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**STAND-BY CHARGE FOR
EMPLOYER-PROVIDED CAR**

If your employer provides you with a car, you will be assessed a “standby charge” under the *Income Tax Act* in respect of your personal use of the car. This amount is added to your income.

In general terms, if the car is **owned** by your employer, the amount of the standby charge will be 2% per month (for each month you have use of the car) multiplied by the cost of the car, including GST and PST (or HST). If the car is **leased** by your employer, the standby charge will be 2/3 of the lease cost to your employer for the period in which you have use of the car, again plus taxes. However, in either case (employer-owned or leased car), the amount of the standby charge is reduced, if

- you are required by your employer to use the car for employment purposes,

- your employment kilometres with the car exceed your personal kilometres for the year, and
- your personal kilometres are less than 1,667 per month that you have use of the car.

For these purposes, driving from home to work and back is normally considered personal use of the car. Employment use includes driving from home or work to visit clients or customers, and it includes trips between clients or customers.

Essentially, the reduced amount of the standby charge equals the standby charge otherwise determined (i.e. as described above) multiplied by the following fraction:

A / B , where

A is the total personal kilometres during the year, and

B is 1,667 multiplied by the number of months you have use of the car, rounded off to whole months (20,004 per year, if you have the car for the whole year).

(As noted, if A, your personal kilometres, exceeds 1,667 per month, there is no reduction to the standby charge.)

Example

You are provided with your employer's leased car throughout 2009. Your personal kilometres for the year, including driving from home to work, are 12,000 (1,000 per month) and your employment kilometres are 30,000. Your employer's lease costs for the year are \$8,000 including GST and PST.



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Your standby charge will equal:

(Total personal kilometres / (12 x 1,667)) x 2/3 x \$8,000, or

(12,000 / 20,004) x 2/3 x \$8,000 = \$3,199

If your employer pays any of the **operating costs** for the car for the year (e.g. gas, oil, repairs, or even just the annual licence fee), you will be assessed an operating cost benefit for the year, which is included in your income for tax purposes in addition to the standby charge. Normally the benefit is a prescribed amount per personal kilometre driven, which is 24 cents per personal kilometre for the 2009 taxation year (21 cents for employees employed principally in selling or leasing automobiles). However, if your employment kilometres for the year exceed your personal kilometres for the year, you can choose to instead compute the operating cost benefit as one-half of the standby charge. Obviously, you would choose this option only if it were less than the 24 cent (or 21 cent) per personal kilometre amount. You can avoid this deemed income inclusion by **repaying all the benefits to the employer no later than February 14** of the next year. If the employer is paying only a small benefit (e.g. just the vehicle licence fee), it is important to make this repayment to avoid a very large income inclusion!

SUPERFICIAL LOSSES

The superficial loss rules in the *Income Tax Act* can apply to deny capital losses in certain circumstances where you dispose of a property and you or an “affiliated person” acquire or reacquire the property or an identical property. In particular, the rules apply if

- you dispose of the property and you or an affiliated person acquire the property or an identical property within the period that begins 30 days prior to the disposition and ends 30 days after the disposition; and
- you or an affiliated person own the property or identical property at the end of the above-noted period.

An affiliated person includes (among others) your spouse or common-law partner, a corporation that you control, your RRSP, and a partnership if you are a majority-interest partner. It does not include your children, meaning that the superficial loss rules do not apply when you transfer property to your children or if they acquire the property within the time frame discussed above.

For these purposes, whether one property is identical to another is largely a question of fact. However, shares of the same class of a corporation or the units of the same class in a mutual fund are considered identical properties.

Although a superficial loss is denied, the amount of the loss is added to the adjusted cost base of the property to the person owning the property at the end of the 30-day period following the disposition (i.e. either you or the affiliated person). The addition to the cost of the property will either maintain the accrued loss or reduce any future gain when the property is later sold.

Example

You sold 100 units in mutual fund X on December 15, 2008 at a loss of \$1,000. Your spouse bought 100 units in mutual



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fund X on January 2, 2009 for \$3,000, or \$30 per unit, and she still owned them on January 14, 2009 (i.e. 30 days after December 15, 2008). Your spouse sold the 100 units on May 31, 2009 for \$41 per unit.

Your \$1,000 loss will be denied, but added to your spouse's cost of the units, which will become \$4,000 (i.e., \$40 per unit). Therefore, when your spouse sells the units for \$41 each, her gain will be \$1 gain per unit (rather than \$11 per unit which would otherwise have been the case given her \$30 acquisition cost).

If only some or a part of the property is owned at the end of the 30-day period following your disposition, then only that portion of your loss will be denied. Thus, if your spouse in the above example owned only 50 units in mutual fund X on January 14, 2009, ½ of your loss would be denied (\$500), and that amount would be added to the cost of her 50 units for tax purposes.

FIRST-TIME HOME BUYERS

The *Income Tax Act* provides some benefits for first-time home buyers, including those who have not owned a home in the current year or the previous four years.

RRSP Home Buyer's Plan

The RRSP Home Buyer's Plan allows you and your spouse (or common-law partner) to withdraw up to \$25,000 each from your RRSPs, tax-free, to purchase a home in which you will reside. (The limit was previously \$20,000, but was increased in the 2009 federal budget for withdrawals made after January 27, 2009). Therefore,

couples can withdraw a total of up to \$50,000 from their RRSPs for this purpose.

Although the plan is often said to apply to "first-time buyers", you can withdraw under the plan as long as neither you nor your spouse owned and lived in a home more than 30 days before the withdrawal in the year of withdrawal or in one of the preceding four calendar years. (The 30-day period allows you to acquire your new home up to 30 days before withdrawing under the Home Buyer's Plan). The four-year period is waived if the property is being purchased for a related disabled person, generally meaning a person eligible for the disability tax credit.

You must acquire the home by October 1 following the year of the withdrawal.

The withdrawn amount must be repaid to your RRSP over a 15-year period, beginning with the second year following the year of withdrawal. You do not have to pay interest on the amounts. At least one-fifteenth of the withdrawn amount must be repaid in each of those 15 years, although early repayments are allowed.

A repayment for a year can be made in the year or within 60 days after the end of the year. The repayment is made like a regular contribution to your RRSP, although you designate in your tax return the amount of the repayment for the year. Furthermore, unlike your regular contributions, the repayment under the Home Buyer's Plan is not deductible. Any amount that is required to be repaid in a year but is not repaid is included in your income for that year.



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New credit for first-time home buyers

In addition to enjoying the benefits of the RRSP home buyer's plan, individuals are eligible for a new "first-time home buyers' tax credit", announced in this year's federal budget. Although the credit has not yet been passed into law, it applies to purchases of homes after January 27, 2009 (i.e. the closing date for the home purchase is after that date). The credit is 15% of \$5,000, or \$750, as a reduction against your federal income tax. In order to qualify for the credit, neither you nor your spouse (or common-law partner) may have owned and lived in another home in the calendar year of purchase or any of the four preceding calendar years (the same test as for the Home Buyer's Plan). The credit can be claimed by you or your spouse or common-law partner.

CONVERTING YOUR HOME TO A RENTAL PROPERTY (OR VICE VERSA)

Most readers are likely aware of the principal residence exemption, which exempts from tax all or part of the gain, if any, realized on the sale of your home. In general terms, you get a full exemption from tax if the home was your "principal residence" during each year of ownership (or each year but one), which normally means you must "ordinarily inhabit" the home during that year (the home need not actually have been your primary place of residence – a cottage can qualify). If the home was not your principal residence for two or more years of ownership, a portion of the taxable capital gain, if any, is included in your income. (If the home was never your principal residence, the entire taxable capital gain is included.)

For these purposes, you can designate only one home as your principal residence per year per family unit, generally meaning you and your spouse or common-law partner and minor unmarried children.

Special rules apply if you convert your home to a rental property or vice versa. These rules allow you to designate the home as your principal residence even if you do not "ordinarily inhabit" the home.

First, if you live in your home but then move out and begin to rent it out, the home can continue to qualify as your principal residence for up to four years after you move out. You must file a special election in your tax return for the year in which your move from the home. Note that if you are required to move to take up employment in a new work location, the four-year limitation is waived (meaning the home can qualify as principal residence for a longer period while you rent it out), as long as your new residence is at least 40 kilometres closer to the work location than your old home, and you return to live in your home during your employment or by the end of the year in which your employment terminates. In either case, however, you are still subject to the "one home per year" rule, meaning that you can designate the home as your principal residence for a year only if you don't designate another home as your principal residence for the same year.

Second, a similar four-year rule applies if you rent out a property and then decide to move in and make it your residence. The home can qualify as your principal residence for up to four years before you moved into the home. You must file an election either in your tax return for the year in which you sell your home, or 90 days after the CRA sends a demand for the



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election, whichever is earlier. Note that this rule does not apply if you claimed capital cost allowance (tax depreciation) on the home during the rental period.

DONATIONS OF PUBLICLY-LISTED SECURITIES

You are probably aware of the tax credit for donations to registered charities and certain other “qualified donees”.

There are certain types of donations that provide further tax relief. For example, if you donate certain types of publicly-listed securities, any taxable capital gain you realize on the donation is deemed to be nil, although the fair market value of the securities will still qualify for the donations credit. In other words, you get the full credit based on the full value of the securities, even though you pay no tax on the accrued capital gain of the securities (normally when you gift property, there is a deemed disposition at fair market value for tax purposes).

The securities that qualify for this treatment are shares, debt obligations, or rights listed on a designated stock exchange; shares in a mutual fund corporation; units in a mutual fund trust; and interests in a related segregated fund trust.

DEDUCTING REPAIR COSTS

If you run a business or have a rental property, you can generally deduct repair costs incurred in respect of property used in the business, or for repair of the rental property. A significant issue is whether the repair cost is a **current expense** or a **capital expense**. If it is a current expense, it is fully deductible in the year in which it is

incurred. If it is a capital expense, it will normally be added to the capital cost of the property and therefore add to the amount that can be depreciated for tax purposes over time under the capital cost allowance provisions of the *Income Tax Act*. Obviously, then, it is almost always more beneficial to have an expense categorized as current rather than capital.

Generally, current expenses are those incurred for minor repairs or those for ordinary wear and tear and that provide relatively short-term value. A current expense may also bring a property back to its original condition but not add significantly beyond that condition. On the other hand, a capital expense is generally one that adds long-term value to the property or improves it beyond its original condition.

In one of its publications on business and property income and expenses (T4002), the Canada Revenue Agency (CRA) provides the following examples of repair costs that are current and capital:

Current	Capital
Painting exterior of house	Install vinyl siding on house
Repairing wooden steps	Replacing wooden steps with concrete steps
New compressor in building	New electrical wiring in building
Replace roof or floor	New roof or floor of significantly better quality and longevity than former roof or floor

The CRA also takes the position that repairs made in anticipation of the sale of a property or as a condition of the sale are usually capital expenses. On the other hand, where the repairs would have been



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made in any event and the sale was negotiated during the course of the repairs, or after their completion, the cost would normally be current.

PRESCRIBED INTEREST RATES

The CRA recently announced the prescribed annual interest rates that will apply to any amounts owed to the CRA and to any amounts the CRA owes to taxpayers for income tax purposes. These rates are calculated quarterly and will be in effect from July 1 to September 30, 2009. The rates are unchanged from the current quarter of April 1 to June 30, 2009.

- The interest rate charged on overdue income taxes, Canada Pension Plan contributions, and Employment Insurance premiums will be 5%.
- The interest rate paid on overpayments (late refund paid by the CRA) will be 3%.
- The interest rate used to calculate taxable benefits for employees and shareholders from interest-free and low-interest loans will be 1%.

AROUND THE COURTS

Moving expenses allowed

If you move to carry on employment or business in a new work location, you can deduct certain moving expenses incurred in the course of the move if your new residence is at least 40 kilometres closer to the new work location than your old residence. The *Income Tax Act* does not fully define the term “moving expenses”, although the Act does provide that moving

expenses include certain expenses that are listed therein (the “listed expenses”).

In the recent *Trigg* case, the taxpayer moved from Montreal to take up work in Alberta. The sale of the taxpayer’s Montreal home did not take place until after his move to Alberta. The CRA denied the deduction of certain car rental costs and expenses for the removal and replacement of asbestos from his old residence in Montreal.

The taxpayer rented the car to drive from Alberta back to Montreal twice, first for the purpose of negotiating a sale of his old home, and later to close the deal. The CRA denied his claim for the deduction of the car rental costs, largely on the basis that such costs were not included in the listed expenses noted above. Upon appeal to the Tax Court of Canada, the deduction was allowed. The Court felt that, even though the car rental costs were not part of the listed expenses, they were moving expense incurred in the course of the move because they were incurred as a direct consequence of the change in residence imposed by the taxpayer’s change in employment. The Court reasoned that “but for the move to Alberta, the Appellant would not have needed to return to Montreal to finalize the sale of his former home.”

As to the asbestos costs, the taxpayer argued that such costs were part of his “selling costs in respect of the sale of the old residence”, which are one of the listed expenses. The Court agreed and allowed their deduction, largely on the basis that the sale of the home was conditional upon the taxpayer removing the asbestos. As such, the costs of removing the asbestos were correctly categorized as selling costs in respect of the sale of the home.



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Home renovation costs not eligible for medical expense credit

There are various medical expenses that qualify for the medical expense credit under the *Income Tax Act*. One such expense, in general terms, is an expense for renovations or alterations to a home of a disabled person to enable the person to be mobile or functional within the home. However, the expense will qualify only if the expense (1) is *not* the type of expense that would typically increase the value of the home; and (2) is *not* the type of expense that would normally be incurred by a non-disabled person with normal physical development.

In the *Chobotar* case, the taxpayer was disabled and confined to a wheelchair. He required a larger bedroom and bathroom in his house to be mobile and function within his home, owing both to the wheelchair and his large physical size. As a result, an extra bedroom was added to his house with an ensuite bathroom. The addition cost was approximately \$35,000, and the taxpayer attempted to claim it as a medical expense for the purposes of the medical credit.

The CRA denied the claim on the grounds that it did not meet the two requirements noted above. Upon appeal to the Tax Court of Canada, the Court held that the second requirement was met, in that the costs of the additional room, including the special door sizes, and specialized cupboards and bathroom fixtures, were not the type of expense that would normally be incurred by a non-disabled person. However, the Court held that the first requirement was not met, because evidence provided by a real estate agent indicated that the additional room added about \$21,000 in value to the

taxpayer's house. Therefore, even though the taxpayer spent some \$35,000 for the addition, and was therefore \$14,000 out-of-pocket on a net basis (the difference between his expenses and the increase in the value of the home), the entire \$35,000 amount was denied as a medical expense.

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Should you have any questions regarding the foregoing or other tax matters, please do not hesitate to contact members of our tax group at (403) 262-2116.

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This letter summarizes recent tax developments and tax planning opportunities. We recommend that you consult with an expert before embarking on any of the opportunities in this letter, which may not be appropriate to your own specific circumstances.