"Budget 2017 is about jobs. It's about creating good middle class jobs today, while preparing Canadians for the jobs of tomorrow. The next step in our plan for Canada's economy is making the smart, responsible investments we need to be innovative and competitive, while improving the health of our communities, ensuring a better future for our kids and grandkids."

- Bill Morneau, Minister of Finance

The Honourable Bill Morneau, Minister of Finance (the Minister), tabled the Liberal government’s second budget on March 22, 2017 (Budget 2017).

Budget 2017 contains a series of announcements and measures that continues the government’s theme of investing in innovation to create jobs and to strengthen the middle class. The government also continues to pursue material infrastructure spending, expanding on commitments made in the 2016 federal budget (Budget 2016), and also the 2016 fall economic statement.

Budget 2017 is notable for the absence of material new income tax policies or measures. It had been anticipated that the Minister might delay any such announcements until the government’s fall 2017 economic statement – taking a cautious approach in a changed North American political environment given recent U.S. developments. Rumoured changes to the capital gains inclusion rate did not materialize. The employee stock option regime also continues to remain untouched. Budget 2017 stays the course with a modest assortment of measures to pursue the government’s stated tax agenda, as introduced in its first budget on March 22, 2016, to ensure fairness in both the administration and design of the tax system. In this regard, Budget 2017 states that it includes measures that close perceived tax loopholes, improve tax relief for the middle class, and eliminate tax measures that are considered by the government to be ineffective and inefficient, and to disproportionately benefit the wealthy.

A significant indication of possible future personal tax policy initiatives is announced in Budget 2017. The government proposes to release in the coming months a paper on tax planning using private corporations to reduce personal taxes, and proposed policy responses to such planning.

In this Budget Briefing 2017, we summarize the more significant tax proposals included in Budget 2017.

IN THIS BRIEFING

The following areas will be covered in this Budget Briefing:

- Business Income Tax Measures
- International Tax Measures
- Personal Income Tax Measures
- Administrative Measures
- GST/HST and Excise Measures
- Customs Tariff and Special Import Measures
- Outstanding Tax Measures

BUSINESS INCOME TAX MEASURES

GENERAL CORPORATE TAX RATE

Budget 2017 does not propose to change the general corporate income tax rate, which remains at 15% at the federal level for 2017.

SMALL BUSINESS TAX RATE

Budget 2017 does not propose to change the small business tax rate applicable to the first $500,000 of
qualifying active business income of Canadian-controlled private corporations from the current 10.5% at the federal level.

**ELIMINATING THE USE OF BILLED-BASIS TAX ACCOUNTING**

Under the rules of the *Income Tax Act* (ITA), certain professionals, such as accountants, dentists, lawyers, and medical doctors, can elect to exclude in computing income for a taxation year the value of work in progress (i.e., that is not yet billed) as at the end of the year. Such professionals can thereby defer tax by deducting in the year the costs associated with their work in progress without recognizing in the same year the associated revenues. Budget 2017 proposes to eliminate this deferral opportunity by eliminating the ability of professionals to elect to use billed-based accounting. The measure will apply for taxation years beginning on or after March 22, 2017, to be phased in over a two-year period to mitigate the effect of the changes on taxpayers.

**TIMING OF RECOGNITION OF GAINS AND LOSSES ON DERIVATIVES**

Budget 2017 introduces an elective mark-to-market regime for eligible derivatives. The proposal would apply to all taxpayers, including financial institutions.

Taxpayers that do not elect into the regime would be required to apply the realization method for reporting gains and losses from income account derivatives. Mark-to-market reporting of income account derivatives in a manner other than under the elective regime would no longer be permitted.

An eligible derivative of a taxpayer that is not a financial institution means a swap agreement, a forward purchase or sale agreement, a forward rate agreement, a futures agreement, an option agreement or similar agreement that is held on income account (and is not a Canadian resource property or foreign resource property), provided the taxpayer produces audited financial statements prepared in accordance with GAAP in respect of the taxation year, or the agreement has a readily ascertainable fair market value. Under the proposed regime, such taxpayers would be deemed to dispose of each eligible derivative for fair market value proceeds immediately before the end of the taxation year, and reacquire the derivative at the end of the taxation year at an amount equal to such proceeds.

In addition to the foregoing criteria, eligible derivatives for financial institutions would not include “tracking property,” other than an “excluded property” of the financial institution. Eligible derivatives of such taxpayers would be deemed to be “mark-to-market property” for purposes of the mark-to-market regime that is currently applicable to them.

The proposed regime includes an interpretive provision that deems a taxpayer to hold and dispose of an eligible derivative to which it is a party, even if such derivative is not a property of the taxpayer. Implicit in this provision is that a derivative under which a taxpayer is a net payor may be an obligation, rather than property, of the taxpayer.

An election to have the regime apply in respect of a particular taxation year and subsequent years would be made in prescribed form on or before the taxpayer’s filing due date for that particular year. The election could be revoked by the taxpayer with the consent of the Minister on specified terms and conditions, effective for taxation years that begin after the day upon which the taxpayer is notified in writing of the Minister’s concurrence.

A deemed realization and deferral rule would apply to certain eligible derivatives held at the beginning of the first taxation year in which an election is made. Accrued gains and losses on eligible derivatives that
were not reported on a substantially similar mark-to-market basis in the immediately preceding year would be deemed to be realized at the end of that year. However, recognition of these amounts would be deferred until the time at which the taxpayer ultimately disposes of the eligible derivative.

Consequential amendments are also proposed, including those which would preclude the tax deferred transfer of eligible derivatives in respect of which a mark-to-market election has been made.

The proposed regime would apply to taxation years beginning on or after March 22, 2017.

**ANTI-STRADDLE MEASURES**

A “straddle” is a combination of two or more derivatives or other transactions that offset each other economically. Budget 2017 introduces a specific anti-avoidance measure to combat what the government perceives as the opportunistic use of straddles to realize a loss in a particular year, while deferring gains to a subsequent year (e.g., generating a loss in a particular year by closing out the losing leg of a straddle, while leaving the offsetting gain position unrealized). Such a strategy is effective only where a taxpayer reports straddle transactions on a realization, rather than mark-to-market, basis.

The proposal would apply only to certain taxpayers. Financial institutions, mutual fund trusts and mutual fund corporations are excluded.

The proposed anti-straddle rules are detailed. In effect, they would introduce a stop-loss rule to defer the realization of any loss position within a straddle to the extent of any gain on an offsetting position that remains outstanding. A position within a straddle would include a wide array of enumerated properties and obligations. Offsetting positions in respect of a particular position may be held by the taxpayer, a person or partnership that is affiliated with the taxpayer, or a person or partnership that does not deal at arm’s length with the taxpayer.

The proposal excludes certain transactions. For example, it would not apply to capital account transactions or property, hedging transactions entered into in the ordinary course of a taxpayer’s business, or transactions or series of transactions none of the main purposes of which is to defer or avoid tax. In addition, the proposal would not apply where the offsetting gain position in a straddle is held for a 30-day period beginning on the day of disposition of the loss position, and at no time in that period is the holder’s economic exposure in respect of the position changed in any material respect by another position.

The measure would apply to any loss realized on a straddle position entered into on or after March 22, 2017.

**INVESTMENT FUND MERGERS**

Budget 2017 would provide a limited extension of existing rules that permit certain investment funds to merge on a tax-deferred basis.

The existing rules apply to mergers between two mutual fund trusts, and where a mutual fund corporation merges into a single mutual fund trust.

Budget 2017 proposes to extend these rules to permit a mutual fund corporation to merge with more than one mutual fund trust. This measure is intended to facilitate the tax-deferred reorganization of a mutual fund corporation having multiple classes of shares, each class of which is treated as a distinct
investment fund (defined by Budget 2017 as a “switch corporation”), into multiple mutual fund trusts.

As proposed, the rule requires each share class within a switch corporation to be merged into a separate mutual fund trust. All or substantially all of the assets allocable to a particular share class would be required to be transferred to a single mutual fund trust, and the shareholders of the class must become unitholders of the mutual fund trust.

Notably, the proposal requires all share classes of a switch corporation to be merged into separate mutual fund trusts at the same time. The selective merger of particular share classes of a switch corporation would not be permitted.

This measure would apply to mergers that occur on or after March 22, 2017.

Budget 2017 also proposes to allow insurers to effect tax-deferred mergers of segregated funds in a manner intended to parallel the rules applicable to mutual fund trusts and corporations.

In addition, it is proposed that non-capital losses arising in a taxation year after 2017 may be carried over by a segregated fund to later taxation years. This proposal would be subject to the existing regime governing the carrying forward and back of non-capital losses, including those that restrict the use of losses following a merger.

**CLEAN ENERGY GENERATION EQUIPMENT: GEOTHERMAL ENERGY**

Budget 2017 proposes certain changes to the deduction of expenses related to the acquisition and use of geothermal energy equipment that are intended to promote investment in technologies that contribute to a reduction in greenhouse gases and air pollutants.

Classes 43.1 and 43.2 provide accelerated CCA rates (30% and 50%, respectively) for investment in certain clean energy generation and conservation equipment. Currently, geothermal equipment used to generate electricity receives preferential treatment relative to geothermal equipment used to generate heat (or heat and electricity) in the following ways:

- geothermal equipment primarily used for producing electricity is eligible for an accelerated CCA rate of 50% under Class 43.2 whereas geothermal equipment primarily used for producing heat is only eligible for a CCA rate of 4% under Class 1; and
- the costs of drilling and completing geothermal production wells for an electricity generation project that qualifies for Class 43.2 are also included in Class 43.2, whereas the costs of drilling and completing geothermal production wells used primarily for heating purposes are included in either Class 1 (4% rate), Class 17 (8% rate), Class 14.1 (5% rate) or are treated as current expenses, depending on the circumstances.

Further, certain equipment that is part of a “district energy system” (i.e. a system which transfers thermal energy between a central generation plant and one or more buildings by circulating an energy transfer medium that is heated or cooled with thermal energy) is included in Class 43.2. Geothermal heat is not included as an eligible thermal energy source for use in a district energy system and is thus not included in Class 43.2.

Lastly, certain intangible project start-up expenses are treated as “Canadian renewable and conservation expenses” which can be deducted in full in the year, carried forward indefinitely or transferred to investors via flow-through shares. To be eligible for this treatment, the intangible start-up
expenses must relate to a project of which the majority of a tangible property is eligible for inclusion in Class 43.1 or 43.2.

Budget 2017 proposes the following measures aimed at further promoting investment in geothermal equipment and to treat geothermal equipment used primarily for heating purposes in a manner that is more consistent with geothermal equipment used primarily for electricity purposes:

- expanding the list of eligible thermal energy equipment that qualifies as Class 43.1 or 43.2 to include geothermal equipment used primarily for generating heat or for generating a combination of heat and electricity;
- expansion of eligible costs of property that are included in a CCA class to include the cost of completing a geothermal well and, for systems that produce electricity, include the cost of related electricity transaction equipment;
- making geothermal heat an eligible thermal energy source for use in a district energy system;
- expansion of Canadian renewable and conservation expenses to include expenses incurred for the purposes of determining the extent and quality of a geothermal resource and the cost of all geothermal drilling.

The new measures will apply to all property acquired for use on or after March 22, 2017, that has not been used or acquired for use prior to that date. Accelerated CCA rates will only be available if the particular property, when it first becomes available for use, satisfies the requirements of all applicable environmental by-laws and regulations.

**CANADIAN EXPLORATION EXPENSE: OIL AND GAS DISCOVERY WELLS**

Currently, expenses incurred for the purposes of determining the existence, location extent or quality of an accumulation of petroleum or natural gas in Canada, including the expenses associated with drilling an oil or gas well that results in the discovery of a previously undiscovered petroleum or natural gas reserve, qualify as a “Canadian exploration expense” (CEE). CEE is fully deductible to the extent of an oil and gas company’s income, whereas expenses incurred with respect to drilling an oil or gas well are otherwise treated as a “Canadian development expense” (CDE) and only deductible on a declining-balance basis at a 30% rate.

Budget 2017 proposes measures that will generally classify expenses incurred with respect to drilling an oil or gas well that results in the discovery of a previously undiscovered petroleum or natural gas reserve as CDE (rather than CEE). Although such expenses do not necessarily result in a well which is capable of production, or change the rights of the working interest holder, it is the government’s view that such expenses result in the acquisition of an asset of an enduring benefit and should be deductible on the same declining-balance basis as expenses incurred with respect to drilling production wells.

However, drilling expenses incurred where (i) the oil or gas well has either been abandoned or has not produced within 24 months, or (ii) the Minister of Natural Resources has certified that the costs associated with drilling the well are expected to exceed $5 million and it will not produce within 24 months, may continue to be classified (or can be reclassified) as CEE and deducted on a current basis.

These new measures will apply to expenses incurred after 2018 (including expenses incurred in 2019 that can be deemed to have been applied in 2018 as a result of the flow-through share look-back rule described below). However, if the taxpayer has entered into a written commitment prior to March 22, 2017 (including a commitment to a government under the terms of a license or permit) to incur the
RECLASSIFICATION OF EXPENSES RENOUNCED TO FLOW-THROUGH SHARE INVESTORS

Flow-through share agreements permit a corporation to renounce or flow-through certain expenses, including CEE and CDE, to investors who can then deduct those expenses in computing their own taxable income. A “look-back” rule further permits eligible expenses that are incurred in respect of funds raised under a flow-through share agreement to be renounced with an effective date in the year that the funds were raised for the expenses to be incurred in the following calendar year.

An “eligible small oil and gas corporation” (i.e. an oil and gas corporation with taxable capital employed in Canada of not more than $15 million) can currently treat up to $1 million of CDE as CEE when renouncing those expenses to holders of flow-through shares. As described above, CDE is deductible at a rate of 30% per year on a declining-balance basis, whereas CEE is deductible in full.

Budget 2017 proposes to eliminate the measure which permits an eligible small oil and gas corporation to renounce up to $1 million of CDE as CEE to flow-through share subscribers. This measure will apply to expenses incurred after 2018 (including expenses incurred in 2019 that can be deemed to have been incurred in 2018 as a result of the look-back rule). However, there is an exception for expenses that are incurred after 2018 and before April 2019 that are renounced under flow-through share agreements that were entered into after 2016 and before March 22, 2017.

MEANING OF FACTUAL CONTROL

The ITA contains two concepts of “control” of a corporation: *de jure* control and *de facto* control. The concept of *de facto* control is relevant for determining whether certain preferential tax treatments, such as the small business deduction and the scientific research and development tax credit, are available to a particular corporation.

While *de jure* control refers to having legal control of the corporation and is generally a question of whether a party “has the ability to elect the board of directors of the corporation” (see *Duoha Printers (Western) Ltd v The Queen*, [1998] 1 SCR 795), *de facto* control is a broader concept and generally means that a taxpayer has a “clear right and ability to effect a significant change in the board of directors or to influence in a very direct way the shareholders who would otherwise have the ability to elect the board of directors” (see *Silicon Graphics Limited v The Queen*, 2002 FCA 260 reversing 2001 DTC 379 (TCC)).

In the recent decision of the Federal Court of Appeal in *McGillivray Restaurant Ltd v R* (2016 FCA 99), the Court affirmed the *Silicon Graphics* test above and confirmed that while the list of factors which may be considered in determining whether *de facto* control of a corporation exists is open-ended, “a factor that does not include a legally enforceable right and ability to effect a change to the board of directors or its powers, or to exercise influence over the shareholder or shareholders who have that right and ability, ought not to be considered as having the potential to establish de facto control.”

In response to the *McGillivray* decision above, Budget 2017 proposes to amend section 256 of the ITA to provide that in determining whether *de facto* control exists in any given situation:

- all factors relevant in the circumstances must be considered; and
- such factors will not be limited to, and the relevant factors need not include, whether the taxpayer has
a legally enforceable right to effect a change to the board of directors or its powers, or to exercise influence over the shareholder or shareholders who have that right or ability.

In effect, this proposed measure overpowers the McGillivray decision and is consistent with the recent decision of the Tax Court of Canada in Aeronautic Development Corp v The Queen, 2017 TCC 39, which has judicially expanded the test in McGillivray in any event. The proposed measure will apply to taxation years that begin on or after March 22, 2017.

ELIMINATION OF THE TOBACCO MANUFACTURERS’ SURTAX

Budget 2017 proposes to eliminate the 10.5% surtax on profits arising from the manufacture of tobacco or tobacco products. The proposed change is effective as of March 22, 2017. A corporation with a taxation year that includes that day will be required to prorate the surtax, based on the number of days in the year that are on or before March 22, 2017. This measure is introduced in conjunction with certain excise tax measures relating to tobacco and tobacco products described below under the heading GST/HST and Excise Measures. In particular, Budget 2017 proposes to increase tobacco excise duty rates in order to maintain the same tax burden on tobacco products.

INTERNATIONAL TAX MEASURES

BASE EROSION AND PROFIT SHIFTING

Budget 2016 recognized “the importance of protecting the integrity of the Canadian tax base and ensuring that everyone pays their fair share of tax,” and noted that Canada has been actively engaged with the efforts of the G20 and the Organization for Economic Co-operation and Development (OECD) to address base erosion and profit shifting (BEPS). BEPS generally refers to shifting taxable profits away from the jurisdiction in which underlying economic activity has taken place. Aspects of the BEPS project are discussed in detail in numerous earlier Osler Updates.

Budget 2017 confirms the government’s commitment to protecting Canada’s tax system. Budget 2017 notes that the government has implemented – or is in the process of implementing – the measures agreed to by OECD members as the minimum standards under the BEPS project including the following:

- enacting legislation in December 2016 that requires large multinational enterprises to file country-by-country reports;
- participating in the development of a multilateral instrument to streamline the implementation of tax treaty-related BEPS recommendations such as those targeted to prevent treaty abuse. Budget 2017 indicates that the government is pursuing signature of the multilateral instrument and is currently undertaking the necessary domestic processes required to do so;
- improving the mutual agreement procedures in Canada’s tax treaties in order to increase the effectiveness and timely resolution of tax treaty-related disputes; and
- ensuring that revenue authorities are not granting taxpayers non-transparent “private” tax rulings that grant favourable tax treatments by having the CRA begin the spontaneous exchange of tax rulings that may give rise to BEPS issues with other tax administrations worldwide.

Budget 2017 further notes that, with respect to transfer pricing issues, the CRA is applying the OECD’s
revised transfer pricing guidance in determining whether multinational enterprises are pricing their intercompany transactions in accordance with the arm's length principle.

Budget 2017 states that the government will continue to work with the international community to ensure a coherent and consistent response to fight tax avoidance through BEPS and that the government is strengthening efforts to combat tax evasion through the implementation of enhanced information-sharing procedures with other tax administrators pursuant to the OECD’s Common Reporting Standard. Canada enacted legislation to implement this standard beginning on July 1, 2017, which will allow for the first exchanges of information with other countries beginning in 2018.

**EXTENDING THE BASE EROSION RULES TO FOREIGN BRANCHES OF LIFE INSURERS**

Very generally, the ITA provides special treatment for Canadian-resident life insurance companies that carry on their insurance business in Canada and in another country through a branch. Such an insurer’s income (or loss) from carrying on its insurance business is limited to its income (or loss) from the insurance business in Canada. In effect, the insurer’s income (or loss) from its insurance business carried on through a foreign branch is exempt from tax in Canada and can be “repatriated” from the branch to Canada without Canadian tax. Budget 2017 proposes to amend the rules of the ITA as they apply to a foreign branch of a Canadian-resident life insurance company so that the treatment of the branch and of a foreign affiliate with respect to the insurance of Canadian risks are more closely aligned.

As described in more detail in Budget 2017, there will be base erosion rules introduced that are modelled on the base erosion rules in the foreign accrual property income (FAPI) regime (introduced in Budget 2014) so that, for purposes of computing the income of the insurer from a business carried on in Canada in a taxation year, there will be included in that income the income from insurance (or reinsurance) of specified Canadian risks as part of the insurer’s “designated foreign insurance business.” A “designated foreign insurance business” will be defined to be an insurance business that is carried on by the insurer in a country other than Canada in a year, unless more than 90% of the gross premium revenue from the business for the year from the insurance of risks (net of reinsurance ceded) is in respect of the insurance of risks (other than specified Canadian risks) of persons with whom the life insurer deals at arm’s length.

As in the case of the applicable FAPI rules, the new designated foreign insurance business rules will contain anti-avoidance rules to ensure that the proposed rules cannot be avoided through the ceding of Canadian risks or the use of so-called insurance swaps.

Additional anti-avoidance rules will provide that there will deemed to be included as a specified Canadian risk insured by a Canadian-resident life insurer in its business carried on in Canada, a risk that is insured by the insurer in the following circumstances:

- the risk is insured in a foreign branch as part of a transaction or series of transactions;
- the risk would otherwise not be a specified Canadian risk; and
- it can be reasonably concluded that one of the purposes of the transaction or series of transactions is to avoid the application of the proposed base erosion rules.

An analogous version of this anti-avoidance rule will also be introduced to the FAPI rules of the ITA as they apply to the taxation of the insurance of designated Canadian risks by foreign affiliates.

These new base erosion rules will apply for taxation years that begin on or after March 22, 2017.

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PERSONAL INCOME TAX MEASURES

REVIEW OF TAX PLANNING USING PRIVATE CORPORATIONS

Budget 2016 indicated the government would conduct a wide-ranging review of all tax expenditures with the core objective of looking for opportunities to reduce tax benefits that help those with individual incomes of $200,000 or more. Budget 2017 states that this review has highlighted a number of issues regarding tax planning strategies using private corporations which can result in high-income individuals reducing personal taxes. Identified tax reduction strategies include “sprinkling” income among family members using private corporations, holding passive investment portfolios inside private corporations and converting a private corporation’s regular income into capital gains. Budget 2017 announces that the government intends to release a paper in the coming months setting out the nature of these issues, as well as proposed policy responses. The proposed review would also address whether there are features of the current income tax system that have an inappropriate adverse impact on genuine business transactions involving family members.

NEW CANADA CAREGIVER CREDIT

Budget 2017 proposes to eliminate the current Caregiver Credit, Infirm Dependant Credit and Family Caregiver Tax Credit. These three credits will be replaced with a single new tax credit, the Canada Caregiver Credit, which is intended to provide better support to those who need it most, apply to caregivers whether or not they live with their family member and help families with caregiving responsibilities.

The Canada Caregiver Credit will provide a 15% non-refundable tax credit for (i) up to $6,883 of expenses incurred for the care of dependent relatives (i.e., parents, brothers and sisters, adult children and other specified relatives) with infirmities and (ii) up to $2,150 on expenses incurred for the care of a dependent spouse, common-law partner or minor child with an infirmity. The credit will be reduced on a dollar-for-dollar basis where the dependant’s net income exceeds $16,163 (indexed for inflation for subsequent years). The credit will be available beginning in the 2017 taxation year.

EXTENDED ELIGIBILITY FOR TUITION TAX CREDIT

Budget 2017 proposes to extend the range of courses that are eligible for the Tuition Tax Credit to include occupational skills courses that are undertaken at a post-secondary institution in Canada and to allow the full amount of bursaries received for such courses to qualify for the scholarship exemption.

ELIMINATION OF HOME RELOCATION LOAN DEDUCTION

Generally, where an employee receives a loan from his or her employer with an interest rate that is below the prescribed rate, the employee will realize a taxable benefit that must be included in his or her income for the year. However, where the loan is an “eligible home relocation loan,” the employee may be able to deduct all or a portion of the taxable benefit that arises as a result of the loan (subject to limits set out in the ITA). Budget 2017 proposes to eliminate this deduction for taxable benefits that arise in 2018 and subsequent years on the basis that the eligible home relocation loan deduction disproportionately benefits the wealthy and does not assist the middle class.
EXTENSION OF MINERAL EXPLORATION TAX CREDIT FOR FLOW-THROUGH SHARE INVESTORS

Resource companies can renounce or “flow-through” certain expenses related to Canadian exploration activities to their investors via flow-through shares. The investors can then deduct those expenses in computing their own taxable income. In addition, investors in mining flow-through shares can take advantage of the mineral exploration tax credit, which provides an additional deduction of 15% of mineral exploration expenses incurred in Canada that are flowed-through to investors.

Currently, the mining exploration tax credit will no longer apply to flow-through share agreements entered into after March 31, 2017. Budget 2017 proposes to extend the eligibility for the mining exploration tax credit for an additional year so that it applies to flow-through share agreements entered into on or before March 31, 2018. Pursuant to a “look-back” rule in effect, expenses that are incurred in respect of funds raised under a flow-through share agreement can be renounced with an effective date in the year that the funds were raised for the expenses to be incurred in the following calendar year.

ANTI-AVOIDANCE FOR REGISTERED PLANS

The ITA contains numerous anti-avoidance rules, which apply to tax-free savings accounts (TFSAs), registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) to ensure that such plans do not provide unintended excess tax benefits, including the following:

- advantage rules which prevent the exploitation of the tax attribute of a registered plan, such as shifting returns from a taxable investment to a “registered plan” (currently defined as a TFSA, RRSP or RRIF);
- prohibited investment rules which generally provide that investments held in a registered plan must be “arm’s length” investments; and
- non-qualified investment rules which generally provide a restriction on the classes of assets that may be held in a registered plan.

Budget 2017 proposes to extend these anti-avoidance rules to also apply to registered education savings plans (RESPs) and registered disability savings plans (RDSPs). The new rules would generally apply to transactions occurring and investments acquired after March 22, 2017 (subject to certain exceptions described below). Investment income earned after March 22, 2017, is considered to be a “transaction occurring” after March 22, 2017, for these purposes.

The following exceptions to the above measures have been proposed:

- the advantage rules will generally not apply to swap transactions undertaken before July 2017;
- further, swap transactions entered into to ensure that an RESP or RDSP complies with the new rules by removing an investment that would otherwise be a prohibited investment or would be subject to the advantage rules will be permitted until the end of 2021; and
- where a taxpayer receives distributions on investment income from an investment that was held on March 22, 2017, and that investment becomes a prohibited investment as a result of these new measures, the taxpayer may elect (subject to certain conditions) by April 1, 2018, to pay Part I tax on such distributions in lieu of paying the advantage tax.
ADMINISTRATIVE MEASURES

REVIEW OF TAX EXPENDITURES

Budget 2017 reaffirms the government’s commitment in Budget 2016 to conduct a wide-ranging review of all tax expenditures with the core objective of looking for opportunities to eliminate poorly targeted and inefficient tax measures and to identify those tax benefits that unfairly benefit the wealthiest Canadians.

INCREASED ENFORCEMENT OF TAX EVASION

Budget 2016 proposed to invest additional funds for the CRA for the purposes of improving service levels, cracking down on tax evasion, combatting tax avoidance and enhancing tax collections.

Budget 2017 proposes further measures in this regard, with a commitment to invest an additional $523.9 million over five years to prevent tax evasion and improve tax compliance. The proposed measures stated to crack down on tax evasion and combat tax avoidance are the following:

- increasing verification activities;
- hiring of additional auditors and specialists with a focus on the underground economy;
- developing business intelligence infrastructure and risk assessment systems to target high-risk international tax and abusive tax avoidance cases; and
- improving the quality of investigative work that targets criminal tax evaders.

These proposed measures are projected to generate increased tax revenues of $2.5 billion over the next five years.

ELECTRONIC DISTRIBUTION OF T4 SLIPS

Currently, employers are required to provide two copies of T4 information slips (T4s) to each employee. These slips can be delivered either in paper copy or, with the relevant employee’s express consent, electronically.

Budget 2017 proposes to allow employers to distribute T4s electronically to currently active employees without having to obtain express consent from the relevant employee in advance. The new measures include requirements that the employer have adequate privacy safeguards in place to ensure that employee information remains confidential prior to issuing T4s electronically without the employee’s consent. The new measures will also require employers to provide paper T4s to any employee who does not have confidential access to view or print the T4 (e.g., employees on leave or former employees) and to provide paper copies of the T4 to any employee who requests a paper copy.

The new measures will apply to T4s issued for 2017 and subsequent taxation years.

GST/HST AND EXCISE MEASURES

Budget 2017 introduces very few new GST/HST measures. These measures include the following:
**TAXI BUSINESS**

Budget 2017 proposes to change the definition of a “taxi business” in the *Excise Tax Act* to include a business carried on by a person of transporting passengers for fares by automobile through a commercial ride-sharing service facilitated by web applications, so that such persons are required to register for and charge GST/HST on their fares on the same basis that currently applies to taxi operators. The amendment is to be effective July 1, 2017.

**GST/HST REBATE TO NON-RESIDENTS FOR TOUR PACKAGE ACCOMMODATIONS**

Budget 2017 proposes to repeal the GST/HST rebate that non-resident tour operators can currently claim for GST/HST payable in respect of the Canadian accommodation portion of certain eligible tour packages for supplies made on or after January 1, 2018, and for supplies made after March 22, 2017, and before January 1, 2018, unless all the consideration for the supply is paid before January 1, 2018.

**EXCISE DUTY – TOBACCO AND ALCOHOL PRODUCTS**

In conjunction with the elimination of the tobacco manufacturer’s surtax (see above under Business Income Tax Measures), as a stated means of maintaining the intended tax burden of the surtax on tobacco products, Budget 2017 proposes to increase excise duty rates on tobacco products effective as of March 23, 2017. It also proposes to impose a tax on inventories of cigarettes held by manufacturers, importers, wholesalers, and retailers, at the end of March 22, 2017, in accordance with the inventory tax mechanism in the *Excise Act, 2001*.

Budget 2017 further proposes that excise duty rates on alcohol products be increased by 2% effective as of March 23, 2017, and that the rates be automatically adjusted by the Consumer Price index on p 1 of every year, starting in 2018.

**CUSTOMS TARIFF AND SPECIAL IMPORT MEASURES**

**EXPANDING THE GENERAL PREFERENTIAL TARIFF AND LEAST DEVELOPED COUNTRY TARIFF RULES OF ORIGIN**

Budget 2017 proposes to amend the General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations in order to increase the number of items that certain least developed countries (LDCs) can import into Canada duty-free. In particular, the rules will be amended to expand the list of countries from which LDCs can source manufacturing inputs in the production of T-shirts and pants, and still retain duty-free status on the finished products.

**CHANGES TO THE SPECIAL IMPORT MEASURES ACT**

A number of amendments have been proposed to the *Special Import Measures Act* (SIMA) and the related regulations. These proposed changes include: (a) allowing domestic producers to file complaints regarding trade and business practices, which are specifically intended to avoid trade remedy duties; (b) allowing interested parties to request that the CBSA conduct formal reviews to determine if specific
products fall within the scope of trade remedy measures; (c) to allow unions to participate as interested parties in trade remedy proceedings; (d) providing more discretion to the Canada Border Services Agency in anti-dumping investigations in determining the reliability of prices in exporting countries; and (e) making changes for exporters which are found to be dumping at *de minimis* levels.

**OUTSTANDING TAX MEASURES**

Budget 2017, in accordance with the government’s customary disclosure of previously announced measures, confirms the government’s intention to proceed with the following previously announced tax and related measures, as modified to take into account consultations and deliberations since their release:

- measures announced on October 3, 2016, relating to improving fairness in relation to the ability to claim or use the capital gains exemption on the sale of a principal residence;
- the measure announced in Budget 2016, on information-reporting requirements for dispositions of an interest in a life-insurance policy;
- measures confirmed in Budget 2016 to expand the scope of the GST/HST joint venture election, which had been promised in previous budget proposals;
- the legislative proposals released on September 16, 2016, relating to technical amendments to the ITA; and
- the legislative and regulatory proposals to amend the *Excise Tax Act* released on July 22, 2016, relating to the GST/HST.

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