

The Berris Mangan Review



The Berris Mangan Review provides accounting and tax articles, information, and tips to our clients and friends.

CANADIAN TAX IMPLICATIONS FOR NON-RESIDENTS DOING BUSINESS IN CANADA

By Brent Axworthy, C.A., Partner

Canada has traditionally been viewed as a high tax jurisdiction. However the efforts of Canadian governments to make the tax regimes more attractive to investors, and more competitive with other jurisdictions, particularly the U.S., has led to significant reductions in tax rates.

A foreign investor in a Canadian business typically operates using a Canadian corporation, commonly a subsidiary of a foreign corporation. However, partnerships, joint ventures, branches of foreign corporations, and commercial trusts are all alternative investment structures which may be appropriate in a particular situation.

Foreign business investors using partnerships or commercial trusts as investments vehicles may benefit from avoiding a corporate level of tax, but such structures may also result in certain complications and are typically less familiar to business investors.

A foreign-owned corporation which was incorporated in Canada is taxable on income earned on a worldwide basis because the corporation is considered resident of Canada for income tax purposes. A foreign corporation with "mind and management" in Canada may also be considered resident of Canada.

For 2011, a federal income tax rate of 16.5% applies to a foreign-owned corporation. A provincial tax (10% in British Columbia) will also typically apply.

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A corporation or individual that is not a resident of Canada will generally be taxable on income earned from carrying on a business in Canada, at similar rates, unless relief under a tax treaty is available.

A corporation or individual that is not a resident of Canada and provides services in Canada may be subject to a 15% withholding tax at source, unless relief under a tax treaty is available or a waiver is obtained.

A withholding tax will generally apply to dividends paid by a Canadian corporation to a foreign corporation and to interest paid to foreign lender, at a rate of 25%, or a lesser rate based on a tax treaty. Interest paid to an arm's length foreign lender is not subject to Canadian tax.

"Thin capitalization" rules apply to restrict income tax deductibility of interest paid to certain non arm's-length lenders of a Canadian corporation to the extent that a 2 to 1 debt to equity threshold is exceeded.

A foreign corporation operating a business directly in Canada will be subject to similar income tax rates as a Canadian corporate subsidiary but will also be subject to a Branch Tax in respect to repatriated profits at a rate of 25%, or a lesser rate based on tax treaty.

Foreign employees working in Canada are subject to Canadian income taxes in respect to services rendered in Canada unless a tax treaty provides relief. Personal income tax rates are less favorable than corporate rates. A top personal marginal income tax rate of approximately 44% applies to an employee working in British Columbia. Such a foreign employee must also be aware of the implications of establishing sufficient personal residency ties to Canada that the individual is considered a resident of Canada for income tax purposes and consequently subject to a much broader scope of taxation in Canada.

Foreign employees may also be subject to Canadian social security taxes unless a social security agreement provides relief. The contribution rates of these Canadian programs are relatively low compared to those for similar programs in some other countries.

The Canadian income tax regimes include various

incentives, notably those related to scientific research and development, and manufacturing and processing activities.

Transfer pricing rules may result in negative tax consequences, in respect to transactions between a Canadian corporation and non arm's length foreign persons if acceptable arm's length pricing standards and related documentation are not maintained. Canada's transfer pricing rules are based on OECD guidelines.

Canada has an extensive network of tax treaties with other countries, including major trading partners such as the U.S., China, and the U.K.



The federal government imposes a 5% value added sales tax, which applies to the supply of many types of goods and services. Several provinces of Canada have "harmonized" provincial sales taxes with the federal sales tax. In British Columbia, the combined federal and provincial Harmonized Sales Tax rate is currently 12%. Some other provinces maintain cascading sales taxes with rates ranging from 5 to 10%.

Other types of taxes may apply in some Canadian jurisdictions and investment situations, including capital taxes, property, sales, and excise taxes.

NEW FINANCIAL REPORTING FRAMEWORKS IN CANADA

By Craig Whyte, CA, CIA, Director of Assurance

There have been many recent changes to accounting standards in Canada which are now impacting financial reporting. Depending on an entity's nature, entirely different accounting frameworks will be applied when preparing either interim or annual financial statements.

The accounting frameworks and their effective dates are as follows:

PUBLICLY ACCOUNTABLE ENTERPRISES

- Publicly accountable enterprises are required to apply International Financial Reporting Standards ("IFRS") for fiscal periods beginning on or after January 1, 2011. There are some exceptions to this timeframe related to rate regulated entities which have the option to defer adoption by one year to January 1, 2012, and investment companies and segregated accounts of life insurance enterprises which are not required to apply IFRS until January 1, 2013.

PRIVATE ENTERPRISES

- Private enterprises are required to apply either Accounting Standards for Private Enterprises ("ASPE") or IFRS, if determined to be more appropriate, for fiscal periods beginning on or after January 1, 2011. ASPE was specifically developed for private enterprises in Canada and is tailored to meet their needs and therefore would be expected to be adopted by most private entities.

NOT-FOR-PROFIT ORGANIZATIONS

- Not-for-profit organizations are required to apply either Accounting Standards for Not-for-Profit Organizations ("ASNPO") or IFRS, if determined more appropriate, for fiscal years beginning on or after January 1, 2012. ASNPO has been adapted from the current not-for-profit standards and therefore significant changes are not expected from current financial reporting and it is expected that most not-for-profit organizations would adopt ASNPO.

PENSION PLANS

- Pension plans will also have new accounting standards called Accounting Standards for Pension Plans ("ASPP"). Although these standards are a continuation of the current accounting standards for pension plans. Pension plans must apply ASPP to their investment portfolio and pension obligations but can apply either IFRS or ASPE to other balances because this new standard only addresses these specific balances.

FIRST TIME ADOPTION

- For all of the above accounting frameworks, there are requirements and considerations on transition including accounting policy changes and changes to the recorded financial statement balances and disclosures. First time adoption rules are applied at the date of transition which is the beginning of the comparative figures. Application of these new accounting standards is retroactive although there is some relief for specific account types that can be prospectively applied and therefore easier to implement.
- Adoption of new accounting standards can, in some cases, be more complex than expected with new information and disclosure requirements therefore it is best to understand the implications early on to make the transition easier.

TAX-FREE SAVINGS ACCOUNT (TFSA) UPDATE

As you may be aware, the Tax-Free Savings Account (TFSA) is a registered savings vehicle that will allow you to earn tax-free investment income. Any Canadian resident individual who is 18 years of age or older and who has a valid Canadian social insurance number (SIN) is eligible to open a TFSA.

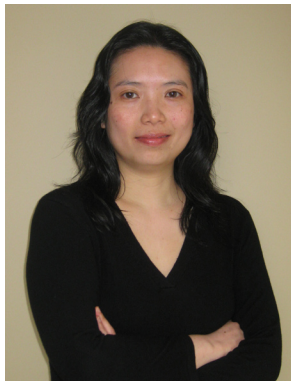
Since the TFSA was launched in 2009 the contribution room has increased by \$5,000 per year. This means if you have never contributed any amount to your TFSA, you may contribute up to \$15,000 in 2011. If you contribute less than your annual limit to your TFSA, you can carry forward the unused TFSA room to future years.

TFSA contributions must be made during the year or by the 60th day of the following year. For example, your 2011 TFSA contribution can be made from January 1, 2011 up to day 60 of 2012.

If you have multiple TFSAs accounts at different financial institutions, be sure to keep track of all contributions to each account. The Canada Revenue Agency (CRA) keeps track on all individual contributions. If you contribute more than your annual limit to your TFSAs, you will be subject to financial penalties imposed by the CRA.

For further information regarding the TFSA, please contact your Berris Mangan Advisor.

STAFF NEWS



Wendy Wong is a graduate of the University of British Columbia with a Bachelor of Commerce in Accounting. Wendy obtained her Chartered Accountant designation in 1999.

In 2006, Wendy joined PricewaterhouseCoopers as an audit Manager. In 2009, she took a well deserved break to travel. Upon her return in 2010, she joined Collins Barrow, Chartered Accountants as Manager.

Wendy joined the Berris Mangan team as *Manager of Client Services*.

FIRM NEWS

In an effort to gain feedback from our corporate clients, we developed a Client Satisfaction Survey that was included in year-end packages. A year later, completed surveys were entered into a draw to win a gift certificate to the Tea House Restaurant in Stanley Park.

We would like to thank everyone who completed a survey. Your comments and suggestions are appreciated!

Congratulations to *Sheila Roell*, Office Manager of *Sicon Signs* for winning the gift certificate to the Tea House Restaurant!



Sicon has been helping clients make strong impressions with their signs for over fifty years. They manufacture displays for every type and size of business - from major multi-national corporations, to national retail chains, to independent local businesses - in almost every conceivable location.

Visit their website at www.siconsigns.com.

CHARITY



We raised \$1,430 for BC Children's Hospital through our annual Jeans Day event.

For more information, please contact your Berris Mangan advisor.

Disclaimer: This is not advice. Clients should not act solely on the basis of the material contained in this document. Items herein are general comments only and do not constitute or convey advice per se. We therefore recommend that formal advice be sought before action in any of the areas. This document is issued as a useful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our written prior approval.



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