HENDRY WARREN LLP
MONTHLY NEWSLETTER

Tax Benefits for Disabled Individuals

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Our goal is to provide updates on topical tax issues. Information contained in the newsletters is not meant to be a comprehensive summary of the issues raised. Rather, we wish to bring what we believe to be important issues to the attention of our valued clients. We would be pleased to discuss any questions that you, the reader, might have in greater detail.

The Canada Revenue Agency ("CRA") offers a number of income tax benefits and tax planning opportunities for qualifying individuals with disabilities. These benefits are often overlooked by taxpayers due to lack of awareness about benefits or their eligibility.

DISABILITY TAX CREDIT

The basis for many of the tax benefits and programs for individuals with disabilities relate directly to an individual's ability to qualify for the disability tax credit ("DTC"). The DTC is a non-refundable tax credit that assists persons with disabilities or their supporting persons in reducing the amount of income tax they may have to pay.

There are three main criteria required to qualify for the DTC, as follows:

- must have an impairment in physical or mental functions that is prolonged, which means it has lasted or is expected to last for a continuous period of at least 12 months.
- impairment in physical or mental functions must be severe and it must restrict him or her all or substantially all of the time (at least 90% of the time).
- severe and prolonged impairment in physical or mental functions must be certified by a medical practitioner.

Examples of impairments range significantly. They include, but are not limited to, vision, speaking, hearing, mobility, mental functions, life-sustaining therapy, and mental and physical impairments that result in an inability to complete necessary daily activities.

To apply for the DTC, *Form T2201 – Disability Tax Credit Certificate* must be completed by a medical practitioner and submitted to the CRA for processing. Generally, for the first tax year in which an individual is claiming the DTC, the form must either be filed before the filing of their income tax return for the year or with their income tax return for the year in paper form. The form will be reviewed to determine if the person with a disability is eligible for the credit.

It should be noted that in cases where the qualifying individual has little or no income, a supporting individual or spouse of the eligible person with a disability may be able to claim all or part of the disability tax credit calculated in respect of the eligible person with a disability for the year.

It may be possible to retroactively receive income tax benefits where the DTC is processed in one year, certifying that the impairment started in an earlier year. This can be accomplished by filing a T1 Adjustment request. For example, if the medical practitioner completes the form in 2016 indicating that the disability began in 2014, a T1 Adjustment can be filed to claim the DTC for 2014 and 2015, as well as claiming the credit on their 2016 personal tax return. The CRA will generally approve the taxpayer to claim the DTC for a certain number of taxation years, after which the form must be completed and submitted once again.

The basic federal DTC is $7,899 for the 2015 taxation year, which could result in approximately $1,185 of federal tax savings annually.

<u>MEDICAL EXPENSES, ATTENDANT CARE, AND NURSING HOME COSTS</u>

Individuals eligible for the DTC are eligible for additional medical tax credits, including certain types of care or therapy. Attendant care, for example, is provided by an attendant who performs or assists with functions that the taxpayer is unable complete. Tasks could include meal preparation, maid and cleaning services, transportation, and personal services such as banking and shopping. It is important to note that services, such as a provider of only maid and cleaning services, or a provider of only transportation services, would not be viewed as attendant care.

A nursing home is generally considered to be an establishment that provides full–time maintenance or nursing home care for patients who are unable to care for themselves by reason of an injury, illness or disability of the patient. The CRA is generally of the view that a retirement home does not provide the care required to be classified as a nursing home. It is common for retirement homes to provide receipts for the portion of expenses related to attendant care costs.

Where an amount in respect of remuneration for attendant care or for care in a nursing home is claimed as an eligible medical expense, no taxpayer may claim the DTC in respect of that person for that tax year. When the disability amount is being claimed, the maximum amount that can be claimed federally for attendant care costs as medical expenses is $10,000. Taxpayers need to determine, based on their specific circumstances, whether it is more beneficial to claim the limited amount of attendant care expenses plus the DTC or to claim the full amount of the cost of attendant care with no claim for the DTC.

<u>REGISTERED DISABILITY SAVINGS PLANS (RDSPs)</u>

An RDSP is a federal tax-supported savings vehicle that is intended to encourage people to save for the future needs of a person with a disability. In order to qualify for an RDSP, the beneficiary of the plan must:

i) be eligible for the DTC
ii) have a valid social insurance number (SIN)
iii) be resident in Canada
iv) be under the age of 60.

Contributions to an RDSP are not tax deductible and can be made until the end of the year in which the beneficiary turns 59. Contributions that are withdrawn are not included in income for the beneficiary when they are paid out of an RDSP. However, the Canada disability savings grant, the Canada disability savings bond (bond), investment income earned in the plan, and rollover amounts are included in the beneficiary's income for tax purposes when they are paid out of the RDSP.

The grant is an amount that the Government of Canada contributes to an RDSP. The government will pay a matching grant depending on the beneficiary's family income and the amount contributed. The beneficiary's family income is calculated as follows:

- From birth to December 31 of the year the beneficiary turns 18, the beneficiary's family income is based on the income information used to determine the Canada child tax benefit (CCTB) for that beneficiary.
- Beginning the year the beneficiary turns 19 until the RDSP is closed, the beneficiary's family income is based on his or her income plus his or her spouse's, or common-law partner's income. To qualify for the bond or to earn a grant, the beneficiary must file income tax and benefit returns for the past two years and all future taxation years when he or she has an RDSP.
- If the beneficiary is under the care of a department, agency, or institution for at least one month in the year, the grant is based on the allowance payable to the department, agency, or institution under the Children's Special Allowances Act.

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.

QUALIFIED DISABILITY TRUST (QDT)

Effective for 2016 and later taxation years, all testamentary trusts created by a will, will be subject to tax at the top marginal tax[1] in the respective province of residency, other than certain exceptions, including QDTs. A QDT is a testamentary trust that is resident in Canada and has one or more beneficiaries who qualify for the DTC. The trust and the electing beneficiary must jointly elect that the trust be a QDT. The benefit of a QDT is that the trust, which is required to file an annual tax return, has access to graduated income tax rates throughout the life of the trust.

Where QDT status is lost or when distributions are made to a beneficiary other than the beneficiary qualifying for the DTC ("electing beneficiary"), the trust will become subject to a recovery tax. The purpose of the recovery tax is to essentially require the trust to repay the tax savings on the income taxed at graduated rates that was or will be distributed to a non-electing beneficiary and not included in that beneficiary's income for the current or prior year. While the computation of the recovery tax is complex, it appears likely that it will apply on the death of the last remaining electing beneficiary. This outcome will require advance tax planning to minimize any punitive impact. QDTs can be particularly beneficial in cases where the creator of the will would like the assets to benefit a disabled individual, but would like a third party trustee to maintain control of the assets subject to their wishes.

[1] The top marginal tax rate in Ontario is current 53.53%

CONCLUSION

There are many tax advantages for individuals with disabilities, and individuals supporting those with disabilities. These planning measures should be considered in conjunction with family planning, personal needs, and other government funding requirements.

Should you have any questions, please contact our office to discuss in further detail.