Ontario Federation of Agriculture

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MEMORANDUM

TO: OFA Policy Advisory Council

CC:

FROM: Ben Le Fort, Senior Policy Analyst

DATE: August 23rd 2017

RE: Proposed Federal Changes to Corporate Tax Planning

On July 18th the Department of Finance released a consultation paper that proposed a major overhaul of the current tax regime for private corporations in Canada. The stated reason for these proposed changes is to close "tax loop holes" so that high income earners do not receive beneficial tax treatment when they earn their money through a corporation.

The government has identified and proposed reform of four tax strategies that are currently available to private corporations:

1. **Income Sprinkling:** Used to reduce income taxes by shifting income that would otherwise be realized by an individual in a higher tax bracket, to instead, be realized by family members in a lower tax bracket via dividends or capital gains.

Proposed changes: The government is proposing a "reasonableness test" that will determine if it is reasonable for a person who is related to the owner of the corporation to receive income based on their contributions (both their labour contribution and capital) to the company. The "reasonableness" test will be most strict for those aged 18-24. If the income is deemed unreasonable it will be attributed back to the owner of the corporation and taxed at their marginal tax rate.

2. **Limiting the use of the Capital Gains Exemption**: The Lifetime Capital Gains Exemption (LCGE) provides an exemption from capital gains realized on the disposition of qualified small business corporation shares and qualified farm property. Currently the LCGE is $835,716 for the disposition of small business shares and $1 million for the disposition of qualified farm property. The LCGE can be claimed by several members of the same family who are legal owners of the business.

Proposed changes: Individuals would no longer qualify for the LCGE in respect to capital gains that accrue before the individual reaches 18 years of age. Additionally, gains that accrue inside a trust will not be eligible for the LCGE.

3. **Holding Passive Investments inside a corporation:** Holding investments is financially advantageous for owners of private corporations. This is due to the fact that lower corporate tax rates allow for more after tax income to be invested in passive assets, compared to the same level of income taxed at personal tax rates, for high income earners.

   Proposed changes: This is an area the government is genuinely looking for feedback on. They are currently proposing multiple possible changes. One proposal would be to apply a "refundable tax" on income used to acquire passive investments, which would presumably be refunded when the initial investment is withdrawn and reinvested back into the business. Another proposal is to simply increase the tax on income used to acquire passive investments with no refund.

4. **Converting regular income into capital gains:** Advanced tax strategies referred to as "surplus stripping" can currently be used to reduce income taxes by taking advantage of lower taxes on capital gains compared to salary or dividends.

   Proposed Changes: The government is arguing that current wording in the Income Tax Act is too narrow and has resulted in the "unintended" consequence of allowing specific tax planning to legally convert regular income into capital gains. The government is proposing to amend the wording within the Income Tax Act to prevent regular income, within a private corporation, from being converted into capital gains.

Intergenerational Business Transfers

The one bit of potential good news for OFA members is the government's announcement that it is interested in hearing comments on how to better accommodate "genuine intergenerational business transfers" of incorporated businesses. As it currently stands there is a significant tax advantage for an owner of an incorporated farm business to sell the shares of their farming business to a third party, rather than their children. The government is requesting comments on how to best remove these disincentives and better facilitate the transfer of incorporated businesses onto the next generation.

Key Action Items

The changes that the government is proposing are far-reaching and will impact all Canadians who have incorporated their business, including family farm corporations, which now account for more than 25% of all farm businesses in Canada. The government is leaving the consultation period open until October.

It will be important to not only advocate on behalf of our members but also to communicate as clear as possible to our members what is and what is not being proposed. The changes being proposed are highly technical in nature and can easily be misinterpreted.

Finally, it would be strongly advised that all of our members who have incorporated their farm business review their current tax strategies and succession plans with their tax and legal advisors to ensure that they adhere to the proposed changes.