Tax Letter

January 2020

Converting losses into tax advantages

One of the strategies at calendar year end that may be used by individuals who hold non-registered investments is to determine if disposing of the "looser investments" is beneficial as it will trigger capital losses. These losses can then be used to offset any capital gains incurred in this tax year. Unused losses can also be carried back into the previous three tax years or carried forward indefinitely.

One thing to watch out for is the "superficial loss" rule. This rule states that, if an investor sells a security at a loss and then buys back the same security within 30 days of sale, the tax benefit from the capital loss will be denied.

It is important to mention that investors need to closely monitor end-of-year deadlines for completing a tax-loss sale to ensure the transaction is finalized in time to apply to the current tax year (if that is the reason for the sale). Settlement dates usually fall on the second business day after the sale is initiated.

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Beware of real estate investment schemes

The Canada Revenue Agency (CRA) is warning taxpayers about getting involved in tax schemes where promoters, some of which may be tax preparers, are claiming that individuals can get a significant tax write-off by investing in real estate through a limited partnership.

This scheme is advertised as an investment opportunity in real estate through a limited partnership. The promoter often claims that the tax write-off will be more than double of what was invested. For example, the investor invests $3000 but is advised that, due to costs such as lease and tenant improvements plus certain financial services, the amount of actual write off is $7500.

Limited partnerships are unique arrangements that provide investors with certain benefits similar to partnerships and corporate entities. However, different than general partnerships, the investor's liability is restricted to the amount they invested. Therefore, they cannot claim a higher tax write-off than invested. Those who choose to participate in these tax schemes are being severely penalized by CRA and tax courts.

International Students – Do you have to pay income tax?

As an international student, you may have to complete an income tax return whether you stay in Canada part-time or you are here year-round. For tax purposes, international students studying in Canada are typically considered one of the following: resident, non-resident, deemed resident, deemed non-resident.

Residency status is based on the residential ties you have with Canada, this can include having a home in Canada, a spouse or a dependent who is moving to Canada to live with you. Other residential ties may include Canadian driver's license, Canadian bank credit cards, or Canadian health insurance.

Most international students who study or carry out research in Canada do establish residential ties with Canada and may therefore be considered residents. However, you have not established significant residential ties with Canada if you return to your home country on a regular basis or for large portions of the calendar year or move to another country when not attending a post-secondary institution in Canada.

Tax planning suggestions

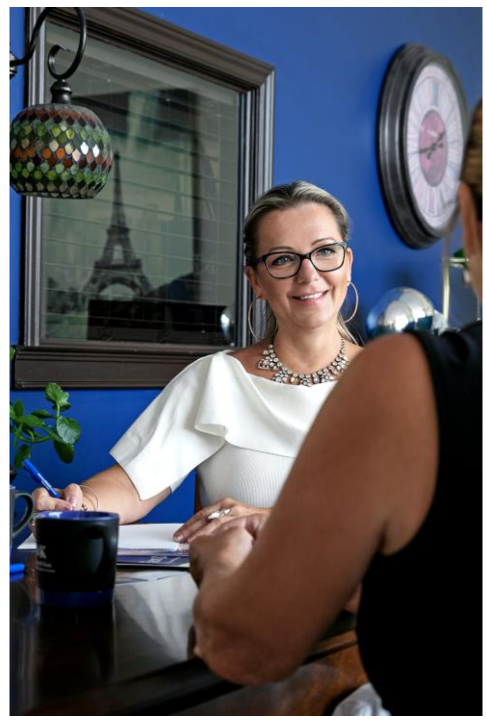
INCOME SPLITTING

Consider:

- Lending funds at a prescribed interest rates (currently 2% per year) to your spouse or common-law partner, or child aged 18 or over, for investment purposes, provided that the interest is paid within 30 days following the end of each year. The desired effect is for investment income to be taxed in the hands of the said individual.
- Gifting funds to your children aged 18 or over to potentially generate business income, capital gains or other income in certain circumstances.
- Hiring your spouse or common-law partner, or children, to perform services which would otherwise be performed by you or other employees.
- Reorganizing the family business to introduce other family members directly, or through a trust, as shareholders, beneficiaries or partners.
- Investing in a Tax-Free savings account (TFSA) for you, your spouse, or children aged 18 or over.
- Contributing to a Registered Disability Savings Plan for a disabled child, grandchild, or other relative.
- Investing the Canada Child Benefit payments in designated investments for the benefit of a child.

OTHER CONSIDERATIONS

- Withdrawing funds from your RRSP by December 31, 2019 if your 2019 income is unusually low.
- Contribute to the Tax-Free Savings Account. TFSA contribution limit for 2019 is $6000. You can also carry forward any unused contribution room from previous years. The annual limits were $5000 for 2009-2012, $5500 for 2013-2014, $10,000 for 2015, and $5500 for 2016-2018.
- Consider contributing to a Registered Education Savings Plan for your child, grandchild, or other young relatives.



... from current Tax Court Files

Part-time law practice losses disallowed

In the Queen vs. Renaud case, an individual was a lawyer employed full time at a federal government agency. At the same time, she had a part-time practice of 10 hours per week, from which losses were reported. Her practice consisted of helping clients with low incomes who could not pay her enough for her to make a profit.

The taxpayer attempted to claim the non-capital losses for tax purposes against her other sources of income, a claim that is generally available for these types of losses.

The Tax Court of Canada found that Ms. Renaud’s practice was not sufficiently commercial, but rather had a significant personal element, and as a result did not constitute a “source” of income and her losses were denied.

The decision was appealed to the Federal Court of Appeal. The Court agreed with the Tax Court Judge, holding that the practice was not clearly commercial in nature and that it was not carried on with a view of making a profit. The application of losses was denied.