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The CRA Introduces Simplified Logbook for Motor Vehicle Expenses

In the 2008 federal Budget, the government announced that as a result of some lobbying by the Canadian Federation of Independent Business, it would consider a method to simplify the record keeping for purposes of motor vehicle expense claims and the calculation of taxable benefits. The proposal was to allow taxpayers to maintain a logbook for a sample period of time that is representative of the usage of the motor vehicle, in order to support motor vehicle expense deductions and taxable benefit calculations. Consultations were undertaken and on June 28, 2010, the Minister of National Revenue announced the introduction of such a logbook. The News Release and the explanation of the required documentation is reproduced below.

> The Honourable Keith Ashfield, Minister of National Revenue, Minister of the Atlantic Canada opportunities Agency and Minister for the Atlantic Gateway, is pleased to announce the introduction of a new simplified logbook for motor vehicle expense provisions as part of the government's overall strategy to assist small and medium sized businesses and Canada Revenue Agency's (CRA's) aim to ease the tax compliance burden of small business owners.
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> In the 2008 Federal Budget, the Government of Canada, through recommendations by the CFIB, identified the requirement to keep a logbook as the most burdensome aspect of the motor vehicle tax provisions for its members. In response, the Canada Revenue Agency developed an alternative system for recording business travel with the aim to assist businesses in substantiating the business use of a motor vehicle that was used for business and personal reasons.
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Inside

Businesses can choose to maintain a full logbook for one complete year to establish the business use of a vehicle in a base year. After one complete year of keeping a logbook (starting in 2009 or thereafter) to establish a base year, a three month sample logbook can be used to extrapolate business use for the entire year, providing the usage is within the same range (within 10%) of the results of the base year. Businesses will need to demonstrate that the use of the vehicle in the base year remains representative of its normal use. Thus, for both income tax and GST/HST purposes, the motor vehicle record keeping burden is being reduced.

Documenting the use of a vehicle

This document explains the ways in which a person who uses a vehicle in a business can keep track of business travel.

When a vehicle is used partially for business purposes and partially for other purposes, the expenses relating to its use must be apportioned. Only those expenses relating to the business travel or commercial activity are considered eligible for a business deduction and for input tax credits on GST/HST. The proration in such cases is done based on the distances driven. To support a deduction or claim, the person must know and be able to demonstrate the distance travelled for business purposes and commercial activities.

The *Income Tax Act* and the *Excise Tax Act* do not set out specific documentary requirements for recording the usage of a vehicle. The general rule is that the person must retain records that would enable an objective determination of the person's tax payable.

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Full logbook

The best evidence to support the use of a vehicle is an accurate logbook of business travel maintained for the entire year, showing for each business trip, the destination, the reason for the trip and the distance covered.

Alternative records

The fact that a viable business exists is usually a strong indicator that a person incurred vehicle expenses, because it is extremely difficult to carry on a business without doing at least some driving. Claims for a very low amount of business use do not require extensive records to demonstrate business travel. As the percentage of business use and the related expense claims increase, more documentation, as discussed below, is expected to be available.

For many persons, the books and records they already retain as part of their normal business operations may be indicative of the presence of and the extent of business driving. An appointment diary indicating what addresses were visited and why, or a log of service calls might be sufficient. Purchase or sales invoices may indicate that items were picked up or delivered by the taxpayer. Examples of other evidence that may be taken into consideration may include:

- whether the person has another vehicle for personal travel,
- the type of vehicle,
- the nature of the business and the business travel likely required,
- who else drives the vehicle (e.g., family),
- how the vehicle is insured, and
- indications of other personal travel.

CRA auditors will generally consider the usage of a vehicle in the context of the entire operation of that particular business. A proposal to disallow a portion of a claim for vehicle expenses would only occur where the claimed travel seems out of proportion in that overall context and is not supported by sufficient evidence as described here. However, it should be noted that individuals will be responsible for providing sufficient evidence to demonstrate the accuracy of their claims for business distances driven throughout the year.

Logbook for a sample period

The CRA would be prepared to afford considerable weight to a logbook maintained for a sample period as

evidence of a full year's usage of a vehicle if it meets the following criteria.

- The taxpayer has previously filled out and retained a logbook covering a full 12-month period that was typical for the business (the "base year"). The 12-month period is not required to be a calendar year.
- A logbook for a sample period of at least one continuous three-month period in each subsequent year has been maintained (the "sample year period").
- The distances travelled and the business use of the vehicle during the three-month sample period is within 10 percentage points of the corresponding figures for the same three-month period in the base year (the "base year period").
- The calculated annual business use of the vehicle in a subsequent year does not go up or down by more than 10 percentage points in comparison to the base year.

The business use of the vehicle in the subsequent year will be calculated by multiplying the business use as determined in the base year by the ratio of the sample period and base year period. The formula for this calculation is as follows:

(Sample year period % ÷ Base year period %) × Base year annual % = Calculated annual business use

Where the calculated annual business use in a later year goes up or down by more than 10%, the base year is not an appropriate indicator of annual usage in that later year. In such a case, the sample period logbook would only be reliable for the three-month period it had been maintained. For the remainder of the year, the business use of the vehicle would need to be determined based on an actual record of travel or alternative records, as discussed above. In these circumstances, the taxpayer should consider establishing a new base year by maintaining a logbook for a new 12-month period.

Example:

An individual has completed a logbook for a full 12-month period, which showed a business use percentage in each quarter of 52/46/39/67 and an annual business use of the vehicle as 49%. In a subsequent year, a logbook was maintained for a three-month sample period during April, May and June, which showed the business use as 51%. In the base year, the percentage of business use of the vehicle for the months April, May and June was 46%. The business use of the vehicle would be calculated as follows:

(51% ÷ 46%) × 49% = 54%

In this case, the CRA would accept, in the absence of contradictory evidence, the calculated annual business use of the vehicle for the subsequent year as 54%. (I.e., the calculated annual business use is within 10% of the annual business use in the base year – it is not lower than 39% or higher than 59%.)

Even though records and supporting documents are only required to be kept for a period of six years from the end of the tax year to which they relate, the logbook for the full 12-month period must be kept for a period of six years from the end of the tax year for which it is last used to establish business use.

Year of acquisition of a vehicle

The business use of a vehicle in the year it is bought or leased can also have implications as to how the vehicle is defined and limitations on amounts that can be claimed for certain expenses. Individuals should take extra care to document its use in that year. Further information is provided on the CRA's website at http://www.cra-arc.gc.ca/tx/bsnss/tpcs/slprtnr/bsnssxpnss/mtr/typ-eng.html.

Hot News Items

Canada

EI Amendments for Canadian Forces Claimants In Force

Bill C-13, the *Fairness for Military Families (Employment Insurance) Act*, now S.C. 2010, c. 9, which will assist Canadian Forces members and their families, is now in force.

The Bill will help Canadian Forces members who are taking, or planning to take, parental leave by extending the period of parental leave where the start date of the leave is deferred or where the member must return to duty from parental leave. The parental leave in such cases will be extended by the number of weeks the parental leave is deferred or interrupted.

Bill C-13 received first reading in the House of Commons on April 12, 2010, second reading on May 7, and third reading on June 16. It received first reading in the Senate on June 17, second reading on June 21, and third reading on June 28. The Bill received Royal Assent on June 29 and became effective July 4.

Need To Know

Manitoba

Exemptions from Minimum Employment Standards

Manitoba Regulation 82/2010 has amended the Employment Standards Regulation, varying the exemption provisions with respect to the application of *The Employment Standards Code*.

The Regulation *removes* persons working in training or work experience programs under government or school board authority, who do not receive wages, from exemption of the application of the Code.

However, the Regulation *adds* volunteer camp counsellors at residential camps operated by charitable organizations to the list of employees exempted from the Code's application.

Other types of employees currently exempt from all or certain provisions of the Code include the following:

- managers;
- sales representatives;
- construction workers;
- farm workers, fishers, and horticulturists;
- domestics;
- family members (in certain situations);
- temporary election workers;
- volunteers;
- beneficiaries under a rehabilitation plan;
- certain crown employees;
- members of, or students in, certain professions; and
- certain employees earning two times the Manitoba industrial average wage.

Recent Cases and Rulings

Two-Year Employment Gap Not Relevant to Severance Pay in Ontario

• • • **Ontario** • • • Brien was awarded 24 months' severance pay, along with *Wallace* damages of two months' pay, for wrongful dismissal. Niagara Motors appealed, claiming that the trial judge erred in treating Brien as a 23-year employee, even though she had left for two years after having her second child. In addition, Niagara Motors claimed that the *Wallace* award was no longer valid following the Supreme Court of Canada decision in *Honda Canada Inc. v. Keays* 2008 CLLC ¶230-025, which was released following argument but before the trial judge released its reasons. Finally, Niagara Motors claimed there was a double counting with respect to severance payment.

The appeal was allowed, in part. The Court of Appeal dismissed the claim with respect to the issue of Brien's two-year gap in employment. Brien had left for family reasons; however, she was not officially on maternity leave. When she was invited back after two years, she was reintegrated into the workplace as if she had never left. The appeal of the *Wallace* damages was allowed. Although the employer's conduct in wrongfully alleging misconduct was improper, any claim for punitive damages based on that conduct was abandoned before trial. While this misconduct could have led to an award of mental distress damages, the distress suffered by Brien in being terminated did not qualify for compensation through damages. Finally, the parties agreed on the double counting of damages.

Brien v. Niagara Motors Limited, (Ont. C.A.), 2010 CLLC ¶210-028.

Two-Year Employment Gap Not Relevant to Wrongful Dismissal Damages in B.C.

• • • **British Columbia** • • • Graham worked for Galaxie in three time periods. The first period was from the spring/summer of 1983 until early 1990. The second period was from late 1990 to June 2002. The third period was from July 2004 to July 2007, when he was terminated. In an earlier decision, in an action for wrongful dismissal, the Court determined that Graham had been constructively dismissed and had taken reasonable steps to mitigate his losses. According to Graham, despite the interruptions between the three periods of employment, he was continuously employed by Galaxie, and he should be considered a 22-year employee for the purposes of determining damages. Galaxie claimed that there were significant breaks in service and, as a result, only the last three years of service should be used to calculate reasonable notice.

The action was allowed, in part. The first time that Graham left his employment with Galaxie, he took on a different job with a different employer, which lasted six months before he returned. Graham led no evidence to demonstrate that he was on a leave of absence from Galaxie at the time, or that when he returned he was assured that his past service with the company would be recognized. He was treated like a new employee when he returned in 1990. However, in 2004, both Graham and another employee returned to Galaxie on the basis that they would maintain seniority. This meant that he had worked for Galaxie for over 14 years when he was terminated. Graham was not induced to leave secure employment to return to Galaxie and, while he was a valued employee, he was not in a senior management position at the time of his termination. He was a 60-year-old salesperson who could have found another position in his field. Instead, he chose to be self-employed. As a result, he was entitled to 10 months' notice.

Graham v. Galaxie Signs Ltd., (B.C.S.C.), 2010 CLLC ¶210-029.

Employment Contract, Which Potentially Reduced Overtime Rates, Violated Legislation

• • • **Saskatchewan** • • • Bolen and Zacharias were employed as truck drivers for DJB. They signed a contract of employment agreeing that they would be paid a monthly rate regardless of the hours required each month. The monthly wage included overtime, vacation pay, and statutory holiday pay, and gave the employees a discretion as to the hours of work per day. When their employment ended, Bolen and Zacharias brought a complaint to the Department of Labour Standards claiming unpaid overtime and holiday pay. The Director issued a Wage Assessment, which was appealed. The Adjudicator determined that the contract provided more favourable conditions to the employees than provided in the Act and set aside the Wage Assessment. The trial judge allowed the appeal and reinstated the Wage Assessment, holding the contracts did not provide conditions more favourable than the Act. DJB appealed.

The appeal was dismissed. Subsection 72(2) of *The Labour Standards Act* requires that overtime be paid at the rate of time-and-one-half and provides that no provision in an employment contract shall be deemed to be more favourable than the provisions of the Act if the contract provides for the payment of wages at a rate less than the rate of time-and-one-half. The Adjudicator failed to correctly interpret and apply this provision, which was an error of law. The employment contracts provided for overtime pay at a rate which decreased as the employee worked more overtime. It could conceivably be reduced to the rate of minimum wage, which would violate the Act.

DJB Transportation Services Inc., Bone and Bone v. The Director of Labour Standards on behalf of Bolen and Zacharias, (Sask. C.A.), 2010 CLLC ¶210-030.

No Deduction For Motor Vehicle Expenses in Excess of Allowance Received

The taxpayer, a heavy equipment operator, reported for work at logging camps operated by his employer, and was paid a motor vehicle allowance to be applied against his travel expenses (the "Allowance"). The Minister disallowed the taxpayer's deduction for 2004 and 2005 of motor vehicle expenses incurred in excess of the Allowance, but also excluded the Allowance from his income for those years under s. 6(1)(*b*)(vii) of the *Income Tax Act* (the "Act"). The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The taxpayer's attempt to deduct his actual motor vehicle travel expenses so that they exceeded the Allowance was consistent with the jurisprudence, as long as he met the rules of s. 8(1)(*h*.1) of the Act. Paragraph 8(1)(*h*.1) requires that a taxpayer must travel to work somewhere other than the employer's place of business, that he/she be required to pay those travel expenses, and that a Form T2200 be filed with the Minister containing the employer's certification that these requirements have been met. The taxpayer in this case, however, rarely drove his car for any other work-related purpose than to get to and from his employer's various places of business. Generally, expenses incurred for this type of travel are not deductible. Since the taxpayer was not required to travel to work somewhere other than his employer's place of business, and since his employer had not provided him with a T2200 Form, he was not entitled to the expense deductions claimed. The Minister's reassessments were affirmed accordingly.

Brochu, (Tax Court of Canada), 2010 DTC 1183.

No Evidence That Taxpayers Had Been Corporate Directors at Relevant Time

The plaintiff, A, brought an action for damages for unjust enrichment, contribution, or indemnity against the defendants B and L for monies paid to the Canada Revenue Agency (the "CRA") for unpaid GST and source deductions on behalf of Wray's Fire Protection Limited (the "Corporation"), alleging that the defendants were officers and directors of the Corporation and were there-

fore jointly and severally liable for payment of its remittances.

The action was dismissed. The Court found that L was not a director at the relevant time, and that there was no evidence that B was ever a director of the Corporation. The plaintiff failed to establish that the arrears were incurred at a time when L was still a director of the Corporation. There was no evidence called to support the plaintiff's assertion that L resigned as a director because the company was in financial difficulty, and no evidence that after her resignation, L had any further involvement with the company or its operations. Further, before she left her position, L fulfilled the rules of acting with due diligence by ensuring a replacement was found for her position and then training that individual. With respect to B, the plaintiff failed to bring any persuasive evidence to support his contention that B was a director of the Corporation at any time. Although the plaintiff submitted a company document listing B as a director, the Ontario *Business Corporations Act* requires that directors must sign a written consent, and this consent form was not produced at trial. The fact that B submitted a letter to the CRA stating that he had resigned as a director was not conclusive evidence, as B was not a businessman and he had attempted to act on the advice of the CRA as to what information should be contained in such a letter. Regarding the plaintiff's claim of unjust enrichment, there was no basis to support this claim. Both B and L challenged their liability with the CRA after receiving notices of assessment, and the CRA accepted their submissions, choosing not to further pursue them for the unpaid amounts. There was also no evidence that B and L knew the plaintiff was paying the arrears or would expect contribution from them.

Adams, (Ontario Superior Court of Justice), 2010 DTC 5063.

Taxability of Expense Reimbursements and Allowances Received by an Employee

The CRA was asked if the following expense reimbursements or allowances paid by an employer to an employee in the following situations would constitute a taxable benefit and would have to be included in the employee's income:

(1) Reimbursement of the expenses incurred by an employee for survey, appraisal or inspection certificates issued in respect of a new house following the employee's relocation.

(2) Reimbursement of the cost to obtain a new mortgage on a new house following an employee's relocation.

(3) Allowance paid in replacement of moving expenses or real estate agent expenses in a case where an employee would move by himself/herself instead of using external movers or sell his/her own residence without the help of an agent.

(4) Allowance paid in respect of an employee's travel expenses where the employee would decide not to move and renounce his/her right to the reimbursement of moving expenses.

(5) Reimbursement of housing and travel expenses incurred by an employee temporarily posted to a territory other than the one where he/she worked normally.

Allowance paid for meal and incidental expenses incurred by an employee temporarily posted to a territory other than the one where he/she worked normally.

It is the view of the CRA that:

(1) Provided the relocation was employment related and not made for personal reasons, the reimbursement would not be a taxable benefit and would not be included in the employee's income under paragraph 6(1)(*a*) of the Act.

(2) Even if the relocation was employment related, the reimbursement of the cost incurred by the employee to get a new mortgage on the new house would be an assistance provided by the employer for the cost of financing the house and would be an employment benefit taxable under subsection 6(23) and paragraph 6(1)(*a*) of the Act.

(3) The allowance would be included in the employee's income under paragraph 6(1)(*b*) of the Act except for an amount of $650 exempted by administrative policy (see "Non-accountable allowances" section of CRA Guide T-4130 "Employers' Guide – Taxable Benefits and Allowances"). The $650 would be considered a reimbursement of expenses incurred by the employee for an employment-related move.

(4) The travel allowance would also be included in the employee's income under paragraph 6(1)(*b*) of the Act but would not qualify for the $650 exemption which is only available for relocation or moving allowances.

(5) Where an employer asks an employee to travel from his/her residence to a place other than his/her regular place of work, this travel is generally considered to be made in the course of per-

forming his/her employment duties and the reimbursement of any related housing and travel expenses is not considered a taxable employment benefit.

(6) The allowance would have to be included in the employee's income under paragraph 6(1)(*b*) of the Act but could be excluded under subparagraph 6(1)(*b*)(v), 6(1)(*b*)(vii) or 6(1)(*b*)(vii.1) of the Act if it would be reasonable and received in the course of employment. The allowance could also be exempted by subsection 6(6) of the Act if it would be reasonable and if the employee worked at a special work site.

Technical Interpretation, Ontario Corporate Tax Division, May 19, 2010, Document No. 2009-0342651E5.

Financial Assistance to Employees' Extended Family

The CRA was asked whether financial assistance provided by an employer to its employees' extended families who were directly affected by the hurricanes and typhoons would be taxable to the employees.

Section 5 of the Act provides that salary, wages and other gratuities are included in a taxpayer's income from an office or employment. Section 6 includes in a taxpayer's income the various fringe benefits that an employee or officer may receive in respect of, in the course of, or by virtue of office or employment. Section 6 operates to prevent employees from avoiding taxes by simply arranging to receive part of their wages or salary as fringe benefits rather than cash remuneration.

Paragraph 6(1)(*a*) provides that there shall be included in the income of a taxpayer for a taxation year from an office or employment the value of board, lodging and other benefits of any kind whatsoever, received or enjoyed by the taxpayer in the year, in respect of, in the course of, or by virtue of an office or employment.

Subsection 56(2) provides that the payment or transfer of property by a taxpayer to others, which would be regarded as income of a taxpayer if it had been paid or transferred to him/her, will be deemed to be income of the taxpayer in certain circumstances. The provision applies to payments or transfers made to other persons at the direction, or with the concurrence, of the taxpayer for his/her benefit or as a benefit which the taxpayer wishes to confer on the other person. For example, subsection 56(2) would be engaged where an employee asks his/her employer to pay part of his/her salary to his/her spouse. See also Interpretation Bulletin IT-335R2, "Indirect Payments" (12 June 2004).

The CRA stated that, in the current case, the employer is likely to have made such payments in a personal and philanthropic capacity, not as a payment for services performed. Accordingly, the payments should not be included in the employees' income. The CRA also noted that a deduction under section 110.1 of the Act for a charitable donation is not available to the employer as the criteria for such a deduction because the employer is not a registered charity or other entity that qualifies under the provision.

Technical Interpretation, Business and Partnerships Division, May 20, 2010, Document No. 2009-0349581E5.

Employee Recruitment Payments

The CRA was asked whether a recruitment payment made to recent graduates is taxable. The employer offers a contract to new nursing graduates when they are hired. The contract provides for two payments to be made: one upon the signing of the contract and offer of employment letter and the second upon submission of a temporary nursing registration. The employee guarantees, in return for the two payments, to work for the employer for a specified period of time. If the employee does not work for the specified time or does not complete all of the requirements to obtain registration as a nurse, the employee must repay the amounts to the employer.

Section 5 provides that salary, wages and other gratuities are included in a taxpayer's income from an office or employment. Section 6 includes in a taxpayer's income the various fringe benefits that an employee or officer may receive in respect of, in the course of, or by virtue of office or employment. Section 6 operates to prevent employees from avoiding taxes by simply arranging to receive part of their wages or salary as fringe benefits rather than cash remuneration.

Subsection 6(3) provides that certain amounts paid by an employer to an officer or employee will be regarded as remuneration for services under section 5. This provision prevents an officer or employee from excluding such payments from employment income by arranging to receive payment before or after employment. The provision applies to amounts received by one person from another when

- the payee is in the employment of the payer; or
- the payment is on account of, or in place of, or in satisfaction of, an obligation under an agreement made

between the payer and payee immediately before, during or immediately after the period of employment.

Subsection 6(3) will be applied to such payments if they can reasonably be regarded as having been received:

- in return for entering into the contract;
- in return for services under the contract; or
- in return for a covenant relating to what the employee is or is not to do before or after the termination of the employment.

In the CRA's view, the terms of the contract indicate the payments are made as consideration for entering into a contract of employment and should therefore be included in employment income pursuant to subsection 6(3).

Interestingly, in CRA Document No. 2003-0004917 "Nursing Bursary Program" (17 May 2003), the CRA was asked whether payments under the New Brunswick Nursing Program constitute a bursary or employment income under section 5 of the Act. Nursing students could apply for a government-sponsored bursary during their education program. To qualify for this financial assistance, candidates must enter into a return-of-service agreement, which is essentially a permanent employment contract for a specified term. Although the bursary is paid by the employer, the program is funded by the provincial government. It was the CRA's view that paragraph 56(1)(n) would apply to the bursary. Paragraph 56(1)(n) provides that a scholarship, fellowship, bursary or similar prize, whether in cash or kind (other than a prescribed prize), is included in income in the year of receipt to the extent it exceeds the scholarship exemption described in subsection 56(3). Although the amount is paid by the prospective employer, the income is not received by virtue of the individual's employment and therefore neither subsection 5(1) nor subsection 6(3) would apply.

Technical Interpretation, Business and Partnerships Division, May 19, 2010, Document No. 2009-0352621E5.