

# BREAKFAST FOR BUSINESS

## “HALLOWEEN TRICKS AND OTHER LEGISLATIVE UPDATES”

February 8, 2012

*Presented by:*

**Robert Martini**

**Gwen Benjamin**

**Robin MacKnight**



# OCTOBER 31, 2011

- “Technical Changes”
- Affects many *Income Tax Act* and some *Excise Tax Act* provisions
- Some surprises

# PERSONAL SERVICES BUSINESS CHANGES

- PSB Rules originally introduced as anti-avoidance measure
- Recent Corporate Tax Rate Cuts resulted in:
  - PSB as deferral vehicle
  - PSB as income splitting vehicle

# PERSONAL SERVICES BUSINESS CHANGES

- “Full rate taxable income” amendments
- Means PSB income NOT eligible for general rate reduction
- 2012 General Rate Reduction: 13%
- Applies to Taxation Years beginning after October 31, 2011

# PERSONAL SERVICES BUSINESS CHANGES

## Planning:

- Recharacterize as Independent Contractor?
- Hire more than 5 full-time employees (must be “in the business”)
- Abort?
- Pay out salaries to incorporated employee?

# OTHER OCTOBER 31 CHANGES

- Expansion of Employment Benefits
- Expansion of Shareholder Benefits

# **REGISTERED DISABILITY SAVINGS PLANS (RDSPS) IC99-1**

- Released on November 30, 2011
- The circular explains the provisions of the ITA and CRA administrative requirements for RDSPs
- It also provides some information on the Canada Disability Savings Grant (Grants) and the Canada Disability Savings Bond (Bonds)

# WHAT IS AN RDSP?

- A savings plan to help parents and others save for the long term financial security of a person who is eligible for the disability tax credit

# BENEFITS OF THE RDSP

- Grants
  - The Government will pay matching grants of 300, 200 or 100 percent, depending on the beneficiary's family income and the amount contributed.
  - An RDSP can get a maximum of \$3,500 in matching grants in one year, and up to \$70,000 over the beneficiary's lifetime
- Bonds
  - The Government will pay a bond of up to \$1,000 a year to low-income Canadians with disabilities.
  - No contributions have to be made to get the bond
  - The lifetime bond limit is \$20,000

# LIMITATIONS ON THE RDSPs

- There is no annual limit on amounts that can be contributed, however, the overall lifetime limit for a particular beneficiary is \$200,000
- Contributions are permitted until the end of the year in which the beneficiary turns 59
- Limitation on the payments made out of the RDSP (discussed further below)

# BASIC TAX POINTS ON RDSPs

- Contributions to an RDSP are not tax deductible
- Contributions that are withdrawn are not included in income for the beneficiary when they are paid out of an RDSP, however, the Grant, Bond and investment income earned in the plan are included in the beneficiary's income for tax purposes when paid out

# WHO IS A BENEFICIARY?

- Individual who is eligible to claim the disability tax credit in the tax year the RSDP is entered into
- Disability Tax Credit – 1) a qualified practitioner certifies on Form T2201 that the individual has a severe and prolonged impairment in physical or mental functions and 2) Form T2201 has been approved by CRA

# WHO CAN BE A HOLDER?

- The beneficiary;
- A qualifying person;
- A legal parent who is not a qualifying person in relation to the beneficiary at the time the arrangement is entered into; or
- An entity who receives rights as a successor or assignee of a qualifying person or a legal parent who is not a qualifying person in relation to the beneficiary at the time the arrangement is entered into.

# QUALIFYING PERSON

- If the beneficiary is not age of majority
  - Legal parent;
  - Individual legally authorized to act on behalf of the beneficiary (i.e. guardian of property); or
  - A public department or agency legally authorized to act on behalf of the beneficiary
- If the beneficiary has reached age of majority but is not contractually competent:
  - Individual legally authorized to act on behalf of the beneficiary (i.e. guardian of property); or
  - A public department or agency legally authorized to act on behalf of the beneficiary
- Practical point: if the RDSP is opened by a parent when the child is a minor the parent can continue to be the holder of the plan when the child becomes an adult. If however, the RDSP is opened by a parent when the child is an adult (who is not contractually competent) the parent can only do so if they are the legal guardian of property for the child.

# PAYMENTS FROM AN RDSP

- Different types of payment:
  - Disability assistance payments
  - Repayment of grants and bonds to the Government; and
  - Transfers of all property from the Beneficiary's current RDSP to a new RDSP of the beneficiary

# SPECIFIED DISABILITY SAVINGS PLAN

- A special type of RDSP what would apply is circumstances where the beneficiary will not live longer than 5 years

# RC4625 – ROLLOVER FROM RRSP TO RDSP

- Amendment applies after June 2011
- The Act allows a tax-deferred transfer to an RDSP of certain amounts received from an RRSP, RRIF or RPP as a consequence of death of the annuitant or RPP plan member.
- In order to qualify for this rollover, the beneficiary of the RDSP must be a child or grandchild of the deceased, and have been financially dependent on the deceased by reason of infirmity
- The rollover is not eligible for grants and bonds
- Must comply with the following:
  - The beneficiary must be eligible for the Disability Tax Credit
  - The \$200,000 lifetime contribution limit cannot be exceeded
  - Contribution can only be made by or with the consent of the RDSP holder

# CASE UPDATES

- *Antle* – leave to appeal denied by SCC
- *Garron* – hearing March 13 by SCC
- *Daishowa* – seeking leave to appeal to SCC

# RECENT CASES

- *TransAlta Corporation v. the Queen* 2012 FCA 20 – price allocation; goodwill in a regulated industry
- *Lipson v. Cassels Brock & Blackwell LLP* – 2011 ONSC 6724; *Cannon v. Funds for Canada Foundation* 2012 ONSC 399 – class actions for unrealized tax benefits

# RECENT CASES

- *McPeake v. the Queen* 2012 BCSC 132;  
*Orman v. Marnat* 2012 ONSC 549 -  
rectification
- *McKay v. the Queen* 2011 TCC 526 –  
taxpayer was creditor, not director
- *St. Arnaud v. the Queen* 2011 TCC 536 –  
fraud and RRSP strips