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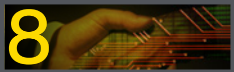
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Building a better working world

Are you underestimating the consequences of your RRSP overcontribution?

Lucie Champagne and Maureen De Lisser, Toronto

A registered retirement savings plan (RRSP) is one of the most common investment tools Canadians use to save for retirement. An RRSP can increase your retirement savings by allowing contributions to be deducted in computing your income for tax purposes, subject to statutory limits, and by sheltering income earned in the RRSP until you withdraw the funds. However, the *Income Tax Act* (the Act) provides several restrictions and penalties to limit these tax benefits.

The rules governing RRSPs are complex and you may easily find yourself exposed to potential penalties. In this article, we focus on the penalties imposed on RRSP overcontributions under Part X.1 of the Act and the relief that may be available. We also review helpful comments from the Canada Revenue Agency (CRA) with respect to these rules.

RRSP deduction limit

Your RRSP deduction limit determines the maximum tax-deductible contributions allowed each year. You may deduct from income RRSP contributions made before the end of the year, to the extent that they were not deducted for a previous year, or up to 60 days after the end of the year. The limit applies to contributions made to either your own or a spousal RRSP. In other words, your total deductible contributions to your plan and a spousal RRSP may not exceed your own deduction limit. If you make a contribution to your spouse's or common-law partner's RRSP, it does not affect your spouse's or common-law partner's RRSP deduction limit for the year.

Broadly speaking, your deductible 2018 RRSP contribution is limited to the lesser of 18% of your earned income[1] for 2017 and a maximum of $26,230. The dollar limit is indexed each year for inflation. In addition to this amount, you would include your unused RRSP deduction room from 2017, as explained below.

Generally, if you contribute less than your RRSP deduction limit, you can carry forward the excess until the year you reach age 71. For example, if your current year RRSP deduction limit is $10,000, but you make a contribution of only $7,000, you can make an additional deductible RRSP contribution of $3,000 in a future year.

If you're a member of a registered pension plan or a deferred profit sharing plan, the maximum annual RRSP contribution as calculated above is reduced by the pension adjustment[2] for the prior year and any past-service pension adjustment for the current year. In addition, there may be an increase or decrease to your RRSP deduction limit if your employer revises your benefits entitlement from the employer's pension plan.

Further, you can carry forward undeducted RRSP contributions. For example, if you make an RRSP contribution in 2018, but don't wish to claim the full amount on your 2018 tax return,[3] you can carry forward the unclaimed amount indefinitely and claim it as a deduction in a future year.

Calculating your maximum RRSP contribution limit can be complex. As a result, the CRA provides the computation of your current year RRSP deduction limit on the Notice of Assessment for your prior year income tax return. You can also check your RRSP deduction limit online if you've registered with the CRA's My Account service.

Penalty for an RRSP overcontribution

To optimize the savings and growth that can be achieved through an RRSP, there's an incentive to contribute as much as possible to your RRSP. However, if your contribution exceeds your RRSP deduction limit for the year, it will result in an overcontribution. If the total RRSP overcontributions exceed $2,000 on a cumulative basis (referred to as a *cumulative excess amount*), the excess is subject to a 1% per month penalty tax under Part X.1 of the Act (for each month the excess is left in your RRSP).

If you have to pay the penalty tax, you must file Form T1-OVP, *Individual Tax Return for RRSP, SPP and PRPP Excess Contributions*, with the CRA and pay the tax within 90 days after the end of the calendar year. Failure to file the T1-OVP return and pay the penalty tax before the 90-day deadline may result in interest and penalties.

Broadly speaking, to correct the situation, the cumulative excess amount contributed to your own RRSP or a spousal RRSP must be withdrawn and included in your income, even if the contributions were not previously deducted.[4] However, you may be entitled to a deduction (known as an "offsetting deduction") for all or any portion of the withdrawal included in your income in the year if all of the following conditions are met:[5]

- The contributions paid were never deducted in computing your income.
- The withdrawal received from the RRSP is in respect of undeducted contributions that did not result from certain transfers from other registered plans and pension plans.
- The withdrawal was received, either by you or your spouse or common-law partner, in the same year in which it was contributed, the year an assessment was issued for the year of contribution, or the year following either of these years.
- There were reasonable grounds to believe that the full amount of the contribution was deductible at the time you made the contribution or in the immediately preceding year.
- It's reasonable to believe that you made the contribution without the intent of receiving a withdrawal that would be deductible under these rules in the absence of the condition above.

Applying these conditions in your situation may not necessarily be straightforward.

If the RRSP withdrawal satisfies these conditions, you may complete Form T3012A, *Tax Deduction Waiver on the Refund of your Unused RRSP, PRPP, or SPP Contributions from your RRSP*, to have the CRA authorize your RRSP issuer to refund the excess contribution without withholding tax.

[1] If you were a resident of Canada throughout the year, your earned income is generally calculated as the sum of net remuneration from an office or employment (generally including all taxable benefits, less all employment-related deductions other than any deduction for contributions to a registered pension plan), income from carrying on a business, net rental income, and alimony and maintenance receipts included in your income. The following amounts reduce earned income: losses from carrying on a business, net rental losses, and deductible alimony and maintenance payments. In order to make the maximum RRSP contribution in 2018, your earned income for 2017 must have been at least $145,723.

[2] The pension adjustment is the total of all your pension credits for the year. It measures the level of retirement savings accrued in a year by you or on your behalf in your employer's registered pension plan and deferred profit-sharing plan.

[3] For example, you may not wish to deduct all of your RRSP contributions for a year if you have sufficient tax credits in the current year to eliminate your tax payable for the year, or if you wish to save the deduction for a later taxation year when you're in a higher income tax bracket.

[4] Subsection 146(8) and paragraph 56(1)(h).

[5] Subsection 146(8.2).

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Waiver of penalty tax

If you are assessed tax under Part X.1 of the Act, relief may be available. The minister has the discretion to waive Part X.1 tax payable if you can show that the cumulative excess amount arose from a reasonable error, and you took reasonable steps to eliminate the overcontribution.[6]

In practical terms, you must withdraw the cumulative excess amount from the RRSP if a waiver is to be granted. The CRA does not consider[7] a reasonable error to include receiving poor advice from a financial institution or misreading notices sent by the CRA[8]. Also, lack of awareness of Part X.1 tax is not a basis for granting a waiver.

To request a waiver, you must provide the CRA with a letter explaining the reason for the over-contribution and the steps undertaken to remedy the problem. You should also explain how the overcontribution resulted from a reasonable error. All supporting documents, such as copies of your RRSP account statements, should be included.

Helpful comments from the CRA

In response to questions posed at the 2017 Association de planification fiscal et financière (APFF) conference, the CRA released two technical interpretations that provide favorable practical comments in applying these rules.

Interaction between an RRSP withdrawal and Part X.1 tax

In document 2017-0707781C6, the CRA comments that, in its view, the application of the offsetting deduction is not dependent on whether Part X.1 tax applies at the time of the withdrawal, which may make it easier for individuals to remedy inadvertent overcontributions.

Specifically, in the scenario provided, an individual inadvertently makes an RRSP overcontribution in Year 1 and withdraws the amount in Year 2 to extinguish the application of Part X.1 tax. The facts are summarized below:

Year 1	Amount ($)	
RRSP deduction limit for Year 1	25,370	(A)
Contributions paid to the RRSP in January	25,370	(B)
Remaining deduction limit for Year 1	**nil**	(A) - (B)
Contributions paid to the RRSP in October	30,000	(C)
RRSP overcontribution margin	(2,000)	(D)
RRSP cumulative excess amount since October	**28,000**	(C) - (D) = (E)

Year 2	Amount ($)	
RRSP deduction limit for Year 2	26,010	(F)
RRSP cumulative excess amount since January*	**1,990**	(E) - (F)
Withdrawal from the RRSP in February**	30,000	
Group RRSP contribution by employer after February	26,010	

* To avoid the application of Part X.1 tax in Year 2, the individual must withdraw $1,990 from the RRSP; however, $30,000 was withdrawn in February.

** This amount represents the undeducted contributions from Year 1.

The CRA was asked whether the individual may claim an offsetting deduction with respect to the withdrawal of $30,000 in Year 2 on the basis that it was reasonable to believe that the full amount of the contribution was deductible at the time the contribution was made in Year 1.

In its response, the CRA noted that "the existence of an RRSP cumulative excess amount giving rise to Part X.1 tax is not a condition for the application of the [offsetting deduction]." Thus, an offsetting deduction may apply whether or not an individual is subject to Part X.1 tax at the time of the withdrawal. In this case, the excess withdrawn in Year 2 over the amount required to extinguish the Part X.1 tax (namely $28,010) does not, by itself, preclude the individual from claiming an offsetting deduction.

Not surprisingly, the CRA further stated that the determination of whether an excess contribution was made inadvertently is a question of fact. Such determination is not directly affected by the existence of an RRSP cumulative excess amount at the time of the RRSP withdrawal.

In closing, the CRA also confirmed that the contribution of $26,010 paid in Year 2 after the withdrawal would generally be deductible in computing net income for Year 2.

[6] Subsection 204.1(4).

[7] As noted in the May 2007 Institute of Chartered Accountants of Alberta-CRA round table, Question 29.

[8] See, for example, *Lepiarczyk v CRA*, 2008 FC 1022. The individual in this case claimed to have misunderstood the term unused as it appeared on his notice of assessment; however, the CRA did not accept that this was a reasonable error and so refused to grant a waiver of Part X.1 tax. The individual's

Withdrawal of an RRSP overcontribution after death

In document 2017-0710681C6, the CRA was asked whether an offsetting deduction is available where an individual dies before having withdrawn an RRSP overcontribution paid in the preceding year. The deceased individual had never deducted the RRSP contribution and this amount remained in the RRSP at the time of death.

If an individual owns an unmatured RRSP at the time of death, the individual is deemed to have received, immediately before death, an amount from the RRSP equal to the fair market value of all the property of the RRSP at the time of death. This is known as "the deeming rule."[9] This amount is included in the individual's income in the year of death.[10]

To claim the offsetting deduction, the withdrawal from an RRSP in respect of undeducted contributions must be received by the individual within the timeline specified above (under "Penalty for an RRSP overcontribution") and included in the individual's income for that year. In this case, the individual died before receiving the withdrawal.

The response provided was favorable. The CRA confirmed that an amount resulting from the date-of-death deeming rule will generally be considered to have been received by the individual for purposes of the offsetting deduction if the amount is included in the deceased individual's income in the year of death. Thus, to the extent that all the other conditions are met, the offsetting deduction may be claimed on the deceased annuitant's terminal return.

The CRA further noted that to claim the deduction on behalf of the deceased individual, the executor should claim the amount on Line 232, *Other deductions*, of the deceased's terminal return and indicate that the amount is a deduction for reimbursement of unused contributions paid to an RRSP.

[9] Subsection 146(8.8).

[10] Subsection 146(8) and paragraph 56(1)(h).

Conclusion

It's important to regularly review your RRSP contributions and deduction limit to avoid overcontributing to either your own or a spousal RRSP. The rules governing RRSPs are complex and many factors must be considered to avoid penalties under Part X.1 and other parts of the Act. If an inadvertent overcontribution occurs, the potential relief available is not automatic and specific conditions must be satisfied.

If you find yourself exposed to potential Part X.1 tax, consult your EY advisor to identify options to remedy the problem and report the penalty tax, if applicable, within the required timeline to make the most of the relief that may be available.

Worldwide Estate and Inheritance Tax Guide 2018

EY's *Worldwide Estate and Inheritance Tax Guide* summarizes the estate tax planning systems and describes wealth transfer planning considerations in 39 jurisdictions and territories around the world, including Australia, Canada, China, France, Germany, Italy, the Netherlands, the UK and the US.

This guide is relevant to the owners of family businesses and private companies, managers of private capital enterprises, executives of multinational companies and other entrepreneurial and international mobile high-net-worth individuals.

The guide provides at-a-glance information as well as details on the types of estate planning in each jurisdiction. It includes sections on the following:

- Types of tax and who is liable
- Tax rates
- Various exemptions and reliefs
- Payment dates and filing procedures
- Valuation issues
- Trusts and foundations
- Succession
- Matrimonial regimes
- Testamentary documents and intestacy rules
- Estate tax treaty partners

You can view the complete *2018 Worldwide Estate and Inheritance Tax Guide* at ey.com/estatetaxguide.

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When is cash an active business asset?

Alan Roth, Andrew Rosner and Iain Glass, Toronto

In limited circumstances, shares of certain private corporations can be qualified investments for registered retirement savings plans (RRSPs)[11] and certain other registered plans.[12]

A share of a specified small business corporation is a qualified investment, provided it was not a prohibited investment at the time the share was acquired.[13]

Generally, a share of a corporation is a prohibited investment for an RRSP or other registered plans where the annuitant is closely connected with the corporation. More specifically, a share of a corporation is a prohibited investment if the annuitant or holder of the plan:

- Is a specified shareholder of the corporation (generally a taxpayer who owns directly or indirectly 10% or more of any class of shares of the corporation, taking into account non-arm's-length and certain other holdings); or
- Does not deal at arm's length with the corporation.[14]

[11] See subsection 146(1) of the Income Tax Act.

[12] Including registered retirement income funds (RRIFs), registered education savings plans (RESPs) and tax-free savings accounts (TFSAs), but not registered disability savings plans (RDSPs).

[13] Regulation 4900(14).

[14] Refer to subsections 207.01(1) and (4) of the Act and the definition of specified shareholder in subsection 248(1).

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A specified small business corporation is defined in Regulation 4901(2). As explained in paragraph 1.57 of *Income Tax Folio S3-F10-C1*, it is a Canadian corporation (not including a corporation controlled, directly or indirectly in any manner whatever, by one or more nonresident persons) all or substantially all the fair market value of the assets of which is attributable to assets that are:

- Used principally in an active business carried on primarily in Canada by the corporation or related corporation;
- Shares or debt of connected small business corporations; or
- A combination of the two.

As a consequence, then, the corporation must not have too much surplus cash; that is, the cash on hand must be used principally in the corporation's Canadian business, and the business must be active.

But if there is cash on hand, how does one determine if it is used in an active business? The following is a summary of the CRA's general views with reference to a particular fact pattern.

In an external interpretation, *CRA income tax ruling document no. 2017-0717561E5*, the CRA was asked whether a corporation would qualify as a *specified small business corporation* pursuant to subsection 4901(2) of the Income Tax Regulations, so that its shares would be qualified investments for an RRSP.

In the given scenario, a corporation in its startup phase was raising funds to finance the future construction of its business facilities. The corporation used some of the funds to cover specific business expenses and held the remainder as cash. The specific issue raised was whether the funds held as cash would be considered to be used principally in an active business. If not, the corporation would not qualify as a specified small business corporation and would not be able to raise funds from RRSPs.

Assuming the business has in fact commenced operations, the CRA considers cash or near cash property held by a corporation to be used principally in an active business where:

- Its withdrawal would destabilize the business; or
- It is retained to fulfill requirements that have to be met to do business (e.g., certificates of deposits required to be maintained by a supplier).

However, the CRA does not generally think that cash or near cash property held to offset the non-current portion of long-term liabilities is used in an active business.

The CRA may regard temporary surplus cash that the business invests in short-term income-producing investments to be used in the business.

The CRA will generally consider cash that a business accumulates and depletes in accordance with seasonable fluctuations to be used in the business. However, the CRA will not generally consider a permanent balance that exceeds a corporation's reasonable working capital needs to be so used. Furthermore, a cash balance will not in and of itself be regarded as used in the business if the corporation accumulates it in anticipation of the purchase or replacement of capital assets or the repayment of long-term debt.

The CRA stresses in the document that its comments are of a general nature and that any determination is a question of fact. These comments are helpful. In this situation, however, the fact that the company was successful in raising cash for its long-term as well as short-term needs could have created a tax problem.

This interpretation illustrates just how difficult it is to qualify as a *specified small business corporation* at a particular time for purposes of meeting the qualified investment test. However, it is important to note that even though a share may satisfy the qualified investment test for RRSP purposes, it may subsequently become a prohibited investment if, at any time after its acquisition, the corporation ceases to satisfy the specified small business corporation test.[15] In other words, to ensure the share does not become subject to the prohibited investment penalty rules, the corporation must satisfy the specified small business corporation test at all times. As a result, a corporation must regularly monitor its surplus cash to ensure it doesn't fall offside.

[15] Regulation 4900(15).

Crossing the digital divide: what boards need to know about proposed digital tax policies

Originally published in the "EY Center for Board Matters"

Companies are increasingly incorporating digital activity into their business models. As one of the latest frontiers of competitive advantage, technology innovation is seen as a differentiator across all sectors of the economy

Whether a company manufactures cars, provides asset management services, is a retailer or is in the energy business, chances are that it is exploring some sort of digital strategy. From the buying and selling of products and information to cloud-based data warehousing, businesses are using digital information in ways that were, until recently, the purview of technology companies. The internet and the blurring of industry boundaries resulting from technological innovation mean that many companies are starting to view themselves as technology companies — with accompanying digital tax issues.

The focus on digital tax policies has evolved quickly, mirroring the rapid integration of digital into the business landscape. Businesses are increasingly discovering ways to monetize their digital assets.

Tax policymakers are trying to keep pace with this growing trend, with some countries and supranational groups exploring different digital taxation models. A current lack of agreement on how to proceed, however, threatens to create a confusing tax landscape, with a patchwork of different proposals for businesses to navigate. The end result could be double taxation, distortion of business decisions, a lack of clarity about which types of businesses are affected and potentially increased costs for multinational companies.

Increasingly, a company's tax strategy needs to support its digital ambitions while also protecting the investment from tax uncertainty.

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Digital discord — conflicting perspectives

While digital taxation is shaping up to be a defining tax issue for 2018, the future state is still ill defined. The European Commission (the Commission or the EC) and the Organisation for Economic Co-operation and Development (OECD) are currently on different paths — and even within Europe, there are divergent views. Meanwhile, individual countries, driven by political and revenue considerations, have started to move ahead unilaterally.

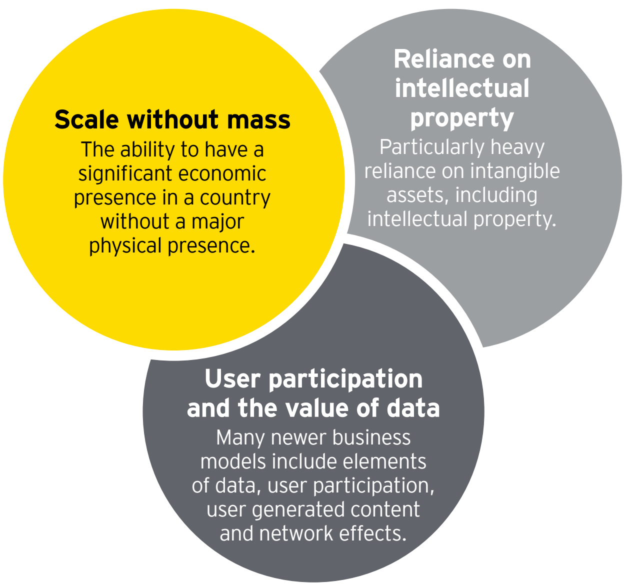
At the heart of the debate is a belief by some countries that there is a mismatch between where profits are currently taxed and where and how certain digital activities create value.

The Commission believes the mismatch is the result of a combination of several factors:

- First, that businesses can supply digital services where they are not physically established (which they call "scale without mass")
- Second, that digital business models tend to have a heavy reliance on intellectual property assets and are therefore highly mobile
- Third, that the business value comes from users' participation in the digital activities that some platforms enable — commonly described as "user value creation."

To combat this perceived mismatch, the Commission in late March released two digital tax proposals that, if enacted in their current state, could significantly increase tax costs for many businesses around the world. The first proposal would be an interim 3% digital services tax on gross revenues (i.e., turnover) derived from activities in which users play a major role in value creation. The tax would apply to revenue from activities such as selling online advertising space; digital intermediary activities (i.e., "platforms") that allow users to interact with each other and that facilitate the sale of goods and services between them; and the sale of data generated from user-provided information. Companies with total annual worldwide revenues of €750 million or more and annual EU taxable revenues of €50 million or more would be subject to the tax.

Certain types of companies — such as digital advertisers and platforms designed to allow users to connect with one another and trade in goods and services — would be within the scope of the tax as currently proposed, while others, such as online marketplaces without user-to-user selling, would be outside the scope. But the tax status of many other types of companies is far less clear. For example, many companies may sell information about their consumers to other companies (such as market researchers), but only a portion of the data may be from "digital" sources as defined by the Commission. It's also unclear whether background data analytics and data transmission to and from the cloud by businesses offering software as a service are included in scope.



The Commission's second, longer-term proposal is broader, with more than 50 different digital activities subject to tax. A "significant digital presence" concept would create a new digital permanent establishment (PE) concept, intended to establish a taxable nexus, along with revised profit allocation rules to determine the share of digital profits subject to tax.

A company would be considered to have a significant digital presence, and therefore a PE (and pay the headline corporate income tax rate in the EU Member State), if the entity meets any one of three criteria:

- It exceeds €7 million in annual revenues from digital services in the EU Member State
- It has more than 100,000 users who access its digital services in the Member State in a tax year
- It enters into more than 3,000 business contacts for digital services in the Member State in a tax year.

The longer-term proposal mirrors ongoing conversations at the OECD and would dramatically change the way cross-border tax norms operate today. If enacted, it would require tax treaties to be renegotiated between countries. That scenario could result in two different tax systems: one for the EU and one for the rest of the world.

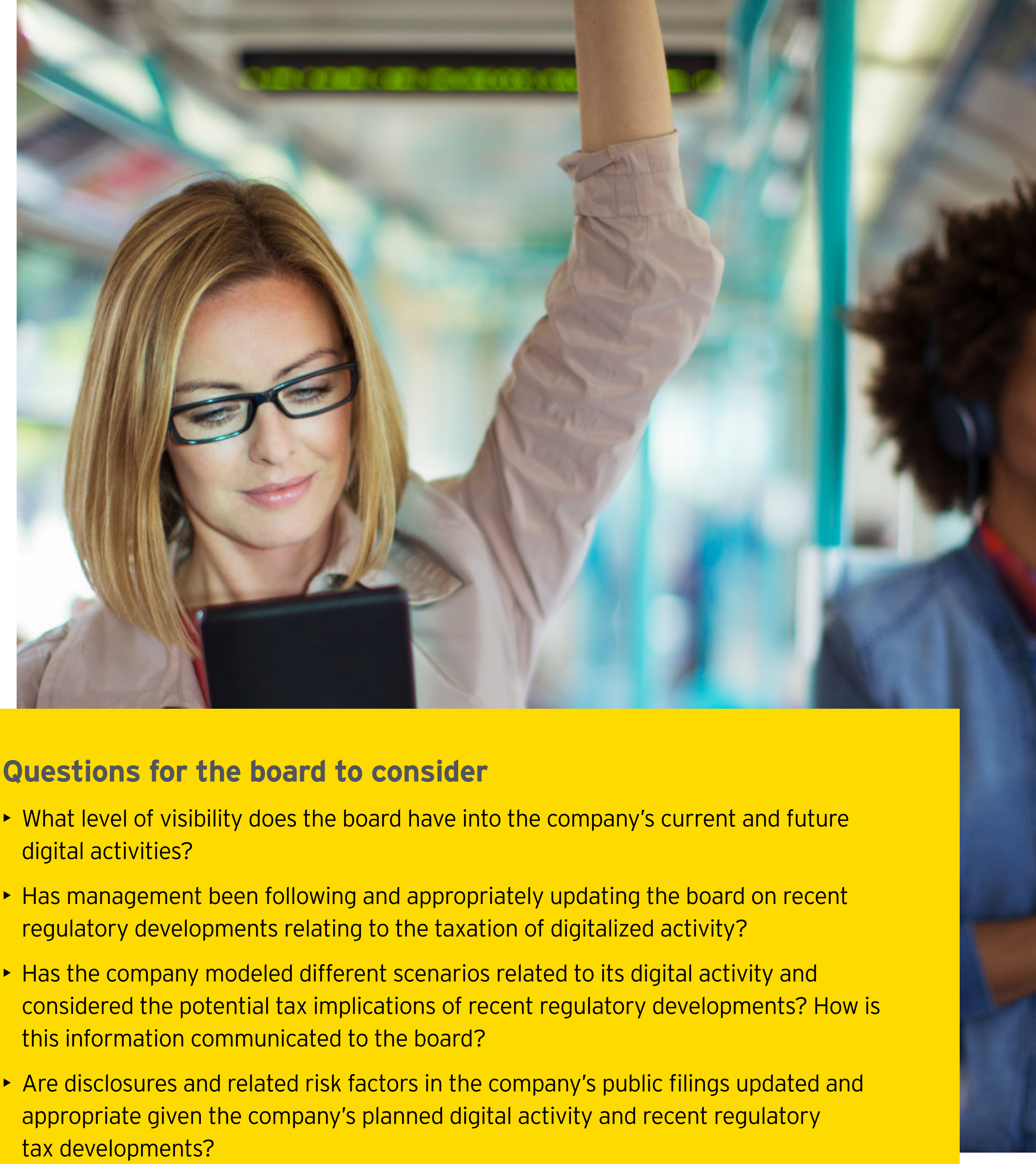
As drafted, both proposals would go into effect 1 January 2020, although in reality, the timing of both remains unclear. To be implemented, each of the Commission's digital tax proposals would need to gain unanimous support among EU Members. Individual countries' political and economic concerns may make this challenging, especially for the interim proposal, which some Member States fear might negatively affect their key industries and trade relationships. There is a possibility that the "enhanced cooperation" measure of the EU — seldom used — could be used if nine or more Member States wish to take the proposal forward.[16] If either scenario fails to play out, an alternative outcome is that a number of EU Member states will simply move forward, unilaterally, with their own digital tax measures.

[16] This measure would not bind the remaining Member States.

Conclusion

Many factors, including politics and economic interest, are shaping the current digital tax debate. While the details are still evolving, the likelihood is that new taxes on digital activity will soon need to be factored into businesses' strategic plans. Boards therefore should begin discussing their companies' existing digital activity and pipeline projects in new ways, and bring tax into the conversation. The effort will require knowledge of the digital tax approach of countries in which they do business, and committing resources to measuring and addressing any resulting tax risks. These risks need to be weighed against the company's digital goals to determine whether tactics, strategy, structures or business models may need modifying.

Digital tax issues may also need to be incorporated into investor communications, Investors need to know about tax risks related to digital activities that may reduce profits if these taxes go into effect. They should be informed about the possibility and potential impact of restructuring parts of a digital strategy and the potential need to exit lines of business or markets depending on how tax proposals advance. While the complex issues of how to tax digital activity are not likely to be resolved any time soon, the debate has implications for all businesses that have digital assets. As such, boards will want to monitor the discussion and become familiar with and conversant in digital tax issues.



Questions for the board to consider

- What level of visibility does the board have into the company's current and future digital activities?
- Has management been following and appropriately updating the board on recent regulatory developments relating to the taxation of digitalized activity?
- Has the company modeled different scenarios related to its digital activity and considered the potential tax implications of recent regulatory developments? How is this information communicated to the board?
- Are disclosures and related risk factors in the company's public filings updated and appropriate given the company's planned digital activity and recent regulatory tax developments?

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Tuition tax credit may be available in certain cases when a course is less than three consecutive weeks in duration

Fortnum v The Queen, 2018 TCC 126
Winnie Szeto and Iain Glass, Toronto

Facts

The appellant, Ms. Lindsay Fortnum, attended the University of Notre Dame in the United States from May 2014 to May 2015. Notre Dame offered a traditional two-year Master of Business Administration (MBA) program, as well as an accelerated one-year MBA program (the one-year program").

The one-year program was intended for students who had already completed a business undergraduate degree or who had already completed certain specified prerequisites. It consisted of three sessions: summer, fall and spring. Each session consisted of approximately 17 credits. The summer session consisted of 10 consecutive courses, each of which was one or two weeks in duration. Each week was from Monday to Friday and consisted of 27.5 hours. All of the courses were compulsory, except for the last week when students were allowed to choose between two electives.

For the 2014 taxation year, the appellant claimed a tuition tax credit of CAD$47,918, which consisted of CAD$21,577 for the summer session and CAD$26,341 for the fall session. The minister of national revenue denied the appellant's claim for CAD$21,577, which represented the portion relating to the summer session, on the basis that the summer courses were not at least three consecutive weeks in duration.

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The parties' positions

According to the appellant, the summer semester was integral to the one-year program. All courses were compulsory and attendance was required. She was not allowed to pick and choose or to register for individual courses. Only registrants of the program were allowed to register and attend these courses. The appellant registered once and paid one fee for the entire summer session. All courses were taken consecutively over a 10-week semester.

The appellant argued that the summer session as a whole should be considered to be a program of courses over a period of 10 consecutive weeks, even though it comprised ten separate one- or two-week courses. The appellant noted that if the same courses were taken as part of the first year of the two-year program, she would have been entitled to the tuition tax credit.

The respondent argued that the appellant was not entitled to the tuition tax credit for the summer session because that session was made up of 10 separate courses, each of which was one or two weeks in duration, and each course had a separate code and a separate professor or instructor.

The decision

To qualify for a tuition tax credit under paragraph 118.5(1)(b) of the *Income Tax Act* (the Act), the appellant must attend a university outside of Canada on a full-time basis in a course leading to a degree and the fees must be paid in respect of a course of at least three consecutive weeks in duration.

At the outset, the Tax Court of Canada emphasized the following rules of statutory interpretation as set out in *Canada Trustco Mortgage Co. v Canada*, [2005] 2 SCR 601:

> [10] [...] When the words of a provision are precise and unequivocal, the ordinary meaning of the words play[s] a dominant role in the interpretative process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. [...]
>
> [11] [...] There is no doubt today that all statutes, including the Act, must be interpreted in a textual, contextual and purposive way. [...]

The TCC then went on to consider a number of prior decisions with respect to the meaning of the word "course" in paragraph 118.5(1)(b), and noted that these decisions were often conflicting.

The court acknowledged that the word "course" could be narrowly construed as referring to a single course on a particular subject, an interpretation that is based on the "ordinary meaning" of the word. However, in this case, the TCC opted for a textual, contextual and purposive analysis of the subject provision, which led the court to conclude that the tuition fee paid by the appellant for the summer session would satisfy the requirements of paragraph 118.5(1)(b).

Finally, the court noted that if its conclusion was in error, this was a case where applying the ordinary principles of statutory interpretation may not resolve the issue. In such case, the court was of the view that the matter should be resolved by recourse to the residual presumption in favour of the appellant[17] (see *Placer Dome Canada Ltd. v Ontario (Minister of Finance)*, 2006 SCC 20).

The appeal was allowed.

Lessons learned

Based on the particular facts of this case, the Tax Court of Canada found that the appellant's claim for a tuition tax credit for her summer session had met the requirements of paragraph 118.5(1)(b), even though each course she took during the summer session individually was less than three consecutive weeks in duration.

It's also important to note that when there is uncertainty with respect to which rule of statutory interpretation should apply (i.e., "ordinary meaning" or "textual, contextual and purposive" analysis), the court may resort to resolve the issue simply by recourse to the residual presumption in favour of the appellant.

While this is an informal decision, and consequently does not technically have precedential value for other taxpayers, it offers an important reminder that a strict interpretation of the Act is rarely the whole story or, as one might say, "par for the course."

[17] Referring to the concept that, in the words of Justice Willard Estey, "where the taxing statute is not explicit, reasonable uncertainty or factual ambiguity resulting from the lack of explicitness in the statute should be resolved in favour of the taxpayer." *Johns-Manville Canada Inc. v the Queen*, 85 DTC 5373 at 5384.

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Publications and articles

Tax Alerts – Canada

Tax Alert 2018 No. 31 – Finance releases draft legislation for 2018 budget for comment

On 27 July 2018, the Department of Finance released for public comment a package of draft legislative proposals and explanatory notes relating to a number of measures announced in the 2018 federal budget, together with a revised version of an income tax measure originally announced on 16 September 2016, as well as some other indirect tax measures. The government also released a consultation paper on proposed changes to the GST/HST holding corporation rules.

Tax Alert 2018 No. 32 – ETA holding corporation proposals

On 27 July 2018, the Department of Finance released a package of draft legislative proposals and explanatory notes including draft amendments to the holding corporation rules contained in section 186 of the *Excise Tax Act* (ETA) that would broaden the "commercial operating corporation property test" an operating corporation must meet for the parent to benefit from the holding corporation rules.

Publications and articles

EY's Global Capital Confidence Barometer

The 18th edition of EY's *Global Capital Confidence Barometer* shows 78% of Canadian companies intend to pursue M&A in the next 12 months, an all-time high in survey history.

EY's Worldwide Personal Tax and Immigration Guide 2017-18

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 2017

The *Worldwide Capital and Fixed Assets Guide* helps our clients navigate the rules relating to fixed assets and depreciation. It summarizes the complex rules relating to tax relief on capital expenditures in 29 jurisdictions and territories.

EY's Worldwide Estate and Inheritance Tax Guide 2018

EY's Worldwide Estate and Inheritance Tax Guide summarizes the estate tax planning systems and describes wealth transfer planning considerations in 39 jurisdictions around the world, including Australia, Canada, China, France, Germany, Italy, the Netherlands, the UK and the US.

Worldwide Corporate Tax Guide 2018

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 2018

This guide summarizes the value-added tax (VAT), goods and services tax (GST) and sales tax systems in 122 jurisdictions, including the European Union.

Worldwide R&D Incentives Reference Guide 2018

The pace at which countries are reforming their R&D incentives regimes is unprecedented. This EY guide summarizes key R&D incentives in 44 countries, and provides an overview of the European Union's Horizon 2020 program.

2017-18 Worldwide Transfer Pricing Reference Guide

The proliferation of transfer pricing rules and regulations around the world, and the huge increase in focus on the subject by the world's tax authorities, require practitioners to have 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 119 countries and territories.

Board Matters Quarterly

The September 2018 issue of Board Matters Quarterly (BMQ) includes four articles from the EY Center for Board Matters. Topics include: Crossing the digital divide, Audit committee reporting to shareholders in 2018, 2018 proxy season review, and a fresh look at board committees.

EY Trade Watch

This quarterly publication outlines key legislative and administrative developments for customs and trade around the world. Highlights of this edition include imposition of various US tariffs and multiple retaliatory actions; recent decisions of the Brazilian higher courts, and the Canadian perspective on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, among other topics.

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Because we believe in the power of private mid-market companies, we invest in people, knowledge and services to help you address the unique challenges and opportunities you face in the private mid-market space. See our comprehensive private mid-market **webcast series**.

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 2017 and 2018 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).

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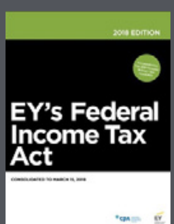

EY's Federal Income Tax Act, 2018 Edition

Editors: Alycia Calvert, 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 February 27, 2018 federal budget tax measures, Bill C-63 (SC 2017, c. 33), *Budget Implementation Act*, 2017, No. 2, the December 13, 2017 amendments to the *Income Tax Act* and Regulations (income sprinkling), and the October 24, 2017 notice of ways and means motion.

EY's Complete Guide to GST/HST, 2018 (26th) Edition

Editors: Dalton Albrecht, 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 2018 and updated to reflect the latest changes to legislation and CRA policy.

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