KRAFT BERGER LLP
Chartered Professional Accountants

Tax Letter

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TOPICS

COVID-19 TAX RELIEF

It's hard to go a day without thinking about the COVID-19 virus and its impact on our lives. Most governments, including ours, have provided significant financial support to those most affected. In this regard, the Canadian federal government has announced some income tax relief, which are summarized below.

RRIF minimum withdrawals reduced

As some readers are likely aware, if you have a registered retirement income fund (RRIF), you must withdraw at least a minimum amount each year, beginning with the year in which you turn 72. Due to severe drops in the stock markets, a result of the COVID-19 issue, taxpayers with RRIFs may be forced to sell investments at depressed prices to meet the minimum withdrawal amount. For this reason, the government has reduced the withdrawal limit by 25% for the 2020 year.

For example, if you were 74 at the beginning of 2020 (meaning you turn 75 this year), the regular minimum withdrawal amount would be 5.67%. With the 25% reduction, the minimum withdrawal is 4.25% for 2020.

Tax filing dates

Tax return filing dates have been extended. Taxpayers filing past the normal filing-due dates but on or before the extended filing dates will not be assessed late-filing penalties.

For individuals, the April 30, 2020 filing deadline for 2019 returns has been extended to June 1, 2020. For individuals who are self-employed or who have a spouse or common-law partner who is self-employed, the regular June 15, 2020 filing date still applies.

Note: Although the deadline has been extended, many individuals should file earlier. If you are entitled to a refund, or if you are eligible for the GST credit or other refundable credits which require you to have filed last year's return before they are calculated, you should file right away. You should ensure that you file electronically, since the CRA is not processing paper returns until it reopens.

For trusts with a taxation year ending December 31, 2019, the tax return filing deadline has been extended from March 30, 2020 to May 1, 2020. For trusts that would otherwise have a filing due date (90 days after year-end) in April or May 2020, the deadline is extended to June 1, 2020.

For corporations that would otherwise have a tax return filing due date after March 18 and before June 1, 2020, the deadline is extended to June 1, 2020.

For partnerships whose 2019 T5013 partnership information return was due on March 31, 2020, the deadline is extended to May 1, 2020.

For payers of amounts to non-residents that are subject to Part XIII withholding tax (e.g. on payments of passive income like dividends and rent), the filing date for the 2019 Form NR4 is extended from March 31, 2020 to May 1, 2020.

Income taxes owing

For all taxpayers, income tax balances including instalments that are otherwise due after March 17, 2020 and before September 1, 2020, can be paid until September 1, 2020 without interest or penalties. For individuals, this will include the March 15, 2020 instalment, if they were required to make that instalment on account of their 2020 income taxes.

The extended payment date does not apply to balances owing before March 18, 2020 – for example, it does **not** apply to instalments payments that were required during 2019 and which you decided to pay sometime in 2020. The extended date **does** apply to the balance owing on your 2019 income tax return that was otherwise due on April 30, 2020.

Sales taxes and duties

All businesses, including self-employed individuals, have until June 30, 2020 to make GST/HST remittances that are otherwise due from March 27 through the end of May.

Any GST and customs duty payments for imported goods owing for March, April or May can also be paid until June 30, 2020.

Similar relief (no penalties or interest) has been provided by provinces that have separate sales taxes rather than the harmonized HST.

For example, Quebec has extended the filing date to June 30, 2020 for QST returns that are normally required to be filed between March 27, 2020 and June 1, 2020. Payments in respect of those returns can also be made until June 30, 2020.

In British Columbia, PST returns and payments with due dates after March 23, 2020 and before September 30, 2020 will now be due September 30, 2020.

Manitoba extended the April and May filing deadlines for small and medium-sized businesses with monthly remittances of no more than $10,000. Businesses will have up to two additional months to remit retail sales taxes (RST) and the payroll tax. Business with monthly RST remittances of no more than $10,000 per month that would normally be due on April 20th and May 20th will now be due on June 20, 2020. Businesses that file on a quarterly basis that have a due date of April 20, 2020 will now have the due date extended to June22, 2020.

In Saskatchewan, monthly filers of PST may defer payment of amounts due for February, March and April 2020 reporting periods to July 31, 2020. Quarterly filers may defer payment of amounts due for the January 1, 2020 to March 31, 2020 reporting period to July 31, 2020.

Reduction in remitting withholding tax on salaries and wages (the "10% Wage Subsidy")

The government introduced a 10% Wage Subsidy under which eligible employers can retain up to 10% of income taxes they withhold on salaries and wages paid to eligible employees during the eligible period of March 18, 2020 through June 19, 2020. In particular, an eligible employer is deemed to have remitted to the Canada Revenue Agency (CRA) an amount of income taxes withheld during the eligible period, equal to the lesser of 1) $25,000, 2) 10% of salaries and wages paid during the period, and 3) $1,375 per employee employed in Canada in the period. Since the employer is deemed to have remitted that amount of income tax withheld, the employer can keep that amount – thus, it effectively works as a wage subsidy.

For the purposes of the 10% Wage Subsidy, an eligible employer includes a Canadian-controlled private corporation (CCPC), generally whose taxable capital is less than $15 million; an individual other than a trust; a registered charity; a partnership all of the members of which are one of the foregoing persons; and most tax-exempt employers.

Canada Emergency Wage Subsidy

The government subsequently introduced a more extensive wage subsidy, which is separate from the 10% Wage Subsidy discussed above. However, any amount claimed under the 10% Wage Subsidy is deducted from this subsidy.

The Canada Emergency Wage Subsidy ("CEWS") provides a 75% wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020 and up to June 6, 2020. The category of eligible employers is somewhat broader than that under the 10% Wage Subsidy, since it includes all taxable corporations and not just CCPCs, but not tax-exempt municipalities and wholly-owned municipal corporations. The CEWS is available to most charities, but excluding a public university, college, school, school board, hospital or health authority.

The CEWS is available to eligible employers in respect of three "qualifying periods", being the periods from March 15 to April 11, April 12 to May 9, and May 10 to June 6, 2020. Generally, if the employer sees a drop in revenues as described below, the maximum subsidy will be 75% of the amount of remuneration paid to each employee per week, up to a maximum benefit of $847 per employee per week. If an employee's average weekly remuneration from January 1, 2020 through March 15, 2020 ("pre-crisis weekly remuneration") was greater than that paid during a qualifying period, 75% of that average will apply, but still subject to the $847 maximum per week.

A special rule applies to non-arm's length employees. The employer can claim the CEWS for such employees only if they were employed prior to March 15, 2020, and the maximum subsidy for the remuneration paid per week in a qualifying period is 75% of the pre-crisis weekly remuneration, again with a maximum benefit of $847 per week (unlike arm's length employees, the maximum subsidy cannot be based on 75% of the weekly remuneration during the qualifying period).

In addition, the CEWS will give an employer a 100% refund for employer-paid contributions to the Employment Insurance plan, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan, for contributions for eligible employees for each week throughout which those employees are on leave with pay during a qualifying period.

In order to receive the CEWS for a qualifying period, the employer must file an application before October 2020. The application is available on the CRA website using the *My Business Account* portal. At time of writing, the application process on the website was expected to be open by late April or early May.

As noted, there are three qualifying periods. For the first qualifying period, the eligible employer will receive the CEWS subsidy, generally if they have a 15% drop in revenues in March 2020 relative to revenues in March 2019. For the other two qualifying periods, they will receive the subsidy if they have a 30% drop in revenues in April or May 2020, respectively, relative to the revenues in April or May 2019, respectively. Alternatively, the employer can elect to measure the drop in revenues relative to the average revenues in January and February of 2020 (an election is not required if the employer was not carrying on business as of March 1, 2019). However, in all cases, once an employer meets the test for one period, it qualifies for the one following period without needing to meet the test again.

The CEWS is not available to an employer in respect of an employee for a qualifying period if the employee is without remuneration for 14 or more consecutive days. The reason for this exclusion is that the employee should be eligible for the "Canadian Emergency Response Benefit", a $500 per week subsidy (for up to 16 weeks) provided to employees who are laid off or lose their jobs because of COVID-19.

The CEWS is provided under section 125.7 of the *Income Tax Act*; it is technically deemed to be an overpayment of the employer's taxes, which the employer can receive as a refund. Normally, a tax refund is provided only after the tax return for the year is filed. However, the CRA has been given the authority to pay out the CEWS anytime in 2020, so employers do not have to wait for payment until next year when their returns are filed.

For employers that are eligible for both the 10% Wage Subsidy and the CEWS for a period, the benefit from the 10% Wage Subsidy reduces the CEWS for that same period. Otherwise, there is no overall limit on the CEWS amount that an eligible employer may claim.

INTERPLAY BETWEEN SPOUSE, EQUIVALENT TO SPOUSE, AND CAREGIVER CREDITS

Spouse credit

If you have a spouse (or common-law partner) with little or no income whom you support, you can claim the spouse tax credit.

For 2020, the federal credit is 15% of the amount by which $13,229 exceeds your spouse's or partner's income for the year, if your income for the year is $150,473 or less. (If your income exceeds $150,473, the credit is reduced gradually, and down to 15% of $12,298 in excess of your spouse's or partner's income if you are in the highest tax bracket; see the January Tax Letter regarding the changes to the personal and spouse credit for 2020.) Accordingly, the credit is reduced to the extent your spouse has any income and is eliminated once your spouse's income reaches $13,229 or more (or the reduced dollar amount if your income exceeds $150,473). A provincial credit is also available and the amount depends on the province.

If your spouse is dependent on you by reason of mental or physical infirmity, the federal credit is increased to 15% of the amount by which $15,502 exceeds your spouse's income if your income for the year is $150,473 or less (again the credit is reduced if your income exceeds that amount).

The spouse credit is available if you were married or in a common-law relationship at any time during the year. Therefore, if you separate or divorce during the year, you can still claim the credit. In such case, the other person's income for the purposes of the credit includes only the income for the period before the breakdown of the marriage or common-law relationship. However, you **cannot** claim the credit if you deduct spousal support in the year of the breakdown. In other words, you can choose to claim the credit, or take the support deduction, whichever is more beneficial.

You can claim only one spouse credit for a year, even if you have more than one spouse or common-law partner during the year.

Eligible dependent (equivalent to spouse) credit

If you are not married or common-law (or still married, but separated and you do not support your spouse and your spouse does not support you), you may be able to claim the "eligible dependant credit", often called the "equivalent to spouse credit" because the amount of the credit is the same as the spouse credit.

You can claim this credit if you have a related person living with and "wholly dependent" on you, if the person is 1) a child under the age of 18, or 2) your parent or grandparent, or 3) dependent on you by reason of mental or physical infirmity.

As noted, the amount of the credit is equal to the spouse credit, and is reduced in the same manner as the spouse credit to the extent of the dependent relative's income for the year.

You **cannot** claim this credit for a year if you claimed the spouse credit for the same year – for example, if you separated from your spouse during the year and have a dependent relative living with you for another part of the year. If you are eligible for both credits in the year, you can choose the one that is more beneficial – normally in respect of the dependent with the lower income. The CRA provides the following example:

Example

Khalid and Sabina are married and have a ten year old son, Samir. In June 2018, Khalid and Sabina separate, and Samir

> lives with Sabina after the separation. Sabina meets the requirements for claiming the spouse or common-law partner tax credit in respect of Khalid for the period of the year before the separation. Sabina also meets the requirements for the eligible dependant [equivalent to spouse] tax credit in respect of Samir for the period of the year after the separation.
>
> In this case, Sabina can claim whichever of the two credits is more beneficial to her for the year. Whichever credit she chooses to claim, she will be unable to claim the other credit for that year.

Like the spouse credit, you can claim this credit only in respect of one dependent. Similarly, only one person can claim the credit in respect of the same dependent.

You cannot claim this credit in respect of your child in a year if you are divorced or separated and have not lived with your spouse or former spouse (or partner) throughout the year, and are required to pay them chid support.

Canada caregiver credit

You can claim this credit if someone is dependent upon by you by reason of physical or mental infirmity and they are either your spouse or common-law partner, or one of the following if they are 18 years of age or older: your child or grandchild or that of your spouse or partner; or your parent, grandparent, brother, sister, uncle, aunt, niece or nephew, or that of your spouse or partner.

The federal credit is 15% of the amount by which $7,276 exceeds the amount by which the dependent's income exceeds $24,361, if any. Thus, the full credit is available if the dependent's income for the year is $24,361 or less, and is reduced when the income exceeds that amount.

Technically, you could qualify for both the spouse credit and the caregiver credit in respect of a spouse or partner who is dependent upon you by reason of infirmity, but an ordering rule says you must choose to claim the spouse credit. Similarly, you could qualify for both the equivalent to spouse credit and the caregiver credit in respect of an adult relative who is dependent upon you by reason by infirmity, but you must choose the eligible dependent credit.

In many cases, the spouse or eligible dependent credit is more generous in any event, as the base credit amounts are higher than the caregiver amount.

However, the caregiver credit is phased out only to the extent that the dependent's income exceeds $24,361, while the spousal and eligible dependent credits start to be phased out once the dependent has *any* income. In cases where the caregiver credit exceeds the other applicable credit, you can "top up" the other credit by the excess.

> **Example**
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> Your spouse is dependent upon you by reason of infirmity, your income is less than $150,473, and you qualify for both the spouse credit and the caregiver credit. Your spouse's income for the 2020 is $10,000.
>
> You must first claim the spouse credit, which is 15% x ($15,502 – $10,000) = $825.

However, the caregiver credit would equal 15% x $7,276 (since your spouse is below the income threshold) = $1,091.

Therefore, your total credit is $825 + ($1,091 – $825) or simply $1,091.

Of course, if you only qualify for one of the credits, you simply claim that credit. For example, both the spouse and eligible dependent credit require that the dependent live with you during the year, while the caregiver credit does not have a live-in requirement. Thus, if you have an infirm adult relative dependent on you for support who does not live with you, only the caregiver credit can be claimed.

Unlike the spouse and eligible dependent credits, you can claim the caregiver credit in respect of more than one person – for example, if you have two adult infirm relatives who are dependent upon you.

If more than one person is entitled to the caregiver credit – say, if you and your spouse support an infirm relative – one of you can claim the credit or you can share the credit.

ALLOWABLE BUSINESS INVESTMENT LOSSES

One-half of a capital loss is an allowable capital loss, which is normally deductible only against taxable capital gains. However, if the capital loss is a "business investment loss", then one-half of it is an "allowable business investment loss" (ABIL) deductible against *all* sources of income.

A business investment loss includes a capital loss disposition to an arm's length person of:

1) a share of a "small business corporation", or
2) a debt owed by a Canadian-controlled private corporation ("CCPC") that is either:
   - a small business corporation, or
   - bankrupt, or
   - an insolvent corporation that qualified as a small business corporation when it was in the process of being wound up.

You can also have a deemed business investment loss in a year if one of the debts mentioned above becomes a bad debt in the year, generally meaning it is reasonable to believe the debt will not be repaid. In this case, you make an election with your tax return for the year.

Lastly, you can have a business investment loss in a year if you own a share of a small business corporation and

1) the corporation became bankrupt in the year, or
2) the corporation is insolvent, and is being wound up under a winding-up order in the year, or
3) at the end of the year,
   (a) the corporation is insolvent,
   (b the corporation (and any corporation controlled by it) does not carry on business,
   (c) the fair market value of the share is nil, and
   (d) it is reasonable to expect that the corporation will be dissolved or wound up and will not later carry on a business.

As with the bad debt above, you must make an election with your tax return for the year, and you will have a deemed disposition of the share for nil proceeds, leading to the capital loss.

For the above purposes, a CCPC is generally a private corporation resident in Canada that is not controlled by non-residents or public corporations.

A "small business corporation" does not actually have to be small. It is defined as a CCPC where “all or substantially all” of its assets (on a fair market value basis) are:

(a) used principally in an active business carried on primarily in Canada by the corporation or by a corporation related to it, and / or
(b) shares or debt in another small business corporation, generally if it controls the other small business corporation or owns at least 10% of the shares of the other corporation on a votes and fair market value basis.

ABILs that cannot be used in the year can be carried forward up to ten years to offset all sources of income. If any amount remains after the 10th year, it becomes a regular allowable capital loss, deductible only against taxable capital gains from that point on.

Business investment loss reduced by previous capital gains exemption

Your business loss otherwise determined is reduced to the extent you claimed the capital gains exemption in a previous year. The reduction is based on the capital gains that were exempt, not the taxable capital gains (which are ½ of the capital gains). The current lifetime capital gains exemption covers (as of 2020) up to $883,384 of capital gains from qualified small business corporation shares and qualified farm or fishing property, with an additional $116,616 for qualified farm or fishing property.

For example, say you had a $100,000 capital loss this year, which qualified as a business investment loss. You claimed the capital gains exemption two years ago, in respect of $60,000 of capital gains. Your business investment loss will be reduced to $40,000, half of which will be an ABIL and deductible against all sources of income. One-half of the other $40,000 will be a regular allowable capital loss and deductible only against taxable capital gains.

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