Federal Budget 2021 – Spending on the Three C's: COVID, Childcare and Climate Change

April 19, 2021

Tabled on April 19, 2021 (Budget Day), the 2021 Federal Budget (Budget 2021) breaks ground in many ways. Deputy Prime Minister and Minister of Finance Chrystia Freeland, the first woman to hold the Finance portfolio, presented it, and it announces significant funding initiatives in a number of targeted areas with a projected deficit of $354.2 billion.

Not surprisingly, existing COVID-19 pandemic measures have been extended to the fall, and there is funding for hiring new staff, procuring vaccines and supporting long-term care. Budget 2021 also looks to "build back better", with key medium and long-term spending initiatives in childcare (with more than $30 billion pledged over the next five years), affordable housing and green growth.

While the spending in Budget 2021 is significant, the tax measures are more subdued. They focus on a few key themes:

- COVID-related measures;
- Addressing the digital economy (including GST/HST on e-commerce and a digital services tax);
- Targeted interest expense restrictions (Canadian-controlled private corporations (CCPCs) will not be impacted);
- Measures to combat certain cross-border tax arrangements; and
- Continuing the multi-year trend of increasing funding for tax compliance and collection activities.

Despite pressure from some groups, there were no significant broad-based changes in tax policy - no wealth tax, no change in the capital gains inclusion rate, no change to the principal residence exemption, and no increase in corporate taxes.

Business Incomes Tax Measures

Emergency business supports

Canada Emergency Wage Subsidy (CEWS)

- **Support for Active Employees** : Budget 2021 proposes new wage subsidy rate structures for June 6, 2021 to September 25, 2021. The rates would be gradually phased out starting July 4, 2021. Only employers with a decline in revenues of more than 10 per cent would be eligible for the wage subsidy as of July 4, 2021.
- **Requirement to Repay Wage Subsidy** : Budget 2021 proposes to require publicly-listed corporations to repay CEWS amounts received for a qualifying period beginning after June 2021 if its aggregate compensation for specified executives (*e.g.*, chief executive officer, chief financial officer, and three other most highly compensated executives) during the 2021 calendar year exceeds its aggregate compensation for specified executives during the 2019 calendar year. The amount to be repaid is equal to the lesser of:
  - The total of all wage subsidy amounts received in respect of active employees for qualifying periods beginning after June 5, 2021; and
  - The amount by which the corporation's aggregate specified executives' compensation for 2021 exceeds its aggregate specified executives' compensation for 2019.
- **Support for Furloughed Employees** : Budget 2021 proposes that the weekly wage subsidy for a furloughed employee from June 6, 2021 to August 28, 2021 be the lesser of:
  - The amount of eligible remuneration paid in respect of the week; and
  - The greater of $500 and 55 per cent of pre-crisis remuneration for the employee, up to a maximum subsidy amount of $595.
- **Reference Periods** : An employer's decline in revenues is generally determined by comparing its revenues in a current calendar month with revenues in the same calendar month, pre-pandemic. An alternative approach compares the employer's monthly revenues relative to the average of its January 2020 and February 2020 revenues. Budget 2021 proposes new reference periods for determining an eligible employer's decline in revenues for the qualifying periods from June 6, 2021 to September 25, 2021. Employers who choose one approach must continue to use the same approach.
- **Baseline Remuneration** : Budget 2021 proposes to allow an eligible employer to elect to use the following alternative baseline (pre-pandemic) remuneration periods for the calculation of the subsidy entitlement: March 1 to June 30, 2019 or July 1 to December 31, 2019, for the qualifying period between June 6, 2021 and July 3, 2021, and July 1 to December 31, 2019, for qualifying periods beginning after July 3, 2021.

Canada Emergency Rent Subsidy

- **Rate Structure** : Budget 2021 proposes a new base rent subsidy rate structures for June 6, 2021 to September 25, 2021. The subsidy rates would be gradually phased out starting on July 4, 2021. Only organizations with a decline in revenues of more than 10 per cent would be eligible for the base rent subsidy and the Lockdown Support (discussed below).
- **Revenue-Decline Calculation** : The rent subsidy and the wage subsidy use the same calculation to determine an organization's revenue decline, so the same reference periods are used for both. If an organization elects to use an alternative method for computing its revenue decline under the wage subsidy, it must use that alternative method for the rent subsidy.
- **Purchase of Business Assets** : Budget 2021 proposes to introduce a deeming rule that would apply for the rent subsidy, where the seller has a business

number with the CRA and a payroll account number, the purchase of the assets will be deemed to meet the payroll account requirement. This measure would apply as of the start of the rent subsidy.

Lockdown support

Budget 2021 proposes to extend the current 25 per cent rate for the Lockdown Support to September 25, 2021, which is available to locations that must cease operations or significantly limit activities under a public health order under a federal, provincial or territorial government. An applicant must first qualify for the base rent subsidy.

Canada Recovery Hiring Program

Budget 2021 proposes to introduce the new Canada Recovery Hiring Program to provide eligible employers with a subsidy of up to 50 per cent on the incremental remuneration paid to eligible employees between June 6, 2021 and November 20, 2021. An eligible employer can claim either the hiring subsidy or the CEWS for a particular qualifying period, but not both.

- **Eligible Employers** : Eligible for-profit corporations generally include only CCPCs. Other eligible employers include individuals, non-profit organizations, registered charities, and certain partnerships. Corporations and trusts that are public institutions (*e.g.*, municipalities, public universities, schools, and hospitals) would not be eligible for the hiring subsidy. Eligible employers (or their payroll service provider) would be required to have had a payroll account open with the CRA on March 15, 2020.
- **Eligible Employees** : An eligible employee must be employed primarily in Canada by an eligible employer throughout a qualifying period (or the portion of the qualifying period throughout which the individual was employed by the eligible employer). The hiring subsidy would not be available for furloughed employees (*i.e.*, an employee receiving remuneration, but do not perform any work for the employer).
- **Eligible Remuneration and Incremental Remuneration** : The types of eligible remuneration generally include salary, wages, and other remuneration for which employers are required to withhold or deduct amounts on account of the employee's income tax obligations. Severance pay, or items such as stock option benefits or personal use of a corporate vehicle, do not qualify. Incremental remuneration for a qualifying period means the difference between an employer's total eligible remuneration paid to eligible employees for the qualifying period and its total eligible remuneration paid to eligible employees for the baseline period. In both the qualifying period and the baseline period, eligible remuneration for each eligible employee would be subject to a maximum of $1,129 per week.
- **Subsidy Amount** : Provided an eligible employer's decline in revenues exceeds the revenue-decline threshold for a qualifying period (see Revenue-Decline Threshold below), its subsidy in that qualifying period would be equal to its incremental remuneration multiplied by the applicable hiring subsidy rate for that qualifying period. The hiring subsidy rates start at 50 per cent and are gradually reduced to 20 per cent by October 24, 2021.
- **Revenue-Decline Threshold** : An eligible employer must have experienced a decline in revenues sufficient to qualify for the CEWS in that qualifying period. Where the CEWS is no longer in effect, an eligible employer would have to have

experienced a decline in revenues of more than 10 per cent. An eligible employer's decline in revenues would have to be more than: 0 per cent, for the qualifying period between June 6, 2021 and July 3, 2021 and, 10 per cent, for qualifying periods between July 4, 2021 and November 20, 2021.

Immediate expensing

Budget 2021 proposes to provide temporary immediate expensing for CCPCs for "eligible property" acquired on or after Budget Day that becomes available for use before 2024, up to a maximum amount of $1.5 million per taxation year. Eligible property under this new measure will include capital property that is subject to the capital cost allowance (CCA) rules, other than property generally included in CCA classes for long-lives assets. The half-year rule applicable to CCA deductions will be suspended for property for which this measure is used.

Rate reduction for zero-emission technology manufacturers

Budget 2021 proposes a temporary measure to reduce corporate income tax rates for qualifying zero-emission technology manufacturers. Specifically, taxpayers would be able to apply reduced tax rates on eligible zero-emission technology manufacturing and processing income of:

- 7.5 per cent, where that income would otherwise be taxed at the 15 per cent general corporate tax rate; and
- 4.5 per cent, where that income would otherwise be taxed at the 9 per cent small business tax rate.

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.

CCA for clean energy equipment

Under the CCA regime, Classes 43.1 and 43.2 of Schedule II to the *Income Tax Regulations* (Canada) provide accelerated CCA rates (30 per cent and 50 per cent, respectively) for investments in specified clean energy generation and energy conservation equipment. To support investment in clean technologies, Budget 2021 proposes to expand Classes 43.1 and 43.2 to include more categories of clean energy equipment. To ensure the incentive provided by Classes 43.1 and 43.2 is consistent with the government's current environmental objectives, Budget 2021 proposes the removal or limitation in the eligibility criteria for various types of equipment.

The expansion of Classes 43.1 and 43.2 would apply in respect of property that is acquired and that becomes available for use on or after Budget Day, where it has not been used or acquired for use for any purpose before Budget Day. The removal and limitations of certain property from eligibility for Classes 43.1 and 43.2 would apply in respect of property that becomes available for use after 2024.

Mandatory disclosure rules

In response to recommendations relating to the enactment of mandatory disclosure rules in the Base Erosion and Profit Shifting Project (BEPS), Action 12: Final Report (BEPS Action 12 Report) of the Organisation for Economic Co-operation and Development (OECD) and the Group of 20, the Government is consulting on proposals to enhance Canada's mandatory disclosure rules. This consultation will address:

- Changes to the reportable transaction rules under the *Income Tax Act* (Canada) (Income Tax Act);
- A new requirement to report notifiable transactions;
- A new requirement for specified corporations to report uncertain tax treatments; and
- Related rules providing for, in certain circumstances, the extension of the applicable reassessment period and the introduction of penalties.

To the extent the proposed measure applies to transactions, the amendments would apply to transactions entered into on or after January 1, 2022. However, the penalties would not apply to transactions that occur before the date on which the enacting legislation receives Royal Assent.

Reportable transaction rules expanded

The *Income Tax Act* contains rules that require that certain transactions entered into by, or for the benefit of, a taxpayer be reported to the CRA. In order for a transaction to be reportable under those rules, it must be an "avoidance transaction", as that term is defined for the purposes of the general anti-avoidance rule in the *Income Tax Act*. As well, the transaction must bear at least two of the following three generic hallmarks:

- A promoter or tax advisor in respect of the transaction is entitled to fees, often referred to as "contingent fees", that are to any extent:
  - Attributable to the amount of the tax benefit from the transaction;
  - Contingent upon the obtaining of a tax benefit from the transaction; or
  - Attributable to the number of taxpayers who participate in the transaction or who have been provided access to advice given by the promoter or advisor regarding the tax consequences of the transaction.
- A promoter or tax advisor requires "confidential protection" with respect to the transaction.
- The taxpayer, or the person who entered into the transaction for the benefit of the taxpayer, obtains "contractual protection" in respect of the transaction. For these purposes, contractual protection includes:
  - Any form of insurance (other than standard professional liability insurance) or other protection (including an indemnity, compensation or a guarantee) that, either immediately or in the future and either absolutely or contingently:
    - Protects a person against a failure to achieve any tax benefit from the transaction; or
    - Pays for or reimburses any expense, fee, tax, interest, penalty or similar amount that may be incurred by a person in the course of a dispute in respect of a tax benefit from the transaction; and
  - Any form of undertaking provided by a promoter, or by any person who does not deal at arm's length with the promoter, that provides, either immediately or in the future and either absolutely or contingently,

assistance, directly or indirectly in any manner whatever, to a person in the course of a dispute in respect of a tax benefit from the transaction.

It is proposed that a taxpayer who enters into a reportable transaction, or another person who enters into such a transaction in order to procure a tax benefit for the taxpayer, would be required to report the transaction to the CRA within 45 days of the earlier of:

1. The day the taxpayer becomes contractually obligated to enter into the transaction or a person who entered into the transaction for the benefit of the taxpayer becomes contractually obligated to enter into the transaction; and
2. The day the taxpayer enters into the transaction or a person who entered into the transaction for the benefit of the taxpayer enters into the transaction.

It is also worth noting that the CRA is proposing that only one generic hallmark need be present in order for a transaction to be reportable. This is a substantial change to the current rules. Importantly, it is proposed that an exception to the reporting requirement be available for advisors to the extent that solicitor-client privilege applies.

New notifiable transaction rules

Canada is looking to add a new requirement to disclose specific tax avoidance transactions and other transactions of interest. Québec previously enacted such a measure that requires taxpayers who have carried out certain transactions to file an information return with Revenu Québec.

A taxpayer who enters into a notifiable transaction, or a transaction or 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:

1. The day the taxpayer becomes contractually obligated to enter into the transaction or series or a person who entered into the transaction or series for the benefit of the taxpayer becomes contractually obligated to enter into the transaction or series; and
2. The day the taxpayer enters into the transaction or series or a person who entered into the transaction or series for the benefit of the taxpayer enters into the transaction or series.

Under this approach, the Minister of National Revenue would have the authority to designate, with the concurrence of the Minister of Finance, a transaction as a notifiable transaction.

New uncertain tax treatment reporting

Canada is looking to implement a new reporting requirement for specified taxpayers that reflect uncertainty in relation to a tax position in their audited financial statements.

It is proposed that uncertain tax treatments be required to be reported at the same time that the reporting corporation’s Canadian income tax return is due. The introduction of a requirement to report particular uncertain tax treatments is intended to provide information to the CRA to allow it to more efficiently administer and enforce the *Income Tax Act*.

Reassessment period and penalties

In support of the new mandatory disclosure rules, it is proposed that, 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 would not commence in respect of the transaction until the taxpayer has complied with the reporting requirement.

In connection with the proposed reporting requirements, it is proposed that, with respect to persons who enter into reportable or notifiable transactions, or for whom a tax benefit results from a reportable or notifiable transaction, a penalty of $500 per week apply for each failure to report a reportable transaction or a notifiable transaction:

1. Up to the greater of $25,000 and 25 per cent of the tax benefit; or
2. For corporations that have assets that have a total carrying value of $50 million or more, a penalty of $2,000 per week, up to the greater of $100,000 and 25 per cent of the tax benefit.

It is also proposed that, with respect to advisors and promoters of reportable or notifiable transactions, as well as with respect to persons who do not deal at arm's length with them and who are entitled to a fee with respect to the transactions, a penalty be imposed for each failure to report equal to the total of:

1. 100 per cent of the fees charged by that person 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, to a maximum of $100,000.

In order to avoid imposing two sets of penalties upon a person who both enters into a reportable or notifiable transaction for the benefit of another person, and is a person who does not deal at arm's length with an advisor or promoter in respect of the reportable or notifiable transaction and is entitled to a fee, it is proposed that such a person be subject only to the greater of the penalties discussed above.

For corporations subject to the requirement to report uncertain tax treatments, it is proposed that the penalty for failure to report each particular uncertain tax treatment be $2,000 per week, up to a maximum of $100,000.

Avoidance of tax debts

Budget 2021 proposes additional rules to combat the avoidance of tax debts. These rules will update the anti-avoidance rule applicable to transfers of property to non-arm's length persons at less than fair market value (the Tax Debt Avoidance Rule). The new rules will apply to transactions that occur on or after Budget Day.

1. The transferor (or non-arm's length party) had knowledge (actual or imputed) that there would be a tax amount owing by the transferor that would arise after the end of the taxation year in which the transfer occurred; and,
2. One of the purposes for the transfer of property was to avoid the payment of the future tax debt.

For the purposes of the Tax Debt Avoidance Rule, a transferor and transferee will be deemed to have not been dealing with each other at arm's length at the time of a transfer of the subject property if:

1. At any time within a series of transactions or events that includes the transfer, the transferor and transferee do not deal at arm's length; and
2. It is reasonable to conclude that one of the purposes of a transaction (or series of transactions) within that series was to cause the transferor and transferee to deal at arm's length at the time of transfer.

For transfers of property that are part of a series of transactions or events, the overall result of the series will now be considered in determining the values of the property transferred and the consideration given for the property, rather than simply using the values determined at the time of the transfer.

Planners and promoters of tax debt avoidance schemes can now be held liable for a penalty equal to the lesser of 50 per cent of the tax that is attempted to be avoided or $100,000 plus the promoter's or planner's compensation for the scheme.

Audit authorities

In response to recent decisions of the Tax Court of Canada limiting the CRA's right to require answers to extensive oral and written queries, Budget 2021 proposes amendments to each of the *Income Tax Act*, the *Excise Tax Act* (Canada), the *Excise Act, 2001* (Canada), the *Air Travelers Security Charge Act* (Canada) and Part 1 of the *Greenhouse Gas Pollution Pricing Act* (Canada) to confirm the CRA's authority to require answers to all proper questions (orally or in writing) and to require reasonable assistance for any purpose related to the administration or enforcement of the relevant statute.

International Tax Measures

Transfer pricing

Canada's transfer pricing rules protect the Canadian tax base from erosion due to transactions between a Canadian taxpayer and a non-resident of Canada with whom the Canadian taxpayer does not deal at arm's length (a non-arm's length non-resident). Essentially, they apply when the Canadian taxpayer pays too much for goods and services received from, or receives too little for goods and services it delivers to, non-arm's length non-residents. These rules accomplish this by testing the terms and conditions of the taxpayer's transactions against the "arm's-length standard", by asking whether they are within the range of what arm's-length persons would have agreed to. If so, the taxpayer has complied with the rules.

In February 2021, the Supreme Court of Canada refused to hear the CRA's appeal of its loss in *Canada v. Cameco Corporation (2020 FCA 112)*. This decision marked the end of a long and costly transfer pricing challenge by the CRA against a Canadian multinational that had created a European sales subsidiary to pursue certain uranium purchase and sale opportunities. The CRA lost decisively before the Tax Court of Canada and the Federal Court of Appeal, and the Supreme Court's refusal to hear an appeal ended the matter.

Budget 2021 describes the Cameco litigation as highlighting "shortcomings in the current transfer pricing rules [that] can encourage the inappropriate shifting of corporate income out of Canada, artificially reducing corporations' taxes owed in Canada." In response, "the Department of Finance will release a consultation paper to provide stakeholders with an opportunity to comment on possible measures to improve Canada's transfer pricing rules."

The announcement of this proposed consultation is an important tax development for Canada. A formal consultation process is the correct course of action. Finance is right to initiate a dialogue with the tax and business communities before acting on such an important tax policy issue, and the Government can certainly expect robust participation from interested stakeholders.

That said, very few within the Canadian tax and business communities viewed the Cameco litigation as being indicative of "shortcomings" in Canada's transfer pricing rules. In fact, the CRA's aggressive application of these rules in this case was widely seen as being inconsistent with both:

- Longstanding tax policy choices Canada has made (particularly in its system of taxing foreign subsidiaries of Canadian companies); and
- The foundational principle that Canada's tax laws apply to the actual legal rights and obligations that the taxpayer's transactions create, rather than some perceived economic simulacrum or what a tax authority thinks the taxpayer "should" have done.

The courts in the Cameco litigation found that the taxpayer's transactions were exactly as they purported to be, were commercially rational and quite typical of multinational enterprises, and (most importantly) met the arm's-length standard that is the core of Canada's transfer pricing rules. This being so, it will be interesting to see what changes Finance proposes and what it perceives to be the "shortcomings" that exist within the current rules.

Any departure from the existing principles that underpin Canada's transfer pricing rules (as confirmed by the courts in Cameco) will have repercussions throughout the Canadian tax regime. It begs the question: if applying the arm's-length standard to the actual legal rights and obligations the taxpayer's transactions create is not the right approach for Canada's transfer pricing rules, then what is?

Base erosion and profit sharing

In Budget 2021, the Government announced its intention to introduce legislation intended to implement two remaining recommendations from the OECD's project dealing with base erosion and profit shifting (the BEPS Action Plan) that Canada has not already adopted: limitations on interest deductibility (BEPS Action 4), and anti-hybrid measures (BEPS Action 2).

Budget 2021 does not contain proposed legislation, but it does contain discussion of the details of the proposed measures. Canada's adoption of these measures is unsurprising, as similar rules were recommended in the BEPS Action Plan and have now been adopted by the United States and the European Union, among others.

Interest deductibility limits

Based on BEPS Action 4, the proposed rule would limit deductible net interest expense to a fixed ratio of "tax EBITDA." The ratio would be 40 per cent of tax EBITDA during a transitional period including taxation years beginning in 2023, but would fall to 30 per cent for taxation years beginning after 2023. A higher ratio may also be allowed, where the overall group has a higher rate of external leverage in keeping with the overall policy of preventing the disproportionate allocation of the debt of a multinational group to Canada. This would represent a significant change in Canadian tax policy, given that the limitation would apply to all interest and not just interest payable to non-residents or related parties. However, Budget 2021 also contains several exclusions to the proposed rules, including exclusions for small businesses (CCPCs with taxable capital employed in Canada of less than $15 million or groups with less than $250,000 of aggregate net interest expense among their Canadian members) and interest income and expense between members of Canadian corporate groups used to transfer losses between related parties. Budget 2021 also comments that the new rule should not generally apply to stand-alone corporations or corporate groups that do not contain non-resident members and provides for a consultation on the application of the rules to financial institutions and insurance companies.

Budget 2021 states that existing interest deduction limitations, such as the thin capitalization rules, will continue to apply alongside the new proposals. This is disappointing in that it represents a missed opportunity to simplify the tax rules by removing or limiting other restrictions, including the thin capitalization rules and the foreign affiliate dumping rules.

Overall, the proposals stay close to those described in BEPS Action 4 and, in particular, do not adopt the stricter EBIT test that will apply in the United States starting in 2022. No grandfathering for existing loans will be provided and draft legislation is expected to be released in the summer.

Hybrid mismatch arrangements

Generally, hybrid mismatch arrangements exploit differences in the income tax treatment of entities or financial instruments under the laws of two or more countries to produce mismatches in tax results. The Canada-United States Tax Treaty has contained specific anti-hybrid measures since 2008, however

Budget 2021 proposes to introduce domestic legislation to address the issue more broadly.

1. Deny Canadian residents deductions for payments made to non-residents that give rise to deductions in other countries, or which are not included in the recipient's income within a reasonable amount of time;
2. Deny Canadian residents deductions for payments made by non-residents which give rise to deductions in other countries; and
3. Require Canadian residents to include in income payments received from payors in other countries, to the extent those payments are deductible in that country and, if the payment is a dividend from a foreign affiliate, to prevent the Canadian resident from obtaining a deduction under the foreign affiliate surplus regime.

Draft legislation for these measures is to be released later in 2021 for stakeholder comment, and the rules are proposed to apply as of July 1, 2022.

In Budget 2021, the Government also announced that additional legislation will be introduced after the end of 2021 to implement BEPS Action 2 report recommendations which were not addressed in the first legislative package discussed above, with those rules applying no earlier than 2023.

Personal Incomes Tax Measures

Tax treatment of COVID-19 benefit amounts

Budget 2021 proposes to allow individuals to claim a deduction on repayment of a COVID-19 benefit in the year in which the benefit was received, as long as the repayment is repaid any time before 2023 (rather than deducting such amount in the year it was repaid). Individuals may only deduct benefits once they have been repaid. Those who have made a repayment but have already filed their income tax return may request an adjustment for the return for the relevant year.

Budget 2021 also proposes to amend the *Income Tax Act* to ensure the COVID-19 amounts (and similar provincial/territorial benefits) are included in the taxable income of those individuals who reside in Canada but are considered non-resident persons for income tax purposes.

Relief for defined contribution pension plan errors

Administrators of defined contribution pension plans will be relieved with proposed rules to facilitate the correction of contribution errors made in the preceding five years. The proposals permit the refund of over-contributions with a corresponding restoration of the employee's RRSP contribution room, as well as the correction of under-contributions, subject to a dollar limit, without having to amend prior years' T4 slips. Any adverse impact on an employee's RRSP contribution room arising from the correction will only affect future years. These proposals are to apply in respect of the 2021 and subsequent taxation years.

Taxes applicable to registered investments

In certain instances, investment fund trusts that are not sufficiently widely held to meet the 150 unitholder threshold necessary to qualify as a mutual fund trust under the

Income Tax Act are registered as "registered investments" under the *Income Tax Act*, in order that their units can be qualified investments for RRSPs and other registered plans.

One consequence of such registration is the trust is subject to a 1 per cent per month penalty tax on the cost of its investments that would not be qualified investments if held directly by an RRSP or other registered plan. The rate of that tax does not factor in the proportion of the units of the trust that are held by RRSPs and other registered plans. Budget 2021 proposes to pro-rate the 1 per cent tax based on the proportion of units that are held by RRSPs, RRIFs or DPSPs, or other trusts that are RIs and themselves are subject to the tax. For example, if 20 per cent of the units of the trust are held by RRSPs and 80 per cent held directly by individuals, the rate of tax imposed on the trust would be 0.2 per cent, rather than 1 per cent. The proposed change would apply to taxes imposed after 2020, and with respect to taxes for months before 2021 where the trust's liability for the tax has not been finally determined by the CRA as of Budget Day.

Other personal income tax measures

- **Disability Tax Credit (DTC)** : To be eligible for the DTC, an individual must have a certificate confirming that they have a severe and prolonged impairment in physical or mental functions necessary for everyday life, or require extensive life-sustaining therapy in order to perform basic activities of daily living. Budget 2021 proposes to greatly expand the list of physical and mental functions necessary for everyday life, and the types of extensive life-sustaining therapy that may be included in determining the time spent on such therapy.
- **Canada Workers Benefit (CWB)** : The CWB has both a phase-in, a phase-out threshold, and phase-out rate. Budget 2021 proposes to increase each of these rates, thus ensuring more assistance for lower income workers. Budget 2021 also proposes to introduce a "secondary earner exemption" to the CWB, a special rule for individuals with an eligible spouse. This would allow the spouse or common-law partner with the lower working income to exclude up to $14,000 of their working income in the computation of their adjusted net income, for the purpose of the CWB phase-out.
- **Northern Residents Deductions** : Individuals who live in prescribed northern areas of Canada for at least six consecutive months beginning or ending in a taxation year may claim the Northern Residents Deductions in computing their taxable income for that year. These include both a residency component and a travel component, which allows a taxpayer receiving employer-provided travel benefits to deduct certain expenses from their income. Budget 2021 proposes to expand access to the travel benefits component.
- **Postdoctoral Fellowship Income** : Budget 2021 proposes to include postdoctoral fellowship income in "earned income" for RRSP purposes, thus providing postdoctoral fellows with additional RRSP room in order to make deductible RRSP contributions.

Fairness and Transparency Measures

National speculation tax

Budget 2021 proposes a new 1 per cent national tax on vacant or underused residential real estate owned by non-resident, non-Canadians. The new tax will come into effect on

January 1, 2022, with the first annual declaration required in early 2023. All owners (other than Canadian citizens or permanent residents of Canada) will be required to file an annual declaration for each residential property owned in Canada, disclosing such information as the property's address, value, and the owner's interest in the property.

Certain exemptions will be provided for (such as leases for qualifying tenants), but owners who are not exempt will be required to calculate and remit the necessary amount of tax. The Government will release a backgrounder for consultation purposes in the coming months, which will provide further details on the parameters of the tax (including how the tax will apply when the property is owned by persons other than individuals) and consideration of whether, how and when the tax will apply to smaller, resort and tourism communities.

Improving transparency and combating tax evasion

In 2017, the Government announced initiatives to ensure that corporations hold accurate and up-to-date information on beneficial owners that will be available to law enforcement, tax, and other authorities. These initiatives aim to counter complex financial crimes such as money laundering, terrorist financing, and tax evasion. After concluding consultations, Budget 2021 proposes to provide $2.1 million over two years to support the implementation of a publicly accessible corporate beneficial ownership registry by 2025.

Over the next five years, Budget 2021 has allocated $304.1 million to fund new and existing CRA initiatives involving GST/HST audits of large businesses, fraudulent GST/HST refund and rebate claims, and identifying tax evasion involving trusts. An additional $230 million will be earmarked to support CRA collection activities.

Action against money laundering and terrorist financing

Budget 2021 proposes the following amendments to the *Income Tax Act* in order to limit opportunities for the abuse of charitable registration status for terrorist financing purposes:

- To allow for the immediate revocation of charitable status for organizations listed as a terrorist entity;
- To prevent individuals with a known history of supporting terrorism from becoming a director, trustee, or similar official of a registered charity; and
- To allow for the revocation of charitable status when a charity provides false statements for the purpose of maintaining their registration.

Sales and Excise Tax Measures

Previously announced measures

The Government announced it still intends to proceed with various GST/HST proposals released as early as 2016. Notably, the Government intends to implement rules regarding expanding the availability of the joint venture election to a broader range of commercial activities.

Application of the GST/HST to e-commerce

The Government is proceeding with previously announced e-commerce GST/HST rules, including:

- A “Simplified Registration Regime” for non-resident providers of services and intangible products;
- Registration and collection obligations for digital platform operators and their clients who provide services, intangibles, and short term accommodation through such digital platforms;
- Registration and collection obligations for goods sold to Canadians when stored by non-resident vendors in Canadian fulfillment warehouses; and
- Reporting obligations for Canadian companies providing warehousing services to non-resident non-GST/HST-vendors.

These rules will come into force on July 1, 2021, and include several substantive changes to the previously announced rules, such as:

- Safe harbor rules to protect platform operators who fail to collect and remit tax because they relied in good faith on false information supplied by third parties;
- Enabling suppliers registered under the Simplified Registration Regime to account for certain rebates, such as rebates for bad debts and point-of-sale rebates to purchasers; and
- Expands the Minister of National Revenue’s authority to register a non-resident vendor they believe should be registered under the Simplified Registration Regime, and a limited procedural right for a non-resident vendor to receive notice and dispute the Minister’s decision.

Notably, there are still no input tax credits or rebates available for a GST/HST-registered business under the normal regime that inadvertently pays GST/HST to a vendor registered under the simplified GST/HST regime. We are still awaiting guidance from the Government regarding how to differentiate between a regular GST/HST-registered vendor and a vendor registered under the Simplified Registration Regime.

The Government has announced a 12-month transition period, commencing July 1, 2021, where the CRA will “take a practical approach to compliance” when dealing with affected businesses that are taking reasonable measures to meet new obligations, but are unable to do so for operational reasons. The Government did not announce what this practical approach will entail, but note the CRA does have discretion to waive penalties and interest when assessing taxpayers for GST/HST non-compliance.

Input tax credit information requirements

A business must obtain certain prescribed information before it can claim an input tax credit (ITC) to recover the GST/HST incurred on goods and services used as inputs in their commercial activities. The Government will amend this prescribed information in two ways:

- First, a supplier can now list a “billing agent” as an intermediary when issuing invoices. Previously, only an actually acting as an agent could be listed.

- Second, the graduated prescribed information thresholds governing the amount of prescribed information that must be disclosed by a supplier has increased to $100 (from $30) and $500 (from $150. This will streamline invoicing and accounting compliance obligations for small value purchases.

These measures would come into force on the day after Budget Day.

GST new housing rebate conditions

The current GST/HST New Housing Rebate rules have been amended to address a technical issue where a person purchases a new home with the assistance of a guarantor.

Currently, all persons acquiring the home (*i.e.*, all persons listed as purchasers in the purchase agreement) must be doing so for use as their primary place of residence or for a close relation (*i.e.*, an individual related by blood, marriage, common-law partnership or adoption, or a former spouse or former common-law partner). There are circumstances where a New Housing Rebate will be denied because a guarantor, like an uncle or friend, is listed in the purchase agreement or on title as an owner, with no intention to use the home as such.

The new rules now permit two or more individuals who are not considered relations for GST New Housing Rebate purposes buy a new home together, as long as the new home is acquired for use as the primary place of residence of any one of the purchasers or their relations.

This measure would generally apply to a supply made under an agreement of purchase and sale entered into after Budget Day.

Rebate of excise tax for goods purchased by provinces

Provinces are not required to pay federal excise tax embedded in the price of motive fuels, air conditioners in automobiles, and fuel inefficient vehicles (*i.e.*, the “green levy”). Budget 2021 proposes a joint election between a province and a vendor to specify that the vendor is eligible to apply for a rebate for this tax. If no election is made, only the province can claim the rebate. This measure would apply in relation to these goods purchased or imported by a province on or after January 1, 2022.

Excise duty on tobacco

Budget 2021 proposes to increase the tobacco excise duty rate by $4 per carton of 200 cigarettes. Corresponding rate increases are proposed for other tobacco products.

Excise duty on vaping products

Budget 2021 proposes to implement a tax on vaping products in 2022 through the introduction of a new excise duty framework. The proposed duty will apply to non-cannabis vaping products, whether or not they contain nicotine (cannabis vaping products are already subject to cannabis duties).

Budget 2021 also proposes a single flat rate duty on every 10 milliliters (ml) of vaping liquid or fraction thereof, within an immediate container (*i.e.*, the container holding the liquid itself), suggesting a rate of $1 per 10 ml or fraction thereof contained in the liquid volume of each vaping liquid pod or container.

Similar to other dutiable products, the flat rate would be imposed at the time of packaging or importation for retail sale by the licensed packager/importer. All vendors in a supply chain would be subject to licensing and registration requirements, and products would be packaged with duty-paid stamps.

The Government intends to collaborate with provinces on this legislation in a manner similar to the co-ordinated cannabis duty regime.

Tax on select luxury goods

The Government also proposed a new point-of-sale or importation retail sales tax on new luxury cars and personal aircraft priced over $100,000, and boats priced over $250,000, effective January 1, 2022.

This tax would be payable separately from the GST/HST or provincial sales tax. The tax would cover all new personal-use passenger vehicles except motorcycles, off-road vehicles like ATVs or snowmobiles, racing cars or motor homes. The tax would not apply to non-personal use vehicles like ambulances, construction vehicles, cargo vans, or aircraft carrying more than 39 passengers.

For vehicles and aircraft priced at over $100,000, the amount of the tax would be the lesser of 10 per cent of the full value of the vehicle or the aircraft, or 20 per cent of the value above $100,000. For boats priced over $250,000, the amount of the tax would be the lesser of 10 per cent of the full value of the boat, or 20 per cent of the value above $250,000.

The GST/HST would apply to the final sale price, inclusive of the proposed tax.

Digital services tax

As announced in the Fall Economic Statement 2020, Budget 2021 proposes to implement a Digital Services Tax (the DST). Briefly, the DST would apply at a rate of 3 per cent on revenue from certain digital services “reliant on the engagement, data and content contributions of Canadian users.” Such services would include, namely:

- Those provided through an online marketplace that helps match sellers of goods and services with potential buyers;
- Interface and user interaction services offered by social media;
- Online advertising services; and
- The sale or licensing of data gathered from users online.

The DST would apply to “large” tech-based businesses with global revenue from all sources of €750 million or more and revenue associated with Canadian users of more than $20 million per year. The DST liability may be tax deductible in certain circumstances (*e.g.*, whether it is incurred for the purpose of earning income subject to

Canadian income tax), but would not be eligible for a credit against Canadian income tax payable.

The DST will apply as of January 1, 2022, but is intended to be interim in nature until an acceptable multilateral approach is adopted by the international community.

Previously Announced Measures

Budget 2021 confirms the Government's intention to proceed with a variety of previously announced tax and related measures, including measures relating to COVID-19 supports; temporary adjustments to Child Care Expenses and Disability Supports deductions; the automobile standby charge; CCA for purchases of zero-emission automotive equipment and vehicles; and the anti-avoidance rules consultation and the income tax measures announced in the Fall Economic Statement 2020.

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