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Tax planning using Canadian private corporations

July 18, 2017 Tax proposals

The Federal Budget, released on March 22, 2017, stated that the federal government would be reviewing tax planning using private corporations, with particular emphasis on sprinkling income, holding passive investments inside a private corporation and the conversion of dividends to capital gains. The Budget promised that over the coming months it would issue a report outlining concerns and policy responses.

On July 18, 2017, the Department of Finance (Finance) released 26 pages of draft legislation, 44 pages of explanatory notes, a detailed consultation paper and a PowerPoint slide deck, all focused on tax planning involving private corporations. Topics addressed in the materials included income sprinkling, the removal of retained earnings on a tax-effective basis, the lifetime capital gains exemption and the accumulation of corporate profits for passive investments. Finance provided a 75-day consultation period, with a deadline of October 2, 2017 for taxpayers' submissions.

What came as a particular surprise to many is the draft legislation included in this material. The March 22 Budget had promised policy responses that would address areas of concern. The release of draft legislation covering all but one of the topics addressed implies that the consultation period is over already. Moreover, most of the short consultation period occurred over the summer months when many stakeholders were on vacation.

This article provides a brief overview of the existing legislation and a summary of the proposed changes and their impact on taxpayers, followed by some suggested planning ideas. Of course, the proposed amendments are not yet law, and may be withdrawn or amended. However, assuming the amendments as proposed currently become law, the following planning consideration may be relevant to you. These planning considerations are of a general nature only and are not intended to be legal advice provided to any person. We urge you to consult with a Dentons tax advisor before implementing any changes.

A. Income sprinkling using private corporations

In general, the term "income sprinkling" refers to tax-planning arrangements whereby income that would have been taxed in the hands of an individual paying tax at a high rate is diverted to and taxed in the hands of a lower-rate individual. Currently the Income Tax Act (the Act) contains legislation, known as tax on split income (TOSI), limiting the effectiveness of income sprinkling involving minors (individuals under 17 years old at the beginning of the particular year).

The TOSI rules apply currently to certain types of income received by a minor with a Canadian resident parent. When the TOSI rules apply, the minor pays tax at the highest marginal personal tax rate (ranging from 44.5 percent to 54.0 percent, depending on the province or territory) on the split income and loses personal tax credits.

The July 18 measures propose an expansion of the TOSI rules, applicable after 2017. Under the proposed measures, both the types of persons who are subject to the rules and the types of income to which the rules apply are expanded, as follows:

1. in addition to taxable dividends received from private corporations and certain income from partnerships and trusts derived from a business, profession or rental activity of a related person, the TOSI rules will now apply to:
   a. "compound income" – meaning income derived from the investment of income previously subject to TOSI and certain other amounts, earned by an individual under the age of 25;
   b. income from certain debt arrangements; and
   c. gains from dispositions of certain property.
2. the meaning of "specified individual" (the person who receives the split income in question) is expanded to include Canadian resident individuals, whether minor or adult. Further, the meaning of "related person" is expanded for TOSI purposes to include aunts, uncles, nieces and nephews. This expands greatly those who may be subject to TOSI.
3. the proposed measures create a definition of "connected individual", generally being a Canadian resident individual with a certain measure of influence over a corporation who is treated as connected with the corporation and is used as the link between the corporation and the "specified individual" receiving the amount in question.
4. the proposals include a reasonableness test for determining whether TOSI applies to an adult. Generally, the test is designed to ensure that amounts received by an adult specified individual from a business where a family member is a connected individual, are taxed at the highest possible tax rate, unless the amount received is "reasonable". What is reasonable depends on several factors. The reasonableness factors vary depending on the age of the adult individual, as follows:
   a. labour contributions:
      i. for specified individuals 18-24 years old, they are actively, engaged on a regular, continuous and substantial basis in the activities of the business; and
      ii. for specified individuals 25 years old or older, they are involved in the activity of the business (e.g. contributed labour that could have otherwise been remunerated by way of salary).
   b. capital contributions:
      i. for specified individuals 18-24 years old, the amount cannot exceed a legislatively-prescribed maximum allowable return on the assets contributed by the individual in support of the business (currently one percent); and
      ii. for specified individuals 25 years old or older, the individual has contributed assets, or assumed risk, in support of the business.

c. previous returns/remunerations:

i. all previous amounts paid or payable to the individual in respect of the business.

Note that the above is only a summary of the most important changes and does not capture all their elements or details. These amendments are complex, difficult to interpret and may lead to unintended consequences. Many taxpayers will not be able to apply these provisions without professional assistance from a tax advisor.

Impact to you

Under the proposed rules, an adult individual who receives split income will be liable for tax at the highest marginal rate on the "unreasonable portion of the split income". As indicated, the rules are expanded to include a very wide and all-encompassing group of persons that may be impacted. Further, the type of income covered is very broad. What is "reasonable" is very uncertain and will be difficult to determine in many circumstances.

Arrangements that work today may not work under the new rules. Individuals who thought they were outside the rules before may find themselves inside the amended TOSI regime and thus subject to high-rate tax.

Do you income sprinkle with family members, even if they are extended family members? Do you have a family trust that is used to flow dividends to a spouse or that may be used to multiply the lifetime capital gains exemption among family members? Do you have any lending arrangements with related parties? All of these arrangements and planning techniques (and many more) are affected.

What should you do?

1. Consider maximizing income sprinkling this year, as 2017 is the last chance to do so under the current rules. Consider:
   a. larger dividends to family members in 2017;
   b. other income sprinkling opportunities in 2017 (e.g., interest,royalties, shareholder benefits under section 15 or deemed interest under section 80.4 of the Act); and
   c. a corporate reorganization to add family members as shareholders to enable dividend sprinkling before the end of 2017.
2. Review salary vs. dividend mix:
   a. the proposed changes do not affect salaries paid to family members (subject to the reasonableness test in section 67 of the Act);
   b. consider if a switch to employment earnings is warranted in each case (be mindful of CPP/EI and WCB requirements).
3. Consider if the reasonableness test for split income can be satisfied for individuals 18 – 24 years old or for those 25 and older.
4. Determine how to calculate and track split income and the reasonable portion thereof.
5. Consider how to record and track re-invested split income (documentation/ systems/program required).
6. Determine what documentation is required for evidencing "reasonableness" of past and current contributions/services to support dividends/salary (timesheets, job description, work tickets, evidence of work product, etc.).
7. Review financing and guarantee arrangements.
8. Identify conferred benefits that may be subject to TOSI (e.g., section 80.4 of the Act).
9. Where TOSI is involved, consider whether a reorganization of shares is required so that each shareholder holds a different class of share to enable dividends to be declared and paid in different amounts on each class to reflect what is "reasonable" for that shareholder.
10. Review any shareholders' agreements with respect to dividend and remuneration provisions. Do they permit unequal dividend/salary payments? Do they need to be amended to reflect this?
11. Review all corporate and partnership structures in light of the expanded definition of "related person" (aunts/ uncles/nieces/nephews etc.).
12. Review all trusts and determine impact of the proposed changes to consider:
    a. what tax advantages have been removed, what still remain;
    b. what is the ongoing purpose of the trust;
    c. whether non-tax reasons validate the continued existence of the trust.
13. Consider whether a private corporation in a group has no purpose other than to sprinkle dividends.
14. Review partnership arrangements and consider amending a partnership agreement to address a change in remuneration from year to year based on a formula that includes the individuals' role in the business, efforts, assets contributed to the business, source of funds for those assets contributed, the risk assumed in respect of the business, strategic influence, equity influence, earnings influence, investment influence and all other amounts already paid to a partner in the past in respect of the business.

15. Consider whether a post-2017 sale of shares or other assets should be accelerated into 2017 to avoid TOSI.

B. Removing retained earnings of a corporation tax-effectively (a.k.a. surplus stripping)

Section 84.1

Whenever capital gains are taxed more favourably than dividends, taxpayers will have an incentive to sell their shares at a gain rather than to keep them for the purpose of earning income from them. For example, depending on the province or territory, a top marginal rate individual taxpayer will pay tax of 22.25 - 27.00 percent on a capital gain, as opposed to 35.72 - 46.97 percent on a non-eligible, taxable dividend.

Since 1985, to prevent individuals from realizing a capital gain by selling shares of a Canadian resident corporation to a non-arm's length corporation, section 84.1 either (a) treats non-share consideration (such as cash or a promissory note) received from the purchasing corporation by the selling taxpayer as a dividend or (b) reduces the paid-up capital of shares the vendor received as consideration from the corporation. A dividend or reduction to the paid-up capital of shares does not occur to the extent of the individual's "hard" adjusted cost base (ACB) in the shares. "Hard" ACB means ACB not arising from certain specific adjustments to cost relating to property owned prior to 1972 or from a sale of the shares by a related individual who claimed his or her lifetime capital gain exemption to shelter a resulting capital gain from taxation.

The draft legislation proposes to amend section 84.1 effective July 18, 2017. The amendments reduce the selling taxpayer's hard ACB of shares by the amount of any capital gain realized since 1985 by a non-arm's length person (the adjustments apply only for the purposes of section 84.1 and do not affect the taxpayer's ACB of the shares for any other purpose). To calculate an individual's hard ACB of shares, it will be necessary to track all of the changes in the ownership of shares that are to be disposed of, from the date of their issuance (or earlier, where the shares were issued as part of a share exchange) to the date of sale. If there have been amalgamations, then the share history has to take into account the predecessor corporations. Even if all of the minute books can be located, it would be unusual for the share transfers in a minute book to reflect capital gains realized either by the transferor or individuals who do not deal at arm's length with the transferor.

As it is likely that the selling taxpayer has the onus to establish his or her hard ACB, there could be a serious problem in providing appropriate support for the calculation.

Impact to you

Until the proposed amendments to section 84.1, it was possible to carry out transactions commonly referred to as "pipeline transactions", where an individual shareholder, at the time of his or her death, owned shares of a private corporation or sold shares of the corporation while alive. If certain guidelines were followed, then these pipeline transactions permitted the taxpayer, or his or her estate to sell shares to a corporation and receive non-share consideration or share consideration with paid-up capital equal to the purchase price without incurring additional income taxes. The proposed amendments to section 84.1 eliminate pipeline transactions. These amendments will almost certainly increase the income tax liability arising as a result of a person's death if the shares of the corporation are to be distributed to beneficiaries and will result in double taxation where shares are sold to a non-arm's length corporation.

An alternative to a pipeline transaction is to have the corporation repurchase the shares received by an estate within the first taxation year after death, so that the resulting capital loss can be carried back to the deceased's final tax return to reduce capital gains resulting from the deceased's deemed disposition of the shares on death. This may reduce the overall tax payable by the deceased, the estate and its beneficiaries.

It has been suggested that no purpose would be achieved in freezing one's estate. In fact, the opposite is true: because of the increase in tax due to the proposed amendments, estate freezing is now more important than ever.

What should you do?

Steps that can be taken to deal with the proposed amendments to section 84.1 include the following:

1. obtain or prepare a share history register dating back to the original issue of shares. Where one share has been substituted for another (such as with a share exchange agreement or an amalgamation) obtain or prepare a share history register for all predecessor shares;
2. keep historical records, such as predecessor minute books, income tax returns and contracts involving share transfers or dispositions in previous years;
3. where books and records are controlled by a person other than the taxpayer, retain copies or obtain undertakings or covenants to maintain the documents (e.g., where there is a share sale with a non-arm's length person and that person controls the records after);
4. where practicable, calculate the adjustments required by section 84.1 and retain a copy of your calculations along with appropriate supporting documentation;
5. pay attention to the one-year limitation to redeem or repurchase shares received by an estate following the death of a taxpayer;
6. consider the merits of an estate freeze as part of an overall succession plan relevant to your particular circumstances;
7. revisit exit strategies that may have been used to purchase departing shareholders' shares in the past. These may be informal arrangements than can be changed as needed or more formal arrangements, such as those contained in a shareholders' agreement, which will require amendments.

Section 246.1

Proposed section 246.1, effective July 18, 2017, deals with surplus stripping. As stated in the commentary dealing with section 84.1, there will always be attempts to remove a corporation's surplus when dividends to individuals bear more tax than capital gains.

The actual wording of the provision appears to be far too broad. Section 246.1 applies when (a) an individual receives an amount from a non-arm's length corporation (b) as part of a series of transactions where there is an increase or decrease in the paid-up capital of the shares of a corporation or a disposition of property (c) it can reasonably be considered that one of the purposes of the transaction is the reduction or disappearance of assets of a private corporation, which (d) results in the individual paying less tax than if he or she had received a taxable dividend from the corporation.

If section 246.1 applies then the receipt of a capital dividend can be treated as a taxable dividend and the corporation's capital dividend account (CDA) is eliminated.

Unfortunately, the Explanatory Notes to section 246.1 do not include a description of the type of transactions that may be affected, creating uncertainty as to the scope of this proposal.

Impact to you

The main areas of concern include the payment of a capital dividend from the increase in a private corporation's CDA arising from a non-arm's length sale of capital assets and the receipt by the corporation of life insurance proceeds in circumstances where the premiums are a significant portion of the life insurance proceeds.

It is even possible that section 246.1 could apply to the return of paid-up capital by a corporation to an individual shareholder and to the payment of a capital dividend as a result of capital gains realized in arm's length transactions. It is hoped that if the provision is finally enacted then there will be clarification that these two types of transactions will not be affected.

What should you do?

1. Until section 246.1 is enacted, there should be extreme caution in paying any dividends from a corporation's CDA or returning paid-up capital to an individual shareholder.
2. All capital dividends should be reviewed carefully and the calculations relating thereto retained with supporting documentation.
3. Record the purpose of all transactions that affect the CDA. Was the underlying transaction undertaken in the ordinary course of the business? Or for some other reason? Was life insurance acquired due to contractual requirements (such as those contained in the loan agreements or a shareholders' agreement) or as a tax-efficient investment?

C. Lifetime capital gains exemption

Under Canadian tax legislation, only 50 percent of a capital gain realized by a taxpayer is included in income and becomes taxable. However, taxpayers may take advantage of the lifetime capital gains exemption (the LCGE), which takes the form of a deduction and enables taxpayers to realize a certain amount of capital gains on a tax-free basis. At the moment, the LCGE is limited to $835,715[1] for capital gains related to small business shares and to $1 million for capital gains related to qualified farm or fishing property. The current legislation refers collectively to small business shares and qualified farm or fishing property as "eligible property" (the Eligible Property).

Currently, the use of the LCGE is not restricted by the taxpayer's age, with the exception of minors who may claim the LCGE with regards to capital gains that result only from an arm's length disposition. Moreover, capital gains that have been allocated to Canadian taxpayers by a trust are eligible currently for the LCGE as long as the property disposed of was small business shares or designated farm or fishing property.

The proposed measures aim to restrict access to the LCGE and are directed particularly to fiscal arrangements that reduce the taxation of capital gains and the utilization of the LCGE by family members. To meet this objective, the proposals target three major areas: (i) age-related restrictions; (ii) the use of trusts; and (iii) the implementation of a reasonableness test. These restrictions will apply to capital gains resulting from a disposition occurring after 2017, subject to the transitional rules discussed below.

(i) Age-related restrictions

Under the draft legislation, the LCGE cannot be claimed by taxpayers under the age of 18 and will not be available for taxpayers aged 18 years or older to the extent of the gain that accrued before the beginning of the year in which the individual turned 18. The individual may use the LCGE to shelter the balance of the gain.

(ii) Use of trusts

The Act permits a trust to realize a gain and, rather than the trust itself paying tax on that gain, distribute the gain to its beneficiaries. Prior to the proposed amendments, the beneficiaries could shelter the distributed gain using their LCGEs, provided the gain arose from the trust's disposal of Eligible Property.

Under the amendments, individuals who are beneficiaries of a trust that

[1] The amount of the LCGE is indexed annually in order to reflect inflation

realizes a gain from the disposition of Eligible Property will no longer be able to claim the LCGE to shelter any such distributed gains. However, under certain conditions, spousal or common-law partner trusts, or alter ego trusts will be eligible to claim the LCGE, as will employee share ownership trusts. As a result, capital gains that occur while the property is held in a family trust will no longer qualify for the LCGE for dispositions that occur after 2017.

(iii) Reasonableness test

For taxpayers who are not subject to the age-related or trust-related limitations discussed above, the possibility of claiming the LCGE will be subject to a reasonableness test[2]. Such a test will be based on the taxpayer's contribution of labour and capital. The application of this test will limit the possibility of claiming the LCGE against capital gains that are not included in the taxpayer's split income.

Impact to you

The draft legislation will restrict significantly the capacity of Canadian taxpayers to benefit from the LCGE through entities held by multiple family members. In addition, transactions between taxpayers will become more complex, as dispositions after 2017 that lead to capital gains will require more information regarding the holding period and the fluctuation of the fair market value of the disposed property, especially if the shares or the property have been held by taxpayers for a significant number of years and if one or more of the proposed limitations were applicable for any of those years. The application of the reasonableness test will result unavoidably in enforcement difficulties and uncertainty for taxpayers.

What should you do?

1. The proposed measures allow taxpayers to make a single election during the 2018 taxation year (the Election Day), through which they will be able to increase their ACB of an Eligible Property under a deemed disposition and re-acquisition. This increase will be limited to the fair market value of the property on the Election Day.
2. Generally speaking, to benefit from this election, the property must have been held from the end of 2017 through the day of the election and must meet the criteria found in the current legislation with regards to Eligible Property, subject to the 24-month holding period test being reduced to a 12-month holding test.
3. This election will not be available for taxpayers who are minors, except for those who have attained the age of 17 years before 2018. Nevertheless, the proposed measures allow minors to claim the LCGE, provided that they dispose of their shares genuinely to an arm's length buyer in 2018. Due to this exception, the draft legislation provides that the TOSI rules will not apply to this capital gain even though it is realized after 2017.
4. The deemed disposition and re-acquisition will enable taxpayers to crystalize capital gains accruing prior to the Election Day. While the election could be interesting for some taxpayers, particular attention should be paid to the potential triggering of the alternative minimum tax (the AMT), especially in the case of individuals who have little other income after claiming the LCGE. The tax paid due to the application of AMT in a given year may be applied against regular tax payable in the following seven years, provided the taxpayer is not subject to the AMT subsequently.
5. Where valuation could be of concern, taxpayers could rely on existing rollout legislation to remove some or all of the property held by a trust. However, this will result in a loss of control over the trust property, which may not be desirable. Trustees will need to consider other methods to exercise control over the property, such as the issuance of voting shares to trustees, registering security interests against the property or specially drafted provisions in a shareholders agreement.
6. The LCGE is not available in respect of capital gains accruing while property is held by a trust. Trustees should consider if a distribution of property to the beneficiaries is advisable (whether on a tax-deferred or taxable basis).
7. Consider removing property from a trust prior to the end of 2017 to make a 2018 election.

D. Setting aside corporate profits for passive investments

Changes proposed to the taxation of passive investments are aimed at removing a perceived unfair advantage that a private corporation has with respect to investing in passive investments using earnings that were subject to corporate tax rates that are less than personal tax rates. The objective of the proposals is to promote a neutral tax regime where an individual investing through his or her corporation should be no better off than a salaried individual investing his or her after-tax earnings.

Brief overview of existing taxation of active and passive income

Active business income: corporations in Canada are subject to lower tax rates on active business income (general corporate tax rate of 26 - 31 percent, or small business rate of 10.5 - 22.5 percent, depending on the province or territory) than individuals who earn such income or a salary directly (i.e., top personal rate of 44.5 - 54.0 percent, depending on the province or territory). However, when a corporation's after-tax profits are paid to its shareholders by way of dividends, such dividends will be subject to personal tax. The result is that the combined corporate and personal tax is the same amount (approximately) as that paid by an individual who earned the business income or salary directly. This is known as tax integration, which is a key tax principle under our existing tax system (i.e., the concept that an individual should be no better or worse off if income is earned directly or through a corporation). It is important to note that for active business income earned through a corporation, integration is achieved only when dividends are paid out to shareholders and the difference between corporate and personal tax rates results in a significant tax deferral advantage that exists until such dividends are paid. This allows greater after-tax retained earnings to be reinvested in the corporation's business.

Passive investment income: unlike the rules for active business income, the current rules do not allow for any tax advantage or deferral in respect of passive investment income earned through a corporation. Passive investment income, such as interest income or rental income, is not eligible for the small or general corporate tax rate on active business income, but rather is subject to a general corporate tax rate ranging from 39 - 44 percent, depending upon the province or territory, plus a refundable tax of 10⅔ percent. The combined rate is slightly higher than the personal rate and so operates like a prepayment of personal taxes. A portion of the corporate taxes paid (30⅔ percent) are refundable when a corporation pays taxable dividends out of after-tax passive income to its shareholders. Individuals receiving the taxable dividends will be subject to personal tax at top rates ranging from 35.72 - 46.97 percent, depending on the province or territory. With respect to capital gains, the 50 percent taxable portion is taxed in a corporation like other forms of ordinary investment income (i.e., the refundable tax regime applies). The non-taxable portion of the capital gain is allocated to the corporation's CDA and can be paid out to shareholders tax-free. Again, the result under tax integration is that the total corporate and personal tax is approximately the same as the total personal tax that would have been paid had the individual earned the passive income directly.

Example

The tax rates used in this example are approximately the average of the tax rates in effect in all provinces and territories.

A Canadian-controlled private corporation earns business income of $100,000 that is subject to a small business corporate tax rate of 12 percent or $12,000. The corporation invests the remaining $88,000 in a passive investment (e.g., a publicly-traded bond paying 5 percent interest annually). The annual interest income

[2] This reasonableness test is the same as that used with respect to TOSI.

received of $4,400 will be subject to the general corporate tax rate on investment income of 40 percent, plus a 10⅔ percent refundable tax, for a total of 50⅔ percent. The net corporate tax rate after refundable taxes are received is 20 percent. The after-tax earnings of $3,520 ($4,400 less 20 percent tax) will be paid as a taxable dividend to an individual shareholder. The individual will pay personal tax on the $3,520 at a rate of 40 percent, or $1,408 will be left with $2,112.

In contrast, an individual earning directly $100,000 of business or employment income who is subject to a top personal rate of 50 percent will have $50,000 of after-tax earnings on hand to re-invest, $38,000 less than the corporation. A $50,000 investment in a 5 percent bond will earn annual interest of $2,500. Such interest will result in personal tax of $1,250, leaving the individual with $1,250.

The perceived unfairness arises because, even though the corporation will be subject to the higher upfront corporate tax on the investment income and the individual will be subject to significantly larger personal tax on the eventual distribution of funds from the corporation when the investment is sold, the value of the initial corporate passive investment will be higher because the starting capital is $88,000 (due to the lower rate of tax on the active business income) rather than $50,000 available to the individual investor, so the corporate owner ends up with more after-tax income from the passive investment.

Overview of proposed rules

Finance is considering a number of possible approaches to establishing fairness in the tax treatment of passive investment income of a private corporation, but its ultimate proposal appears to focus on what it calls the "Deferred Taxation Approach". Under this approach, Finance appears to be willing to allow the initial active business income to be reinvested into passive investments and focuses instead on how the income generated by this advantaged income should be treated.

The proposed changes could be potentially very complex, but in short, there would be an upfront corporate income tax on passive income of about 50 percent as under the existing rules, except that no part of this upfront tax will be refundable. Further, the distribution of the non-taxable portion of capital gains will be treated as taxable dividends, as opposed to a tax-free capital dividend. When the passive income is distributed, individual shareholders will then pay another layer of tax on the dividend (up to 40 - 47 percent, depending upon the province or territory). The result will be that the corporation's passive income will be subject to total effective tax of more than 70 percent between the corporation and the individual. Finance's intention is that, over the life of the passive investment, the shareholder's ultimate proceeds will be equal roughly to those received by an individual who invested with after-tax employment income and therefore did not have the up-front capital velocity advantage.

Impact to you

The proposed changes will affect corporate owners who set aside some of their corporate profits to earn passive investment income but should not impact taxes payable by corporations with no such income. Finance recognizes that there are significant passive assets held in private corporations and that the new proposals are intended to apply only on a go-forward basis.

What should you do?

Removing passive assets from the corporation at this time (before the status of these proposals is better understood) would not be advisable, as doing so could result in significant, up-front, tax. Further, these passive income proposals are only discussions at this point. In identifying a perceived unfairness with respect to investment by individual investors versus company owners, Finance has failed to take into account the very different nature of private business and that there are many good reasons for keeping excess funds in the corporation. As a proactive planning measure, corporations may need to review the nature of any passive investments and consider their purpose in connection with their businesses (i.e., are they a cushion for business contingencies or set aside for future business expansion?)

Concluding remarks

The July 18, 2017 proposals are among the most wide-reaching and complex proposals released by Finance since the 1972 tax reform. Virtually every private corporation in Canada that engages in any type of income-splitting strategy, has acquired any passive investment or has planned carefully to use the LCGE in future must consider these proposals. Shareholders of private corporations are advised to review their specific corporate structure with their tax advisors to determine the extent of the impact on their particular situations. It will also be advisable to review family trusts, private lending agreements and business succession plans, as the taxation of these may be subject to material change. Finally, legal representatives of estates need to be aware of the proposed changes (that have retroactive effect), where it was intended to rely on the tax-paid ACB of shares of a private corporation held by the estate.

These proposals are only in draft form and may be subject to material change before becoming law. Notwithstanding, there are certain planning considerations presented in this article that should be discussed with your Dentons tax advisor prior to 2018, so that you are aware of various options that may be incorporated into future financial and business succession planning.

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