Benefit All Canadians By Reforming Taxing Statutes Through A Royal Commission

Issue

Credible and balanced simplification of the taxing statutes requires a trustworthy and appropriate formal process to ensure outcomes serve all Canadians' long term interests.

Background

The federal government has proposed policy changes regarding the taxation of Canadian Controlled Private Corporations (CCPC's). The consultation period for submitting comment regarding the proposals is seventy-five days and limited to online submissions. Despite the limited timeframe and process for engaging Canadians on the proposed changes, the anticipated outcomes of the review are ambitious:

1. To "bolster the confidence Canadians have in their Government and in their economy… by making sure that we all pay our fair share of taxes—with no exceptions."[1]
2. To "help businesses grow, create jobs and support their communities."[2]

Laudable goals, but unachievable given the timelines and ad-hoc approach which focuses on income sharing, passive income and capital gain deferment. The sheer complexity of the taxing statutes alone means that, in some cases, even the professional advisors, the Canada Revenue Agency, the taxpayer and the Courts cannot fully understand the provisions. See, for example, *Hoffman v. H.M.Q.*, 2010 TCC 267 where C. Miller, J. states, at paragraph 13:

> The system has become so complicated that not only the taxpayer is bewildered, but also advisors and those administering the *Act*.

Addressing issues of tax avoidance cannot be managed or accomplished by simply keeping the scope of the review narrow. Already, the unintended consequences Canadians are identifying are proliferating at an astounding rate. For the business community, priority consequences include:

Business competitiveness. Finance Canada's proposal spends three pages documenting Canada's relative competitiveness. In the UK and the US investment income earned by a small business is taxed at 19%, making Canada's current competitiveness shaky. Factor in the proposed 73% tax on investment income and Canada's tax environment for small business becomes <u>the worst</u> in the G7.[3]

Business diversification and sustainability. Businesses retain earnings and defer income for many reasons, not least of which are to diversify, invest in projects or innovation, and keep employees working in economic downturns. Prudent businesses who had diversified or had economic reserves had the capacity to keep people working in Alberta since 2015 and in BC and Ontario during the 2008. The proposed changes would penalize businesses for prudence that serves the public interest.

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[1] Pg. 3 Tax Planning Using Private Corporations
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Social outcomes for the public. If the proposed changes are implemented, doctors have been vocal that they will begin to make different choices – how long they practice, where they practice, or for young people, if they even become a doctor. Healthcare service levels and accessibility, especially to rural communities, will be affected. Charitable organizations ability to deliver services, often to the most vulnerable of Canadians, will be negatively impacted because funding often depends on charitable donations. The proposed changes will make it financially discouraging (for some) to donate.

Confidence in the Rule of Law. We don't punish honest citizens for fair play in Canada. Honest Canadians took advantage of well-established tax laws to develop business plans and their retirements. Even if some people were using the existing laws dishonestly, many who were not will suffer financial harm if the proposed changes are implemented. If the federal government proceeds as planned, our nation's guarantee of fair treatment for citizens will be tarnished and the rule of law diminished.

There are tremendous risks to implementing the proposed changes without acknowledging and addressing the unintended consequences Canadians have identified. And, without addressing the complexity of the taxing statutes – as a whole – the statutes will continue providing effective cover for evasiveness. There is nothing stopping businesses or wealthy Canadians (who desire to) to pay for strategic expertise and find new tactics to skirt the narrowly focused changes. In short, effectively addressing tax evasion cannot be achieved in the current time frame or method of consultation.

The enormous public pushback provides an opportunity for the federal government to achieve its goals of instilling public confidence in itself and our economy. By changing the focus of the current review to begin with a simplification of the taxing statutes as a whole, root causes of evasion can be addressed. With over forty business organizations acting as a coalition on this issue, government would have a willing and engaged partner with the appropriate expertise to redress the flaws of the taxing statutes.

Federal leadership and commitment to a trusted, thorough, and inclusive process to achieve balanced tax outcomes that benefit all Canadians in the long term is needed. A Royal Commission is that process.

Recommendations

That the federal government:

1. Shelf the proposed changes and extend the current consultation period beyond October 2, 2017 so as to ensure broad participation by Canada's SME community.
2. Establish a royal commission to undertake a comprehensive review of taxing statutes guided by the principles of simplification and modernization, as well as having the goal of reducing compliance costs to make Canada a competitive tax regime once again.
3. Establish a standing committee, with active representation from the SME community to support the commission by continuously monitor changes and publicly report progress at least annually.