

Guideline Income Analysis

Complex Issues and Best Practices

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The Basics

- Start with Line 15000
- Adjustments per Schedule III of the Guidelines:
 - Taxable amounts to actual (dividends and capital gains)
 - Carrying charges
 - CCA on real property
 - Capitalization amounts for partnership or sole proprietorship
- Attribution of Corporate Pre-tax Income (“CPTI”)
- Section 19 adjustments
 - Personal and discretionary expenses
 - Gross-ups (on dividends, capital gains, capital dividends, other lower tax rates)
 - Beneficial interest in a Trust
- Non-recurring Income and Double Dipping



Schedule III Adjustments

- The major adjustments:
 - Adjust taxable capital gains and taxable dividends to actual amounts (generally non-controversial)
 - Deduct carrying charges: examine the carrying charges. Items to consider not deducting include accounting and legal fees often claimed
 - Capital cost allowance on real property. Certainly that which has been deducted against personal income. Open question is whether amortization deducted inside a corporation should also be adjusted
 - Partnership or sole-proprietorship capitalization adjustment. Analogous to the attribution of CPTI, but in reverse



Corporate Pre-tax Income

- Adjustment required pursuant to Section 18:

“In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm’s length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.”

In other words, all related party remuneration and personal expenses *less* the market compensation

- Other non-specified adjustment: CCA on real property?



Corporate Pre-tax Income

- First determine the amount of undistributed income
- Adjustment for dividends paid:
 - Consider deducting the “pre-tax equivalent” of the dividends paid by the corporation in calculating the undistributed/available CPTI
 - Then the gross-up
 - OR – deduct actual dividends and then no gross-up applied
- Address the issue of corporate losses
- Address the impact of income attributed
- Period of review can impact analysis



Corporate Pre-tax Income

- Having determined the quantum, consider the ability to distribute:
 - Minority interest
 - Family Control (see *Lang-Newlands v. Newlands*, 2024 ONSC 6285)
 - Shareholders agreement
 - Financial circumstances of corporation
 - Ratio analysis
 - Past practice
 - Business requirements
 - Bank covenants, etc.
 - Shareholder loan account activity



Section 19 Adjustments

- Personal and discretionary expenses
 - Review general ledgers, expense reports and corporate credit cards if available
 - Present in scenarios if making assumptions with respect to additional expenses absent clear determination and be transparent with respect to such assumptions
 - Gross-up for income tax savings and consider what rate to apply in the calculations (effective? marginal?)
 - Does deductibility for tax purposes matter (e.g. corporate paid life insurance)
- Gross-ups (on dividends, capital gains, capital dividends, other lower tax rates)
- Beneficial interest in a Trust
 - Consider spouse's ability to control distributions
 - Consider historical pattern of distributions



Non-recurring and Double Dipping

- The language of Section 17(1) is “non-recurring” rather than “non-reoccurring”
- Distinguish conclusion for purposes of determining retroactive support or prospective support
- Double dipping considerations:
 - Distinguish between income for child support and income for spousal support
 - When deducting there are two prevailing methods:
 - Amount actually equalized, or
 - Amount included in Line 15000 referable to the equalized asset



Thank you.

