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Update on new tax legislation – what you need to know

On December 13, 2017, the federal government released proposed legislation to simplify restrictions on income sprinkling (splitting) that were being targeted within the July 18, 2017 release of draft legislation. The revised proposals will become effective for 2018. This makes it imperative for business owners to understand the changes and adjust their business and tax planning accordingly prior to enactment. We urge you to review the summary of the changes provided below and contact us on how the revised proposals may impact your business.

The new release included the introduction of the "bright-line" tests to automatically exclude some family members, and allow income sprinkling for those members who make sufficient contributions to the business. Beginning in 2018, the tax on split income (TOSI) will be expanded to apply in respect of certain amounts received by adult individuals. If TOSI applies, split income is taxed at the highest marginal tax rate. Four general exclusions from TOSI have been introduced. The information below summarizes each of the exclusions.

1. **Excluded shares**

This exclusion applies only to individuals over the age of 24. TOSI will not apply when income is received from excluded shares or when gains arise from the disposition of excluded shares. Excluded shares must be:

- 10% or more of the corporation (by votes and value); and
- The corporation must earn less than 90% of business income from services; and
- 90% or more of the business income must not be derived from a related business

Excluded shares do not include shares of a professional corporation, certain service businesses or shares held through a trust. For 2018, taxpayers seeking to rely on this exclusion will have until the end of 2018 to meet the condition of owning at least 10% of the outstanding shares of a corporation in terms of votes and values.

2. **Excluded business**

An excluded business is a related business where an individual actively engages on a regular, continuous, and substantial basis during the year or in any 5 previous years (do not need to be consecutive). This test applies to individuals over the age of 17. The "bright-line" test should be met for this exclusion to apply. This test requires the individual works at least 20 hours/week in the business during the portion of the year the business operates, or in any 5 prior years.

3. **Reasonable return**

This exclusion considers the following subjective factors in respect of the related business:

- the work performed in support of the related business,
- the property contributed, directly or indirectly, in support of the related business,
- the risks assumed in respect of the related business,
- the total of all amounts that were paid or that became payable, directly or indirectly, by any person or partnership to, or for the benefit of, them in respect of the related business,
- and such other factors as may be relevant

4. **Age 65 and over:** TOSI will not apply to amounts received by a business owner's spouse from a related business if the business owner is age 65 or over and the business owner contributed meaningfully to the business. This exemption also applies to professional corporations.

In addition to the 4 exclusions above, TOSI will not apply to compound income (income earned from the investment of income that was subject to TOSI or other attribution rules) as was proposed in July. Another change from the July proposal is that aunts, uncles, nieces and nephews will not be considered to be related individuals for purposes of these revised TOSI rules.