Year End Tax Planning 2020-2021

Crowe BGK LLP

YEAR END TAX PLANNING

November 2020

Fall is an appropriate time to review various income tax and financial planning techniques that are available to individual and corporate taxpayers. Most tax planning transactions require analysis before being implemented so that they can be applied appropriately and consistently with the tax law. We encourage you to consult your Crowe BGK advisor before initiating any of the strategies outlined in this issue.

To view our various publications with respect to the legislative changes and available government assistance as a result of COVID-19, please consult our website at the following link: https://www.crowe.com/ca/crowebgk/insights/covid-19

PLANNING FOR OWNER-MANAGERS

Salary/Dividend Planning

Many factors must be considered in determining the most beneficial method of remunerating the owner-manager of a closely-held corporation. Each case must be examined separately and there is no one "rule of thumb" that applies to all situations.

Here are a few factors that should be taken into consideration:

- The tax rate of the corporation;
- The marginal tax rate of the individual;
- Exposure to Alternative Minimum Tax;
- The ability to benefit from child care expenses, paternity/maternity benefits and RRSP & CPP/QPP contributions, which are all based on salary and not dividend income;
- Wage levies applicable to salaries, such as the Ontario Employer Health Tax, Quebec's Health Services Fund and 1% Training Tax;
- Quebec restrictions on the deductibility of investment expenses by individuals where expenses exceed investment income;
- Whether eligible or tax-free dividends can be paid to shareholders;
- Receiving dividend income will result in a higher net income compared to receiving an equivalent salary, since dividend income is grossed up by 38% for eligible dividends or 15% for non-eligible dividends. This can have an impact on certain credits and benefits of an individual (e.g. old age security benefits);
- Receiving salary income (max $154,611 for 2020) will result in a higher RRSP contribution room in 2021; and
- Remuneration that is accrued and expensed (e.g. bonuses) by a corporation must be paid to the employee within 180 days of the corporation's year-end.

Income Splitting

Prescribed Rate Loans

The CRA announced this summer that the prescribed interest rate for the third and fourth quarter of 2020 was reduced to 1%, down from the previous 2% during the second quarter of 2020. Considering the new low prescribed rate, it is an opportune time to consider income splitting using prescribed rate loan planning.

Generally, investment income earned by an individual who invested money borrowed at low or no interest from a related person will attribute back to the lender. Subject to a purpose test, this rule does not apply where the loan is to a related person other than a spouse or minor child. Nor will it apply where the loan is to a spouse or minor child if interest is charged at the prescribed rate in effect at the time the loan is made. When utilizing this exception, interest must be paid no later than 30 days after the end of the year to avoid attribution of income.

For instance, the high-income spouse can loan investment funds to the low-income spouse at the current 1% rate and receive (and pay tax on) interest income annually, for as long as the loan remains outstanding. The low-income spouse will pay tax on the income generated by the funds and deduct the interest paid to the high-income spouse.

It may be prudent to effect such an arrangement before a potential rate increase to secure the current 1% rate. If this planning was put in place while the interest rate was 2%, it may be opportune, depending on the circumstances, to enter into a refinancing arrangement using the 1% rate. The CRA has recently softened its administrative position on refinancing arrangements by specifying that if the initial investments purchased with the loan have grown in value and a portion are disposed of in order to repay the initial loan, the retention of the remaining investments will not cause the attribution rules to apply. Before this announcement, the position was that it was necessary to liquidate the entirety of the investments and satisfy the initial loan in order to be able to borrow at the new lower rate.

Since the attribution rules are complex, caution is advised when contemplating a transfer of property or a loan to a spouse or a minor child (including transfers indirectly through a corporation or a trust). Prior to entering into or altering such an arrangement, we suggest you consult with your Crowe BGK advisor.

Tax on Split Income ("TOSI")

As of 2018, the "kiddie tax", which previously subjected minors receiving certain types of income from private corporations, partnerships or trusts to be taxed at the highest marginal rate has been broadened to apply to all Canadian resident taxpayers.

These income splitting rules are very broad and complex. Prior to distributing any amounts (other than salary) from a private corporation, partnership or trust we suggest you consult with your Crowe BGK advisor.

Other Basic Planning Ideas

- Depositing Canada Child Benefit (CCB) and Quebec Child Assistance payments (CAP) directly into accounts opened in the children's names;
- Using the income of the spouse with the higher income to pay the family's household expenses so that the spouse with the lower income can accelerate the growth of his or her capital; or
- Paying reasonable salaries to your spouse and/or children based on work performed.

Planning Ideas in Light of COVID-19

In times of uncertainty, the value of a corporation may decrease significantly. In light of the COVID-19 pandemic, it may be opportune to take advantage of low business valuations. For example, if you have been considering a shareholder buy out and the fair market value of the shares of the corporation has decreased, now may be the best time to consider following through.

It is precisely at times like these that shareholders of private corporations should consider freezing the value of(or re-freezing at a lower value) the shares of their corporations in favour of a trust or family members directly. Capital gains tax can be deferred to the next generation and/or the multiplication of the capital gains exemption can be maximized upon a future sale of the business.

If you wish to conserve cash throughout the year due to the uncertainty caused by the COVID-19pandemic, you can make a lump-sum RRSP contribution in the January-February period of the following year, instead of contributing periodically throughout the year. The deadline to contribute to an RRSP for the 2020 taxation year is March 1, 2021, and the deadline to make an RRSP contribution for the 2021 taxation year is March 1, 2022.

If you have a corporation with a capital dividend account balance, it might be best to elect to distribute the available balance and access the cash personally on a tax-free basis prior to selling off assets and potentially incurring capital losses, which would decrease your corporation's capital dividend account balance.

If you have been reluctant to remove redundant assets from your corporation in the past in order to qualify for the capital gains exemption, now may be a good time to revisit this planning strategy. It is possible that the value of the asset has decreased due to the shifting economy, thereby reducing the tax cost resulting from the transfer out of the particular redundant asset. Similarly, if you have personal assets in your corporation which result in shareholder benefits and non-deductible expenses in the corporation, their value may have decreased and as a result now may be an opportune time to remove them from the corporation.

Should you wish to consider implementing any of these planning opportunities, please contact your Crowe BGK advisor.

Reduction of the Small Business Deduction (SBD) Limit

For taxation years beginning on or after January 1, 2019, the SBD limit of up to $500,000 is reduced when the prior year investment income of an associated group of corporations is greater than $50,000. For each dollar of prior year investment income over $50,000, the SBD limit is reduced by $5. Prior year investment income of $150,000 or more will eliminate the SBD for the associated group for the particular year. This phase out of the SBD limit is not applicable for Ontario corporate income tax purposes. Planning options may be available to mitigate the reduction or elimination of the SBD in your corporate group.

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PLANNING FOR INVESTORS

Capital Gains and Losses

Capital losses realized in 2020 (net of any capital gains realized) can be carried back up to three years and carried forward indefinitely to offset future capital gains. It may be worthwhile to conduct an investment portfolio analysis in order to dispose of assets with unrealized losses prior to the end of the calendar year for individuals and taxation year for corporations. Using losses against gains realized in previous years will result in additional tax refunds.

It should be noted that a corporation is affiliated with a person that controls the corporation. A corporation is also affiliated with each member of an "affiliated group of persons" that controls the corporation.

Capital losses will not be recognized at the time of disposition where, during the period that begins 30 days before and ends 30 days after the disposition of the investment, the taxpayer or a person affiliated with the taxpayer acquires an identical property (a "superficial loss"). Individuals are affiliated if they are spouses or common-law partners. For an individual transferor, this denied loss will be added to the adjusted cost base of the property acquired by the affiliated person. This rule may be used advantageously to transfer a capital loss to an affiliated person.

Deductibility of Interest and Investment Expenses

Individuals who have debts should generally make it a priority to repay those with non-deductible interest. In general, interest on loans contracted for personal purposes will not be deductible, however interest on loans contracted to earn income will be. The courts have confirmed that a taxpayer can sell an income-producing asset to repay a debt with non-deductible interest and then contract a new debt for the purpose of repurchasing the same asset or a different income-producing asset.

In Quebec, investment expenses incurred in the year by individuals are deductible up to the amount of investment income for that year. The excess amount may be carried back to the three preceding years or carried forward indefinitely. There exists no similar restriction for corporations.

Donations

Charitable donations are generally limited to 75% of net income (no limit for Québec). Unclaimed amounts can be carried forward for 5 years.

It is generally advantageous to donate publicly traded securities rather than cash to a registered charity. The amount of the donation receipt will be equivalent to the fair market value of the securities at the time of the donation. However, any increase in value of the securities above the donor's original cost will not be subject to capital gains taxation. In addition, for corporations, 100% of the gain is credited to the capital dividend account.

Strategies concerning donations of marketable securities can be complex. Potential donors should consult their Crowe BGK advisor.

Political Contributions

If you've made a personal contribution to a recognized federal party, you are eligible to receive a federal tax credit. The maximum amount of the credit is $650 for 2020. If you've made a personal contribution to a recognized provincial party and you reside in that province at the end of the year, you may be eligible to receive a provincial tax credit. The maximum amount of the credit is $1,410 for Ontario. In Quebec, only contributions made to municipal political parties are eligible and the maximum credit is $155 in 2020.

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RETIREMENT PLANNING

Registered Retirement Savings Plan (RRSP)

The maximum amount individuals are allowed to contribute to an RRSP for 2020 is the lesser of 18% of their earned income for 2019 (essentially employment income net of any expenses, business income and rental income) and $27,230, plus unused RRSP contribution room from previous years. RRSP contribution room available for 2020 is reported on an individual's 2019 Federal Notice of Assessment. Membership in a Registered Pension Plan (RPP) or a Deferred Profit-Sharing Plan (DPSP) may reduce the amount of eligible RRSP contributions. All or part of an RRSP contribution may be paid to a spousal plan without affecting the contribution room available to the spouse. This tax planning strategy effectively allows income splitting between spouses. Individuals may contribute to their own RRSPs up to and including the year in which they turn 71. If additional contribution room is generated subsequently, RRSP contributions may be made to a spousal plan up to the end of the year in which the spouse turns 71.

For individuals who anticipate their income being taxed in a higher tax bracket in a subsequent year, it may be worthwhile to delay the RRSP deduction to that subsequent year.

The amount of RRSP over-contributions must not exceed the RRSP contribution limit by more than $2,000 at any time; otherwise a penalty will be imposed on the excess amount.

RRSP contributions should, where possible, be made early in the year to benefit from the longer period that income is earned on a tax-sheltered basis within the RRSP.

Interest paid on a loan contracted to contribute to an RRSP is not tax deductible. RRSP management fees are also not deductible.

If you turn 71 this year, you are required to collapse your RRSPs no later than December 31, 2020. In order to avoid having to pay a tax on the value of the RRSP, you should purchase an annuity or transfer the RRSP to a Registered Retirement Income Fund (RRIF) no later than December 31, 2020. Assuming a spousal plan contribution is not available, you may contribute your 2020 available RRSP deduction in December 2020 (before winding-up your RRSP) and pay a maximum penalty of $252.30 [1% of $25,230($27,230-$2,000)].

As a result of the COVID-19 pandemic, the minimum required withdrawal for all types of RRIFs has been reduced by 25% for the year 2020. The 25% reduction applies to the entire minimum amount for 2020. However, individuals who have already withdrawn more than the reduced 2020 minimum amount will not be permitted to re-contribute the excess amount back into their RRIFs.

Tax-Free Savings Account (TFSA)

A TFSA allows investment income, including capital gains, to accumulate on a tax-free basis, rather than only defer taxation as is the case with an RRSP. Canadian residents aged 18 or older are able to contribute $6,000 in 2020 to a TFSA. Unused contribution room is carried forward to a subsequent year. The cumulative contribution limit in 2020 is $69,500. Unlike an RRSP, no deduction is available for contributions made to a TFSA.

Individual Pension Plan (IPP)

An IPP is an option for owners of incorporated businesses who wish to enhance the amount of their retirement savings. Contributions are made by reference to the owner's salary and the pension benefit desired. This can significantly exceed RRSP contribution limits, including a potentially large past-service contribution (and deduction) by the corporate employer. Minimum annual withdrawals are required once a plan member reaches age 72, similar to the rules for RRIFs.

Government Pensions

Individuals who have turned or are about to turn 65 should file their Old Age Security (OAS) and Canada Pension Plan (CPP)/Quebec Pension Plan (QPP) retirement applications. Old age spousal or widow(er)'s allowances may also be available. **Reduced** CPP/QPP retirement benefits may be available to persons between ages 60 to 65. **Enhanced** CPP/QPP benefits and OAS pensions are available if the application is delayed until after age 65 (up to age 70).

Taxpayers must repay their OAS at the rate of 15% of 2020 net income in excess of $79,054. The entire OAS amount must be repaid if a taxpayer has net income in excess of $128,149.

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PLANNING FOR HIGHER EDUCATION

Registered Education Savings Plan (RESP)

A RESP can assist individual contributors achieve tax-free growth on the funds they will use to pay for the post-secondary education of designated beneficiaries, usually their children or grandchildren. The lifetime contribution limit that may be contributed to all RESPs of a beneficiary is $50,000, with no annual limit. No deduction is available for contributions made to an RESP.

A RESP is also entitled to government assistance. The federal government awards the Canada Education Savings Grant (CESG). The current annual maximum CESG per beneficiary is $500 (i.e. 20% of the first $2,500 of contributions paid annually). Each child is entitled to a cumulative limit of $7,200. A family that has not contributed to their child's RESP for one or more years can receive a grant of not more than $1,000 as a CESG in a year (i.e. on a maximum contribution of $5,000).

Quebec also provides assistance in the form of the Québec Education Savings Incentive (QESI), under which it grants an annual maximum of 10% of RESP contributions up to a maximum annual incentive amount of $250.

The beneficiaries of an RESP will not be taxed on the withdrawal of the contributions but will be taxed on the withdrawal of accumulated income, including government assistance, which they will receive in the form of Educational Assistance Payments (EAP). Initial contributions may either be paid to the beneficiary or returned to the subscriber.

To learn more about how to optimize tax-efficient withdrawals from your RESP, contact your Crowe BGK advisor.

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INTERNATIONAL PLANNING

Form T1135 Foreign Income Verification Statement

Taxpayers who hold foreign property with a total cost greater than $100,000 at any point in the year are required to provide detailed information regarding each specified foreign property owned during the taxation year.

Significant penalties may apply to a taxpayer that fails to report or inaccurately reports the information respecting any specified foreign property.

US Citizens in Canada

A US citizen resident in Canada must file Canadian and US income tax returns, reporting worldwide income. We recommend that the US tax returns be prepared by a US tax advisor due to the complex interplay of foreign tax credits.

US citizens who may not be in compliance with US filing requirements should be aware that the U.S. Internal Revenue Service (IRS) has an amnesty program for Americans living in Canada and abroad. The IRS may waive significant penalties for certain "low compliance risk" taxpayers who opt to be compliant.

Snowbirds and the COVID-19 Impact

Usually, Canadians who stay in the United States for more than 122 days (~4 months) every year run the risk of being considered a US resident for US tax purposes. If you are caught under the specific rule, but have spent less than 183 days in the United States in the current year, there may be an exemption available. The exemption is claimed by filing IRS form 8840 on a timely basis, generally by June 15 of the following year.

Due to the COVID-19 Pandemic, numerous individuals have faced challenges in departing the United States in a timely manner in order to remain below this 183 day threshold. On April 21, 2020, the U.S. Internal Revenue Service (IRS) provided relief for certain nonresident individuals who, if not for COVID-19-related emergency travel disruptions, would not have been in the United States long enough during 2020 to be considered resident aliens under the substantial presence test. This relief is subject to certain conditions. The substantial presence test is based on the days that a person was physically present in the U.S. and there are certain thresholds of physical presence that are required in order to meet the substantial presence test.

Crowe BGK has a US tax division that can assist with US tax reporting and other US tax matters.

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DATES TO REMEMBER – December 2020 to June 2021

**Deadlines falling on holidays or Sundays may be extended to the next business day.*

***** Due to the COVID-19 situation, note that these dates are subject to potential change.***

December 15, 2020	Fourth personal income tax instalment for 2020 is due.
December 29, 2020	Anticipated final day of trading on Canadian stock exchanges for the transaction to be recognized in 2020.
January 30, 2021	Final day for paying interest for 2020 on loans to a spouse or minor child in order to avoid income attribution.
March 1, 2021 (extended from Sunday, Feb. 28)	Deadline for distributing 2020 remuneration slips to employees (T4/RL-1) and independent sales representatives (T4A/RL-1), slips for payments of dividends and interest (T5/RL-3), and for filing the related summaries.
March 1, 2021 (extended from Sunday, Feb. 28)	Deadline to submit your 2020 RL-31 slip to Revenu Québec and to distribute the slip to your tenants.
March 1, 2021	Deadline for 2020 RRSP contributions.
March 15, 2021	First personal income tax instalment for 2021 is due.
March 31, 2021	Deadline for filing T3 returns for trusts with a December 31, 2020 year-end. T3/RL-16 slips must be sent to beneficiaries no later than 90 days after the end of the trust's tax year.
April 30, 2021	Deadline to submit T1 returns for individuals (other than individuals or their spouse who have business income)
June 15, 2021	Deadline to submit T1 returns for individuals (or spouse) with business income

TO OBTAIN CURRENT DEDUCTIONS AND TAX CREDITS, THE FOLLOWING EXPENDITURES MUST BE PAID BY DECEMBER 31, 2020

- Certain legal and accounting fees
- Charitable donations
- Political contributions
- Tuition fees
- Deductible support payments
- Childcare expenses
- Professional membership fees and union dues
- Eligible medical expenses
- Deductible moving expenses
- Expenses associated with an objection or appeal related to a tax assessment
- Deductible interest expenses, including interest on student loans

The matters described herein, as well as other techniques used in tax planning, should be subject to ongoing review and analysis. Some decisions may more appropriately be implemented earlier, rather than later, in the year.

If you have any questions or you believe any of the abovementioned strategies apply to you, please contact your Crowe BGK advisor today.

This and other Insights are available in the Crowe BGK Publications section at CroweBGK.com.

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