2021 Federal Budget Highlights

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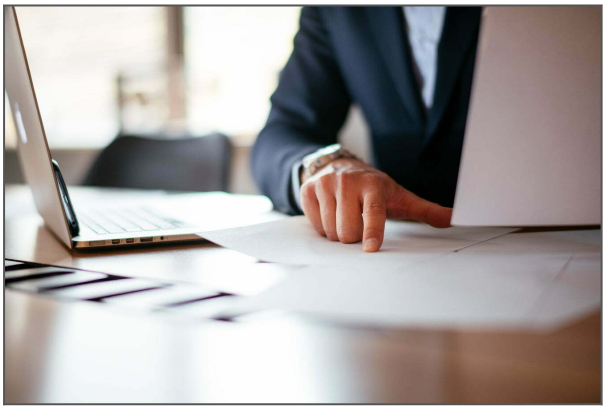

On April 19, 2021, Deputy Prime Minister and Finance Minister Chrystia Freeland presented the Government of Canada’s 2021 budget. To the relief of many Canadian business owners, the much anticipated change to capital gains inclusion rates, or targeting the tax plans in which they are used, has been tabled for another day. Additionally, there was no change to Canadian residents’ principal residence exemption on their home. However, the budget proposed additional disclosure requirements which may give insight into the Canada Revenue Agency’s views on certain transactions. As this is a large budget, we will summarize only the highlights in this article.

COVID-19 Relief Programs

Canada Emergency Wage Subsidy (CEWS), Canada Emergency Rent Subsidy (CERS) and Lockdown Support

The above programs were continued to September 25, 2021, but the subsidies will begin declining on July 4, 2021. Any public corporation that has paid its “top executives” in this year more than in 2019 will need to repay the subsidies for any period starting after June 5, 2021.

Canada Recovery Hiring Program

Despite continuing the CEWS program, the Canada Recovery Hiring Program was introduced to provide another form of subsidy to eligible employers for 50% on incremental wages paid to eligible employees. In each qualifying period, an eligible employer can claim the CEWS or this subsidy but cannot claim both.

Tax Treatment of COVID-19 Benefit Amounts

Benefits that are repaid may be claimed as a deduction in the year the benefit was included rather than the year which the repayment was made.

Indirect Tax

Digital Services Tax (DST)

This new tax was originally announced in the November 2020 Fall Economic Statement. A 3% temporary non-income tax will be effective on January 1, 2022, targeting large global digital businesses. The DST will apply in a particular calendar to a business (group) that earned global revenue from all sources of €750 million or more in the previous calendar year and has “in-scope” revenue associated with Canadian users of more than $20 million in the particular calendar year.

Luxury Tax

The budget proposes the implementation of a sales tax on the purchase of personal use luxury cars and personal aircrafts with retail sales prices over $100,000 ($250,000 for boats). The tax will be the lesser of 20% of the value above $100,000 and 10% of the full value. This is proposed to come into force on January 1, 2022.

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

The budget proposes that non-resident owned Canadian real estate that is considered to be vacant or underused will be subject to a 1% tax on the value. It appears that CRA is requiring the owners to file with CRA an annual declaration. The government is seeking comments on this proposal, and is particularly looking for consultation on the impact this would have on resort and tourism communities.

Corporate Tax

Zero-Emission Technology Manufacturers

Qualifying manufacturers may apply reduced rates on manufacturing and processing income, equal to approximately half of the applicable corporate tax rate.

Carbon Capture, Utilization and Storage (CCUS)

An investment tax credit was introduced for certain CCUS projects, which is scheduled to come into effect in 2022. There will be a 90-day consultation with CCUS stakeholders, and thereafter the details will be released.

Capital Cost Allowance (CCA)

The budget has proposed to expand classes 43.1 and 43.2 of the CCA items for certain clean energy equipment. Subject to the normal restrictions, the budget also proposes to provide immediate expensing of up to $1.5 million per taxation year (per associated group) in respect of CCA property, other than property included in classes 1 to 6, 14.1, 17, 47, 49, and 51.

Interest Deductibility

The budget proposed to limit in deductibility of interest expense to the amount of its taxable income before taking into account interest expense, interest income and income tax, and deductions for depreciation and amortization. There will be exemptions for (associated groups of) Canadian-controlled private corporations that have taxable capital in Canada of less than $15 million, or have an aggregate net interest expense of $250,000 or less.

There will be draft legislative proposals released on the above in late 2021. It is intended that this measure would come into place for taxation years beginning on or after January 1, 2023.

Film or Video Production (Services) Tax Credits

The timelines for the above credits have been temporarily extended, namely the 24 month timelines will be increased by 12 months. The taxpayers will be required to file a waiver with CRA to extend the assessment limitation period by 12 months.

Personal Tax

Taxes Applicable to Registered Investments

The tax liability with respect to certain investments that trigger taxation under Part X.2 of the *Income Tax Act* will now be calculated only on the investments that are triggering the taxes, not the full amounts held.

Federal Disability Tax Credit

There were changes announced to the eligibility list with the intention to better reflect reality. The amount of the credit in 2021 is $1,299.

Tax Administration Matters

Avoidance of Tax Debts

The tax debt avoidance rule is being extended to apply to situations where one of the purposes of a property transfer was to avoid the payment of the future tax debt. Penalties and plans for promoters would also be introduced.

Mandatory Disclosure Rules

The federal government is consulting on proposals to enhance the mandatory disclosure rules to apply to taxation years after 2021.

The budget proposes to lower the threshold of the requirement of reporting a transaction as a “tax avoidance” transaction from meeting at least two parts of the three-part test for the application of the general anti-avoidance rule, to meeting at least one part. As a reminder, the three-part test is: 1) the existence of an avoidance transaction; 2) the transaction gives rise to a tax benefit; and 3) there is abuse or misuse of the *Income Tax Act*.

The budget allows CRA to designate “notifiable” transactions as abusive or transactions of interest which will require reporting to CRA. The reporting of the transaction will not change the tax treatment. It should be noted this proposal is in response to *Paletta v. The Queen*.

The budget proposes that corporations filing a Canadian income tax return, that have at least $50 million in assets, have audited financial statements and have an uncertain tax position will need to report “uncertain tax treatments” to CRA.

With respect to the above, it is intended that if a taxpayer does not report the transaction that the transaction will not be statute barred.

It was announced that the federal government will spend $304.1 million over five years to increase GST/HST audits of large businesses, improving and modernizing CRA’s risk assessment tools and processing of refunds, and identify tax evasion particularly through the use of trusts.

The budget proposes an amendment to clarify that CRA officers may require persons to answer questions in the form specified by a CRA officer. Furthermore, the persons may be required to provide reasonable assistance for any purposes related to the administration of a taxation (or other specified) statute.

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.

