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2021 Federal Budget Highlights

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On April 19, 2021, Canada's Deputy Prime Minister and Finance Minister, Chrystia Freeland, delivered the 2021 Federal Budget. It was the first budget tabled by the Canadian federal government in over two years. Expectedly, the budget focuses largely on supporting Canadians through the current third wave of the COVID-19 pandemic, and kickstarting a post-pandemic economic recovery plan.

The budget introduces a digital services tax which Canada is prepared to implement unilaterally. The digital tax will be levied on digital companies who earn revenues from the active collection and usage of Canadians' data. The tax would apply to large businesses with a gross revenue of €750 million euros or more. Canada appears to be determined to levy this tax and will implement it unilaterally if a multilateral agreement is not in place by January 1, 2022. Currently there is no multilateral digital tax treaty in force. See here for a link to the individual European countries who have unilaterally implemented or are proposing to implement a digital tax. The unilateral imposition of a digital tax by Canada could however invoke the wrath of the U.S. Although, both Trump's and Biden's policies are deeply divided, opposition to digital tax services taxes is one of the very few things both parties might agree on.

A provider of digital services such as a car ride service or an online retailer of goods and services located outside of Canada should be aware that currently three of the Canadian provinces are imposing a digital services tax namely Quebec, Saskatchewan and British Columbia. Quebec levies a 9.975% tax rate on sales exceeding $30,000. Saskatchewan levies a digital tax at the rate of 6% on digital revenue – there is no threshold. British Columbia levies a digital tax at a rate of 7% on digital sales over $10,000. A vendor of digital tax services will have to register once its sales reach the threshold. For Saskatchewan there is no threshold and one would have to register on the first supply.

Effective July 1, 2021 – the federal government is adopting similar measures with respect to the GST/HST on online goods and services sold into Canada. Non-resident vendors who sell through an online platform and who generally would not have been required to be registered for

HST/GST under the current regime will now be required to collect and remit HST as of July 1, 2021 where total sales exceed CDN $30,000. For the proposed legislation see here.

The Government aims to revamp the general anti-avoidance rules contained in the Income Tax Act. Both the federal and provincial governments are aiming to strengthen their anti-avoidance legislation. The Ontario budget addressed structures wherein a corporation continued out of Ontario into a low/nil income tax jurisdiction. Such corporations would still be subject to Canadian federal income tax as they would continue to be managed from Canada. In its budget, Ontario stated that it encourages the federal government to consider ways to combat artificial income shifting, such as through the use of trusts or corporate continuances, that put provincial tax revenue at risk.

The government is also looking to tighten its audit powers and in particular the proposed budget appears to implement legislation granting the CRA broader audit powers requiring the taxpayer to respond to questions orally or in writing including in any form specified by the CRA. This is the government's response to the recent cases such as *Cameco, BP Canada Energy Company* and *Atlas Tube Canada ULC*. See here for a discussion of these three cases and the CRA audit powers.

In *Cameco* the CRA sought to interview 25 employees of Camec to verify the information contained in its transfer pricing reports prepared by KPMG for tax years 2010 through 2012.

In the past, Cameco had granted the C.R.A. access to its personnel for assessment of tax years 2003 through 2006. The oral information obtained from the personnel led to a reassessment of those years that was subsequently challenged by Cameco. The matter was pending before the Tax Court of Canada when the C.R.A. applied for a compliance order seeking access to a larger number of Cameco's personnel for assessment of tax years 2010 through 2012. The Federal Court refused to issue a compliance order on the basis that issuing such order would prejudice Cameco. The Supreme Court refused to grant leave to hear the government's appeal of the Federal Court's decision.

Of important and similar to US measures, the budget proposes to allow for the immediate expensing of capital properties acquired by a Canadian Controlled Private Corporation (CCPC) up to a maximum of $1.5 million per taxation year. Following up on its 2018 federal fall economic statement the budget proposes an accelerated and enhanced capital cost allowance for investments in specified clean energy generation and energy conservation equipment.

The following provides that the highlights of the federal budget.

CORPORATE TAX

Emergency Business Supports

- The Canada Emergency Wage Subsidy (CEWS), Canada Emergency Rent Subsidy (CERS) and Lockdown Support have been extended until September 25, 2021.

Canada Recovery Hiring Program

- Proposes to introduce the new Canada Recovery Hiring Program to provide eligible employers with a subsidy of up to 50% on the incremental remuneration paid to eligible employees between June 6, 2021 and November 20, 2021.
- An eligible employer would be permitted to claim either the hiring subsidy or the Canada Emergency Wage Subsidy for a particular qualifying period, but not both.

Interest Deductibility Limits

- Introduces an earnings-stripping rule to limit the next interest expense deduction to no more than a fixed ratio of 30% (40% in the first year of application) of "tax EBITDA" (i.e., earnings before tax interest, taxes depreciation and amortization).
- The new rule applies to corporations, trusts, partnerships, and Canadian branches of non-resident taxpayers.

Immediate Expensing

- Proposes to provide temporary immediate expensing of eligible properties acquired by a Canadian Controlled Private Corporation (CCPC) that would otherwise qualify for capital cost allowance (CCA), up to a maximum of $1.5 million per taxation year.

Rate Reduction for Zero-Emission Technology Manufacturers

- Proposes a temporary measure to reduce the small business tax rate to 4.5% (from 9%) and the general corporate tax rate to 7.5% (from 15%) on eligible zero-emission technology manufacturing and processing income.
- The reduced tax rates would apply to taxation years that begin after 2021. The reduced rates would be gradually phased out starting in taxation years that begin in 2029 and fully phased out for taxation years that begin after 2031.

Capital Cost Allowance for Clean Energy Equipment

- Proposes to expand CCA classes 43.1 (30%) and 43.2 (50%), which provide accelerated CCA rates for investments in specified clean energy generation and energy conservation equipment.
- Accelerated CCA will be available for these categories only if the requirements of all Canadian environmental laws, by-laws and regulations applicable in respect of the property have been met.

Film or Video Production Tax Credits

- Imposes a temporary measure to extend the timelines for the Canadian Film or Video Tax Credits (CPTC) and the Film or Video Production Services Tax Credit (PSTC) by 12 months. These measures apply to productions for which the taxpayers incurred eligible expenditures in their taxation years ending in 2020 or 2021.

Mandatory Disclosure Rules

- Launches public consultations on proposals to enhance Canada's income tax mandatory disclosure rules.
- This consultation will address changes to the reportable transaction rules in the *Income Tax Act*, a new requirement to report notifiable transactions, and a new requirement for specified corporations to report uncertain tax treatments.

Modernization of GAAR (General Anti-Avoidance Rule)

- As previously announced in the *2020 Fall Economic Statement*, the government will take steps to modernize the general anti-avoidance rule.
- Proposes a number of measures to address planning and engaging in complex transactions that attempt to circumvent the tax debt avoidance rule, as well as a penalty for those who devise and promote such schemes.
- This includes an anti-avoidance rule addressing the deferral of tax debts through the transfer of property and an anti-avoidance rule addressing transfers deemed to be on non-arm's length status.

Audit Authorities

- Proposes amendments to the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* to ensure that the CRA has the authority it needs to conduct audits and undertake other compliance activities.
- The amendments would confirm that CRA officials have the authority to require taxpayers to respond to questions orally or in writing, including in any form specified by CRA officials.

PERSONAL TAX

- The option to claim a deduction for the repayment of a federal COVID-19 benefit in the year of receipt rather than the year of repayment.
- Pro-rating the tax under Part X.2 of the *Income Tax Act* based on the proportion of shares (or units) of a registered investment held by investors subject to the qualified investment rules.
- Increase in the Canada Workers Benefit to 27% (from 26%) for income over $2,000.
- Expansion of the travel component of the Northern Resident Deductions to allow taxpayers the option to claim up to $1,200 across eligible trips, or the amount of employer-provided travel benefit that the taxpayer received for that travel.
- Fixing contribution errors in defined contribution pension plans.
- Introduction of a new 1% tax on the value of non-resident, non-Canadian owned residential real estate considered to be vacant or underused.
- Expansion of the Disability Tax Credit by revising the list of mental functions used to assess the credit, and a reduction in the minimum required frequency of therapy to two times a week (from three times).
- Increase in Old Age Security (OAS) for Canadians 75 and over by introducing a one-time $500 payment and a 10% increase to regular, ongoing OAS payments.

INDIRECT TAX MEASURES

Digital Services Tax

- Introduces a new 3% digital services tax (DST) on foreign and domestic corporations that earn revenue from digital services that rely on data and content contributions from Canadian users.
- The new DST will be effective January 1, 2022 and will apply to entities that have a global revenue from all sources in excess of 750 million (EUR) and revenue associated with Canadian users in excess of $20 million per year.
- DST liability would not be eligible for a credit against income tax payable, but could be deductible in computing taxable income in certain circumstances.
- To note, the budget contains highlights of the new DST proposal, but does not include draft legislation.
- Canada expects to raise $3.4 billion in revenue over five years.

GST/HST measures related to e-commerce

- The budget expanded on the 2020 Fall Economic Statement where the Ministry of Finance announced measures to amend e-commerce GST/HST rules to apply to **non-resident online vendors**. The changes include the following:
- Platform operators and third-party suppliers will be jointly and severally liable for the collection and remittance of GST/HST in cases where false details were provided by the third-party supplier to the platform operator.
- Platform operators will have limited liability in cases where they did not collect and remit GST/HST if they reasonably relied on information provided by third-party suppliers.
- Suppliers registered under the proposed simplified method may be able to deduct amounts related to GST/HST and bad debts, and certain provincial HST point-of-sale rebates.
- **Platform operators and suppliers must not include zero-rated supplies in the calculation of the proposed $30,000 thresholds used to determine the registration obligations under the proposed simplified method.**
- The CRA will have the authority to register suppliers and platform operators believed to be required to be registered under the proposed simplified registration rules.

Tax of Luxury Goods

- Proposes a new point-of-sale or importation retail sales tax on new luxury cars and personal aircraft priced over $100,000, as well as boats priced over $250,000, effective January 1, 2022.
- This tax would be payable separately from the GST/HST or provincial sales tax.

Input Tax Credit Information Requirements

- Proposes to increase the current thresholds related to the required details on supporting documentation for input tax credit (ITC) claims to $100 (from $30) and $500 (from $150), and to treat billing agents as intermediaries for ITC documentation purposes, effective April 20, 2021.

GST New Housing Rebate

- The new rules expand the availability of the GST New Housing Rebate to situations where multiple individuals acquire a new home, but only one of the purchasers acquires the home for use as a primary place of residence (previously, all of the purchasers had to meet this test).
- This will be effective for agreements of purchase and sale entered into after April 19, 2021 (special rules apply for owner-built homes).

Excise Tax/Excise Duty Changes

- Rebate of excise tax for goods purchased by Provinces: Introduction of a joint election mechanism to clarify which of the two parties is entitled to the rebate of Federal excise taxes embedded in the price of motive fuels, air conditioners in automobiles and fuel inefficient vehicles purchased by a province for its own use. This measure only applies where the province does not have a reciprocal taxation agreement with the federal government.
- Excise duty on Tobacco: Proposes to increase the tobacco excise duty rate by $4 per carton of 200 cigarettes.
- Excise duty on Vaping Products: Announced a consultation to implement an excise duty framework on vaping products commencing in 2022.

Trade and Customs Changes

- Proposes changes to the *Customs Act* to ensure imported goods are valued consistently between all importers by ensuring Canadian importers with ties to foreign suppliers value their goods based on the last sale for export to a purchaser in Canada.
- Announces that the government intends to start consultation in summer 2021 with importers and exporters of emission intensive goods on whether Canada should participate in a program of Border Carbon Adjustments.

POST-PANDEMIC ECONOMIC RECOVERY

- Extension of pandemic business and income support measures, such as the Canada Emergency Wage Subsidy (CEWS), the Canada Emergency Rent Subsidy (CERS) and the Lockdown Support until September 25, 2021.
- Introduction of a new Canada Recovery Hiring Program (CRHP).

Environmental

- $101.4 billion in new spending over three years to fuel the recovery and kick-start the transition to a green economy.
- $17.6 billion for green recovery — to conserve 25% of lands and oceans by 2025, and to put Canada on course to exceed climate change targets by cutting emissions to 36% below 2005 levels by 2030.
- $4.4 billion to help homeowners with green retrofits through interest-free loans of up to $40,000.

Deficit and Debt

- The deficit stands at $354.2 billion for the 2021-21 fiscal year and is projected to be $154.7 billion for the 2021-22 fiscal year.
- The deficit is expected to decline to $30.7 billion over the course of the next 5 fiscal years.
- The Debt-to-GDP ratio is projected to hover around the 50% mark for the next 5 fiscal years.

Jobs and Workers

- Extension of maximum period of employment insurance sickness benefits, from 15 weeks to 26 weeks.
- Projection of 1 million new jobs created by the end of the year.
- A new $15/hour federal minimum wage.

MORE HIGHLIGHTS

- $3 billion over five years to help provinces/territories improve long-term care.
- $2.5 billion to build and repair 35,000 housing units for vulnerable Canadians.
- $1 billion for the tourism sector for festivals and cultural events.
- No promise of funding to implement a national pharmacare program.
- Extension of interest-free period for Canada student and apprentice loans to March 31, 2023
- $30 billion over five years and $8.3 billion per year after that to create and sustain a national child care program. Goal is a $10/day child care service by 2025-2026.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.