Canada – TaxMatters@EY

November 2019

In this issue

TaxMatters@EY is a monthly Canadian bulletin that summarizes recent tax news, case developments, publications and more. For more information, please contact your EY advisor.

Boost education savings by making year-end RESP contribution

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As year end approaches, many of us turn our minds to tax planning. When reviewing tax planning opportunities, consider making a registered education savings plan (RESP) contribution for a child or grandchild.[1] Making regular contributions to an RESP maximizes tax-deferred growth of plan assets while providing access to available government grants. Contributing smaller amounts annually can also save you from having to make large catch-up contributions down the road.

Overview

In general terms, an RESP is a tax-assisted arrangement between you, as the subscriber, and a promoter, typically a financial institution, that will allow you to save money for one or more of your children to fund a postsecondary education. You make contributions to the RESP, which grow tax-free while in the plan, and the promoter agrees to make payments to a named beneficiary when he or she attends a postsecondary institution.

[1] The beneficiary is usually a child or grandchild of the contributor, but no blood relationship is required. See https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-education-savings-plans-resps/who-become-a-beneficiary.html.

Depending on your income level, the age of your child and the amount of contributions made, the RESP may be entitled to receive government grants that will further assist you in saving for your child's future education.

When the money is later withdrawn to cover expenses related to your child's postsecondary education, any investment income and grants withdrawn will be taxed as ordinary income in your child's hands, typically at a very low tax rate. These withdrawals are referred to as educational assistance payments (EAPs).

Types of RESP

There are two basic types of RESP:

- Group plans, in which you enrol with many other contributors
- Individual plans, including family and non-family plans, to which you're the only contributor, your named beneficiaries are the only beneficiaries, and you have some control over the investments. Individual plans generally offer much more flexibility than group plans

Transfers between individual RESPs for siblings are permitted without triggering penalties and repayments of grants so that these plans enjoy the same flexibility available under family plans.

RESP contribution limits

You can contribute a lifetime maximum of $50,000 for each beneficiary, and there's no annual contribution limit. There is also no limit to the number of RESP accounts that can exist for the same beneficiary, but contributions to all those plans combined cannot exceed the $50,000 lifetime limit. Contributions in excess of the lifetime maximum, calculated at the end of each month, are subject to a penalty tax of 1% per month (subject to certain exceptions) until the excess is withdrawn from the plan.

Contributions to an RESP are not tax deductible, but as mentioned previously, the income earned will accumulate without tax until it is withdrawn. At that time, the income earned in the plan is taxed as ordinary income in the beneficiary's hands when it is paid out to fund postsecondary education. Any original contributions withdrawn are not taxable.

You can contribute to an RESP for up to 31 years. The deadline for termination of the plan is the end of its 35th anniversary year. In the case of a beneficiary with a disability, you can contribute to an RESP for 35 years, and the termination deadline is the end of its 40th anniversary year.

Types of RESP grant

Basic Canada Education Savings Grant

When you make RESP contributions on behalf of beneficiaries under age 18, a basic Canada Education Savings Grant (CESG) may be paid to the plan to increase the amount of money available to fund future postsecondary education. The basic CESG is 20% of annual contributions you make to all eligible RESPs for a qualifying beneficiary, to a maximum basic CESG of $500 in respect of each beneficiary ($1,000 in basic CESG if there is unused grant room from a previous year).

There is a lifetime basic CESG limit of $7,200 for each qualifying beneficiary. The basic CESG is available regardless of family income. If your child is 16 or 17, there are special CESG eligibility rules.

RESPs for beneficiaries 16 and 17 years of age can only receive a CESG if at least one of the following two conditions is met:

- A minimum of $2,000 of contributions has been made to, and not withdrawn from, RESPs in respect of the beneficiary before the year in which the beneficiary turns 16.
- A minimum annual contribution of at least $100 has been made to, and not withdrawn from, RESPs in respect of the beneficiary in any four years before the year in which the beneficiary turns 16.

No CESG is paid for a child who turns 18 in the year.

Making an RESP contribution of $2,500 each year, from birth until the end of the calendar year in which the beneficiary turns 13 years of age, and then making a contribution of $1,000 in the year they turn 14, will ensure the maximum CESG is paid into the plan.[2] However, with no maximum annual RESP contribution limit, individuals should consider whether the tax-free compounding benefit of early lump-sum contributions outweighs the CESG benefits available with regular contributions.

Additional Canada Education Savings Grant

For families of modest income, an additional CESG may be available. If you qualify, an additional CESG may be available for RESP contributions you make each year for a qualifying beneficiary. These additional grants are based on your adjusted family net income for the year. For 2019, the additional CESG is equal to 10% of the first $500 in contributions if your adjusted family net income is between $47,631 and $95,259 and 20% of the first $500 in contributions if your adjusted family net income is less than $47,631.

Canada Learning Bond

In addition to the CESG, if you are in a low-income family, you may qualify for a Canada Learning Bond (CLB) contribution to an RESP equal to $2,000 in additional RESP savings for each qualifying beneficiary ($500 initially plus $100 for each subsequent year a child is eligible up to and including the year the child turns 15).

[2] Calculated as ($2,500 x 14) + $1,000 = $36,000. $36,000 x 20% = $7,200.

The CLB is based in part on the number of qualified children and the adjusted family net income of the primary caregiver. For example, a family with up to three children may be eligible to receive the CLB if the adjusted net family income for 2019 is $47,630 or less; for a family of four, the income limit is increased to $53,740.

Carryforward of grant entitlement

If you do not contribute an amount to an RESP that is sufficient to receive the maximum CESG cumulative entitlement, you can receive the unclaimed entitlement in a later year if your contributions in that year exceed $2,500. However, the maximum CESG you can receive in a year is $1,000 (20% of a $5,000 RESP contribution). The result is that while you can carry forward unclaimed CESG entitlements, you will only be entitled to receive a CESG amount equivalent to two years of the maximum CESG amount of $500 in a given year.

Eligible RESP investments

Depending on your RESP promoter, you could put money in a savings-type account or choose from a variety of options such as guaranteed investment certificates (GICs), publicly traded bonds and stocks, mutual funds and similar investments. Different plans provide for different investment options. Generally, the same types of investments that are qualified investments for RRSPs will also qualify for an RESP. Use caution when choosing investments for an RESP, as penalties may be imposed on the acquisition of non-qualified or prohibited investments.[3]

However, you should consider when your child will most likely be attending postsecondary school when deciding how to invest your RESP contributions, taking into account factors such as the need for liquidity at a certain point, the expected time horizon and the potential risk of market fluctuations.

RESP withdrawals

RESP payments made directly to a beneficiary who is attending a postsecondary institution can be distributed from two distinct amounts held in the RESP:

- Amounts accumulated in the RESP, including government grants and income earned on contributed amounts and government grants (these amounts are distributed as EAPs)
- Amounts contributed by the subscriber

EAPs are taxed as ordinary income in the beneficiary's hands. RESP contributions that a subscriber directs to be refunded directly to a beneficiary are tax free to both the subscriber and the beneficiary (since RESP contributions are made out of after-tax income).

The maximum amount of EAPs that can be made to a student is $5,000, for the first 13 consecutive weeks of a qualifying educational program. After the student has completed the 13 consecutive weeks, there is no limit on the amount of EAPs that can be paid if the student continues to qualify to receive them.

[3] For more detail on prohibited and non-qualified investments, refer to the Investors chapter of *Managing Your Personal Taxes 2018-19: A Canadian Perspective*.

Expenses for which you can use RESP withdrawals

EAPs must be used to pay any amount to further your child's education at a postsecondary school level. This requirement is vague and may lead to some question as to which types of expenses may be eligible.

To withdraw money from an RESP, contact your RESP provider. They will ask to see official proof of enrollment before issuing the EAP. They may also provide you with a list of allowable expenses that the money can be used for, or they may ask for receipts for school purchases to prove the money is being spent on allowable educational expenses.

Because your RESP provider is responsible for administering the RESP in accordance with tax laws, it determines what is considered a "reasonable" expense – that is, one that can be paid for with the savings. As such, different promoters may permit different expenses to be paid from EAP payments or may have different criteria for requesting receipts. Administratively, the Canada Revenue Agency (CRA) does not expect promoters to assess the reasonableness of each expense item provided the EAP is below a certain threshold (indexed annually). For 2019, this threshold is $23,976.

One way to decide if a school expense is reasonable is to ask yourself whether or not this purchase will serve to further the student's studies. Some expenses obviously qualify. For example, you should expect that tuition, textbooks and required fees and equipment expenses would be eligible. However, other expenses may be less certain, and different promoters may take different views. Examples of such expenses could include certain transportation costs and living expenses.

You should consult with your RESP promoter to understand its views and requirements with respect to EAPs.

Designating amounts from an RESP

There are no rules in the income tax legislation to determine what amount of a payment from an RESP to a beneficiary should be designated an EAP and what amount should be designated a refund of contributions. Promoters generally characterize 100% of the payment as an EAP unless a subscriber specifically directs otherwise.

This policy aims to ensure that plan funds are used in the most efficient way; if the RESP has to be collapsed before all monies have been paid out, unused government grants must be repaid and accumulated income is subject to penalty taxes if paid to the subscriber. As unused capital contributions can be returned to the subscriber tax free, it may be in the subscriber's interest for accumulated income to be distributed before contributions.

This policy may not be optimal, however, if the beneficiary has other taxable income in the year of the RESP payment. Employment income received in the same year from part-time work, a summer job or a co-op term may use up all the student's personal and education-related tax credits. EAP income will then be taxed at the student's marginal tax rate, resulting in the tax benefit of the RESP being reduced. Including a non-taxable return of RESP contributions as part or all of an RESP payment reduces the amount included in a beneficiary's taxable income.

Moreover, the federal and provincial tuition-related tax credits must first be applied by the student to reduce his or her income tax payable to zero before any tuition tax credit may be transferred to a parent (to a maximum of $5,000 federally per year).

You should plan ahead and work with your RESP promoter to allocate RESP payments in the most beneficial way. If, for example, your child knows that his or her program of study will have co-op terms in certain years, you may be able to plan around this so that the EAPs are paid out in other years and refunds of contributions are paid out in years where taxable employment income is higher.

What happens if the RESP beneficiary chooses not to pursue postsecondary education?

If none of the RESP beneficiaries pursues higher education, you can withdraw the income from the plan in addition to your contributed capital. But you must repay the CESG and CLB receipts. Up to $50,000 of the income withdrawal will be eligible for a tax-deferred transfer to your RRSP or to a spousal or common-law partner RRSP to the extent that you have contribution room, and the remainder will be subject to a penalty tax as well as the regular tax on the income inclusion.

In certain circumstances, the RESP accumulated investment income for a particular beneficiary may also be transferred on a tax-deferred basis to a registered disability savings plan (RDSP) for the same beneficiary.

Finance issues comfort letter on application of advantage tax rules to investment management fees

Maureen De Lisser, Toronto

The Department of Finance recently[4] released a comfort letter recommending changes to the *Income Tax Act* (the Act) that would exclude investment management fees incurred by a registered plan, but paid outside the plan by the annuitant, holder or subscriber of the plan, from the application of the advantage tax rules in Part XI.01 of the Act.

The release of this comfort letter will come as welcome news to the investment industry and registered plan annuitants, holders and subscribers.

Background

This comfort letter follows a series of Canada Revenue Agency (CRA) announcements that began in 2016 with the announcement that the CRA would apply the advantage tax rules in circumstances where investment management fees incurred by a registered plan (such as an RRSP, RRIF or TFSA) are paid outside the plan by the annuitant or plan holder.[5]

[4] On September 30, 2019. The letter was dated August 26, 2019.

[5] Announced at the 2016 Canadian Tax Foundation Annual Conference (see CRA document 2016-0670801C6).

Specifically, the CRA had indicated that investment management fees represent a liability of the registered plan trust, which one would expect to be paid by the trustee using funds from within the plan. Therefore, there is an increase in the value of the property of a registered plan as a direct result of the plan's management fees being paid by a party outside of the plan. The CRA was of the view that this increase in value would likely constitute an advantage (subject to a tax equal to 100% of the amount of the investment management fees paid by the annuitant or holder) since:

- It would not be commercially reasonable for an arm's-length party to gratuitously pay the expenses for the registered plan.
- A compelling reason for entering into such arrangements would be to maximize registered plan savings and thereby benefit from the tax exemption provided to the registered plan.

Implementation of this change in the CRA's position was to take effect on January 1, 2018, but was subsequently deferred in follow-up announcements.[6] Ultimately, the CRA indicated that implementation would be deferred pending completion of a review by the Department of Finance, and that following the review it would update Income Tax Folio S3-F10-C3, *Advantages – RRSPs, RESPs, RRIFs, RDSPs and TFSAs*, to provide additional guidance.[7]

Changes recommended in the comfort letter

The comfort letter indicates that the Department of Finance sees no tax policy concerns with investment management fees for a registered plan being paid directly by the annuitant or holder. Specifically, the letter states:

> It is not evident that plan holders are tax-motivated when entering into arrangements to directly pay the investment management fees of their financial service providers. Generally, the direct payment of fees results in either a net loss, or negligible gain, for the plan holder.

As a result, the comfort letter recommends that changes be made to the Act to clarify that the payment by a controlling individual (i.e., an annuitant, holder, or subscriber) of investment management fees pertaining to a registered plan does not constitute an advantage for the plan. The new exception to be added to the definition of an "advantage" in subsection 207.01(1) of the Act will apply to payments, not exceeding a reasonable amount, of fees described in paragraph 20(1)(bb) of the Act. Such fees include amounts paid to investment advisors for advice relating to the advisability of purchasing or selling securities, or services relating to the administration or management of the securities. Commissions are specifically excluded from the description of such fees.

What's next?

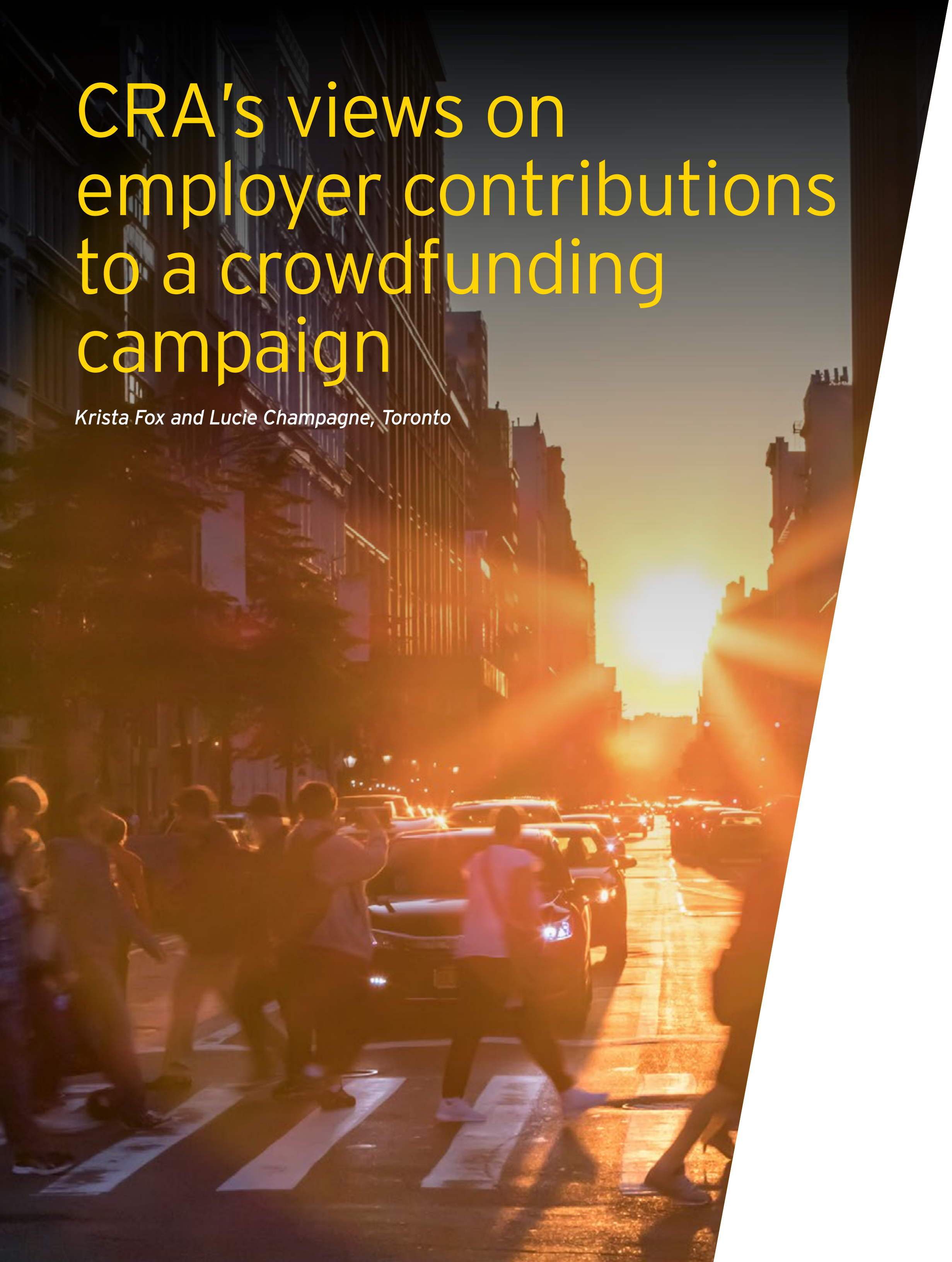
The recommended changes will need to be put forward as a proposed amendment by the Minister of Finance and proceed through the normal legislative process for enacting tax legislation.

However, we expect that the CRA will administratively adopt this position prior to the enactment of the actual legislative changes, and that they will update their guidance on this issue in Income Tax Folio S3-F10-C3, *Advantages – RRSPs, RESPs, RRIFs, RDSPs and TFSAs*, in the near future.

[6] It was first deferred until January 1, 2019 to allow time for the investment industry to make changes to their fee structures (see CRA document 2017-0722391E5).
[7] As announced in CRA document 2018-0779261E5.

CRA's views on employer contributions to a crowdfunding campaign

Krista Fox and Lucie Champagne, Toronto



Online crowdfunding campaigns have become an increasingly common fundraising method for individuals and businesses in recent years. As with other technological advances, the rapid growth in the use of crowdfunding campaigns has challenged the Canada Revenue Agency (CRA) to consider the associated tax implications of such campaigns.

In the absence of specific rules on crowdfunding arrangements in the *Income Tax Act* (the Act), the CRA continues to address possible tax consequences through a number of technical interpretations. Recently, the CRA provided further insight specifically into the factors it will consider in relation to the possible income tax implications of an employer contribution to an employee's crowdfunding campaign.

Background

Generally, crowdfunding is a way for individuals or businesses to raise money for a cause, project or business idea by soliciting small contributions from a large number of people, typically through an internet campaign or social media.

Common crowdfunding models include the donation-based model where donations are made with no expectation of reward, the rewards-based model where contributions are made in exchange for merchandise or other gifts, the investment-based model where investments are made in exchange for equity in a business and loans-based models where loans are made in return for interest on the loan.

Internet-based crowdfunding campaign platforms often charge a processing fee per transaction or take a percentage of the money raised.

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CRA's views to date on crowdfunding

In previous technical interpretations released in 2013 and 2015,[8] the CRA stated that, depending on the facts and circumstances of a particular situation, amounts received by a taxpayer under a crowdfunding arrangement could be characterized as a loan, capital contribution, gift, income or a combination thereof. Since the terms and conditions of such arrangements differ greatly from one situation to another, the CRA evaluates each situation on a case-by-case basis to assess the income tax consequences of a particular crowdfunding arrangement.

The CRA has restated that voluntary payments (or other transfers or benefits) received by an individual who carries on a business or profession through a crowdfunding campaign are considered to be taxable receipts, consistent with paragraph 4 of Interpretation Bulletin IT-334R2, *Miscellaneous Receipts*.[9] While IT-334R2 was cancelled in 2014, similar comments are included in Income Tax Folio S3-F9-C1, *Lottery Winnings, Miscellaneous Receipts, and Income (Losses) from Crime*, which was released in 2014.

However, an amount received through crowdfunding that is considered a windfall is not taxable, provided, among other things, that there was no organized effort to receive the payment and the recipient did not seek or solicit the payment. Such an amount could also be considered a gift, provided it is a bona fide gift and consistent with relevant case law (e.g., a voluntary transfer of property with no obligation to do so).[10]

The CRA also considers amounts received through a crowdfunding arrangement used for product development by an individual that carries on a business or profession to be taxable income, unless it can be clearly shown that the arrangement was a loan, capital contribution or other form of equity.[11] Generally, expenses related to such crowdfunding would be deductible as business expenses.

While these technical interpretations provide a general framework to assess the income tax implications of certain arrangements, none of the comments specifically address a situation in which an employer contributes to an employee's donation-based crowdfunding campaign.

Employer contributions to employee crowdfunding

In a recent technical interpretation,[12] the CRA was asked to consider such an arrangement.

In the scenario provided, an employee had recently given birth to a child with an unspecified health condition. The employee established a crowdfunding campaign to raise funds to defray the costs of additional therapies and support for the child. The employee's employer proposed to make a one-time contribution to the campaign.

The CRA was asked whether the employer's contribution to the employee's crowdfunding campaign, which would likely be the largest single contribution, would constitute a taxable benefit for the employee.

Consequences for the employee

Generally, if an employee receives a payment or benefit by virtue of an office or employment from an employer or some other person, the employee must include that amount in their income by virtue of subsection 5(1) or paragraph 6(1)(a) of the Act. Therefore, a crowdfunding contribution received by an employee in their capacity as an employee will be regarded as a taxable benefit.[13] However, the CRA stated that the contribution will be considered non-taxable if the employee receives it in their capacity as an individual. It is a question of fact whether an individual received a contribution in their capacity as an employee or an individual. In some cases, this determination may not be clear cut.

Where an employee deals at arm's length with the employer and is not a person of influence – for example, an executive – the CRA will generally consider the employee to have received a contribution in their capacity as an individual rather than as an employee if the contribution is:

- Provided for humanitarian or philanthropic reasons
- Provided voluntarily
- Not related to employment factors such as performance, position or years of service
- Not provided in exchange for employment services

In addition, the CRA stated that it could also take a number of case-specific factors into account, including whether:

- The employee was affected by extenuating circumstances or an event outside of work that was beyond their control, such as a serious illness of the employee or a family member, a disaster or funeral expenses
- The contribution was based on compassionate grounds meant to provide short-term financial assistance to compensate the employee for personal losses, damage suffered or increased living costs due to the extenuating circumstances or event, or to cover the basic necessities of life
- The employee received the contribution as a one-time lump sum payment
- The employer had a reasonable expectation that the employee would spend the contribution within a reasonable amount of time and on items or expenses resulting from the extenuating circumstances or event, or on the basic necessities of life
- The value of the contribution was reasonable and the contribution was made within a reasonable amount of time following the extenuating circumstances or event

[8] CRA documents 2015-0579031I7, 2013-0509101E5, and 2013-0508971E5.
[9] CRA documents 2013-0509101E5, 2013-0508971E5, and 2013-0484941E5.
[10] CRA documents 2013-0509101E5 and 2013-0508971E5.
[11] CRA document 2015-0579031I7.
[12] CRA document 2018-0779191E5.
[13] These comments are consistent with paragraph 1.5 of Income Tax Folio S3-F9-C1, *Lottery Winnings, Miscellaneous Receipts, and Income (Losses) from Crime*.

The contribution was not intended to compensate the employee for loss of income and was not subject to any conditions tied to their employment

Given the facts in the provided scenario, the CRA suggested that the employee would likely receive the contribution in their capacity as an individual and the amount would be non-taxable.

The CRA did caution taxpayers that an employer's contribution to a crowdfunding campaign for the benefit of an employee or their family will be treated as employment income if the contribution represents a form of disguised remuneration. For example, a taxable employment benefit will result if an employer's contribution is given in lieu of extra wages or benefits, or the employee forgoes wages or other taxable benefits in favour of the contribution.

Consequences for the employer

The CRA confirmed that an employer's crowdfunding contribution or other voluntary transfer would be ineligible for a charitable deduction under subsection 110.1(1) of the Act since the contribution would not be a gift made to a registered charity or other qualified donee. The contribution would also not be deductible as a business expense under paragraph 18(1)(a) of the Act since it was not an outlay or expense incurred for the purpose of gaining or producing income.

Conclusion

The CRA's analysis in this recent technical interpretation results in a reasonable outcome given the nature and purpose of the contemplated contribution. The factors the CRA identified establish a framework for employers to assess the nature of contributions or voluntary transfers made to employees. As a practical matter, proper documentation to support any contributions or voluntary transfers made to an employee in their capacity as an individual should be maintained in the event of an audit by tax authorities.

Unanswered questions remain given the range of arrangements and circumstances in which crowdfunding campaigns are used. For example, minimal guidance has been provided with respect to identifying which expenses would be deductible as business expenses, and the GST/HST implications of certain arrangements. However, the general guidance to date from the CRA appears to rely on well-established tax principles.

As such, as a starting point, situations that have not already been contemplated in existing technical interpretations should generally be examined based on these principles. Seeking further clarification from the CRA can also mitigate any tax exposures with respect to a particular arrangement.

How can your company thrive rather than survive in this era of digital Darwinism?

Originally published on ey.com

After years playing around the edges of digital transformation, the world's biggest companies are stepping up their game. Investment in digital technology is expected to reach an eye-watering US$2 billion by 2022.

Standing still is not an option. Inertia leads to extinction. In this time of rapid, hyper-connected change, new questions need to be answered. How can your company thrive rather than survive in this era of digital Darwinism? Three emerging trends can help you unlock both value and human potential.

1. Embrace the evolution, not the end point

According to IDC, around a third of the world's top companies are allocating at least 10% of their revenue to digital strategies. But has anyone transformed yet?

The very phrase "digital transformation" suggests there's a light at the end of the tunnel that will be reached after enough time, money and human capital has been expended on the journey. But digital transformation is not an A-to-B transition.

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Truly digital organizations evolve every day. They embrace digital transformation not just to address technology challenges and opportunities, but culture, leadership, risk and investment ones too. They empower their people to experiment, they foster an innovation culture, and they invest in future possibilities, leveraging latent core strengths into new business models.

When it comes to digital transformation, culture is more important than technology. It needs a transformative mindset to orchestrate engagement and inspire innovation across co-workers, customers, stakeholders and into wider society. Why? Because if you don't get that right, you can't get anything done. You can hire the top design thinkers and install the latest technology, but if you can't move with agility and innovate every day you will fail to keep up with the frenetic pace of change.

Leadership is also more important than technology. Many companies are weighed down by old-school thinking and age-old business practices. The board may call for visionary leadership, but the executive is hamstrung by the quarterly reporting cycle.

The message here is clear. You can't "do digital." The secret is to "be digital." To do that, you must rethink your talent as much as your technology, and you must reimagine everything from business models to the makeup of the board.

2. Start with the how, not the what and why

Traditional consulting advice has always urged companies to understand the "what" (their strategy) and the "why" (the market, the context, the opportunity) and only then focus on the "how" (the culture, tools, technology and talent required to make it happen). But in our dynamic and disruptive world, setting a strategy — and sticking to it — is impossible because the future is unpredictable.

When Christopher Columbus set sail for the New World, he didn't know where he was going or what he would find. But he knew he must have the right ship, supplies and crew. You may not be able to answer the "what" and the "why," but you can develop the "how." And that will help you to move faster and change direction.

So, forget the digital strategy. Instead build capability, develop an innovation culture and prepare your people. Be led by future-back innovation: planting your purpose in the future, articulating the opportunities and driving back into current action.

Then you'll be ready for any future.

3. Rethink your revenue streams

The well-paved mantra of the last five years has been "data is the new oil,"with new business models being driven around the potential to monetize customer data. But the pendulum is swinging quickly back.

Thanks to the European Union's General Data Protection Regulation, the world's toughest privacy and security law, people now have the power to control where and how their personal information is used online.

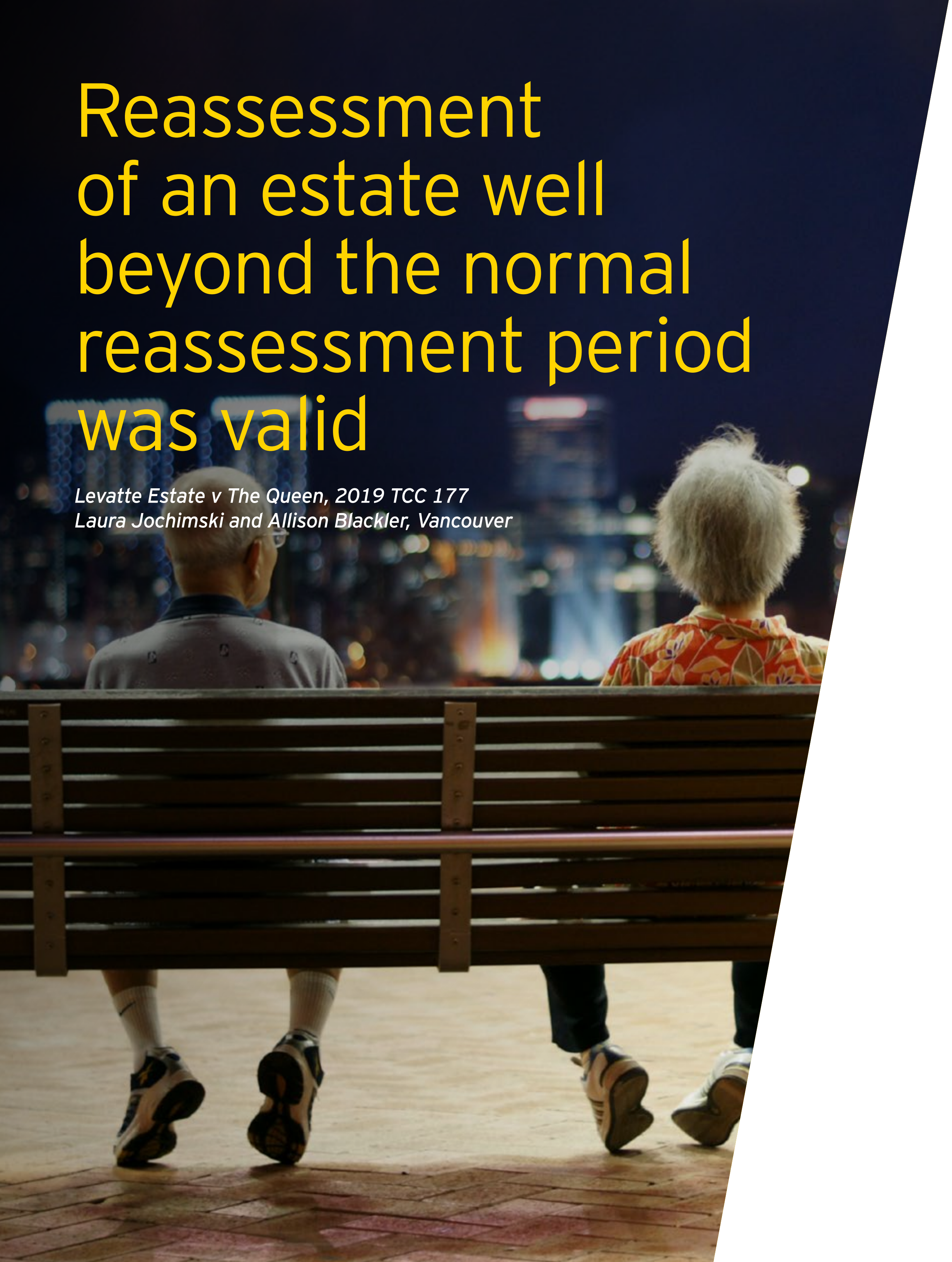
The Democratic party frontrunners in the 2020 presidential elections each have internet privacy, data and big tech squarely in their sights. Senator Bernie Sanders has said his internet privacy policy is simple: "Our information belongs to us, not corporations." Each candidate has promised, if elected, to break up the tech titans — just as previous governments did Standard Oil and AT&T — on the basis that the consumer has now become the product.

The father of the worldwide web is also worried. Thirty years after he invented the internet, Tim Berners-Lee is proposing a fresh set of rules that avoids some of the missteps of the last three decades. Future platforms and products "must be designed with privacy, diversity and security in mind," Berners-Lee has said.

These signposts are all pointing in one direction. From a risk management perspective, it's time to reconsider how we manage and monetize customers' data.

When it comes to digital transformation, there's never been a better time to take risks. The EY disruption readiness survey last year found that more than two-thirds of investors want companies to embrace disruptive innovation projects, even if they are risky and may not deliver short-term returns.

The message here is clear: doing anything is better than doing nothing. Driven by people, powered by technology, this is business transformation for a better working world.



Reassessment of an estate well beyond the normal reassessment period was valid

Levatte Estate v The Queen, 2019 TCC 177

Laura Jochimski and Allison Blackler, Vancouver

In this case, the Tax Court of Canada (TCC) held that a reassessment of an estate in respect of a taxable capital gain was validly issued even though it was made well outside the normal reassessment period. However, the TCC allowed the taxpayer's appeal in part, exempting a portion of the gain on the basis that one of the disposed properties was used as a principal residence by the deceased for some years and reversing the late filing penalty.

Facts

The taxpayer was the estate of the deceased Mr. L, who passed away in 1995. When he passed, his will provided for the creation of a spousal trust for the benefit of his wife, Ms. L, to hold two properties, one residential and one commercial. In so doing, the deemed disposition of those properties took place at their adjusted cost base under subsection 70(6) of the *Income Tax Act* (the Act) accordingly deferring the tax liability until Ms. L's passing.

However, when Ms. L passed away in 2006, the taxpayer's executor, Ms. W, failed to report the deemed disposition of the properties and filed the return one day late. While the return was reassessed in 2007 to impose a late filing penalty, it was not until 2016 that the minister issued a reassessment in respect of the unreported taxable capital gains stemming from the deemed disposition of the two properties on Ms. L's passing.

The taxpayer's main argument before the TCC was that the reassessment was statute barred because it was issued long after the expiry of the normal three-year time limit. Although in cases of negligence the time limit is extended, the taxpayer submitted that Ms. W was not negligent as she had relied on improper advice from an accountant in filing the 2007 return.

In the alternative, if the year was not statute barred, the taxpayer asserted that the gain in respect of the residential property should be reduced as it was Mr. L's principal residence prior to his death. Last, in regards to the penalty amount, the taxpayer submitted that Ms. W exercised due diligence in filing the return, and therefore the penalty should be reversed.

TCC decision

In regards to the taxpayer's main argument, the TCC held that the reassessment made in 2016 was not statute barred. The TCC found that the failure to report the disposition of properties rose to the level of "neglect, carelessness and wilful default" and therefore allowed the minister to issue the reassessment pursuant to subparagraph 152(4)(a)(i) of the Act.

While the TCC acknowledged that Ms. W was going through a time of personal hardship, her reliance on an accountant's advice was not a defence to an assessment made after the normal reassessment period. The court ruled that Ms. W should have raised the existence of the properties and possible tax consequences with the accountant.

Regarding the taxpayer's alternative argument, the TCC held that there was enough evidence to find that the residential property in question was Mr. L's principal residence for at least part of the time of ownership, and reduced the amount of the reassessed capital gain accordingly.

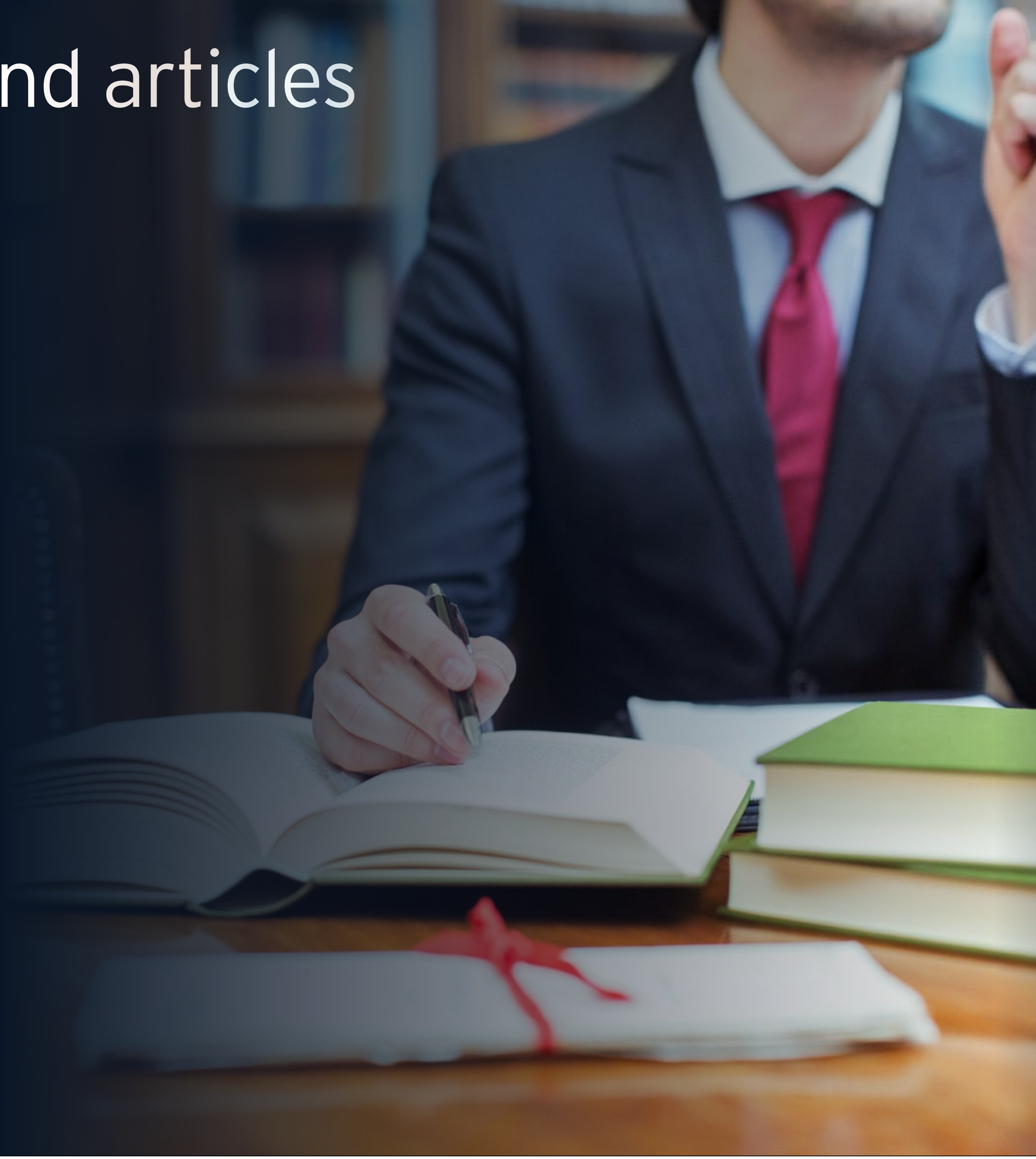
Last, the TCC took into consideration Ms. W's difficult personal circumstances in 2007 at the time of filing, and held that she had made reasonable efforts to file the return on time in light of those circumstances. The penalty portion of the reassessment was therefore vacated.

Lessons learned

Estate planning to defer capital gains is very common. And with the increase in property values in conjunction with an aging population in Canada, it is likely that we may see more and more estates disposing of real property with increasingly larger dollar values at stake. As shown here, the consequences of getting your planning wrong can even crop up years down the road, with the interest amount alone being a substantial burden.

This case serves as a reminder for executors and tax practitioners to have full discussions about all of the properties held in an estate and the tax consequences that arise with each one. After all, better questions at the beginning may yield better results in the end.

Publications and articles



Tax Alerts – Canada

Tax Alert 2019 No. 40 MLI comes into force

On August 29, 2019, Canada deposited its instrument of ratification for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (the MLI).

The MLI will enter into force vis-à-vis Canada on December 1, 2019. Accordingly, it will enter into effect for any particular covered tax treaty in accordance with the provisions set forth in its "entry into effect" articles and will apply to some of Canada's tax treaties with effect as early as January 1, 2020.

Tax Alert 2019 No. 41 Alberta budget

Publications and articles

Publications and articles

EY's Global Capital Confidence Barometer

The 20th edition of EY's *Global Capital Confidence Barometer* describes how 76% of Canadian respondents expect to pursue M&A in the next 12 months, the second-highest ever (behind April 2018) and the fifth consecutive year above the historical average of 50%.

EY's Worldwide Personal Tax and Immigration Guide 2018-19

This guide summarizes personal tax systems and immigration rules in more than 160 jurisdictions, including Australia, Brazil, Canada, France, Germany, Mexico, the Netherlands, the Russian Federation, the UK and the US.

EY's Worldwide Capital and Fixed Assets Guide 2019

This guide summarizes the complex rules relating to tax relief on capital expenditures in 31 jurisdictions and territories.

EY's Worldwide Estate and Inheritance Tax Guide 2019

This guide summarizes the gift, estate and inheritance tax systems and describes wealth transfer planning considerations in 39 countries.

Worldwide Corporate Tax Guide 2019

Governments worldwide continue to reform their tax codes at a historically rapid rate. Chapter by chapter, from Afghanistan to Zimbabwe, this EY guide summarizes corporate tax systems in 166 jurisdictions.

Worldwide VAT, GST and Sales Tax Guide 2019

This guide summarizes the value-added tax (VAT), goods and services tax (GST) and sales tax systems in 124 jurisdictions, including the European Union.

Worldwide R&D Incentives Reference Guide 2019

The pace at which countries are reforming their R&D incentives regimes is unprecedented. This EY guide summarizes key R&D incentives in 46 countries and provides an overview of the European Union's Horizon 2020 program.

2018-19 Worldwide Transfer Pricing Reference Guide

Transfer pricing rules and regulations around the world continue to grow in number and complexity. Practitioners need to have current knowledge of a complex web of country tax laws, regulations, rulings, methods and requirements. This guide summarizes the transfer pricing rules and regulations adopted by 124 countries and territories.

Board Matters Quarterly

The September 2019 edition of Board Matters Quarterly looks at various issues including digital audit, BOTs, tax transformations, the board's role in navigating geopolitics and the role of disruption in portfolio strategy.

EY Trade Watch

EY Trade Watch Autumn 2019 edition outlines key legislative and administrative developments for customs and trade around the world. This issue comes in a new, interactive and easy to share format, links to EY resources, interactive graphics and maps. Highlights include:

Global

- Focusing on fundamentals – a global trade leading practices briefing

Americas

- Spotlight on latest developments in Canadian trade
- Latest developments on the US-China trade dispute

Asia-Pacific and Japan

- Is the customs audit environment in Asia-Pacific changing?

Europe, Middle East, India and Africa

- African Union launches operational phase of the Africa Continental Free Trade Area (AfCFTA)
- Brexit update

Publications and articles

Websites

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Online tax calculators and rates

Frequently referred to by financial planning columnists, our mobile-friendly calculators on ey.com/ca let you compare the combined federal and provincial 2018 and 2019 personal tax bills in each province and territory. The site also includes an RRSP savings calculator and personal tax rates and credits for all income levels. Our corporate tax-planning tools include federal and provincial tax rates for small business rate income, manufacturing and processing rate income, general rate income and investment income.

Tax Insights for business leaders

Tax Insights provides deep insights on the most pressing tax and business issues. You can read it online and find additional content, multimedia features, tax publications and other EY tax news from around the world.

The Worldwide Indirect Tax Developments Map

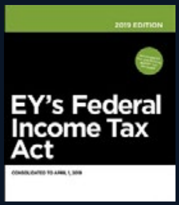
Updated monthly, our interactive map highlights where and when changes in VAT, global trade and excise duties are happening around the world. The map can be filtered by tax type, country and topic (e.g., VAT rate changes, compliance obligations and digital tax).

CPA Canada Store

EY's Complete Guide to GST/HST, 2019 (27th) Edition

Editors: Jean-Hugues Chabot, Sania Ilahi, David Douglas Robertson

Canada's leading guide on GST/HST, including GST/HST commentary and legislation, as well as a GST-QST comparison. Written in plain language by a team of EY indirect tax professionals, the guide is consolidated to 15 July 2019 and updated to reflect the latest changes to legislation and CRA policy. This edition has new commentary regarding duties on cannabis products under the *Excise Act*, 2001.



EY's Federal Income Tax Act, 2019 Edition

Editors: Albert Anelli, Warren Pashkowich and Murray Pearson

Complete coverage of Canada's *Income Tax Act* and Regulations. Included with this edition: interactive online features and purpose notes for selected provisions. Purchase of a print book includes access to an online updated and searchable copy of the federal *Income Tax Act* as well as the PDF eBook. This edition contains amendments and proposals from the 19 March 2019 federal budget, the 15 January 2019 proposed amendments to the *Income Tax Act* (salary overpayments) and 2018 legislation as passed and proposed.

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