# Tax Planning Using Private Corporations

**Alberta Chambers of Commerce Submission**
**Department of Finance Canada**

*On behalf of the Alberta Chambers of Commerce (ACC) federation, we respectfully submit recommendations to the Finance Department of Canada. These recommendations reflect the priorities and concerns of the ACC and the 126 community chambers of our federation who represent over 24,000 businesses in the Province of Alberta.*

*The ACC is unique in Canada in that every community chamber in Alberta is a member of the provincial federation as well as the Canadian Chamber of Commerce.*

## Why Chambers of Commerce Oppose the Proposed Tax Changes

The federal government has proposed policy changes regarding the taxation of Canadian Controlled Private Corporations (CCPC's) focused on income sharing, passive income and capital gain deferment. Despite a limited consultation timeframe and process for engaging Canadians on the proposed changes, the anticipated outcomes for the review are ambitious:

1. To "bolster the confidence Canadians have in their Government and in their economy… by making sure that we all pay our fair share of taxes—with no exceptions."[1]
2. To "help businesses grow, create jobs and support their communities."[2]

The ACC represents over 24 000 businesses in Alberta, over 95% of which are small business. Small businesses will be profoundly affected by these proposals and, in turn, their employees will also be affected. These proposals will affect whether businesses carry on, they will affect decisions that small business owners make, and they will affect how small businesses will behave.

Succession planning for family businesses, participation of women in business, maternity choices and options, all will be affected. Thousands upon thousands of Canadians say those affects will be negative.

Under no reasonable scenario are the proposed changes, on balance, positive for Canadians. The outcomes for the review are very ambitious and unachievable. Government has had limited face-to-face consultations with constituents. Chambers of commerce have heard loud and clear from our members: please stop moving forward with these changes.

From the perspectives of chamber of commerce constituents, opposition to the changes has little-if-nothing to do with addressing inappropriate tax avoidance. It is the unintended consequences the proposed policy changes will have on our economy, on citizens' futures, and on the viability and very culture of entrepreneurship in Canada that concerns chamber members.

Certainly, the approach to consultation has been inadequate in time and method. In lieu of genuine dialogue with government, constituents have expressed their severe concern with these proposals via letters to Members of Parliament and chambers of commerce, social media, print media, online and TV. The outcry from these constituents has been overwhelming.

[1] Pg. 3 Tax Planning Using Private Corporations
[2] Abid

Outside the federal government, no expert or credible source familiar with small business agrees with the federal government's view of what the affect on business or the broader economy will be. Vast numbers of constituents critical to sustaining and advancing national prosperity – from small business to agriculture to health care – have identified unintended consequences with the proposals which pose tremendous risk to Canadians' future prosperity, including:

**Business competitiveness.** Finance Canada's proposal spends three pages documenting Canada's relative competitiveness. In the UK and the US, investment income earned by a small business is taxed at 19%, making Canada's current tax competitiveness shaky. Factor in the proposed 73% tax on investment income and Canada's tax environment for small business becomes the worst in the G7.[3]

**Business diversification and sustainability.** The proposed changes would penalize businesses for prudence that serves the public interest. Businesses retain earnings and defer income for many reasons, not the least of which are to diversify, invest in projects or innovation, and keep employees working in economic downturns. Prudent businesses which had diversified or built up economic reserves have had the capacity to keep people working in Alberta. This was also the case in BC and Ontario during the 2008 economic downturn. Small business continuity is also placed at risk because intergenerational succession planning would be severely affected as a result of the proposed changes.

**Social outcomes for the public.** If the proposed changes are implemented, doctors have been vocal that they will begin to make different choices – how long they practice, where they practice, or for young people, if they even become a doctor. Healthcare service levels and accessibility, especially to rural communities, will be negatively affected. Charitable organizations ability to deliver services, often to the most vulnerable of Canadians, will also be negatively impacted because funding often depends on charitable donations. The proposed changes will make it financially difficult for some small businesses to donate simply because they won't be able to afford it.

**Confidence in the Rule of Law.** We don't punish honest citizens for fair play in Canada. Honest Canadians complied with long-standing tax laws to develop business plans and their retirements. Even if some people were using the existing laws dishonestly, the vast honest majority will suffer financial harm if the proposed changes are implemented. If the federal government proceeds as planned, our nation's guarantee of fair treatment for citizens will be tarnished and the rule of law diminished.

The resolve of chambers and other constituents is firm on this issue. If the government continues on its current course, it will alienate significant numbers of Canadian constituents who will move from opposing the proposed tax changes to opposing the government.

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[3] Trudeau's Proposed Tax Changes Devastating for Small Businesses: A letter to the Department of Finance

## The Path Forward

Chambers of commerce are supportive of addressing the root causes of inappropriate tax avoidance: complexity of the taxing statutes. The sheer complexity of the taxing statutes alone means that, in some cases, even the professional advisors, the Canada Revenue Agency, the taxpayer and the Courts cannot fully understand the provisions. See, for example, *Hoffman v. H.M.Q.*, 2010 TCC 267 where C. Miller, J. states, at paragraph 13:

> The system has become so complicated that not only the taxpayer is bewildered, but also advisors and those administering the *Act*.

Across the country, tax professionals are clearly stating that addressing tax avoidance cannot be effectively achieved within the current scope of the federal government's proposal, consultation method and timeline. All aspects of taxation relating to determination of tax characters, timing and calculations, the hundreds of exemptions, deductions, rebates, deferrals, and/or credits that are part of the federal tax system, collectively contribute to the complexity of the tax system. It is this complexity that leads to the perception of unfairness in the current Tax Act.

It is this legislation and its administration, as a whole system, which result in unfair and unnecessary outcomes which do not serve the public interest. That's why, this September, chambers of commerce delegates at the Canadian Chamber of Commerce annual general meeting adopted a resolution calling for the federal government to:

1. Extend the current consultation period beyond October 2, 2017 so as to ensure broad participation by Canada's SME community;
2. Establish a royal commission to undertake a comprehensive review of taxing statutes guided by the principles of simplification and modernization, as well as having the goal of reducing compliance costs to make Canada a competitive tax regime once again;
3. Establish a standing committee, with active representation from the SME community to support the commission by continuously monitor changes and publicly report progress at least annually.

There were over three hundred voting delegates in attendance and the resolution was adopted with 98.8% support. Clearly, if the process and approach is appropriate, the federal government has a willing ally in Canada's business community to achieve common ends. We hope, as both the Finance Minister and Prime Minister have stated, that government is truly "listening".

## Summary

There is a better course of action to address inappropriate tax avoidance available to the federal government: establish a Royal Commission to simplify and modernize Canada's tax legislation.  This would have an added benefit of reviewing the complete Tax Act for fairness.

Adopting this alternative path will ensure the issues motivating the currently proposed policy changes will be addressed by addressing the root causes of inappropriate tax avoidance. More importantly, demonstrating forward thinking leadership by implementing a thorough review of tax legislation will provide resources and direction to act on wider strategic opportunities with a common vision. Engaging the business community as meaningful partners in pursuit of long-term prosperity for Canadian's will further strengthen the results we can collectively achieve.