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## PERSONAL TAX

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### MEDICAL EXPENSES - COSMETIC PROCEDURES

In an August 31, 2011 **Technical Interpretation**, Canada Revenue Agency (CRA) noted that medical expenses paid after March 4, 2010 for **purely cosmetic** procedures are **ineligible** for the Medical Expense Tax Credit (METC).

This generally includes **surgical and non-surgical** procedures purely aimed at **enhancing** an individual's **appearance**, such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening. The CRA has **posted** on its **website** some examples of procedures that will generally be **ineligible** as medical expenses at [www.cra.gc.ca/gncy/bdgt/2010/md-cl-eng.html](http://www.cra.gc.ca/gncy/bdgt/2010/md-cl-eng.html).

### MOVING EXPENSES

In a December 1, 2011 **Tax Court of Canada** case, the taxpayer **worked** for Boehringer Ingelheim Ltd. (B). In 2007 the taxpayer accepted a **promotion** and he determined that he would **need to**



**move closer to his place of work** in Burlington, Ontario. The Appellant moved from Toronto to Oakville and there is no dispute that the **new residence is 40 kilometres** closer to his work than his former residence.

### Taxpayer Wins!

The **Court allowed** the **moving expenses**.

### CHILDREN'S ART TAX CREDIT (CATC)

Commencing in **2011** a non-refundable **CATC** will be available to **parents of children** who are **under age 16** at the beginning of the year, or **age 18** if the child is **disabled**. The **CATC** is based on **15% of eligible expenses** paid for the cost of registration or membership in a **prescribed program** of artistic, cultural, recreational, or development activity. The **maximum 15% CATC** is based on **\$500**. This is **similar** to the **Fitness Credit** introduced in 2010. Therefore, a parent is eligible for a maximum **\$150, 15% tax credit (arts, \$500 and fitness, \$500)**.

Eligible **CATC** programs include:

- a weekly program of a minimum of **eight consecutive weeks** duration in which a minimum of **90%** of all activities are eligible activities

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or, offered by an **organization** where a **50% eligible activity test** is met; and

- a program of a minimum of **five consecutive days** in which more than **50%** of the activities are eligible.

A program that is part of a **school curriculum** will **not** be eligible.

**Eligible CATC activities** will **include** development of creative skills or expertise in **artistic or cultural** activities; providing of substantial focus on **wilderness and a natural environment**; helping children develop and use particular **intellectual skills**; structured interaction among children where supervisors teach or help children develop **interpersonal skills**; and providing enrichment or tutoring in **academic subjects**.

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For **more information** see the Children's Arts Tax Credit (CATC) Questions and Answers on the CRA website.

**NATURAL PERSON/SOVEREIGN PERSON**  
In an October 20, 2011 **Tax Court of Canada** case, the taxpayer was assessed **gross negligence penalties, late filing penalties, interest and taxes** for the years **1999 to 2001** for **unreported income**.

In this case, the **Appellant argued** that he is a "**sovereign person**" and cannot be taxed unless there is contract between him and the government. The **Court found** that this **argument is without merit**.

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## EMPLOYMENT INCOME

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### HIRING CREDIT FOR SMALL BUSINESS (HCSB)



The **2011 Federal Budget** created a **one-time hiring credit** for small business. The **HCSB** gives small businesses **relief**

from the **employer's share** of Employment Insurance (EI) premiums paid in **2011** by paying up to \$1,000, based on the **increase** in an employer's EI premiums paid in 2011 over those paid in 2010.

#### Eligibility

You are **eligible** for this credit if you meet **all** of the following conditions:

- you **deducted EI premiums**

from the remuneration you paid to your employees, or paid the worker's share of EI premiums for barbers, hairdressers, fishers or drivers of taxis and other passenger-carrying vehicles, and you remitted these premiums (along with your share of EI premiums) to your payroll (RP) account;

- you reported the income and deductions on a **T4 Slip** and filed this information on your RP account for **2010 and 2011**;
- the total of **employer EI premiums** you paid for **2010** was **\$10,000 or less**; and
- your total **employer EI premiums increased** in **2011**.

If you are eligible, the **CRA** will **automatically calculate** the amount of your **HCSB** using the EI information from the T4 Slips you filed with your 2010 and 2011 T4 Information Returns. The amount to be credited to your payroll account will be no more than \$1,000.

### INDEPENDENT CONTRACTOR VS. EMPLOYEE - TRUCK DRIVERS

In a September 22, 2011 **Federal Court of Appeal** case, the **Tax Court** had **previously** concluded that **43 of the truck drivers** were **independent contractors** because they **signed Agreements** that indicated this intent. However, the **other 53 truck drivers** were considered to be **employees**.

#### Taxpayer Loses

The **Federal Court** found that **39 of the 43 independent contractors** were in fact **employees**. Therefore, of the

**96 truck drivers**, the **Federal Court** concluded that **92 of them** were in fact **employees**. A **significant loss** for the **Corporation**.

### EMPLOYMENT INSURANCE FOR NON-ARM'S LENGTH EMPLOYEES

In an October 20, 2011 **Tax Court of Canada** case, the major shareholder's **daughter** worked for the corporation and the corporation **successfully** argued that the **salary** was **not** subject to **Employment Insurance** because the **Employment Insurance Act** **excludes non-arm's length** situations where the terms and conditions of the employment are **not substantially similar** to contracts of employment with arm's length people.

In an October 3, 2011 **Tax Court of Canada** case, the individual was the **spouse** of the owner of the corporation and claimed that her employment was subject to EI and, therefore, made an application for Employment Insurance.

The Court again concluded that her employment was **not insurable** on the basis that **her terms and conditions of employment** were **not the same** as an arm's length person.

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## BUSINESS/PROPERTY INCOME

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### SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In December, 2011, CRA issued **Guide RC4467** which notes that:

- In 2010 the **SR&ED Program**

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provided approximately **\$3.5 billion** of tax assistance for over **21,000** claimants. Of these, **75%** were **small businesses**.

- The SR&ED Program provides financial assistance through the form of **refundable investment tax credits**, and a reduction of **taxes payable**, or both.
- The SR&ED Program is available to **any business** operating and doing **SR&ED** in Canada. Any business that is involved in **basic** or **applied research**, or in developing **new** or **improved** materials, devices, products, or processes may be **eligible** under the SR&ED Program.
- To determine if your work meets the SR&ED requirements, see the **CRA Eligibility Self-Assessment Tool** at [www.cra.gc.ca/sred-assessment](http://www.cra.gc.ca/sred-assessment).
- Also, CRA has a **First Time Claimant Service**; a **Pre-Claim Project Review Service** (provides a preliminary opinion on the eligibility of projects for SR&ED tax incentives); and the **Account Executive Service** (provides a designated contact person who will be available to answer your questions on SR&ED).

For more information see [www.cra.gc.ca/sred](http://www.cra.gc.ca/sred).



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## OWNER-MANAGER REMUNERATION

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### DIRECTOR LIABILITY

In an April 21, 2011 **Federal Court of Appeal** case, the Federal Court reviewed the “**due diligence defence**” and found the **taxpayer/director personally liable** with respect to unpaid **GST/HST** and **source deductions** and noted that:

- The **director’s efforts** should be to **prevent failures**.
- There is a need for **stronger corporate internal controls** and **director’s meetings** to ensure that the statutory obligations under the **Income Tax Act** and the **Excise Tax Act** are met.
- This is a **warning** to directors that they must meet **statutory obligations** with respect to source deductions and GST/HST remittances.

### INDIVIDUAL PENSION PLANS

An **Individual Pension Plan (IPP)** could be used as a replacement **retirement savings vehicle** for, say, a Registered Retirement Savings Plan (**RRSP**). Some **points to consider** include:

1. An **RRSP** may work well for younger employees however, **older employees** that have **corporations** may prefer a defined benefit type of Pension Plan such as an **IPP** to provide **current contributions** that are in excess of the **RRSP** deduction



limit.

2. An **IPP** may also allow the employer to make **past service contributions**.
3. An employee must receive **T4-type (T4 or T4PS) employment income** from an employer as compensation for **IPP pension contribution** purposes. For example, self employment, dividend and interest incomes are not pension eligible.
4. An **ideal IPP candidate** is between age **50 and 71**, is a shareholder of an **owner-managed corporation** or a **senior executive**, is of **high net worth** and highly compensated, desires significantly **higher contributions** than an **RRSP**, has **significant profits and cash flows** to meet corporate-funded IPP obligations, has **no need to access the IPP fund** except in the form of a pension, and has **no need to borrow** against IPP assets.

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## ESTATE PLANNING

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### CPP CHANGES FOR 2012

In July 14 and October 7, 2011 Releases, CRA discussed the **2012 CPP changes** and notes that if you are **under age 65** and you **work** in Canada, you and your employer will have to make **CPP contributions**. Also, working individuals who are at least **65 years of age but under 70** will be subject to the **CPP**, even if you are receiving a **CPP** or **QPP** pension, **unless** you **elect** to stop

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contributing by filing Form CPT30.

Some **other CPP changes** include:

1. A person who **delays** receiving their **CPP** until **after age 65** will receive a **larger increase** than was available **prior to 2012**.



Under the **old rules**, the **CPP** would be increased by **.5%** per month after age 65.

From **2011 to 2013** this percentage will increase from **.5%** per month to **.7%** per month.

2. Individuals that **elect** to receive their **CPP** **before age 65** will have a **larger reduction**. **Previously** it was **.5%** for each month before age 65.

The change is a **phased-in reduction** that will **increase** the early **CPP** reduction to **.6%** per month.

3. Under the old rules, an individual had to **stop working** for **two months** before they could apply to receive **CPP** between the ages of 60 and 65. Commencing in **2012**, this test will **no longer apply**.

#### **RRSPs/RRIFs - ANTI-AVOIDANCE RULES**

The **2011 Federal Budget** enhances the existing **RRSP/RRIF Anti-Avoidance Rules**. For example, the

new rules would require the **income received** by an **RRSP/RRIF** (including capital gains) from a **“prohibited investment”** (for example, shares in which the annuitant or a related person owns 10% or more) to be **100% taxed**.

Also, the Budget proposes a **special tax** on the fair market value of a **“prohibited investment”**.

#### **Caution**

This is **complicated legislation** and needs a **special review** before application to a fact situation. A **special election** could be made **before July, 2012** for pre-March 22, 2011 prohibited investments.

#### **RRSP SCAM**

In a November 23, 2011 **Tax Court of Canada** case, the **issue** was whether **CRA** was correct in reassessing the Appellants to include in **income** the amounts that they paid for **corporate shares** acquired using funds in their **self-directed RRSP** accounts for 2001 and 2002.

The Appellants were **defrauded** by being persuaded to transfer their existing registered funds into new, self-directed registered accounts, and then purchase **corporate shares** that were **not qualified investments** and that had **no value** at the time of purchase.

#### **Taxpayer Loses**

The amounts were required to be included in **income**. However, the Court **deleted** the **gross negligence penalties** on the basis that the Appellants were **innocent victims**.

#### **NON-PROFIT ORGANIZATIONS (NPO)**

In an October 24, 2011 **Technical Interpretation**, **CRA** took the position that the **Organization** would **not likely qualify** for **tax-free status** as a **NPO** because it is operating for a **profitable purpose**. In this case, the **Organization** was receiving **revenues in excess of expenses** for **advertising** undertaken by it for other persons.

**CRA** noted that the large amount of **retained earnings** suggest that the **Organization** has **not** operated **exclusively** for any **purpose except profit**.

#### **TAX-FREE SAVINGS ACCOUNT (TFSA)**

In the Fall of 2011, many taxpayers received a **TFSA over-contribution package** concerning their **2010 TFSA contributions**. For example, if a person made a contribution in 2010, withdrew it, and then **re-contributed** it in the **same year** or, withdrew funds and contributed them into another **TFSA**, there could have been a **1% per month penalty**.

If a taxpayer has received a **TFSA over-contribution package**, they may **ask the CRA** to **review** the file and consider **waiving the penalty**.

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#### **WEB TIPS**

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#### **ONLINE TRANSLATOR - GOOGLE**

If you are looking for a **quick and easy translator to use**, consider going to <http://translate.google.com>.

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This translator converts **typed-in words** and phrases in addition to **entire uploaded documents**.

## CANADIAN FINANCIAL CALCULATORS

Over **40 excellent Canada specific financial**

**calculators** can be found at:

<http://www.cchwebsites.com/content/calculators/indexcanadian.html>



Examples of the calculators available are:

Adjustable Rate Mortgage Calculator

Interest Only Mortgage Calculator

Refinance Breakeven

Rent vs. Buy

Amortizing Loan Calculator

Student Loan Consolidation and

Debt Payoff

Home Equity Loan vs. Auto loan  
Future Value Calculator  
Taxable vs. Tax Advantaged  
Investments  
Retirement Nestegg Calculator  
Tax Free Savings Account (TFSA)  
Comparison (Canadian)  
Taxable vs. Tax Advantaged  
Investments (Canadian)

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## INTERNATIONAL

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### U.S. CITIZENS IN CANADA - AN UPDATE

On December 7, 2011 the IRS released a fact sheet entitled "**Information for U.S. Citizens or Dual Citizens Residing Outside the U.S.**". This **seven point** release provides a **commentary** and **examples** on the **filing obligations, processes, and related penalties** for

U.S. Citizens residing abroad that are delinquent in their filings (example, in Canada).



The release can be found at:  
<http://www.irs.gov/newsroom/article/0,,id=250788,00.html>

### Editor's Comment

These **filing requirements** could apply to persons **born in the U.S.**, or, in some cases, children of people born in the U.S. and, **Green Card** holders.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

Although every reasonable effort has been made to ensure the accuracy of the information contained in this newsletter, no individual or organization involved in either the preparation or distribution of this letter accepts any contractual, tortious, or any other form of liability for its contents.

For any questions... give us a call.

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## 2011 PERSONAL INCOME TAX RETURN CHECKLIST

### INFORMATION REQUIRED INCLUDES:

1. All **information slips** such as T3, T4, T4A, T4A(OAS), T4A(P), T4E, T4PS, T4RIF, T4RSP, T5, T10, T2200, T2202, T101, T1163, T1164, TL11A, B, C and D; T5003, T5007, T5008, T5013, T5018 (Subcontractors), RC62 and corresponding provincial slips.
  
2. Details of **other income** for which no T slips have been received such as:
  - other employment income (including stock option plans and Election Form T1212),
  - business income,
  - partnership income,
  - rental income,
  - alimony, separation allowances, child maintenance,
  - pensions (certain pension income may now be *split* between spouses - see #35), U.S. and German Social Security Pensions have special rules.
  - interest income earned but not yet received - example Canada Savings Bonds, Deferred Annuities, Term Deposits, Treasury Bills, Mutual Funds, Strip Bonds, Compound Interest Bonds
  - professional fees,
  - director fees,
  - scholarships, fellowships, bursaries,
  - replacement properties acquired.
  
3. Details of **other expenses** such as:
  - employment related expenses - Provide Form T2200 - Declaration of Conditions of Employment,
  - tools acquired by apprentice vehicle mechanics,
  - business and employment purchases like vehicles, supplies, etc.,
  - interest on money borrowed to purchase investments,
  - investment counsel fees,
  - moving expenses - including costs of maintaining a vacant former residence,
  - child care expenses,
  - alimony, separation allowances, child maintenance,
  - safety deposit box fees,
  - accounting fees,
  - pension plan contributions,
  - film and video production eligible for tax credit,
  - mining tax credit expenses,
  - business research and development,
  - adoption related expenses,
  - clergy residence deduction information, including Form T1223,

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- disability supports expenses (speech, sight, hearing, learning aids for impaired individuals and attendant care expenses),
- tradeperson's tools acquired by an employee,
- public transit passes acquired,
- amounts paid for **programs of physical activity** for children **under age 16** at any time during the year (**under 18** for children with **disabilities**).

Up to **\$500** may be claimed for both a **fitness** and an **arts** tax credit. The types of programs that qualify are **very broad**.

4. Details of **other investments** such as:
  - real estate or oil and gas investments - including financial statements,
  - labour-sponsored funds.
5. Details and **receipts** for:
  - Registered Retirement Savings Plan (RRSP) contributions,
  - professional dues,
  - tuition fees for both **full-time** and **part-time** courses for you or a dependant - including mandatory ancillary fees, and Forms T2202, TL11A, B, C and D where applicable,
  - charitable donations (including publicly traded securities),
  - medical expenses for you or a dependent person (including certain medical related modifications to new or existing home and travel expenses). Note that purely cosmetic procedures do not qualify after March 4, 2010.
  - political contributions.
6. Details of **capital gains and losses** realized in 2011.
7. Details of previous **capital gain exemptions** claimed, **business investment losses** and **cumulative net investment loss accounts**.
8. Name, address, date of birth, S.I.N., and province of **residence** on December 31, 2011.
9. **Marital/common-law status** and spouse/partner's income, S.I.N. and birth date.
10. List of **dependants/children** - including their incomes and birth dates.
11. If you or one of your dependants was in attendance at a **college or university**, details concerning name of institution, number of months in attendance, tuition fees, income of dependant, Form T2202.
12. Are you **disabled or are any of your dependants** disabled? Provide Form T2201 - disability tax credit certificate. This also includes extensive therapy such as kidney dialysis and certain cystic fibrosis therapy. Also, the **transfer rules** include relatives such as parents, grandparents, child, grandchild, brothers, sisters, aunts, uncles, nephews or nieces.  
Persons with **disabilities** also may receive tax relief for the cost of **disability supports** (eg. sign language services, talking textbooks, etc.) incurred for the purpose of **employment** or **education**.  
Also, see #33 for **Registered Disability Savings Plan** information.
13. Details regarding residence in a prescribed area which qualifies for the **Isolated Area Deduction**.

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14. Information regarding *child tax benefit* receipts.
15. Details regarding contributions and withdrawals from *Registered Education Savings Plans*.
16. Details regarding *RRSP - Home Buyers' Plan* withdrawals and repayments; *RRSP - Lifelong Learning Plan* repayment.
17. Receipts for 2011 income tax *installments* or, payments of tax.
18. Copy of 2010 personal tax *returns*, 2010 Assessment *Notices* and any correspondence from Canada Revenue Agency (CRA).
19. 2011 *Personalized Tax information* which CRA may have sent you.
20. Do you want your *tax refund or credit* deposited directly to your account in a financial institution? Yes/No.  
To start direct deposit, or to change banking information, attach a void personalized cheque or your branch, institution and account number.
21. Details of *carry forwards* from previous years including losses, donations, forward averaging amounts, registered retirement savings plans.
22. Details of *foreign property* owned at **any time** in 2011 including cash, stocks, trusts, partnerships, real estate, tangible and intangible property, contingent interests, convertible property, etc..
23. Details of *income* from, or *distributions* to, *foreign entities* such as foreign affiliates and trusts.
24. Details of your *Pension Adjustment Reversal* if you ceased employment and were in a Registered Pension Plan or a Deferred Profit Sharing Plan. (T10 Slip)
25. If you provided *in-home care* for a *parent or grandparent* (including in-laws) 65 years of age or over, or an infirm *dependent relative*, a federal tax credit may be available.  
Also, the caregiver may claim related *training costs* as a medical expense credit.
26. Interest paid on qualifying *student loans* is eligible for a tax credit.
27. ***Retroactive lump-sum payments***  
Individuals receiving qualifying retroactive *lump-sum payments* over \$3,000 may be allowed to use a special mechanism to compute the tax.
28. Changes in *family circumstance* that could affect the *Goods and Services Tax Credit*, such as births, deaths, marriages, reaching the age of 19 years, and becoming or ceasing to be a resident in Canada.
29. *Children* of low or middle income parents may be entitled to a *Canada Learning Bond* of \$500 in the initial year and \$100 per

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year until age 15. Please ask us for details.

30. Do you have any *personal interest expense* - such as on a house mortgage or vehicle?  
If so, it may be possible to take steps to convert this into deductible interest. Please ask us for details.
31. An *investment tax credit* is available in respect of each *eligible apprentice* employed in one of the 45 Red Seal Trades. Also, a *\$1,000 grant* is available for first and second year apprentices effective *January 1, 2007*.
32. Have you received the *Universal Child Care Benefit* of *\$100 per month* for each child under *6 years* of age?
33. Any person eligible for the *disability tax credit*, or their parent or legal representative, may establish a **Registered Disability Savings Plan** which receives *government grants*. Please ask us for details.  
See #12 for information on **disabilities**.
34. The age limit for *maturing* Registered Pension Plans, Registered Retirement Savings Plans, and Deferred Profit Sharing Plans is *71 years* of age.
35. Spouses may *jointly elect* to have up to 50% of *certain pension income* reported by the *other spouse*. Please ask us for details.
36. Individuals 18 years of age and older may deposit **up to \$5000** per year into a **Tax-Free Savings Account** commencing in 2009. Please ask us for details.
37. Are you a first-time **home buyer** in 2011?  
A tax credit based on \$5,000 (@15% = \$750) is available for qualifying homes acquired after January 27, 2009.
38. If required income or Forms have **not been reported** in the past to the CRA, a **Voluntary Disclosure** to the CRA may be available to avoid penalties. Contact us for details.
39. Commencing July 2010, the law is changed to allow two eligible individuals who **share custody** after a **relationship breakdown** to share the Canada Child Tax Benefit, Universal Child Care Benefit, and the GST/HST Credit in respect of the child.
40. Are you a **U.S. citizen, Green Card Holder**, or were you, or your parents **born in the United States**? You likely have U.S. filing obligations.
41. Do you have, or share, **custody** of a **child** after a relationship breakdown? You may be entitled to the CCTB, UCCB and GST/HST Credit.

# Tax Tips & Traps