

CORPORATE TAXATION UPDATE

REVISIONS TO SMALL BUSINESS DEDUCTION

In its budget of March 16, 2016, the Quebec government made significant changes to the small business deduction (“SBD”) rules for Canadian controlled private corporations (“CCPCs”), which will take effect for taxation years beginning on or after January 1, 2017. A new eligibility requirement has been introduced, to the effect that Quebec CCPCs will need to demonstrate that their employees worked 5,500 hours in the year in order to qualify for the Quebec SBD.

In its budget of March 22, 2016, the Federal government also announced changes to the determination of the SBD – using a completely different approach. The Federal changes target CCPCs that receive payments from other corporations if certain conditions are met. Starting with taxation years that begin after budget date, then, and

in the absence of changes to these new rules, Quebec CCPCs will have to determine whether they qualify for the Federal SBD, the Quebec SBD, both, or neither. As a consequence of these changes and the timing for their implementation, owner-managers will need to plan their salary/dividend mix carefully, taking into account the various tax rate changes.

A summary of the tax rates applicable to CCPCs in 2016 and 2017 is set out in the following tables:

COMBINED FEDERAL AND QUEBEC CORPORATE TAX RATES APPLICABLE ON INCOME EARNED IN 2016:

	ACTIVE BUSINESS INCOME		PASSIVE INCOME	RDTOH	DIVIDEND REFUND
	ELIGIBLE FOR SBD*	INELIGIBLE OR OVER \$500K			
FEDERAL	10,5%	15%	38,67%	30 ^{2/30%}	38 ^{1/30%}
QUEBEC	8%	11,9%	11,9%		
TOTAL	18,5%	26,9%	50,57%	30 ^{2/30%}	38 ^{1/30%}

* Note that effective March 22, 2016, unless certain conditions are met, the new rules may disqualify a CCPC from claiming the SBD even where their active business income is below the \$500k threshold. In that case the tax rate matches the “ineligible or over \$500k” column.

COMBINED FEDERAL AND QUEBEC CORPORATE TAX RATES APPLICABLE ON INCOME EARNED IN 2017:

	ACTIVE BUSINESS INCOME				PASSIVE INCOME	RDTOH	DIVIDEND REFUND
	ELIGIBLE FOR FEDERAL AND QUEBEC SBD	ELIGIBLE FOR QUEBEC SBD ONLY	ELIGIBLE FOR FEDERAL SBD ONLY	INELIGIBLE OR OVER 500K \$			
FEDERAL	10,5%	15%	10,5%	15%	38,67%	30 ² / ₃ %	38 ¹ / ₃ %
QUEBEC	8%	8%	11,8%	11,8%	11,8%		
TOTAL	18,5%	23%	22,3%	26,8%	50,47%	30 ² / ₃ %	38 ¹ / ₃ %

To understand the effect of these changes more fully and to plan for optimization, consider contacting your PSB Boisjoli tax advisor.

REVISIONS TO AMORTIZATION OF INTANGIBLE PROPERTY AND GOODWILL

Intangible property such trademarks, customer lists, and goodwill, will be treated as “eligible capital property” (“ECP”) until the end of 2016. Under the current rules, 75% of the costs incurred to acquire ECP are included in an account called the cumulative ECP or “CEC” pool. Each year, taxpayers are entitled to deduct 7% of the CEC pool on a declining balance basis.

The Federal government has concluded that these rules were unnecessarily complex and gave rise to various undesirable transactions and have, effective January 1, 2017, introduced a new class of depreciable property (Class 14.1), with rules to transition existing CEC pools to that class.

Under the new rules, 100% of the costs incurred to acquire ECP will be included in new Class 14.1, with a deduction of 5% of the undepreciated capital cost of the class each year. As a transitional measure, the rate will be 7% for acquisitions made before January 1, 2017.

The new rules may change the strategy involved in the sale of a business. If you are in the process of selling your business and have significant ECP, speak with your tax advisor.

2016 YEAR-END PERSONAL TAX PLANNING CHECKLIST

REMINDER – CHANGES TO PERSONAL TAX RATES

As discussed in last year's edition of the Reporter, the Federal government announced changes to personal income tax rates, with the result that the top marginal rate in Quebec is 53.31% in 2016, for income earned over \$200,000. The marginal Federal rate for income between \$45,282 and \$90,563 decreased to 20.5% from 22%.

In addition, the \$2,000 family tax cut was cancelled, and TFSA contribution limits were reduced. These changes all took effect on January 1, 2016.

OWNERSHIP OF FOREIGN PROPERTY

In recent years, a revised Form T1135 was introduced by the Canada Revenue Agency to provide for more specific reporting on the ownership of foreign property. The form must be completed by any Taxpayer who owns foreign property with a total cost amount of more than \$100,000 CDN. Such foreign property includes, but is not limited to, the following:

- bank accounts;
- shares of non-resident corporations (includes U.S.);
- debt owed to a Taxpayer by non-resident(s);
- interest(s) in foreign Trust(s);
- real estate; and
- other property except personal use property.

Where a taxpayer holds more than \$250,000 of such property, the revised form requires more specific and detailed information such as identifying the name of each foreign entity in which funds are held or the name of each non-resident corporation in which shares are held.

This reporting must be done annually at the time of filing one's personal income tax return. Failure to comply with these reporting requirements can attract a minimum penalty of \$25 a day to a maximum of \$2,500 per year and an incomplete filing can extend the normal reassessment period relating to that fiscal year.

If you are unsure about whether or not this impacts you, consider contacting us for a consultation.

REGISTERED RETIREMENT SAVINGS PLAN

- The deadline for 2016 RRSP contributions will be March 1, 2017. Make your annual RRSP contributions early in the year to begin tax-free compounding as early as possible.
 - The amount deductible in 2016 is the balance of the unused contribution room as at December 31, 2015 plus the lesser of: 18% of 2015 "earned income" and \$25,370, reduced by the 2015 Pension Adjustment.
 - Unused contribution room is the amount of RRSP deductions you are entitled to deduct from previous years less the amount actually deducted.
 - Consider asking your employer to make a direct contribution to your RRSP. The primary advantage of this type of contribution is that you can contribute your salary without your employer having to withhold federal and provincial income taxes.
 - The Canada Revenue Agency (CRA) allows taxpayers to over contribute to their RRSP up to a cumulative excess of \$2,000. Making an over contribution may be advantageous because it will allow you to you earn tax-deferred income even though you are not permitted to deduct the RRSP over contribution.
 - If you are over 71 years of age and you have earned income, consider making contributions to a spousal RRSP if your spouse has not yet reached the age of 71 in 2016.
 - If your 2016 taxable income is low and you anticipate earning more in the future, consider carrying forward your RRSP contribution and claiming a deduction in a future year to claim your deduction in a higher tax bracket.
 - If you receive a retiring allowance, consider transferring it directly to an RRSP (up to the deductible amount) to avoid withholding tax.
 - Any RRSP administration fees should be paid outside the plan; this will allow you to maximize the capital in the plan for future growth.
 - If you turn 71 during 2016, make your annual RRSP contributions before December 31st. Furthermore, your RRSP must be converted to either a Registered Retirement Income Fund or an annuity prior to the end of the year.
 - If you turn 71 in 2016, consider making your 2017 RRSP contribution in December 2016 before the RRSP is wound up. While you will be subject to an over contribution penalty for the period between the date of over contribution and January 1, 2017, you will benefit from an RRSP deduction in 2017. (This assumes that you have earned income in 2016, that you cannot contribute to a spousal RRSP, and that you can benefit from the deduction in 2017).
 - Earned income generally includes :
 - income from employment;
 - income from carrying on a business;
 - taxable support (alimony) received in the year; and
 - net rental income.
- Less the total of:
- losses from carrying on a business;
 - net rental losses; and
 - deductible alimony payments.

HOME BUYERS' PLAN

The Home Buyers' Plan allows a "first time home buyer" to withdraw up to \$25,000 of RRSP funds on a tax-free basis to purchase a home. For a family, each spouse is entitled to withdraw up to \$25,000 from their RRSP for a total of \$50,000.

You are a "first-time home buyer" if you and your spouse have not owned and lived in a home as a principal place of residence at any time during the five calendar years up to and including the year in which the funds are withdrawn. For instance, if you withdrew funds from your RRSP on October 31, 2016, in order to be considered a "first-time home buyer" neither you nor your spouse may have owned a residence at any time after January 1st, 2012.

If you withdraw funds from your RRSP under the Home Buyers' Plan, you must acquire a home by October 1st of the year following the year of withdrawal. In our example, the deadline would be October 1st, 2017.

Amounts withdrawn under this plan must be repaid to your RRSP over a period not exceeding 15 years. The repayment period commences no later than 60 days after the second calendar year following the year in which the withdrawal is made. In our example, the repayments must start on or before March 1st, 2019.

In the year of withdrawal you may claim an RRSP deduction. In order to obtain a deduction, the contribution must remain in the RRSP for a period of not less than 90 days before the withdrawal if that contribution is part of the withdrawal.

Keep in mind that withdrawing funds under this plan will result in the taxpayer forgoing the income that would have been earned on those funds during the period of withdrawal and the related tax-free compounding of that income.

LIFELONG LEARNING PLAN

Individuals may withdraw up to \$10,000 per year from their RRSP, provided they are enrolled in full-time training or higher education for at least three months during the year. The cumulative limit is set at \$20,000 per person.

Generally, withdrawals under this plan are repayable in equal instalments over a 10-year period, with the first repayment due no later than 60 days after the fifth year following the withdrawal.

REGISTERED EDUCATION SAVINGS PLAN

Registered Education Savings Plans ("RESP") can be used to achieve income splitting with children. There is no annual contribution limit to an RESP as of 2007 and later years, however the lifetime contribution is limited to \$50,000 per child.

While the taxpayer is not entitled to a deduction for a contribution made in the year, investment income earned in the plan accumulates tax-free, and will only be taxed when received by the student.

... REGISTERED EDUCATION SAVINGS PLAN

In addition to your contribution to the plan, the federal government provides a Canada Education Savings Grant ("CESG"). This grant will be paid directly into the plan and is equal generally to 20% of the first \$2,500 annual RESP contribution for each beneficiary under age 18, to a maximum of \$500 per year. There is a lifetime limit of \$7,200 for each child.

Depending on family income and in addition to the basic grant discussed above, the CESG rate will be increased on the first \$500 of annual contributions to an RESP in respect of a beneficiary who is under 18 years of age:

- 40% if the child's family has net income for the year of \$45,282 or less or;
- 30% if the child's family has net income for the year in excess of \$45,282 but less than \$90,563;
- 20% if the child's family has net income for the year in excess of \$90,563 \$.

Furthermore, since January 1st, 1998, each minor child accumulates grant contribution room of \$2,500 per year. Therefore, RESP contributions will attract a Canada Education Savings Grant up to the amount of that cumulative room. In this respect, a family that has been unable to contribute to an RESP for one or more years will be able to "catch up" in later years.

If the RESP beneficiaries do not pursue higher education, then the income and the contributed capital may be withdrawn but the Canada Education Savings Grant must be repaid to the government.

Up to \$50,000 of the income withdrawal will be eligible for transfer to your RRSP, to the extent that you have contribution room, and the remainder will be subject to both regular tax and an additional 20% tax (12% if Qc, and 20% other Cases).

In order to be eligible for the Canada Education Savings Grant, a beneficiary must have a social insurance number.

In 2007, the Quebec government introduced a new refundable tax credit to support education savings. This refundable tax credit will be granted to a trust governed by an education savings plan for beneficiaries resident in Quebec that has attracted a Canada Education Savings Grant.

In general, the Quebec financial assistance for education savings provided by the tax credit will be equivalent to 10% of the first \$2,500 of annual contributions to an RESP for children under age 18. Depending on family income, an increase of up to \$50 per year may be added to the basic amount.

The maximum lifetime limit of the Quebec refundable tax credit is \$3,600 per child.

TAX FREE SAVINGS ACCOUNT

Tax Free Savings Account ("TFSA"): the TFSA was introduced in 2009. Unlike an RRSP, which provides for current tax deductibility on contributions and a deferral of tax on growth, the TFSA is not tax deductible for current contributions but is a tax free vehicle thereafter. There will be no tax, including on withdrawal, of the funds or investments within the TFSA including the growth thereon. Individual resident Canadians were allowed to contribute \$5,000 per year for the 2009-2012 taxation years so long as they were the age of majority.

The contribution rate for 2013 to 2014 was set at \$5,500 and \$10,000 for 2015. It was returned to \$5,500 as of January 1, 2016. Any unused contribution room may be carried forward to future years. Therefore, as of 2016, a Canadian resident who was 18 in 2009 and has never contributed to a TFSA has a contribution limit of \$46,500. Over-contributions are subject to penalties and interest.

REGISTERED DISABILITY SAVINGS PLAN

A Registered Disability Savings Plan (“RDSP”) is a tax-deferred plan that was introduced as an incentive for parents and others to create long term savings for individuals who are eligible for the Disability Tax Credit. In brief, the RDSP works as follows:

- Only one RDSP can be created for a beneficiary;
- The disabled beneficiary must be a resident of Canada;
- Contributions into the plan are NOT tax deductible;
- Contributions will attract Canada Disability Savings Grants (“Grants”);
- Contributions may attract Canada Disability Savings Bonds (“Bonds”);
- Income accumulates in the RDSP on a tax-deferred basis;
- There is no maximum annual contribution limit;
- However, there is a maximum lifetime contribution limit of \$200,000;
- Some planning is required in order to maximize a disabled beneficiary’s Grants and Bonds;
- Contributions can be made until the end of the year that the beneficiary turns 59.

Canada Disability Savings Grant

Grants are the amount that the Canadian government will pay into RDSPs. The amount of the Grant is dependent on the following two factors:

- a) the beneficiary’s family income; and
- b) the amount contributed into the beneficiary’s plan in the year. The beneficiary’s family income is computed as follows:

- Until December 31st of the year in which the beneficiary turns 18, the beneficiary’s family income is based on the income information for the purpose of determining the Canada Child Tax Benefit for that beneficiary;
- Beginning in the year the beneficiary turns 19, the beneficiary’s family income is based on the disabled beneficiary’s income and that of his/her spouse.

Where, in 2015, the beneficiary’s family income is less than \$90,563, the Grant shall be computed as follows:

- On the first \$500 of contributions: 3 times the amount contributed (up to \$1,500); and
- On the next \$1,000 of contributions: 2 times the amount contributed (up to \$2,000).

As a result, the maximum annual Grant for low income families shall be \$3,500 (on contributions of \$1,500).

Where, in 2015, a beneficiary’s family income is more than \$90,563, the Grant shall be computed as follows:

- on the first \$1,000 of contributions: one dollar for each dollar contributed.

Thus, for high income earning families, the maximum annual Grant shall be \$1,000 (on contributions of \$1,000). Please note that the cumulative lifetime Grant limit is \$70,000 per beneficiary.

Canada Disability Savings Bond:

In short, a Bond is another form of government assistance that is available for low income earning families. More precisely, the Canadian government will pay up to \$1,000 per year to a RDSP where the beneficiary's family income is less than \$26,359. No Bond is paid where the beneficiary's family income is in excess of \$45,282. The amount of the Bond will be phased out where the family income is between \$26,359 and \$45,282. The cumulative lifetime Bond limit is \$20,000.

Please note that no Grants or Bonds will be paid in years following the year the beneficiary turns 49 years of age.

Other application rules:

Please note that all government Grants and Bonds paid into the RDSP during the ten preceding years must be repaid under any of the following circumstances:

- The RDSP is voluntarily terminated;
- The RDSP is deregistered;
- The beneficiary ceases to be disabled; or
- The beneficiary dies.

Please note that this article is not meant to replace a personal meeting to discuss this subject matter. Should you require additional information on RDSPs, please contact a member of our tax department.

Taxation of RDSP withdrawals?

Generally, beneficiaries must begin to withdraw annual amounts from their RDSP in the year they turn 60 years old. The Grants, Bonds, and income generated within the RDSP will be taxed in the beneficiary's hands as amounts are paid out of the plan. The original contributions, however, are not subject to taxation as they are withdrawn from the RDSP. Please note that the taxable portion is excluded from a beneficiary's income when computing the GST/HST credit, Canada Child Tax Benefits, and the Working Income Tax Benefit. Further, it is excluded when calculating the social benefit repayment.

DEDUCTIBLE EXPENSES / TAX CREDITS

To obtain a deduction or tax credit, the following items should be paid for before December 31, 2016.

- Registered pension plan contributions
- Union dues
- Child care expenses
- Attendant care costs
- Moving expenses
- Support (alimony) payments
- Political contributions
- Interest on student loan
- Physical education costs (fitness & sports) for children under 16 years old
- Artistic, cultural, recreational costs for children under 16 years old
- Investment counsel fees
- Professional membership fees
- Employment expenses
- Tuition fees
- Medical expenses (*)
- Charitable donations
- Interest expense
- Public transit passes
- Acquisition of a first home that meets the requirements of the First time Home Buyer's Tax Credit

(*) Disbursements in a period of 12 months ending in the year.

CAPITAL GAINS/ LOSSES

Individuals can realise up to \$824,176 (indexed for inflation in 2016 and subsequent taxation years) of capital gains free of personal income taxes when they dispose of Qualified Small Business Corporation Shares or Qualified Farm Property. Taxpayers holding such shares must ensure that the shares meet all eligibility criteria, or if not, steps must be taken to make the shares eligible.

The timing of when you decide to dispose of capital property is very important. For property that has appreciated in value, consider selling it only in January as opposed to the current calendar year. This can result in a one-year deferral of tax. Similarly, for property that had depreciated in value consider selling it before December 31, 2016. This will trigger a capital loss that can be used to offset any capital gains reported in the year.

In cases where you have realised large capital gains in calendar years 2013, 2014, or 2015 and you paid income tax on those gains at the top marginal tax rates, consider triggering capital losses to the extent of those gains prior to January 1, 2017. The purpose of the above is to allow you to recuperate taxes paid in prior years.

Note that any unused capital losses may be carried-forward indefinitely to be applied against future capital gains.

...CAPITAL GAINS/ LOSSES

For investments in shares traded on the stock market, the selling date of the shares for tax purposes is the date of settlement of the transaction (i.e., three working days after the date of the transaction). For a sale of shares to be effective in 2016, the transaction must take place no later than December 23, 2016 for Canadian equities and no later than December 27, 2016 for U.S. equities. Please contact us should you require further information regarding foreign or emerging market equities.

A capital loss incurred by an individual on the transfer of shares to his RRSP is deemed to be nil.

Gifts of publicly traded shares and stock options to registered charities may be eligible for an inclusion rate of 0 on any capital gain realized on such gifts. The result is that the otherwise taxable capital gain would not be included in taxable income.

SELF-EMPLOYMENT INCOME

Individuals residing in Quebec are required to pay contributions to the Health Services Fund (HSF) on non- salary income.

Self-employed individuals operating a successful business should consider whether incorporating the business would provide additional benefits. Many professional orders now allow their members to incorporate.

Self-employed individuals wishing to claim home office expenses must ensure that the work space is either:

- a) the principal place of business of the individual; or
- b) used exclusively to earn business income and to meet clients on a regular and continuous basis.

Where the above-mentioned conditions are met, deductible expenses include, but are not limited to, a portion of property taxes, mortgage interest, rent, heat, electricity, insurance and other maintenance expenses. Where home office expenses create or increase a business loss, the amounts are not deductible against other sources of income, but they may be carried forward. This applies both federally and provincially.

BUSINESS LOSSES

Some of the ways you may utilise losses realized in the year from an unincorporated business are:

- carrying the losses back three years and/or forward twenty years against other sources of income;
- collapsing RRSP's;
- reducing or not claiming discretionary deductions; and
- accelerating receipt of other income (i.e. dividends).

PENSION INCOME

For taxpayers 65 and older, subject to certain threshold amounts, up to \$2,000 for Federal and \$2,185 for Quebec, of qualified pension income is eligible for federal and provincial tax credits. Qualifying pension income does not include Old Age Security or Quebec Pension Plan benefits.

If you are 65 or older and you are not in receipt of qualifying pension income, consider purchasing an annuity or converting your RRSP into a RRIF which will generate income eligible for the credit.

Since 2007, couples are given the option to split retirement income. This measure will enable taxpayers who receive retirement income, such as payments under a registered pension plan, annuity payments from a registered retirement savings plan (RRSP) starting at age 65 and annuity payments under a registered retirement income fund (RRIF) to allocate up to 50% of this income to their spouse.

INCOME SPLITTING

Spouses and children can be paid reasonable salaries from a family-run business. Note that the salary paid must be reasonable for the work performed.

Income attribution rules do not apply to capital gains earned on loans to minor children. Therefore, consider giving or loaning money to children to purchase investments with a low current yield but high capital gain potential. Although the income may be attributed to you, the capital gain will be taxed in your children's hands and be subject to their tax rates.

Income splitting can be achieved in families with two working spouses by having the higher income earner pay as much of the family living expenses as possible and allowing the other spouse to save and invest his/her income. The overall purpose is to achieve taxation at the lowest possible marginal rate.

Income attribution rules do not apply to income earned on loans made to a relative (e.g. a spouse, an adult child, or a trust created for the benefit of minor children) where the loan bears interest at the rate equal to (or greater than) CRA's prescribed rates. The prescribed interest rate is 1% for the fourth quarter of 2016. Historically, the prescribed interest rate is comparably low. Although the interest on the loan would be taxable in your hands, the excess returns would be taxed at your relative's tax rate. As mentioned above, the overall purpose is to achieve taxation at the lowest possible marginal rate. For additional application rules, contact a member of our tax department.

TAX INSTALMENTS

Ensure your required quarterly instalments are made on time to avoid non-deductible instalment interest and instalment penalty charges.

If your current year's income is lower than the previous year, consider reducing your calculated instalments accordingly.

U.S. TAX ISSUES TO CONSIDER PRIOR TO DECEMBER 31

Have you spent more than 120 days in each of the last three years (including 2016) in the United States. If so, you should be filing Form 8840 "Closer Connection Exception Statement" to protect your status as a non-resident and to avoid having to file the FBAR "Report on Foreign Bank and Financial Accounts". Note that the failure to file the FBAR on time, if required, results in an automatic \$10,000 penalty.

Do you have any U.S. real estate and/or stocks and bonds? If so, you may be exposed to U.S. estate tax if the value of your worldwide estate is greater than \$5,450,000 USD in 2016.

If you are unsure about whether or not this impacts you, consider contacting us for a consultation.

OTHER PLANNING TIPS

If you are over the age of 65 and cash flow permits, consider delaying the application for your Quebec pension until the age of 70. Such a delay increases the pension amount by 0.7% for each month following your 65th birthday to a maximum of 42% at age 70.

If you are over the age of 65 and cash flow permits, consider delaying the application for your Old Age Security Pension until the age of 70. Such a delay increases the pension amount by 0.6% for each month following your 65th birthday to a maximum of 36% at age 70.

If you are considering making an acquisition that will allow you to claim CCA (capital cost allowance) (e.g. – automobile) consider making the purchase before the end of the year rather than early in the New Year. This will allow you to accelerate the CCA claim by one year.

Attempt to convert otherwise non-deductible interest expense into deductible interest. Using available cash pay down personal loans and credit card balances, and then borrow money for investment or business purposes.

Since interest rates on credit card balances are normally very high, consider refinancing alternatives such as a consumer loan or line of credit. This will significantly reduce the cost of non-deductible interest.

Consider Revenue Quebec's rules that, since March 30, 2004, limit the deductibility of investment expenses for Quebec tax purposes to the investment income earned in the taxation year. Investment expenses that cannot be deducted in a given taxation year may be applied against investment income earned in one of the three preceding taxation years or in any subsequent taxation year.

Consider combining the claim for medical expenses. This will include eligible expenses incurred by you, your spouse, and your eligible dependents.

Since 2005, Revenue Quebec requires an employer that makes an automobile available to an employee to obtain from his employee a copy of the logbook that the employee keeps for the automobile, no later than the tenth day after the end of the year; or the tenth day after the end of the period in which the automobile was made available to the employee. If an employee does not provide his employer with the logbook within the prescribed time limit, he will incur a penalty of \$200.

In 2010, Quebec introduced a new stock savings plan, the SSP II, to facilitate the financing of medium-sized businesses on public savings markets. The characteristics of this new regime are as follows:

- Maximum assets of the eligible corporation is set at \$200 million;
- The tax deduction granted to individuals is set at 100% of the eligible investment;
- The minimum holding period for eligible shares is set at two years.

Consequently, consider investing in this new plan before December 31, 2016 to claim a deduction of 100% on the eligible investment for 2016 taxation year.