



Golf and the tax man...an unfriendly mix

Now that spring has finally arrived and summer is quickly approaching, it is time to dust off the golf clubs and hit the course. Shareholders who have their corporation pay certain expenses that have both a business purpose element and a personal element will be interested in the recent court decision, *Gillis v. The Queen*, which focused on corporate golf memberships and taxable benefits. The case involved a corporate golf membership that permitted the individual shareholder, who was also the president and main sales person of the corporation, unlimited golf. The issue before the courts was whether the corporate golf membership constituted a taxable benefit to the individual and if so what was the value of the benefit.

Generally, employees are assessed a taxable benefit on the personal portion of certain expenses or advantages provided by a corporation. The most common examples of these benefits include the use of an automobile, group term life insurance premiums, and imputed interest on interest-free loans. However, where it can be shown that the primary purpose of the expense or advantage is related to the corporation's business, there will not be a taxable benefit to the employee. This is true for corporate paid memberships and dues for recreational and social clubs. In other words, where the primary purpose of the club membership and dues are principally for the employer's advantage no taxable benefit should be assessed to an employee.

The court ruled in *Gillis*, that even though the individual was a key salesperson and the corporation benefited greatly from the corporate golf membership (i.e. regular golf games had resulted in sales totaling more than \$5.75 million), the individual did not receive the benefit by virtue of being an **employee**, rather he received the benefit by virtue of being a **shareholder**. The court acknowledged that the primary purpose of the corporate golf membership was for business purposes, but maintained that a portion of the membership fee should be included in the taxpayer's income as a shareholder's benefit. It appears that based on the decision in *Gillis*, when a benefit is received by virtue of being a shareholder, an apportionment of the personal benefit is required to be included as a taxable benefit, whereas if the benefit is received by virtue of an individual's employment a full exclusion is available if the primary purpose relates to the corporation's business.

Whether a benefit is received by virtue of one's shareholdings or employment is a question of fact. However, the Canada Revenue Agency's administrative position, which is supported by Canadian tax court cases, is that where an individual is both a shareholder and an employee, he will be **deemed to have received the benefit by virtue of his shareholdings**. This can only be rebutted if shown that the same or similar benefit would have been made available to employees with similar positions and responsibilities.

The taxation authorities have never accepted golf as a deductible business expense and it is clear from this court case that they will now view golf dues and fees as an "assumed taxable benefit" where the employee entitled to the advantages is also a shareholder. Golfers beware.....FORE!