Income Tax Primer For Academic Staff

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DISTINCTION BETWEEN SELF-EMPLOYMENT AND EMPLOYMENT INCOME

The Income Tax Act contains no statutory definition of 'income' although it does list the basic rules for computing a taxpayer's income for a taxation year. The Act distinguishes the various sources of income. The most important distinction for the majority of academic staff is that applied to income from an office or employment in contrast to income from a business or profession.

The distinction between an employee and a self-employed individual is a question of fact. The tests developed by the courts to determine the nature of the relationship are:

- Control test the degree of control over not only what is to be done but also how it is to be done. In the case of professionals or the highly skilled, control over how the work is performed is often difficult and therefore this test is not in itself conclusive;
- Integration or organization test whether the individual is part and parcel of an organization such that his/her work forms an integral part of its overall business;
- Economic reality test an individual is less likely to be an employee if he bears risk of loss or has a chance of profit;
- Specific result test an individual who is engaged to ensure his/her services are generally at his/her employer's disposal is more likely an employee than one who is engaged to ensure completion of specific work.

Among the other factors considered are whether the other party considers them to be independent and indicates this by a formal contract, service is also provided to others, remuneration is related to performance, payment is by invoice including GST or HST, provision of equipment is by the contractor, there is an absence of benefits, and independence in how, where, and when the work is done.

Business income includes all remuneration received by a teacher for professional services rendered under a 'contract for services'. In order to be deductible from self-employment income, an expense must first pass the following general tests: it must be an outlay to earn income (other than exempt income); it cannot be a capital outlay and must be reasonable under the circumstances. There are specific restrictions on the ability to claim meals, automobile lease payments, interest on money borrowed to acquire an automobile and expenses incurred for certain offences under the Criminal Code.

In the case of income from an office or employment, only a restricted list of statutory deductions is permitted, whereas the recipient of business income may generally deduct any reasonable expenses, other than payments on account of capital, which were incurred for the purpose of earning the income. Amortization of capital costs (depreciation) is usually deductible against business income.

EMPLOYMENT INCOME

An academic staff member's salary, received for teaching and administrative duties, is normally classified as income from employment.

Strike pay is not taxable even if the recipient is picketing. Payment for other services provided to the union as an employee or consultant is, however, taxable.

In addition to salary payments, some fringe benefits are also taxable.

Fringe Benefits Included in Income

Examples of fringe benefits that are included in income are as follows:

- Allowances for personal or living expenses received from an employer.
- The value of the benefit received through an employee's personal use of an automobile owned or leased by an employer.
- Wage loss benefits received out of a sickness or a disability insurance plan maintained by the employer, where the premiums are paid by the employer.
- Provision of a residence to an employee rent-free or for a lower rent than the employee would have to pay someone else for such accommodation.
- Premiums paid by an employer for group life insurance.
- Imputed interest on interest-free and low-interest loans made by an employer to an employee in certain circumstances.
- Waiver of tuition fees provided by an educational institution to its staff members (unless the course was undertaken by the staff member for the benefit of the employer) or their spouse and children. Where a dependent obtains a scholarship on a non-preferential basis the benefit is taxable in the hands of the recipient rather than the employee.
- Termination payments and amounts received as damages for wrongful dismissal. Where a portion of a settlement for wrongful dismissal is not related to damages for loss of office or employment, it will be treated as a non-taxable amount. Punitive damages might be an example of a non-taxable court award.

However, a portion thereof may be transferred by way of a lump-sum payment to an RRSP or a Registered Pension Plan (RPP) as follows:

- -\$2,000 for each year of service up to and including 1995 that an individual was employed by the employer or a related party; in addition
 - -\$1,500 for each year of service prior to 1989 that the employer's contribution to

an RPP had not vested. These transfers must be made either in the year the payment is received or within 60 days after the end of the year and are over and above the normal RRSP contribution limits.

- Free or subsidized parking provided by the employer to the employee may be regarded as a taxable benefit by the CRA. If the primary beneficiary of the free parking is the employer (it allows the employee to come and go to clients) no taxable benefit may apply.
- Where an employer pays all or part of the premiums that an employee is required to pay to a provincial authority administering a provincial hospital insurance plan or provincial medical care insurance plan, the amount paid is a taxable benefit to the employee.

Fringe Benefits Excluded From Income

Examples of fringe benefits that are not included in income are as follows:

- Transportation to the job in cases where employers find it expedient to provide vehicles for transporting their employees from pick up points to the location of employment at which, for security or other reasons, public and private vehicles are not welcome or practical.
- Employers' cost of providing recreational facilities for employees' use without charge or for a nominal fee if such services are nondiscriminatory.
- Where an employer is required under a provincial hospital insurance plan or provincial medical insurance plan to make contributions on behalf of its employees.
- Employer contributions to a private supplementary health services plan (including dental services) for employees, as well as the value of benefits flowing from the plans.
- Moving expenses paid or reimbursed to an employee under certain prescribed circumstances.
- Reimbursement of the costs of attending a convention where the employer requires an employee to attend in the line of duty associated with his/her employment.
- Internet and cell phone expenses paid by an employer, provided that the employer is the primary beneficiary of the service.
- Employers' contributions to a wage loss replacement group plan for employees.
- Certain consulting services provided to the employee, which, generally, are in the areas of mental or physical health, termination or retirement.

- Professional memberships fee reimbursement where the employer is the primary beneficiary of the payment.
- Tuition fees paid for courses leading to a degree, diploma, or certificate in a field related to the employee's current or future employment responsibilities.

Deductions Available to Employees

Allowable deductions from employment income include the following:

- **Legal expenses** an employee may deduct legal expenses incurred in collecting or to establish a right to salary or retiring allowance from an employer or former employer, and to establish a right to any income taxed as employment income such as payments from an insurer for accident and sickness benefits.
- **Teachers' exchange fund** a single amount in respect of all employments of the taxpayer as a teacher, not exceeding \$250, paid by him/her in the year to a fund established by the Canadian Education Association for the benefit of teachers from Commonwealth countries present in Canada under a teachers' exchange arrangement.
- **Travel expenses** incurred by an employee:
 - who is ordinarily required to carry on the duties of his employment away from his/her employer's place of business or in different places; and
 - who has a contractual obligation to pay travel expenses in the performance of his/her duties, for which he is not reimbursed.

The employee must include form T2200 signed by the employer with his/her return to support his claim for travel expenses.

Relevant situations might arise where an academic staff member participates in an exchange program or is required to commute between two campuses of the same employer at his/her own expense.

If the use of an automobile is involved, interest and capital cost allowances (depreciation) may be included in the travelling expenses.

Dues and other expenses of performing duties

- Dues for membership in professional associations where such dues are necessary to maintain a professional status recognized by statute;
- Academic Staff Association fees or union dues union dues;

- Office rent, salary paid to an assistant or substitute, or cost of supplies if required to be paid by the employee by his/her contract of employment.
- **Contributions to a registered pension plan (RPP)** of amounts permitted under the terms of the registration of the plan.
- **Registered Retirement Savings Plan Contribution** up to the maximum available under current RRSP rules. A Pension Adjustment (PA) for those taxpayers who are members of a Registered Pension Plan (RPP) reduces these limits.
- **Moving expenses** are deductible from the employment or business income where the taxpayer has moved at least 40 kilometers closer to a new job location. The general rule is that only moves within Canada qualify. However, a taxpayer who is absent from Canada, but a Canadian resident for tax purposes, is not subject to these "within Canada" requirements .
- **Childcare expenses** if claimed by the spouse with the lower income. Higher income spouses may be eligible under certain circumstances, the most usual of which occurs where the lower income spouse is in full-time attendance at university or is physically or mentally incapacitated.
- **Pension Income Splitting** of up to one half of eligible pension income with a spouse or common law partner.
- Home Office and Travel in situations where the taxpayer, even though an employee, is not provided with an office by the employer and the employer so certifies on a form T2200. The T2200 form is also used if the employee is required to travel (e.g., between several work sites) as a condition of the employment contract and is not reimbursed for travel costs.
- **Musicians using their own instruments** in employment situations may deduct expenses for maintenance, rental, insurance and capital cost allowance to the extent that the use of the instrument is directly for employment purposes or is a condition of employment.

SCHOLARSHIPS AND GRANTS

Scholarships, Fellowships, Bursaries and Prizes

The ITA does not define the terms "fellowship", "bursary," "scholarship," "prize" and "research grant." The name applied to any specific grant may not be indicative of its true nature. For instance, in some circumstances an award bearing the title "fellowship" may be classified as a "research grant" for tax purposes.

There is a full exemption for the total of all amounts received during a year in respect of scholarships, fellowships, bursaries and prizes if the student is following a program that gives right to the education credit.

Teachers and students are reminded that in some situations both moving and childcare expenses may be claimed as a deduction if they are in receipt of certain types of grants.

Research Grants and Expenses

Awards deemed to be research grants for tax purposes must be declared as income to the extent that they exceed allowable research expenses incurred. Personal or living expenses such as meals and lodging are normally not allowable but may be deducted when they become part of travelling expenses incurred in carrying on research away from home.

If the primary purpose of the grant is to enable the recipient to further his/her education/training, then the grant will be considered a fellowship and the expenses not deductible. If, on the other hand, the primary purpose of the grant is to enable the recipient to carry out research for the sake of a novel proposition, then it will be considered a research grant. If there are two purposes, as long as the primary purpose is for research (as explained above) then the grant will be treated as a research grant. Where it is difficult to establish a primary purpose, CRA's policy will be to leave the determination of the primary purpose to the grantor — the employer.

Fellowships are similar to scholarships and bursaries in that they are amounts given to an individual to enable him/her to advance his/her education. Fellowships are normally treated as income, but can sometimes be included as a research grant and taxed pursuant to the appropriate rules. The treatment of the fellowship will depend upon the primary purpose for which the fellowship was granted.

A researcher is entitled to claim his/her travelling expenses:

- between his/her home and the place at which he/she temporarily resides while engaged in the research work;
- from one temporary location to another; and
- for field trips connected with his/her work.

Travel expenses of a researcher's spouse and dependants are not deductible from a research grant.

Individuals on sabbatical within Canada should explore the possibility of their right to deduct moving and childcare expenses. Hotel expenses while seeking a more permanent abode should be included, as well as any other expenses directly associated with the project, such as the cost of research assistance, typing, photocopying, preparation and publication of reports and other relevant expenses other than personal or living expenses. An individual on sabbatical should not assume that salary received while on sabbatical qualifies as a research grant. Professional advice should be pursued to determine the tax treatment of amounts received on sabbatical.

Receipts for research expenses are not required to be filed with the taxpayer's income tax return. However, since an accounting may be demanded at any time, the researcher should keep a diary of all his/her eligible expenses supported by receipts where practical.

Normally, expenses incurred in a year prior to or subsequent to the receipt of a research grant are still deductible but the total expenses cannot exceed total research grant money received. An exception pertains to expenses arising in the year prior to the receipt of the grant and before notification that the grant has been awarded. In this particular circumstance the expenses may not be carried forward. Research expenses incurred more than one year before or more than one year after the year in which the grant is received are not deductible from that grant

Although eligible research expenses may be deducted from a research grant, they are not deductible from sabbatical salary or from a fellowship, unless the fellowship is deemed to be a research grant. Nor may any portion of such expenses be deducted from sabbatical salary.

SABBATICAL LEAVES

An academic staff member on a sabbatical or leave of absence in a foreign country must consider the income tax implications of the foreign jurisdiction as well as those of Canada.

Residency

A Canadian resident is subject to Canadian Income Tax on his/her world income whereas a nonresident is only subject to Canadian Income tax on certain Canadian source income. The question of whether or not one is resident in Canada for tax purposes is therefore an important determination for an individual.

There is no presumption of non-residency where an individual is outside Canada in excess of two years. A non-resident must establish the severance of all residential ties on leaving Canada. There must be no evidence that a return to Canada was foreseen at the time of departure (i.e., by way of employment contract).

Dwelling Place — "Where an individual who leaves Canada keeps a dwelling place in Canada (whether owned or leased), available for his or her occupation, that dwelling place will be considered to be a significant residential tie with Canada during the individual's stay abroad. However, if an individual leases a dwelling place located in Canada to a third party on arm's length terms and conditions, the CRA may not consider the dwelling place to be a significant residential tie with Canada."

Spouse and Dependants — "If an individual who is married or cohabiting with a common-law partner leaves Canada, but his or her spouse or common-law partner remains in Canada, then that spouse or common-law partner will usually be a significant residential tie with Canada during the individual's absence from Canada. Similarly, if an individual with dependants leaves Canada, but his or her dependants remain behind, then those dependants will usually be a significant residential tie with Canada while the individual is abroad." Legal separation is, of course, an exception.

Personal Property and Social Ties — "An individual who leaves Canada and becomes a non-resident will not retain any residential ties in the form of personal property (e.g., furniture, clothing, automobile, bank accounts, credit cards, etc.) or social ties (e.g., club memberships, etc.) within Canada after his departure."

Other Residential Ties — other ties that may be relevant are the retention of:

- provincial hospitalization and medical insurance coverage;
- a seasonal residence in Canada;
- a driver's license from a province or territory;
- a vehicle registered in a province or territory;
- a Canadian passport;
- professional or other memberships in Canada (on a resident basis); and
- presence of personal property in Canada..

Overseas Employment Exemption

Employees of Canadian employers working overseas in prescribed countries for more than six consecutive months may be partially exempt from tax.

Research Expenses during Sabbatical

Academic staff who plan on carrying out research during a sabbatical leave should confirm that their affairs will permit a claim for research expenses. This will depend on the status of the member during the sabbatical leave.

Sabbaticals (Residents of Canada)— If academic staff on sabbatical leaves remain residents of Canada for income tax purposes, it does not matter whether they actually stays in Canada or emigrate temporarily to a foreign country. In either case, they will be taxed by Canada on their world income. If one is obliged to pay foreign income taxes on any part of world income, Canada will normally permit a foreign tax credit for all or part of the foreign tax.

Sabbaticals (Non-Residents of Canada) — Non-residents are subject to Canadian income tax only on income received from sources within Canada. For most academic staff the three main classes of Canadian source income are:

- 1. sabbatical salaries, business or professional income, research grants, fellowships, etc.;
- 2. investment income, capital gains, and
- 3. rental income.

Non-residents are allowed to claim personal credits only where substantially all (90%) of their income for the year from all sources is income from employment in Canada, a business carried on in Canada, or Canadian scholarship and research grants.

Leaves of Absence Taken Abroad

Sometimes academic staff will accept teaching or other assignments in foreign countries under which most of their income will be from sources outside Canada. If they remain a resident of Canada, they must declare and pay tax on world income. If one establishes non-resident status they are then taxable in Canada only upon income from sources within Canada. One may, however, become taxable on part or all of his/her world income in the new country of residence.

Before jumping to conclusions regarding the advantages and disadvantages of non-resident status, the taxpayers must consider their position in the foreign country as well as in Canada. A resident of Canada is entitled to a credit for income taxes paid to foreign countries. This credit will generally be the lesser of the foreign tax paid and the Canadian income tax otherwise applicable to the foreign income. The credit is available only to residents of Canada and could not be claimed by a non-resident paying tax. Other considerations include departure tax and provisions of relevant tax treaties. Readers are advised to consult their tax advisors.

BUSINESS INCOME

Academic staff may provide services as independent contractors for their universities, colleges, or other institutions under a contract for services (not an employment contract), which is not treated as income from employment. Aside from their regular salary, academic staff may also derive income from royalties, consulting fees, writing, lectures, appearances on television or radio, etc. all of which are usually classified as income from a business or profession. In computing taxable income, expenses may be claimed against income.

Contract for Services

In some circumstances, the teaching of non-credit courses may be performed under a nonemployment arrangement. Some post-secondary institutions enter into separate contracts with teachers for supplementary services. Where an institution pays for such services on the presentation of an invoice through accounts payable or reports the income on a T4A, such practice provides evidence that the institution does not consider the remuneration to be employment income.

Academic staff teaching a specialty course or seminar within the university or college confines, but on behalf of an outside institution, would do well to arrange for payment directly from the sponsor.

Academic staff may also supply non-instructional services to their institution, such as preparation of textbooks or computer programming. Professional advice should be sought to clarify the potential tax treatment of this type of income.

Deductions from Business Income

Generally speaking, a taxpayer may deduct from business income all expenses or costs which were incurred in order to earn the income. The expense must be reasonable, not in the nature of a personal or living expense and not for the purpose of obtaining an asset of enduring value, i.e., a capital outlay. Allowable expenses will be deductible in the year incurred unless normal accounting treatment requires them to be deducted in a later year (e.g., prepaid fees, insurance, etc.)

Typical examples of expenses incurred by academic staff to earn business income are books, journals, travelling, office supplies and facilities, telephone, postage, typing, photocopying and wages for part-time help. An individual in business may deduct salary paid to a spouse or child, providing the expense is reasonable in the circumstances and intended to earn income.

Home Office Expenses

If a home office is required to earn business income, and the office is used exclusively for earning business income, a deduction proportionate to the total expenses reasonably related to earning the business income may be claimed. For example, if the house has eight rooms, one of which is an office of average room size, then one-eighth of all costs of maintaining the residence may be deductible. Expenses for home offices will be allowable only to the extent of the taxpayer's net income for the period from the business and only where the office is the principal place of business or is used on a regular or continuous basis for meeting clients, customers, or patients.

Capital Cost Allowance

Capital cost allowance (CCA) on furniture and equipment used in the business may be deducted during the period of business use. At the close of each year the CCA (depreciation) will be deducted from the capital value of the assets and the depreciation claim for the following year will be the applicable percentage rate of the residual balance which is described as the "undepreciated capital cost. Property acquired during the year is eligible for only one-half the normal rate applicable to the particular capital cost allowance class in the year of acquisition (with the exception noted above).

Convention Expenses

The general rule is that a self-employed individual may deduct from business income the cost of up to two conventions a year held by a business or professional organization related to the taxpayer's business. The law requires the convention be held at a location consistent with the territorial scope of the organization, but if the organization is an international one, this would allow deductibility of a convention held almost anywhere. A taxpayer can be required to prove the convention helped him/her in earning income from business. He/she cannot deduct costs of a spouse or children (unless they are active in the business) and can only deduct 50% of the convention cost represented by food and entertainment. (IT-131R2).

Automobile Expenses

Travel expenses frequently include the costs of owning and operating an automobile that is used partly for business and partly for pleasure. A claim for the expenses requires a record of the total costs and of the portion reasonably attributable to business use. Operating expenses will include gasoline, oil, repairs, supplies, tires, parking, carwashes, license fees, finance costs and insurance. Capital cost allowance on vehicles may also be claimed

Investment Tax Credits

Taxpayers may claim a tax credit for part of the cost of conducting scientific research. Eligible expenses include purchases of capital equipment and outlays for operating costs as long as it is for work, which is done by, or for furthering "scientific research and experimental development," as defined by the CRA. Any application for investment tax credits be filed within eighteen months of the end of the fiscal year of the business.

These rules are potentially very helpful to researchers but require careful professional guidance, particularly since many provinces have Scientific Research and Experimental Development programs of their own with different rules.

Readers with a corporation involved in film production should consider obtaining certification by the Minister of Communication. Tax credits are available for qualified productions.

Taxation of Artists, Writers and Musicians

Special consideration is given by CRA regarding income for artists and writers who are selfemployed, including sources of income, reasonable expectation of profit and inventories and gifts of art. Generally, CRA recognizes that artists may take years to recognize a profit from their activities, but at the same time tries to distinguish between genuine artists engaged in an artistic business and those merely engaged in a hobby. CRA will consider several factors including:

how much time is devoted to the art;

the extent of public exposure of the artist's work;

whether the artist is represented by an agent/publisher;

how much time is devoted to marketing;

revenues received and the profit/loss history;

the variation over time in the value or popularity of the taxpayer's work;

whether the expenses are relevant to the endeavours;

the artist's academic and professional qualifications;

membership in relevant associations;

the level of public and peer recognition, awards, etc.;

the significance and increase in gross income; and

the potential possible distribution of the art.

Artists and writers who have full time employment as academic staff may also find it useful to have the support of their employer that the expenditures they incur are not required in order to maintain employment.

INCORPORATION

Significant tax advantages may be obtained by incorporating a business. The low tax rate allowed Canadian small businesses operating in particular provincial jurisdictions, combined with the dividend tax credit, may result in a lower aggregate tax burden than that applicable to an unincorporated business.

Other advantages besides the potential for tax deferral include the possibility of splitting income between family members and the potential eligibility for capital gains exemption that is available on the disposition of the shares of a small business corporation. The costs of incorporating include initial costs and ongoing extra accounting and legal fees and annual filing fees to the jurisdiction in which the company is incorporated.

Personal Service Corporations

In the past, executives and highly paid employees have attempted to reduce their personal tax burden by interposing a corporation between themselves and the organization to whom they provided services. Frequently, this corporation was used to split the executive's or employee's income among his/her family members.

To ensure that individuals who use such corporations do not achieve any undue advantage through the corporation, the only deductions allowed to the corporation are for the wages, salaries and other employment benefits paid to these incorporated individuals. No expenses other than those that could be claimed by an employee are deductible. Furthermore, such corporations now pay tax at the maximum corporate rate. Tax must also be paid on any dividends paid by the corporation to its shareholder(s).

INTERNATIONAL TAX TREATIES AND FOREIGN TAXATION

In addition to the Canada-United Kingdom Income Tax Convention and the Canada-U.S. Income Tax Convention, Canada has signed tax treaties with a wide range of other countries. The complete list is available on the CRA website.

The purpose of these treaties is to avoid double taxation and prevent tax evasion. Invariably, a treaty will contain provisions that determine which of the contracting states will tax income from certain specific sources and in some instances, the rate of tax that will apply. International tax treaties are usually reciprocal in that they apply in reverse to the taxation of a Canadian by a foreign country and the taxation of a foreign person by Canada. The laws of that country first govern taxation by any country. Where there is conflict between the local laws and an applicable treaty, the treaty provision will, in most instances, modify the local laws.

Canadian Taxation of Sabbatical Salary

Readers should be aware of the CRA's position with respect to taxation of Canadian residents who are abroad. Even if a teacher successfully establishes that he/she is a non-resident of Canada while on a foreign sabbatical, Canada will still tax the sabbatical salary when it is paid from a Canadian university to the teacher.

CANADA REVENUE AGENCY INFORMATION AND TAX BULLETINS

Canada Revenue Agency Web Site

www.cra-arc.gc.ca/tax

Important Income Tax Interpretation Bulletins

IT-63R5	Benefits, including standby charge for an automobile
IT-75R4	Scholarships, fellowships, bursaries, prizes, research grants and financial
	assistance
IT-99R5(C)	Legal and accounting fees
IT-103R	Dues paid to a union or to a parity or advisory committee
IT-110R3	Gifts and official donation receipts
IT-120R6	Principal residence
IT-131R2	Convention expenses
IT-151R5(C)	Scientific research and experimental development expenditures
IT-158R2	Employees' professional membership dues
IT-167R6	Registered pension plans – Employees' contributions
IT-178R3(C)	Moving expenses
IT-211R	Membership dues – Associations and societies
<i>IT-221R3(C)</i>	Determination of an individual's residence status
IT-257R	Canada Council grants
IT-288R2	Gifts of capital properties to a charity and others
IT-337R4(C)	Retiring Allowances
IT-340R(SR)	Scholarships, fellowships, bursaries and research grants – Forgivable loans,
	Repayable awards and repayable employment income
IT-352R2	Employee's expenses, including work space in home expenses
IT-357R2	Expenses of training
IT-421R2	Benefits to individuals, corporations and shareholders from loans or debt
IT-428	Wage loss replacement plans
IT-470R(C)	Employees' fringe benefits
IT-495R3	Child care expenses
IT-497R4	Overseas employment tax credit
IT-502(SR)	Employee benefit plans and employee trusts
IT-504R2(C)	Visual arts and writers
IT-514	Work space in home expenses
IT-515R2	Education tax credit
IT-516R2	Tuition tax credit
IT519R2(C)	Medical expense and disability tax credits and attendance care expense deduction
IT-521R	Motor vehicle expenses claimed by self-employed individuals
IT-522R	Vehicle, travel and sales expenses of employees
IT-525R(C)	Performing artists
IT-529	Flexible employee benefit programs

PROVINCIAL GOVERNMENT INFORMATION

Alberta British Columbia Manitoba New Brunswick Newfoundland and Labrador Nova Scotia North West Territories Ontario Ontario – Minister of Finance Prince Edward Island Quebec Saskatchewan www.alberta.ca www.gov.bc.ca www.gov.mb.ca www.gov.mb.ca www.gov.nf.ca www.gov.nf.ca www.gov.ns.ca www.gov.nt.ca www.gov.on.ca www.fin.gov.on.ca www.gov.pe.ca www.gouv.qc.ca www.finance.gov.sk.ca

