



RRSP Home Buyers' Plan

Generally, when you withdraw an amount from your registered retirement savings plan (RRSP), the full amount is included in your income. However, an exception to this rule is when the withdrawals are made under the Home Buyers' Plan (HBP).

The HBP allows you to withdraw up to \$25,000 from your RRSP in order to purchase a home. Your spouse or common-law partner can withdraw the same amount from their RRSP, so couples can withdraw a total of \$50,000. As noted, the withdrawals are not included in your income. However, certain conditions must be met:

CONDITION NO. 1

You cannot acquire the home more than 30 days before withdrawing the amount from your RRSP.

CONDITION NO. 2

Neither you nor your spouse may have owned another home in the period beginning at the start of the fourth year before the year of withdrawal and ending on the thirty-first day before the withdrawal. This ownership period is waived for homes acquired for disabled persons eligible for the disability tax credit, if the new home will provide the person with more accessibility or a better-suited environment for the person's needs.

CONDITION NO. 3

You must provide your RRSP issuer with Form T1036, "Home Buyers' Plan (HBP) – Request to Withdraw Funds from an RRSP", which states the address of the home and that you are either residing in the home or intend to reside in the home within one year of acquiring it. Furthermore, you must have already entered into an agreement to purchase the home or to have it built.

CONDITION NO. 4

You must acquire the home before October of the year following the year of the withdrawal from your RRSP.

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Shareholder Loans

Clients frequently ask us how they can access the funds in their corporation for personal use without paying personal tax on the withdrawal. Following is a brief overview of the shareholder loan rules and the consequences if the rules are not followed correctly.

Under the shareholder loan rules in the Income Tax Act, if you are a shareholder of a corporation and receive a loan from (or incur debt owing to) the corporation, you may be required to include the full amount of the loan in your income. The same rule can apply if you are non-arm's length or affiliated with a shareholder (e.g. the shareholder is your spouse, child, etc.) and you receive a loan from the corporation.

Obviously, the rule can be quite harsh, since loans are typically not considered income. Fortunately, there are various exceptions that apply, as discussed below. Where an exception applies, the principal amount of the loan will not be included in your income. But if the loan is interest-free or below the prescribed rate of interest, you may be required to include an imputed interest benefit. (This point is discussed further below.)

The main exceptions are as follows.

EXCEPTION NO. 1

In ordinary course of the corporation's business, or money lending business

The shareholder loan rules do not apply if a shareholder debt arose in the ordinary course of the corporation's business, as long as bona fide arrangements are made for repayment of the loan within a reasonable time.

EXAMPLE: If a shareholder borrows money or buys property from the corporation, and that type of transaction is in its ordinary business, the exception should apply.

EXCEPTION NO. 2

Repayment within specified time

This exception applies if you receive a loan and repay it in full by the end of the corporation's taxation year following the year that the loan was made. If you only partly repay the loan, this exception does not apply. However, as discussed below, you will receive a deduction for the partial repayment. Note that this exception can give you close to two years to repay.

EXAMPLE: If the corporation has a June 30 year-end and you received a loan in July 2014, you will have to June 30, 2016 to repay it.

This exception does not apply if the repayment was part of a series of loans and repayments.

EXAMPLE: If you borrow and repay and then re-borrow and continue this scenario.

EXCEPTION NO. 3

Receive loan in capacity of employee

The third main exception applies if you are also an employee of the corporation, and it is reasonable to conclude that you received the loan in your capacity as employee and not because of your shareholdings. Furthermore, if you are a 'specified shareholder' of the corporation, the loan must be used for one the following purposes:

- to acquire a home in which you will live (not to rent out);
- to purchase treasury shares from the corporation or a related corporation; or
- to acquire a car to be used for employment purposes.

SEE SHAREHOLDER LOANS P. 4

**AROUND THE COURTS**

Most in-vitro fertilization costs did not qualify for medical expense tax

THE CASE: ISMAEL

In the recent *Ismael* case, the taxpayer had premature ovary failure and therefore attempted to have a child through in-vitro fertilization. She lived in Toronto, where the procedure was available. However, she decided to pursue the treatment first in Syracuse, New York, and subsequently in Ukraine. She made this choice on the grounds that the Canadian clinics had a limited number of donors, particularly in respect to her preferred choice of East African descent, and that the number of embryos that could be transferred in Canada was limited.

In the taxation years in question, the taxpayer attempted to claim the cost of the clinic treatments, egg donor fees, transportation costs for her and her spouse including airfare, bus and car rental expenses, along with accommodation and food costs – all as medical expenses for the purposes of the medical expense tax credit.

THE DECISION: DENIED!

The CRA denied the claim on the grounds that the expenses did not come within the list of qualifying medical expenses under the Income Tax Act.

THE APPEAL: GRANTED...

Upon appeal to the Tax Court of Canada, the Crown conceded that the taxpayer's cost of clinic treatments qualified for the credit.

...AND DISMISSED

However, the Crown argued that the remaining costs did not since substantially equivalent medical services were available in Toronto, and her husband's expenses were also denied since it was not shown that the taxpayer required assistance to travel.

The egg donor fees did not qualify because they were not incurred to locate a '*compatible donor*' and to arrange for an '*organ transplant*' (as permitted in the Act). The Court held that an egg donation did not qualify as an '*organ transplant*'. (In an earlier case, surrogate mother expenses had been allowed on the basis that an embryo is an '*organ*'). ■



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RRSP HOME BUYERS' PLAN CONT'D FROM P. 1

You do not have to pay interest on this 'loan' from your RRSP to you. The repayments are made by way of a regular contribution to your RRSP, with an appropriate designation

The amount withdrawn under the HBP must be repaid to your RRSP within 16 years.

made in your tax return for the year of the repayment. Like a regular RRSP contribution, the repayment can be made in the year or within 60 days after the end of each year. The repayment period starts in the second year after the year of withdrawal, with a minimum of one fifteenth of the withdrawn amount repayable each year. The repayments to the RRSP are not deductible (since the withdrawals were not included in your income).

If you do not repay the minimum amount in a year, the shortfall is included in your income for that year. If you repay more than required in a given year, the overpayment reduces your obligation to pay for the next year. (Thus, if you have extra cash available at any point, this allows you to put it back into your RRSP where it can continue to grow tax-free.)

Once you have withdrawn funds under the HBP, the CRA will send you a "Home Buyers' Plan (HBP) Statement of Account" each year with your income tax notice of assessment. This statement will show the total HBP withdrawals, the amounts you have repaid to date, and the minimum amount that has to be paid for the following year. ■

SHAREHOLDER LOANS CONT'D FROM P. 2

If none of the exceptions apply and you are required to include the loan in your income, you get a deduction in the year in which you repay the loan.



If one of the above exceptions apply so that the loan is not included in your income, you may still be required to include an imputed interest benefit in your income. The benefit will equal the prescribed rate of interest under the Act applied to the outstanding principal amount of the loan during the year, less any interest paid by you in the year or by January 30 of the following year. The prescribed rate is set each quarter, and has been 1% for the first three

quarters of 2014. Thus, if you pay at least the prescribed rate of interest, there will be no taxable benefit.

Furthermore, this inclusion rule does not apply if the loan was made at an arm's length rate of interest that would have applied if it were made to a non-shareholder (and non-employee) by a corporation in the money-lending business. ■

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