

# Lang Michener LLP



## Tax

# Say on Pay: Clawbacks and Taxation

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Financial institutions and many other employers are considering "say on pay" resolutions and various clawback measures in an effort to better align employee remuneration with corporate performance. In order to avoid negative consequences to its employees, an employer should carefully consider the taxation aspects of the clawback measures.

Remuneration from employment is generally included in income when received, subject to particular rules aimed at curbing the undue deferral of employment income. Employees are extremely limited in the deductions they may claim in computing employment income. The clawback of a bonus from a prior year is not a permitted deduction. Unless properly structured, the clawback can result in the employee having paid tax on an amount, being obliged to repay the amount to the employer, but being unable to claim any tax relief in respect of the repayment. While this may satisfy the clawback policy, it may undermine the incentive and retention aspects of the overall compensation policy.

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