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Application of Paragraph 81(1)(h) of the Income Tax Act to Employment Income

Under paragraph 81(1)(h) of the INCOME TAX ACT, certain social assistance payments are not included when calculating a taxpayer's income if all of the conditions set out in the paragraph are met. In addition, the amount must be paid to an individual, other than a trust; the amount must constitute a social assistance payment ordinarily made on the basis of a means, needs, or income test under a program provided for by an Act of Parliament or of the legislature of a province; the amount must be received directly or indirectly by the taxpayer for the benefit of another individual, other than the taxpayer's spouse or a person who is related to the taxpayer or to the taxpayer's spouse; the amount must not constitute family allowance or any similar allowance payable in respect of the other individual; and the other individual must reside in the taxpayer's principal place of residence, or the taxpayer's principal place of residence is maintained for use as the residence of that other individual.

Social assistance payments are sometimes made through a non-profit organization responsible for recipients and foster homes. In these situations, we were of the view that the reasonable per diem payments paid by the non-profit organization were not required to be included in the income of the individual responsible for the foster home because of the application of paragraph 81(1)(h) of the Act. However, we were of the view that paragraph 81(1)(h) could not apply to the base amount payments made by the non-profit organization if an employee-employer relationship existed between the organization and the individual responsible for the foster home. In such cases, we considered the amounts received by the individual responsible for the foster home to be employment income taxable under section 5 of the Act and that paragraph 81(1)(h) did not apply since the amounts were not social assistance benefits paid for the benefit of another individual.

We have recently reviewed our position and have arrived at the conclusion that paragraph 81(1)(h) of the Act can apply to base amount payments made by a non-profit organization to an individual responsible for a foster home, even when the amount has the features of employment income. Paragraph 81(1)(h) states that the payment can be received indirectly by the individual, and, in our view, an

amount paid to enable the individual responsible for the foster home to care for and support the recipients, and assist them in order to promote their social integration and family integration, is an amount paid for the benefit of the other individual. However, it is necessary to ensure that all of the other conditions for the application of paragraph 81(1)(h) are met.

Canada Pension Plan contributions are not required to be remitted in respect of the base amount payments made by the non-profit organization. However, employer and employee Employment Insurance premiums must continue to be deducted and remitted on these amounts.

This new position is effective immediately and, in keeping with our normal policy, will apply to all future assessments and reassessments.

Loans of Property as a Gift

The Department has given opinions that the loan of a property to a registered charity could result in a gift to the charity for purposes of sections 110.1 and 118.1 of the INCOME TAX ACT. This position was recently reconsidered.

It is now our position that the loan of property (including money) is not a gift for purposes of sections 110.1 and 118.1 of the Act. To constitute a gift, it is generally understood that there must be a voluntary transfer of property without consideration. It is the Department's position that the term "transfer" has to involve more than the mere granting of a right to use property for a limited period of time. In other words, a loan of property does not constitute a transfer of property.

This change in position is consistent with the treatment of interest-free loans to registered charities. That is, an interest-free loan by a taxpayer to a registered charity does not result in a donation receipt in respect of the fair market value interest on such a loan.

Consistent with the approach suggested for contributions of services in paragraph 15(d) of Interpretation Bulletin IT-110R3, GIFTS AND OFFICIAL DONATION RECEIPTS, there is nothing to prevent a charity from paying rent or interest on a loan of property and later accepting the return of all or a portion of the payment as a gift, provided it is returned voluntarily. The donor in such an arrangement would have to account for the taxable income that would be realized.

This new position is effective immediately, and, in keeping with our normal policy, will apply to all future assessments and reassessments with respect to a loan of property made after the date of this newsletter.

Income Tax Rulings and Interpretations Directorate Telephone Inquiry Service

In addition to providing advance income tax rulings for a fee and written technical interpretations, the technical specialists in the Income Tax Rulings and Interpretations Directorate provide a telephone inquiry service to the public for questions on interpretation of income tax provisions. Taxpayers and tax practitioners should first seek advice and assistance on interpretive matters at Revenue Canada's tax services offices (TSO). This includes situations of a particular taxpayer that are under review or appeal. If the TSO is unable to fully respond to a general inquiry, the call may be directed to the Income Tax Rulings and Interpretations Directorate.

The Directorate accepts calls 24 hours a day, with voice mail service outside business hours. To help us provide a better service with our

scarce resources, the caller will be asked to provide the following information directly to the rulings officer, or leave the following information in a detailed message in the rulings officer's voice mailbox:

- 1) the specific inquiry,
- 2) the relevant provisions of the INCOME TAX ACT, and
- 3) the details of the caller's research and findings with respect to the inquiry.

It should be noted that our telephone inquiry service is set up to respond to specific questions based on interpretive positions previously taken by the Department and not to provide general tax information.

Rulings officers will return calls on a first come first served basis during business hours, generally on the same or next business day depending on the volume of calls. If, at the outset, it is clear that an inquiry would require more than 30 minutes to research and respond, the caller will be requested to submit the inquiry in writing. It is expected that a particular telephone inquiry should not require more

than 30 minutes of the officer's time. The officer will perform a search through the Income Tax Rulings and Interpretations Directorate's research database to determine whether the issues at hand have previously been addressed. When the situation or a similar situation has previously been addressed in writing, the officer will relay the response to the inquirer. When the situation has never been addressed in writing, the caller will be asked to write in to obtain an answer. In this way, the issue will receive appropriate research and review and the response will be publicized so that others will benefit from the answer. It should be noted that a severed version of all written responses is placed in the Income Tax Rulings and Interpretations Directorate's research database and may be consulted at tax services offices' reading rooms. Commercial tax publishers also have this material available in their services.

Rulings officers are specialists in their respective areas of income taxation. They will be as helpful as possible and will discuss the issues when appropriate but when the question has never been addressed before, it must be submitted in writing to receive a fully considered response.

The telephone number for inquiries is (613) 957-8953.