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Updates on Proposed Tax Changes to Private Corporations
(November 2017)

Last month, the Department of Finance ("Finance") announced that they will not move forward with the proposed anti-surplus stripping and lifetime capital gains exemption (LCGE) measures originally included in their July 2017 consultation paper and draft legislations. Please refer to our August 2017 newsletter for highlights of the original proposed tax changes.

Finance also announced that it will provide some relief on corporate reinvestments. It will proceed with measures to target tax deferral advantages from passive investments for private corporations, but only for annual passive investment income over $50,000. There will be no tax increase on annual passive investment income below the $50,000 threshold. The new rules will be applied on a "go-forward" basis, and income from existing investments is "protected".

However, Finance intends to proceed with its proposals to tax on split income (TOSI), but it will "simplify" such income-splitting measures involving private corporations. It also says that family members who "meaningfully contribute" to the business will not be affected. Finance confirmed it will introduce "reasonableness" tests for adult family members ages 18-24, as well as those over 25. The tests will consider their contributions in any combination of the following:

- Labour contributions
- Capital or equity contributions
- Risks assumed (e.g. signing a loan, providing a guarantee, etc.)

It is not clear how Finance will "simplify" such income-splitting measures, and how it will implement the new rules on corporate reinvestments over the $50,000 threshold, but it is likely that they will provide further details in the 2018 Federal Budget.

Planning

The proposed tax changes have not yet passed into law, so it is uncertain whether there will be further changes before these proposed rules become enacted. They are still very broad and not clear. Therefore, it may be difficult to conduct planning around these proposed tax changes.

Finance indicates that it intends to proceed with TOSI which would be effective in 2018. Private corporations should review their circumstances prior to the end of 2017. For example, private corporations may want to consider declaring dividends in 2017, especially since the personal ineligible dividend tax rates will increase from 40.95% in 2017 to 43.41% in 2018 (combined federal and BC rates at the top personal tax bracket for Canadian residents), and where the private corporation has refundable dividend tax on hand. Corporations paying any taxable dividends to Canadian resident shareholders in 2017 will have until February 28, 2018 to report them in a 2017 T5 Statement of Investment Income Summary. Withholding taxes are due by January 15, 2018 on dividends paid to Canadian non-resident shareholders in December 2017.

Where a private corporation has capital dividend account, declaring capital dividends to resident shareholders should also be considered. Please also note that a capital dividend election would need to be filed on or before the day the dividends are payable or paid.

If you would like more information, please contact us and we would be happy to help.