Cassels

2021 Federal Budget Briefing

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INTRODUCTION

On April 19, 2021, The Honourable Chrystia Freeland, Deputy Prime Minister and Finance Minister, delivered the 2021 Federal budget, titled “A Recovery Plan for Jobs, Growth, and Resilience” (Budget 2021). Budget 2021 contained a number of significant income tax proposals affecting Canadian businesses, including a new mandatory reporting regime and new interest deductibility and anti-hybrid structure rules.

It is also notable that Budget 2021 did not include certain measures that many expected or speculated would be included this year. Specifically, there was no increase to the capital gains inclusion rate, no increase in personal or corporate tax rates, no introduction of a wealth tax, and no change to the principal residence exemption.

The following is a summary of the income tax measures introduced in Budget 2021 that are most relevant to businesses.

BUSINESS INCOME TAX MEASURES

COVID-19 EMERGENCY BUSINESS SUPPORTS

Canada Emergency Wage Subsidy

Budget 2021 proposes to extend the Canada Emergency Wage Subsidy (CEWS) until September 25, 2021, with the maximum CEWS rate gradually declining from July to September from the current 75% to 20%, depending on the employer’s revenue decline. After July 4, 2021, only employers experiencing a decline in revenue of more than 10% will qualify for the CEWS. For more information regarding the CEWS program, including further details proposed in Budget 2021, please see “Canada Emergency Wage Subsidy Updates.”

Of note is that certain publicly listed corporations will be required to repay CEWS amounts received if the aggregate compensation for certain executives (those whose compensation is required to be disclosed under Canadian securities laws) in the 2021 calendar year exceeds the aggregate compensation for those executives in the 2019 calendar year. The amount that would be required to be repaid will be the lesser of: (a) CEWS received in respect of active employees for qualifying periods beginning after June 5, 2021 and

(b) the amount by which the aggregate specified executives' compensation for 2021 exceeds the aggregate specified executives' compensation for 2019. As a result, the net effect of this proposed rule may be diminished as it only applies in respect of CEWS received after June 5, 2021, at which time CEWS rates will begin to decline.

Canada Emergency Rent Subsidy

Similar to the treatment of the CEWS, Budget 2021 proposes to extend the Canada Emergency Rent Subsidy (CERS), including Lockdown Support, to September 25, 2021. As discussed in our prior articles, CERS was implemented on November 19, 2020 to provide direct subsidies to eligible tenants and property owners for rent and property expenses, and was set to expire in June 2021.

While Budget 2021 extends CERS by four additional claim periods, it also proposes an incremental reduction of the base rent subsidy rates available to organizations based on their revenue decline from the July 4, 2021 claim period onward (though the Lockdown Support program would be maintained at its current subsidy rate of 25%). After July 4, 2021, only organizations experiencing a decline in revenue of more than 10% will qualify for the base rent subsidy and Lockdown Support. For more information regarding the proposed changes to CERS, please see "Canada Emergency Rent Subsidy (CERS) Updates Contained in the 2021 Federal Budget."

Canada Recovery Hiring Program

Budget 2021 proposes to introduce the Canada Recovery Hiring Program (CRHP) to provide eligible employers with a wage subsidy of up to 50% on the incremental remuneration paid to eligible employees between June 6, 2021 and November 20, 2021.

Eligible employers may claim either the CRHP or the CEWS for a particular qualifying period, but not both. Employers that are eligible to claim the CEWS will generally be eligible for the CRHP. However, for-profit corporations that are not Canadian-controlled private corporations (CCPCs) will not be eligible for the CRHP.

INTERNATIONAL TAX MEASURES – LIMITATIONS ON INTEREST DEDUCTIBILITY

Budget 2021 proposes to introduce an “earnings-stripping” rule in the *Income Tax Act* (Canada) (the Tax Act) that would limit the amount of interest certain taxpayers can deduct in computing taxable income. More specifically, the rule proposes to limit the net interest expense that a corporation, trust, partnership or Canadian branch of a non-resident taxpayer may deduct in computing its taxable income to an amount that is based on a fixed ratio of “tax EBITDA.”

This proposed rule is intended to address the concern that interest expense paid by a Canadian business may erode the Canadian tax base where (a) interest is paid to related non-residents in low-tax jurisdictions, (b) debt is used to finance investments that earn non-taxable income, or (c) a Canadian resident bears a “disproportionate” portion of a multinational group’s third-party debt. The proposed rule is in line with the recommendations of the Organisation for Economic Co-operation and Development (OECD) in its report “Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2016 Update,” and the approach taken by a number of other jurisdictions.

The fixed ratio will be set at 30% of a taxpayer’s “tax EBITDA,” with the rule being phased in with an initial fixed ratio of 40% for taxation years beginning on or after January 1, 2023 but before January 1, 2024. The 30% fixed ratio will apply for taxation years beginning after January 1, 2024.

“Tax EBITDA” is the corporation’s taxable income before taking into account interest expense, interest income and income tax, and deductions for depreciation and amortization, where each of these items is as determined for tax purposes. For the purposes of measuring “tax EBITDA”:

- Dividends will be excluded to the extent they qualify for the inter-corporate dividend deduction or the deduction for certain dividends received from foreign affiliates;
- Interest expense and interest income will include amounts that are legally interest, as well as payments that are economically equivalent to interest, and other financing-related expenses and income;
- Interest expense will exclude interest that is not deductible under existing income tax rules, including the thin capitalization rules, which will continue to apply; and
- Interest expense and interest income related to debts owing between Canadian members of a corporate group will generally be excluded, to ensure the proposal does not impact certain loss consolidation transactions within a corporate group.

Interest denied under the new rule can be carried forward for up to 20 years and may be carried back up to 3 years, provided the taxpayer would have had the capacity to absorb the denied expense.

Canadian members of a group that have a ratio of net interest to tax EBITDA below the fixed ratio will generally be able to transfer their unused capacity to deduct interest to other Canadian members of the group whose net interest expense deductions, including denied deductions carried over from another year, would otherwise be limited by the rule.

A taxpayer may be able to deduct interest in excess of 30% of tax EBITDA if it can demonstrate that the ratio of net third party interest to book EBITDA of its consolidated group implies that a higher deduction limit would be appropriate. The consolidated group, for purposes of the group ratio rule, would include all of the corporations that are fully consolidated into a parent corporation’s audited consolidated financial statements. Such audited consolidated financial statements would generally be used to measure net third party interest expense and book EBITDA for these purposes, subject to appropriate adjustments including, among other things, in respect of certain interest payments to creditors that are outside the consolidated group, but are related to, or are significant shareholders of, Canadian group entities. In this regard, Budget 2021 notes that standalone Canadian corporations and Canadian corporations that are members of a group with no non-resident members would, in most cases, not have their interest expense deductions limited under the proposed rule. Measures to reduce the compliance burden on these entities and groups will be explored.

The new rule will apply to corporations, trusts, partnerships or Canadian branches of non-resident taxpayers. The rule will not apply to: (i) CCPCs that, together with any associated corporations, have taxable capital employed in Canada of less than $15 million; and (ii) groups of corporations and trusts whose aggregate net interest expense among their Canadian members is $250,000 or less.

The new rule 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 rule, or the 30% fixed ratio) and would apply with respect to existing as well as new borrowings. Draft legislative proposals are expected to be released for comment in the summer of 2021.

INTERNATIONAL TAX MEASURES – HYBRID MISMATCH ARRANGEMENTS

Budget 2021 announces that the Government will propose amendments to the Tax Act to eliminate the benefits of certain hybrid mismatch arrangements. The rules will be amended to align with the recommendations of the OECD in its report “Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report” (Action 2 Report), with appropriate adaptations to the Canadian income tax context.

The proposed amendments to the Tax Act announced in Budget 2021 will focus on two types of hybrid mismatch arrangements:

- Deduction/non-inclusion mismatch – where a cross-border payment results in a deduction in the payer’s country of residence but is not included in income in the recipient’s country of residence.

- Double-deduction mismatch – where a tax deduction is available in two or more countries in respect of a single economic expense.

In general terms, under the proposed rules:

- Payments made by Canadian residents under hybrid mismatch arrangements will not be deductible for Canadian income tax purposes 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;

- To the extent that a non-resident makes a payment made under a hybrid mismatch arrangement that is deductible for foreign income tax purposes, no deduction in respect of the payment would be permitted against the income of a Canadian resident; and

- Any of the payment received by a Canadian resident under a hybrid mismatch arrangement would 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.

The proposed rules will be mechanical in nature and will not be subject to a purpose test. With limited exceptions, the proposed rules would apply in respect of payments between related parties and payments under certain arrangements between unrelated parties that are designed to produce a mismatch.

Rules implementing other Action 2 Report recommendations – such as those on branch mismatch arrangements, imported mismatch arrangements and reverse hybrids may be introduced to the extent relevant and appropriate in the Canadian context.

Budget 2021 proposes to introduce two separate legislative packages to address hybrid mismatch arrangements. The first package will address deduction/non-inclusion mismatches arising from a payment in respect of a financial instrument. These rules would apply as of July 1, 2022. The second legislative package will be released for stakeholders' comment after 2021, and those rules would apply no earlier than 2023. This package would include rules consistent with the Action 2 Report recommendations that were not addressed in the first package.

CONSULTATION ON TRANSFER PRICING RULES

Budget 2021 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". This announcement was made in response to the Federal Court of Appeal's decision in *Her Majesty the Queen v. Cameco Corporation*, in which the court rejected the CRA's interpretation of the recharacterization provisions in section 247 of the Tax Act.

The Government expressed its belief that, “without reform, shortcomings in the current transfer pricing rules can encourage the inappropriate shifting of corporate income out of Canada, artificially reducing corporations’ taxes owed in Canada.”

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. In addition, the Government announced that it will take next steps to strengthen and modernize the general anti-avoidance rule, as announced in the 2020 Fall Economic Statement.

MANDATORY DISCLOSURE RULES

Budget 2021 launches public consultations on proposals to enhance Canada’s mandatory disclosure rules. This consultation will address changes to the Tax Act’s reportable transaction rules, a new requirement to report notifiable transactions, and a new requirement for specified corporations to report uncertain tax treatments. The stated purpose of these rules is to provide the CRA with timely, comprehensive and relevant information on aggressive tax planning strategies, in order to allow the Government to quickly respond to aggressive tax planning strategies through informed risk assessments, audits and changes to legislation. In support of these mandatory disclosure 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 would not commence in respect of the transaction until the taxpayer has complied with the reporting requirement. As a result, the normal reassessment period may be extended indefinitely, until the taxpayer complies with the mandatory disclosure requirements.

The proposals below would apply to taxation years that begin after 2021 and to transactions entered into on or after January 1, 2022, and related penalties would not apply to any transactions that occur before the enacting legislation receives Royal Assent. Draft legislation is expected to be released in the coming weeks.

Reportable Transactions

The Tax Act contains rules that require taxpayers to disclose certain “reportable transactions” to the CRA on or before June 30 of the calendar year following the calendar year in which the transaction first became a reportable transaction. A reportable transaction is an “avoidance transaction” (as defined for purposes of section 245 of the Tax Act), which includes at least two of the following hallmarks:

- A promoter or tax advisor is entitled to a contingent fee based on the tax benefits of the transaction or the number of taxpayers who participate in the transaction;
- A promoter or tax advisor requires “confidential protection” with respect to the transaction; and

- 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 this purpose, "avoidance transaction" means a transaction that results in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain a tax benefit.

Budget 2021 proposes the following amendments to the rules governing reportable transactions:

- Only one hallmark need be present for a transaction to be reportable.
- Amend the definition of "avoidance transaction" for purposes of these rules so that a transaction would be 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.
- Transactions must be reported to the CRA within 45 days of the earlier of the day the taxpayer becomes contractually obligated to enter into the transaction and the day the taxpayer enters into the transaction.
- Promoters and advisors be required to report all reportable transactions (unless solicitor-client privilege applies).
- Taxpayers that enter into reportable transactions and fail to satisfy the mandatory disclosure requirements would be subject to penalties of up to the greater of $25,000 and 25% of the tax benefit, or for corporations with assets of total carrying value of $50 million or more, $2,000 per week up to the greater of $100,000 and 25% of the tax benefit.
- Promoters or advisors of reportable transactions may 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 implement a new disclosure regime for "notifiable transactions," under which 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.

Notifiable transactions would include transactions that the CRA has found to be abusive and transactions identified as transactions of interest (similar to the approach taken in the United States and Quebec). The description of a notifiable transaction would set out the fact patterns or outcomes that constitute that transaction in sufficient detail to enable taxpayers to comply with the disclosure rule.

A taxpayer that enters into a notifiable transaction, or a series of transactions that is substantially similar to a notifiable transaction, would be required to report the transaction or series within 45 days of the earlier of the day the taxpayer becomes contractually obligated to enter into the transaction or series and the day the taxpayer enters into the transaction or series. The same disclosure requirements will also apply to promoters or advisors (unless solicitor-client privilege applies).

Taxpayers that enter into notifiable transactions and fail to satisfy the mandatory disclosure requirements would be subject to penalties of up to the greater of $25,000 and 25% of the tax benefit, or for corporations with assets of total carrying value of $50 million or more, $2,000 per week up to the greater of $100,000 and 25% of the tax benefit. Promoters or advisors of notifiable transactions may 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.

Uncertain Tax Positions

Budget 2021 proposes that specified corporate taxpayers be required to 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 Canadian private corporations that use International Financial Reporting Standards (IFRS) are required to identify uncertain tax treatments for financial statement purposes. Budget 2021 proposes that any corporation that meets the following conditions be required to report uncertain tax treatments:

- required to file a Canadian tax return (i.e., resident in Canada or non-resident corporation with a taxable presence in Canada);
- has at least $50 million in assets (determined based on the carrying value of assets on the corporation’s balance sheet);
- the corporation or a related corporation has audited financial statements prepared in accordance with IFRS or other country-specific GAAP relevant for domestic public companies; and
- uncertainty in respect of the corporation’s income tax for the taxation year is reflected in those audited financial statements (i.e., the corporation concluded it is not probable that the taxation authority will accept an uncertain tax treatment and thus, as described by the IFRS Interpretations Committee, it is probable that the entity will receive or pay amounts relating to the uncertain tax treatment).

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

AUDIT POWER

The general audit power in section 231.1 of the Tax Act provides the CRA with a broad authority to audit taxpayers. The scope of this authority was the subject of a recent decision of the Federal Court of Appeal in *Canada v. Cameco Corporation* (2019 FCA 67), in which the court determined that the Minister did not have the right to compel oral interviews as part of an audit. Budget 2021 responds to this decision and proposes to amend section 233.1 of the Tax Act to confirm that CRA officials have the authority to require persons to provide all reasonable assistance and to answer all proper questions (orally or in writing), for any purpose related to the administration or enforcement of the Tax Act. Similar amendments will be made to the *Excise Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act*. The proposed amendments will come into force on Royal Assent.

AVOIDANCE OF TAX DEBTS

Section 160 of the Tax Act is an anti-avoidance rule (the "tax debt avoidance rule") that creates joint and several liability for a person who receives property from a non-arm's length transferor who has a tax liability, to the extent the value of the property transferred exceeds the amount of consideration given for the property.

Budget 2021 proposes the following anti-avoidance rules to address certain transactions that attempt to circumvent the tax debt avoidance rule:

- A tax debt would be deemed to arise before the end of the taxation year in which a transfer of property occurs if it is reasonable to conclude that the transferor had knowledge (or would have had knowledge if they made reasonable inquiries) that there would be a tax amount owing by the transferor after the end of the taxation year, and one of the purposes of the transfer was to avoid the payment of the future tax debt.

- A transferor and transferee would be deemed not to deal with each other at arm's length at the time of a transfer if they were not dealing at arm's length at any time during the series of transactions that included the transfer of property and one of the purposes of any transaction or event within the series was to cause the transferor and transferee to be dealing with each other at arm's length at the time of the transfer.

- For transfers of property that are part of a series of transactions or events, the overall result of the series would be considered 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.

A penalty would also be introduced for planners and promoters of tax debt avoidance schemes. The rules would apply in respect of transfers of property that occur on or after April 19, 2021.

IMMEDIATE EXPENSING FOR CCPCS

Budget 2021 proposes to provide temporary immediate expensing (i.e., 100% capital cost allowance (CCA) deduction) for CCPCs in respect of "eligible property" (which includes 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, which are generally long-lived assets) acquired on or after April 19, 2021 and that becomes available for use before January 1, 2024.

This 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 (and the half-year rule is suspended for property subject to this rule). The $1.5 million limit would be shared among associated members of a group of CCPCs and would be prorated for short taxation years. For CCPCs with less than $1.5 million of eligible capital costs, no carry-forward of excess capacity would be allowed. CCPCs with more than $1.5 million of eligible capital costs may decide to which CCA class the immediate expensing would apply, and any excess capital cost would be subject to the normal CCA rules.

CAPITAL COST ALLOWANCE FOR CLEAN ENERGY EQUIPMENT

Budget 2021 proposes to expand the existing accelerated CCA for specified clean energy generation and energy conservation equipment currently included in CCA Classes 43.1 and 43.2 to include the following:

- pumped hydroelectric storage equipment;
- electricity generation equipment that uses physical barriers or dam-like structures to harness the kinetic energy of flowing water or 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;
- equipment used to produce solid and liquid fuels (e.g., wood pellets and renewable diesel) from specified waste material or carbon dioxide;
- a broader range of equipment used for the production of hydrogen by electrolysis of water; and
- equipment used to dispense hydrogen for use in hydrogen-powered automotive equipment and vehicles.

The accelerated CCA would be available in respect of 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 in respect of the property have been met. 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 April 19, 2021, where it has not been used or acquired for use for any purpose before April 19, 2021.

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-EMISSION TECHNOLOGY MANUFACTURERS

Budget 2021 proposes to temporarily reduce the corporate tax rates on eligible zero-emission technology manufacturing and processing income to:

- 5%, if that income would otherwise be taxed at the 15% general corporate tax rate; and
- 5%, if that income would otherwise be taxed at the 9% small business tax rate.

A taxpayer would qualify for the reduced tax rates only if at least 10% of its gross revenue from all active businesses carried on in Canada is derived from eligible activities. Taxpayers with income subject to both the general and the small business corporate tax rates would be able to choose to have their eligible income taxed at either the 4.5% or 7.5% rate. However, the amount of income taxed at the 4.5% rate (plus the amount of income taxed at the small business rate of 9%) would not be allowed to exceed $500,000 per year.

The reduced rates would apply to taxation years that begin after 2021 and would be gradually phased out starting in taxation years that begin in 2029 and fully phased out for taxation years that begin after 2031.

TAX INCENTIVE FOR CARBON CAPTURE, UTILIZATION, AND STORAGE

Budget 2021 proposes to introduce an investment tax credit for capital invested in carbon capture, utilization and storage projects. This measure will come into effect in 2022.

FILM OR VIDEO PRODUCTION TAX CREDITS

Budget 2021 proposes to temporarily extend certain timelines for the Canadian Film or Video Production Tax Credit (CPTC) and the Film or Video Production Services Tax Credit (PSTC). The CPTC provides a 25% refundable tax credit on qualified labour expenditures and is available to productions certified to be Canadian film or video productions. The PSTC provides a 16% refundable credit on qualified Canadian labour expenditures and is available to foreign films and videos produced in Canada. In the case of the CPTC, Budget 2021 proposes to add 12 months to the timelines to incur qualifying expenditures, submit a certificate of completion and reach reaching an agreement with a distributor or broadcaster to show the production in Canada. In the case of the PSTC, Budget 2021 propose 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.

OTHER TAX MEASURES

TAXES APPLICABLE TO REGISTERED INVESTMENTS

A registered investment is subject to a penalty tax under Part X.2 of the Tax Act where it holds an investment that is not a “qualified investment,” which is generally equal to 1% per month, of the fair market value of each non-qualified investment at the time of its acquisition.

Units of a mutual fund trust and shares of a mutual fund corporation are qualified investments. However, in order to qualify as a mutual fund trust or mutual fund corporation, the trust or corporation, as applicable, must satisfy certain distribution requirements. If the trust or corporation otherwise qualifies as a mutual fund trust or mutual fund corporation, but these distribution requirements are not satisfied, the trust or corporation may become a registered investment if it only holds qualified investments. A registered investment is a qualified investment for registered plans; however, the registered investment is subject to a monthly tax of 1% of the fair market value (at the time of acquisition) of any property held at the end of the month that is not a qualified investment.

Effective for months after 2020 (or months before 2021 where the taxpayer’s liability under Part X.2 has not been finally determined by the CRA as of April 19, 2021), Budget 2021 proposes to pro-rate the tax imposed under Part X.2 of the Tax Act based on the proportion of shares or units of the registered investment that are held by registered plans.

ADMINISTRATIVE MEASURES

Electronic Filing and Certification of Tax and Information Returns

Budget 2021 proposes various measures to improve the CRA's ability to operate digitally, including the following:

- Amend the Tax Act to provide the CRA with the ability to send notices of assessment to individuals who file their income tax return electronically and those who employ the services of a tax preparer that files their income tax return electronically, without the taxpayer having to authorize the CRA to do so.

- Change the default method of correspondence for businesses that use the CRA's My Business Account portal to electronic only.

- Amend the *Income Tax Regulations* to allow issuers of T4A and T5 information returns to provide them electronically without having to also issue a paper copy and without the taxpayer having to authorize the issuer to do so. This measure would apply in respect of information returns sent after 2021.

- Amend the rule in the Tax Act that requires, subject to the exception below, professional preparers of income tax returns to file electronically where they prepare more than 10 income tax returns of corporations or 10 income tax returns of individuals (other than trusts) to apply instead where they file more than 5 of either type of return for a calendar year. Furthermore, the exception for trusts would be removed. Budget 2021 also proposes to amend the exception in the Tax Act whereby a tax preparer is allowed to a file a maximum of 10 paper income tax returns of corporations and 10 paper income tax returns of individuals per calendar year to instead allow only a maximum of 5 paper returns of each type per calendar year. These measures would apply in respect of calendar years after 2021.

- Amend the threshold for mandatory electronic filing of income tax information returns for a calendar year under the Tax Act from 50 to 5 returns, in respect of a particular type of information return. This measure would apply in respect of calendar years after 2021.

- Eliminate the mandatory electronic filing thresholds for returns of corporations under the Tax Act, and of Goods and Services Tax/Harmonized Sales Tax (GST/HST) registrants under the *Excise Tax Act*. This measure would apply in respect of taxation years that begin after 2021 for the Tax Act amendments and in respect of reporting periods that begin after 2021 for the *Excise Tax Act*.

- Clarify that payments required to be made at a financial institution include online payments made through such an institution. Budget 2021 also proposes that electronic payments be required for remittances over $10,000 under the Tax Act and that the threshold for mandatory remittances to be made at a financial institution under the GST/HST portion of the *Excise Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act* and *Part 1 of the Greenhouse Gas Pollution Pricing Act* be lowered from $50,000 to $10,000. This measure would apply to payments made on or after January 1, 2022.

- Eliminate the requirement that signatures be in writing on certain prescribed forms, effective on Royal Assent.

Increased Funding to CRA

Budget 2021 proposes to spend an additional $304.1 million over five years, starting in 2021-2022, to fund the CRA's new and existing programs combatting tax evasion and aggressive tax avoidance, including:

- Increasing GST/HST audits of large businesses;
- Modernizing the CRA's risk assessment process to prevent fraudulent GST/HST refund and rebate claims; and
- Enhancing the CRA's capacity to identify tax evasion involving trusts and provide better service to executors and trustees.

Budget 2021 estimates that these measures will recover $810 million in revenues over five years.

TAX ON UNPRODUCTIVE USE OF CANADIAN HOUSING BY FOREIGN NON-RESIDENT OWNERS

Budget 2021 announces the Government's intention to introduce a national, annual 1% tax on the value of non-resident, non-Canadian owned residential real estate that is considered to be vacant or underused, beginning in 2022. Beginning in 2023, all owners of residential property in Canada, other than Canadian citizens or permanent residents of Canada, would be required to file an annual declaration for the prior calendar year regarding the current use of the property, with significant penalties for failure to file.

TAX ON SELECT LUXURY GOODS

Budget 2021 proposes to introduce a tax on the sales, for personal use, of luxury cars and personal aircraft with a retail sales price over $100,000, and boats, for personal use, over $250,000. The tax would be calculated at the lesser of 20% of the value above the threshold ($100,000 for cars and personal aircraft, $250,000 for boats) or 10% of the full value of the luxury car, boat, or personal aircraft. The GST/HST would apply to the final sale price, inclusive of the proposed tax. This measure would come into force on January 1, 2022.

DIGITAL SERVICES TAX

As announced in the 2020 Fall Economic Statement, Budget 2021 proposes to implement a Digital Services Tax at a rate of 3% on revenue from digital services that rely on data and content contributions from Canadian users. The tax would apply to large businesses with gross revenue of 750 million euros or more. It would apply as of January 1, 2022, until an acceptable multilateral approach comes into effect.

PREVIOUSLY ANNOUNCED MEASURES

Budget 2021 confirms the Government's intention to proceed with previously announced tax and related measures, as modified to take into account consultation and deliberation since their release. Of note are the proposed changes to the employee stock option rules previously announced on November 30, 2020, which will apply to stock options granted on or after July 1, 2021, as discussed in our previous article.

Budget 2021 confirms the following, as modified:

- Legislative proposals released on March 3, 2021 in respect of "baseline remuneration" for the CEWS.
- Legislative proposals released on February 24, 2021 in respect of the CEWS, the CERS and the Lockdown Support.
- Legislative proposals released on January 19, 2021 in respect of temporary adjustments to the Child Care Expense and Disability Supports deductions.
- Legislative proposals released on December 21, 2020 relating to temporary adjustments to the automobile standby charge to take into account COVID-19.
- Legislative proposals released on December 16, 2020 extending timelines in respect of flow-through shares by 12 months.
- Legislative proposals released on December 15, 2020 relating to capital cost allowance claims for purchases of zero-emission automotive equipment and vehicles.
- The anti-avoidance rules consultation and the income tax measures announced on November 30, 2020 in the Fall Economic Statement in respect of:
    - registered disability savings plans;
    - employee stock options; and
    - patronage dividends paid in shares.
- Measures announced on November 30, 2020 in the Fall Economic Statement regarding Goods and

Services Tax/Harmonized Sales Tax relief on face masks and face shields.

- Legislative proposals announced on November 27, 2020 to facilitate the conversion of Health and Welfare Trusts to Employee Life and Health Trusts.
- Regulatory proposals announced on July 2, 2020 providing relief for Deferred Salary Leave Plans and Registered Pension Plans during the COVID-19 pandemic.
- Legislative proposals released on April 17, 2020 to clarify support for Canadian journalism.
- The income tax measure announced on December 20, 2019 to extend the maturation period of amateur athletes trusts maturing in 2019 by one year, from eight years to nine years.
- The income tax measure announced on December 9, 2019 to increase the Basic Personal Amount to $15,000 by 2023.
- The income tax measure announced on August 29, 2019 to clarify the definition of a shared-custody parent.
- Legislative proposals released on July 30, 2019 to implement Budget 2019 income tax measures in respect of:
    - 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;
    - the allocation to redeemers methodology for mutual funds;
    - character conversion transactions;
    - electronic delivery of requirements for information;
    - the transfer pricing rules;
    - the foreign affiliate dumping rules; and
    - cross-border share lending arrangements.
- Measures released on July 30, 2019 modifying previously enacted measures from the November 21, 2018 Fall Economic Statement and Budget 2019, in respect of:
    - 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 the Goods and Services Tax/Harmonized Sales Tax.
- Remaining regulatory proposals released on July 27, 2018 relating to the Goods and Services Tax/Harmonized Sales Tax.
- The income tax measures announced in Budget 2018 to implement enhanced reporting requirements for certain trusts to provide additional information on an annual basis.
- Measures confirmed in Budget 2016 relating to the Goods and Services Tax/Harmonized Sales Tax joint venture election.
