

MTI NEWSLETTER - TAX TIPS & TRAPS

TAX TICKLERS

Some quick points to consider

- **Government of Canada** cheques never expire and can be cashed at any time. CRA can issue replacement cheques if the original was lost, destroyed, stolen or missing.
- **All Government of Canada** websites, including CRA's, are being migrated to a new website (www.Canada.ca). The merging is intended to be completed by the end of 2016. Current registration and log-in information for your CRA account is expected to be valid in the new website.
- **In 2014-2015**, 95.9% of taxpayer service complaints were resolved within 30 business days.

SELLING YOUR BUSINESS

Do It Before 2017?

Some of the most valuable business assets that can be sold are the intangibles such as goodwill and customer lists. These types of assets are presently classified as "Cumulative Eligible Capital" (CEC). When sold, there is often a large gain on these assets because their value has been built up over time and there is very little, or no, original cost. The corporate tax rates applicable to this type of gain for 2017 onwards will change significantly.

Half of the gain is currently tax-free, and can be distributed to the corporation's shareholders, still tax-free, as a capital dividend. This will not change. The tax changes relate to the taxable half of the gain.

For sales occurring before 2017, the taxable half of the gain on CEC sales would be considered "business income". It may be eligible for the small business deduction which equates to a corporate tax rate around 15%. Even where the small business deduction is not available, the rate would only be approximately 27%. Specific rates vary by province/territory.

In 2017, these assets will be converted from this special CEC class to a regular asset class thereby creating "capital gains" rather than "business income" upon sale. The initial corporate tax rate on the taxable half of the

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gain for these assets is approximately 51%, but again, ranges by province/territory. The cash left in the corporation after taxes will be significantly less if the sale occurs in 2017 or later.

All is not lost, however, since a large portion of the 51% in corporate taxes will be refunded when the cash is paid out to the individual shareholder as a taxable dividend. Once all of the sale proceeds have been distributed to the individual shareholder, the after-tax cash remaining will be roughly the same whether the asset sale occurred in 2017 or prior.

In other words, realizing the gain prior to 2017 will leave more cash available to the corporation. This deferral of taxes will be particularly beneficial where the shareholder does not require all of the sale proceeds immediately for personal use. The funds left in the corporation can often be invested for many years.

Action Item: If you would like to retain the proceeds of a sale in the corporation for the long term, consider whether a close before the end of 2016 is preferential. Also consider whether planning should be undertaken to trigger the gains now.

CANADA CHILD BENEFIT

Get Yours Today!

A well-publicized aspect of the Liberal election platform was the replacement of the Canada Child Tax Benefit, National Child Benefit Supplement, and the Universal Child Care Benefit with the Canada Child Benefit. This new program commenced in July 2016, with payments determined from the family's 2015 personal income tax returns. The family income used in the calculation consists of the net income (not including Universal Child Care Benefits and Registered Disability Savings Plan Income) of the person primarily responsible for the care and upbringing of the child, plus that person's spouse or common-law partner, but not the net income of the child.

Action Item: Ensure that your children are registered in order to receive payment. If you were previously receiving the Canada Child Tax Benefit, you are already registered.

Families may be eligible for the maximum annual benefits of \$6,400 per child under age 6 and \$5,400 per child age 6 to 17. Benefits will be phased out based on family income in excess of \$30,000 with a reduced phase-out rate applied to incomes over \$65,000, as follows:

# of Children (for phase-out rates)	Phase-Out Rates (%)	
	\$30,000 to \$65,000	Over \$65,000
1	7.0	3.2
2	13.5	5.7
3	19.0	8.0
4 or more	23.0	9.5

For example, the payment for a family with \$75,000 of income and a 4-year old would be: $\$3,630 = \$6,400 - (10k \text{ (income over } 65k) \times 3.2\%) - ((65k-30k) \times 7.0\%)$.

A further benefit of \$2,730 per disabled child may apply, with the phase-out rates generally aligning with the Canada Child Benefit.

For a tool which will calculate an individual's entitlement to the Canada Child Benefit, go to <http://www.budget.gc.ca/2016/tool-outil/ccb-ace-en.html>.

For a tool which will consider additional benefits available for those with children, go to <http://www.cra-arc.gc.ca/benefits-calculator/>.

CRA INSTALMENT NOTICES

Do I Have to Pay Them?

Many individuals received unusually high incomes in 2015 as a result of triggering capital gains or taking extra dividends and/or salary from their corporation to avoid being subject to the higher tax rates taking effect in 2016. When tax returns for 2015 were filed, many of these individuals would have been required to make a substantial tax payment in April of 2016 since their 2015 withholdings and instalment payments were not sufficient to cover the additional income. In general, if that April payment upon filing was greater than \$3,000, CRA will request those individuals to make instalment payments during the 2016 year.

Instalment reminders are sent out by CRA (usually in August) and may ask for large amounts to be paid in September and December of 2016. Those amounts are based on the income from the 2015 year. The first few instalment requests in 2017 may also be based on 2015 income levels. If the taxpayer's income in 2016 is, or will be lower than 2015, the instalments per the notices may significantly exceed the taxpayer's expected 2016 liability. It is important to note that there are alternatives to paying the recommended instalment amount included on the notice.

One such possibility is to pay instalments based on the expected tax liability for the 2016 year. If there has been a significant decrease in income, this method may free up large amounts of cash that may otherwise have been tied up in instalment payments and only returned upon CRA processing of the 2016 personal tax return.

Where CRA's requested instalments are remitted, no instalment interest will be charged. Instalments based on 2016 taxes must be made equally by March 15, June 15, September 15 and December 15 to avoid instalment interest. If no payments were made for March and June, remitting payments for September and December can offset the late payment of the earlier amounts. Paying early, and/or paying more than the expected 2016 taxes, will reduce the potential of interest for late payments, and provide a cushion in case actual 2016 taxes exceed the estimated amount.

Action Item: Review your 2015 and expected 2016 tax situation to determine appropriate instalment payments.

LOOMING LIFE INSURANCE CHANGES

Changes Hit in 2017

The 2014 Federal Budget introduced major life insurance taxation changes that received Royal Assent (Bill C-43) on December 16, 2014. These changes take effect in 2017, however, there is still time to take advantage of the old rules if action is taken quickly.

The Exempt Test

Some insurance policies may offer the ability to generate investment earnings exempt from accrual taxation. This is particularly beneficial for policies owned by corporations, as investments outside the policy would be subject to a non-active business tax rates (generally above 50%). There are, however, "exempt test" rules to ensure that this favourable tax treatment is not available to policies that are mainly investment vehicles with only an ancillary insurance element. This test will be modernized to reflect more recent mortality experiences, to provide standardization across insurance companies and products, and to take into account the new products that have emerged in the marketplace over the last 30 years, such as universal life.

Changes to the "exempt test" will reduce many of the tax advantages available. Policies issued prior to 2017 will be grandfathered, and retain a larger window for cash accumulation and tax sheltering than will be available on policies issued after 2016.

Changes to the Adjusted Cost Basis (ACB)

A second major factor for policies issued post-2016 will be the impact on the capital dividend account (CDA) of corporately owned policies. The investment fund portion of a life insurance policy forms part of the death benefit payout, which may become an addition to the CDA.

Dividends paid out of CDA to the shareholders are tax-free. It is often assumed that the addition to the CDA will equal the full balance received on the death of the insured shareholder. However, the addition to the CDA is actually the death benefit (proceeds), less the ACB of the policy. The ACB is generally the total premiums paid less the net cost of pure insurance (NCPI).

The NCPI is a complex calculation; one that must usually be done by the insurance provider.

The change is related to the way that the NCPI is calculated. Effectively, it will take significantly longer for the ACB to decline to zero. This change will result in a much lower CDA addition for many years after issuance of the policy. As such, a smaller portion of the death benefit will be added to the CDA for tax-free payout to the shareholder.

Grandfathering

As indicated above, policies in place before January 1, 2017 will generally be grandfathered. However, alterations to such policies may result in loss of grandfathering. For example, increases in the amount of insurance where medical evidence is required or Term insurance conversions after 2016 may not qualify as pre-2017 grandfathered policies.

Action Item: Consider reviewing your existing coverage soon - don't wait to the end of 2016 as considerable time may be required to implement a new policy.

LOSING SMALL BUSINESS DEDUCTION (SBD)

Intercompany Payments

The 2016 Federal Budget proposed a number of measures to prevent the ability to multiply access to the \$500,000 SBD limit, addressing several strategies which the Government perceived as inappropriate. Broad restrictions in eligibility for the SBD on payments between private corporations in general have been introduced. The restrictions as proposed are so broad that they will affect many corporations and structures where multiplication of the SBD was not a goal or even a consideration.

The measures will apply to taxation years that begin on or after March 22, 2016. For example, a corporation with a December 31 fiscal year-end will first be subject to these

restrictions in the year ending December 31, 2017. A corporation with a March 31 fiscal year-end will first be affected in the year ending March 31, 2017.

In general, these new Specified Corporate Income (SCI) rules will restrict access to the SBD on any active business income (ABI) earned from providing services or property to another private corporation (PayerCo) where there is common ownership. Such income will not be eligible for the SBD.

Consider the situation where ServiceCo provides services to PayerCo, and PayerCo pays a fee back to ServiceCo.

Payments will be restricted by the SCI rules where an interest in PayerCo is held by any of:

- ServiceCo (the corporation providing the service and receiving the fees);
- any shareholder of ServiceCo; or,
- any person who does not deal at arm's length with any shareholder of ServiceCo.

There is no de minimis ownership interest threshold – based on the draft legislative proposals of July 29, 2016, even one share of

thousands will cause these restrictions to apply. In addition, even indirect interest can trigger the SCI rules. For example, if you own 10% of ServiceCo, and your brother-in-law owns one share of thousands issued by PayerCo, these rules could apply.

An exception: if all or substantially all of ServiceCo's active business income (which CRA generally considers to be 90%) is earned from providing services to arm's length persons other than PayerCo, ServiceCo will not be subject to the SCI rules.

The Budget also proposed that PayerCo may be permitted to assign a portion of its own unused SBD limit to ServiceCo to make the payments SCI (a special form must be filed to make the assignment).

Examples of Corporations Potentially Affected

Consider a corporation, OpCo, held by four unrelated shareholders which pays management fees (or some

other type of active income) to four HoldCos each owned by one of the four shareholders (whether in whole or in part).

Under the proposals, the management fees earned by the four HoldCos would not generally be eligible for the SBD, unless OpCo allocated a portion of its own \$500,000 limit amongst the HoldCos. In other words, OpCo and the four HoldCos must now share access to a single business limit, assuming the HoldCos do not have

ABI from other sources. Historically, each of the five corporations (OpCo and the four HoldCos) may each have had full access to the \$500,000 SBD depending on their

ownership and business structure.

As a second example, consider Dr. A, whose professional corporation (PC) carries on a dental practice. Dr. A's spouse owns a second corporation (HyCo), which carries on the hygiene practice at the PC's dental clinic. PC and HyCo are not associated, either by share structure or by de facto control. Currently PC and HyCo each have full access to the SBD. Under the proposals, if HyCo provides its services to the PC, HyCo's income would be ineligible for the SBD, unless one of the exceptions noted above applies.

The proposals are quite broad and there are many existing corporate structures which are, or could be, exposed to these provisions. While the proposals may change during the process of becoming law, it is clear that many existing structures will be affected.

Action Item: Review your current corporate structures to determine if the small business rates will remain applicable, and whether any change in historical planning is appropriate.

LOSING SMALL BUSINESS DEDUCTION

Partnership

Similar to limitations on accessing the SBD on payments amongst certain corporations, the 2016 Federal Budget also proposed changes when payments are made from a partnership. The measures will apply to taxation years that begin on or after March 22, 2016.

Currently, a corporation which is a member of a partnership may claim the SBD on active business income it receives from the partnership up to its pro-rata share of a notional \$500,000 business limit determined at the partnership level (its specified partnership income limit, or "SPI"). For example, if \$500,000 or more of ABI is earned

by a partnership with 10 equal partners, the SPI of each partner would be \$50,000.

A corporation's SPI is added to its active business income from other sources, if any, and the corporation can claim the SBD on the total (subject to its annual business limit).

Some business structures circumvent the application of the SPI rules. In one structure, a shareholder of a corporation is a partner and the partnership pays the corporation as an independent contractor under a contract for services separate from the Partnership Agreement. As a

result, the corporation claims a full SBD in respect of its active business income earned in respect of the partnership because the corporation itself is not a partner. A number of professional services firms, such as those of lawyers and medical professionals, use a structure like this.

To address this, and other similar strategies, the 2016 Federal Budget proposed to extend the SPI rules. Basically, the amount paid to a corporation available for the SBD will be restricted if the corporation has

a shareholder who is a partner, or, if it does not deal at arm's length with a partner.

Action Item: Consider whether your current partnership structure achieves your goals. Be prepared to pay a higher corporate tax rate if affected by these changes.

DIRECTOR LIABILITY

Reliance on the Active Shareholder

In a May 5, 2016 Tax Court of Canada case, at issue was whether the taxpayer (a director and 50% shareholder of the Corporation) was liable for the Corporation's unremitted payroll deductions and tax. A director would not be held liable if he/she had exercised the degree of care, diligence and skill of a reasonably prudent person in comparable circumstances in order to prevent the corporation's failure to remit.

In this case, the taxpayer was informed by the other 50% shareholder, who was involved in the day-to-day operations, that the business was doing well. In reality, the Corporation was in financial difficulty and remittances were not being made.

On receiving correspondence from CRA regarding arrears with its GST and payroll deduction remittances, the taxpayer turned his attention to the corporation's failures. He spoke to the other 50% shareholder about the need to be diligent, as well as stopping by the business every two or three weeks to check on matters.

However, he continued to rely on assurances provided by the other 50% shareholder, even after receiving additional correspondence regarding outstanding source deductions.

Director loses — personally liable for corporate remittances

The Court found that reliance on the other shareholder's word was not acting diligently given the taxpayer's knowledge of the Corporation's financial state. The Court suggested a reasonable person would independently verify that remittance payments were being made, whether by direct contact with CRA, review of the Corporation's bank account, or other approaches. As a result, the Director was personally liable for the unremitted corporate GST/HST and source deductions.

Action Item: Especially in times of corporate financial difficulty, review source documents to ensure that payments to CRA are being made appropriately.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

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