

## Related Business

A related business includes **any business**, where another **individual related** to the recipient of income does **any** of the following:

- personally **carries on the business**
  - this means income from a sole proprietorship to a related person can be subject to TOSI
- is **actively engaged** in the business carried on by a **partnership, corporation or trust**
- **owns shares** of the **corporation** carrying on the business
- **owns a property**, the **value** of which is **derived from shares** of the corporation having a **fair market value not less than 10%** of the fair market value of all of the shares of the corporation
- or is a **member of a partnership** which carries on the business.

The definition is **broadly drafted** to capture income derived **directly or indirectly** from the business.

## Exceptions and Exclusions

**Several exclusions** from the TOSI rules for adult individuals have been introduced. Some **exclusions depend** on the **age of the taxpayer** at the start of the taxation year. Different rules apply to taxpayers at least 17 years of age at the start of the year (i.e. these exceptions are first available in the year the taxpayer turns 18) and to those at least 24 years of age at the start of the year (i.e. these exceptions are first available in the year the taxpayer turns 25). For the purposes of this analysis, the first age group will be referred to as those "**over age 17**" while the second group will be referred to as those "**over age 24**". The exclusions are as follows:

**Excluded Business:** A taxpayer **over age 17** will not be subject to TOSI on amounts received from an excluded business. An excluded business is one where the taxpayer is **actively engaged** on a regular, continuous and **substantial basis** in either the **year** in which the **income** is **received or in any five previous years**. The five taxation years **need not be consecutive**. An individual will be **deemed** to be **actively engaged** in any year where the individual **works** in the business at least an average of **20 hours/week** during the portion of the taxation year that the business operates. A person not meeting this bright line test may also be "actively engaged" depending on the facts, but this will carry a greater risk of challenge by CRA.

**Excluded Shares:** A taxpayer **over age 24** will be **exempt from TOSI** in respect of income received from **excluded shares**, including capital gains realized on such shares. Many restrictions apply to qualify for this exclusion, which makes it **quite complex** and **uncertain**. The taxpayer must directly own shares accounting for at least 10% of the votes and value of the corporation's total share capital. For 2018, this test can be met by December 31. In later years, it must be met when the income is received. Also, the corporation can not be a **professional corporation** (i.e. a corporation carrying on the business of an accountant, chiropractor, lawyer, dentist, medical doctor or veterinarian). Further, it must earn **less than 90%** of its **business**

**income** from the provision of **services**. Finally, **substantially all** of its income (generally interpreted as 90% or more) must be derived from **sources other than related businesses**, which will be problematic for holding companies.

**Reasonable Return:** TOSI will not apply to amounts which reflect a reasonable return.

For taxpayers **over age 24**, an amount which is reasonable is based on **work performed, property contributed, risks assumed**, amounts **paid or payable** from the business, and **any other factors** in respect of the business which may be applicable.

For taxpayers **over age 17, but not over age 24**, the rules are more restrictive. Only a reasonable return in respect of **contributions of capital** will be considered.

- **Certain Capital Gains:**
  - Although TOSI will be expanded to apply to **capital gains** of interests in entities through which a **related business** is carried on, some gains will be excluded. For example, capital gains arising due to a deemed disposition on death. Also, capital gains on **a qualified farm or fishing property, or qualified small business corporation shares** will generally be **excluded** from TOSI.
- **Retirement Income Splitting:**
  - The **TOSI** rules will **not apply** to **income** received by an individual **from a related business** if the recipient's spouse was age **65** in or before the year in which the amounts are received and the amount would have been **excluded from TOSI** had it been received by the **recipient's spouse**.

**Additional exclusions** apply for some income from **inherited property** and property acquired as a result of a **relationship breakdown**. This new draft legislation is a **substantial change** from the current rules. The provisions are **lengthy, complex and nuanced**, and it is likely that additional concerns and challenges will be identified. It is **uncertain** whether there will be **further changes**, given the concerns which have already been identified, as well as the recommendations of the Senate Finance Committee released on the same date as these proposals.

- **Action Item:**
  - *Review whether your earnings may be impacted. Consider whether additional documentation should be kept to prove meaningful contributions and time worked. Also, restructuring of ownership or working relationships may be beneficial in some cases, reversed*, based on the due diligence undertaken in respect of the supplier previously.
- **Action Item:**
  - *Implement a system for checking GST/HST numbers, especially for major purchases, in CRA's GST/HST registry. You may want to select a purchase dollar level for which extra revision of supplier GST/HST numbers is performed. The registry is located at <https://www.businessregistration-inscriptionentreprise.gc.ca/ebci/brom/registry/>*

