

THE FUTURE OF BUSINESS: Sustainable Growth, Innovation and Staying Ahead of the Curve

PRIVATE CORPORATION TAX CHANGES (2015-2018)

Featuring: Wendi Crowe, Partner, Miller Thomson;
Eddy Burello, Partner, MNP

Facilitating: Mark Bernard, Regional Tax Partner, MNP

Miller Thomson's Wendi Crowe and MNP's Eddy Burello shared their observations of the 2015–2018 tax change agenda, including taxes on split income and passive income. The following is a recount of the live discussion.

Big Changes Prompt Big Response

Wendi Crowe, with law firm Millar Thomson, spoke on seeing a new willingness by government, Alberta, federal, and now B.C., to come out with big tax changes. Before that, she remembers the GST being landmark. Compared to that, tax changes are usually incremental - a tightening here or an adjustment there. Wendi suggested governments seem more willing to "be creative in a sense; by having their agenda and diving right in and making big announcements and going with it. It must be an interesting time to be a bureaucrat."

She also noted what some have called the "backlash" to the corporate tax proposals from the business community, when, in fact, she saw a tremendous amount of "very thoughtful, very principled critique of the proposals and the rather fundamental changes being made.

"Governments, not just federal, have paused and listened and retreated almost wholeheartedly on some things, and there has been reengineering." As an example, she pointed to how the passive income proposals are now entirely different from what was initially announced.

The changes made her optimistic. She said they shows what a critical role the tax and business community have to play in responding. She thought those owners had done an incredible job of steering that ship a little bit, not on the underlying agenda or policy, but on getting the public to a result that, while still difficult to deal with, was more workable than initially thought.

Panel facilitator, Mark Bernard noted: "We now see activism associated with act changes."

Big Changes Prompt Big Response

MNP's Eddy Burrello was not as positive. He wondered how business owners felt in the face of the changes. The implication by Canada's Liberal government, he said, was that private company owners were using the tax system to their advantage. "They're clearly under the impression that you're all tax cheats," Eddy said.

He noted people who paid themselves and their kids dividends from a family trust have been made to feel like they were doing something illegal when they were simply following the law that was well established for multiple years — and doing it consistently to save their businesses money.

"Corporate tax rates were low. You were instructed by advisors like us to retain your profits in your company. And to use those retained funds to build your business, to make it sustainable," Eddy told the audience. "Those good economic principles are the cornerstones of business. But the government clearly doesn't understand business."

Eddy saw the new rules as more than just a lack of understanding by Ottawa. He saw them as an all-out "attack on private business," one that didn't happened overnight. It's been a slow buildup year over year over year, he said. Many changes to the tax law specifically focused on private corporations have now made them competitively disadvantaged.

"When you start changing your tax system to make it more expensive to carry on business in Canada, you're adding another element to the overall competitiveness of our landscape," Eddy said. "I don't think the federal government understands the ramifications they've created by all these changes."

Another challenge to our landscape is recent U.S. tax reforms that chopped federal and personal tax rates, putting Canada's once-advantageous tax regime approximately 11 percent higher.

"From a pure tax perspective going forward," he says, "Canada's major advantage is now a huge competitive disadvantage."

Eddy mentioned a recent Fraser Institute report that tracks where investment dollars go when there's a change in effective tax rates. A drop in 10 percent would attract more investment dollars south of the border than current Canada rates. "We can clearly see the mobility of capital heading south, and that will undoubtedly change the competitive framework in Canada," he said.

Eddy suggested the federal government said it won't have a kneejerk reaction to what could potentially happen in the U.S. "Would good business owners not have a plan," Eddy queried. "Would they not look at their competitive environment to assess possible actions to take if option A or B was to materialize?"

Tax Planning for Corporations

Wendi says it's still early days on the proposals on taxes on split income (TOSI) and passive income. "The rules will come into effect and we'll see most business owners discussing and dealing with it when they're doing their 2018 year-ends," she said. "I think people are thinking about it but haven't figured out how they'll deal with it yet.

A number of the most common concerns raised since the tax reforms were announce included: "Should I wind up my family trust? Will it actually become a disadvantage?" "How about my holding company? Should I unwind all this stuff that I paid a lot of money to put into place?"

Wendi suggested not to make changes to family trusts or business structures yet as there were many non-tax reasons the structures were initially set up. "The question will then become, 'So if the structure is still worthwhile for some reason, will it just cost me a whole lot more,'" Wendi noted.





Tax Planning for Corporations

Wendi says it's still early days on the proposals on taxes on split income (TOSI) and passive income. "The rules will come into effect and we'll see most business owners discussing and dealing with it when they're doing their 2018 year-ends," she said. "I think people are thinking about it but haven't figured out how they'll deal with it yet.

A number of the most common concerns raised since the tax reforms were announce included: "Should I wind up my family trust? Will it actually become a disadvantage?" "How about my holding company? Should I unwind all this stuff that I paid a lot of money to put into place?"

Wendi suggested not to make changes to family trusts or business structures yet as there were many non-tax reasons the structures were initially set up. "The question will then become, 'So if the structure is still worthwhile for some reason, will it just cost me a whole lot more,'" Wendi noted.

document and create a reasonable return on a contribution." She said there were very subjective thresholds in the new legislation.

The bottom line is tax planning is undergoing substantial shifts with many old rules of thumb being tossed out the window, Wendi warned. Where she gets a little antsy, "is when we're seeing an incentive to change behaviour to fit into what is a rather artificial kind of tax plan."

New Complexity Equals More Risk

When speaking about the risk associated with auditing and reassessment, it's best to assume that every plan will end up in dispute, Wendi said. Assume an "almost confrontational mindset" from auditors.

For every plan, "Ask yourself how this will be defensible? What documentation do I have on hand? The auditors won't take your word for it," she said. As a lawyer, she said more attention likely will be paid to protect solicitor / client privilege on planning.

Eddy noted in 2015, taxes as a percentage of GDP in Canada was 32 percent, including property taxes, sales taxes, personal income taxes, corporate income taxes and social security / payroll taxes. In the U.S., it was 27 percent.

"The folks in Ottawa seem to focus on personal income taxes because it raises 60 percent of all the tax revenues in this country. Someone needs to step back and ask 'Are we doing the right thing?'"

He also noted Canada's income tax regime has not changed fundamentally in 50 years. Since then, commerce has become increasingly global, cell phones have become common, as have mobile payments.

Outdated tax policies are a problem, Eddy said. "At some point significant reform has to be embedded in our new taxation system, and someone needs to be bold enough to do it."

MNP is committed to providing private enterprise with information and strategies essential to position companies successfully in any market. To discuss the effects that these issues can have on your business, call Steve Ritz, CPA, CA, at 780.453.5363 or steve.ritz@mnp.ca

