Cassels

Mandatory Disclosure of Uncertain Tax Treatments Coming into Effect

Neil Burnside

December 28, 2022

On February 4, 2022, the Department of Finance (Finance) released draft legislation that, among other things, implemented the 2021 Budget's commitment to expand Canada's mandatory tax disclosure requirements. The draft legislation expanded the existing reportable transaction rules, introduced reporting requirements for notifiable transactions, and introduced disclosure of uncertain tax treatments (UTTs). As noted in our 2021 Federal Budget Briefing, the stated purpose of these rules is to provide the Canada Revenue Agency (CRA) with timely, comprehensive, and relevant information on aggressive tax planning strategies.

The draft legislation was subject to a public consultation period from February to April 2022 and was to be effective for taxation years that begin after 2021. Following this initial consultation period, Finance released amended draft legislation on August 9, 2022 and solicited further feedback. The effective date was pushed back to taxation years that begin after 2022.

On November 9, 2022, Finance announced that they require more time to fully assess the feedback received in the most recent public consultation. As such, the changes to the existing reportable transaction rules and the new reporting requirements for notifiable transactions have been pushed back further to royal assent. However, Finance confirmed that the requirement to report UTTs will still come into effect for taxation years beginning after 2022. As the new year approaches, taxpayers should consult their advisors to ensure they comply with these proposed rules.

The UTT Reporting Requirements

Currently, although Canadian corporations that use International Financial Reporting Standards (IFRS) are required to identify UTTs for financial statement purposes, there are no requirements to disclose UTTs to the CRA. The new reporting requirements will require any corporation that meets the following conditions to report each reportable UTT to the CRA:

- the corporation is required to file a Canadian tax return;
- the corporation has at least $50 million in assets at the end of the taxation year;
- the corporation, or a consolidated group of which the corporation is a member, has audited financial statements prepared in accordance with International Financial Reporting Standards (IFRS) or

certain other country specific Generally Accepted Accounting Principles (GAAP) relevant for domestic public companies (e.g. U.S. GAAP); and
- there is uncertainty in respect of the corporation's income tax for the taxation year and that uncertainty is reflected in those audited financial statements.

For each reportable UTT, 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 *Income 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 for the taxation year in which the uncertainty is reflected in the relevant audited financial statements.

The proposed penalty for failure by a corporation to report is $2,000 per week for each reportable UTT, up to a maximum penalty of $100,000 per UTT.[1] In addition, the normal reassessment period will not commence until the taxpayer has complied with the reporting requirement.

How Uncertain is Uncertain?

The reporting requirements are triggered by UTTs that are reflected in audited financial statements. The U.S. GAAP currently requires financial statements to recognize tax positions if it is more likely than not, based on the technical merits, that a tax position will be sustained by a tax authority.[2] IFRS, on the other hand, requires an accounting adjustment when it is not probable that a tax authority will accept the UTT as reported on the company's tax return.

We're Here to Help

Ultimately, taxpayers will need to determine whether a tax position is uncertain under their applicable accounting standard. The Taxation Group at Cassels can help taxpayers and their accounting advisors assess the level of any uncertainty and remain compliant with any applicable reporting requirements.

[1] The draft legislation states that penalties will not apply to taxation years that begin before royal assent of the enacting legislation.

[2] KPMG, "Accounting for Uncertainty in Income Taxes under IFRS and U.S. GAAP" (October 2, 2017), online: <assets.kpmg/content/dam/kpmg/us/pdf/2017/10/tnf-wnit-gaap.pdf> at 7.