

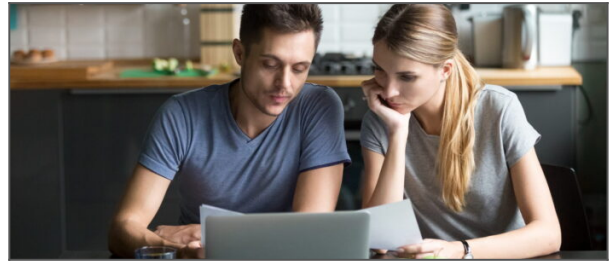
Bill C-208: Cautious Optimism for Small Businesses and Family Farms

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The Problem

The *Income Tax Act* (Canada) has long received bipartisan criticism for its overly punitive taxation on the transfer of small business corporations and farms to the next generation. The founders of such businesses were forced into choosing one of three options:



1. Pay high tax and sell the business to their children. In this situation, the founder parents are using the sale to fund their retirement. This places the parents in a situation where they are either forced to burden their children with funding the founder parents' retirement, or the parents are unable to rely on the proceeds of the growth of their business to fund their retirement;
2. Pay less (or no) tax and sell the business to a *bona fide* third party. There are numerous issues here, such as the fact that the business may be best run as a family business or that there are no interested parties outside of the family; and
3. The children work together with a *bona fide* third party purchaser to enable the parents to pay less (or no) tax on the sale of the business. This option requires substantial legal and tax advice in order to mitigate the inherent risks of dealing with a third party and dealing with a potential reassessment by the Canada Revenue Agency (CRA).

The three above options are clearly less than ideal.

The (Potential) Solution

It was reported that on Wednesday, May 12, 2021, Manitoba MP (Brandon-Souris) Larry Maguire's private member's bill C-208 to amend the *Income Tax Act* passed its third reading in Parliament (receiving bipartisan support) and now requires Senate approval.

Bill C-208, in short, amends various sections of the *Income Tax Act* which restrict a family member's ability to sell their small businesses or farms on a tax-efficient basis. The bill amends Subsections 55(5)(e)(i) and 84.1(2), and adds Subsections 84.1(2)(e) and 84.1(2.3). The amendments apply to a "qualified small business corporation share" and a share of the capital stock of a "family farm or fishing corporation" as defined in Subsection 110.6(1).

The amended and added provisions require strict compliance and contain limitations

(including an anti-flip limitation). It is recommended that you contact one of our TDS Tax Lawyers to advise how this potential change may impact the succession plan and exit strategies for your business.

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