**FTR Now**

# Tax Treatment of Tuition Awards Provided To Employees' Family Members

**Date:** October 2, 2009

The Canada Revenue Agency ("CRA") has recently reviewed its unpopular characterization of tuition fees, scholarships, and bursaries ("tuition awards") provided by employers to family members of employees as taxable benefits to the employees. The CRA's updated position is that a tuition award provided by an arm's length employer for the post secondary education of an employee's family member is to be reported as income to that family member and not as a taxable benefit to the employee. This position generally follows the outcomes in the recent court decisions in *DiMaria v. The Queen, Bartley v. The Queen,* and *Okonski v. The Queen.*

## THE *BARTLEY, DIMARIA* AND *OKONSKI* CASES

These cases involved taxpayer appeals regarding the taxation of employer-paid amounts awarded to the taxpayers' adult children as scholarships in respect of post-secondary tuition. In each case, the Tax Court of Canada ("TCC") rejected the CRA's characterization of such awards as taxable employee benefits, finding instead that the amounts were scholarship income to the intended recipients – the adult children. The TCC decisions were reviewed in our March 28, 2008 *FTR Now* "Scholarships For Adult Children – Not A Taxable Employee Benefit".

The CRA appealed all three of these decisions to the Federal Court of Appeal ("FCA"), and in a judgment delivered in December, 2008, the FCA upheld the TCC's decisions in *DiMaria* and *Bartley*. The appeal of the *Okonski* decision, which was scheduled to be heard in the spring of 2009, was discontinued.

The sole issue at appeal was whether the tuition awards were benefits received or enjoyed by the parent employees, and therefore taxable as employment income pursuant to paragraph 6(1)(a) of the *Income Tax Act* (Canada) (*"ITA"*).

In upholding the TCC's decisions, the FCA noted that there was no evidence that the tuition awards reduced the amount that the taxpayers would have otherwise paid to support their children, perhaps implying that the FCA's conclusion may have been different if such evidence were put forward. In this regard, the Crown had raised an argument that the parent employees were under a binding legal obligation pursuant to the Ontario *Family Law Act* to support their children's post-secondary education (for those who had not "withdrawn from parental control"); therefore, this burden was relieved by the tuition awards and resulted in a benefit to the parent employee. However, the FCA did not entertain this argument as it was not raised at the TTC or in the Crown's reply.

## THE CRA'S UPDATED POLICY POSITION

The CRA has updated its published position respecting the taxation of employer-paid tuition, presumably in response to these court decisions. This position is found on the CRA webpage "Tuition fees, scholarships, and bursaries". It has also been explained in three recent technical interpretations [1] , one of which succinctly states:

> The CRA will accept that where an arm's length employer provides a post secondary scholarship, bursary or free tuition to family members of an employee under a scholarship program, the amount will be included in the particular student's

> income under paragraph 56(1)(n) of the *Income Tax Act* (the "Act") and not the employee's income as a taxable benefit under paragraph 6(1)(a) of the Act, regardless of the criteria used to award the amount. If the particular student is eligible to claim the education tax credit under subsection 118.6(2) of the Act, the entire amount may be exempt from tax pursuant to subsection 56(3) of the Act. The employer is still required to report the amount on a T4A slip. [2] [emphasis added]

The CRA is clear that this administrative position does not extend to employer-provided tuition in respect of elementary and secondary school education. It states that, where an employer provides free or reduced tuition to a family member of an employee for attendance at an elementary or secondary school (whether private or otherwise), such amount will be treated as a taxable employment benefit to the particular employee. [3] As support for this position, the CRA references the TCC case of *Detchon v. The Queen,* in which the TCC held that tuition-free enrolment of employees' children at a private secondary level boarding school was a taxable benefit to the employees, since, as parents, they had a personal obligation to pay for the personal expenses (including schooling) of their children.

Notwithstanding the reference to *Detchon*, the CRA does not provide a detailed explanation for the distinction it has made between tuition awards provided for elementary or secondary school education, and tuition awards for post-secondary education. Presumably, the distinction rests on the assumption that there is financial dependence on the part of children (or other family members) who attend elementary or secondary school, and that tuition awards in respect of these family members relieves the employee of what would otherwise be a personal financial obligation.

## CONCLUSION

The CRA's administrative position is that a tuition award is not taxable to an employee if made by an arm's length employer for post-secondary education for the employee's family member (regardless of the financial dependency of that family member on the employee). If these conditions are satisfied, the CRA will include the amount of the tuition award in the family member's income under paragraph 56(1)(n) of the ITA. The award will be exempt from tax pursuant to subsection 56(3) of the ITA if the family member is eligible to claim the education tax credit under subsection 118.6(2) of the ITA, regardless of the criteria that is used by the employer for purposes of determining eligibility for the tuition award.

However, the CRA will treat as taxable an employer-provided tuition award in respect of a family member's elementary or secondary education. The CRA seems to be assuming that family members are financially dependent on the employee in these circumstances. This position probably is being taken for the CRA's administrative convenience only, to avoid the need to evaluate employees' personal financial obligations on a case-by-case basis. This means, however, that there will likely be factual situations where it is arguable that no taxable benefit is enjoyed by the employee (i.e., where the employee does not have a legal obligation to pay for the elementary or secondary schooling of the family member). The CRA's administrative position respecting tuition awards for elementary and secondary education in these circumstances is potentially open to future challenge.

If you have any questions about the tax treatment of tuition awards for employees' family members, please contact a member of the Pension & Benefits Group.

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**[1]** See documents 2008-0296041E5, 2009-0312451E5, and 2009-0320591E5, which are dated, respectively, August 20, 2009, September 1, 2009, and September 2, 2009.

**[2]** Document number 2009-0312451E5

**[3]** Document number 2009-0320591E5

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