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Federal budget briefing 2021

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The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, tabled the Liberal government's first budget in over two years.

Budget 2021 contains several major income tax changes affecting Canadian businesses and individual taxpayers. In particular, Budget 2021 proposes to introduce significant new interest deductibility and anti-hybrid structure rules, a new digital services tax, new CRA auditing powers and a new reporting regime, and announces an upcoming consultation on Canada's transfer pricing rules (in addition to a previously announced consultation on the general anti-avoidance rule).

Budget 2021 provides further relief through ongoing COVID support programs, temporary 100% capital cost allowance deductions for certain expenses of Canadian-controlled private corporations (CCPCs), and support for clean energy equipment and zero emissions technology manufacturers. It also allows administrators to correct certain errors in defined contribution pension plans and proposes relief for certain investment funds that have elected to be registered investments.

In the case of the GST/HST, Budget 2021 confirms the previously announced expansion of GST/HST registration requirements to apply to e-commerce, and introduces several minor changes to clarify the operation of the new rules. Budget 2021 also has provisions concerning the new housing rebate, and information requirements for claiming credits. It also introduces new excise duties on tobacco and vaping products, and a new tax on certain luxury goods.

Our Budget Briefing 2021 summarizes some of the more relevant tax proposals included in this year's budget and also presents a Report from Osler Special Advisor Stephen Poloz, former Governor of the Bank of Canada.

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Report from Osler Special Advisor Stephen Poloz, former Governor of the Bank of Canada

There are many moving parts in this Budget, so much so that it takes fully 724 pages to lay out all the facts, the projections, and the Government's initiatives. From a macroeconomic standpoint, however, the Budget represents a relatively modest adjustment to previous plans.

The economic assumptions are not controversial – after a big recovery in 2021 with 5.8% growth, followed by 4% in 2022, the economy settles into a sub-2% trend growth rate. Inflation surges to 3.3% this year, making up for less than 1% inflation in 2020, and then settles at around 2% from then on. Short term interest rates make their way very slowly back to around 1.5% in 2025, 10-year yields return to about 2.7% in the same time frame. Oil prices remain steady at around $60 (WTI) and the Canadian dollar inches higher to around 81 cents US. These assumptions come from a survey of economists, not from the government.

Fiscal deficits have been lowered in this Budget because the economy recovered more strongly during the second half of 2020 than factored in previously. This adjustment created about $50 billion in new flexibility for the Government to work with in the first two years, and because the level of national income is higher than expected for the entire scenario there is more revenue than expected every year. The fiscal year just ending is estimated to yield a shortfall of $354 billion, and this is projected to fall very quickly, to $155 billion next year and then to $60 billion. As a result, the ratio of federal debt to the economy peaks at 51%, remains there for three years, and then eases to 49% by 2025-26.

The thrust of the Budget is to put the pandemic behind us, which does require additional fiscal support, and then focus on investing for future growth. The big-ticket item contributing to future growth is a national daycare program, patterned off of the Quebec system, which is expected to lead to higher labor force participation. There are smaller investments in immigration systems and in a center to promote liberalization of interprovincial trade that would also contribute. However, the growth dividends that the Government expects to generate through these investments are not built into their projections. In other words, if these investments work, they should raise the economic growth trendline, generate more budgetary revenue, and lead to much lower deficits and debt than projected here.

Indeed, it is useful to compare some of the details of the 2021 Budget with the 2019 Budget, which was developed long before COVID. The long-term economic growth assumptions are the same in both, and government revenues settle at about 15% of national income in both.

The key difference is that program spending is about 20% of national income this year, 16% next year, and then settles at around 15% thereafter, whereas the 2019 Budget foresaw a trend of 14% of national income. Fundamentally, then, this is not a great deal of stimulus relative to the baseline laid out two years ago – it is about 2% of national income next year and 1% per year thereafter.

True, the government is spending $101 billion over three years in this Budget. But about one-third of this comes from a continuation of the COVID relief measures, which offsets income losses and should not be considered stimulative. The other two-thirds of the money is spread around many categories, with childcare the largest item. Some items reflect continuations of past commitments, such as the commitments to public transit infrastructure.

The Government had committed to offer some form of fiscal anchor. The Budget does this in a minimalist way by laying out the projected debt scenario and showing a credible case that the ratio will begin to decline in the outer years of its projection. Debt service costs will be kept under control by dramatically extending the maturity of the Government's outstanding debt. In the past, the Government was mostly a short-term borrower, with only 15% of its borrowing at maturities over 10 years. This was lengthened last year, to about 29% over 10 years, and over 40% of new issuance will be over 10 years in future. This strategy will include re-opening the 50-year bond. The result is that debt service is only slightly above 1% of national income, essentially the same as was projected in the 2019 Budget. This debt strategy is supported with two scenarios, one good and one bad, to show how it would be affected if the economic assumptions are off. Many observers no doubt would prefer that the Government set out targets for its deficit. However, it is clear that the stock of debt to national income will fall further on these fiscal parameters since interest rates are well below the growth rate of nominal national income. And the situation will improve further if the economic growth line is boosted by these measures.

The bottom line? The economy has outperformed the worst-case scenarios dramatically. That has allowed the Government to finance a number of structural initiatives while showing deficits that are lower than previously expected. The amount of stimulus being added is far less than the $101 billion being widely discussed, is largely structural in nature, and is spread through three years. The overall size of government in the economy is only slightly larger than in the 2019 projections, and the risk that the economy will overheat in response to the fiscal spending appears low.

Business income tax measures

Limits on interest deductibility

Budget 2021 proposes to introduce a limit on the amount of interest certain taxpayers can deduct in computing their taxable income. This proposal is broadly in line with OECD BEPS Action 4, which focused on eliminating the use of third party, related party, and intragroup debt by taxpayers to achieve excessive interest deductions or to finance the production of exempt or deferred income.

The premise underlying OECD BEPS Action 4, and the Budget proposals, is that an entity should be able to deduct interest expense up to a specified proportion of EBITDA, or "fixed ratio", ensuring that a portion of an entity's profit remains subject to tax.

In the case of the Budget proposals, the fixed ratio is generally set at 30% of a taxpayer's "tax EBIDTA" (defined as taxable income before taking into account interest expense, interest income, income tax, and deductions for depreciation and amortization, each for tax

purposes). Interest expense would be deductible above the 30% threshold if the taxpayer is part of a consolidated group whose ratio of net third party interest to book EBITDA implies that a higher deduction limit would be appropriate. The rule would be phased in with an initial fixed ratio of 40% for taxation years beginning on or after January 1, 2023 but before January 1, 2024, after which the 30% fixed ratio would apply. The 30% fixed ratio is at the high end of the 10% to 30% range that the OECD suggests is intended to allow the majority of groups to deduct an amount equivalent to their net third party interest expense.

If enacted, the proposed measures would apply to trusts, partnerships and Canadian branches of non-resident taxpayers. Exemptions from the rule would be provided for (1) CCPCs that are eligible for the small business deduction and (2) groups of corporations and trusts whose aggregate net interest expense among their Canadian members is $250,000 or less.

In the materials accompanying Budget 2021, the Government clarified that for purposes of measuring “tax EBITDA” under the new rule:

- dividends would be excluded to the extent they qualify for the inter-corporate dividend received deduction or the deduction for certain dividends received from foreign affiliates;
- interest would include “certain payments that are economically equivalent to interest (OECD BEPS Action 4 suggests such expenses should include those which are linked to the financing of an entity and are determined by applying a fixed or variable percentage to an actual or notional principal over time), and other financing-related expenses and income”;
- interest expense and interest income related to debts owing between Canadian members of a corporate group would generally be excluded to ensure the proposal does not affect certain loss consolidation transactions within a corporate group; and
- interest that is not deductible under existing rules in the ITA that limit certain interest deductions, like the thin capitalization rules, would be excluded and such rules would continue to apply.

Interest expenses denied under the new rule could be carried forward for up 20 years or back for up to 3 years, starting with taxation years that begin prior to the effective date of the rule (as long as the taxpayer would have had the capacity to absorb the denied expense). Presumably, this is in recognition that certain taxpayers will have cyclical income patterns, or incur losses during a ramp-up phase.

As proposed, a taxpayer would be able to deduct interest in excess of 30% of tax EBITDA if it is able to demonstrate that the ratio of net third party interest to book EBITDA of its consolidated group (defined as the taxpayer’s parent company and all of its subsidiaries that are fully consolidated in the parent's audited consolidated financial statements) implies that a higher deduction limit would be appropriate. While the Budget materials do not make clear what would be considered “appropriate” for these purposes, the Budget materials clarify that the determination of the amount of unused capacity to deduct interest would “take into consideration” the interest expense to tax EBITDA ratio of the consolidated group. This proposed approach is consistent with the OECD’s view in BEPS Action 4 that a fixed ratio rule does not take into account the fact that groups in different sectors may be leveraged differently and, even without a sector bias, some groups are simply more highly leveraged. The application of a group ratio rule compensates for the blunt operation of applying the fixed ratio rule on an entity by entity basis. Budget 2021 does indicate that, for purposes of the “group ratio” rule, the measure of net third party interest expense and book EBITDA will

be adjusted to exclude interest payments to creditors related to, or significant shareholders of, Canadian group entities and will also take into account the impact of entities and groups with negative book EBITDA. The Government notes that Canadian corporations with no non-resident group members would generally be expected not to have their interest expense deductions limited under the proposed rule, and is exploring measures to reduce the compliance burden on these entities and groups.

The Government also anticipates certain challenges in applying the proposed deductibility limitation to certain financial institutions. As the fixed ratio rule and group ratio rule would apply to limit the amount of an entity's net interest expense, the proposals may have limited impact on entities within banking and insurance groups that regularly earn interest income in excess of interest expense. The Government therefore proposes to limit the ability of certain financial institutions to transfer unused capacity to deduct interest to other members of their groups that are not also regulated banking or insurance entities. It has invited interested stakeholders to provide comments in this regard.

The proposal would apply to taxation years that begin on or after January 1, 2023 (with an anti-avoidance rule to prevent taxpayers from deferring the application of the measure, or of the 30% threshold) and would apply with respect to existing as well as new borrowings. The Government has announced that it expects to release draft legislative proposals for comment in the summer.

New digital services tax

Budget 2021 proposes to introduce a 3% digital services tax (DST) on revenue in excess of $20 million from digital services that rely on the engagement, data and content contributions of Canadian users. The DST will apply as of January 1, 2022 until an acceptable multilateral approach comes into effect for the relevant businesses. The DST will apply to groups with global revenue from all sources in the previous calendar year of at least €750 million, and more than $20 million of in-scope revenue from Canadian users in the particular calendar year. The proposed 3% tax rate and revenue thresholds are modelled after DSTs in other jurisdictions, including France. Any written comments on the proposals are to be provided to the government by June 18, 2021.

For several years, Canada has been working with the OECD, the G20 and members of the Inclusive Framework (representing 139 countries) to reach consensus on a new taxing right under the OECD's Pillar One proposals for countries where multinational corporations are providing digital and certain other consumer facing services to consumers. While the end of 2020 was initially targeted for reaching a consensus-based solution, there have been numerous setbacks (including political differences, technical design considerations and the COVID-19 pandemic). The OECD is hoping to resolve the remaining political and technical issues by mid-2021 as countries navigate lockdowns and the roll-out of vaccines. For more details on the OECD's work on the digital economy (Pillar One) and related work on a proposed global minimum tax (Pillar Two), please see our Osler Update and submission to the OECD on the blueprint reports on Pillar One and Pillar Two.

Budget 2021 notes that Canada has a strong preference for a multilateral approach but notes that work has been ongoing since 2013 stating "while Canada's hope and preference is for a multilateral solution this summer, whether or not a deal is reached, Canada intends to take action."

Until very recently, reaching global consensus seemed unlikely. This is because the United States had opposed unilateral tax measures adopted by various countries targeted at non-resident multinational corporations (particularly those operating highly digitized business models – many of which are based in the United States) and threatened to impose tariffs on

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various countries that have enacted DSTs and is refusing to allow credits in respect of such taxes. In addition, the former US administration had attempted to make a Pillar One tax optional (through a so called “safe harbor”). However, the approach recently outlined by the new US administration has dropped the safe harbor requirement, which has revitalized the negotiations.

Although draft legislation has not yet been released, Budget 2021 provides some additional details:

- revenue calculations will not include any applicable value-added tax or sales tax amounts;
- in-scope revenue will include revenue from online marketplaces, social media, online advertising, and user data;
- the DST will apply to businesses organized as corporations, trusts or partnerships;
- groups will generally be defined in the same manner used for country-by-country reporting (and will use a similar €750 million threshold);
- revenue is to be sourced to in-scope activities on a reasonable basis, with tracing required where revenue may be traced to relevant users in Canada – and a specified formulaic allocation used otherwise (which may vary depending on the nature of the revenue);
- a user’s location will generally be based on the ordinary location of the individual and the ordinary place of business of a business user (using generally available information);
- the deductibility of DST would be determined under general principles (e.g., if incurred for the purpose of earning income), and would not be eligible for a credit against Canadian income tax payable;
- a designated entity in a group will be required to file an annual return following the calendar year reporting period – with a single annual payment required (with entities in a group being jointly and severally liable for payment); and
- the government intends to consult with the provinces and territories to discuss the implications of the DST.

Anti-hybrid measures

Budget 2021 announces that the government will be proposing amendments to the ITA to eliminate the tax benefits of hybrid mismatch arrangements. The government intends to amend the rules in accordance with the recommendations of the OECD in its Action 2 BEPS (base erosion and profit shifting) reports. The government refers to hybrid mismatch arrangements as cross-border tax avoidance structures that exploit differences in the income tax treatment of business entities or financial instruments under the laws of two or more countries to produce mismatches in tax results. These mismatches are often classified as:

- “deduction/non-inclusion mismatches” where a cross-border payment results in a deduction in one country but not included in income in the other country. These mismatches have been targeted for the last few years by the CRA using the

recharacterization provision in Canada's transfer pricing rules; however, the government's defeat in *Cameco* renders that approach dubious;

- "double deduction mismatches" where a tax deduction is available in two or more countries in respect of one economic expense;
- "imported mismatches" where a payment is deductible by an entity resident in one country and included in the ordinary income of a recipient entity resident in a second country but that inclusion is offset by a deduction in respect of a hybrid mismatch arrangement with an entity resident in a third country; and
- "branch mismatches" where the residence country of a taxpayer takes a different view from that of the country where the taxpayer's branch is located as to the allocation of income and expenditures between the two countries.

The government intends to release proposals for stakeholder comment later in 2021, that primarily address the "deduction/non-inclusion mismatches" (focused on the recommendations in Chapters 1 and 2 of the OECD BEPS Action Plan) that would apply effective July 1, 2022. A second legislative package addressing the other scenarios and reverse hybrid arrangements would be released for comment after 2021 and would not apply any earlier than 2023.

In general terms, under the main proposed rules, payments made by Canadian residents under hybrid mismatch arrangements would not be deductible to the extent that they give rise to a further deduction in another country, or are not included in the ordinary income of a non-resident recipient. Conversely, to the extent that a payment made under such an arrangement by a non-resident is deductible for foreign income tax purposes, no deduction in respect of the payment would be permitted by the Canadian resident and such amount will be included in income (and, if the payment is a dividend, it would not be eligible for the deduction otherwise available for certain dividends received from foreign affiliates).

Transfer pricing consultation

On February 18, 2021, the Supreme Court of Canada declined to hear the Crown's appeal of unanimous decisions of the Tax Court of Canada and the Federal Court of Appeal siding with the taxpayer in the *Cameco* transfer pricing case. The CRA had challenged Cameco's decision two decades ago to set up a Swiss subsidiary to acquire uranium from Cameco and from 3rd parties and sell that uranium around the world. The CRA relied on the transfer pricing rules to argue that the subsidiary's profits from selling uranium should be taxed in Cameco's hands. The Supreme Court's denial of leave marked the end of this long running transfer pricing dispute between Cameco and the CRA, and confirmed the Federal Court of Appeal's guidance as to the scope of the "recharacterization" branch of Canada's transfer pricing rules under section 247 of the Act.

Budget 2021 expresses the Government's belief that, in light of the Federal Court of Appeal's "reasoning" in *Cameco*, "shortcomings" in the current transfer pricing rules may result in "the inappropriate shifting of corporate income out of Canada, artificially reducing corporations' taxes owed in Canada" and pose "a risk to the integrity of Canada's corporate income tax system." Budget 2021 therefore announces the Government's intention to consult on Canada's transfer pricing rules "with a view to protecting the integrity of the tax system while preserving Canada's attractiveness as a destination for new investment and business activity." Budget 2021 states that the Department of Finance will release a consultation paper for comment on possible such measures, and that the Government will also take "next steps"

to strengthen and modernize the general anti-avoidance rule, as had been announced in the 2020 *Fall Economic Statement*.

Budget 2021 also confirms the Government's intention to proceed with draft amendments to the transfer pricing rules released on July 30, 2019. These amendments would create a new "ordering" rule whereby the transfer pricing rules in section 247 would apply in priority to all other provisions of the Act. Amongst other potential consequences, the proposed amendment would cause transfer pricing penalties to apply to an adjustment (e.g., the denial or reduction of a deduction or an increase to the taxpayer's income) that, under the current rules, could have been made under the transfer pricing provisions but for the prior application of another rule in the ITA.

Mandatory Disclosure Rules

Budget 2021 proposes to consult on new measures to enhance the mandatory disclosure rules under the ITA. The consultation will address those rules discussed immediately below. To the extent these proposals apply to taxation years, the amendments would apply to taxation years that begin after 2021. To the extent these amendments apply to transactions, the amendments would apply to transactions entered into on or after January 1, 2022. However, the related penalties would not apply to transactions that occur before the date on which the enacting legislation receives Royal Assent.

Budget 2021 proposes that, in support of these rules, where a taxpayer has a reporting requirement in respect of a transaction relevant to the taxpayer's income tax return for a taxation year, the normal reassessment period (which generally determines how long a particular transaction may be subject to reassessment by the CRA) would not commence in respect of the transaction until the taxpayer has complied with the reporting requirement. This could result in an indefinite extension of the normal reassessment period if the taxpayer does not comply with a mandatory disclosure reporting requirement.

Reportable Transactions

Budget 2021 proposes to amend the existing reportable transaction rules in the ITA. Currently, in order for a transaction to be reportable under these rules, it must be an "avoidance transaction" as defined for purposes of section 245 of the ITA, and the transaction must bear at least two of three generic hallmarks. Very generally, these three hallmarks are: (1) a promoter or tax advisor is entitled to contingent fees in respect of the transaction based on tax benefits obtained under the transaction or the number of taxpayers who participate, (2) a promoter or tax advisor requires "confidential protection" with respect to the transaction, and (3) the taxpayer or certain other persons obtain "contractual protection" in respect of the transaction including certain forms of insurance against a failure to achieve the intended tax benefit.

Budget 2021 proposes to amend these rules such that only one generic hallmark need be present in order for a transaction to be reportable. In addition, it is proposed that the definition of "avoidance transaction" for these purposes be amended so that a transaction is considered an avoidance transaction if it can reasonably be concluded that one of the main purposes of entering into the transaction is to obtain a tax benefit. These measures are intended to align Canada's mandatory disclosure rules with international best practices. Under current rules, a transaction that gives rise to a tax benefit is not reportable if the transaction can reasonably be considered to have been undertaken primarily for non-tax purposes.

Budget 2021 indicates that promoters or advisors of schemes which, if implemented, would

be a reportable transaction would be subject to similar disclosure rules, with an exception to the extent that solicitor-client privilege applies.

Furthermore, Budget 2021 proposes to subject taxpayers who enter into reportable transactions and fail to satisfy the mandatory disclosure requirement to penalties of up to the greater of $25,000 (or up to $100,000 for corporations with assets of total carrying value of $50 million or more) or 25% of the tax benefit.

Promoters or advisors of reportable transactions would also be subject to penalties equal to the total of (1) 100% of the fees charged to a person for whom a tax benefit results, (2) $10,000, and (3) $1,000 for each day during which the failure to report continues, up to a maximum of $100,000.

Notifiable Transactions

Budget 2021 proposes to introduce a concept of “notifiable transactions”. The notifiable transactions would consist of transactions and series of transactions that have “specific hallmarks”. The notifiable transactions would be designated by the Minister of National Revenue with the concurrence of the Minister of Finance. The proposed approach appears to be that the notifiable transactions would be identified and published publicly by the Minister of National Revenue.

A taxpayer who enters into a notifiable transaction, or a series of transactions that is substantially similar to a notifiable transaction (or another person who enters into such a transaction or series in order to procure a tax benefit for the taxpayer) would be required to report the transaction or series in prescribed form to the CRA within 45 days of the earlier of (a) the day the taxpayer (or other person) becomes contractually obligated to enter into the transaction or series and (b) the day the taxpayer (or other person) enters into the transaction or series.

A promoter or advisor who offers a scheme that, if implemented, would be a notifiable transaction would be subject to the same disclosure requirements, with an exception to the extent that solicitor-client privilege applies.

Budget 2021 notes that similar regimes exist in the U.S. and other jurisdictions, and that Quebec has also enacted a measure that requires taxpayers who have carried out certain transactions to file an information return with Revenu Québec. It should be noted that Revenu Québec has recently released its preliminary list of such notifiable transactions under its own regime; however, Budget 2021 does not indicate whether the same transactions might be identified under the proposed federal rule.

Notifiable transactions would include both transactions that the CRA has found to be abusive and transactions identified as transactions of interest. Although Budget 2021 does not identify which types of transactions might be identified as notifiable transactions, it notes that the descriptions would set out the fact patterns or outcomes that constitute the transaction in sufficient detail to enable taxpayers to comply with the disclosure rule.

Similar to the measures supporting the mandatory disclosure proposals for reportable transactions discussed above, the normal reassessment period (which generally determines how long a particular transaction may be subject to reassessment by the CRA) would not commence in respect of a notifiable transaction until the taxpayer has complied with the reporting requirement. This could result in an indefinite extension of the normal reassessment period if the taxpayer does not disclose the notifiable transaction.

Furthermore, Budget 2021 proposes that taxpayers who enter into notifiable transactions and fail to satisfy the mandatory disclosure requirement would be subject to penalties of up to the greater of $25,000 (or up to $100,000 for corporations with assets of total carrying value of $50 million or more) or 25% of the tax benefit.

Promoters or advisors of notifiable transactions may also be subject to penalties equal to the total of (1) 100% of the fees charged to a person for whom a tax benefit results, (2) $10,000, and (3) $1,000 for each day during which the failure to report continues, up to a maximum of $100,000.

Reporting of uncertain tax positions

Budget 2021 proposes that specified corporate taxpayers report particular uncertain tax treatments to the CRA in order to allow the CRA to more efficiently identify issues and conduct its audit activities in a timely manner. Under accounting rules Canadian public corporations and those Canadian private corporations that use International Financial Reporting Standards (IFRS) to prepare their financial statements have an existing requirement to identify uncertain tax treatments for financial statement purposes. Budget 2021 proposes the reporting of uncertain tax treatments be required for corporations meeting the following conditions:

- resident in Canada or non-resident corporations with a taxable presence in Canada;
- have at least $50 million in assets;
- that corporation, or a related corporation, has audited financial statements in accordance with IFRS or other relevant country specific generally accepted accounting principles (e.g., US GAAP); and
- uncertainty in respect of the corporation’s Canadian income tax is reflected in those audited financial statements.

For each reportable uncertain tax treatment of a corporation, the corporation would be required to provide prescribed information, such as the quantum of taxes at issue, a description of the relevant facts, the tax treatment taken (including relevant ITA sections) and whether the uncertainty relates to a permanent or temporary difference in tax. The reporting of uncertain transactions would be due at the same time as the corporation’s Canadian income tax return is due. Budget 2021 proposes a penalty for failure by a corporation to report each particular uncertain tax treatment of $2,000 per week, up to a maximum of $100,000.

Broadening audit power to compel oral responses

Budget 2021 responds to the Federal Court of Appeal’s decision in the *Cameco* audit case which found the Minister did not have a right to compel oral interviews as part of an audit. Budget 2021 proposes to amend the general audit power in section 231.1 to include the ability to require an owner, manager or persons on the premises of a business to give “all reasonable assistance” and respond to all proper questions orally or in writing as required.

COVID-19 Relief Measures

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Businesses

Canada Emergency Wage Subsidy, Canada Emergency Rent Subsidy, & Lockdown Support programs

Budget 2021 extends the Canada Emergency Wage Subsidy (CEWS), Canada Emergency Rent Subsidy (CERS), and Lockdown Support programs to September 25, 2021 from the current expiry date of June 5, 2021. Budget 2021 also allows the government to further extend these programs to November 20, 2021.

CEWS

The maximum available CEWS rate for active employees will gradually decline for the period June 6, 2021 to September 25, 2021 from the current 75% to 20%, depending on the severity of the employer's revenue decline.

Certain public corporations will be required to repay CEWS amounts received for the qualifying period that begins after June 5, 2021 if their aggregate compensation for certain high-ranking executives (Specified Executives) in 2021 exceeds their aggregate compensation in 2019. The amount of CEWS required to be repaid will be the lesser of: (a) total CEWS received in respect of active employees for qualifying periods beginning after June 5, 2021 and (b) the excess of the corporation's aggregate compensation to Specified Executives for 2021 over its aggregate compensation to Specified Executives for 2019. A corporation's executive compensation for a calendar year will be calculated by prorating the aggregate compensation of its Specified Executives for each of its taxation years that overlap with the calendar year.

Specified Executives are the executive officers whose compensation is required to be disclosed under Canadian securities laws in its annual information circular to shareholders (or similar executives in the case of a corporation listed in another jurisdiction), which would generally include the chief executive officer, chief financial officer, and three other most highly compensated executives.

CERS

CERS was intended to provide direct relief to certain commercial and non-profit renters that have been impacted by COVID-19. The maximum available CERS rate will gradually decline for the period June 6, 2021 to September 25, 2021 from the current 65% to 20%, depending on the severity of the employer's revenue decline. Budget 2021 maintains the 25% CERS top-up under the previously introduced Lockdown Support program, pursuant to which organizations that are temporarily forced to close or temporarily have their business activities significantly restricted by a public health order issued under the laws of Canada or a province or territory are eligible for the top-up in addition to the base CERS rate.

Canada Recovery Hiring Program

Budget 2021 introduces a new wage subsidy program, the Canada Recovery Hiring Program (CRHP), to provide eligible employers with a subsidy of up to 50% of the incremental remuneration paid to eligible employees between June 6, 2021 and November 20, 2021. Eligible employers include Canadian-controlled private corporations (CCPCs), individuals, non-profit organizations, and registered charities that have experienced a revenue decline sufficient to make them eligible for CEWS (0% for the qualifying period between June 6, 2021

and July 3, 2021 and 10% for the qualifying periods between July 4, 2021 and November 20, 2021). Eligible employees must be employed primarily in Canada by an eligible employer throughout the qualifying period, or the portion of the qualifying period throughout which the individual was employed by the eligible employer.

Remuneration that would be eligible for the CRHP generally follows the types of remuneration eligible for the CEWS and includes salary, wages and other remuneration for which the employer is required to withhold and remit income tax amounts, but does not include severance pay or stock options benefits. Incremental remuneration for a qualifying period means the difference between the employer's total eligible remuneration paid to eligible employees for the qualifying period and the total eligible remuneration paid to eligible employees for the baseline period of March 14, to April 10, 2021. Eligible remuneration for each eligible employee is subject to a maximum of $1,129 per week for both baseline period and the qualifying period.

An eligible employer can claim either the CRHP or the CEWS for a particular qualifying period, but not both.

Individuals

Budget 2021 addresses the situation where individuals receive certain taxable benefits relating to COVID-19 in one year, and then as a result of a subsequent determination of ineligibility, the individual is required to repay those benefits in a subsequent year. Typically, the repaid amount would only be available to be deducted for income tax purposes in the year of repayment, resulting in tax owing in the year the benefit was received with a deduction in the subsequent year on repayment. Budget 2021 proposes to allow individuals to claim the deduction in the year the related benefit was originally included in income rather than in the year in which the amount was repaid. This treatment would apply to amounts repaid before 2023.

Avoidance of tax debts

Budget 2021 proposes "a number of measures" to address planning relating to section 160, a provision directed at parties who receive a transfer of assets from a non-arm's length person for what the CRA alleges to be insufficient consideration. In these circumstances, the rule makes the transferee jointly liable for the transferor's tax debts that arise prior to the end of the tax year of the transfer, to the extent of the shortfall in the consideration paid by the transferee.

The elements for this provision were the subject of recent decisions from the Federal Court of Appeal in *Eyeball Networks Inc. v. Canada*, and more recently a decision of the Tax Court in *Damis Properties Inc. v. The Queen*. These decisions rigorously applied the criteria for establishing a non-arm's length relationship between the parties to the transfer, and for valuing the consideration paid by the transferee at the point in time of the transfer, resulting in a stricter application of the provision than the CRA had adopted in assessing.

The three main technical measures contemplated by Budget 2021, are described as follows.

First, a tax debt would be deemed to arise before the end of the tax year in which a transfer of property occurs if it is reasonable to conclude that there would be a tax amount owing by the transferor and where one of the purposes for the transfer of property was to avoid the payment of the future tax debt. This proposed amendment may require vendors of corporate shares to make "reasonable inquiries" and perform some due diligence to determine: (1) whether the purchaser of the shares intends to shelter the tax liability of the corporation;

and (2) whether the deductions to be claimed post-sale are valid.

Second, a transferor and transferee would be deemed not to deal with each other at arm's length if at any time within a series of transactions that includes the transfer, they do not deal at arm's length and one of the purposes was to cause the transferor and transferee to deal at arm's length at the time of transfer. This proposed amendment appears to be intended to make the provision applicable where the transferor of the property (the tax debtor) and the transferee of the property (the share vendor) were related at the outset of the series of transactions but not when the transfer of property occurred.

Third, the provision would consider the overall result of the transactions in determining the values of the property transferred and the consideration given for the property, rather than simply using those values at the time of the transfer.

The changes would also implement an aggressive "third-party civil penalty" regime for planners and promoters for significant amounts – the lesser of $100,000 plus the promoter's or planner's fees, or 50 per cent of the tax that is attempted to be avoided.

Although the amendment purports to target only those involved in “highly aggressive tax plans”, the CRA has attempted to apply the provision in otherwise commercial transactions where the parties are unrelated, but where the CRA alleges the parties have acted in concert or with a common purpose to reduce the overall tax implications of the transaction.

Notably the proposed changes may have a limited retrospective effect, as they would apply only “in respect of transfers of property that occur on or after Budget Day”, but would therefore purport to capture transactions entered into prior to Royal Assent, when the legislation formally comes into force.

Immediate Expensing – Temporary 100% CCA deduction for CCPCs

Budget 2021 proposes to provide a temporary 100% capital cost allowance (CCA) deduction in respect of eligible property acquired by a CCPC on or after Budget Day and that becomes available for use before January 1, 2024. Eligible property under this new measure is capital property that is subject to the CCA rules, other than property included in CCA classes 1 to 6, 14.1, 17, 47, 49 and 51. The classes of eligible property are intended to reflect assets with a shorter life.

Immediate expensing would be limited to a maximum amount of $1.5 million per taxation year and would only be available for the year in which the property becomes available for use. The $1.5 million limit would be shared among associated members of a group of CCPCs, and would be prorated for shortened taxation years. The half-year rule would be suspended for property for which this measure is used. CCPCs with capital costs of eligible property in a taxation year that exceed $1.5 million could decide to which CCA class the 100% deduction would be attributed. Any excess capital cost would be subject to the normal CCA rules. For CCPCs with less than $1.5 million of eligible capital costs, no carry-forward of excess capacity would be allowed.

Capital Cost Allowance for Clean Energy Equipment

Budget 2021 proposes to expand CCA Classes 43.1 and 43.2 – which provide accelerated CCA rates of 30% and 50% respectively, and can also qualify certain intangible start-up expenses as deductible Canadian Renewable and Conservation Expenses – to include or expand the following categories:

- pumped hydroelectric storage equipment;
- certain electricity generation equipment that uses water current, wave or tidal energy;
- active solar heating systems, ground source heat pump systems, and geothermal energy systems that are used to heat water for a swimming pool;
- certain equipment used to produce, store and handle solid and liquid fuels from specified waste material or carbon dioxide;
- equipment used for the production of hydrogen by electrolysis of water; and
- certain hydrogen refueling equipment for use in hydrogen powered vehicles.

The accelerated CCA would be available for these types of property only if, at the time the property becomes available for use, the requirements of all Canadian environmental laws, by-laws and regulations applicable to the property have been met.

The expansion of Classes 43.1 and 43.2 would apply to property acquired and available for use on or after Budget Day which was not used or acquired for use for any purpose before Budget Day.

Budget 2021 also proposes amending Classes 43.1 and 43.2 by: (i) removing certain equipment that burns fossil fuels or waste fuels; and (ii) applying a new heat rate threshold to determine the eligibility of specified waste-fueled electrical generation systems. These changes would apply to property that becomes available for use after 2024.

Rate Reduction for Zero Emissions Technology Manufacturers

Budget 2021 proposes a temporary reduction of the corporate income tax rate for qualifying zero-emission technology manufacturers. Taxpayers would be able to apply on eligible income a reduced rate of 7.5 per cent where the income would otherwise be taxed at the 15 per cent general corporate rate, and 4.5 per cent where the income would otherwise be taxed at the 9 per cent small busines tax rate for CCPCs.

A taxpayer will only qualify for the reduced rates if at least 10 per cent of its gross revenue from all active business carried on in Canada is derived from eligible activities. The measure would apply in respect of income from various qualifying zero-emission technology manufacturing and processing activities in respect of, among others:

- manufacturing of solar, wind energy and water conversion equipment;
- manufacturing of geothermal energy equipment;
- manufacturing of electrical energy storage equipment used for storage of renewable energy or for providing grid-scale storage or other ancillary services;
- manufacturing of zero-emission vehicles and the conversion of vehicles to zero-emission vehicles, and the manufacturing of batteries and fuel cells for such vehicles;
- manufacturing of equipment used for the production of hydrogen by electrolysis of water, and also the production of hydrogen by such means; and

- production of fuel from carbon dioxide or specified waste material.

A taxpayer's eligible income for these purposes will generally be equal to its "adjusted business income" multiplied by the proportion of its total labor and costs used in eligible activities. The determination of these amounts will be substantially based on existing rules of the ITA used in calculating a taxpayer's manufacturing and business profits. The government invites comments on the proposed allocation method by June 18, 2021.

The reduced tax rates would apply for taxation years that begin after 2021. The reduced rates would gradually be phased out starting in taxation years that begin in 2029, and would be fully phased out for taxation years that begin after 2031. Because of the targeted temporary nature of the proposed measure, there would be no changes to the dividend tax credit rates and gross-up factors that would apply to dividend distributions of the reduced rate income (e.g., income subject to the general corporate income tax rate that is reduced will give rise to eligible dividends and the enhanced dividend tax credit corresponding to a 15 per cent tax rate).

Film or Video Production Tax Credits

In recognition of the disruptions caused by the COVID-19 pandemic on film and video productions, Budget 21 proposes a temporary measure to extend certain timelines a production must meet to qualify for the Canadian Film or Video Production Tax Credit (CPTC) or the Film or Video Production Services Tax Credit (PSTC). In the case of the CPTC, there would be added 12 months to the timelines to incur qualifying expenditures before the beginning of principal photography, submit a certificate of completion, and reaching an agreement with a distributor or broadcaster to show the production in Canada following completion. In the case of the PSTC, Budget 21 proposes to extend by 12 months the timelines in which aggregate expenditure thresholds must be met. These measures would be available for productions in respect of which eligible expenditures were incurred in taxation years ending in 2020 or 2021, provided the taxpayer files an applicable waiver in order to extend the assessment limitation period in respect of these years.

Proposed Tax on Unproductive Use of Canadian Housing by Foreign Non-resident Owners

Budget 2021 proposes to introduce 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. Beginning in 2023, all owners of residential property in Canada that are not Canadian citizens of permanent residents of Canada would be required to file an annual declaration in respect of each residential property they own. In the declaration, the non-resident owner would be required to report such information as the property's value, and if applicable claim an exemption from the tax based on use of the property. Where an exemption is not available, the owner would be required to calculate and remit the amount of tax owing by the filing due date. Budget 2021 indicates that in the coming months the government will release a backgrounder and provide for consultation including on such issues as the definition of residential property, the value on which the tax would apply, and how the tax would apply in smaller resort and tourism communities.

Personal income tax measures

Budget 2021 proposes several personal income tax measures, including an expanded list of criteria for determining an individual's eligibility for the disability tax credit, an enhancement

to the Canada Workers Benefit (for low and modest income workers), and expanded access to the travel component of the Northern Residents Deductions. These proposals apply in respect of the 2021 and subsequent taxation years.

Budget 2021 also proposes an amendment that provides individuals who make a repayment of a COVID-19 benefit received (for example if the individual subsequently determines they were not eligible) the option to claim a deduction in respect of the repayment either in the year the benefit was received or in the year that it was repaid.

Fixing Contribution Errors in Defined Contribution Pension Plans

Budget 2021 proposes to give administrators of defined contribution (DC) pension plans more flexibility to correct prior years' errors in respect of the amounts contributed to a DC plan by employees or employers.

The ITA currently does not allow DC plans to accept contributions made in order to correct an under-contribution error that occurred in a prior year. While over-contribution errors may be corrected under some circumstances by refunding the excess to the contributor, the onerous procedural requirements and retroactive impact on the affected individuals' registered retirement savings plan (RRSP) contribution room has made that process cumbersome and often impractical.

Budget 2021 proposes to:

- allow additional contributions to an employee's account under a DC plan to compensate for an under-contribution error made in any of the preceding five years (subject to an as-yet unspecified dollar limit);
- allow for a refund to the employee or employer contributor under a DC plan to reverse an over-contribution error made in any of the five years prior to the year in which the excess amount is refunded; and
- require the plan administrator to report the error on a prescribed form, rather than to issue amended T4 slips for prior years – a measure intended to simplify reporting requirements.

Budget 2021 provides some guidance on the impact on the employee's RRSP contribution room. Rather than triggering a retroactive adjustment of the RRSP contribution room, Budget 2021 proposes that corrections of contribution errors would only impact the employee's RRSP room on a go-forward basis. To the extent that the correction of an under-contribution results in negative RRSP room, it would only impact the employee's contributions in future years. Refunds of over-contributions would restore the employee's RRSP contribution room for the year in which refund occurs.

Budget 2021 is silent on the permissibility/treatment of including an interest-like component in calculations of amounts required to be transferred into or out of a DC plan in connection with correcting a prior years' contribution error.

The proposed measures are stated to apply in respect of under- and over-contribution corrections implemented in the 2021 and subsequent taxation years, implying that contribution errors occurring in 2016 and thereafter are to become correctable under the new rules.

Taxes Applicable to Registered Investments

Budget 2021 proposes relief for investment funds that have elected to be registered investments (for example, investment funds that would otherwise be mutual fund trusts or mutual fund corporations had they met the unitholder dispersal requirements) for registered plans such as RRSPs (RI funds). An RI fund is subject to a penalty tax under Part X.2 of the ITA during a period when it holds an investment that is not a “qualified investment” (e.g. cash, debt securities, certain exchange-listed securities, equity of a mutual fund trustor a mutual fund corporation, etc.). The penalty tax is generally equal to 1% per month of the fair market value of each non-qualified investment at the time of its acquisition.

Effective for months after 2020 (or months before 2021 where a taxpayer’s liability under Part X.2 has not yet been determined), Budget 2021 proposes to pro-rate the 1% monthly tax based on the proportion of shares or units of the RI fund held by registered plans. For example, where only 20% per cent of an RI fund’s units are held by registered plans, the monthly tax imposed under Part X.2 would now be 0.2% of the acquisition value of each non-qualified investment of the RI fund.

This is welcome news for some of Canada’s less widely held retail and institutional investment funds, as it provides appropriate relief in circumstances where an RI fund is held by both registered and non-registered accounts.

Sales and excise tax measures

Overview

Budget 2021 confirms the previously announced expansion of GST/HST registration requirements to apply to e-commerce, and introduces several minor changes to clarify the operation of the new rules.

Budget 2021 also makes a variety of changes to GST/HST and excise taxes, including:

- updating information requirements for claiming input tax credits (ITCs)
- expanding the availability of the new housing rebate
- introducing a joint election mechanism to clarify who is entitled to the “provincial use” excise tax rebate for certain provinces
- increasing the rate of excise duty on tobacco
- setting out a framework for an excise duty on vaping products
- introducing a new tax on the sale of specific luxury goods and
- stating that changes will be made to Customs rules on how certain importers will have to value imported goods.

Application of GST/HST to E-Commerce

In recent years, several Canadian provinces (Quebec, Saskatchewan, British Columbia, and,

most recently, Manitoba) have introduced or proposed legislation to expand the scope of registration and collection requirements for their provincial sales taxes. In many cases, the new requirements apply to non-residents that do not have an establishment in the province, and even where the non-resident does not carry on business in the relevant province or in some cases even if the non-resident business does not carry on business in Canada.

In the 2020 Fall Economic Statement (FES 2020), the federal government announced that it intended to implement similar measures to broaden the registration requirements for non-residents for the GST/HST (which are discussed in greater detail in our Fall Economic Statement Update here). The expanded measures proposed in FES 2020 generally fit into three categories as follows.

- First, FES 2020 proposed to require non-resident vendors making supplies of digital products and services (including digital and traditional services) to Canadian consumers to register for GST/HST and collect and remit tax on such supplies. In addition to vendors, the new requirements would apply to operators of "distribution platforms" (essentially digital platforms, such as websites, that facilitate certain types of supplies). For the purposes of non-resident and distribution platform operator registration, FES 2020 proposed to create a new simplified registration regime, which while generally containing more simplified rules would also entail certain disadvantages for registrants (most notably, an inability to claim input tax credits).
- Second, FES 2020 proposed to require distribution platform operators to register for, and remit, GST/HST where they make Qualifying Supplies of tangible personal property (including sales of goods made by non-registered vendors over a distribution platform where the goods are delivered from a location in Canada to a purchaser in Canada). This type of registration would be a "normal" registration rather than a registration under the simplified regime.
- Third, FES 2020 proposed to apply GST/HST to supplies of short-term accommodation in Canada facilitated through a digital platform. Generally, property owners would be required to collect and remit GST/HST if they are registered; if the property owner is not registered, the platform would be deemed to be the supplier and would therefore have the collection and remittance obligations. As with cross-border goods and services, FES 2020 proposed to apply a simplified registration regime, under which input tax credits would not be available, for suppliers of short-term accommodation.

As with the GST/HST generally, each of the new categories of registration and remittance requirement would only apply above a $30,000 annual threshold.

These proposals are effective July 1, 2021 and generally remain the same as proposed in FES 2020.

Budget 2021 introduces several amendments and clarifications to the proposals made in FES 2020.

- Budget 2021 proposes a "safe harbour" such that where third-party sellers provide false information to platform operators, both the platform operator and the third-party seller

will be liable for collecting and remitting GST/HST; however, the platform operator's liability would be limited in such cases where it reasonably relied on information provided by the third-party sellers except to the extent that it collected tax.

- With respect to the simplified registration framework proposed in FES 2020, Budget 2021 clarifies that suppliers registered under the simplified framework will be able to deduct from the tax they are required to remit amounts for tax on bad debts and certain provincial HST point-of-sale rebates to purchasers, and that public libraries and similar institutions will be eligible to claim a rebate for GST paid on audio books acquired from such suppliers.
- Budget 2021 clarifies that, in calculating the $30,000 threshold proposed in FES 2020, sales of zero-rated digital products or services are not included. Given that the proposals generally apply to sales to Canadian residents, we would expect that the only supplies affected by this clarification would be supplies that are zero-rated by their nature (e.g., certain medical devices, etc.), rather than by reason of being exported or supplied to non-residents.
- Budget 2021 clarifies that the requirement to file a return as proposed in FES 2020 only applies to platform operators that are registered or required to be registered for GST/HST.
- Budget 2021 proposes to give the Minister of National Revenue the authority to register persons that the Minister believes should be registered under the simplified framework proposed in FES 2020 (though the Minister generally cannot register a person retroactively).

Budget 2021 also states that where businesses have taken reasonable measures but are unable to comply with the new requirements, the CRA intends to take a "practical approach" to compliance, including the exercise of discretion, in applying the new measures during an initial 12-month transition period.

Input Tax Credit Information Requirements

Budget 2021 states that billing agents cannot currently be treated as intermediaries for the purposes of the documentary requirements to claim input tax credits (ITCs), and proposes to allow them to be treated as intermediaries, such that recipients will be able to obtain business names and registration numbers from billing agents rather than underlying vendors.

Budget 2021 also proposes to increase the information thresholds for claiming ITCs. The threshold at which the vendor's name and GST number are required will increase from $30 to $100; and the threshold at which the recipient's name, payment terms, and a description of the supply are required will increase from $150 to $500. This is a welcome change as the thresholds had remained the same, and had not been adjusted for inflation since they were first established.

GST New Housing Rebate Conditions

Budget 2021 proposes to expand the availability of the New Housing Rebate to scenarios where multiple individuals acquire a new home, but only one of the purchasers, or a person related to one of the purchasers, acquires the home for use as a primary place of residence. This provision helps deal with a number of GST cases where individuals were denied the New Housing Rebate on the basis that one of the parties listed as a purchaser was not actually living in the home.

Rebate of Excise Tax for Goods Purchased by Provinces

Under the ETA, the "provincial use rebate" provides relief from federal excise tax on motive fuels, air conditioners in automobiles and fuel inefficient vehicles purchased or imported for a province's use. However, it only applies where the province does not have a reciprocal taxation agreement with the federal government (in which the province and the federal government agree to pay each other's taxes). Only Alberta and New Brunswick do not currently have reciprocal taxation agreements with the federal government. For these provinces, the rebate can be claimed by the province or the vendor.

Budget 2021 proposes to create a joint election mechanism to clarify which of the two parties is entitled to the rebate. This proposal was likely made in response to the *Highland Fuels* case.

Excise Duty on Tobacco

Budget 2021 proposes to increase the rate of excise duty on tobacco and to subject certain manufacturers, importers, wholesalers and retailers to a tax on current inventories of cigarettes.

Excise Duty on Vaping Products

Budget 2021 proposes to introduce a tax on vaping products in 2022. Budget 2021 sets out a framework for such a tax and invites input from industry and stakeholders prior to June 30, 2021.

The framework generally appears to be similar to the existing excise tax regime for tobacco-type products. In particular, the duty rate would be "in the order of $1.00 per 10ml or fraction thereof" of vaping liquid, imposed based on the volume of the smallest immediate container holding the liquid (e.g., four 1ml containers would attract $4.00 of duty). The rate would be higher for larger containers. Liability to pay the duty would fall on the last federal licensee in the supply chain who packaged the product for final retail sale.

Manufacturers and importers of dutiable vaping products would be required to obtain a licence from the CRA and to file monthly information returns. Similar to excise taxes on tobacco, there would also be stamping requirements.

Tax on Select Luxury Goods

Effective January 1, 2022, Budget 2021 proposes to introduce a new tax on the retail sale of new luxury cars and personal aircraft over $100,000, and on boats over $250,000. The tax would apply at the point of purchase, and GST/HST would apply on top of the entire sale price including the new tax on the select luxury goods.

Certain vehicles would not be subject to the new tax, including motorcycles, snowmobiles, race cars and motor homes. It is proposed that certain aircraft, including those with a capacity of over 39 passengers, and certain boats (such as commercial fishing vessels and ferries) would also not be subject to the tax. However, as it would seem unlikely that many aircrafts will sell at less than the $100,000 amount (or that many motorcycles or snowmobiles would sell for more than $100,000 such that an exemption was required), most if not all aircrafts with capacities of 39 passengers or less will likely be subject to this new tax.

The tax rate would generally be the lesser of 10% of the full value or 20% of the value over $100,000 (for vehicles and aircraft) and $250,000 (for boats).

Changes to the Customs Act

Budget 2021 states that the government proposes changes to the Customs Act to "ensure that goods are valued in a fair and consistent manner by all importers". It also states that the changes will be made to digitize payment of duty and tax in order to modernize the payment process for commercial importers and minimize administrative burden. No legislation accompanied Budget 2021 on these issues.

Administrative measures

Electronic Filing and Certification of Tax and Information Returns

Budget 2021 proposes a number of measures to facilitate increased tax compliance and administration under the ITA and the ETA through electronic means. Except as noted below, these measures would come into force on Royal Assent of the enacting legislation.

- The default method of correspondence for businesses that use the CRA "My Business Account" portal would be changed to electronic only. Businesses will be able to choose to also receive paper correspondence.
- Issuers of T4A (Statement of Pension, Retirement, Annuity and Other Income) and T5 (Statement of Investment Income) information returns would be able to provide them electronically without having to issue a paper copy. This measure would apply for information returns sent after 2021.
- The thresholds for requiring the electronic filing of income tax information returns for a calendar year under the ITA would be lowered from 50 to 5 returns, such that persons or partnerships that file more than 5 such returns of particular type in a calendar year would have to do so electronically. This measure would apply in respect of taxation years after 2021.
- The thresholds for mandatory electronic filing of returns of corporations under the ITA and for most GST/HST registrants under the ETA would be eliminated. As such, returns of most corporations and GST/HST registrants under the ITA and ETA would be required to be filed electronically. This measure applies for taxation years that begin after 2021 in the case of the ITA, and reporting periods that begin after 2021 in the case of the ETA.

- The thresholds for requiring tax preparers of income tax returns to file such returns electronically would be reduced. In addition, returns for trusts would no longer be excepted from this rule. These measures would apply in respect of calendar years after 2021.
- It would be clarified that payments required to be made at a financial institution under the ITA and the ETA include online payments through such institution. It would further become mandatory for remittances over $10,000 under the ITA to be made by electronic payment, and the threshold for mandatory remittances under the ETA to be made at a financial institution would be lowered from $50,000 to $10,000. These measures would apply for payments made on or after January 1, 2022.
- The requirement that signatures be in writing on certain prescribed forms under the ITA would be eliminated.
- The CRA would have the ability to send certain notices of assessments under the ITA electronically without taxpayer authorization in the case of individuals who file their income tax returns electronically (including through a tax preparer).

Increased funds for improving tax compliance

Budget 2021 proposes to spend an additional $304 million over five years beginning in 2021–2022 to fund the CRA's new and existing programs to combat tax evasion and aggressive tax avoidance, including increasing GST/HST audits of large businesses, modernizing the CRA's risk assessment process for fraudulent GST/HST refund and rebate claims, and enhancing CRA's ability to identify tax evasion using trusts (with forecasted revenues of $810 million from such efforts).

Budget 2021 also proposes to spend $230 million over five years beginning in 2021-2022 to improve CRA's ability to collect outstanding taxes (with forecasted additional collections of $5 billion in outstanding taxes over five years).

Budget 2021 further proposes to provide $2.1 million over two years to Innovation, Science and Economic Development Canada to support the implementation of a publicly accessible corporate beneficial ownership registry by 2025, to permit tax and other authorities access to accurate data on individuals who own and control corporations.

Outstanding tax measures

Budget 2021, in accordance with the government's customary disclosure of previously announced measures, confirms the government's intention to proceed with previously announced tax and related measures, as modified to take into account consultations and deliberations since their release, including the following:

- legislative proposals released on March 3, 2021, relating to the Canada Emergency Wage Subsidy;
- legislative proposals released on February 24, 2021, relating to the Canada Emergency Wage Subsidy, the Canada Emergency Rent Subsidy and the Lockdown Support;

- legislative proposals released on January 19, 2021, relating to the Child Care Expense and Disability Supports deductions;
- legislative proposals released on December 21, 2020, relating to automobile standby charges during COVID-19;
- legislative proposals released on December 16, 2020, relating to the time extension for flow-through shares;
- legislative proposals released on December 15, 2020, relating to CCA claims for purchases of zero-emission automotive equipment and vehicles;
- measures announced on November 30, 2020, in the Fall Economic Statement, relating to:
  - an upcoming consultation on anti-avoidance rules;
  - registered disability savings plans;
  - employee stock options;
  - stock patronage dividends; and
  - GST/HST relief for face masks and shields;
- legislative proposals released on November 27, 2020, relating to the conversion of Health and Welfare Trusts to Employee Life and Health Trusts;
- regulatory proposals released on July 2, 2020, relating to Deferred Salary Leave Plans and Registered Pension Plans during COVID-19;
- legislative proposals released on April 17, 2020, relating to support for Canadian journalism;
- measure announced on December 20, 2019 to extend the amateur athletes trusts maturing in 2019 by one year;
- measure announced on December 9, 2019 to increase the Basic Personal Amount to $15,000 by 2023;
- measure announced on August 29, 2019 to clarify the “shared-custody parent” definition;
- legislative proposals released on July 30, 2019 to implement Budget 2019 measures relating to:
  - change in use rules for multi-unit residential properties;
  - permitting additional types of annuities under registered plans;
  - contributions to specified multi-employer pension plans for older members;
  - pensionable service under an individual pension plan;
  - mutual funds: allocation to redeemers methodology;

  - character conversion transactions;
  - electronic delivery of requirements for information;
  - transfer pricing rules;
  - foreign affiliate dumping rules; and
  - cross-border share lending arrangements;
- measures released on July 30, 2019 modifying previously enacted measures announced in Budget 2019 and on November 21, 2018, in the Fall Economic Statement, relating to:
  - the Accelerated Investment Incentive;
  - the expensing of the cost of machinery and equipment used in the manufacturing or processing of goods and the cost of specified clean energy equipment; and
  - the expensing of the cost of certain zero-emission vehicles;
- legislative proposals released on May 17, 2019 relating to GST/HST;
- remaining regulatory proposals released on July 27, 2018 relating to GST/HST;
- measures announced in Budget 2018 to implement enhanced reporting requirements for certain trusts to provide additional information on an annual basis; and
- measures confirmed in Budget 2016 relating to the GST/HST joint venture election.

If you have any questions or require additional analysis on Budget 2021, please contact any member of our National Tax Department.

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