

## **Tax Considerations for Employment Related Settlements**

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When an employee<sup>1</sup> is terminated, an amount may be paid by the employer to the employee. This payment may take several different forms, and the form that it takes determines the tax consequences of such a payment. Ultimately, the ability of the employer and the employee to settle a dispute about termination compensation is likely to depend in part on the tax applicable to such a payment.

An employee who is receiving a payment has two goals: first, to maximize the amount received; and second, to minimize the applicable tax. Similarly, an employer making a payment has two goals, first to minimize the amount paid and second to maximize the tax deduction for the amount paid.

This article will address the tax aspects of these goals, with a focus on the employee. The majority of this article will address the characterization of the payment. The article will then address deductions that may be available to an employee in respect of certain types of payments.

## 1. Taxation of Termination Compensation

In order for an amount to be taxable, a clear and applicable provision in the *Income Tax Act* (Canada) (the “Act”) must be identified. Section 3 of the Act sets out inclusions in a taxpayer’s income for a taxation year. In particular, included in income is the aggregate of any income earned by the taxpayer from each office, employment, business, property and capital gains. In addition to these five enumerated sources of income, the Act includes in income other sources as identified in subdivision d of Division B of Part I.

With respect to income earned by an employee, subsection 5(1) of the Act includes in a taxpayer’s income, income from office or employment which includes salary, wages and other remuneration and paragraph 6(1)(a) includes in a taxpayer’s income, benefits from employment (such amounts together referred to as “employment income”). In addition, subparagraph 56(1)(a)(ii) includes in other sources of income found in subdivision d of the Act, a retiring allowance. Accordingly, any amount received by an employee that is either employment income or a retiring allowance will be subject to tax.

However, where an employee receives an amount for reasons not connected to employment, and therefore, the amount is neither employment income nor a retiring allowance, the amount may not be subject to tax. A non-taxable termination payment is advantageous to an employer and an employee provided the related payment is deductible.

With respect to a payment made by an employer to a terminated employee, for the employer such an amount will be deductible as a business expense as long as it is made for the purpose of gaining or producing income from the business pursuant to paragraph 18(1)(a) of the Act, and the amount of the payment is reasonable within the meaning of section 67.<sup>2</sup>

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<sup>1</sup> An individual who is an employee or former employee shall hereinafter be referred to as an employee.

<sup>2</sup> Interpretation Bulletin IT-467R2 Damages, Settlements and Similar Payments, dated November 13, 2002, paragraph 5.

## 1.1 Employment Income

In order for an amount to be employment income, generally it must meet two criteria: first, the employee must have obtained the benefit in the context of a work relationship and second, the employee must have personally received the benefit.

In addition to the payments one would ordinarily qualify as employment income, employment income includes general damages that are related to the loss of employment such as compensation for loss of employment or for issues stemming from the loss of employment such as loss of self-respect or hurt feelings.<sup>3</sup> Further, paragraph 6(3)(b) deems, for the purposes of section 5, certain amounts received by a taxpayer before, during, or after employment to be remuneration for services rendered unless it can be established otherwise. This would include amounts received in anticipation of entering into an employment relationship (e.g., a signing bonus) and amounts received on or after the termination of employment.<sup>4</sup>

Employment income is taxable in the year of receipt and is subject to normal source deduction withholdings, including income tax, Canada Pension Plan contributions and employment insurance premiums.

## 1.2 Retiring Allowances

A retiring allowance is defined in subsection 248(1) of the Act. Generally, for an amount to be a retiring allowance it must have been received by the employee either (i) on or after retirement of the individual from an office or employment in recognition of the individual's long service, or (ii) in respect of a loss of an office or employment of the individual, whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment of a competent tribunal.

Generally, the term "long service" is considered to have reference to the number of years in an employee's career with an employer (or related entities).<sup>5</sup>

The meaning of the term "in respect of" was considered in *Nowegijick v. R.*<sup>6</sup> In that decision, Dickson J. of the Supreme Court of Canada said the following at page 5045:

The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

Further, in the case of *Anderson v. R.*,<sup>7</sup> Judge Rip said that for the purposes of determining whether the amount received by a taxpayer is a retiring allowance, the words "in respect of" in

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<sup>3</sup> Interpretation Bulletin IT-337R4 Retiring Allowances, dated February 1, 2006, paragraph 11.

<sup>4</sup> For example, *Morissette c. R.*, 2008 D.T.C. 6513 (FCA) wherein the Court concluded that the amount was taxable under 6(3) because it related to a non-solicitation covenant which, when exchanged for cash in the context of an employment termination, gives rise to employment income.

<sup>5</sup> Interpretation Bulletin IT-337R4 Retiring Allowances, dated February 1, 2006, paragraph 3.

<sup>6</sup> (1983), 83 D.T.C. 5041 (S.C.C.).

subsection 248(1) “direct that a broad scope of inclusion be considered as to what constitutes a sufficient connection between the loss of employment and the amounts received”.

In *Overin v. R.*,<sup>8</sup> the Tax Court of Canada formulated a two-step test to confirm whether the connection between a payment and the loss of employment is sufficient to meet the requirement that an amount be “in respect of” a loss of office or employment:

- (a) The *sine qua non* condition criteria: were it not for the loss of employment, would the employee have received the payment?
- (b) The target objective criteria: was the goal of the payment to indemnify the individual for the loss of employment?

If the answer to the first question is no and the answer to the second question is yes, then the amount will be considered to be a retiring allowance. Both the courts and the CRA have followed this approach.<sup>9</sup> The CRA has provided its interpretation of this test in Interpretation — external 2006-0195221E5 — Damages for wrongful dismissal, dated January 29, 2007:

“In trying to ascertain the appropriate treatment of an award of damages where some of all such amounts may relate to a loss of office or employment, the courts have taken the view that consideration should be given to whether the damages would have been received if it were not for the loss of office or employment. If not, the damages [in the particular facts under review] are considered to have been received in respect the loss of office or employment and, accordingly, taxed as a retiring allowance.”

Generally, discontinuation of employment for any reason is considered to be retirement or loss of employment. However, it is important that the employee does actually discontinue employment for an amount paid to qualify as a retiring allowance. The CRA, in a tax ruling,<sup>10</sup> considered the situation where a sum was paid to a president of a company at retirement, but who remained president of the board of directors. In that situation, the sum was not considered to be a retiring allowance. Similarly, in *Shell v. Minister of Revenue*,<sup>11</sup> where employees continued to offer their services to the employer and worked for other companies in which the employer held shares, amounts received from the employer were not retiring allowances. In *Ashford v. Minister of National Revenue*,<sup>12</sup> the court held that non-renewal of an employment contract with a defined term does not constitute retirement or loss of employment.

An important distinction between the first and second alternative requirements for an amount to be considered a retiring allowance is that under the first requirement described in (i) above, the

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<sup>7</sup> (1997), 98 D.T.C. 1190 (T.C.C.).

<sup>8</sup> 98 DTC 1299 (TCC).

<sup>9</sup> *Dunphy v. R.*, 2010 D.T.C. 2671 (TCC); *Tremblay Estate v. R.*, 2009 D.T.C. (TCC); *Russ Putland v. Her Majesty the Queen*, 2009 TCC 349, (TCC); *Grant v. R.*, 2008 D.T.C. 3035 (TCC); *Ahmad v. R.*, 2002 D.T.C. 2065(TCC); and *Jolivet v. R.*, [2000] 2 C.T.C. 2118 (TCC).

<sup>10</sup> Tax Ruling TR-10 — Lump-sum payment — Whether a retiring allowance, dated February 10, 1975.

<sup>11</sup> [1982] C.T.C. 2391 (TRB).

<sup>12</sup> 86 D.T.C. 1079 (TCC).

amount must be paid “on or after a retirement” whereas under the second requirement described in (ii) above, the amounts may be paid at any time. Accordingly, a retiring allowance can be paid to an employee prior to the termination of employment as long as the terms of the second requirement are met.

The CRA takes the position that an employee can be terminated and still continue to participate in an employer’s health plan (e.g. medical, dental and long term disability coverage) for a restricted period of time, particularly if the plan specifically permits coverage for former employees. However, in the CRA’s view, if pension benefits or vacation leave continue to accrue to the individual, the accrual indicates that the individual is an employee since pension benefits can only accrue to employees.<sup>13</sup>

The CRA takes the view that the following amounts are not considered to be a retiring allowance:<sup>14</sup>

- a superannuation or pension benefit (see 248(1) “retiring allowance”);
- an amount received as a consequence of the death of an employee (see 248(1) “retiring allowance”);
- a benefit from counselling services described in subparagraph 6(1)(a)(iv) (see 248(1) “retiring allowance”);
- salary and/or wages;
- accrued vacation pay;
- an amount received out of or under an employee benefit plan or a salary deferral arrangement;
- a reimbursement of legal costs;
- a retention bonus for reporting to work until the termination date; and
- an amount received upon or after retirement where a low (or no) salary was received before retirement. (Such an amount is more likely to be regarded as deferred compensation, taxable as income from office or employment when received rather than as a retiring allowance.)

Retiring allowances are taxable in the year of receipt.<sup>15</sup> If the taxpayer receives a greater retiring allowance than the taxpayer is entitled to and is required to repay a portion of it, the individual may deduct the repayment under subparagraph 60(n)(i.1).

Retiring allowances are subject to income tax withholdings, but are not subject to Canada Pension Plan contributions or employment insurance premiums. Combined federal and provincial withholding rates for Ontario employers are currently: 10% on amounts up to and including \$5,000; 20% on amounts from \$5,000 up to and including \$15,000; and 30% on amount over \$15,000.

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<sup>13</sup> Interpretation Bulletin IT-337R4 Retiring Allowances, dated February 1, 2006, paragraph 4 and Interpretation — internal 2009-034093117 — Termination payments, dated January 19, 2009.

<sup>14</sup> Interpretation Bulletin IT-337R4 Retiring Allowances, dated February 1, 2006, paragraph 15.

<sup>15</sup> Where an employee has an option to defer receipt of some or all of a retiring allowance to a subsequent taxation year, in order to defer the tax consequences to the year of receipt, such election must be made on or before the termination of employment, before the employee is legally entitled to demand payment and before the employer is obligated to pay the amount. See Interpretation — external 2004-0063391E5 — Retiring allowance — salary continuance, dated March 15, 2004, Interpretation — external 2007-0238461E5 — Retiring allowance, dated June 29, 2007, and Interpretation — external 2008-029784117 — Deferred bonus and retiring allowance, dated April 23, 2009.

As is the case for employment income, as long as an amount paid as a retiring allowance is reasonable in the circumstances, it is an ordinary deductible business expense for the employer. In determining reasonableness for a retiring allowance, consideration will be given to the length of service involved, its relationship to the remuneration received by the employee and the value of any pension or other benefits the employee receives.

### 1.3 Non-Taxable Receipts

The courts have had the opportunity to consider the taxation of amounts related to employee termination that are neither employment income nor a retiring allowance. The leading case is *Schwartz v. R.*, 96 D.T.C. 6103, wherein the Supreme Court of Canada held that damages received for termination of an employment contract before the individual commenced employment were not taxable. This conclusion was based on the conclusion of the court that the damages were not taxable under the general provisions of section 3 as they did not fall into one of the five enumerated sources and they could therefore only be taxable if they qualified as a retiring allowance. In this case, the court found that they damages were not a retiring allowance because they did not relate to employment of the individual, they related to future employment.

The position taken by the Canada Revenue Agency towards such payments is consistent with the courts. In Interpretation Bulletin IT-365R2, dated May 8, 1987, and entitled "Damages, Settlements, and Similar Receipts", the CRA states at paragraph 2:

All amounts received by a taxpayer or the taxpayer's dependant, as the case may be, that qualify as special or general damages for personal injury or death will be excluded from income regardless of the fact that the amount of such damages may have been determined with reference to the loss of earnings of the taxpayer in respect of whom the damages were awarded. However, an amount which can reasonably be considered to be income from employment rather than an award of damages will not be excluded from income.

Similarly, the CRA stated in Interpretation — internal 2006-020497117 — Retiring allowance versus non-taxable damages, dated November 2, 2006:

"only where general damages are received in respect of personal injuries sustained before or after the loss of employment (for example, in situations of harassment during employment or defamation after dismissal), or where a loss of employment involves a human rights violation and is settled out of court, will general damages be viewed as unrelated to the loss of employment and therefore non-taxable. In order to claim that damages received upon loss of employment are for personal injuries unrelated to the loss of employment, it must be clearly demonstrated that the damages received relate to events or actions separate from the loss of employment. In the case of damages received for a human rights violation, only a reasonable amount, determined by reference to the maximum amount that would be awarded under the particular human rights legislation and

the evidence presented in the case, would qualify as non-taxable. As is generally the case, the Minutes of Settlement set out the terms of Settlement in very generic terms, stating only that \$XXX is awarded for “damages for emotional distress.” However, the Statement of Claim and a letter from the Taxpayer's legal representative unequivocally link the \$XXX damage settlement to the loss of employment. As indicated above, unless a taxpayer can clearly demonstrate that damages received from a former employer relate to events or actions separate from the loss of employment, the damages will be considered a retiring allowance.”

Although the test as outlined by the Supreme Court of Canada in *Schwartz* is very straightforward, it is not simple to apply and is dependent on the facts in each situation. The following are examples of situations where the courts have found payments to employees are not taxable:

- damages for a tort action for the wrong done to a taxpayer in stripping the taxpayer of his ability to work as a nuclear researcher;<sup>16</sup>
- compensation to retirees for cancellation of private health coverage;<sup>17</sup>
- damages for not renewing a fixed term contract;<sup>18</sup>
- damages for human rights violations;<sup>19</sup>
- damages related to potential future employment; and<sup>20</sup>
- damages related to a former employer's negligent misrepresentation and a release of claims against the former employer's parent corporation.<sup>21</sup>

There will be no withholding required for a non-taxable payment to an individual.

#### 1.4 Determining the Characterization of a Termination Payment

The characterization of damages for tax purposes in situations where an employee is terminated can be very difficult. The Supreme Court of Canada laid out the general principle to be followed in *Tsiaprailis v. R.*<sup>22</sup> in which the Court held that the determination is to be made based on “what the payment was intended to replace”. This is a judge-made rule, sometimes called the “surrogatum principle”, by which the tax treatment of a payment of damages or a settlement payment is considered to be the same as the tax treatment of whatever the payment is intended to replace. The determination of what the payment is intended to replace is dependent on the facts and in particular on the documents in any given case. Accordingly, it will be important that all settlement agreements, statements of claim or other complaints or correspondence between

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<sup>16</sup> *Ahmad*.

<sup>17</sup> CRA Document 2006-0216481E5.

<sup>18</sup> *Ashford*.

<sup>19</sup> CRA Documents 2002-0172217, 2003-0014105, 2004-00167118817, 2004-0079731E5, 2005-0126912E5, 2008-0292081R3, 2008-0273721E5; and cases: *Dunphy, Saardi v. R.*, [1999] 4 C.T.C. 2488 (TCC), *Fournier v. R.*, [1999] 4 C.T.C. 2247 (TCC), *Mendes-Roux v. R.*, [1998] 2 C.T.C. 2274, 49 C.C.E.L. (2d) 278 (TCC) and *Bédard v. R.*, [1991] 1 C.T.C. 2323 (TCC).

<sup>20</sup> *Schwartz and Schewe v. R.*, 2010 TCC 47 (TCC).

<sup>21</sup> *Rae v. R.*, 2010 DTC 1107 (TCC).

<sup>22</sup> 2005 SCC 8.

the parties and with advisors be consistent with, and as supportive as possible of, the position being taken by the parties on the character of the payment.

Generally, in a legal dispute that is ultimately settled, it is the statement of claim that would be looked at first. In cases where the statement of claim does not clearly determine the nature of the payment, the courts have turned to the correspondence or agreements between the parties.<sup>23</sup> For example, if some or all of an amount is received in settlement of human rights dispute,<sup>24</sup> the settlement agreement or letter should clearly state this and also identify the portion of the amount being paid for that purpose. Consideration should be given to prior decisions of courts and tribunals that are most similar to the facts involved with the taxpayer's case. In addition, any evidence of a policy or legislative basis for awards to individuals in similar circumstances may be helpful. Evidence of the importance of this supporting documentation is found in the case law. In *Forest v. R.*,<sup>25</sup> the Federal Court of Appeal relied on a document prepared by the former employer which outlined severance for employees who left their employment voluntarily in similar circumstances. This severance calculation was used by the court to determine what portion of the amount paid to the appellant in damages was a retiring allowance and what portion was non-taxable damages. In *Tremblay Estate v. R.*,<sup>26</sup> the court concluded that the amount paid to the taxpayer was a retirement allowance based primarily on the language in the Settlement Agreement, which stated that the taxpayer agreed to accept a severance payment in final settlement of all of the taxpayer's claims against the former employer. The agreement made reference to a release of claims in relation to the taxpayer's employment and termination, including claims for damages, salary, termination pay and severance pay. The court concluded that it "should not look behind the Settlement Agreement to find that a portion of the severance payment was to cover the Appellant's silence or to relate to a non-competition agreement or for any other purpose."

### 1.5 Termination Payment With More Than One Characterization

Determining the appropriate characterization of a payment can be difficult in circumstances where the payment may be made for more than one purpose. In some cases the payment could fall under more than one characterization. In such a case, the most appropriate characterization for tax purposes must be determined. In other cases, the payment may be made to address two distinct complaints. In the former case, the purpose for which the payment is made must be identified to determine the applicable tax treatment for the entire amount. In the latter case, the payment actually represents two distinct payments for tax purposes and it is the appropriate amounts allocable to each purpose that must be determined to confirm the applicable tax treatment which may be different for the two distinct amounts.

The CRA provides two examples of the former situation.<sup>27</sup> First, a payment may be received upon or after retirement or loss of employment by reason of an employment contract, which would generally be viewed as remuneration from employment. However, the receipt may also

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<sup>23</sup> For example, see *Au v. R.*, 2005 DTC 794 (TCC) confirmed 2006 D.T.C. 6074 (FCA).

<sup>24</sup> An amount can be paid to settle a human rights issue even where the individual has not lodged a complaint with a human rights tribunal or other arbiter.

<sup>25</sup> [2008] 3 CTC 394 (FCA).

<sup>26</sup> 2009 DTC 1558 (TCC).

<sup>27</sup> See Interpretation Bulletin IT-337R4 Retiring Allowances, dated February 1, 2006, paragraphs 13 and 14.

reasonably be regarded as being in recognition of long service or as compensation for loss of office. In such a case, the provisions of subparagraph 56(1)(a)(ii) may be considered to take precedence over sections 5 and 6 on the basis that the more specific taxing provision should prevail over the general one (sections 5 and 6). Similarly, the CRA takes the view that payments in lieu of notice of termination by virtue of the employment terms are considered to be income from employment. However, where a damages payment arising from the loss of employment includes an amount in respect of reasonable notice, this will be considered to be a retiring allowance under 56(1)(a)(ii) for the same reasons described above.

An example of the latter situation can be found in the CRA's position that a termination arrangement that provides a leave with pay before retirement or termination, including continuance of certain benefits such as pension benefits, is not a termination until the leave with pay ends. The basis for this view is that pension benefits can only accrue to employees and therefore, the continuation of such benefits indicate that there is an employment relationship. In that situation, the amounts received prior to the end of the leave will be characterized as employment income and the amount received after leave will comprise a retiring allowance.<sup>28</sup> A further example can be found in cases where an employee receives an amount that is in part a retiring allowance and in part compensation for non-taxable damages.<sup>29</sup>

In *Forest*, the Federal Court of Appeal, relying on the Supreme Court of Canada's decision in *Schwartz*, ruled that once it has been established that a settlement amount has dual purpose, the bar on apportionment should not be set so high. As long as there is some evidence from which a judge can reasonably identify the individual components of a settlement amount, that evidence should be accepted. However, again, reliance must be placed on any relevant documents which can support a reasonable allocation between the two purposes.

## **2. Transferring Some or All of a Retiring Allowance Directly into an RRSP or RPP**

Paragraph 60(j.1) allows a long term employee to defer some or all of the income tax on a retiring allowance by transferring the eligible portion of the retiring allowance to a registered pension plan (RSP) or registered retirement savings plan (RRSP) under which the taxpayer is the annuitant. The amount transferred is deducted from the retiring allowance subject to withholding tax. The amount that can be transferred under paragraph 60(j.1) is equal to the aggregate of the following two amounts:

- (a) \$2,000 for each year or part of a year before 1996 that the employee worked for the employer (or person related to the employer); and
- (b) \$1,500 for each year or part of a year before 1989 that the employee worked for the particular employer in which none of the contributions to a registered pension plan were vested in the employee's name when the retiring allowance was paid.

However, if there is sufficient unused contribution room, even if the taxpayer is not the RRSP annuitant or if the amount does not qualify under paragraph 60(j.1), the retiring allowance may be transferred to the taxpayer's RRSP or to a spousal or common law partner RRSP up to a

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<sup>28</sup> Interpretation — external 2004-0063391E5 — Retiring allowance — salary continuance, dated March 15, 2004.

<sup>29</sup> *Rae, Dunphy, Mendes-Roux and Bédard*.

maximum of the available room pursuant to subsection 146(5) or (5.1).<sup>30</sup> Generally, this maximum amount is equal to the lesser of (i) 18% of the taxpayer's income and (ii) \$22,000<sup>31</sup> plus any unused RRSP deduction room from previous years. In order for the employer to deduct this amount from a retiring allowance for withholding tax purposes, the employer is required to see the employee's notice of assessment for the year and must obtain written confirmation that the contribution room has not been used.

The benefit of using paragraph 60(j.1) is that the amount transferred will not count towards the taxpayer's RRSP deduction limit.

### 3. Legal Fees Paid to Obtain a Retiring Allowance or Employment Income

A reimbursement of legal expenses incurred to collect or establish a right to a retiring allowance or employment income received by a taxpayer is included in income under paragraph 56(l)(l.1) or paragraph 6(1)(j), respectively.

Pursuant to paragraph 60(o.1), legal expenses paid to collect or establish a right to a retiring allowance can be deducted from a taxpayer's income for tax purposes. Generally, the maximum amount that can be deducted is equal to any retiring allowance included in income, plus any reimbursement of legal expenses included in income under paragraph 56(1)(l.1), less any amount transferred to an RRSP and deducted under paragraph 60(j.1). If the legal expenses exceed the maximum amount deductible, any remainder may be carried forward 7 years and deducted against future payments of retiring allowances from the same employer.

Pursuant to paragraph 8(1)(b), legal expenses paid to collect or establish a right to salary or wages can be deducted from a taxpayer's income for tax purposes. This deduction is limited to amounts "owed" by an employer, or former employer. Therefore, legal expenses paid for an unsuccessful claim against an employer or former employer are not deductible. However, if the taxpayer establishes the amount is owed, but is unsuccessful in collecting such amount, the related legal fees are still deductible.<sup>32</sup>

Legal expenses reimbursed by an employer will not be subject to withholding tax by the employer as long a reimbursement is specifically identified as such or is paid directly to the legal adviser. Accordingly, if an employer is reimbursing an employee for legal expenses, either the employer should pay the legal advisor directly or the specific amount being reimbursed should be identified when the employee receives the reimbursement, particularly if it is received together with a retiring allowance.

Legal expenses for the purposes of paragraph 60(o.1) are narrowly defined to only include legal type services and expenses. Expenses for auxiliary services such as the use of accountants or labour relations consultant in a legal action can also be deducted.<sup>33</sup>

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<sup>30</sup> Interpretation — external 2008-0273721E5 — Settlement for alleged human rights, dated: May 8, 2009.

<sup>31</sup> The maximum is \$22,000 for 2010, but this amount is subject to change.

<sup>32</sup> See *Medynski v. R*, 2009 D.T.C. 734 (TCC) and Interpretation Bulletin IT-99R5 Legal and Accounting Fees, dated December 11, 1998 – Consolidated December 2000, paragraphs 22-23.

<sup>33</sup> See *Medynski v. R*, 2009 D.T.C. 734 (TCC) and Interpretation Bulletin IT-99R5 Legal and Accounting Fees, dated December 11, 1998 – Consolidated December 2000, paragraph 28.

#### **4. Conclusion**

An amount received by an employee on or after termination will be subject to tax if it is employment income or a retiring allowance. If the amount is unrelated to employment termination, the amount may not be subject to tax.

The determination of the characterization of the payment will be made based on the facts of the particular situation. It is therefore very important that any correspondence or documents drafted with respect to the payment clearly and consistently support a characterization of the payments or damages sought that is consistent with the facts. The characterization of a payment should be considered as early as possible - hopefully before the employee starts a claim process.

An employee who pays legal fees to collect or establish a right to a retiring allowance will be entitled to a deduction for such fees. If an employer reimburses the employee for such fees, the employee will be required to include such an amount in income. Alternatively, if the fees are paid by the employer directly to the service provider, the amount paid will not be included in the employee's income, nor will the employee be entitled to a deduction.

Payments by an employer to an employee will be subject to full source deduction withholdings if they are employment income, will be subject only to income tax withholdings if they are retiring allowances, and will be subject to no withholdings if they are non-taxable payments. No withholding tax is applicable to a payment for qualifying amounts transferred to an RRSP or RSP or for a reimbursement of qualifying legal fees.

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