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# MTI NEWSLETTER - TAX TIPS & TRAPS

*This publication is a high-level summary of the most recent tax developments applicable to business owners, investors and high net worth individuals. Enjoy!*

## Tax Tidbits

*Some quick points to consider…*

- The Office of the Taxpayer's Ombudsperson reported a surge in CRA complaints, including delays and poor information from telephone contact centers, in processing T1 adjustments and in responding to service complaints. Other common areas of complaint related to collections action and difficulties accessing online accounts after being locked out.
- CRA is using AI tools designed to identify outliers relative to industry norms and historical filing patterns. Returns that depart from expected patterns may face increased audit risk, even when the tax positions are fully supported.
- In a recent court case, negligent record keeping rendered the taxpayer's records so unreliable that no GST on subcontract fees were allowed as input tax credits. Ensure to keep records updated and organized.

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## REAL ESTATE
### Change in Use?

A May 29, 2026 Tax Court of Canada case reviewed whether two real estate properties were held on account of income or capital, and if there was a change in how they were held prior to their sale in 2017 that resulted in gains of $13.25 million. CRA's administrative comments indicate that the gain on the sale of property should be reported entirely in the year the property is disposed of and apportioned between income (full gain is taxed) and capital gains (only half the gain is taxed) based on the value when the nature of the property was converted from capital to inventory.

The properties were originally acquired in 1996 and 1998 and were used for many years as income-producing commercial rental properties. While discussions to convert the properties to residential condominiums for sale began in 2005 and 2006, the first development agreement was not signed until 2008, rezoning was approved in 2010 with financing approved in 2011 and demolition and construction began in 2012. In 2008, the properties were rolled into a new corporation that eventually sold them in 2017.

The taxpayer argued that the properties were acquired and held as capital assets, resulting in $13.25 million of capital gains. The taxpayer argued that development planning activities did not, by themselves, change the character of the properties from capital to inventory.

CRA argued that all gains on both properties were business income. CRA relied on the 2008 rollover date as the relevant acquisition date for determining the taxpayer's intention (income or capital) rather than the 1996/1998 acquisition dates by the ultimate ownership group.

### Taxpayer wins, mostly

The court disagreed with CRA's approach in determining that the gains were business income.

The court found that the original intention was to hold the properties on account of capital, based on the ultimate ownership group's intention when they acquired the properties in 1996/1998, rather than on the intention on the date when the property was rolled over (as asserted by CRA). The question was then whether, and if so, when, the properties were converted from capital property to inventory.

The court accepted the taxpayer's testimony that, although they were exploring the possible conversion of the commercial rental properties to residential condos for resale, including entering into development agreements beginning in 2008 and obtaining rezoning approval in 2010, they had not decided whether they would proceed with that project, even if it was possible. The court accepted that these steps were exploratory and preparatory in nature and that the taxpayer retained the ability to abandon the project and continue holding the properties as capital property.

The court found that the properties were converted from capital property to inventory on September 16, 2011 when financing was secured, as this was the point that the taxpayer became irrevocably committed to the condominium project based on the terms of the development agreements. This was the point in time that the taxpayer's unilateral right to terminate the development project ceased.

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*ACTION: There are tax implications of changing the purpose of real property from income to capital or vice versa. Seek consultation to determine exactly what the implications are, and what can be done.*

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## MUTUAL FUND TRAILING COMMISSIONS

### GST/HST

Mutual fund trailing commissions now constitute taxable supplies subject to GST/HST as CRA has determined that they no longer meet the definition of a financial service. While CRA previously stated that they will enforce the application of GST/HST to these taxable supplies made by dealers on or after July 1, 2026, CRA announced that they will delay the enforcement date to January 1, 2028 to provide the industry with more time to take necessary actions to comply.

Despite the delay, CRA stated that dealers are encouraged to apply this tax treatment as soon as possible. CRA noted there are circumstances where trailing commissions were already taxable and the tax status for those supplies has not changed.

Dealers that choose to collect GST/HST in relation to trailing commissions earned prior to January 1, 2028, will be eligible to claim input tax credits (ITCs) to the extent that the GST/HST paid on their business inputs is attributable to those supplies. Mutual fund managers that pay the GST/HST on trailing commissions in these circumstances are also eligible to recover the GST/HST paid, subject to the normal rules. Prior to January 1, 2028, if a dealer claims ITCs for the GST/HST paid on business inputs attributed to supplies made in exchange for trailing commissions, CRA will enforce the dealer's remittance of tax on the supplies to which the inputs were attributed (that related ITCs were claimed for).

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*ACTION: GST/HST may soon be charged, if not already, on mutual fund trailing commissions.*

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## VOLUNTARY DISCLOSURES PROGRAM (VDP)

### Comments from CRA

On June 15, 2026, CRA released a Tax Tip (The Voluntary Disclosures Program: Your second chance to set things right) that addressed the following concerns that taxpayers may have regarding program.

- I'll be flagged for future audits if I come forward. CRA noted that coming forward through the program does not trigger increased surveillance of future tax filings.
- It's probably not worth it financially. CRA noted that the savings on penalties, up to 100%, and significant interest relief for approved applications can be helpful (taxpayers must still pay the underlying tax).
- I'm not sure what to expect, the outcome feels uncertain. CRA stated that the updated program was designed to provide greater clarity regarding the relief taxpayers can expect. Taxpayers may also request a pre-disclosure discussion to better understand their situation before applying.

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*ACTION: CRA is continually developing new systems, leads and technologies for catching unreported income. If applicable, ensure to get caught up sooner rather than later.*

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## TRAVEL FROM HOME TO WORK

### Long Commute

In a June 23, 2026 Tax Court of Canada case, the taxpayer deducted lodging expenses, vehicle expenses and hydro and internet costs against his 2021 and 2022 employment income. The taxpayer resided in Kimberly, BC. After being unable to find work closer to home, he took a job in Salmon Arm and then switched to a position in Kelowna, both of which required driving more than five hours from Kimberly. As the taxpayer's spouse was not willing to move from Kimberly for personal reasons, the taxpayer rented an apartment near each city where he worked and returned to Kimberly once or twice each month. While the taxpayer largely worked at the employer's office, he performed some work at his rented apartment.

#### Taxpayer loses

As the taxpayer provided no evidence to support that he was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, the court found that he did not meet the requirements to claim either motor vehicle expenses or lodging expenses as a travel expense. The court reiterated the well-established principle that travel from home to a place of work is personal, whether the distance travelled is short or long.

In addition, the employer did not state on the T2200 that the taxpayer was required to incur hydro or internet costs in performing his duties of employment. The court further noted that, even if the T2200 provided the appropriate confirmation, the fact that there was personal internet use (as admitted by the taxpayer) but no evidence allocating internet usage between personal and employment left the court unable to conclude that any portion of the internet usage was consumed directly in the performance of employment duties.

The court upheld CRA's denial of the employment expenses.

*ACTION: CRA considers travel costs from home to work personal and non-deductible. Caution should be afforded when incurring these types of costs.*

## EMPLOYMENT EXPENSES

### Commission Salespersons

A June 17, 2026 Tax Court of Canada case reviewed the taxpayer's deduction of $86,231 in fees paid to a corporation he controlled against his commission income for the 2014 year. The corporation prepared a business plan intended to increase future sales, with the work subcontracted to the taxpayer's son. The court also noted that the corporation had non-capital losses of $500,000, meaning that the fee would not attract corporate tax. It was undisputed that the taxpayer's employer required the preparation of a business plan and that the taxpayer's remuneration was based on 5% of his employer's total sales, the bulk of which the taxpayer generated.

The taxpayer was not a shareholder of his employer but was president and reported directly to the shareholders or their representatives.

#### Taxpayer loses

The court found that, while the employer required the taxpayer to prepare the business plan, the employment contract did not require the taxpayer to hire or pay a third party to prepare it. The court noted that prior jurisprudence states that the contract of employment must require the taxpayer not only to perform a task but also to incur the cost without any reimbursement by the employer. The court also provided the example that a commissioned salesperson cannot deduct the costs of hiring an assistant unless the contract of employment requires the taxpayer to incur the cost.

In addition, to be deductible, an amount must be expended in the year, requiring actual payment rather than merely incurring costs in the year of deduction. As the court concluded that the payment was not made before the end of 2014, this requirement was not met.

The court further noted that, even if the taxpayer met all conditions for deducting costs incurred to earn commission income, the expense was unreasonably high and that the maximum reasonable amount would be $21,558. The court arrived at this amount by finding that both the hours worked and the hourly value for the services were overstated and reduced each by 50%.

Although the deduction was denied for the reasons above, the court found that there was a sufficient tie between the taxpayer's remuneration and the corporation's sales, rather than sales made personally, to satisfy the requirement that the taxpayer was remunerated in whole or part by commission. The court also held that the required purpose to earn employment income was met because the expenditure was incurred both to preserve the taxpayer's employment and to enhance future commission income, even though the benefits of the business plan were expected to arise in later years.

*ACTION: For employment expenses to be deductible against commission income, ensure that the employee is actually required to incur the cost and that it is paid by the employee in the year.*

## GUARANTEED INCOME SUPPLEMENT (GIS)

### Retroactive Lump-Sum Payment

In a May 7, 2026 French Federal Court of Appeal case, the taxpayer had received a lump-sum payment of $69,144 in respect of salary and associated interest from 2012, 2013 and 2014 related to a wrongful dismissal dispute.

The salary portion of the payment was a retroactive lump-sum payment related to prior years, allowing it to be deducted from taxable income in the year of receipt and taxed as if received in the prior years to which it related. The taxpayer's income tax return had been assessed accordingly.

However, the full lump-sum payment was included in the taxpayer's income in the year received (2017) for purposes of determining his eligibility for the GIS. As a result, he was not entitled to any GIS for the twelve months commencing in July of the following year. He argued that his income for GIS purposes should be reduced consistent with the income tax treatment of these payments.

#### Taxpayer loses

While the calculation of income for GIS is similar to income for tax purposes, it is not identical. The entire lump-sum payment was his income for GIS for the year received. This resulted in his income being too high to qualify for GIS for the twelve months commencing in July of the following year.

While this case focused on GIS, the same concept applies to OAS payments.

*ACTION: Lump-sum payments may be fully included in income for determining OAS/GIS eligibility, resulting in potentially significant erosions of such payments. Consider the impact on these benefits when receiving large one-time payments.*

## RESP HOLDERS EMIGRATING TO THE US

### Tax Issues

A May 15, 2026 Advisor.ca article (What happens to an RESP when a family moves to the U.S.?, Carson Hamill) discussed the tax implications of a registered education savings plan (RESP) held when a family moves from Canada to the US. Some considerations included the following:

- making a Canadian resident (e.g. a grandparent) the subscriber may simplify administration;
- the Canada education savings grant (CESG) is only available if the beneficiary is a resident of Canada regardless of the contributor's residence;
- previously received CESG can remain in the RESP and income continues to accumulate with no Canadian tax;
- the US does not provide tax relief in respect of RESPs, so income earned within an RESP while a US resident is subject to US tax;
- complex reporting on various IRS forms may be required to avoid substantial penalties; and
- there may also be state income tax issues to address.

*ACTION: Careful consideration of all of these issues is important in deciding whether the RESP remains a prudent financial strategy after emigration.*

## QUALIFIED DISABILITY TRUSTS

### Multiple Contributors

A qualified disability trust (QDT) is a testamentary trust that is eligible for graduated tax rates, unlike most testamentary trusts. A QDT elects with one or more disabled beneficiaries and is subject to several complex criteria, including the restriction that a beneficiary may file an election with only one trust in any specific year.

A June 2, 2026 Technical Interpretation discussed a strategy where multiple individuals (e.g. two divorced parents and four grandparents of a disabled individual) structure their wills to contribute to a single testamentary trust for a disabled beneficiary (DB). Their wills would provide that, if the individual is the first of the individuals to die, a trust would be created for DB, funded with estate assets. As the remaining individuals pass away, their wills would provide that estate assets are contributed to the existing trust.

CRA opined that, when an individual bequeaths property in their will to an existing testamentary trust, the contribution does not disqualify that existing trust as a testamentary trust provided that the contribution is made by an individual on or after that individual's death and as a consequence thereof. As such, the existing testamentary trust would remain a testamentary trust and would not be disqualified from continuing to qualify as a QDT.

CRA noted that whether a transfer is made by an individual on or after that individual's death and as a consequence thereof is a question of fact and law that can only be determined after a review of all the facts and circumstances applicable to a particular situation.

*ACTION: Properly structured wills could permit multiple individuals to direct assets to a single qualified disability trust, allowing the trust to benefit from marginal tax rates.*


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