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In this edition of the Canadian Tax Planners Newsletter, we shall review a recent Tax Court decision on whether a benefit provided by an employer must be included in income if the employee did not want the benefit. In the Rachfalowski case, the court ruled that the benefit did not have to be included in income. We shall commence our review of tax tips and traps related to various investment vehicles.

Unwanted Taxable Benefits

The tax rules applicable to golfing expenses appear to be quite straightforward. However, a recent Tax Court of Canada decision ruled the taxpayer did not have a taxable benefit, even though his employer paid for the golf membership. Prior to this case, the rules related to golf expenditures could be summarized as follows:

- the payment of initiation and annual fees are not deductible for income tax purposes
- charges for food and beverages are deductible at a rate of 50% as a meals and entertainment expense
- if an employee paid for a customer's round of golf, the amount can be reimbursed to the individual without tax implications, but the employer would only be allowed to deduct 50% of the reimbursed amount
- payment of membership fees result in a taxable benefit to the employee

The facts of the Rachfalowski case that was recently heard in the Tax Court of Canada can be summarized as follows:

- the taxpayer was employed by Canada Life Financial Corporation. Their executive compensation package included a golf membership and the company paid both the initiation fee and the annual dues
- according to Mr. Rachfalowski, even though he hated golf, his employer would not let him opt out of the golf membership
- the taxpayer used the dining room and played a few rounds of golf at the course
- CRA reassessed Mr. Rachfalowski in 2005 and included the annual membership fee in his income. The taxpayer appealed to the Tax Court of Canada

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The judge agreed with Mr. Rachfalowski as he questioned whether the taxpayer received a benefit that ought to increase his income. The Court believed that the golf membership was used to enhance the employer's image and provide a location for the executives to entertain their customers. Mr. Rachfalowski did not receive any economic benefit from his membership.

It is not uncommon for employees to receive a taxable benefit they do not desire because of a compensation package that applies to a group of employees. If the individual's income is not increased as a result of the benefit, a case may be made to exclude the amount from the employee's income.

Taxation of Investment Vehicles

Investment income is subject to various rates and credits and the ultimate tax treatment depends if the investments are held in a personal account, RRSP, RESP, investment holding company or a Tax Free Savings Account that will be introduced in January of 2009. We shall review the tax tips and traps related to owning the following types of investment vehicles:

- fixed income vehicles that generates interest income
- bonds
- shares of public companies
- mutual funds
- exchange traded funds
- flow through shares
- income funds
- Labour Sponsored Venture Capital Corporations
- limited Partnerships
- commodities
- put and call options
- rights

After Tax Rate of Return – When considering investment options, comparisons should be made on an after tax basis. Tax rates not only vary by province and income level, but also by the type of income as different rates apply to interest, capital gains, eligible and non-eligible dividends. A non-eligible dividend is paid from a Canadian controlled private corporation, rather than a Canadian public company.

Note – The remainder of this article is only available to subscribers of the Canadian Tax Planners Newsletter. If you elect to subscribe and wish to receive a copy of this newsletter, advise us accordingly and the complete article will be forwarded by return mail.