

SPRING 2019

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the newsletter of Prentice Yates & Clark

Tax Changes for 2018/19

Whether you prepare the return yourself or have them prepared by your CPA, it's almost time for all Canadians to be gathering their paperwork together for their 2018 personal tax returns. So, what changes for 2018 might affect your business? And, what other tax changes are coming into effect in 2019?

Changes Affecting Canadian-Controlled Private Corporations

The federal small business tax rate decreased to 10% as of January 1, 2018, and by a further one percent to 9% as of January 1, 2019. The personal tax rate for ineligible dividends increased to offset those decreases in order to maintain "integration" – the concept that the tax burden for income earned by an individual personally should approximate the combined corporate and personal tax paid if that income was earned through a corporation and then paid out as a dividend to the individual.

Ineligible dividends are those that are paid out of corporate income that has benefitted from preferential tax treatment, either through:

- the reduced small business tax rate noted above, or
- the refundable dividend tax treatment for certain investment income earned in private corporations

Changes to the Tax on Split Income (TOSI) Rules

- Possibly the most significant tax changes are those affecting the shareholders of private corporations.
- The TOSI rules were first introduced in 1999. They were developed in order to limit the benefit of tax structures that mainly aimed to reduce a family's overall tax burden by splitting income with minor children.
- The 2017 federal budget identified similar concerns with income split between adult family members, and new rules were introduced that became effective January 1, 2018. These new rules are complex, but essentially they extend the TOSI rules to adult family members. Some sources of income are exempt from the TOSI rules, with different exemptions applying to those between



18 and 24 years old from those that apply to Canadians 25 or older.

Excluded business

Income from an excluded business will not be subject to the TOSI rules for individuals between 18 and 24 years old. The excluded business rules focus on the individual's contribution to the business, and require that the individual has been actively involved in the business on a regular, continuous and substantial basis. Income for adults in this age group would also be excluded if it is under a specific amount, which is calculated using a legislatively-prescribed rate applied to the value of the assets that the individual has contributed to the business.

Excluded shares

In addition to the excluded business exception, Canadians 25 years and older have additional exceptions for both of the following:

- income from excluded shares, which apply where the individual owns more than ten percent of a non-services-based company
- a "reasonable" return based on the contributions of the individual. These contributions may be financial (capital contributed), based on one or both of:
 - the work that he or she does (after considering any remuneration they already receive for that work)
 - risks that he or she has assumed

There is an additional exception for spouses over 65 years old.



Tax Changes for 2018/19 - continued

Changes to Taxation of Passive Income

In addition to the changes just discussed – and which affect the shareholders of private corporations – there are also changes, effective for taxation years beginning after 2018, to the taxation of passive income earned within a Canadian-controlled private corporation (also known as a “CCPC”).

These rules are designed to limit the deferral advantage available to these private corporations, since they invest income that has been taxed at the low small business rate passive investments are subject to. In contrast, individuals who earn income personally would pay higher tax, and therefore would have less after-tax income to invest.

These changes to taxation of passive income reduce the access to the small business tax rate by \$5 for every \$1 of “adjusted aggregate investment income” above \$50,000. They are also very complex, especially since some provinces, such as Ontario, have announced that they will not parallel the new federal passive income rules.

Other Changes

The new year brought in **increased Canada Pension Plan (CPP) contributions** designed to fund the enhanced CPP benefits in the future. However, a slight offset to those higher CPP rates exists and will be noted, as the Employment Insurance contribution rates have decreased. For more information, please see www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-enhancement.html

The federal government’s new **carbon pricing mechanism** will also come into effect in those provinces that do not have a carbon pricing mechanism of their own. This will result in increased costs for fossil fuels and the services that they support starting in April 2019, with a direct rebate to consumers to offset some of those cost increases.

Other than the changes discussed above to the tax rate for ineligible dividends, no changes are coming to the personal tax rates for other sources of income: salary, capital gains, and eligible dividends (generally those from public companies). The tax brackets and personal credit amounts are adjusted for inflation.

The **public transit tax credit** was eliminated as of July 1, 2017, so you might notice this credit disappearing completely for 2018 when you prepare or review your tax return. Also new for 2019: low-income workers can qualify for an increase in the **Canada Workers Benefit**. However, they will not receive the extra money until 2020.

In summary, while there were relatively few changes to the tax rules in 2018/19, those changes that were introduced for private corporations and their shareholders are complex and may have a significant impact on those affected. **To see if these changes affect you or your business, it’s worth meeting with your CPA. ♦**



Strategies to Help Businesses Comply with Canadian Privacy Laws

Privacy and data security are becoming an area of significant concern for both businesses and individuals. It is important you understand the laws and your obligations in this area to reduce and mitigate risks.

Overview of the Privacy Regime in Canada

The *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 (PIPEDA) is Canada’s federal privacy law for private sector businesses. It sets out the ground rules for how businesses must handle personal information.

PIPEDA requires businesses to obtain a person’s consent when they collect, use or disclose personal information in the course of a commercial activity.

Commercial activity is defined as “any particular transaction, act, or conduct, or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists” [s.2(1)]. What constitutes commercial activity depends on the facts. For example, a court-appointed trustee-in-bankruptcy who collects personal information to administer a bankruptcy was found to engage in commercial activity because it received remuneration for administering the bankruptcy [PIPEDA case summary 2006-336]. Similarly, a non-profit daycare that was subsidized by a municipal government was found to engage in commercial activity because it received payment for child care services [PIPEDA case summary 2005-309].

Some organizations may be exempt from PIPEDA in provinces that have enacted their own privacy legislation that is substantially similar to PIPEDA. To date, Quebec, Alberta and B.C. have enacted provincial privacy legislation that is deemed substantially similar to PIPEDA. Nevertheless, PIPEDA continues to apply to international and inter-provincial transfers of personal information by private-sector businesses in those provinces.

Personal Information

Personal information is defined as “information about an identifiable individual” [s.2(1)]. This includes both factual and subjective information about a person. Factual personal information includes information such as a person’s name, address, phone number, email address, ID numbers, and more sensitive information such as credit card information and financial information. Subjective personal information includes information such as a person’s opinions, evaluations and comments. Canadian courts have interpreted personal information so broadly that it also includes information that does not alone identify an individual but when combined with other information, does identify an individual.

Strategies to Help Businesses Comply with Canadian Privacy Laws- continued

PIPEDA's 10 Fair Information Principles

Businesses subject to PIPEDA must follow a code for the protection of personal information. The code consists of 10 fair information principles that are set out in Schedule 1 of PIPEDA.

In addition to requirements around how to collect personal information, the fair information principles require businesses to appoint a chief privacy officer who is responsible for the business' compliance with PIPEDA, make their personal information handling policies publicly available, and allow individuals access to their personal information.

The fair information principles also require businesses to adopt security safeguards appropriate to the sensitivity of the information. For example, more robust security measures must be put in place to protect sensitive personal information such as financial information and medical records whereas less stringent security measures may be adopted to protect basic personal information such as name and email address.

Compliance Strategies for Businesses

The following six strategies will help businesses comply with their obligations under PIPEDA.

Develop a privacy policy and post it on your website. Businesses should develop a comprehensive privacy policy that sets out in detail what personal information it collects, why it collects it, how it uses it and to whom it discloses it. This privacy policy should also address other items such as what security measures are in place to protect the personal information and whether the information is transferred across borders. The privacy policy is an outward public-facing document that informs your clients and customers about how you manage their personal information.

Develop a privacy management program and train your employees. A privacy management program is an internal "how to" manual for businesses and their employees. It sets out in detail the policies, practices and procedures the business must adopt in order to comply with its privacy policy. In addition, businesses should train their employees on their privacy management program.

Develop a data breach response plan that complies with PIPEDA's new breach reporting requirements. On November 1, 2018, PIPEDA's new mandatory breach recording and record-keeping requirements came into effect. These new provisions impose requirements on businesses to keep track of every "breach of security safeguards" and report significant ones to the Office of the Privacy Commissioner of Canada and individuals affected by the breach. In order to comply with these requirements, businesses should develop a data breach response plan, which acts as the company's "playbook" in the event of a data breach.

Adopt appropriate security measures and ensure data security is up-to-date. Businesses should adopt security measures that are appropriate to the sensitivity of the personal information. Businesses should also ensure that all data security is up-to-date. This may include, for example, ensuring all critical security patches are applied as soon as possible or within a reasonable period of time.

Obtain express consent whenever you can. While PIPEDA allows businesses to rely on an individual's implied consent to the collection, use and disclosure of personal information in appropriate circumstances, businesses should nevertheless obtain an individual's

express, written consent where possible and maintain a record of that consent in order to avoid any ambiguity in the consent process.

Conduct a periodic review of your personal information handling practices and policies. Businesses should review their privacy policies and personal information handling practices annually to ensure they are up-to-date or make any amendments as necessary.

In the age where privacy breaches are splashed across the media, it is important for businesses, both big and small, to ensure they have appropriate privacy practices in place. This not only complies with the law but also demonstrates to clients and customers that you care about the personal data they entrust you with. ♦



Electronic Signatures

Owner-managers have adapted quickly to transferring funds electronically, paying invoices online and scanning and sending data to and fro.

When it comes to product delivery, contracts or agreements, many are still relying on hardcopy signatures or faxed copies of paperwork to finalize the deal or witness product or service transactions. This process can be time-consuming, with the need to attend your solicitor's or client's site, or to print and file shipping or receiving documents.

Signing documents electronically is a great solution for saving time while ensuring they are legally binding.

Two types of signatures are available that help make this process easier: a digital signature and an electronic signature.

1. Electronic signatures, as the name implies, require the signatory to sign the document which, in effect, has the same legal standing as a handwritten signature.
2. Digital signatures, on the other hand, utilize user-friendly, secure cryptographic protection on your signature and offer end-to-end privacy.

Both methods produce the same effect: The signed document is recognized as an authentic signature of a signatory and meets the Canadian standards for electronic signatures.

Inside PYC

The annual **Co-operative Housing Federation of Canada** conference will be held in London, ON from June 5th to 8th. J.J. Pauze and Viola Bardhoshi will be attending. We will be delivering one workshop; "End of Section 95 Operating Agreements" and participating in the trade show; please come and visit our booth.

Congratulations to Erin McNeil, Manager, Applegrove Co-operative Homes. Ms. McNeil won the gift basket courtesy of Prentice Yates & Clark at the recent **Golden Horseshoe Co-operative Housing Federation AGM/Winter Workshops Supplier Expo** in St. Catharines, ON.

Electronic Signatures - continued

Canadian law regarding electronic signatures is under the guidance of the *Personal Information Protection and Electronic Documents Act* (PIPEDA). It states:

- “An electronic signature means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document”
- “A secure electronic signature is as an electronic signature that
 - is unique to the person making the signature;
 - the technology or process used to make the signature is under the sole control of the person making the signature;
 - the technology or process can be used to identify the person using the technology or process; and
 - the electronic signature can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been changed since the electronic signature was incorporated in, attached to or associated with the electronic document.”

Android or Apple?

Most businesses will require electronic signatures with hardware and software that will allow someone to sign off on a document from anywhere. Whether you have Android- or Apple-based hardware and software, you can buy a tablet or iPad that's Microsoft Word or Excel-compatible, and allows PDF signing in an application such as Adobe Acrobat. In theory, they let you start e-signing right “out of the box.”

Hardware Cost

Hardware cost for signature pads varies from \$150 to \$650. The less expensive models provide a basic touchpad and stylus, while the more expensive approach legal-sized electronic units that will provide an electronic copy of the document and a hardcopy if needed. Regardless of the unit you're considering, ensure your choice includes high-quality biometric and forensic capture techniques to guarantee confidentiality and reliability.

What to Look For

Most companies that offer electronic signature capabilities should provide the following:

1. You should be able to provide your signature via all of the business's formats (smartphone, laptop, etc.). Using your finger, stylus, mouse or keyboard makes it valid.
2. It should enable a complete audit trail with date and time stamps and in-document checkboxes that ensure signees follow the expected procedure in a reasonable timeframe.
3. Your documents should be secure, encrypted and legally binding in every country.
4. It should create unique signatures that can only be used by the signatory. (Only individuals authorized by an organization have document access, and all files are encrypted during transit and storage.)
5. Signatures should be able to be stored securely in the Cloud and at your premises.
6. User authentication methods should be equal to the transaction's security need.
7. There should be multi-party signing capability for items needing more than one signature.
8. You should be able to track the progress of the document.

9. The solution should be able to integrate with the application your company is already using, such as Google Drive, DropBox or SalesForce.

And the Cost ...?

The cost of obtaining and maintaining your electronic signature template is tricky to find and understand. Most websites will not provide a specific quote. Some will start with a basic per-year cost, but will still require that you contact them to see if your business is able to take advantage of bulk discounts or discuss whether your specific application requires additional features that add to the cost. Companies such as Adobe may offer their service as part of an integrated package. Packages are usually sold for a flat monthly or an annual fee, or are based on the number of senders (similar to costing structures of most software, where more users means higher cost). Or you may pay on a per-signature basis.

As you can see, good business practice suggests that determining what the business requirements are before making a final decision will avoid disappointment and expensive upgrading. You will need to contact the supplier for help determining your specific needs, then work with them to agree on the costs to the organization for such a solution, based on how you will integrate existing systems and your needs for hardware, software, communication and reporting.

If your business has become comfortable with the paperless approach and you're already using it for banking, invoicing, payroll, purchasing and sales, maybe it's time to “complete the circle” and adopt electronic signatures, too. ♦



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