

# JE'S TAX BULLETIN

JACK EIGENMACHT CHARTERED ACCOUNTANT PROFESSIONAL CORPORATION

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## Employment Insurance and the Self-Employed – Opting into the System

THERE ARE A NUMBER OF REAL AND PERCEIVED benefits to becoming self-employed, including greater access to tax deductions for work-related expenses, the possibility of incorporating the business and taking advantage of small business tax rates, and, generally, a greater degree of freedom and control over one's work environment. Offsetting those real advantages, however, is the inescapable fact that becoming self-employed means giving up both the protection of both employment standards legislation and much of the social safety net that employed Canadians can take for granted. For the self-employed, there are no paid statutory holidays, no paid vacation, no statutory right to receive notice or compensation in lieu when employment is terminated, and no access to income replacement programs such as employment insurance. Generally speaking, for the self-employed, time off work, whatever the reason, means time without income.

The federal government has recently moved to remedy some of that imbalance by proposing to allow self-employed Canadians to opt into part of the federal Employment Insurance (EI) program. The EI program provides benefits to Canadian workers who are temporarily out of the workforce in a number of situations. The best known of those, of course, are regular benefits, which provide a percentage of wages, to a specified maximum, to workers who have lost their jobs while they search for new employment. There are also, however, what are termed "special" benefits, which are available in particular circumstances, and it is those benefits to which the self-employed may now opt to have access.

There are four types of special benefits, as follows:

- maternity benefits (15 weeks maximum) are available to birth mothers and cover the period surrounding birth (a claim can start up to eight weeks before the expected birth date);
- parental/adoptive benefits (35 weeks maximum) are available to biological or adoptive parents while they are caring for a newborn or newly adopted child, and may be taken by either parent or shared between them (if parents opt to share these benefits, only one waiting period must be served);
- sickness benefits (15 weeks maximum), which may be paid to a person who is unable to work because of sickness, injury, or quarantine; and
- compassionate care benefits (six weeks maximum), which may be paid to persons who have to be away from work temporarily to provide care or support to a family member who is gravely ill with a significant risk of death.

Under the proposed legislation, self-employed individuals will be able, beginning January 1, 2010, to opt into the EI program for the purpose of these special benefits. Only special benefits are covered by this new initiative, and the self-employed will continue to be ineligible for regular (job loss) EI benefits.

To opt into the program, a self-employed person must have earned at least \$6,000 from self-employment in the preceding calendar year. Therefore, someone who wants to

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opt into the program beginning in January 2010 must have earned at least \$6,000 from self-employment during 2009. In addition, no benefits can be received until at least one year after the individual has opted in. So a self-employed taxpayer who earned at least \$6,000 from self-employment during 2009 and chooses to opt into the program in January of 2010 would not be eligible to receive benefits of any kind until January 2011.

The EI program is funded by contributions made by employees through payroll deductions, with the maximum deduction for 2009 being \$731.79. Employers are also required to contribute to the program, with their contribution being 1.4 times the employee portion. Where a self-employed person wants to opt into the EI program, he or she will be assessed for the employee portion (\$731.79) of premiums but will not be required to pay the employer portion, in recognition of the fact that there will be only partial access to EI benefits.

Once they are part of the EI system, self-employed individuals will have the choice of opting out at the end of any tax year, as long as they have never claimed and collected EI benefits. Once a self-employed taxpayer makes a claim for and receives benefits, however, he or she will be required to contribute EI premiums on income from self-employment for as long as he or she is self-employed.

The decision on whether to opt into the EI system is likely to be determined for the most part by the personal circumstances of each self-employed taxpayer. In all cases, the cost of premiums, especially over several years or even decades of self-employment, will have to be weighed against both the likelihood of ever needing to make a claim for benefits and the question of whether the amount of benefits that can be received will exceed the cost of making those premium payments.

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