

# YOUR ACCOUNTANT



ROLFE, BENSON LLP

CHARTERED ACCOUNTANTS

1400–900 West Hastings Street  
Vancouver, B.C. V6C 1E3  
Telephone: 604-684-1101

Fax: 604-684-7937

E-mail: [admin@rolfebenson.com](mailto:admin@rolfebenson.com)

## Winter 2010

### Help Us Protect the Environment

If you would like to receive our newsletters by e-mail (in Adobe PDF format), please e-mail to Sherry Dunn at [admin@rolfebenson.com](mailto:admin@rolfebenson.com). Please include in your request the name (*individual and/or corporate*) which appears on the newsletter mailing label.

### Clients

Located on our website ([www.rolfebenson.com](http://www.rolfebenson.com)) is a link **SEND THIS FILE**. Please use this secure form when your files are too large to be sent via regular email.

#### CONTENTS

<i>Help Us Protect the Environment</i> .....	1
<i>Clients</i> .....	1
<i>Year End Tax Planning</i> .....	1
<i>2010 Remuneration</i> .....	2
<i>Personal Tax Returns</i> .....	2
<i>Employees vs. Contractors</i> .....	3
<i>Automobile Business Usage</i> .....	3
<i>Business/Property Income</i> .....	3
<i>Owner/Manager Remuneration</i> .....	3
<i>Estate Planning</i> .....	4
<i>Firm News</i> .....	4

### Year End Tax Planning

Some 2010 year-end tax planning tips include:

1. Certain expenditures made by individuals by 31 December 2010 will be eligible for 2010 tax deductions or credits including: moving expenses, child care expenses, safety deposit box fees, charitable donations, political contributions, medical expenses, alimony, eligible employment expenses, union, professional, or like dues, carrying charges and interest expenses, certain public transit amounts, and children's fitness amounts.

2. You have until 1 March 2011 to make tax deductible Registered Retirement Savings Plan (RRSP) contributions for the 2010 year.

Consider contributing to a spousal RRSP to achieve income splitting in the future.

3. If you own a business, consider paying a reasonable salary to family members for services rendered to the business.
4. An individual whose 2010 net income exceeds \$66,733 will lose all, or part, of their old age security.

Senior citizens will begin to lose their income tax age credit if net income exceeds \$32,506.

Contact us for assistance in managing your 2010 personal income.

5. Consider purchasing assets eligible for capital cost allowance before the year-end.
6. Consider selling capital properties with an underlying capital loss prior to the year-end if you had taxable capital gains in the year, or any of the preceding three years. This capital loss may be offset against the capital gains.

7. Registered Education Savings Plan (RESP)



This newsletter is published quarterly by Rolfe, Benson LLP as an information service to clients and friends of the Firm, it is not intended to substitute for competent professional advice. You should consult your professional advisors before taking any action.

A Canada Education Savings Grant (CESG) for RESP contributions will be permitted equal to 20% of annual contributions for children (maximum \$500 per child per year).

8. Health and dental premiums for the self-employed  
Individuals will be allowed to deduct amounts payable for Private Health Service Plan coverage in computing business income provided they meet certain criteria.
9. A refund of Employment Insurance paid for non-arm's length employees may be available upon application to CRA.
10. Taxpayers that receive "eligible" dividends from private and public corporations may have a significantly lower tax rate on the dividends. Notification from the corporation to the shareholder is required. In BC the tax rate on eligible dividends will increase by about 15% in 2011. Consider paying such dividends before the end of the year.
11. Eligible public transit passes will be entitled to a tax credit.
12. A tax credit for children under 16 enrolled in certain organized activities is available.
13. A Registered Disability Savings Plan may be established for a person who is eligible for the Disability Tax Credit. Non-deductible contributions to a lifetime maximum of \$200,000 are permitted which are eligible for tax-deferred grants and bonds. Please contact us for details.
14. 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.

## 2010 Remuneration

Some general guidelines to follow in remunerating the owner of a Canadian-controlled private corporation earning "active business income" include:

1. Bonusing down active business earnings in excess of the annual business limit may reduce the overall tax. However, leaving corporate active business income over this amount presents a tax deferral.

Professional advice is needed in this area.

2. Notification must be made to the shareholders when an "eligible" dividend is paid - usually in the form of a letter dated on the date of the dividend declaration. If all shareholders are directors, the notification may be made in the Directors' Minutes.

Please contact us for advice before paying an eligible or ineligible dividend.

3. Elect to pay out tax-free "capital dividend account" dividends.

4. Consider paying dividends to obtain a refund of "refundable dividend tax on hand".
5. Corporate earnings in excess of personal requirements could be left in the company to obtain a tax deferral. The effect on the "Qualified Small Business Corporation" status should be reviewed before selling the shares.
6. Dividend income, as opposed to salaries, will reduce an individual's cumulative net investment loss balance thereby providing greater access to the capital gain exemption.
7. Excessive personal income affects receipts subject to clawbacks, such as old age security, the age credit, child tax benefits, and GST credits.
8. Salary payments require source deductions to be remitted to the Canada Revenue Agency on a timely basis.
9. Individuals that wish to contribute to the Canada Pension Plan or a Registered Retirement Savings Plan may require a salary to create "earned income".
10. Salaries paid to family members must be reasonable.
11. Remember that one can make non-cash holiday gifts of \$500 each year to employees which are deductible to the employer but not taxable to the employees.

## Personal Tax Returns

### TUITION AND EDUCATION CREDITS - SCHOLARSHIP

CRA notes that the Income Tax Act expands the scholarship exemption so that most scholarships and bursaries received by students are exempt from income tax subject to certain criteria.

Also tuition, education and textbook tax credits are available to students enrolled at a "designated educational institution" in a "qualifying educational program".

### MEDICAL EXPENSES - COSMETIC PROCEDURES

In a 16 June 2010 Technical Interpretation, CRA notes that the 2010 Budget precludes the medical credits for expenses incurred after 4 March 2010 for purely cosmetic purposes, including any related services and other expenses such as travel. Both surgical and non-surgical procedures for enhancing one's appearance will be ineligible. However an expense will continue to qualify as a medical expense if it is required for medical or reconstructive purposes, such as surgery to address a deformity related to a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

#### *Editor's Comment*

Also GST/HST may apply to the ineligible cosmetic expenses.

## MEDICAL EXPENSE - WEIGHT-LOSS CLINIC

In a 25 June 2010 Technical Interpretation, CRA notes that fees paid to a weight-loss clinic by an individual in respect of a weight-loss program for the treatment of obesity would qualify as a medical expense where the services are provided by a medical practitioner who is authorized to act as such in the province in which the services are rendered.

## DISABILITY TAX CREDIT (DTC) - PRIOR YEARS

In a 7 June 2010 Technical Interpretation, CRA notes that there is no provision in the Income Tax Act that precludes an individual from requesting to have a prior year tax return reassessed for the DTC where the certificate was signed in one year certifying that the impairment started in an earlier year.

## Employees vs. Contractors

In a 22 June 2010 Tax Court of Canada case, the Appellant was found to be engaging the truck driver in insurable/pensionable employment income, not as an independent contractor.

The Court noted that factors which suggest that the trucker was an employee of the Appellant include:

1. Tools/equipment - The Appellant provided all the tools and equipment, including the truck.
2. Chance of profit/risk of loss - The trucker had no expenses and no liability exposing him to a risk of loss. There was no opportunity for him to increase his income.
3. Control - The trucker received instructions from the Appellant and reported to the Appellant on a daily basis for work assignments.

Also, in a 30 June 2010 Tax Court of Canada case, CRA took the position that the 43 incorporated and 53 unincorporated truck drivers were employees of the payer and subject to EI and CPP.

The Court concluded that the 43 incorporated truck drivers were independent contractors because the intent of the incorporated workers and the Appellant was that of being independent contractors.

However, based on the evidence presented, the Court found that the remaining 53 workers were employees.

Also, in a 4 May 2010 Tax Court of Canada case, the Court found that a professor at the University of British Columbia was engaged as an independent contractor not an employee and noted that the professor honoured the contract which defined the independent contractor status by becoming a GST Registrant, invoicing his time with GST and bidding on new contracts as existing contracts expired.

## Automobile Business Usage

In 2010 the CRA announced a new policy in regard to documenting the business use of an automobile when it is used for both business and personal purposes. The new rules allow for reduced record keeping. The new rules require the maintenance of a log of business usage for a full 12-month base year, after which one would only record a sample three-month period in each subsequent year.

## Business/Property Income

### EMPLOYMENT INSURANCE ACT (EIA)

In a 25 September 2008 Tax Court of Canada case, the Court concluded that the relationship between Brother 1 and Sister 1, who each owned 30% of the Corporation, was such that the salary paid to them was not subject to EI under the EIA. (Individuals that control more than 40% of the voting shares are automatically exempt from EI.)

The EIA notes that insurable employment also does not include employment if the employer/employee are not dealing with each other at arm's length. However this requires that the terms and conditions of their employment are different from those of other arm's length employees.

The Court noted that the Brother and Sister stated that they had a great deal of autonomy and freedom in carrying out their tasks. They both assumed their responsibilities, knowing very well that they did not need to obtain any approval. Decisions were made during dinners at their mother's home or at other locations.

The Court concluded that the familial aspect of the business had a marked influence on its operation to the point that some important decisions were made based on the familial connection rather than on the economic reality of the business. The Brother and Sister also received a salary that was different and not comparable in terms of hours worked to other employees. They both received generous bonuses when the business was flourishing.

### GENERAL PURPOSE ELECTRONIC DATA PROCESSING EQUIPMENT (GPEDPE)

GPEDPE (computers and ancillary equipment) are eligible for a 100% tax deduction in the year if acquired after 27 January 2009 and before February 2011.

Keep this 31 January 2011 deadline in mind.

## Owner/Manager Remuneration

### NATIONAL JOINT COUNCIL TRAVEL DIRECTIVES

Owner-managers are often looking for objective, reasonable travel allowances to pay themselves, and employees, so as to reduce or avoid disputes with CRA. The kilometric rates paid by

the Government of Canada for privately owned vehicles driven on authorized government business and for private non-commercial accommodation and meal allowances and incidental expenses are at [www.njc-cnm.gc.ca/directive/index.php?sid=97&lang=eng](http://www.njc-cnm.gc.ca/directive/index.php?sid=97&lang=eng) (or Google National Joint Council Travel Directives).

For example, the total for meals and incidentals is \$85.20 per day - only 75% of this is paid from the thirty-first consecutive calendar day of travel status while at the same location when corporate residences and/or apartment hotels are available, or the traveler chooses to stay in private accommodations. The Territories have higher rates.

## Estate Planning

### DONATED ARTWORK

In a 23 November 2009 Tax Court of Canada case, CRA successfully reduced the donation tax credit on artworks donated by the Appellants to a museum in 1999 and 2000 by successfully challenging the fair market value of the artworks.

### CLEARANCE CERTIFICATES

In a 16 June 2010 Technical Interpretation, CRA notes that where a legal representative distributes the deceased person's assets without first obtaining a Clearance Certificate, the Income Tax Act, the Employment Insurance Act, and the Excise Tax Act permit the CRA to assess the representative personally for unpaid tax debts.

### TRANSFERRING CAPITAL LOSSES BETWEEN SPOUSES

Typically, a loss must be claimed by the individual who owned the asset while it declined in value. However, CRA has confirmed that they accept transactions which transfer capital losses between spouses. This could be useful where one spouse owns appreciated assets, or has realized a capital gain, while the other has capital losses.

Careful planning is required to ensure all technical requirements are met. Please contact us for details.

In most cases that transfer must happen before the end of November if the loss is to be transferred in the current tax year.

## Firm News

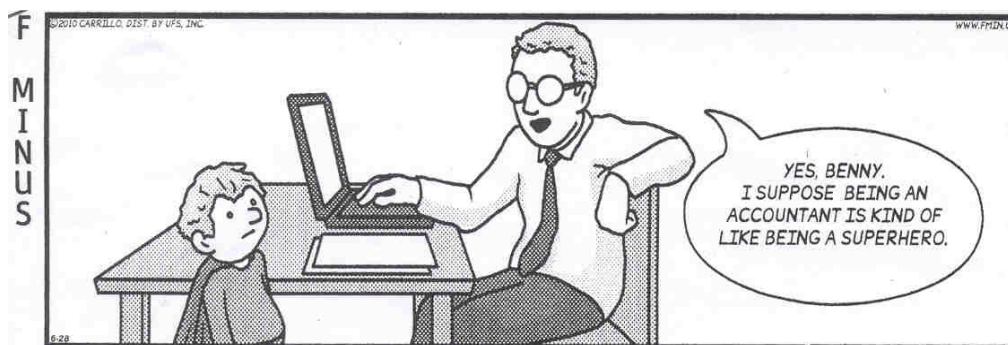
This is the time of the year when we do some work for the community. For probably 25 years we have raised funds for the United Way and this year was no exception. Firstly, the majority of our staff make cash commitments and then we raise other funds through some fun activities in the firm. These activities include a 50:50 draw, a very popular bake-off silent auction, and a costume day. This year we increased our firm giving by over 20% and we are very proud of our staff in this connection. On the 6th of December we will make our annual visit to the Salvation Army at which time we not only serve an evening meal but also pay for it. We are encouraged to smile at all of the recipients of this meal as so often they don't get a smile from anyone. There is no question that this evening does as much for us as we are able to do for others. Many years ago, we decided to donate to three suitable charities instead of sending out greeting cards and we will continue this policy again in 2010.

In another vein, we are trying to do things which qualify as "green". We have numerous Shred It boxes in the office to accumulate all of our unneeded paper (not your client records) and Shred It advised us that we saved 127 trees in 2009 and it will probably be more this year. Each office has a blue box to accumulate this paper and then from time-to-time the Shred It people come and pick the paper up.

We are doing our part to keep up the birth rate and can announce that Anna Pipa has a new daughter and Ian Brown just two weeks ago announced that his wife had a baby daughter. Rob Watts and Tim Saxvik both have children that have graduated from high school and are moving on to University and careers and yours truly has seven grandchildren, one of whom has graduated from high school and is now attending Capilano University.

Christmas is a wonderful time of the year but we have to appreciate that over 50% of our staff are from other religious and racial backgrounds which may or may not be Christian. They all celebrate with us at our annual Christmas dinner at the Royal Van Yacht Club when we recognize and appreciate the other cultures and backgrounds.

DRLR



*This newsletter is published quarterly by Rolfe, Benson LLP as an information service to clients and friends of the Firm, it is not intended to substitute for competent professional advice. You should consult your professional advisors before taking any action.*