CFAA Update on CCPC Tax Changes

December 14, 2017

In the afternoon of December 13, 2017, the government released its changes to the tax changes on income sprinkling planned for Canadian Controlled Private Corporations (CCPCs). See http://www.fin.gc.ca/n17/17-124-eng.asp.

The proposed tax changes will include clarifications of the process for determining whether a family member is significantly involved in a business, and thus is excluded from potentially being taxed at the highest marginal tax rate (known as the tax on split income or TOSI).

The following tests will automatically exclude individual members of a business owner's family who fall into any of the following categories:

1. **The business owner's spouse, provided that the owner meaningfully contributed to the business and is aged 65 or over**.
2. Adults aged 18 or over who have made a substantial labour contribution (generally an average of at least 20 hours per week) to the business during the year, or during any five previous years.
3. **Adults aged 25 or over who own 10 per cent or more of a corporation that earns less than 90 per cent of its income from the provision of services and is not a professional corporation.**
4. Individuals who receive capital gains from qualified small business corporation shares, if they would not be subject to the highest marginal tax rate on the gains under existing rules.

Individuals aged 25 or over who do not meet any of the exclusions described above will be subject to a reasonableness test to determine how much income, if any, would be subject to the highest marginal tax rate. In certain cases, adults aged 18 to 24 who have contributed to a family business with their own capital will be able to use the reasonableness test on the related income.

Those income sprinkling measures are to be effective starting with the 2018 tax year.

The Government says it will also move forward with measures to limit tax deferral opportunities related to passive investments, and details of that plan will be included in Budget 2018. Those changes may well be of more importance to rental owners than the income sprinkling changes.

Implications for landlords

For landlords the most helpful exclusion is point #3. A rental owner's business is not a professional corporation, and it would not earn 90% or more of its income from the provision of services. (However, a rental management business, which does not own rental property, may well earn 90% or more of its income from the provision of services, and thus be subject to the new rules.)

People in any category of business may be helped by the provision allowing seniors to split income.

It is still not clear whether income from property owned through trusts will be affected.