# Year-end TAX PLANNER

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# Looking back at 2016 and forward to 2017

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## Federal Highlights

**Canada Child Benefit –** The Canada Child Tax Benefit (CCTB) and Universal Child Care Benefit (UCCB) were replaced with the Canada Child Benefit. The Canada Child Benefit will provide a maximum benefit of $6,400 per child under the age of 6 and $5,400 per child between ages 6 and 17. The amount of the benefit will be based on combined family net income reported in the previous taxation year. The amounts received under the Canada Child Benefit are not taxable.

**Children's Fitness and Arts Tax Credit –** For the 2016 taxation year, the children's fitness and arts tax credit maximum eligible amount will be reduced from $1,000 to $500 and $500 to $250 respectively. Both credits will be eliminated for the 2017 and subsequent taxation years.

**Income Splitting for couples with children –** This measure previously introduced by the Harper government has been eliminated by the Trudeau government.

**Teachers and Early Childhood Educator School Supply Tax Credit –** Starting with the 2016 taxation year, eligible educators may claim a 15 per cent refundable tax credit on eligible expenditures up to a maximum of $1,000.

**Disposition of principle residence –** Starting with the 2016 taxation year, a sale of a principle residence is to be reported on the vendor's income tax return in order to be eligible to claim the principle residence exemption.

**Trusts and estates –** Starting in 2016, the graduated tax rate applicable to a testamentary trust created by an individual's death will be replaced with the highest personal income tax rate – 33 per cent federal rate plus any provincial tax rates – if the testamentary trust has been in existence for more than 36 months, subject to certain exceptions. The graduated tax rate will continue to apply for trusts having beneficiaries who qualify for the federal Disability Tax Credit. Further, testamentary trusts and grandfathered inter vivos trusts will be required to have taxation years ending on December 31.

**Small business tax rates –** The 2016 federal budget announced that the small business income tax rate remains at 10.5 per cent for 2016 and subsequent taxation years.

**Tax-Free Savings Account (TFSA) –** The 2016 federal budget decreased the annual limit of contributions to $5,500 from $10,000, effective for the 2016 tax year.

## Provincial Highlights

**Small business rate and thresholds –** The threshold in Manitoba increased from $425,000 to $450,000 on January 1, 2016 and to $500,000 starting in 2017. Alberta's 2016 budget decreased the small business income tax rate from 3 per cent to 2 per cent effective January 1, 2017. New Brunswick decreased its small business tax rate from 4 per cent to 3.5 per cent effective April 1, 2016.

**Personal income tax –** For 2016, the federal marginal tax rate on income between $45,283 and $90,563 was reduced from 22 per cent to 20.5 per cent while the top marginal tax rate increased from 29 per cent to 33 per cent for income in excess of $200,000. The British Columbia top marginal personal tax rate decreased from 16.8 per cent to 14.7 per cent on income over $106,543. The Alberta marginal tax rate on income between $125,001 and $150,000 increased from 10.5 per cent to 12 per cent, on income between $150,001 and $200,000 increased from 10.75 per cent to 13 per cent, on income between $200,001 and $300,000 increased from 11 per cent to 14 per cent and on income in excess of $300,000 increased from 11.25 per cent to 15 per cent. New Brunswick's 2016 budget eliminated the top marginal personal income tax rate of 25.75 per cent and lowered the rate on income in excess of $150,000 from 21 per cent to 20.3 per cent. Newfoundland and Labrador's 2016 budget introduced an increase to all personal income tax rates.

## International Highlights

**Extension of back-to-back loan –** Where a taxpayer has a debt owing to a third-party intermediary and a non-resident person uses his or her property to secure the debt – to circumvent the application of the thin capitalization rules and the Part XIII withholding tax – the taxpayer will be deemed to owe an amount to the non-resident person. The new anti-avoidance rules will be effective for taxation years commencing after 2015. The 2016 budget extended these rules such that starting March 22, 2016 they will also apply to back-to-back loan arrangements involving rents and royalty payments.

**Back-to-back shareholder loan –** The shareholder benefit rules generally apply where a shareholder (including a related party) becomes indebted (by loan or otherwise) to a Canadian corporation and the loan remains outstanding for more than a year after the end of the year in which the loan was made. If the recipient of the loan is a non-resident, the loan is deemed to be a dividend on which withholding taxes apply. Similar to the back-to-back rules mentioned above, new rules have been introduced to expand the scope of the shareholder loan rules. From March 22, 2016 onwards, back-to-back loan rules will apply where an intermediary is interposed between the Canadian corporation and the shareholder (including a related party). Where such rules apply, the Canadian corporation will be deemed to have made the loan directly to the shareholder rather than to the intermediary.

## Entrepreneurs

**Dividends or salaries –** An owner-manager must determine the most tax effective salary-dividend mix that minimizes overall taxes for the corporation and all relevant individuals. The owner-manager must consider personal marginal tax rates, the impact of alternative minimum tax (AMT), the corporation's tax rate, RRSP contribution room ($144,500 of earned income in 2016 is required to maximize RRSP contribution in 2017), provincial health and/or payroll taxes, Canada Pension Plan (CPP) contributions and other personal deductions and credits which may be available:

- If personal cash requirements are low, consider retaining income in the corporation to obtain the tax deferral, as corporate rates are lower than personal rates.
- Be aware that distributing dividends that trigger a refund of refundable tax on hand do not necessarily provide a tax benefit to the shareholder, if the shareholder is subject to personal dividend tax at a rate, which exceeds the corporate dividend refund rate of 38⅓ per cent.
- Ontario residents: For 2016, the top provincial personal tax rate of 13.16 per cent will apply to taxable income exceeding $220,000 and 12.16 per cent on income between $150,000 and $220,000. Tax savings can be achieved by deferring the receipt of bonuses or dividends until income is below these high income tax thresholds.
- Alberta residents: For 2016, the top provincial personal tax rate of 15 per cent will apply on income exceeding $300,000 and 14 per cent will apply to taxable income between $200,001 and $300,000. Tax savings can be achieved by deferring the receipt of bonuses or dividends until income is below these high income tax thresholds.

## Qualified small business corporation share (QSBC share) status

A sale of QSBC shares will be eligible for the lifetime capital gains exemption of up to $824,176 in 2016, with the limit indexed for future years. Among other criteria, to maintain the QSBC share status, a corporation needs to have substantially all of the assets of the business used in an active business carried on primarily in Canada. Excess cash and passive investment assets may jeopardize the QSBC share status. A cumulative net investment loss (CNIL) balance as well as a prior year claim of an allowable business investment loss (ABIL) may limit the individual taxpayer's ability to claim the capital gains exemption on a sale of QSBC shares. Receiving dividend and interest income instead of a salary will reduce the CNIL balance and in turn help to preserve access to the capital gains exemption.

**Scientific research and experimental development (SR&ED)**

- Claims for SR&ED expenditures and related incentives (i.e. investment tax credits) are due 18 months after the corporation's year-end. These claims cannot be filed late.
- Where a CCPC's taxable income, on an associated group basis, exceeds certain thresholds, the corporation may not be able to access the higher SR&ED investment tax credit (ITC) rate and the ITC will not be refundable. The ITC limitations will also be applicable in situations where a Canadian Controlled Private Corporation's (CCPC's) taxable capital for federal purposes, on an associated group basis, exceeds certain limits. Consider paying a bonus in order to reduce the current year's taxable income to access the higher ITC rate.

Over recent years there were several changes to the SR&ED incentives program:

**Capital assets**

- Capital expenditures incurred after January 1, 2014 are no longer included in the calculation of eligible expenditures or ITCs.

**Proxy overhead amount**

- The proxy was reduced from 60 per cent to 55 per cent for 2014 and future years.

**Investment tax credits**

- There is a basic and enhanced tax credit for SR&ED purposes. The basic credit is now 15 per cent and the enhanced credit is 35 per cent (only for CCPCs, up to a maximum of $3,000,000 of qualified SR&ED expenditures).

**Provincial credits**

- The carry-forward period for Manitoba R&D tax credits increased from 10 to 20 years for taxation years ending after 2005.
- For eligible expenditures incurred after May 31, 2016 (prorated for straddled taxation years), the Ontario innovative tax credit ("OITC") decreased from 10 per cent to 8 per cent and the Ontario R&D tax credit decreased from 4.5 per cent to 3.5 per cent. In addition, the OITC maximum credit was reduced from $300,000 to $240,000.
- The Saskatchewan 2015 budget made all R&D credits non-refundable applicable to R&D expenditures incurred after March 31, 2015 and reduced the credit rate from 15 per cent to 10 per cent for all corporations.

**Remuneration accruals –** A bonus accrued at year-end needs to be paid within 179 days after the year-end. Applicable source deductions are to then be remitted on a timely basis (beware a change in this timing should the bonus be significant).

**Tax liabilities –** Final corporate tax liabilities need to be paid within two months after year-end and within three months for certain eligible CCPCs.

**Shareholder loans –** Ensure that you repay shareholder loans from your corporation no later than one tax year after the end of the tax year in which the amount was borrowed.

**Income to family members –** Consider paying salaries to family members who work in the business. Keep in mind the salaries must be reasonable or the amounts may be challenged by the CRA. Salary payments as opposed to dividends also allow the recipient to have earned income for child-care expenses, CPP and RRSP purposes.

**Depreciable assets**

- Consider purchasing equipment prior to the end of your fiscal year in order to accelerate access to capital cost allowance (CCA). Be aware of the available for use rules.
- A special election can be used to treat leased fixed assets as purchases under a financing arrangement.

**Business income reserve –** When proceeds from the sale of goods or real property – classified as inventory – are not due until after the year-end, a reserve on sale profits may be claimed, over a maximum of three years.

**Capital gains reserve –** A capital gains reserve may be claimed on the sale of capital properties, over a maximum of five years, if the proceeds of disposition are not due until after the year-end.

**Taxable capital –** Monitor the corporation's taxable capital for federal tax purposes. If in excess of certain limits, the corporation will begin to lose access to the small business deduction and the 35 per cent refundable ITC for SR&ED expenditures. Consider the following:

- Use excess cash to pay off some debts
- Declare dividends
- Defer planned dispositions that will result in income until after year-end
- Maximize federal and provincial refundable and non-refundable tax credits
- Trigger capital losses to recover capital gains tax paid in previous years

**Personal services business –** The federal corporate tax rate for personal services business increased from 28 per cent to 33 per percent effective for the 2016 and subsequent taxation years. Therefore, consideration should be given to whether it is still beneficial to carry on business through this type of vehicle.

**Reporting of Internet Business Activities –** In December 2013, CRA introduced Schedule 88: Internet Business Activities. A corporation that earns income from a website or a web page is required to file this schedule as part of its T2 corporate tax return for the 2015 and later tax years.

**Administrative relief for small businesses –** The CRA has instituted a new administrative policy that applies to certain information returns to ensure that late-filing penalties are charged in a manner that is both fair and reasonable for small businesses. This applies to NR4, T4, T4A, T4E, T5 and T5018 slips.

## GST/HST and QST

**Management/intercompany fees –** GST/HST or QST is applicable on intercompany management fees. However, prior to 2015 an election was available for certain closely held corporations to exempt such fees and the election was to be simply completed and kept within both parties' books and records. This election is still available as of January 2015, but the CRA has mandated that all elections must be filed with them.

**Recapture of Input Tax Credits –** At the inception of HST in Ontario (July 1, 2010) large businesses were required to recapture ITC's with respect to specified property and services. An agreement was reached with the province that a "phase-out" of RITC's would commence five years after its inception. On July 1, 2015 the recapture rate decreased from 100 per cent to 75 per cent and will continue to decrease by 25 per cent on the 1st of July 2016, 2017 and 2018. From July 1, 2018 onwards there will be no recapture rate.

**GST/HST rate changes –** Both the 2016 budgets for New Brunswick and Newfoundland and Labrador have increased the HST rate from 13 per cent to 15 per cent effective July 1, 2016. The 2016 Prince Edward Island budget has also increased the HST rate from 14 per cent to 15 per cent effective October 1, 2016.

**Drop Shipments –** A drop shipment occurs when a non-resident non-registrant acquires goods from a GST/HST registrant in Canada and has the goods drop shipped to a recipient in Canada. The registrant in Canada has therefore made a taxable supply to the non-resident non-registrant for which GST/HST is applicable based on the fair market value of the goods or commercial service. There are however exceptions to these rules. Recently the CRA has issued draft legislation that has updated these rules. Close attention to these rules is necessary to ensure that the GST/HST is administered accordingly.

## Corporate tax changes

Subsection 55(2) – proposed rules confirmed in the 2016 Budget

The 2016 budget confirmed the amendments proposed in the 2015 budget with respect to the Section 55 of the Income Tax Act.

- Subsection 55(2) is an anti-avoidance rule intended to prevent the inappropriate reduction of a capital gain by way of the payment of a deductible inter-corporate dividend.
- Currently, subsection 55(2) generally applies where one of the purposes of the dividend was to effect a significant reduction in the portion of a capital gain that, but for the dividend, would have been realized on a disposition of any share, unless certain exceptions apply.

- If subsection 55(2) applies, the dividend is treated as proceeds of disposition of the share or a gain from the disposition of capital property (depending on whether the share has been disposed of).
- Budget 2015 proposed to amend subsection 55(2) such that the anti-avoidance rule applies where one of the purposes of the dividend is to:
- Significantly reduce the fair market value of any share; or
- Significantly increase the total cost of properties of the dividend recipient (regardless of whether the dividend reduces a capital gain)
- The amendments are proposed to apply to dividends received by a corporation on or after April 21, 2015.
- The exceptions to this proposed application would be:
- Certain dividends deemed received as a result of the redemption, acquisition or cancellation of shares; and
- The safe income exception. Any dividend paid out of safe income on hand will not be caught under the 55(2) regime. Safe income is conceptually the after-tax retained earnings attributable to a participating shareholder.
- Each inter-corporate dividend will need to be analyzed on a case-by-case basis and care needs to be taken when any inter-corporate dividends are paid.

**Multiplication of Small Business Deduction –** The 2016 budget proposed changes to address concerns about partnership and corporate structures that are used for purposes of multiplying access to the small business deduction ("SBD"). The new rules are effective for taxation years that began on or after March 22, 2016.

- For partnerships, specified partnership rules are extended and as such a single business limit applies with respect to the partnership's business.
- Under the old rules, in circumstances where a shareholder of a CCPC is a member of a partnership and the partnership paid the CCPC as an independent contractor under the terms of an agreement, the CCPC claimed a full small business deduction in respect of its active business income earned from fees received from the partnership. This was the case even though the shareholder of the CCPC was a member of the partnership and the CCPC was not a member. Under the new rules, the CCPC will be deemed to be a member of the partnership throughout the taxation year for the purposes of allocating the SBD.
- For corporations, new rules are introduced to restrict access to the small business deduction on any active business income earned from providing services or property to another private corporation where there is common ownership.
- In essence, a CCPC's active business income from providing services or property (directly or indirectly) in its taxation year to a private corporation will be ineligible for the small business deduction where, at any time during the year, the CCPC, one of its shareholders or a person who does not deal at arm's length with such a shareholder has a direct or indirect interest in the private corporation. The ineligibility for the small business deduction will not apply to a CCPC if all or substantially all (90 per cent or more) of its active business for the taxation year is earned from providing services to arm's length parties other than the private corporation.

**Eligible Capital Property Rules –** The 2016 budget proposed to eliminate the eligible capital property ("ECP") regime and replace it with new CCA class 14.1. The new rules are effective January 1, 2017.

- Transitional rules allow for a CCA deduction to be the greater of $500 and 7 per cent of the pool of expenditures incurred before January 1, 2017.
- The first $3,000 of incorporation costs will be a fully deductible expenditure.
- Gains from the disposition of ECP on or after January 1, 2017 will be taxed at investment income tax rates rather than active business income tax rates.

## Personal Tax Matters

### I am an employee, so what do I need to know?

**Employment-related courses –** Consider having your employer pay directly for job-related educational courses.

**Gifts and awards –** Subject to certain exceptions, non-cash gifts and non-cash awards with a total value of $500 or less annually may not be taxable to you personally. Ask your employer to consider this option.

**Employee loans –** Pay 2016 interest on or before January 31, 2017 to reduce your taxable benefit on employee loans.

**Home office –** Ensure you claim your entitlement to home office expenses if your employer will complete form T2200.

**Public transit pass tax credit –** Ensure you claim the cost of public transit, subject to certain criteria. Retain passes or receipts to support claims.

**Employee stock options – public companies**

- If you dispose of stock options for cash, discuss with your employer as to whether they can elect to forgo the tax deduction so you may claim it.
- The employee election to defer the payment of tax on stock option benefits until the shares are sold is no longer allowed.

- Employers are now required to withhold and remit income tax relating to the taxable benefit realized when public company options are exercised.
- Note that the Liberal government confirmed that it will not proceed with previously anticipated changes to the taxation of employee stock options.

**Overseas employment tax credit –** Please be aware that if you claimed this credit in 2015, it is fully eliminated in 2016.

**Corporate vehicle –** Reduce your operating cost benefit and/or standby charge behu have access to a company vehicle.

To reduce the operating cost benefit:

- Consider reimbursing your employer for some or all of the personal use portion of the actual operating costs by February 14, 2017; and
- Reduce your personal driving to less than 50 per cent of the total driving, if possible.

To reduce or eliminate your standby charge benefit:

- Limit your access to the vehicle (i.e. not every day); and
- Avoid personal driving.

**Pooled registered pension plan (PRPP) –** Consider joining PRPP if you do not have access to an employer-sponsored pension plan. PRPPs are a voluntary savings plan similar to a defined contribution RPP or RRSP.

**RRSPs, RPPs and DPSPs –** If you contributed less than the maximum allowable amount to your RRSP in a previous year, use the unused contribution room in addition to your normal contribution room for the 2016 tax year. If you decide not to contribute your entitlement for 2016, your ability to do so carries forward indefinitely. However, even if you do not need the deduction in 2016, you should still make the contribution if you have excess funds, so the funds can start to grow on a tax-deferred basis. You can claim the deduction in any future year.

**Registered plans – contribution limits**

| | Registered retirement savings plan (RRSP) | Defined contribution registered pension plan (RPP) | Deferred profit sharing plan (DPSP) |
|---|---|---|---|
| **Basis for deduction** | 18% of earned income in the previous year | 18% of the pensionable earning for the year | |
| Dollar limits 2016 | $ 25,370 | $ 26,010 | $ 13,005 |
| Dollar limits 2017 | $ 26,010 | $ 26,230 | $ 13,115 |

## I have investments, so what do I need to know?

**Tax-Free Savings Account (TFSA)**

- On January 1, 2016, the eligible contribution amount for a TFSA was reduced to $5,500 from $10,000.
- Canadian residents age 18 or older may contribute to a TFSA. Contributions are not deductible but withdrawals and income earned are not taxed.
- Withdrawals should be done before year-end as amounts withdrawn are not added to your contribution room until the beginning of the following year after the withdrawal.
- Consider holding eligible investments that are subject to higher tax rates (i.e. interest and foreign dividends).

**Donations of private corporation shares**

- Donations to registered charities are treated as a deduction for corporations and a tax credit for individuals.
- Budget 2016 repealed the 2015 proposal to exempt capital gains realized on dispositions of private corporation shares or real estate if the proceeds are donated to a registered charity within 30 days.
- Donations of public company shares are exempt from capital gains tax.
- The new 33 per cent federal donation credit rate applies to donations above $200 made in 2016 and later years where the taxpayer's income is above $200,000. Donations carried forward from 2015 or prior years will not be eligible for the higher credit rates.

**Combined Federal and Provincial Tax Credits for Donations Over $200 in 2016**

| Province | Combined Federal / Provincial Credit | | After-tax cost of $1,000 donation in 2016 | |
|---|---|---|---|---|
| | Regular rate | High rate | Regular rate | High rate |
| Alberta | 50.0 | 54.0 | 500 | 460 |
| British Columbia | 43.7 | 47.7 | 563 | 523 |
| Ontario | 46.4 | 50.4 | 536 | 496 |
| Manitoba | 46.4 | 50.4 | 536 | 496 |
| Newfoundland | 45.8 | 49.8 | 542 | 502 |
| New Brunswick | 47.0 | 51.0 | 530 | 490 |
| Nova Scotia | 50.0 | 54.0 | 500 | 460 |
| Quebec | 48.2 | 51.6 | 518 | 484 |
| P.E.I. | 47.4 | 51.4 | 526 | 486 |
| Saskatchewan | 44.0 | 48.0 | 560 | 520 |

**Gifts to foreign charities**

Foreign charitable foundations can be registered as qualified donees if:

- They receive a gift from the government,
- They are involved in activities of disaster relief or urgent humanitarian aid, or
- They carry on activities in the national interest of Canada.

**Investment holding company** – Ontario residents with incomes exceeding $220,000 in 2016 who earn investment income from portfolio investments will be subject to Ontario's high-earner income tax. Consider holding these investments in a corporation to benefit from the lower corporate tax rate on investment income.

**Interest deductibility –** If you are incurring non-deductible interest and have cash or investments on hand, consider paying down non-deductible debt and then borrowing to replace those investments. However, be mindful of triggering gains if you liquidate investments.

**Capital gains and losses –** If you have capital gains this year or in 2015, 2014 or 2013, consider selling an asset with an accrued loss, which can then be offset first against capital gains from 2016 and then any excess against those prior years' gains to recover tax. Before triggering losses, consider the superficial loss rules. If you have little or no other income, or have capital losses to use up, consider triggering capital gains before year-end by selling an investment that has appreciated in value, then reinvesting the proceeds, even in the same investment.

If certain conditions are met, you can dispose shares of an eligible small business corporation and defer the recognition of capital gains by reinvesting the proceeds from the sale of those shares in another eligible small business corporation by April 30, 2017.

**Superficial loss rules –** The superficial loss rules prevent a taxpayer from claiming a capital loss on an asset the taxpayer clearly intended to continue to hold. If you are holding an asset with an accrued loss and wish to sell the asset to offset the loss against any capital gains realized and you purchase the identical asset within 30 days – either before or after selling the original asset – the superficial loss rules will apply to deny the capital loss, provided that the asset is held at the end of 30 days after the sale. The superficial loss would also apply if your spouse or a company controlled by you or your spouse buys the asset within the same timeframe.

**Eligible dividends**

- Eligible dividends may trigger AMT; and
- Eligible dividends could be tax-free if paid to individuals in lower tax brackets or who have significant non-refundable tax credits, such as tuition and education amounts.

**First-time donor's super credit –** A first-time donor is entitled to claim an additional 25 per cent credit on up to $1,000 of donations made after March 20, 2013. The credit can be claimed only once, after 2012 and before 2018.

## What do families need to know?

**Estate planning –** Ensure your estate plan is meeting your current and future objectives. Also ensure that your will is up to date.

**Income-splitting –** Consider an income-splitting plan to lend funds to family members in lower tax brackets. The current prescribed rate is one per cent. Interest on intra-family loans must be paid on or before January 31, 2017, to avoid attribution of income.

**Split income with minor –** Commencing with the 2015 taxation year, the income attribution rules apply to "split income" that is paid or allocated to a minor from a trust or partnership, if:

1. The income is derived from a business or a rental property; and
2. A person related to the minor is actively engaged on a regular basis in the activities of the trust or partnership to earn income from any business or rental property, or has a direct or indirect interest in the partnership.

**Registered Education Savings Plan (RESP)**

- Plan your contributions to ensure the RESP will receive the maximum lifetime Canada Education Savings Grant (CESG) of $7,200.
- Asset transfers between RESPs for siblings are now allowed, subject to certain criteria.

**Registered Disability Savings Plan (RDSP) –** If you have a child who qualifies for the Disability Tax Credit, you should:

- Set up an RDSP to qualify for the Canada disability savings bond (maximum of $20,000 per child)
- Contribute to an RDSP to qualify for the Canada disability savings grant (maximum of $70,000 per child)

**Child care expenses –** Available deductions for child care expenses will remain the same as in 2015. Boarding school and camp fees qualify for the child care deduction, though limits may apply. Ensure that child care expenses for 2016 are paid by December 31, 2016 and a receipt is obtained.

**Education and textbook tax credits –** Claim these credits if you attend post-secondary school either full time or part time. Eligible fees for exams taken after 2010 may qualify for the tuition tax credit. This credit will be eliminated for the 2017 taxation year.

**Unused and unclaimed tax credits –** Consider transferring your education, tuition or textbook tax credits to your spouse, parent or grandparent, subject to limitations, if you are unable to utilize them. Unused education and textbook credit amounts carried forward from years prior to 2017 may be claimed in 2017 and subsequent taxation years.

**Moving expenses –** Your moving expenses may be deductible if you moved to attend school or moved from school to work or back home.

**Lifetime Learning Plan (LLP) –** You are allowed to make a tax-free withdrawal from your RRSP to finance full-time education – or part-time for students who meet one of the disability conditions – for yourself, your spouse or your common-law partner. You may withdraw up to $10,000 in a calendar year and up to $20,000 in total.

## The Golden Years

**Inter vivos trust** – If you are 64 or older and live in a province with a high probate fee, consider establishing an inter vivos trust as part of your estate plan.

**Testamentary trust –** Starting in 2016, the graduated tax rate applicable to a testamentary trust created by an individual's death will be replaced with a flat top marginal rate, if the testamentary trust has been in existence for more than 36 months. The graduated tax rate will continue to apply for testamentary trusts created less than 36 months ago and trusts with beneficiaries who qualify for the Disability Tax Credit.

- Previously a testamentary trust computed its income tax liability using the graduated personal income tax rates. Multiple testamentary trusts could be established in a will to magnify this benefit.
- Only a "graduated rate estate" (a newly defined term) will now be entitled to use the graduated rates and includes:
    - An estate that is a testamentary trust but only for the first 36 months after the death of the testator. Consequently, an ongoing estate, or testamentary trusts created pursuant to the will such as a spousal trust, would only benefit from the graduated tax rates for its first 36 months; or
    - A testamentary trust for the benefit of a disabled individual who would be eligible for the federal Disability Tax Credit.
- All other trusts, whether inter vivos or testamentary, are subject to a flat rate equal to the top personal income tax rate (33 per cent federally plus the applicable provincial tax rate).
- If a trust is not a graduated rate estate, it will be subject to the following provisions, which previously did not apply to testamentary trusts. More specifically, a testamentary trust (like an inter vivos trust):
    - Will be required to make quarterly instalments and pay its balance due on March 31 of the following year;
    - Must adopt a calendar year-end. If a testamentary trust has a non-calendar year-end, it must change its year-end to December 31 in the year in which it ceases to be a graduated rate estate.
    - For example, a testamentary trust created on September 30, 2014 could choose a September year-end. The trust would be a graduated rate estate until September 30, 2017 and would file its September 30, 2017 return using the graduated rates. Thereafter, it must adopt a December 31 year-end and would file a stub period return for the period ending December 31, 2017.
    - Will not be entitled to the $40,000 AMT exemption.
    - May not make ITCs available to its beneficiaries.
    - Will not be able to apply for a refund after the normal reassessment period of three years, rather than the 10-year period available for individuals and graduated rate estates pursuant to the Taxpayer Relief rules.
    - May only file a Notice of Objection within 90 days of the Notice of Assessment, rather than one year after its filing date of 90 days after the end of the year.

**RRSP**

If you turned 71 in 2016, you must collapse your RRSP. You may:

- Defer taxes on all or a portion of the amount in your RRSP by transferring the funds to a registered retirement income fund (RRIF);
- Contribute to your RRSP only until December 31, 2016 if you have unused RRSP contribution room or earned income in the previous year;
- Contribute to your spouse's RRSP until the end of the year that your spouse reaches age 71 if you have unused RRSP contribution room or earned income in the previous year; and
- Make an additional 2016 contribution (facts depending) by the end of December 31, 2016, subject to a small penalty.

**Pension income** – If you receive pension income, consider splitting it with your spouse or common-law partner, to a maximum of 50 per cent. To maximize your pension credit, you will require at least $2,000 of pension income if you are age 65 or older.

**Old Age Security (OAS) –** Allocation of pension income from a spouse or receipt of dividends may trigger the OAS clawback. Consider measures to invest so as to earn capital gains, as only 50 per cent of the gain is included in income for the purposes of calculating the OAS amount. Alternatively, explore additional options to manage your income (e.g. through a corporation) in order to avoid the OAS clawback.

**Canada Pension Plan (CPP) –** If you are 60 to 70 years of age and employed or self-employed, you must contribute to the CPP. However, if you are between the ages of 65 and 70, you can elect to stop these contributions. This election can be revoked the following year. Be aware that CPP benefits are reduced if you begin collecting prior to turning 65.

**Individual pension plans –** If you are over 71, you must make minimum withdrawals if you have a defined benefit RPP that was created primarily for you.

## United States Matters

**U.S. tax reforms**

- In late 2015, Congress passed the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), which extends a long list of expired tax provisions, including a wide range of tax matters that will impact both individuals and businesses. A number of key tax provisions that historically were extended on an annual basis were made permanent. Other provisions were extended for five years (through 2019) or two years (2015 and 2016).
- Effective for the 2016 taxation year, the filing due date for the Foreign Bank and Financial Account Report ("FBAR") is moved forward to April 15th under new U.S. tax laws. Similar to income tax returns, taxpayers will be permitted to extend FBARs up to six months for a final deadline of October 15th. New due dates have been adjusted for corporate and other business tax returns as well.
- Effective February 16, 2016, the Foreign Investment Real Property Tax Act ("FIRPTA") withholding rates on the disposition of U.S. Real Property Interests (USRPI) increased from 10 per cent to 15 per cent. The 10 per cent rate is still applicable to properties that will be used as the primary residence of the transferee, provided that the sales price does not exceed $1 million.
- The Foreign Account Tax Compliance Act ("FATCA") is a relatively new U.S. federal law that requires U.S. persons, including individuals who live outside the United States, to report their financial accounts held outside of the United States and requires foreign financial institutions to report certain information to the Internal Revenue Service ("IRS") about their U.S. clients. Congress enacted FATCA to make it more difficult for U.S. taxpayers to conceal assets held in offshore accounts and shell corporations. Non-compliance could attract significant penalties.

**Canadian RRSPs, RRIFs, RPP and DPSPs**

- A recent U.S. IRS announcement allows U.S. citizens and resident aliens who hold interests in Canadian RRSPs or RRIFs and who meet certain conditions, to automatically defer investment income earned in the plan until the funds are withdrawn.
- If you are a Canadian resident, consider transferring your U.S. 401(k) or IRA plan on a tax-deferred basis to an RRSP.

**Canadian TFSAs –** Investment income earned in a TFSA may be taxable for U.S. tax purposes in the year it is earned. Additional reporting information may have to be filed with the IRS annually.

**Canadian mutual funds –** An annual information return needs to be filed with the IRS in respect of a U.S. citizen, green card holder or U.S. resident alien who owns Canadian mutual funds in 2016.

**U.S. estate tax –** Canadians may be exposed to U.S. estate tax if they hold U.S. property (e.g. shares in U.S. corporations, even if held in a Canadian brokerage account; U.S. real estate, including vacation homes; interests in U.S. partnerships, etc.).

**U.S. federal income tax return/treaty-based return –** Determine whether you are conducting activities in the United States that require you to file a U.S. federal income tax return, or U.S. treaty-based tax information disclosure return.

**State and municipal taxes –** The rules at the state and local level differ in many cases from the U.S. federal level. If you are carrying on business in the U.S., ensure that you are onside, as each jurisdiction has its own set of rules.

## International Matters

**Loans from foreign subsidiaries –** Be aware that 2013 legislation introduced additional tax complexities associated with loans from foreign affiliates to Canadian corporate shareholders and to certain non-arm's length persons.

**Transfer pricing –** If your corporation has transactions with a related non-resident corporation or partnership, ensure that the transfer pricing documentation meets the requirements imposed by the Canadian transfer pricing rules and those of the foreign jurisdiction. Non-compliance can result in significant penalties. Note that there are substantial changes in the winds here with recent pronouncements from the OECD.

**Thin capitalization –** The thin capitalization rules prevent non-resident shareholders who own the shares of a Canadian corporation that give the holder 25 per cent or more of the votes or fair market value (i.e. "specified" non-resident shareholder) from financing the corporation with high levels of debt. Currently, the thin capitalization rules limit the interest expense deduction of a Canadian corporation where the amount of the debt owing to certain non-residents exceeds a 1.5 to 1 debt-to-equity ratio. The interest expense that exceeds the debt-to-equity ratio limit is not deductible for Canadian income tax purposes and is also considered a dividend subject to withholding taxes.

It used to be possible for a taxpayer to avoid these rules through the use of a "back-to-back loan'' arrangement which involves interposing a third party (such as a foreign bank) between two related taxpayers (for instance, a foreign parent corporation and its Canadian subsidiary) in an attempt to avoid the application of the thin-cap rules. However, the 2014 federal budget added an anti-avoidance provision to subject certain back-to-back loans to the thin capitalization rules. On these lending arrangements, the taxpayer will be deemed to owe an amount to the specified non-resident (and not to the intermediary) in respect of the obligation. In addition, the taxpayer will also be deemed to have an amount of interest paid or payable to the specified non-resident that is equal to the proportion of the interest paid or payable by the taxpayer on the obligation owing to the intermediary. In addition to the thin capitalization rules, Part XIII withholding tax will apply in respect of a back-to-back loan arrangement to the extent, and as if, the financial intermediary did not exist. These measures apply to taxation years that begin in 2015.

**Loan receivable due from a non-resident corporation –** Where a non-resident controlled Canadian corporation makes loans to its foreign parent or related non-resident companies, the Canadian corporation could be subject to the shareholder benefit rules and deemed dividend withholding tax in certain circumstances. Relatively recent legislation permits the Canadian corporation to elect out of the deemed dividend withholding tax rules, if the Canadian corporation includes interest on the loan at a prescribed rate in income. The legislation applies to loans received or indebtedness incurred after March 28, 2012. Loans made by, or to, certain partnerships may also be eligible for the election.

**Payments to non-residents**

- You may be required to withhold and remit 15 per cent of certain payments made to non-residents in respect of fees, commissions or other services rendered in Canada.
- Be aware of the NR301, NR302 and NR303 forms that non-residents should file in support of reducing withholding tax rates on payments under a tax treaty.
- Understand your withholdings obligations on payments made to non-resident employees, even if you are a non-resident employer.

**Regulation 102 – source deduction rules**

- There is an administrative burden on non-resident employers who send employees to work in Canada.
- Required to withhold and remit to CRA taxes under Reg. 102 for Canadian-source income regardless of length of time working in Canada.
- Under our treaties, most of these workers would not have had to pay tax in Canada (when number of days or Canadian-source income is low).

**Regulation 102 – new certification option**

- As of January 1, 2016, non-resident employers may apply for a non-resident employer certification. A non-resident employer certification removes the requirement to withhold tax from the salary, wages and other remuneration the employer pays to non-resident employees. Therefore, a certified non-resident employer will be able to pay an eligible employee who is exempt from paying tax in Canada under a tax treaty without withholding/remitting tax. Consequently, it can eliminate the need for non-resident employers/employees to request Reg. 102 waivers of tax withholding, where applicable. Non-resident employer certification will be valid for up to two calendar years. Below are the requirements and relevant registration information for both employers and employees that can take advantage of this new certification process:

**Employer:**

1. The non-resident employer must be resident in a country with which Canada has a tax treaty at the time of payment and be certified by the Minister of National Revenue.
2. To apply for a certification, the employer needs to file RC473 – Application for Non-Resident Employer Certification.

**Employees:**

1. A non-resident employee must be a resident in a country with which Canada has a tax treaty at the time of the payment;
2. Is not liable to income tax under Part I of the Canadian Income Tax Act on the payment because of the tax treaty under which the employee is resident; and
3. Either works in Canada for less than 45 days in the calendar year that includes the time of the payment, or is present in Canada for less than 90 days in any 12-month period that includes the time of the payment.

It is the responsibility of the non-resident employer to ensure the employee is eligible under the certification.

## Key Tax Dates

**December 15, 2016**

- Final quarterly instalment of 2016 tax due for individuals.

**December 23, 2016**

- This is likely the final trading day for Canadian exchanges for those wishing to have trades settled for 2016.

**December 31, 2016**

Last opportunity to make a payment for the following items in order to utilize any applicable credit or deduction on your 2016 return:

- Charitable donations
- Payment of union dues and professional fees
- Investment counsel fees, interest and other investment expenses
- Alimony and maintenance payments
- Child care and child fitness expenses
- Interest
- Medical expenses
- Moving expenses of individuals
- Political contributions
- Deductible employee legal fees
- Tuition fees and interest on student loans
- Payments to employer to reduce standby charge
- RRSP contributions if you turn 71 by December 31, 2016

**January 17, 2017**

- U.S. taxes: estimated tax payments due for individuals

**January 31, 2017**

- Interest due on intra-family loans
- Non-deductible interest due on loans from your employer to reduce your taxable benefit

**February 14, 2017**

- Payment to your employer to reduce your taxable operating benefit from an employer-provided automobile

**February 28, 2016**

- Last day to file T4, T4A and T5 Summary and Supplementary forms

**March 1, 2017**

- Deductible contributions to your own RRSP or spousal RRSP (for 2016 deduction)
- RRSP Home Buyer's Plan repayment due (to avoid 2016 inclusion)

**March 15, 2017**

- First quarter (2017) personal tax instalment due

**March 31, 2017**

- Last day to file income tax returns for inter vivos trusts without penalty
- Last day to file NR4 Summary and Supplementary forms regarding amounts paid or credited to non-residents of Canada

**April 18, 2017**

- U.S. individual tax return due if you have not obtained an extension

**May 1, 2017 (April 30, 2017 is a weekend day)**

- Last day to file personal tax returns, except for self-employed individuals or spouses of self-employed individuals, in which case the deadline is June 15, 2017. No matter your deadline, interest will be charged on any balance due after May 1.
- Filing deadline for personal return may be later if individual or spouse died during the year; however, a terminal return is required.

**Appendix I**

Combined Federal and Provincial Personal Top Marginal Tax Rates for 2016

| Province/Territory | Salary and Interest | Capital Gains | Eligible Dividends | Non-eligible Dividends |
|---|---|---|---|---|
| Alberta | 47.00/48.00% | 23.5%/24.00% | 30.33/31.71% | 39.07/40.24% |
| British Columbia | 47.70% | 23.85% | 31.30% | 40.61% |
| Manitoba | 50.40% | 25.20% | 37.78% | 45.74% |
| New Brunswick | 53.30% | 26.65% | 34.20% | 45.81% |
| Newfoundland | 49.80% | 24.90% | 40.54% | 41.16/41.86% |
| Northwest Territories | 47.05% | 23.53% | 28.33% | 35.72% |
| Nova Scotia | 54.00% | 27.00% | 41.58% | 46.97% |
| Nunavut | 44.50% | 22.25% | 33.08% | 36.35% |
| Ontario | 51.97/53.53% | 25.98/26.76% | 37.19/39.34% | 43.48/45.30% |
| P.E.I | 51.37% | 25.69% | 34.22% | 43.87% |
| Quebec | 53.31% | 26.65% | 39.83% | 43.84% |
| Saskatchewan | 48.00% | 24.00% | 30.33% | 39.91% |
| Yukon | 45.80/48.00% | 22.90/24.00% | 21.78/24.81% | 37.6/40.17% |

**Appendix II**

Combined Federal and Provincial Corporate Tax Rates for 2016/2017

| Province/Territory | Active Income | Manufacturing Income | Small Business < $500,000 (CCPC) | Investment Income (CCPC) |
|---|---|---|---|---|
| Alberta | 27.00% | 27.00% | 13.50/12.50% | 50.67% |
| British Columbia | 26.00% | 26.00% | 13.00% | 49.67% |
| Manitoba | 27.00% | 27.00% | 10.5%/22.50% | 50.67% |
| New Brunswick | 27.00/29.00% | 27.00/29.00% | 14.50/14.00% | 50.67/52.67% |
| Newfoundland | 30.00% | 30.00% | 13.50% | 53.67% |
| Northwest Territories | 26.50% | 26.50% | 14.50% | 50.17% |
| Nova Scotia | 31.00% | 31.00% | 13.50%/26.50% | 54.67% |
| Nunavut | 27.00% | 27.00% | 14.50% | 50.67% |
| Ontario | 26.50% | 25.00% | 15.00% | 50.17% |
| Prince Edward Island | 31.00% | 31.00% | 15.00% | 54.67% |
| Quebec | 26.90/26.80% | 26.90/26.80% | 18.50% | 50.57/50.47% |
| Saskatchewan | 27.00% | 25.00% | 12.50% | 50.67% |
| Yukon | 30.00% | 17.50% | 13.50% | 53.67% |

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