New Tuition Benefit: Tax-Free For Your Employees!

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Despite challenging economic times, many corporations across Canada remain committed to advancing employee education through tuition reimbursement policies. These types of policies help companies to retain talent and lower the risk of attrition. Some companies also extend tuition assistance to their employees' spouses and dependent children. This assistance ranges from full to partial reimbursement of private school or post-secondary tuition fees. The assisting company usually covers the cost of tuition only, while the employee or family member of the employee remains responsible for paying any non-instructional fees and purchasing books and other supplies.

Historically, the Canada Revenue Agency (the "CRA") treated tuition assistance for an employee's family member as a taxable benefit to the employee and required the company to attribute a fair market value (FMV) to this benefit. The CRA's position was successfully challenged in a recent court case,[1] and is also overruled in certain circumstances by a legislative change to the *Income Tax Act* (Canada) (*ITA*) enacted on June 26, 2013.[2] The legislative amendment provides that if four specific conditions are met, free or discounted tuition for an employee's family member is not subject to tax in the hands of the employee. This means that if you provide the family members of your employees with free or reduced tuition assistance and the conditions for the application of the exemption are met, you will not need to include the amount of the assistance in the employee's T4 as taxable income. Instead, you will report the FMV of this benefit as a bursary on a T4A slip for the family member. If the family member in turn meets certain criteria, then this benefit might be excluded from tax altogether.[3]

In order for your employees to benefit from this new exemption, you will need to ensure that four requirements are met. First, the tuition assistance benefit you provide must be enjoyed by an individual *other than your employee*. For instance, if you provide your employee with tuition assistance for job-related courses then this exemption will not apply (and your employee will have to include a taxable benefit in his/ her income). Determining who has received or enjoyed the benefit of your company's tuition assistance program is a factual question that requires an examination of specific facts and circumstances.

Second, the tuition assistance benefit must be provided under a structured program to further education. This means that the benefit should arise from a documented program that is designed to assist the employee's family members to further their education and

explicitly provides free or reduced tuition to accomplish this goal. Employer programs aimed at assisting an employee with family financial obligations will not qualify. Again, determining whether this condition is satisfied will depend on the particular facts and circumstances of the program.

Third, the employee and the employer must deal with each other at arm's length.[4] The *ITA* provides rules that determine whether persons are considered to deal with each other at arm's length. For example, if the employee is also an owner or controlling shareholder of the employer then the tuition assistance exemption will not apply.

Fourth, the tuition assistance benefit must not be a substitute or replacement for any of your employee's compensation or employment benefits. This means that the free or reduced tuition assistance must not be a negotiated term of employment or provided to employees as an optional benefit that can be substituted for another employment benefit.

If you want to establish, or already have, a tuition assistance program for family members of your employees, qualifying for this new legislative exemption means that your employees will pay less income tax as the tuition assistance benefit will not have to be included in their taxable income. You can take advantage of this new exemption by ensuring that you develop and maintain a properly documented company tuition assistance program that meets the four requirements of the exemption. In doing so, it is important to be aware that factors such as offering different levels of family tuition assistance depending on the status of the employee (for example, full or part-time, management or administrative staff) may increase the risk that the CRA will consider the tuition assistance to be employee compensation that must be included in your employees' income. We have experience in setting up tuition assistance programs and can provide you with a simple solution that will not only further the education of your employees' family members but also meet the requirements of the tuition assistance exemption.

For further details on how to set up or tailor your tuition assistance program to qualify for the exemption, or if you have any questions concerning this article, please contact Natasha Miklaucic at 416.367.6233 or nmiklaucic@blg.com

[1] Bartley and DiMaria, [2009] 2 CTL 73 (FCA).

[2] See subparagraph 6(1)(a)(vi) of the ITA. The provision applies retroactively to October 30, 2011.

[3] Subparagraph 56(3)(a)(ii) of the *ITA* provides an exemption, which among other things, excludes from taxable income the full amount of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment in an elementary or secondary school educational program.

[4] Specifically, under subsection 251(1) of the *ITA*, non-arm's length relationships will be determined by looking at whether or not individuals are related, whether or not there is a beneficial interest present (for instance, as between a taxpayer and a personal trust) and whether or not, as a question of fact, persons not related to each other are at a particular time dealing with each other at arm's length.

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