

Fall Economic Statement 2023

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The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, tabled the [Fall Economic Statement 2023](#) on November 21, 2023. The Statement provides general economic and fiscal information and projections, and outlines details of its ongoing housing plan. The Statement also provides updates on some previously announced tax measures and international tax reform, including the current state of the new investment tax credit regime for clean energy technologies. A modest number of new tax measures are also introduced.

An Osler Update will be circulated separately reviewing the announced proposals and details of the clean energy technologies investment tax measures. The following includes a brief summary of the tax measures introduced or addressed in the Statement.

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Clean energy investment tax credit regime

The Statement contains a much-anticipated progress update on the timelines for finalizing and introducing legislation into Parliament to implement the suite of Clean Energy Investment Tax Credits (Clean Energy ITCs) announced to date.

Of note, the Statement indicates that legislation is anticipated to be introduced into Parliament in the fall of 2023 for the Carbon Capture, Utilization, and Storage (CCUS) ITC, the Clean Technology ITC and the labour requirements.

The Statement also indicates that the Department of Finance will be running consultations and anticipates that legislation for the remaining Clean Energy ITCs will be introduced in Parliament in 2024.

The Statement announces expansions to the scope of the Clean Technology and Clean Electricity ITCs and provides additional details about the design elements and eligibility requirements for the Clean Hydrogen ITC.

We will be publishing a separate Update with a more in-depth review of the announcements in the Statement that relate to Clean Energy ITCs.

In light of the government's stated intention to support the transition to greener energy through various forms of financial support, please review the separate discussion below regarding concessional loans and the government's response to the *CAE Inc.* case — a decision that was not aligned with the historical treatment of loans extended by government on preferential terms.

International tax reform update

As part of the government's ongoing commitment to implement Pillar One and Pillar Two, which were approved by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting on October 8, 2021, the Statement updates certain proposed measures.

Digital services tax

The Statement restates Canada's intention to move ahead with its previously proposed digital services tax (DST). In October 2021, Canada agreed to delay the implementation of a DST in order to give time for negotiations with the OECD/G20 Inclusive Framework to conclude on Pillar One. However, earlier this year Canada was one of a small group of countries that refused to support an OECD-backed further one-year extension of the moratorium on introducing new DSTs. The Statement notes that at least seven countries (Austria, France, India, Italy, Spain, Türkiye and the United Kingdom) have continued to apply their own DSTs.

In previous updates, Finance has indicated that Canada's DST will apply as of January 1, 2024, with retroactive effect to January 1, 2022. The Statement is more vague on timing, instead indicating that forthcoming legislation will allow the government to determine the entry-into-force date of the DST "as Canada continues conversations with its international partners". The United States has criticized the proposed Canadian DST as being discriminatory and has threatened potential tariffs or other retaliatory measures if Canada proceeds with its DST as

planned. There have also been several other criticisms of Canada's proposed DST — particularly its intended retroactive application.

International shipping

The Statement proposes to align the exemption for international shipping income in the *Income Tax Act* (ITA) with the approach taken under Pillar Two. Currently, non-resident shipping companies are exempt from income tax under the ITA, even if managed and controlled from Canada, where the jurisdiction has a reciprocal exemption for Canadian companies.

The Pillar Two global minimum tax generally excludes international shipping income. However, one condition for the exclusion to apply is that the "strategic or commercial management" of the shipping operations be located in the same jurisdiction as the entity. Draft legislative proposals released in August include the exclusion for international shipping income from Pillar Two.

Taxpayers that meet the current exemption in the ITA for non-resident companies that are managed from Canada may not qualify for the exclusion under Pillar Two. The Statement proposes to make the existing exemption for international shipping income in the ITA available to Canadian-resident companies. This measure would apply to taxation years that begin on or after December 31, 2023 (consistent with the implementation of the *Global Minimum Tax Act* in Canada).

Other income tax measures

The Statement introduces only a modest number of limited additional business tax measures, which are outlined below.

Concessional loans

The Statement provides a welcome proposed amendment regarding concessional loans in response to the decision in *CAE Inc. v. R.*, in which the Tax Court of Canada ruled (and Federal Court of Appeal upheld) that a low-interest non-forgivable government loan constituted "governmental assistance". Under the ITA, a taxpayer who receives government assistance in the course of earning income from business or property may reduce the amount of a related expense or the cost or capital cost of a related property, or may be required to include the government assistance in the taxpayer's income. The amount of the assistance may also reduce the amount of an expenditure on which an associated investment tax credit is based.

The proposed amendment will provide that *bona fide* concessional loans from public authorities with reasonable repayment terms will generally not be considered governmental assistance. The amendment comes into force on November 21, 2023.

Dividend received deduction

Budget 2023 proposed to deny the dividend received deduction under the ITA in respect of dividends received by financial institutions on shares that are mark-to-market property. The Statement proposes an exception to this measure for dividends received on "taxable preferred shares." This exception, along with the rest of the measure, would apply to dividends received on or after January 1, 2024.

Employee ownership trusts

Budget 2023 introduced tax rules to facilitate the creation of an employee ownership trust (EOT). These trusts own shares in a business on behalf of its employees, enabling greater worker participation in business decisions and profits. An EOT can also provide an alternative business succession option for retiring business owners.

With the stated goal of encouraging more business owners to sell to an EOT, the Statement proposes to exempt the first \$10 million in capital gains realized on the sale of a business to an EOT from taxation, subject to certain conditions. This incentive would be in effect for the 2024, 2025 and 2026 tax years. The Statement indicates that further details of this new exemption will be provided in the coming months.

Denial of short-term rental property expenses

The Statement proposes certain income tax measures to support provinces and municipalities that take action to limit the use of properties as short-term rental housing, which the government says are keeping homes for Canadians for long-term use off the market. The Statement announces that the federal government intends to deny income tax deductions for expenses incurred to earn short-term rental income, including interest expenses, in provinces and municipalities that have prohibited short-term rentals.

The Statement also announces that the federal government intends to deny income tax deductions when short-term rental operators are not compliant with the applicable provincial or municipal licensing, permitting or registration requirements. These measures would apply to deny all expenses incurred on or after January 1, 2024.

Underused housing tax

Budget 2021 introduced a new national 1-per-cent annual tax on the value of Canadian residential real estate owned by non-residents of Canada that is considered to be vacant or underused. The Underused Housing Tax (UHT) took effect on January 1, 2022.

The Statement indicates the government is proposing to make several changes to the UHT to help facilitate compliance. They include

- eliminating filing requirement for certain owners
- reducing minimum failure-to-file penalties
- creating exemptions for certain employee accommodations
- providing additional time to file 2022 UHT returns
- making additional technical changes to the UHT rules

Draft legislative and regulatory proposals relating to these proposed changes will be released for consultation, with feedback to be submitted by January 3, 2024, following which the government intends to bring forward legislation for consideration by Parliament.

Sales and excise tax measures

The Statement introduces two proposals regarding the GST.

Joint venture election

The Statement announces a new joint venture election to deal with certain commercial activities and indicates that the government is seeking stakeholders' views and comments on the proposed new joint venture election rules.

It should be noted that the new draft election currently appears to be in addition to the existing joint venture election under the GST/HST rules, rather than replacing it. The government has also asked for comments on transitional considerations for the existing joint venture election rules.

Background

Under the GST/HST, unlike a partnership, a contractual joint venture is not a person and cannot register for GST/HST on its own account. Without a joint venture election, each participant in the joint venture would have to separately account for their proportionate share of taxes that are collectible and claim their proportionate share of input tax credits. As it is easier for both the CRA and the joint venture participants to administer, the *Excise Tax Act* currently contains a joint venture election rule. Under this election, generally the operator of the joint venture is entitled to file GST/HST returns as if the joint venture were a person (i.e., it remits all of the tax collected and claims all of the input tax credits). The election is only eligible for certain limited activities.

Proposed new joint venture election rules

The government has stated that the purpose of the new joint venture election rules is to “allow more participants in commercial joint ventures access to the simplification benefits of the joint venture election”. The proposed new election does not require that the joint venture activities be eligible activities, but rather requires that all or substantially all of the joint venture activities are commercial activities.

Still, the proposed new rules contain a number of limitations which will limit the number of joint ventures that can take advantage of the election. In particular, the new election only applies to “qualifying participants”, which is defined to include only people that contribute resources for consumption, use or supply in the course of the joint venture activities, “other than nominal resources”, and that receive an interest “other than a nominal interest”. The “nominal” is not defined for these purposes.

There are a number of additional technical provisions in the new rules such that entities currently engaged in joint ventures should carefully go through the new election language to see how the new proposed joint venture rules will apply to them.

Removal of GST on new co-op rental housing

The government [recently introduced a proposal](#) to remove the GST from new purpose-built rental housing projects, such as apartment buildings, student housing and seniors' residences. The rule would apply to projects that begin construction between September 14,

2023, and the end of 2030, and that complete construction before 2036.

The Statement announces that co-operative housing corporations that provide long-term rental accommodation would also be eligible for this removal of the GST on new rental housing, provided the other conditions have been met. The measure is not intended to apply to co-operative housing corporations where occupants have an ownership or equity interest.

Confirmation of intention to proceed

The Statement reaffirms the federal government's intention to proceed with numerous previously announced tax measures, including

- legislative proposals released on August 4, 2023, including with respect to the following measures:
 - [the carbon capture, utilization and storage investment tax credit](#)
 - [the clean technology investment tax credit](#)
 - [labour requirements related to certain investment tax credits](#)
 - [enhancing the reduced tax rates for zero-emission technology manufacturers](#)
 - [flow-through shares and the critical mineral exploration tax credit — lithium from brines](#)
 - [employee ownership trusts](#)
 - [registered compensation arrangements](#)
 - [strengthening the intergenerational business transfer framework](#)
 - the income tax and GST/HST treatment of credit unions
 - [the alternative minimum tax for high-income individuals](#)
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 - [modernizing the General Anti-Avoidance Rule](#)
 - [global minimum tax \(Pillar Two\)](#)
 - [the digital services tax](#)
 - [technical amendments to GST/HST rules for financial institutions](#)
 - [enhancements to the vaping product taxation framework](#)
 - tax-exempt sales of motive fuels for export
 - [excessive interest and financing expenses limitations](#)
 - extending the quarterly duty remittance option to all licensed cannabis producers

- revised luxury tax draft regulations to provide greater clarity on the tax treatment of luxury items
- proposed amendments to implement technical tax amendments to the *Income Tax Act* and the *Income Tax Regulations*
- legislative amendments to implement changes discussed in the transfer pricing consultation paper released on June 6, 2023
- tax measures announced in Budget 2023 including
 - the dividend received deduction by financial institutions
 - the clean hydrogen investment tax credit
 - the clean technology manufacturing investment tax credit
 - the clean electricity investment tax credit
- legislative proposals released on August 9, 2022, including with respect to the following measures:
 - substantive Canadian-controlled private corporations
 - technical amendments to the *Income Tax Act* and *Income Tax Regulations* proposed in the August 9 release not yet enacted
 - remaining legislative and regulatory proposals relating to the GST/HST, excise levies and other charges announced in the August 9, 2022, release
- legislative proposals released on April 29, 2022, with respect to hybrid mismatch arrangements
- legislative proposals released in Budget 2021 with respect to the rebate of excise tax for goods purchased by provinces
- regulatory proposals released in Budget 2021 related to information requirements to support input tax credit claims under the GST/HST
- income tax measure announced on December 20, 2019, to extend the maturation period of amateur athlete trusts maturing in 2019 by one year, from eight years to nine years

If you have any questions or require additional analysis on the Fall Economic Statement 2023, please contact any member of our National Tax Department.