Did You Know:

Vienca Ho
Tax Manager

Vienca completed her CGA designation in 2008 and joined Davidson & Company LLP in 2011. She specializes in public company tax compliance with experience in Canadian individual tax and U.S. corporation tax.

She enjoys spending time with her family and friends, doing yoga, swimming and traveling.

Aaron Chung
Tax Principal

Aaron has been with Davidson & Company LLP since 2012 after 7 years with two of the Big Four Accounting firms. Prior to that, he worked in the accounting and finance groups in utilities and telecommunications industry. Aaron specializes in corporate tax services in the Mining area focusing on tax provision, tax compliance and flow-through shares for public companies.

Aaron enjoys playing golf, romantic movies and long walks. Exactly in that order.

MOVING EXPENSES

You can deduct certain moving expenses incurred in the course of a move to carry on employment or a business in a new work location. The deduction is allowed if you move to a home that is at least 40 kilometres closer to the new work location than your previous home (calculated using a "normal" driving route).

However, the deduction for the year is allowed only to the extent of your income from the year from the employment or business in the new work location. Any unused expenses can be carried over and claimed in the following year, subject to the same income limitation.

For students moving to go to college or university, the deduction is typically not available because the deduction is limited to the student's scholarships, fellowships, bursaries, and research grants that are included in income – and scholarships, fellowships and bursaries are generally not included in income. However, if a

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Moving Expenses

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student moves to work, say for a summer job or to run a business, the student can claim moving expenses to the extent of employment or business income from the new work location, as noted above.

The types of moving expenses that qualify for the deduction include:

- travel costs, such as for gas and reasonable amount for meals and lodging, in the course of moving you and your family residence (using either the detailed or simplified method, as described below);
- moving van and storage costs;
- the cost of meals and lodging near your old home or new home for up to 15 days – for example, if you have to move out of the old home but cannot yet move into the new home (using the detailed or simplified method);
- if you rented your former home, the cost of cancelling your lease, if any;
- the selling costs on the sale of your former home, including legal fees and real estate commissions;
- if you sold your former home, the cost of legal services on the purchase of your new home, and land transfer tax paid on the new home (note that the GST or HST paid on a new home cannot be deducted);
- interest, property taxes, insurance premiums and the cost of heating and utilities in respect of your former home, up to a maximum of $5,000, but only during a period in which the home is not occupied by you or your family members nor rented to any other person, and in which "reasonable efforts" are being made to sell the home; and
- the cost of revising legal documents to reflect your new address, replacing drivers' licenses and vehicle permits, and of connecting or disconnecting utilities.

For the car travel and meal expenses, you have two options for doing the calculation. Under the "detailed method", as with the other expenses, you can claim your actual expenses. You will need to keep all receipts, as the CRA will quite likely request them.

Alternatively, under the "simplified method", you can claim a flat rate for car travel and meals, as set by the CRA each year.

The CRA flat rates under the simplified method for moves in 2014 will be published early in 2015. For moves from 2006 to 2013, the flat rate for meals has been $17 per person per meal, to a maximum of 3 meals or $51 per day. For travel, the flat rate is based on the number of kilometres driven in the move and depends on the province in which the move originated. For example, for a move from Ontario in 2013, the rate was 55 cents per kilometre. You can find these amounts at cra.gc.ca/travelcosts.

Employer reimbursement of your expenses

If your employer reimburses your moving expenses that are eligible for the deduction, then you must include the reimbursement in income and can claim the offsetting deduction, so there is no net taxable

benefit. If your employer reimburses only a part of the deductible expenses, the remaining eligible expenses can be deducted.

If your employer reimburses moving expenses that are not eligible for the deduction, the CRA's position is that the reimbursement will not normally be included in your income as a taxable benefit.

A non-accountable employee allowance of up to $650 for incidental moving expenses of an employment-related move is a non-taxable benefit under CRA administrative policy (Guide T4130), if you certify to your employer that you have spent at least that much. This allowance is not subject to the normal requirement that the move be more than 40km.

TAXATION OF SPOUSAL AND SIMILAR TRUSTS

Qualifying as a spousal (or similar) Trust

There are certain types of trusts to which property can be transferred on a tax-deferred basis. The main types of trusts are:

- Spousal or common-law partner trusts;
- Joint spousal or common-law partner trusts; and
- Alter-ego trusts.

(In all the rules below, a common-law partner who meets certain conditions is treated identically to a spouse.)

A spousal trust is a trust that is created during your lifetime or upon your death (e.g. under your will), under which your spouse is a beneficiary. Your spouse must be entitled to all of the income during his or her lifetime, and must be the only person who can receive capital of the trust during his or her lifetime.
Similarly, a "joint spousal or common-law partner trust" is one created during your lifetime under which you and/or your spouse are beneficiaries and are entitled to all of the income up to the later of your deaths. Only you and your spouse can receive capital of the trust up until the later of your deaths.

An "alter ego trust" is one created during your lifetime under which you are entitled to all of the income and are the only person who can receive capital of the trust up until your death.

In either case, there can be other beneficiaries under the trusts after death. For example, it is common to have a spousal trust which provides that upon the death of the beneficiary spouse, the children of the settlor (the person who created and contributed to the trust) receive the income or property of the trust. However, as outlined above, in order to qualify as a spousal trust, these other beneficiaries cannot receive any of the trust income or capital during the lifetime of the beneficiary spouse.

Tax Issues

As noted, the main tax benefit of qualifying as one of these trusts is that you can transfer property into the trust on a tax-deferred basis. This tax-free transfer is often called a "rollover".

However, you can elect out of the rollover in your tax return for the year of the transfer. (In the case of a spousal trust created by your will on your death, this election would be made by the executor or administrator of your estate.) If you elect out of the rollover, the transfer takes place for tax purposes at fair market value, which may generate capital gains. Capital losses will normally be disallowed under the superficial loss rules, except in the case of a spousal trust created upon your death.

Upon the death of the relevant beneficiary – your spouse's death (spousal trust), the later of your and your spouse's death (joint spousal trust), or your death (alter

ego trust) – there is a deemed disposition by the trust of its capital properties for fair market value proceeds. This deemed disposition may generate capital gains or other income, which will normally be taxed in the trust.

In the case of an alter ego trust, the trust can elect in its first taxation year not to have the deemed disposition apply on your death. In such case, the first deemed disposition will be 21 years after the creation of the trust (unless the trust is wound up before that time). However, in such case, there is no tax-free rollover of property allowed upon creation of the trust.

Proposed Changes

Recently, the federal government proposed changes to the taxation of trusts, most of which take effect beginning in the 2016 taxation year. One of the significant changes is to the deemed-disposition rule upon the death of the relevant beneficiary, as described above. Under this change, any gain or income arising from the deemed disposition upon the death will be included in that beneficiary's income, rather than in the trust's income. Any resulting tax will be payable by the beneficiary's estate. The change is most significant for spouse or common-law partner trusts, because the spouse (common-law partner) beneficiary and his or her estate may not receive that gain or income or any other property of the trust, but will still be liable for the tax.

For example, in the case of second or subsequent marriages, a settlor may set up a spousal trust for his current spouse. That spouse will be entitled to the income of the trust during her lifetime. However, upon her death, the remaining capital (and subsequent income) may be left to the settlor's children from a previous marriage. The spouse will nonetheless be liable to pay the tax resulting from the deemed disposition upon her death. There is a new provision that provides that the trust will be "jointly and severally" liable (or "solidarily" liable, in Quebec) to pay the tax along with the spouse. However, there is no requirement for the CRA to assess the trust for the tax instead of the spouse. As a result, the spouse and her estate may be required to pay tax in respect of accrued gains on property that she never receives.

Tax practitioners and organizations have communicated their concerns over this new rule to the Department of Finance, and hopefully some relieving measures will be added to alleviate the concerns. However, as of the time of writing, we have heard no further word from the Department, and the legislation in question, though it will not take effect until 2016, was enacted in mid-December 2014.

CAPITAL GAINS EXEMPTION

The capital gains exemption allows individuals resident in Canada to earn tax-free capital gains from the dispositions of qualified small business corporation (QSBC) shares, and qualifying farm or fishing property. The exemption is actually a deduction in computing taxable income: you report the capital gain as part of "total income" and "net income" (so your "net income", which affects other calculations, may be quite high), and then claim the deduction at the last stage of the "taxable income" calculation on your return.

For several years, the exemption limit was $750,000 of capital gains from these properties, but the limit was raised to $800,000 in 2014 ($400,000 of taxable capital gains, since only half of capital gains are included in income). For later years, the limit is indexed for inflation: for 2015, it is $813,600.

QSBC Shares

In general terms, a share of a private corporation qualifies as a QSBC share if it meets the following criteria:

- at the time of the disposition of the share, the corporation is a "small business corporation" (see below); and
- throughout the 24 months before the disposition, the corporation was a Canadian-controlled private corporation (CCPC) and more than 50% of its assets on a fair market value basis were used principally in a business carried on primarily in Canada (or were shares or debt in certain related CCPCs that met similar asset thresholds).

A CCPC is basically a private corporation resident in Canada that is not controlled by public corporations, non-residents, or a combination thereof.

A "small business corporation" is a CCPC where "all or substantially all" of the corporation's assets on a fair market value basis are used principally in a business carried on primarily in Canada (or are shares or debt in certain related CCPCs that met similar asset thresholds). The CRA takes the position that "substantially all" normally means 90% or more, although that percentage is not in the Income Tax Act and the Courts are not bound by it.

Furthermore, you or a related person must normally own the shares for at least 24 months prior to the disposition. The 24-month hold period generally disqualifies "quick flips" of shares that might otherwise qualify as QSBC shares. There are some exceptions, including where you transferred substantially all the assets of your business to the corporation within the past 2 years in exchange for those shares.

Family farm or fishing property

The capital gains exemption also applies to gains from the dispositions of qualified farm or fishing property. The dollar limit ($813,600 as of 2015) applies to the total of your gains from QSBC shares and farm or fishing property. In other words, the exemption claimed from QSBC shares will reduce your limit for farm or fishing property, and vice versa.

The definitions of "qualified farm property" and "qualified fishing property" are quite complex and lengthy. However, there is a 24-month hold period similar to that for the QSBC conditions, and a requirement that the property was used principally in a farm or fishing business. An amendment in the 2014 Federal Budget provides that the principal use test can be met either in a farming business, fishing business, or a combination of the two. Previously, a combination of the two businesses did not count in this test. For example, if a property was used 40% in a farm business and 20% in a fishing business, it would not have met the principal-use test before 2014, but it does now

In its December 2, 2014 Economic Update, the province of Quebec increased the dollar limit for the exemption for farm property and fishing property to $1 million for Quebec provincial tax purposes, effective for dispositions after 2014. The limit for QSBC shares remains as is. Once the QSBC share limit reaches $1 million (because of indexing), the farm and fishing property limit will be indexed to inflation, such that both limits will be the same.

Exemption reduced by previous ABILS and CNILS

The capital gains exemption limit in a year is reduced by your allowable business investment losses (ABILS) or Cumulative net investment losses (CNILS) for the year and previous years. An ABIL is one-half of a business investment loss, which is a capital loss incurred on certain dispositions of shares or debt in CCPCs. CNILS are the amount that net investment expenses such as interest expense and carrying charges exceed investment income.

Example

In 2014, you sold some QSBC shares and realized a capital gain of $200,000, resulting in a $100,000 taxable capital gain included in your income. You have not previously used any of your capital gains exemption.

In 2013, you had claimed an ABIL of $30,000.

In 2014, you can deduct only $70,000 under the capital gains exemption in computing your taxable income.

PARTNERSHIP INFORMATION RETURNS

A partnership is not a taxpayer or a person. As a result, it does not file a tax return or pay income taxes.

Instead, each partner reports his or her share of the partnership income or loss for each taxation year on the partner's tax return. The income is added to the partner's income or losses from other sources. The income retains its source in the hands of the partner, e.g. business income or property income.

However, certain partnerships must file an information return (Form T5013) for each fiscal period of the partnership. The CRA's administrative position (cra.gc.ca/partnership) is that the return must be filed in the following circumstances:

- if, at the end of the fiscal period,
  - the partnership has an "absolute value" of revenues plus an absolute value of expenses of more than $2 million, or has more than $5 million in assets; or
- during anytime in the fiscal period,
  - the partnership is a tiered partnership (has another partnership as a partner or is itself a partner in another partnership);
  - the partnership has a corporation or a trust as a partner;
  - the partnership invested in flow-through shares of a principal-business corporation that incurred Canadian resource expenses and renounced those expenses to the partnership; or
  - the CRA requests a return in writing.

For these purposes, the revenues and expenses are those provided in the partnership's financial statements. "Revenues" mean gross revenues. Expenses include both current costs and capital costs (e.g. depreciation or amortization). Revenues from all sources are added to the total of all expenses, and the total is used to determine whether or not the criterion has been met. The CRA provides the following example.

Example

Amounts for a partnership in a fiscal period:

- Revenues = $1,500,000
- Minus Cost of goods sold of $850,000
- = $650,000 gross profit
- Minus: Expenses of $400,000 = Net profit of $250,000
- But, the filing requirement is based on absolute values:
- The absolute value of expenses is $1,250,000 which includes the cost of goods sold ($850,000) and expenses ($400,000).
- The absolute value of revenues plus expenses is $1,500,000 plus $1,250,000 = $2,750,000.

As a result, the partnership would have to file since the absolute value of revenues plus the absolute value of expenses is more than $2 million, even though it has net profit of only $250,000.

For the purposes of the $5 million asset test, the CRA counts the cost of both tangible and intangible property, without taking into account any depreciated amount.
As noted, the information return is not a tax return. It simply provides the CRA with information regarding the

partners (identification, share of partnership income or loss, and so on), which the CRA can use to determine whether the partners are properly reporting their shares of income or loss.

The information return, Form T5013, was previously available only in paper format. Since January 1, 2014, it can be filed electronically.

For the 2013 and 2014 fiscal years, the CRA held that family farm partnerships formed of individuals only did not have to file a T5013 return. However, a farm partnership that included a trust or a corporation was required to file a T5013 return if the above criteria were met.

AROUND THE COURTS

Legal fees incurred by spouse paying support not deductible

In the recent Grenon case, the taxpayer incurred legal fees in a provincial family court proceeding dealing with his obligation to pay child support and spousal support. He attempted to deduct the legal fees in computing his income. As part of his arguments, he noted that recipients of child or spousal support are allowed to deduct legal fees in court proceedings dealing with the support, so payors of support should be allowed a similar deduction.

He argued, among other things, that this was a breach of the Charter of Rights because most taxpayers paying support are men.

The CRA denied the deduction on the grounds that the legal fees were not incurred for the purpose of earning income, and that there was no specific provision in the Income Tax Act that allowed the deduction.

The Tax Court of Canada agreed with the CRA and denied the deduction. Interestingly, the Judge went on to express concern about the "serious inequities" that arise when recipients of support are allowed to deduct the related legal fees while payors of support are not allowed the deduction. However, the Judge concluded that this decision had to be left to Parliament, and could not be made by the courts.

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This letter summarizes recent tax developments and tax planning opportunities; however, we recommend that you consult with an expert before embarking on any of the suggestions contained in this letter, which are appropriate to your own specific requirements.

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1200 - 609 Granville Street,
PO Box 10372, Pacific Centre
Vancouver, B.C. Canada V7Y 1G6

Tel: (604) 687-0947

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