Tax & Estate Update 2018

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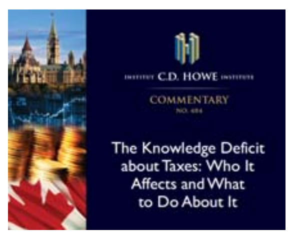
Advocis
March 8, 2018

Agenda

1. Canadian tax administration and enforcement
2. Canadian personal tax update
3. Update on registered plans
4. CCPC tax update
5. Income splitting…what's left?
6. U.S. tax update
7. Best cases and rulings

Canadian tax administration and enforcement

C.D. Howe report: tax literacy



Measured knowledge and skills around:

- Personal income tax
- Sales tax (such as GST/HST), and
- Social transfers

C.D. Howe report — question 1

Do you have to pay tax on a mystery novel?

Yes, but only the 5% federal GST portion*

21% answered correctly

* All provinces except Newfoundland and Labrador exempt books from provincial sales tax or the provincial portion of the HST.

C.D. Howe report — question 2

Do you have to pay tax on dental check-ups?

No - Dental exams are exempt from sales tax

32% answered correctly

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C.D. Howe report — question 3

Which, if either, couple will face the higher tax bill?

Couple A

One partner earns $100K
$21,460 *

Couple B

Each partner earns $50K
$16,570 *

32% answered correctly
24% said they simply didn't know

* In B.C. in 2018, assuming only the basic personal and spousal or partner amounts are claimed.

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C.D. Howe report — "The Knowledge Deficit about Taxes: Who It Affects and What to Do About It"

Conclusions:

- Three main characteristics best predict tax literacy – tax knowledge increased with:
  - Age
  - Family income, and
  - Level of education

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C.D. Howe report — "The Knowledge Deficit about Taxes: Who It Affects and What to Do About It"

Problem with tax illiteracy:

"Policies that use the tax administrative apparatus as a delivery system cannot reach their full potential if citizens don't understand how taxes work in general and how they are affected specifically"

- 55,000 eligible Canadians don't get CPP benefits
- 160,000 eligible seniors don't get OAS (almost $1 billion, pre-tax)
- 150,000 eligible seniors don't get GIS
- 68% of eligible families don't get RESP Canada Learning Bond

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C.D. Howe report — "The Knowledge Deficit about Taxes: Who It Affects and What to Do About It"

Recommendations:

- Governments should publish more information re: seniors programs
- Offer better education initiatives, such as public education campaigns
- Auto-enrollment in social programs

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RESPs — Canada Learning Bond (CLB)

- Annual CESGs (20% X $2,500 / annually)
- Low-income parents:
  - $2,000 CLB / child
  - No contribution required
- **Budget 2018**
  - Link CLB eligibility with Ontario online birth registration service*

* No information in the Budget for other provinces

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Auditor General Report on CRA Call Centres

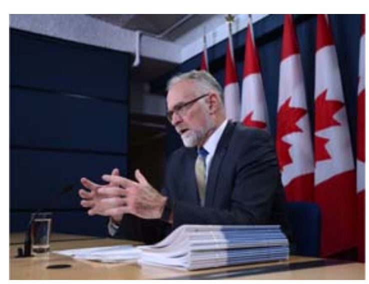

Photo Credit: Sean Kilpatrick / THE CANADIAN PRESS

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Auditor General

Assuming you owed money on your 2015 tax return, as of what date does the government begin charging you arrears interest?

a) 30 days after it was due;
b) May 1, 2015;
c) April 31, 2016 (sic);
d) May 31, 2016;
e) All of the above

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Auditor General report on CRA Call Centres

- CRA says 90% of calls are answered by CRA Agent or Self Service System

Audit findings:

- 53.5 million calls were received by the CRA Call Centres
- Access and timelines:
  - Over 50% blocked: Busy signal / message to see web / call back
  - Only 36% of calls were answered by Agent or Self Service System
- Accuracy:
  - Agents gave inaccurate information almost 30% of the time

Per *2017 Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 2—Call Centres—Canada Revenue Agency*: Data included all calls for the lines included in the audit from 20 March 2016 to 31 March 2017. In addition, we analyzed summary data reports provided by the Agency for all lines over the five fiscal years from 2012 / 13 to 2016 / 17.

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Budget 2018 - Enhancing CRA support

- Comprehensive departmental review of the CRA's service model
- Spend $206 million over five years
- $33.6 million per year on ongoing basis
- Additional funding to enhance its telephone technology
- Hire more agents
- Provide additional training to ensure that Canadians get the correct information when they contact the CRA

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New — trust reporting (2021)

- No annual T3 trust returns if:
  - No income
  - No trust distributions to beneficiaries
- Starting in 2021, most* trusts must report:
  - Identity of all trustees
  - Beneficiaries
  - Settlors of the trust
  - "Protector"

* Certain trust that are excluded from this reporting requirement include: mutual fund trusts, segregated funds trusts, trusts governed by registered plans (e.g. RRSPs, TFSAs, RESPs, etc.), lawyers' general trust accounts, graduated rate estates and qualified disability trusts, trusts that qualify as non-profit organizations or registered charities.

Canadian personal tax update

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Federal income tax rates in 2018

Taxable income	Federal income tax rate
Up to $46,605	15.0%
> $46,605 and ≤ $93,208	20.5%
> $93,208 and ≤ $144,489	26.0%
> $144,489 and ≤ $205,842	29.0%
> $205,842	33.0%

Who is in the “middle class”?

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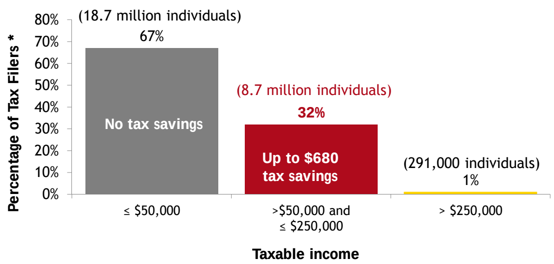

* Approximate percentages, determined using the Canada Revenue Agency’s final income statistics for the 2015 taxation year.

2018 B.C. personal income tax rates

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2018 Taxable Income*	2017 Tax Rates	2018 Tax Rates
Over $ 0 and ≤ $ 39,676	5.06%	5.06%
Over $ 39,676 and ≤ $ 79,353	7.70%	7.70%
Over $ 79,353 and ≤ $ 91,107	10.50%	10.50%
Over $ 91,107 and ≤ $110,630	12.29%	12.29%
Over $110,630 and ≤ $150,000	14.70%	14.70%
Over $150,000		**16.80%**

* 2018 tax brackets are shown (2017 tax brackets were slightly lower)

B.C.2018 combined federal / provincial personal income tax rates (lowest and highest)

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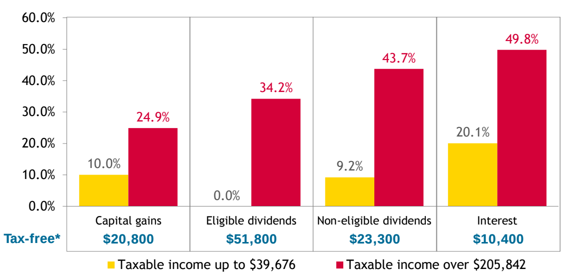

* Approximate amount of income that may be earned without paying any tax when only the basic personal amount and dividend tax credit are claimed. Negative tax rates that may result with low income due to excess dividend tax credits have been ignored.

Targeting the wealthy

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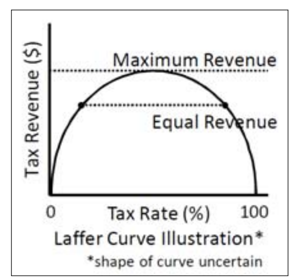
Raising revenue

- Revenue maximizing top marginal rates
- ≤ 50% (2014 Milligan; 1966 Carter Commission)
- > 50% (2015 Osberg)



Source: *Targeting the Wealthy – Good Tax Policy or Good Politics?* Sarah S. Chiu, 67th Annual Canadian Tax Foundation National Conference

C.D. Howe report (January 2018): “How Effective Tax Rates Affect Work Decisions”

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Marginal effective tax rates (C.D. Howe)

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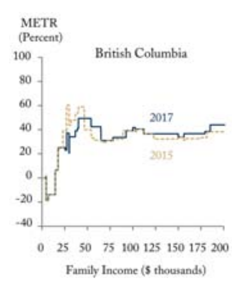


Figure 1: Marginal Effective Tax Rates for a Typical Dual-Earner Family of Four, by Province, available online at https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/METRs%20for%20Families%20E-Brief.pdf

"Boutique" tax credits & other tax inefficiencies

CANADIAN TAX JOURNAL / REVUE FISCALE CANADIENNE (2016) 64:1, 65-133

Policy Forum: The Case Against Boutique Tax Credits and Similar Tax Expenditures

Neil Brooks*

Liberal Senate Forum

September 29, 2016

I was very pleased by what appeared to be plans for a wide-ranging review of our taxation system… on June 17, the government did announce it was undertaking a comprehensive review of federal tax expenditures.
When are the results of that review of tax expenditures expected to be complete…?

Too many "tax expenditures"

- Personal tax expenditures (tax credits, deductions and other special preferences)
  - Increased 27% (to 128) in 18 years (1996 to 2014)
- Financial cost of compliance:
  - Canadians spend nearly $7 billion (~$501 per household) complying with the personal income tax system each year
- Indirect / intangible costs:
  - Adds significantly to the time and frustration in submitting a tax return
  - Must store receipts and fill out additional forms to demonstrate eligibility

"Canada's tax code is too complicated – even for CRA officials", Fraser Institute, December 2017.

Previously eliminated tax credits

- Education amount
- Textbook amount
- Children's fitness
- Children's arts amount
- Public transit

2018 medical expense tax credit

- 15% non-refundable tax credit
- For eligible medical expenses exceeding:
  - 3% of net income or $2,268 federally, ($2,164 in B.C.) whichever is lower

Psychiatric service dogs

- Animal specially trained to assist a patient in coping with various disabilities
  - Blindness, deafness, severe autism, diabetes and epilepsy
- Qualifying expenses include:
  - Cost of animal, care & maintenance, including food and veterinary care
- Dogs for post-traumatic stress disorder

Mendoza v The Queen (2016 TCC 112)

- CRA denied transit credit
  - Required proof of transit usage
- Taxpayer had credit card history for 2013 PRESTO purchases
  - Could no longer get 2013 usage records
- Judge estimated 400 one-way trips were taken in 2013:
  - *"there has to be some guideline by the CRA on an administrative basis that allows for substantial compliance using other evidentiary means where that (transit) organization fails to issue the required documentation."*

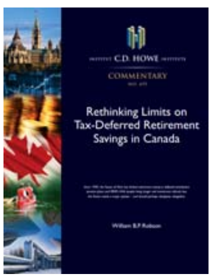
Update on registered plans

TFSA contribution limit

Year	Limit
2009	$ 5,000
2010	5,000
2011	5,000
2012	5,000
2013	5,500
2014	5,500
2015	10,000
2016	5,500
2017	5,500
2018	5,500
Cumulative	**$57,500**

18 years of age
and
resident in Canada

C.D. Howe recommendations for RRSP limit



- Update *factor of nine* assumptions for current economy / demographics
- Increase RRSP contribution limit from 18% to 30%
- Facilitate "catch up contributions" later in life
  - Index unused RRSP contribution room for inflation, or
  - Establish an inflation-indexed lifetime contribution limit, rather than annual tax-deferred limits

In Defense of RRSPs

January 23, 2018

In Defense of RRSPs: Dispelling common myths

Jamie Golombek
Managing Director, Tax & Estate Planning, CIBC Financial Planning and Advice

For over 60 years, the Registered Retirement Savings Plan (RRSP) has been available to build savings for retirement.[1] In recent years, these plans seem to be falling out of favour, with fewer Canadians contributing to RRSPs and a significant number of pre-retirees withdrawing funds from these plans. This report looks at this surprising trend and debunks some of the myths that may be keeping Canadians from saving in an RRSP.

The role of RRSPs in retirement funding

When it comes to retirement planning, how much Canadians need to save is a touchy subject. While some Canadians may spend less in retirement due to a reduction in work-related and other expenses, like paying down their mortgage, others find that retirement expenses stay the same or may even increase, perhaps due to increased costs for travel, entertainment, hobbies, or health expenses.

RRSP myths

1. There's no point investing in an RRSP — you pay all the savings back in taxes when you retire anyway
2. It's better to invest in a TFSA than in an RRSP
3. It's better to pay off debt
4. I don't have enough money to save in an RRSP
5. I don't need an RRSP because I'll have other sources of funds for retirement
6. If I save too much in an RRSP or RRIF, there will be a large tax bill when I die

RRSPs can effectively provide tax-free* investment income

In Defense of RRSPs: Dispelling common myths

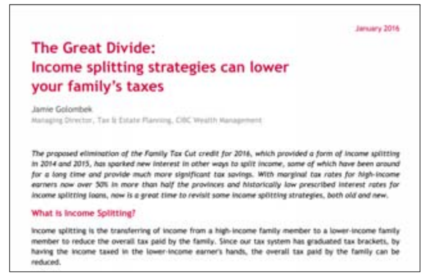
Figure 1: RRSP vs. TFSA vs. Non-Registered Investments, Constant tax rate

	RRSP	TFSA	Non-Registered Investments
Pre-tax income	$3,000	$3,000	$3,000
Tax (33.33%)	n/a	(1,000)	(1,000)
Total amount invested, January 1	$3,000	$2,000	$2,000
Growth (5%)	150	100	100
Total pre-tax, December 31	$3,150	$2,100	$2,100
Tax (33.33% / 16.67%)	(1,050)	n/a	(17)
Net after-tax proceeds	$2,100	$2,100	$2,083

* RRSPs provide the same after-tax rate of return as a Tax Free Savings Account when tax rates are the same upon contribution and withdrawal.

Income splitting… what's left?

The Great Divide: common ways to split income


January 2016

The Great Divide:
Income splitting strategies can lower your family's taxes

Jamie Golombek
Managing Director, Tax & Estate Planning, CIBC Wealth Management

The proposed elimination of the Family Tax Cut credit for 2016, which provided a form of income splitting in 2014 and 2015, has sparked new interest in other ways to split income, some of which have been around for a long time and provide much more significant tax savings. With marginal tax rates for high-income earners now over 50% in more than half the provinces and historically low prescribed interest rates for income splitting loans, now is a great time to revisit some income splitting strategies, both old and new.

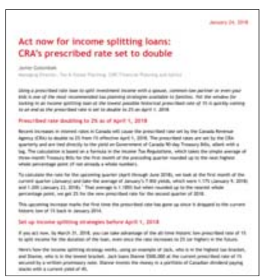
What is Income Splitting?

Income splitting is the transferring of income from a high-income family member to a lower-income family member to reduce the overall tax paid by the family. Since our tax system has graduated tax brackets, by having the income taxed in the lower-income earner's hands, the overall tax paid by the family can be reduced.

Attribution — exceptions

No attribution if:

- FMV is paid for the property
- Prescribed rate loan
  - Rate is **1% until March 31, 2018**
    - *Lowest possible!*
  - Rate will **increase to 2% on April 1, 2018**


Act now for income splitting loans:
CRA's prescribed rate set to double

Income splitting — example of spousal loan at 1% (before April 1)

- Dianne loans Jack $500,000
- Investment earns 5% interest annually

Dianne

$500,000

Interest Expense 1%

Jack

Income	$5,000	Income	$25,000
		Interest expense	(5,000)
		Net income	$20,000

Income splitting opportunity: $20,000
Tax Savings (B.C.2018): $20,000 X (50% - 20%) = $6,000/yr

Income splitting — example of spousal loan at 2% (as of April 1)

- Dianne loans Jack $500,000
- Investment earns 5% interest annually

Dianne

$500,000

Interest Expense 2%

Jack

Income	$10,000	Income	$25,000
		Interest expense	(10,000)
		Net income	$15,000

Income splitting opportunity: $15,000
Tax Savings (B.C.2018): $15,00[illegible]0% - 20%) = $4,500/yr

$1,500 less annually

Income splitting — kids action plan

- If kids < 18, set up family trust (through lawyer)
- Loan to trust at prescribed rate(promissory note)
- Investment income earned in trust paid out to kids (or used for their benefit)
- Kids pay zero (minimal) tax
- Tax-free (public company) dividends to kids
  - About $51,000 (B.C. 2018)

B.C. 2018 — income splitting and funding children’s expenses

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$1,000,000 Capital

Dividends (4%)	$40,000
Tax (34%*)	(13,600)
Net amount	$26,400

Can pay for $26,400 of children’s expenses (e.g. private school)

* 2018 B.C. top marginal tax rate on eligible dividends is 34%.

B.C. 2018 — income splitting and funding children’s expenses with a trust

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$1 million loan @ 1%

Trust

$1,000,000 Investments

		Dividends (4%)	$40,000		
Interest (1%)	$10,000	Interest (1%)	(10,000)		
		Net income	$30,000	Distribution	$30,000

B.C. 2018 — income splitting and funding children’s expenses with a trust

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$1 million loan @ 1%

Trust

$1,000,000 Investments

Can pay for $35,000 **($8,600 more)** children’s expenses

		Dividends (4%)	$40,000		
Interest (1%)	$10,000	Interest (1%)	(10,000)		
Tax (50%)	(5,000)	Net income	$30,000	Distribution*	$30,000
After tax	$ 4,000			After-tax funds	5,000
				TOTAL	$35,000

* Approximately $51,000 of eligible dividends can be earned tax-free by an individual who has no other income and claims the basic personal amount in B.C. in 2018.

CCPC tax update

Changes to taxation for Canadian-controlled Private Corporations (CCPCs)

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Update on the CCPC tax proposals

~~December 2017~~ **March 2018 (after Federal Budget)**

Debbie Pearl-Weinberg
Executive Director, Tax and Estate Planning, CIBC Financial Planning and Advice

Jamie Golombek
Managing Director, Tax & Estate Planning, CIBC Financial Planning and Advice

The federal government first announced proposed changes to the taxation of Canadian-controlled private corporations (CCPCs) on July 18, 2017. The originally-proposed measures focused on three areas: income sprinkling among family members, passive investment income earned within a corporation, and converting regular income from a corporation into capital gains. The government had invited interested parties to comment on the proposals by October 2, 2017 and they ultimately received over 21,000 submissions from various business groups, industry associations and other interested parties. In response to comments received, the Department of Finance made a series of announcements in October 2017 modifying and, in some cases, withdrawing some of the proposals. On December 13, 2017, more detailed revisions were announced to the rules targeting income sprinkling.

Changes to CCPC taxation: where do we stand now?

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- Government signalled its intention to address tax planning strategies involving private corporations:
  - Sprinkling income using corporations
    - December 13, 2017: Revised proposals released
  - Holding passive investments in a corporation
    - July 2017: Proposals for punitive tax on passive income
    - October 2017: Limitations on application announced
    - 2018 Federal Budget: New approach
  - Converting a private corporation’s regular income into capital gains
    - Small Business Week: Proposals dropped!

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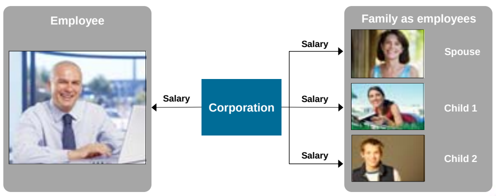
Splitting income using CCPCs — salaries

- Salary can be paid to all employees
- Must be “reasonable” in light of work performed
  - Otherwise, no deduction to corporation
- No proposed changes



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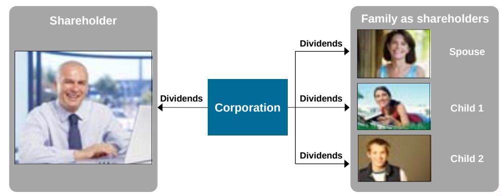
Splitting income using CCPCs — dividends

- Dividends can be paid to shareholders, including family members
- Separate classes of shares allow dividends to be paid to selected shareholders
- Attribution
- Kiddie Tax if under 18
  - New **Tax on Split Income (TOSI)**, “Kiddie Tax for Adults”



Shares of the Corporation may also be held by a trust, with family members as beneficiaries.

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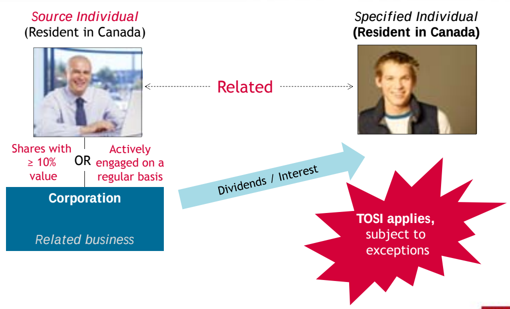
Tax on Split Income (TOSI): who is subject to TOSI?



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Some exceptions to TOSI

No TOSI for Specified Individual (*SI*) if:

1. Excluded business
   - *SI* is 18+ and works 20 hrs+/week in the year or for any five prior years
2. Excluded shares
   - *SI* is 25+ and owns shares with ≥ 10% votes & value
3. Reasonable rate of return
   - *SI* is 18+ and earns a reasonable return compared to Source Individual (more stringent requirements apply to an *SI* who is 18 to 24 years old)
4. Retirement
   - *SI* is spouse/CLP of a Source Individual who is 65+ and not subject to TOSI
5. Qualified Farm/Fishing Property (QFFP)
   - *SI* has capital gains from QFFP

These rules are complex and a tax advisor should be consulted for further details.

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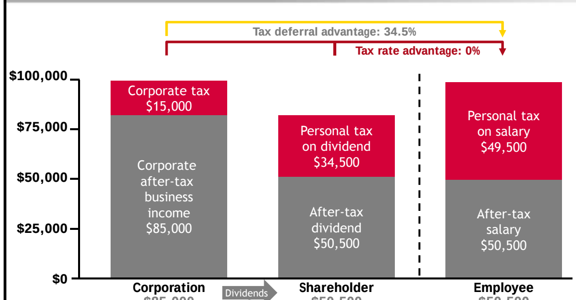
Theoretical tax: $100,000 SBD Income* earned in a CCPC vs. personally



* SBD Income is active business income < $500,000 federally that is eligible for the small business deduction.

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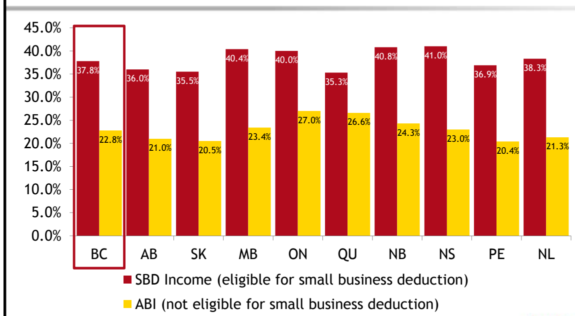
2018 tax deferral advantage on SBD Income and ABI, by province



Source: KPMG, January 2018

July 2017 proposed combined tax rate on investment income using theoretical tax rates

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	Interest	Capital gain
Corporate		
Investment Income	100,000	100,000
Inclusion rate	x 100%	x 50%
Taxable income	100,000	50,000
Corporate tax @ 50.37%	50,367	25,184
Net cash available for distribution:		
Investment income	100,000	100,000
Corporate tax	(50,367)	(25,184)
Net available for distribution as dividend	49,633	74,817
Personal		
Non-eligible dividend	49,633	74,817
Tax on non-eligible dividend @ 42.02%	(20,856)	(31,438)
Net cash to individual	28,777	43,379
Effective tax rate	**71.22%**	**56.62%**

Budget 2018: passive investment income

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July 2017 proposals — Abandoned!

Two Measures:

- Small Business Deduction Business Limit
- Refundable Dividend Tax On Hand (“RDTOH”) Accounts

Effective Date: January 1, 2019

Small business deduction limit (SBD Limit)

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Current SBD Limit

- $500,000 of active business income

Proposed SBD Limit

- Reduce $500,000 limit for CCPCs with “adjusted aggregate investment income” (AAII) >$50,000
  - Reduced by $5 for each $1 of AAII that exceeds $50,000
  - SBD eliminated once AAII >$150,000

Adjusted Aggregate Investment Income (AAII)

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Excludes:

- Taxable capital gains / losses from disposition of
  - Property used principally in Canadian active business of CCPC
  - Share of connected CCPC
- Net capital losses carried forward
- Dividends from connected corporations

Includes:

- Dividends from non-connected corporations (e.g. Public Co. dividends)

Reduction in the SBD Limit based on AIII

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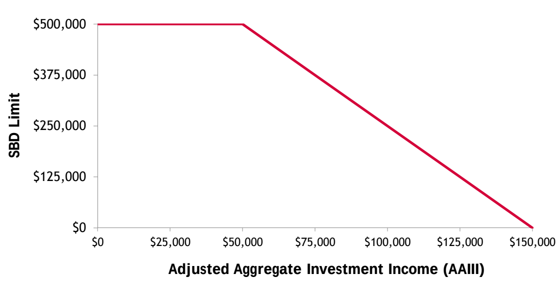

Reduction in the SBD Limit based on AAII

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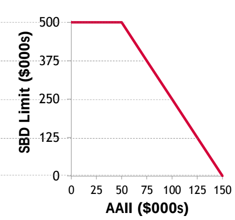
If AAII is…	the SBD Limit will be…	calculated as *SBD Limit – (AIII - $50K) X 5…*
$ 50K	$500K	$500K - (*$ 50K* - $50K) X 5
$ 75K	$375K	$500K - (*$ 75K* - $50K) X 5
$100K	$250K	$500K - (*$100K* - $50K) X 5
$125K	$125K	$500K - (*$125K* - $50K) X 5
$150K	$ 0	$500K - (*$150K* - $50K) X 5



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Passive income — NEW approach

Measures to limit tax planning using private corporations

($ millions)	2017 / 18	2018 / 19	2019 / 20	2020 / 21	2021 / 22	2022 / 23	Total
Holding passive investments inside a private corporation	0	(43)	(305)	(650)	(630)	(705)	(2,333)
Income sprinkling using private corporations (December 2017)	(45)	(190)	(200)	(205)	(215)	(220)	(1,075)
Total	(45)	(233)	(505)	(855)	(845)	(925)	(3,408)

Source: Tax Measures, *Budget Plan 2018*, Finance Canada.

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Passive income — example 1

- Elise – catering business
- Earns $100,000 annually
- Dividends $75,000, retains $25,000 annually

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Passive income — example 2

- Simon, incorporated farmer
- Saves excess investment income in AgriInvest account

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Passive income — example 3

- Claire, retail business
- Invested excess retained earnings in 20% share of clean-tech firm
- Sold investment at profit of $1 MM capital gain, reinvested in new start-ups

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Passive income — example 4

- Amrita owns hotel
- Retains excess funds annually in corporation
- Corp now has $400,000 in retained earnings invested in low-risk bonds

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Passive income — example 5

- Saanvi, retail store
- Keeps large cash on hand to pay employees, suppliers
- Earns “incidental” interest income on deposits

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Passive income — example 6

- Louis owns Profco, earns over $500,000 annually
- Accumulated $5 MM of retained earnings in corporation
- Diversified portfolio of securities

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Strategies for passive income

1. **Keep corporate passive income on post-Budget investments <$50,000 annually**
   - Buy & hold…
   - Defer capital gains
2. **Life insurance investments**
3. **Individual pension plans**
4. **Continue to max RRSPs and TFSAs**

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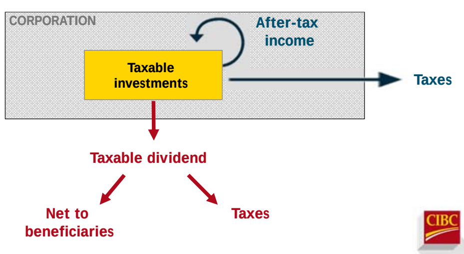
Investments in a CCPC

Accumulation: Tax on investment income

Distribution: Taxable dividend to distribute investments to estate beneficiaries



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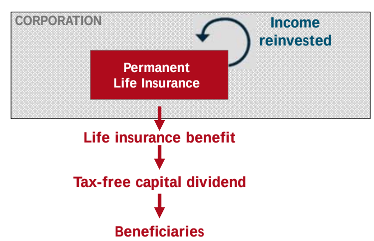
Permanent insurance within a CCPC

Accumulation: No tax on investment income

Distribution: Non-taxable dividend to distribute all or some of investments to estate beneficiaries



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Individual Pension Plans (IPPs)

- Defined benefit plan
  - Provides benefits to an individual person
- Pros:
  - Annual contribution limit* often higher than maximum RRSP limit
  - Creditor-protected to the extent allowed per legislation
- Cons:
  - Setup and ongoing administrative costs
- Suitability:
  - Age 40 or older
  - Income that allows contributions > maximum RRSP contribution limit

* Determined actuarially

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Business owners may still invest tax-efficiently with registered plans

- Private corporation changes may make corporate investing less attractive
- Business owners may still benefit from tax advantages of registered plans

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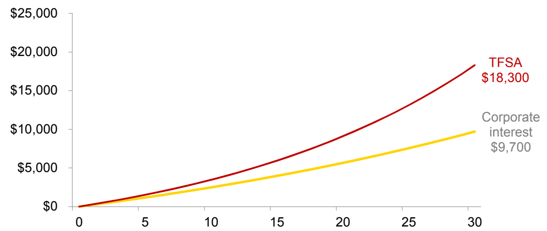
Example – After-tax investment income to shareholder with TFSA vs. corporate interest

Cumulative net investment income and taxes if $10,055 is invested in a corporation vs. $5,500 in a TFSA (5% interest income, Ontario 2017 tax rates)



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Limiting access to refundable taxes (RDTOH)

- CCPC investment income taxed at high rates
  - Includes refundable tax of 38.33%
  - Refundable when ANY dividend is paid
- Currently, CCPC can pay an eligible dividend (taxed at low rate) and generate a refund of RDTOH paid on investment income
  - Normally, investment income is paid as non-eligible dividend (taxed at higher rate)

RDTOH is Refundable Dividend Tax On Hand

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Limiting access to refundable taxes (RDTOH)

Budget 2018

- Two RDTOH accounts going forward
- Dividend refund generally only available where non-eligible dividends paid
  - Exception: CCPC that pays an eligible dividend can get a refund of "**Eligible RDTOH**" (NEW CONCEPT)
  - "Eligible RDTOH"
    - Refundable Part IV Tax paid on eligible portfolio dividends received

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U.S. tax update

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U.S. tax reform

TAX CUTS & JOBS ACT

Enacted December 21, 2017

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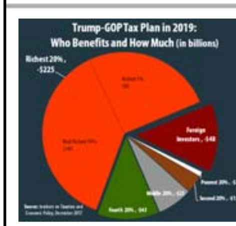
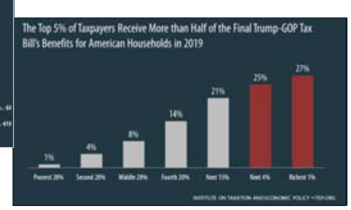
Who benefits from U.S. tax reform?





Source: Institute on Taxation and Economic Policy, *The Final Trump-GOP Tax Bill: National & 50-State Analysis*, December 2017

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Canadian vs. U.S. tax

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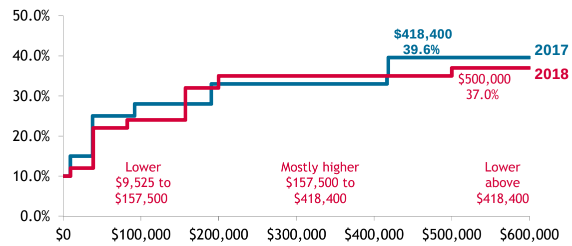
U.S. income tax rates* 2017 vs. 2018 for single individual



Tax brackets will revert to 2017 levels in 2026, unless legislative changes are made.

* U.S. federal tax on income (excluding qualified dividends and long-term capital gains) for a single individual. State and local taxes may also apply.

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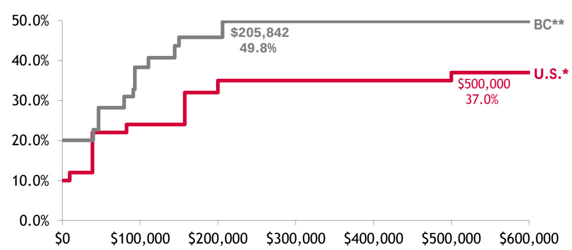
2018 income tax rates U.S. vs. B.C. for single individual



* U.S. federal tax on income (excluding qualified dividends and long-term capital gains) for a single individual. State and local taxes may also apply.

** Combined federal/B.C. tax rates for ordinary income.

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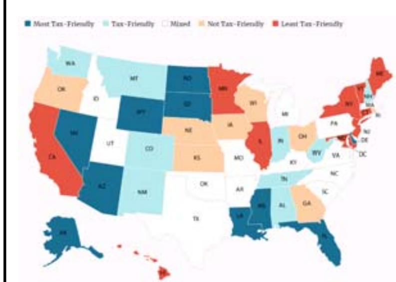
2018 U.S. state personal income taxes



State	Top Tax Rate
CA	13.30%
MN	9.85%
NJ	8.97%
VT	8.95%
NY	8.82%
HI	8.25%
ME	7.15%
CT	6.99%
MD	5.75%
IL	4.95%

Source: Kiplinger Tax Map, January 2018

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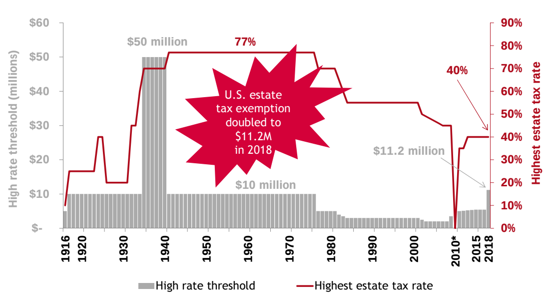
100+ years of U.S. estate tax



* In 2010, a taxpayer could elect high rate threshold of $5 million and highest estate tax rate of 35%.

Source of data: Historical Look at Estate and Gift Tax Rates, CCH 2015.

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U.S. estate tax exemption

In 2018, the unified credit of $4,425,800 eliminates estate tax for an $11.2 million estate

U.S. estate tax exemption will be indexed to inflation after 2018.

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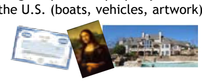
U.S. estate tax for Canadians vs. U.S. persons

"Canadian" Not a U.S. citizen, green-card holder or U.S. domiciliary	**U.S. person** U.S. citizen, green-card holder or U.S. domiciliary
Estate tax on "U.S.-situs" property, such as: • U.S. real estate • U.S. securities (even if held in Canadian accounts, including RRSP, RRIF, TFSA) • U.S. business assets • Tangible personal property located in the U.S. (boats, vehicles, artwork)	Estate tax on worldwide estate: • Includes life insurance that is essentially owned by the decedent



Estate tax applies on the fair market value (FMV) of property owned upon death

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U.S. estate tax exemption is prorated for Canadians

Under the Canada-U.S. treaty, Canadians are allowed a prorated unified credit

$$\textbf{Unified Credit} \times \frac{\textbf{U.S. Situs Assets}}{\textbf{Worldwide Assets *}}$$

* Worldwide assets include death benefits from life insurance owned by an individual.

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U.S. estate tax — example: 2018 calculation for a Canadian vs U.S. citizen

Estate Assets	Fair Market Value	
U.S. condo	$ 1,500,000	
Other non-U.S. assets	13,500,000	
Total estate assets	$15,000,000	
	Canadian	**U.S. citizen**
Estate tax (only on U.S. situs assets for Canadian)	$545,800	$5,945,800
Unified credit (prorated for Canadian $1.5M /$15M)	(442,580)	(4,425,800)
Estate tax payable	$103,220	$1,520,000

Sources: CCH U.S. Master Estate and Gift Tax Guide, Quick Tax Facts.
Canada-U.S. Tax Convention as amended by Protocols to Sept 21, 2007, Article XXIX-B, paragraph 2.

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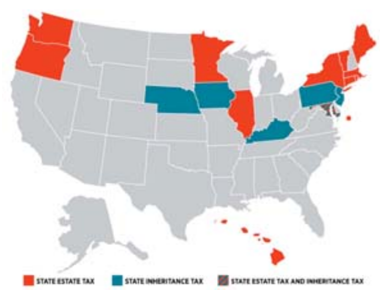
2018 U.S. state estate & inheritance taxes



Source: www.forbes.com/sites/ashleaebeling/2017/12/21/where-not-to-die-in-2018

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U.S. estate tax for Canadians with U.S. vacation properties

February 2018

Estate Tax for Canadians with U.S. Vacation Properties

Jamie Golombek
Managing Director, Tax and Estate Planning, Financial Planning and Advice

A version of this article appeared in the National Post on February 1st 2018.

If you are about to purchase a U.S. vacation property, you may be wondering about the best way to structure the ownership. Should you use a corporation or a trust? Or should the property simply be bought in personal name? What about U.S. estate tax?

The good news is that for the majority of Canadians seeking to buy non-commercial U.S. real estate for personal use, such as a Florida condo or an Arizona vacation home, often the best and most cost-effective solution is simply to buy it personally. The biggest concern with personal ownership, however, is the potential application of the U.S. estate tax if you die owning the U.S. property.

Canada, of course, does not have an estate tax. Instead, we tax only the unrealized appreciation of assets (other than your principal residence) upon death, as well as the fair market value of your RRSP/RRIF. But if you are a U.S. citizen living in Canada or a non-U.S. citizen who owns "U.S. situs property" upon death, you may be potentially caught by the U.S. estate tax.

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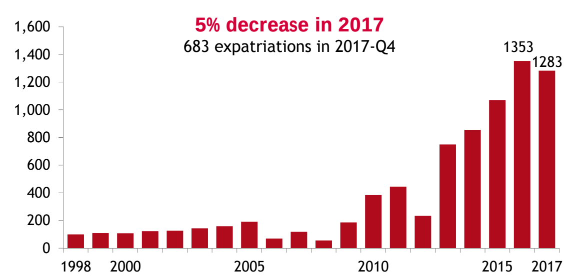
Quarterly average of published expatriates per year, 1998 to 2017



Source: Andrew Mitchell LLC, Forbes and *Quarterly Publication of Individuals, Who Have Chosen to Expatriate* by the Federal Register

Best tax cases and rulings

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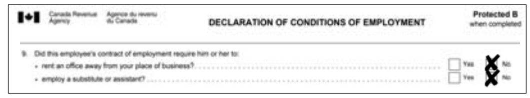
Brown v The Queen (2017 TCC 237)

- Commissioned financial advisor at bank
- Employment expenses: $52,000 in 2011 and $48,000 in 2012
- Said supporting documents were lost when house flooded
  - No photos of damage / invoices for $40K of home repairs

Form T2200



Court said…

- Claim of lost documents not credible
  - Expenses reduced about $45K/$42K for 2011/12

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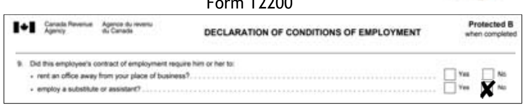
Blott v The Queen (2018 TCC 1)

- Market dealer with Calgary capital management company
- Paid $12,000 as a salary to his wife for administration
- Deducted payments as "office equipment"

Form T2200



Court said…

- No!

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TFSA frequent trading

"millions of additional taxes have been recovered as a result of audits of TFSAs"

- Canada Revenue Agency, 2017 STEP Conference

- Trading activity could constitute a business
- A TFSA must pay income tax on its business income
- Not a concerns for RRSP/RRIF when invested in "qualified investments"

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TFSA frequent trading: factors that may indicate business income

IT-479R - Transactions in securities

- Frequency of transactions
- Duration of holdings
- intention to acquire the securities for resale at a profit
- Nature and quantity of the securities
- Time spent on the activity

"as there is nothing unique about TFSAs in the context of securities trading, there is no plan to provide any additional guidance specific to TFSAs."

- Canada Revenue Agency

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Frequent trading *Foote v The Queen* (2017 TCC 61)

- Certified Financial Analyst with 25 years of experience
  - Co-head of institutional trading at a Canadian investment firm
  - Licensed by securities regulators, including as a trader and dealer
- In 2009:
  - Bought/sold stocks of 34 issuers costing about $2,500,000
  - 38 purchases / 50 sales
  - Hold periods ranged from 1 day to 274 days
  - Total gain of about $550,000
- Stated investment strategy: To invest in diversified securities that he feels have the potential for 30% returns, including distributions and growth, within what he thinks will be a "certain reasonable time frame."

Court said…

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Pakzad v The Queen (2017 TCC 83)

- Denied various business expenses against his employment income
- Judge dismissed the appeal and issued his reasons on June 10, 2016
- Pakzad requested a publication ban of the TCC's reasons, saying:

> *"The personal information and unflattering descriptions of his business acumen, contained in those reasons, would attract the attention of criminals resulting in financial and physical harm to himself, his family and the public."*

Court said…

- *"The personal concerns of a litigant, including concerns about the very real emotional distress and embarrassment that can be occasioned to litigants when justice is done in public" are not, on their own, sufficient grounds to justify a publication ban.*

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Taking the tax man to court could come back to haunt you…

- Information from tax cases is public:
  - Members of the public generally may attend a trial
  - Notice of all Tax Court cases, along with hearing dates and locations, searchable by a taxpayer's name, is available online
  - Reasons for judgment in an appeal may be published on the internet and/or in other publications

Questions & Answers

www.jamiegolombek.com