



September 8, 2017

Re: Tax Planning Using Private Corporations

As a firm of Chartered Professional Accountants, we work closely with small business owners each and every day. To say we are disappointed with the new proposals and the lack of understanding that the federal government has shown regarding the current taxation of small business is a monumental understatement.

In this letter, we will make a case for the following points:

- the timing of the announcement and the short consultation period make meaningful and positive change to the tax code impossible;
- the tax code is complex and any changes must be carefully considered;
- the changes are a disincentive to starting a business and will negatively impact the economy and the nature of entrepreneurship in Canada;
- these changes will have unintended consequences that will negatively impact the Health Care System for years to come;
- despite election promises to the contrary, and assertions that these changes will only impact the 1%, they are a direct assault on middle-class families; and
- a possible way forward.

**The timing of the announcement and the short consultation period make meaningful and positive change to the tax code impossible**

The timing of the announcement combined with the lack of a meaningful consultation period (only 75 days) comes across as a lack of interest by the Department of Finance and our Federal Government in genuinely seeking public opinion and ideas through legitimate consultation.

As one can imagine, 75 days is not nearly enough time for tax professionals to read through, assimilate and project the full consequences of the proposed changes and how these changes will

interact with the remainder of the already very complex Canadian Income Tax Act. This difficulty was compounded by the inaccessibility of Members of Parliament during the summer break, another frustrating consequence of the summer announcement.

It almost seems as if the announcement of the proposed changes during the summer parliamentary break was done intentionally in order to speed along the process in the hopes of it not raising much attention and therefore opposition.

To make matters worse, the amount of misinformation being propagated by the Finance Minister and the government, including our Prime Minister, leaves us saddened that our properly elected officials are so unwilling to bend from their own political agenda that they are willing to mislead the public in order to protect their own interests and political careers. Much of what has been released to the public is demonstrably incorrect. Or perhaps there is simply a lack of understanding by the current government of the impact that tax code changes can have on every aspect of Canadian society?

### **The tax code is complex and any changes must be carefully considered**

We understand that the current tax system is complicated and could use a well thought out overhaul to lower its complexity and make it easier to administer at all levels, be it corporate, personal or other.

A simplified tax system would no doubt help the average Canadian citizen with their tax filing obligations, and the CRA and Canadian Tax Courts with enforcement duties, but this is not what the proposed changes will do. Instead, they will result in increased complexity and, most likely, increased cases to be handled by the Courts as the poorly drafted legislation is challenged again and again.

### **The changes are a disincentive to starting a business and will negatively impact the economy and the nature of entrepreneurship in Canada**

With that being said, our firm, our professionals, our clients, our families and our friends and anyone we speak with are disappointed with the new proposals and the impact they will have on all levels of small business.

In recent news articles, both the Prime Minister and Finance Minister have been quoted as saying that the changes will only affect businesses making over \$150,000 and target the wealthy 1%.



In actuality, when the changes being proposed are factored in with the remainder of the Canadian Income Tax Act, most of the changes being proposed will *also* negatively affect businesses making up to \$150,000 and cause them to incur very expensive fees in order to comply with the additional complexities contained in the changes.

One need only look at the plethora of articles and analyses being published by tax experts who have analyzed and projected the changes to real world scenarios that small businesses face on a regular basis, to see how negatively this will impact all small businesses, regardless of income.

As tax professionals, we are debating whether the new proposals stem from a major lack of understanding of the current tax system, or if the government has decided to try and win political favour by attacking and painting small businesses as tax cheats using loopholes. By definition, from Merriam Webster, a loophole is: “an error in the way a law, rule, or contract is written that makes it possible for some people to legally avoid obeying it”.

**The way in which corporations use dividends is not a loophole; it is a well-planned and widely accepted use of the current legislation that was enacted in 1972 after 10 years of analysis and consultation with professionals, academics and committees. *It was designed this way to encourage and compensate Canadian families who take on the risks of opening and operating a small business.***

***The changes, as proposed, will discourage entrepreneurs from starting businesses and make it much harder to succeed and raise necessary capital.***

The current tax system contains within it the concept of “integration”. Integration within the Canadian tax system currently works very well to make sure that business owners pay the **same effective tax rates as employees.**

Does the Finance Minister and this government simply not understand our Country’s complex tax code, or have they just chosen to ignore it for political or other purposes?

**These changes will have unintended consequences that will negatively impact the Health Care System for years to come**

In addition to concerns for Canadian businesses - and the hundreds of thousands of people that they employ - we believe that these changes will have a very negative impact on our Health Care System and, if passed, will cause problems for our country for years to come.



In fact, some of the most significant and understated impacts of the proposed changes will be to our Health Care System.

We understand that the political cycle is short, and public memory is even shorter, and that, sometimes, policies are passed that have unintended repercussions.

So let us bring back into memory a period in the 1990's when Doctors were leaving Canada for more favourable tax jurisdictions and for countries that valued their expertise more in the form of higher fees for service.

***The 1990's Doctor shortage or "Brain Drain" as it became known, was a real problem being faced by Canada and felt severely in Ontario.***

In an attempt to make our compensation to Doctors more competitive with the rest of the world, professional incorporation and non-licensed family shareholders were introduced in Canada across all provinces to encourage our Canadian trained Doctors to stay and practice in Canada.

***Couple the new proposed changes with Bill C-29 enacted in December 2016 and you have created a tax situation for our medical professionals that will dramatically impact health care in Canada.***

Medical professionals across Canada, and their governing bodies, are warning against the negative impacts these changes will have on Doctor retention and therefore on our country's Health Care System.

Many medical practitioners are already looking at alternatives to Canada, while many who are later in their careers are merely contemplating early retirement or severely reduced hours.

***The impact will be a shortage of doctors across Canada with our best and brightest leaving for friendlier territories - or entering early retirement.***

How can this be good for any Canadian? Unless privatizing health care - something that will benefit only the very wealthiest of individuals - is a part of the goals of this government...

**Despite election promises to the contrary, and assertions that these changes will only impact the 1%, they are a direct assault on middle-class families**

More and more each day, professionals from across Canada are providing concrete examples of the costs and negative repercussions that these changes will have on small business, which



includes those making well under the \$150,000 arbitrary threshold that our Finance Minister has chosen.

*These changes attack the very heart of the Canadian economic engine: family owned businesses. Small businesses benefit Canada in countless ways, including providing employment, supporting culture, and sponsoring community initiatives. Small business owners are called ‘pillars of the community’ for a reason and attacking their ability to survive and thrive threatens every member of society.*

The examples contained in the Minister’s proposal paper are extremely limited in scope and **do not take into consideration the time and sacrifice families make to run a successful small business** nor do they take into account the requirement for small businesses to retain capital inside of the corporation to guard against inevitable future downturns or swings in the economy.

We believe the risk that business owners take on when they start a business needs to be recognized and rewarded.

The government is touting that their plan is based on fairness.

But, comparing business incomes to employee salaries is neither fair nor equitable.

Business owners are not covered by Employment Insurance, Labour Laws, severance pay, sick days, vacation pay or pension plans, yet the government seems to want to treat them like employees when it comes to taxation.

Is that truly fair? No. It is not.

We ask you to please stop using rhetoric to push forward an agenda and win political points, and instead use concrete figures and examples that better convey the complexity of the situation and the full effects of the changes on it.

We realize this may not be possible *because your proposed changes won’t in any way meet the goals you have set for them.*

### **A Possible Way Forward**

We believe that a meaningful review of the Canadian Income Tax Act is needed and would require no less than the organization of a competent and diverse committee of both public and private



sector members that would be given an adequate period of time to understand the problems identified by the Finance Minister.

The time period for such a task would have to be no less than a year and probably more in order to do the job well. Remember that the changes you are seeking to overturn took decades to develop and implement. Significantly changing the taxation system in Canada is no simple matter.

The committee's recommendations would then have to be released to the public for a meaningful consultation that ideally would last at least another year in order to provide the Finance Minister and the committee enough feedback on their recommendations to fully contemplate and understand all of the possible ripple effects of the proposals.

Quickly drafting such important legislation and then giving a paltry 75 day consultation period in the middle of summer is simply unacceptable.

**Outside of the taxation of small businesses, there are a great deal of examples where fairness is not being accomplished by our tax code and which would generate much larger returns for the government:**

First, and foremost, is the taxation of stock options for CEOs and Executive of public companies. These are the real top 0.1% of our population, and yet the government has backed away entirely from implementing the very changes that they campaigned on in order to get into office.

Another example is the golden pension plan that Ministers are privy to, which pays them \$6.25 of tax payer money for every \$1 they contribute. After 6 years, they are entitled to a fully vested pension of over \$100,000/year which can be split with their spouse upon retirement and which is fully untaxed for their entire working careers. The spouse of a Member of Parliament didn't work to earn that money, yet Ministers are allowed to split their income with them, while these changes will prevent business owners from doing the same.

At a time when most private pension plans have disappeared and economic security is becoming increasingly less likely, does the Ministerial pension plan seem fair? No, it does not.

Yet, we could argue that public servants, who sacrifice their privacy for public service, deserve to be compensated...

In the same way, entrepreneurs who put their own security and capital at risk to start a business place stress on their families and their health as they build their business, contribute to the



economy, and employ their fellow Canadians, also deserve to be compensated and rewarded for their sacrifice.

The very compensation that the proposed changes will eliminate.

Is that fair? No. It is not.

### **Recommendations**

The list of how this proposed legislation will negatively impact Canadians can go on and on.

***Equal taxation is not the same as fair taxation*** and if this government continues to pursue this current course, we fear:

- that the average small business owner will be overburdened with onerous compliance costs and complexity,
- that our most successful entrepreneurs will be chased out of the country in search of more favourable tax jurisdictions, and
- a new era of “Brain drain” in our medical community will begin thereby severely limiting the average Canadian’s access to high level medical attention and services.

Many in the professional community believe the consultation period to be a sham, where the government has no intent on making any changes to their tabled draft legislation. To further strengthen that point, Mr. Morneau recently stated that he has not heard anything that would make him change his mind regarding the tabled legislation. Obviously, if Mr. Morneau has not heard anything, it is because he has chosen not to listen!

The amount of misinformation that the government is publishing and posting in order to gain political favour and convince regular Canadians, who understandably have a minimal understanding of our very complex tax system, that these changes will lead to a more fair tax system is ***truly disturbing***.

The facts and analyses that have been undertaken by professionals across the country do not line up in any way what you are saying. It is our hope that after considering all of these concerns, and the many more being expressed by knowledgeable Canadians across the country, that the government will:

- at a minimum increase the consultation period;



- in a best case scenario drop these changes until a formal committee and proper consultation be undertaken in order to properly examine the scope and impact of the Finance Minister's goals of achieving a more fair tax regime in Canada.

To implement the changes without doing so would be neglectful and would have grave negative impacts on our great country!

Again, as proud Canadians, entrepreneurs, and as tax professionals who understand the far-reaching impacts of these changes, we hope that the Prime Minister and Finance Minister will start to truly listen to the warnings and information being provided to them.

Don't simply say that some people are for the proposals and some are against them. The only people that we have heard speak for the proposed changes are politicians putting forth their agenda or people who have been swayed by the government's rhetoric. No one in the business community - the heart of Canada's economy believes that these changes will help make Canada better.

We encourage you to keep in mind what makes this country great ... an environment where people are rewarded for a desire and effort to be great, to innovate and to strive for success while at the same time maintaining the incredibly important balance of taking care of those in need.

Sincerely,



Rob Chaggares CPA, CA, CFP   Pierre Bonhomme CPA, CA   Duncan Peake CPA, CA, MBA

The Partners of Chaggares & Bonhomme, Chartered Professional Accountants

