

# TAX PLANNING

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## 2019 Tax Highlights

- RRSP contribution limit increases to \$26,500
- Employment Insurance Rates reduced to 1.62%
- Lowest tax bracket remains at 15%
- Corporate tax rate decreases to 12.5% for Ontario SBC's
- Top Tax bracket starts at income over \$210,371
- No Tax on personal income up to \$12,069
- CPP Rates rise to 5.1%
- OAS repayment threshold increases to \$77,580
- TFSA annual limit is \$6,000

## TAX PLANNING FOR SEVERANCE

The Income Tax Act (ITA) provides that compensation received as a result of termination or loss of employment may be characterized as employment income, a retiring allowance, non-taxable damages or a combination of the three. The payroll withholding and income tax ramifications depend on which way the severance is characterized.

### Employment income

Employment income includes salary, wages and other remuneration. If the severance is treated as employment income, it will be subject to the taxpayer's normal withholding rate based on their tax bracket and also subject to deductions such as Employment Insurance premiums and Canada Pension Plan contributions. Where a former employee is provided salary continuation payments, the courts have held that the payments are employment income.

### Retiring allowance

Retiring allowances are payments arising from or related to the loss of employment or the termination of an employment contract, including those paid as part of a settlement or an award of damages. The ITA sets out that a retiring allowance may include payments received by an employee either:

- on or after retirement in recognition of the employee's long service; or
- in respect of a loss of employment, on account of or in lieu of payment of damages or pursuant to an order or judgment of a competent tribunal.

Retirement allowance payments in recognition of long service must be made on or after retirement and not before. However, there's no similar condition for loss of employment. In fact, CRA has stated it's possible for an employee to receive a payment specifically in respect of a loss of employment so long as:

- evidence shows that the loss of office isn't speculative or contingent; and
  - the employment relationship, including all benefits, will end on a specific date within a reasonable time frame.
- To qualify a payment as a retirement allowance, the courts have developed a two-pronged test:

1. But for the loss of employment would the amount have been received?
2. Is the purpose of the payment to compensate a loss of employment?

If the answer to the first question is "no" and to the second question is "yes," generally the payment is a retiring allowance, though each situation is fact-specific. For instance, the courts have held that continuation in a health or dental plan doesn't preclude an employee receiving a retiring allowance. However, continuation in a pension plan of a former employer indicates a continuing employment relationship, and a retiring allowance isn't possible.

The determination of whether a payment is a retiring allowance is often difficult. If a payment can be classified

as a retiring allowance, the minimum amount required to be withheld (the withholding tax) by the former employer is lower than it is for employment income.

### Lump sum amount

\$5,000 and under

Over \$5,000 and up to \$15,000

Over \$15,000

In effect, the ITA allows a brief tax deferral by applying a flat rate, which in most cases will be less than the actual tax rate on ordinary income. Note, though, that this withholding is simply a prepaid estimate of taxes owing on the payment and, subject to the following planning opportunities, the final tax liability would be determined when the taxpayer files their tax return for the year.

### Transfer of eligible retiring allowance to an RPP or RRSP

The ITA permits an employee to make a tax-free transfer of a portion of a retiring allowance to a registered pension plan (RPP) or registered retirement savings plan (RRSP) where the employee is the annuitant. In effect, this allows the employee to defer payment of some or all of the income tax to a later time. Transfers to an RPP aren't common because of the potential adverse effect on the employee's pension adjustment or past service pension adjustment. The transferred amount is limited to:

- \$2,000 for each full or partial year of service before 1996; and
- \$1,500 for each full or partial

## How To Change Your Tax Return

If you have filed your return and then determine that you need to make a change, either because you have received another T-slip, or because you didn't claim an expense and later learned it was deductible, you can request an adjustment to your tax return. The time limit for filing adjustments to your tax returns by mail is **ten (10) years**. An adjustment request may be made in 2019 for the 2009 or subsequent taxation years.

You can request the change online for your most recent return, or your returns for the previous two tax years, or by mail, for tax returns for the past ten years.

### **Requesting a change online**

Requesting a change online is very simple, and is done by logging into your account at the CRA My Account page. A separate request has to be filed for each tax year.

You can also use the online request if you forgot to apply for the GST/HST [tax credit](#) when you filed your tax return.

### **Requesting a change by mail**

You can obtain a form T1ADJ from the CRA web site, complete it and mail it in, along with documents supporting your change request.

## TAX PLANNING FOR SEVERANCE (CONTINUED)

year of service before 1989 in which an employer made contributions to an RPP or deferred profit-sharing plan that hadn't vested.

Things to consider:

- The employee can include years of service with a previous employer if that service is recognized in determining the employee's pension benefits (i.e., the employee is registered in the same pension plan with both employers).

- Salary continuation payments are income and therefore can't be transferred into an RPP or RRSP for the purpose of deferral. The deferral is available only if the employee makes the contribution in the year it's received or within 60 days after that year.

### **Direct transfer to an RPP or RRSP based on available room**

An employee may also direct that a retiring allowance be paid to their or their spouse's RRSP, subject to the employee's RRSP deduction limit.

Things to consider:

- Any excess retiring allow-

ance beyond the deduction limit will be subject to withholding tax (amounts transferred directly to an RRSP from an employer are not subject to withholding taxes at source).

The transfer must be made in the year the employee receives the payment or within 60 days thereafter.

### **Instalment retiring allowance payments**

Payment by instalment is possible provided the terms of any agreement to do so clearly designate the payments as a retiring allowance. If an employer deducts EI premiums, benefits or other deductions, the payment can't be designated as a retirement allowance.

Things to consider:

- Instalment payments are taxable in the year received and sometimes include an interest calculation. Interest is taxable as income as it doesn't form part of the retiring allowance. A portion or all of an instalment payment may be transferred into an RPP or RRSP (subject to the above limits).

### **Non-taxable damages**

The Supreme Court of Canada has held that the tax treatment

of a damage award or settlement relating to loss of employment is considered the same as that which the payment replaces. This means if a payment is meant to replace employment income, it's taxed as income. An award for damages for some other cause is treated as damages and therefore isn't taxable. Damages arising from personal injuries, including mental anguish sustained before or after the loss of employment, that are separate and unrelated to the loss of employment aren't subject to tax as they're not income or a retiring allowance. However, damages for harassment and mental distress may be considered employment income if they can be traced to the dismissal. Determining when a payment is related to the loss of employment as opposed to some other cause is complex. Complicating the matter is the new doctrine of awarding "moral damages" where the manner of dismissal caused mental distress. Although clearly such damages can be awarded, the tax ramifications from such a payment are unclear. Thus, where a payment may include a damages component, it's advisable to immediately seek legal counsel.

## CCRA—MY ACCOUNT

My Account is a secure portal that lets you view your personal income tax and benefit information and manage your tax affairs online.

My Account is:

- **Convenient** – It is available 21 hours a day, 7 days a week.

- **Easy to use** – After registering, simply log in with your CRA user ID and password.

- **Fast** – Information is up-to-the-minute and transactions are processed immediately.

**Secure** – The CRA user ID and password are just part of the security.

You can also log in with a **Sign-in Partner**. This option lets

you log in with a user ID and password that you may already have, such as for online banking. Individuals can use My Account. Authorized representatives (including accountants and employees) can access the same services through Represent a Client.

**My Account** allows you to track your refund, view or change your return, check your benefit and credit payments, view your RRSP limit, set up direct deposit, receive email notifications, and so much more.

On your mobile device? Try the MyCRA mobile app - you can securely access key parts of your tax information and manage personal details, wherever you are.

**Note:** It is possible to see information in My Account before you receive the official document from the CRA. For example, if the CRA reassessed your return, you will see details of the reassessment in My Account before you receive your notice of reassessment in the mail. This is because the most up-to-date information is displayed immediately in My Account, while the notice goes through several manual processes before you receive it by mail.

### **Accessing the My Account services**

To get access, you will need:

- your social insurance number;



## CANADIANS SELLING U.S. REAL ESTATE

The first time many Canadians hear the term “FIRPTA” is from their listing agent when they’re selling U.S. real estate.

Under the Foreign Investment in Real Property Tax Act (FIRPTA), “the disposition of a U.S. real property by a foreign person” is subject to the withholding rules under Section 1445 of the Internal Revenue Code (IRC). That is 15% of the sale price.

While many real estate agents, closing agents and advisors are aware of the FIRPTA legislation, the withholding rules and the various methods of compliance can be complex.

### Filing a U.S. tax return

Canadians who own property in the U.S. are not required to file U.S. tax returns unless the property generates rental income or they have other U.S.-sourced income in a given tax year. As a result, Canadians who have purchased U.S. properties as vacation homes are usually filing U.S. tax returns for the first time when they sell these properties, and potentially owe a capital gains tax to the IRS.

Under the IRC, there are various types of withholding taxes. The FIRPTA withholding is not a tax but a withholding against capital gains tax. When the Canadian seller files the U.S. tax return the following year to report the U.S. property sale, any actual capital gains tax is deducted from the FIRPTA withholding, and the balance is returned to the taxpayer.

As the FIRPTA withholding amount is assessed on the contract price (discussed in greater detail below), and the capital gains tax is assessed on the actual gain made on the transaction, the withholding will likely be much larger than the capital gains tax. Since the amount held back by the IRS is large, the foreign seller is therefore incentivized into complying with his or her U.S. tax reporting obligations in order to receive a refund.

Furthermore, the timing of the refund after the tax return is filed can be unpredictable. Some Canadians have reported

waiting up to two years for a refund, while others wait six to eight months.

### Withholding rules and withholding parties

When FIRPTA applies to a real estate sale, the IRS puts the responsibility of withholding in the hands of the transferee: the buyer. Therefore, if the transaction violates the FIRPTA rules, the IRS may assess penalties against the buyer.

In a typical U.S. real estate transaction, the parties will deal with a closing agent who acts as the escrow agent for the proceeds of the sale. Since the seller’s escrow agent is holding the funds at closing, it also has a part to play in FIRPTA compliance. As a result, the term “withholding agent” can be confusing but, essentially, the buyer is legally responsible for ensuring compliance.

The key here is that “ensuring compliance” does not necessarily mean remitting the 15% to the IRS at closing. Instead, there are three other ways for a transaction to comply.

### The default: Remit funds to the IRS

Commonly viewed as the default way of complying with FIRPTA, the 15% withholding is remitted to the IRS at closing. The buyer will sign a Form 8288, and a Form 8288-A is completed for each seller.

When the funds are remitted with the required forms, the seller typically receives a stamped copy of Form 8288-A from the IRS eight to 10 weeks following closing. He or she will then include a copy of the stamped 8288-A when filing the U.S. tax return. As discussed, any capital gains tax will be paid to the IRS out of the amount withheld, and the balance returned to the taxpayer.

### The transaction qualifies for an exemption from withholding

Transactions qualify for an exemption from withholding if the following criteria are met:

(1) the amount realized is US\$300,000 or less;

(2) the transferee/buyer has definite plans to use the property as a residence; and

(3) the transferee/buyer is an individual (or multiple individuals).

The IRS has provided specific guidelines on what “definite plans to use the property as a residence” means. For the purpose of this exemption, the personal use requirement means that for 24 months immediately after the closing date, the buyer plans on using the property personally for 50% of the number of days that the property is in use. The days that the property is left vacant do not count.

It is good practice, if the transaction is eligible for this exemption, for the buyer to sign a personal use certification at closing attesting to the above requirements, so that both parties have written record that the rules of FIRPTA were contemplated and complied with.

### Application of 8288-B withholding certificate

When the seller’s capital gains tax liability is significantly lower than the amount withheld, or when the property is being sold at a loss, the seller may elect to apply for an 8288-B withholding certificate. The application must be submitted to the IRS by the closing date.

The withholding certificate application includes a calculation of the seller’s expected capital gain tax, thus showing the IRS that the required withholding amount exceeds his or her tax liability. If the seller makes a timely application, the transferee and the escrow agent are then authorized to hold the 15% in escrow, post-closing, while the application is pending.

In general, the IRS processes the application in 90 days. Depending on the seller’s tax liability, a withholding certificate can either reduce the amount to be withheld or provide an exemption. Once the withholding certificate is issued and received by the seller, the escrow agent is authorized to release the

## MY ACCOUNT—CONT.

- your date of birth;
- your current postal code or ZIP code and; an amount you entered on your income tax and benefit return, so have your return on hand (the line requested will vary and it could be from the current tax year or the previous one).

For step-by-step instructions on setting up your CRA user ID and password, go to [Registration process to access the CRA login services](#).

### My Account Services:

- Return status
- Other personal info
- See Notice of Assessment
- See Home Buyers Plan
- RRSP/TFSA balances
- Direct deposit
- View all Tax slips
- Disability credit
- Carryover amounts
- Account balances
- Change returns
- Child benefits
- Tax credits
- Dependents
- Submit documents
- View instalments
- Change marital status
- Change address
- Authorize representative
- Register dispute



- Request voucher(s)

To register for the CCRA “My Account” go to the web-link at: [www.canada.ca/en/services/taxes](http://www.canada.ca/en/services/taxes)

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**FILING DEADLINES**

April 30th is the filing deadline for 2018 tax returns. The self-employed must file by June 15th, 2019. All taxpayers will incur interest charges on any unpaid balances after April 30th, 2019. Don't miss your deadline as there is an automatic 5% late penalty levied against unpaid balances.

**APPEALS**

Appeals of tax reassessments for prior years must be filed within 90 days of the mailing date of the reassessment. The deadline for objecting to an assessment of the 2018 filing is 90 days from the date of the assessment or 1 year from the filing deadline of April 30th, 2019, whichever is later.

**INSTALLMENTS**

If your tax balance owing is greater than \$2,000 in current year and one of 2 preceding years, Revenue Canada will request that you make quarterly tax installment payments based on the balance owing in the upcoming year.

PDL Financial Consulting & Valuations Inc. specializes in the areas of Income tax planning and preparation, Real Estate appraisal, acquisition, management, Mortgage analysis, Financial Consulting & Investment Planning, Business start up, registration & planning.

**SELLING U.S. PROPERTY (CONTINUED)**

withheld funds back to the seller directly out of escrow, minus the reduced amount required to be remitted to the IRS, if any. It is important to remember that obtaining a withholding certificate does not exempt the seller from his or her U.S. tax filing obligations.

**Withhold or remit at a reduced rate**  
The withholding rate increased from 10% to 15% in February 2016. However, when the amount realized on the trans-

action is less than US\$1 million, there is still an opportunity to reduce the withholding rate to 10% if the buyer is able to sign a personal use certification (discussed above). This rate reduction can be implemented whether the seller decides to remit the funds to the IRS or apply for a withholding certificate.

**Timing is key**  
When FIRPTA's withholding rules apply to a real estate transaction, all the parties must be made aware. It is prudent for the Canadian seller to consider the

pros and cons of the various methods of complying with FIRPTA in order to have a clear path ahead, especially when the cooperation of the buyer and the escrow agent is often required. If the seller decides that it's worthwhile to apply for a withholding certificate, the preparation takes time, and a variety of information regarding the property's history as well as information from the buyer must be gathered. Therefore, plan for FIRPTA in a timely manner.

**2019 FEDERAL TAX RATES**

- 15% **on the first** \$47,629 of taxable income, +
- 20.5% **on the next** \$47,629 of taxable income (on the portion of taxable income over \$47,629 up to \$95,259), +
- 26% **on the next** \$52,408 of taxable income (on the portion of taxable income over \$95,258 up to \$147,667), +
- 29% **on the next** \$62,704 of taxable income ( on the portion of taxable income over \$147,666 up to \$210,371), +
- 33% on taxable income over \$210,371

**CANADA REVENUE AGENCY CONTACT NUMBERS:**

<b>T.I.P.S.</b>	<b>1-800-267-6999</b>
<b>INDIVIDUAL INCOME TAX</b>	<b>1-800-959-8281</b>
<b>TELEREFUND</b>	<b>1-800-959-1956</b>
<b>BUSINESSES AND SELF EMPLOYED</b>	<b>1-800-959-5525</b>
<b>UNIVERSAL CHILD CARE BENEFITS</b>	<b>1-800-387-1193</b>
<b>GST/HST CREDIT</b>	<b>1-800—959-1953</b>
<b>FORMS &amp; PUBLICATIONS</b>	<b>ORDER ONLINE</b>
<b>PAYMENT ARRANGEMENTS</b>	<b>1-888-863-8657</b>