WeirFoulds LLP

Beware: Proposed Tax Changes May Require you to Act Now

September 29, 2017

By Ryan Morris

In a prior **Client Alert**, we summarized tax proposals released on July 18th, 2017 that will, if enacted as proposed, significantly change the tax rules for private corporations and their shareholders. In some cases, it may be appropriate (or at least not unwise) to wait to see the final form of proposals before taking action. However, there are two scenarios we would like to draw to your attention where you should consider acting now.

First, under the proposals, access to the lifetime capital gains exemption (LCGE) is to be considerably restricted starting next year. However, under the proposals, a transitional rule would allow certain affected individuals to elect to realize, on a day in 2018, a capital gain in respect of eligible property by way of a deemed disposition for proceeds up to the fair market value of the property (resulting in an increase in cost basis of the property, thereby reducing taxable capital gains on a later sale) and to use their LCGE with respect to the gain. However, to be eligible for this election, certain conditions need to be satisfied by December 31, 2017. Accordingly, if you can potentially benefit from this election, you should consider these conditions as soon as possible in case action is needed to meet the conditions.

In many instances, minors are not entitled to benefit from the transitional rule discussed above. Accordingly, if you are planning on a sale of some or all of your business where some of the resulting gain may be able to be sheltered using the LCGE of one or more minors under the current rules, there may be an impetus to close the sale this year.

Second, the proposed measures include a general anti-surplus stripping rule that is to be effective as of July 18th, 2017. Among other things, if enacted as proposed, this rule frustrates "pipeline" transactions, which is a popular planning technique to avoid double taxation that can occur with respect to private company shares on the death of a shareholder. If you were planning on using a pipeline transaction, it is important to consider an alternative technique at an early opportunity as the ability to use the alternative technique is time-limited.

Please contact your WeirFoulds lawyer or any of the authors below as soon as possible to review your situation.

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