

Taxation of Executive Compensation and Retirement

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Highlights

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INCENTIVES AND BENEFITS

measuring and comparing executive compensation

In the world of Canadian executive compensation, gross compensation data does not contain sufficient information to make accurate comparisons between peers. As **Chris D'Iorio** and **Rick Schubert** explain, this is because gross compensation data does not reflect the impact of the distortive effects of our tax legislation on both the cost and value of executive compensation. Despite the magnitude of these effects, both relative pay-for-performance ("P4P") analysis and competitive benchmarking are performed in Canada using gross compensation data. This fact has serious implications for the reliability of such comparisons and any judgments based on them. These distortive effects are so significant that a tax-adjusted methodology is required to produce executive compensation numbers that can be reliably and accurately compared. The authors provide an illustration of a typical P4P analysis for a subset of peers in the Canadian financial industry. The analysis compares gross compensation numbers with an estimate of the impact of Canadian tax treatment of stock-settled and cash-settled executive compensation on both the cost of providing the compensation and its economic value to the executive. The results show that the P4P rankings of peers in the Canadian financial industry changes once cost and value are adjusted for tax – this despite the fact that the structure of pay packages at Canadian financial institutions are relatively homogeneous. 1631

PRACTICE

deferral elections for deferred share unit plans

A recent technical interpretation released by the Canada Revenue Agency ("CRA") addresses the timing of deferral elections for deferred unit plans. The technical interpretation reconfirms the CRA's historic position on the timing of these elections and, in particular, the CRA's understanding of the meaning of constructive receipt. **Grace Pereira** examines the importance of this technical interpretation and, in particular, the welcome clarity it brings in the area of deferred compensation arrangements with respect to the meaning and importance of the doctrine of constructive receipt. The author notes that the CRA has historically taken the position that an employee has "received" an amount, for purposes of subsection 5(1) and paragraph 6(1)(a) of the Income Tax Act, in the earliest taxation year in which the employee receives it or has "constructively received" it because absolute enjoyment or use vests in the employee. This position predates the introduction of the salary deferral arrangement ("SDA") rules in the Income Tax Act. Also, the CRA has continued to invoke the doctrine of constructive receipt, even in circumstances where the SDA rules do not apply. 1636

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