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BOTTESELLE
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Chartered Professional Accountants

Non-arm's length transfers of property

If you sell

or transfer a property to a **non-arm's length** person for an amount other than its fair market value, there are onerous income tax rules that may apply. The rules are discussed below, including an exception for transfers to spouses and common-law partners. But first, what constitutes a non-arm's length person?

SEE **NON-ARM'S LENGTH** P. 2

"Non-arm's length" defined

INDIVIDUALS

In terms of individuals, a non-arm's length person includes any person who is "related" to you under the Act. This includes people related to you by blood, marriage or adoption. The list includes your children, grandchildren, great-grandchildren and so on, your parents and grandparents, your siblings, your spouse or common-law partner, and your in-laws. Interestingly, it does *not* include cousins, aunts, uncles, nieces or nephews, but it *does* include a brother- or sister-in-law (including through a common-law partnership).

CORPORATIONS

In terms of corporations, they will be non-arm's length under various circumstances including the following if:

- one controls the other;
- they are controlled by the same person or group of persons;
- each of the corporations is controlled by one person, and the person who controls one of the corporations is related to the person who controls the other corporation; and
- one of the corporations is controlled by one person, and that person is related to any member of a related group that controls the other corporation.

INDIVIDUALS & CORPORATIONS

In terms of individuals and corporations, a non-arm's length person includes a corporation that you control, including a corporation if you are a member of a "related" group that controls the corporation (e.g. you and your spouse control the corporation). Control of a corporation generally means ownership of shares that entitle you to more than 50% of the votes. A "group" means two or more persons.

While the above is a short summary of the non-arm's length rules, there are various other combinations and situations under which persons can be considered non-arm's length.

The onerous rules

Sale of property for *less* than fair market value

If you sell a property to a non-arm's length individual for an amount that is *less* than its fair market value, you will be deemed to have disposed of the property at fair market value. However, this rule is one-sided, because recipient's cost is whatever they paid you for the property. As illustrated below, this rule can result in double taxation.

For example, **you own capital property** (e.g. shares, real estate) that cost you $10,000. You sell the property to your sister for $20,000 when its fair market value is $50,000. You will have deemed proceeds of $50,000, and therefore a $40,000 capital gain, half of which will be included in your income as a taxable capital gain. However, your sister's cost of the property will be $20,000. If she then sells the property to a (non-related) third party for $50,000, she will have a capital gain of $30,000, which was already part of your $40,000 capital gain.

SEE **NON-ARM'S LENGTH** P. 4

2021 Car expense limits

Tax-free car allowance deduction

In 2021, the maximum tax-free car allowance deductible for employers for allowances paid to their employees remains the same as the 2020 amount. For the Northwest Territories, Nunavut and Yukon, the maximum deductible tax-exempt allowance is four cents higher:

PROVINCE/ TERRITORY	KM DRIVEN DURING YEAR	
	First 5000 km	Each additional km
Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan	$0.59 per km	$0.53 per km
Northwest Territories, Nunavut, Yukon	$0.63 per km	$0.57 per km

Taxable benefit rates

FOR OPERATING EXPENSES | The rate to calculate the taxable benefit of employees relating to the personal portion of automobile operating expenses paid by their employers is decreased by one cent from the 2020 amount, to 27 cents per kilometre.

FOR SELLING OR LEASING CARS | For taxpayers who are employed principally in selling or leasing automobiles, the rate is decreased by one cent to 24 cents per kilometre.

Car expense deductions

For the deduction of car expenses, the limits have not changed since 2001.

CAPITAL COST ALLOWANCE (TAX DEPRECIATION) | Maximum cost of the car is $30,000 before applicable sales tax. However, for eligible zero-emission vehicles such as electric and hybrid cars, the limit is $55,000, before sales tax.

CAR LEASE COSTS | Maximum deduction is $800 before sales taxes per 30-day period. This can be reduced further if the manufacturer's list price of the car exceeds $35,294.

INTEREST ON A CAR LOAN | Maximum deduction is $300 per 30-day period.

NON-ARM'S LENGTH CONT'D FROM P. 2

Purchase of property for *more* than fair market value

If you buy property from a non-arm's length person for an amount that is *more* than its fair market value, you will be deemed to acquire the property at a cost equal to its fair market value. But again, this rule is one-sided, in that the seller will have proceeds equal to whatever you paid for the property.

For example, **your sister owns capital property that cost her $10,000**. You buy the property from her for $50,000 when its fair market value is $20,000. Your sister's proceeds will be $50,000, so that she will have a $40,000 capital gain, half of which will be included in her income as a taxable capital gain. However, your cost of the property will be the fair market value of $20,000. Say you sell it at a later time to an unrelated third party for $50,000. You will then have a capital gain of $30,000, which was already counted in your sister's $40,000 capital gain.

Gift of property

If you give property to a person – whether they are arm's length or non-arm's length – you will normally be deemed to have received proceeds at the property's fair market value. But in the case, the recipient's cost of the property is also deemed to be the fair market value, so the double taxation issue does not arise.

Transfer to spouse or common-law partner

An exception applies to sales and gifts of property to your spouse or common-law partner. It also applies to a transfer of property to a former spouse or common-law partner in settlement of rights arising out of your marriage or common-law partnership.

In these cases, there is an automatic "rollover", which means you have proceeds of disposition equal to your cost amount of the property and the recipient inherits that same cost of the property. As such, there will be no tax payable on the transfer.

However, you can elect out of the rollover in your tax return for the year of transfer. If you do so, the rules discussed above may apply. If there is a loss, it will often be denied as a "superficial loss".

A cautionary note

Beware that if you give or sell property to a non-arm's length person for less than market value, in a year when you have a tax debt (income tax or GST/HST) owing to the CRA – and you don't pay your debt – the CRA can assess the other person for your tax debt, and can seize that property or any other assets the person has to pay your tax bill.

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