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EI PREMIUM RATES AND MAXIMUM INSURABLE EARNINGS PROJECTED

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By: Theo Anne Opie, LL.B. © CCH Canadian Limited.

On April 15, 2010, the Parliamentary Budget Officer (PMO) released the projected EI premium rates and Maximum Insurable Earnings for the next four years.

The PBO projects that EI premium rates for employees will increase by the maximum allowable amount of $0.15 per year to $2.33 (per $100 of insurable earnings) by 2014 from $1.73 in 2010. The EI premiums for each of the next four years is projected to be as follows:

- 2011 – $1.88
- 2012 – $2.03
- 2013 – $2.18
- 2014 – $2.33

This $0.60 increase in the premium rate is projected to raise the annual contribution per worker by $535, on average ($223 borne by the employee and $312 borne by the employer).

The PMO also projects that maximum insurable earnings over the next four years will be as follows:

- 2011 – $44,650
- 2012 – $45,675
- 2013 – $46,775
- 2014 – $47,925

Inside

While the Canada Employment Insurance Financing Board (CEIFB) will set the actual EI premium rates for the next four years, employers should be aware of the projected figures when engaging in advance planning and budgeting.

The full report, entitled *Projecting Employment Insurance Premium Revenues and Expenditures* outlines the methodology used to arrive at the projected figures and is available at the following web site: **www2.parl.gc.ca/Sites/PBO-DPB/index.aspx?Language=E**.

Hot News Items

2010 Budget Season Now Complete

The 2010 Budget season is now complete. The federal Budget and all provincial and territorial Budgets have been released. Highlights of budget measures that relate to payroll are reproduced below.

2010 Federal Budget

The 2010 federal Budget was presented March 4, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,172.

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Alberta

The 2010 Alberta Budget was presented February 9, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

British Columbia

The 2010 British Columbia Budget was presented March 2, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Manitoba

The 2010 Manitoba Budget was presented March 23, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

New Brunswick

The 2010 New Brunswick Budget was presented December 1, 2009 and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Newfoundland and Labrador

The 2010 Newfoundland and Labrador Budget was presented March 29, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Nova Scotia

The 2010 Nova Scotia Budget of April 6, 2010, presented by Finance Minister Graham Steele contained the following measure affecting payroll.

Personal Income Tax Rates and Credits

New High Income Tax Rate

Effective January 1, 2010, and until the budget is balanced, the province will have a fifth personal income tax bracket. Taxable income in excess of $150,000 will be taxed at a marginal rate of 21%. Currently, the top rate of provincial income tax is 17.5% on taxable income in excess of $93,000; this bracket will now extend from $93,001 to $150,000.

Elimination of Surtax

As a result of the additional tax bracket, Nova Scotia will suspend its high-income surtax until the budget is balanced. The surtax had applied to individuals with taxable income starting at about $83,000. Employer payroll remittances for personal income taxes will be adjusted to reflect this change on July 1, 2010.

Reduction in Small Business Tax Rate

Effective January 1, 2011, the government will reduce the rate of corporate income tax for small businesses from 5% to 4.5%. Eligible small businesses can apply this rate on their first $400,000 of taxable income.

HST Increase

Effective July 1, the Harmonized Sales Tax (HST) will be restored to 15 per cent. This measure will provide an additional $214.8 million in revenue this year.

Ontario

The 2010 Ontario Budget was presented March 25, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Prince Edward Island

The 2010 Prince Edward Island Budget of April 23, 2010, presented by Finance Minister Wesley Sheridan contained no new taxes or tax increases affecting payroll.

Quebec

The 2010 Quebec Budget of March 30, 2010, presented by Finance Minister Raymond Bachand, contained the following measures related to payroll.

Quebec Sales Tax Increase

The government announced, in the 2009-2010 Budget Speech, the implementation of a plan to return to balanced budgets by fiscal year 2013-2014.

This plan stipulated, among other things, revenue recovery measures including an increase of one percentage point in the rate of the Quebec sales tax (QST) as of January 1, 2011. However, the government indicated that other measures would be needed to balance the budget.

Accordingly, as part of the 2010-2011 Budget Speech, the QST rate will be increased by a further percentage point as of January 1, 2012, bringing it to 9.5%. Moreover, to compensate low- and middle-income households for the increase in their tax burden resulting from this increase, the component relating to the QST of the new solidarity tax credit will be raised.

Collecting All Government Revenues

Efforts to fight tax evasion and avoidance will be stepped up:

- Revenu Québec will become the Agence du revenu du Québec on April 1, 2011. The Agence will be a stand-alone, accountable entity. Resources will be granted to it on a cost-benefit basis.

- $30 million will be invested to combat unreported work in the construction industry, economic and financial crime and the illicit tobacco trade. In this way, they expect to recover an additional $300 million in 2013-2014. With the $900 million objective announced in the 2009-2010 Budget, the tax recovery target will be raised to $1.2 billion in 2013-2014.

Measures Relating to the March 4, 2010 Federal Budget

On March 4, 2010, the Minister of Finance of Canada presented the federal government's Budget for 2010. This Budget includes various fiscal measures that affect the tax system.

Along with the Budget, the federal Minister of Finance tabled, in the House of Commons, supplementary information as well as notices of ways and means motions to amend the *Income Tax Act* and the *Excise Tax Act*.

In this regard, Quebec's tax legislation and regulations will be amended to incorporate some of the measures announced. However, the changes to Quebec's tax system will only be adopted following the assent given to any federal legislation or adoption of any federal regulation giving effect to the measures retained, taking into account the technical changes that may be made to them before such assent or adoption. Lastly, these changes will apply on the same dates as those retained for the purposes of the federal measures with which they harmonize.

Measures Relating to the *Income Tax Act*

Measures Retained

Note: The numbers in brackets refer to the federal Budget resolution number.

Quebec's tax legislation and regulations will be amended to incorporate, with adaptations based on their general principles, the measures relating to:

1. the transfer to a registered disability savings plan of an amount received from certain registered savings plans for retirement, following the death of an individual who was the participant or the annuitant, as the case may be, by a child or a grandchild who was financially dependent on the individual immediately prior to his death (BR 5 to BR 10), subject to the reserve that the incorporation of these measures will be by reference to the federal tax legislation;

2. the tax treatment of amounts paid, directly or indirectly, by a provincial government into a registered education savings plan or a registered disability savings plan (BR 11 to BR 13);

3. the disbursement quota that registered charities must satisfy (BR 18 to BR 21);

4. the addition of a requirement to be entitled to the deduction for employee stock options (BR 23 and BR 24);

5. the withdrawal of the election to defer taxation of a benefit arising from the exercise of a stock option granted to an employee of a corporation, other than a Canadian-controlled private corporation (CCPC), or a mutual fund trust and the obligation to withhold tax at source (BR 25 to BR 28);

6. the temporary relief allowed individuals who elected to defer taxation of a benefit arising from the exercise of a stock option granted to an employee of a corporation, other than a CCPC, or a mutual fund trust (BR 29 a) to c), BR 30 and BR 31), subject to the specific features described below;

7. the non-taxation of part of certain benefits received under U.S. social security legislation (BR 32);

8. the changes made to the definition of "principal-business corporation" applicable as part of the flowthrough share system (BR 34);

9. the changes made to the acquisition of control rules upon the conversion of a specified investment flowthrough entity to a corporation (BR 35 to BR 37);

10. the changes made to the definition of "taxable Canadian property" and the correlative adjustments (BR 38 to BR 40);

11. the changes made to the relief mechanism applicable to foreign tax paid (BR 42 to BR 44);

12. the changes concerning the accelerated capital cost allowance on account of clean energy generation applicable to heat recovery equipment and distribution equipment of a district energy system;

13. the changes concerning the capital cost allowance applicable to satellite and cable set-top boxes; and

14. the changes to specified leasing property rules.

In addition, although it requires no legislative or regulatory amendment, the measure relating to the application for a refund of an overpayment in certain circumstances will also be retained for the purposes of Quebec's tax system (BR 41).

Special features relating to the temporary relief from the tax treatment applicable following the alienation of certain securities acquired under an employee stock option

Where an individual, during a given taxation year and before 2015, disposes of securities regarding which a valid election to defer taxation of the benefit attributable to their acquisition was made for the purposes of paragraph 8 of section 7 of the *Income Tax Act* and he made the election, on the prescribed form, to claim preferential tax treatment for the given year, the following rules will apply:

- the rate of the deduction relating to the employee stock options will rise, regarding securities covered by these elections, from 50% to 100% if the securities were alienated or exchanged before June 13, 2003 or if they were acquired under a stock option granted after March 13, 2008 by a small or medium-size enterprise carrying out innovation activities, from 37.5% to 87.5% if the securities were alienated or exchanged after June 12, 2003 and before March 31, 2004 and from 25% to 75% if the securities were alienated or exchanged after March 30, 2004;

- an amount equal to 50% of the lesser of the value of the taxable benefit attributable to the acquisition of such securities and the capital loss resulting from their alienation will be included, on account of taxable capital gain, in the calculation of the individual's income for the given year; and

- a special tax, equal to 50% of the proceeds of alienation of the securities, must be paid by the individual for the given year.

For greater clarity, an individual may, for the purposes of Quebec's tax system, make an election separate from the one he made for the purposes of the federal tax system concerning preferential tax treatment.

Measures Not Retained

Some measures have not been retained because they do not correspond to features of Quebec's tax system or because Quebec's tax system has no corresponding provisions. These measures concern:

- the allocation, in the case of shared custody, of the component relating to children granted by the goods and services tax/harmonized sales tax (GST/HST) credit (BR 1);
- the possibility allowed the head of a single-parent family to designate the amounts he received on account of the universal child care benefit as the income of one of his minor children (BR 3);
- the information exchanges concerning provincial education savings or disability savings assistance programs (BR 14);
- the scope of the definition of the expression "qualifying education program" for the purposes of the education tax credit (BR 17);
- the strengthening of anti-avoidance rules applicable to registered charities (BR 22);
- the adjustment to determine an individual's income for the purposes of certain provisions of the *Income Tax Act* (BR 29 d);
- the mining exploration tax credit (BR 33); and
- the proposals to tighten enforcement rules of the system to combat the recycling of the proceeds of crime and money laundering.

Other federal measures were not retained because the Quebec tax system is satisfactory in their regard. The measures concern:

- the allocation of the Canada Child Tax Benefit in the event of shared custody (BR 2);
- the exclusion, from the list of expenses qualifying for the medical expense tax credit, of expenses paid for purely cosmetic medical or dental services (BR 4);
- the determination of the exemption regarding scholarships and bursaries (BR 15 and BR 16);
- the interest paid by the Department of National Revenue on overpayments of tax;
- the reporting of tax avoidance transactions; and
- the issuing of electronic notices by the Canada Revenue Agency.

News release dated February 26, 2010 relating to employee life and health trusts

On February 26, 2010, the Minister of Finance of Canada issued a news release containing legislative proposals to implement a series of tax measures relating to employee life and health trusts.

Essentially, the effect of these proposals is to create a new type of taxable trust called "employee life and health trust", provide rules regarding the timing of the deduction of any prefunding of such a trust by an employer, allow the trust to deduct in calculating its income all the benefits paid to employees or retirees, provide rules governing the carryback and carryforward of any losses suffered by the trust after deducting benefit payments and treat benefits received from the trust as if they had been received directly from the employer.

Given that, in general, Quebec's tax system is harmonized with the federal tax system insofar as the determination of trust income is concerned, Quebec's tax legislation and regulations will be amended to incorporate, with adaptations based on their general principles, most of the proposed federal measures.

However, the federal measure stipulating that an individual will not be required to include, in calculating his income from an office or employment, the value of benefits resulting from contributions paid by his employer as part of an employee life and health trust will be adapted to reflect the specific features of Quebec's tax system.

More specifically, the incorporation of this measure will be subject to the rule according to which an individual must include, in calculating his income from an office or employment, the value of the benefit he receives, or from which he benefits, for a taxation year where, because of his office or employment, current, former or projected, protection is granted to him in the course of the year under a life and health insurance plan, other than group protection against total or partial loss of income from an office or employment.

In addition, the federal measure adding, to the list of trusts excluded from the application of Part XII.2 of the *Income Tax Act*, employee life and health trusts and the one stipulating that payments from such a trust to non-residents will be subject to tax under Part XIII of the Act, unless the payments are designated payments, will not be incorporated because Quebec's tax system does not contain corresponding provisions.

Moreover, the changes that will be made to Quebec's tax system will only be adopted following the assent given to any federal legislation or adoption of any federal regulation giving effect to the measures retained, taking into account the technical changes that may be made to them before such assent or adoption. These changes will apply as of the same dates as those retained for the purposes of the federal measures with which they harmonize.

News Release of February 25, 2010 – Harmonized Sales Tax (HST) System Concerning Place of Supply

On February 25, 2010, the Minister of Finance of Canada announced, in a news release, proposed changes to the harmonized sales tax (HST) system concerning place of supply rules that allow suppliers to decide whether the provincial component of the HST must be charged on their taxable supplies of goods and services made in Canada. Changes are also proposed regarding related rules stipulating self-assessment of the provincial component of the HST, or its rebate, in certain circumstances where goods or services are either transferred in a province, or acquired in a province to be consumed, used or supplied outside the province.

In keeping with the principle of substantial harmonization of the Quebec sales tax (QST) and the HST regarding place of supply rules applicable to interprovincial transactions as well as the related self-assessment and rebate rules, Quebec's tax system will generally be harmonized with the HST system in this regard, subject to Quebec's specific features and taking the provincial character of the QST into account.

Accordingly, changes will be made to the QST system to incorporate, with adaptations based on its general principles, these proposed changes to the HST system. These changes will only be adopted once any legislation arising from the federal news release has been assented to or any regulation arising therefrom has been adopted, taking into account the technical changes that may be made to them before such assent or adoption. They will apply on the same dates as those retained for the purposes of the changes to the HST system with which they harmonize.

News Release of October 27, 2009 – Private Pension Plan Reform

On October 27, 2009, the Minister of Finance of Canada issued a news release announcing a reform plan of the federal private pension plan legislative and regulatory framework, one of whose objectives is to reduce the volatility of capitalization of defined benefit pension plans.

At the same time, he also announced that the pension fund surplus threshold stipulated by the tax legislation would be raised from 10% to 25%, for all defined benefit pension plans, whether under federal or provincial jurisdiction.

This threshold is one of the items that must be taken into consideration to determine whether the contribution paid by an employer under the defined benefit provisions of a registered pension plan can be deducted in calculating its income.

For the purposes of Quebec's tax system, a taxpayer can deduct, in calculating his income, the amount allowed as a deduction in calculating his income for the purposes of the *Income Tax Act* on account of employer contributions paid to a registered pension plan.

Accordingly, while they do not require any legislative or regulatory amendment, the federal measures relating to this increase, from 10% to 25%, of the surplus threshold stipulated for defined benefit registered pension plans will, in accordance with the principle of substantial harmonization of the tax systems in this matter, be retained for the purposes of Quebec's tax system.

Saskatchewan

The 2010 Saskatchewan Budget was presented March 24, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Northwest Territories

The 2010 Northwest Territories Budget was presented January 28, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Nunavut

The 2010 Nunavut Budget was presented March 8, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Yukon

The 2010 Yukon Budget was presented March 25, 2010, and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Need To Know

Minimum Wage Increases

The minimum wage rates are located in the "Employment Standards" section of PAYSOURCE at ¶5710; ¶5750; ¶5800 and ¶5810. For subscribers who receive the paper Report, the new minimum wage rates for Manitoba, Prince Edward Island and Quebec will be added to the commentary with the next Report.

Manitoba

Effective October 1, 2010, the general minimum wage will increase by 50 cents to $9.50, up from the current rate of $9.00.

Prince Edward Island

Minimum wage on Prince Edward Island will increase in two phases in 2010 to $9.00. Executive Council has approved the decision to implement the 60 cent increase as follows: from $8.40 to $8.70 effective June 1, 2010, and by an additional 30 cents to $9.00 on October 1, 2010.

Quebec

Effective May 1, 2010, the general hourly minimum wage will increase to $9.50 per hour, up from the current level of $9.00 per hour. The minimum wage payable to an employee who receives gratuities or tips will increase to $8.25, up from the current level of $8.00. Finally, the wages of apple pickers will no longer be established on the basis of yield, but will now fall under the general hourly minimum wage.

Recent Cases and Rulings

Contract Provided For More Severance Pay if Termination Occurred Prior to Fixed-Term

• • • **Ontario** • • • Orr had worked with the Magna group of companies since 1987. He became Chief Financial Officer of Magna Entertainment on January 1, 2001, under a five-year contract. The employment contract provided Magna could terminate Orr's employment by providing written notice or paying a retirement allowance. If Orr was terminated within the first three years of the contract, he would be entitled to two years' notice, or a retiring allowance of salary and annual bonus for the preceding two years. If he was terminated in the last two years of his contract, the notice period was set at only one year, and the retirement allowance was based on the one year preceding termination. Under the contract, Magna could assign Orr to another area within the company. On March 25, 2003, Orr was told he was being terminated. He did not seek the two-year retirement allowance, as he was assigned to another position. Orr worked on that assignment until he was told on July 2, 2004 that there was no permanent position for him, and that he would continue to receive his salary and bonus until the termination date of January 31, 2005. In an action for wrongful dismissal, the trial judge found that Orr was entitled to the two-year severance provision, which was not extinguished by being offered an assignment of his position. Magna appealed.

The appeal was allowed. The effect of the trial judge's decision was that Orr's contract was both terminated and assigned at the same time. This position amounted to an error of law. Orr had the choice to take his retirement allowance or to work in a different position with Magna. Orr chose the latter. Therefore, he was not terminated and was not entitled to the two-year retirement allowance. There was insufficient evidence that Orr had an indefinite right to claim two years' severance as long as he was not put into a comparable position by Magna.

Orr v. Magna Entertainment Corp., Magna International Inc. and Stronach, (Ont. C.A.), 2010 CLLC ¶210-014.

Racial and Homophobic Comments Causing Mental Stress, Led to Constructive Dismissal

• • • **Ontario** • • • Qubti, of Palestinian descent, worked as a driver for Reprodux for seven years. Qubti had to take five months off work after breaking his ankle. While he claimed that he notified Reprodux that he was ready to go

back to work, Reprodux claimed that he quit when he broke his ankle and that he later asked for his job back. According to Qubti, from the start of his employment, he was subjected to racist and demeaning taunts causing him stress and anxiety. He claimed he was subject to homophobic and racist comments while at work, including nicknames and verbal abuse. Reprodux alleged that Qubti quit in order to become a professional gambler. Qubti brought an action for constructive dismissal and intentional infliction of mental suffering.

The action was allowed, in part. Qubti was subject to verbal abuse from management, which created a hostile and poisoned work environment causing him to seek medical attention for mental stress. This resulted in him being constructively dismissed. Qubti did not condone the conduct and he did not quit after breaking an ankle. The Court determined that he intended to work for Reprodux until he found alternate employment. He was awarded four months' notice. However, the conduct of Reprodux did not qualify as a separate actionable wrong. Unpleasant nicknames and unfeeling behaviour was insufficient for a finding of intentional infliction of mental suffering. The conduct of Reprodux was not malicious and outrageous enough to be deserving of punishment on its own. Therefore, punitive damages were not awarded.

Qubti v. Reprodux Ltd., (Ont. S.C.J.), 2010 CLLC ¶210-015.

Loss of EI Benefits Factor in Determining Reasonable Notice

• • • **New Brunswick** • • • Jean was employed as a deckhand on a snow crab fishing vessel, and in the off season he collected Employment Insurance benefits. The amount of money a deckhand earned in each fishing season varied. After being dismissed prior to the start of a fishing season, Jean sued the employer for general damages, special damages for past loss of earnings, and the loss of Employment Insurance benefits generated by those earnings, and exemplary damages. The trial judge awarded Jean five months' notice of termination but dismissed the claim for damages for loss of Employment Insurance benefits. In calculating the appropriate wage rate, the trial judge added together the amounts the four deckhands earned during the relevant year and divided the figure by six. The claim for damages relating to the manner of dismissal was dismissed. Jean appealed.

The appeal was allowed, in part. The Court agreed with the trial judge that there was no evidence to support a claim for damages for the manner of dismissal. In determining compensation in lieu of notice, the focus is on the loss sustained by the employee by reason of the employer's failure to give proper notice and not what it would have cost the employer had the employment continued throughout the notice period. Therefore, courts must consider the issue of compensation as it relates to Employment Insurance benefits from the employee's perspective rather than from the employer's perspective. In this case, considering Jean's age, years of experience, and employment record, the failure to give him proper notice deprived him of alternative comparable employment for the fishing season. In determining the appropriate wage rate, the trial judge erred in taking the net crew share and dividing by six, rather than four. Therefore, the Court increased the compensatory damages in lieu of reasonable notice along with the interest award.

Jean v. Pêcheries Roger L. Ltée, (N.B.C.A.), 2010 CLLC ¶210-016.

Taxpayer Was An Inside Director

The Minister assessed the taxpayer for unremitted corporate source deductions for 1999, 2000, and 2001 for MindTheStore.com Inc. ("MTS"), of which the taxpayer was a director. In dismissing the taxpayer's appeal (2009 DTC 1057), Miller, J. of the Tax Court of Canada rejected the taxpayer's due diligence defence, finding that he was an inside director who was both intelligent and experienced in business matters, but had failed to attempt to prevent MTS's failure to remit the source deductions owing. The taxpayer appealed to the Federal Court of Appeal.

The taxpayer's appeal was dismissed. Miller, J. made no palpable or overriding errors that would justify appellate intervention. The Minister's assessments were affirmed accordingly.

Comparelli, (Fed.C.A.), 2010 DTC 5021.

Taxpayer's Relationship With Pilotage Authority Was One of Employment

The taxpayer was employed as a ship's pilot by the Atlantic Pilotage Authority ("APA"). He worked during scheduled weeks, and also had the option to accept assignments from the APA during unscheduled weeks, which he did. In reassessing the taxpayer for 2002, 2003, and 2004, the Minister disallowed the deduction of business expenses the taxpayer claimed for the income he earned during unscheduled weeks. On appeal to the Tax Court of Canada, the taxpayer argued that, during unscheduled weeks, his relationship with the APA was one of independent contractor. The Minister conceded that the taxpayer was entitled to the business expense deductions

claimed but erroneously disallowed for 2004, since those deductions related to a business of the taxpayer not related to the APA.

The taxpayer's appeal was allowed in part. Because the taxpayer was a licensed pilot, he was subject to the APA's disciplinary authority regardless of where he worked. Under the collective agreement governing the APA's relationship with the taxpayer (the "Collective Agreement"), the APA had the discretion to prohibit him from engaging in any undertaking that might conflict with his duties as a pilot. When working during the unscheduled weeks, the taxpayer was merely taking the opportunity to earn extra income, but this opportunity was firmly rooted in his employment contract, and there was no opportunity for him to share any profit or endure any risk of loss from his pilot activities. Also, the Collective Agreement was premised on the existence of an employer–employee relationship between the APA and its pilots, and contained references throughout to the terms "employee" and "employment". Therefore, the taxpayer's relationship with the APA during the unscheduled weeks was clearly one of employment. The Minister's reassessments for 2002 and 2003 were affirmed accordingly. The Minister, however, was ordered to reassess in order to give effect to the concession made for the deductibility of the taxpayer's business expenses claimed for 2004.

MacIntyre, (Tax. Court of Canada), 2010 DTC 1053.

Damages Award Was Not a Retiring Allowance

The taxpayer's employment as a dean with a university (the "University") was terminated. Rather than accept the severance proposals made by the University, the taxpayer sued and was awarded $90,000 in damages by the Supreme Court of British Columbia. In assessing the taxpayer for 2001, the Minister included this $90,000 in his income as a "retiring allowance" under s. 248(1) of the Act. The Minister did, however, permit the taxpayer to deduct $26,103 for legal fees. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was allowed. The $90,000 award was extraneous to the taxpayer's loss of employment as dean. It did not relate to the taxpayer's past service, but was made for the loss of a future position as an instructor that he had elected to pursue. The taxpayer's right to take up that instructor position was a benefit having nothing to do with his position as dean. Therefore, the $90,000 was not a retiring allowance required to be included in the taxpayer's income. The Minister was ordered to reassess accordingly.

Schewe, (Tax Court of Canada), 2010 DTC 1056.

Travel Allowances and Deductions – Employees of a Railroad Company

The CRA was asked to consider two situations in which a railroad company paid travel allowances to its employees.

- In the first situation, the employer would pay a travel allowance (considered to be non-taxable) to an employee having applied and obtained a temporary posting to a location other than his/her regular base station. The allowance would be paid to cover the employee's expenses related to his/her daily travel from his/her home to the new work location. Note that he/she would not have to travel anymore from his/her home to the old work location. The location of the new posting would become the employee's regular place of work for the duration of his/her posting. He/she would not be remunerated for his/her travel time and the allowance would be based on the number of kilometres driven.

- In the second situation, the employer would pay a travel allowance (considered to be non-taxable) to each employee responsible for the maintenance and repair of railway tracks to enable them to return home every weekend. The allowance, also based on the number of kilometres driven, would be paid because the employee's work location would be too far from his/her home to enable him/her to return home every day. The employee would stay away at least 36 hours from his/her principal place of residence to perform his/her duties. Considering that the allowance was unreasonable since it did not cover all their travel expenses, certain employees included the allowance in their income and then deducted all their actual travel expenses under paragraph 8(1)(h.1) of the Act. As for the first situation, they would not be remunerated for their travel time. The CRA was asked if the employees would be required by paragraph 6(1)(b) of the Act to include the allowances in their income and if they could claim a deduction for their travel expenses under paragraph 8(1)(*h*.1) .

The CRA confirmed for both situations that the travel allowance would be taxable and no deductions would be allowed for the actual travel expenses incurred by the employees because the travel in question was not accomplished in the course of performing their employment duties. The travel of an employee between his/her home and place of work is considered of a personal nature. In the absence of any services rendered to the employer during the travel period, the employee would not travel in the

course of performing employment duties but instead to get to work to perform those duties.

Regarding the first situation, the CRA confirmed that the employee would be required under paragraph 6(1)(*b*) of the Act to include the travel allowance in his/her income, and could not claim the exemption under paragraph 6(1)(*b*)(v.ii) or the deduction under paragraph 8(1)(h.1) because the travel was not accomplished in the course of performing his/her employment duties. He/she would probably not qualify for the exemption under paragraph 6(6) of the Act since the first situation does not appear to involve a special work site or remote location. However, if he/she was a part-time employee, he/she could qualify for the exemption under paragraph 81(3.1) of the Act but only if the following four conditions were met: (1) the allowance was reasonable; (2) the employee and the employer were dealing at arm's length; (3) during the period in which the travel expenses were incurred, the employee carried on a business or had another employment; and (4) the duties of the part-time employment were performed at a location that was not less than 80 kilometres from both the employee's old place of business or employment, and ordinary place of residence.

Regarding the second situation, the CRA considered that the employee's travel between his/her home and work location every weekend was also of a personal nature. As a result, the travel allowance would be taxable under paragraph 6(1)(*b*) of the Act and the employee could not claim a deduction under paragraph 8(1)(*h*.1) since the travel would not be done in the course of performing employment duties. Since the maintenance and repair of the railroad tracks could be performed at a special worksite, the employee could be eligible for the exemption under subparagraph 6(6)(*b*)(i) of the Act in respect of the allowance received for the travel between his/her principal place of residence and the special work site. Because he/she was absent from his principal place of residence for more than 36 hours and should not be expected to commute on a daily basis between his/her work location and his/her principal place of residence, he/she could qualify for the exemption provided in subparagraph 6(6)(*b*)(i) of the Act if the following three conditions were met: (1) the principal place of residence was a self-contained domestic establishment available to the employee while he/she was performing his/her employment duties; (2) those employment duties were of a temporary nature; and (3) the travel allowance was for a period during which the employee received board and lodging, or a reasonable allowance for board and lodging. For more details on this topic, see IT-91R4.

Technical Interpretation, Business and Partnerships Division, January 25, 2010, Document No. 2009-034550117

Meal Allowances Paid to Employees

The CRA was asked if the meal allowances received by employees of a corporation in the following three situations would be included in their income:

1. If they receive a call to do overtime, the corporation pays them a meal allowance for each normal meal period.

2. If they have to work more than a given number of hours before or after their regular shift, the corporation pays them a meal allowance.

3. If they work outside the municipality or metropolitan area where they regularly report to work and do not have access to the place where they normally eat, the corporation pays them a meal allowance.

Regarding the first situation, the CRA confirmed that the value of benefits received by an employee from his/her employer is normally included in his/her income under paragraph 6(1)(*a*) of the Act and that the travel or meal allowance paid to him/her to travel for employment purposes within the municipality or metropolitan area where his/her regular place of work is located is also normally included in his/her income. The Income Tax Technical News (ITTN) No. 12 released by the CRA on June 11, 2009 states that a meal allowance may be excluded from the recipient's income provided it is paid primarily for the benefit of the employer. If the main purpose of the allowance is to make sure that the duties of the employee are undertaken in a more efficient way in the course of a work shift and that its payment does not indicate an alternate form of remuneration, it may be excluded from his/her income. Note that the allowance must be reasonable: it should reimburse the employee only for the reasonable expenses that must be incurred in the circumstances.

Regarding the second situation, the CRA confirmed that, unless the taxpayer can provide supporting evidence on why the meal allowance should be in excess of $17, an allowance exceeding that limit should be included in his/her income. ITTN No. 12 confirms that a meal allowance paid to an employee in respect of overtime will not be included in his/her income as a taxable benefit if the following three conditions are met: (1) the value of the meal or meal allowance is reasonable (i.e., up to $17); (2) the employee works at least two hours of overtime right before or right after his/her scheduled work hours; and (3) the overtime is infrequent and occasional (i.e., less than three times a week or more than three times a week if on an occasional basis to meet workload demands). If an allowance is considered unreasonable, all the allowance (not only the excess) is included in the taxpayer's income.

Regarding the third situation, the CRA confirmed that the allowance could be excluded from the employee's income in accordance with subparagraph 6(1)(*b*)(vii) of the Act provided it is reasonable, paid for travel expenses incurred to travel outside the municipality or metropolitan area where the employee's regular place of work is located, and in the course of the performance of his/her employment duties. Refer to the Information Circular 73-21R9 to determine the meaning of the expressions "metropolitan area" (i.e., surrounding populated area integrated with a municipality that is a major urban centre and its environs) and "municipality" (i.e., city, town, or district). The CRA noted that, although the question of whether a place constitutes the employee's normal place of work is a question of fact, this place would normally refer to a place where the employee reports on a regular basis or performs his/her employment duties. In some cases, this place could be the employee's home office.

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