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DIVIDEND PLANNING BY DECEMBER 31, 2017. THE LAST HURRAH FOR INCOME SPLITTING.

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Background

As you are no doubt aware, announcements from the Minister of Finance are significantly curtailing the ability to split income amongst shareholders of a company and beneficiaries of a trust that are shareholders of a company. These are structured to take effect January 1, 2018.

For full particulars of the impact of the amendments to the Income Tax Act (Canada), consult your tax advisor. The extremely condensed version of the proposed changes to income splitting is:

1. tax at the highest marginal rate is imposed where the dividends paid to (primarily) family are not 'reasonable', which tax is referred to as Tax on Split Income aka TOSI;
2. determining what a 'reasonable' amount of a dividend will look like varies from facts to facts, but the draft legislation dangerously confuses the role of employees and shareholders, disregarding the inherent risk assumed by entrepreneurs and their family unit; and
3. the determination of reasonableness will be more onerous for those receiving dividends between the ages of 18-24, particularly if the person does not contribute 20 hours/week to the business.

Planning into This – Templates included here.

If you have family members or non-arm's length individuals, companies, or trusts as shareholder(s) and you use these to income split, before the end of the year consider declaring dividends to the shareholders to the extent it brings their income immediately under the highest tax bracket, taking into account any other sources of income they may have.

In BC, the highest combined personal federal and provincial tax rate in 2017 is 47.7% on general income and 40.95% on non-eligible dividend income. In 2018, in addition to the increased taxes resulting from the expanded application of TOSI, these rates are anticipated to increase to 49.8% and 43.73% respectively.

This will be particularly troublesome for family members under 24 years of age, such as children who are attending post-secondary.

The ability to declare dividends to them without those dividends being taxed at the highest rate is anticipated to largely disappear after 2017.

The following templates are included here, should you wish to use them, to declare dividends before the end of 2017 – all templates are dated as if the dividend is declared December 29, 2017, but can be changed:

1. Package I – Package for inter-corporate dividends (then use Package II or III as applicable to move the dividends received by the company to its shareholder(s))
2. Package II – Package for dividends to individual human shareholders
3. Package III – Package for dividends to Trust shareholders and subsequent distribution from the Trust

Where your company has sufficient cash on hand, you may wish to make the payment supported by actual movement of money to the receiving shareholder(s)/trust beneficiaries. Alternatively, you may wish to make the payment by way of promissory note. Both options are included here. Should you effect payment by promissory note, ensure the promissory note is delivered to the ultimate recipient on the date of the dividend.

We recommend that you consult with your accountant as to the amount of the dividend appropriate for your shareholders' circumstances, and whether that dividend will be classified as a capital dividend, eligible dividend, or regular dividend. It is also important to ensure that you are declaring dividends on classes of shares entitled to receive them and, if your dividends involve a trust, that the distribution from the trust is permitted by its terms. There is inherent risk in using these templates without accounting and legal review, but we have tried to reduce this risk. If you have any questions, please contact members of the Wealth Preservation group.

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