

Cassels

Budget 2023: Lowering the Criminal Rate of Interest, Targeting “Junk Fees” and Other Consumer Protection and Financial Crime Measures

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On March 28, 2023, the Canadian federal government released the much-anticipated Budget 2023. The following summarizes certain consumer protection and financial crime measures included in the budget that will impact Canadian consumers and businesses operating in Canada.

Lowering the Criminal Interest Rate

In the budget, the government has announced its intention to amend the *Criminal Code* (Canada) (the Code) to lower the current criminal rate of interest under the Code (equivalent to a 47 percent annual percentage rate) to the equivalent of a 35 percent annual percentage rate. This announcement follows on the consultation to amend the criminal rate of interest under the Code, which we previously reported on in our article, “Consultation on Proposed Changes to Canada’s Criminal Rate of Interest.”

The government has also announced its intention to launch consultations on whether the criminal rate of interest should be further reduced.

As summarized in our article regarding the criminal rate of interest consultation, payday lending is exempt from the Code’s rate cap. In the budget, the government states its intention to adjust the Code’s exemption to require payday lenders to charge no more than \$14 per \$100 borrowed. Further, the government will launch consultations on additional revisions to the Code’s payday lending exemption.

Junk Fees

The federal government is targeting so-called “junk fees,” which are defined as “unexpected, hidden and additional fees” charged to consumers for goods and services including in respect of higher telecom roaming charges, event and concert fees, baggage fees, and shipping and freight fees. No particular industry is referenced and no details were provided as to how the government will approach addressing these fees other than a statement that the federal government will work with regulatory agencies, provinces and territories to reduce such fees.

Lowering Credit Card Fees for Businesses

Certain large credit card payment networks have agreed to reduce the interchange fees charged to businesses by approximately 27 percent for approximately 90 percent of businesses that accept credit cards. While this measure is designed to benefit small business merchants, it may address any passing down of such fees to consumers (as has been anticipated since the settlement of the credit card interchange fee class action in 2022, resulting in merchants having the ability to pass such fees onto consumers).

Financial Crime Measures

Publicly Accessible Federal Beneficial Ownership Registry

The government is introducing amendments to certain federal legislation to implement a publicly accessible beneficial ownership registry. The budget states that the registry will cover corporations governed under the *Canada Business Corporations Act*, and will be scalable to allow access to the beneficial ownership data held by provinces and territories that agree to participate in a national registry.

Addressing Emerging Risks

Amendments to the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act*, the *Office of the Superintendent of Financial Institutions Act*, and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) to modernize the federal financial framework to address emerging risks to Canada's financial sector were announced in the budget, including the following legislative changes:

- Expanding the Office of the Superintendent of Financial Institutions (OSFI) mandate to include supervising federally regulated financial institutions (FRFIs) in order to determine whether they have adequate policies and procedures to protect themselves against threats to their integrity and security, including protection against foreign interference.
- Expanding the range of circumstances where OSFI can take control of an FRFI to include where the integrity and security of that FRFI is at risk, where all shareholders have been precluded from exercising their voting rights, or where there are national security risks.
- Expanding the existing authority for the Superintendent of Financial Institutions to issue a direction of compliance to include an act that threatens the integrity and security of an FRFI.
- Providing new powers under the PCMLTFA to allow the Minister of Finance to impose enhanced due diligence requirements to protect Canada's financial system from the financing of national security threats and allow the Director of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to share intelligence analysis with the Minister of Finance to help assess national

security or financial integrity risks posed by financial entities.

The government will also review the mandate of FINTRAC to determine whether the mandate should be expanded to counter sanctions evasion. The government will provide details in the 2023 fall economic and fiscal update.

Canada Financial Crimes Agency

The 2022 federal budget announced the government's intention to establish a new Canada Financial Crimes Agency (CFCA). The CFCA would be Canada's lead enforcement agency against financial crime. Further details on the structure and mandate of the CFCA will be provided in the 2023 fall economic and fiscal update.

Crypto Assets

Acknowledging recent news headlines regarding crypto assets, crypto-platforms, and Signature Bank, the budget states the government's intention to protect Canadians from risks associated with crypto-assets by addressing consumer protection gaps and risks in the Canadian financial system. To this end, the government will work with regulators and provincial and territorial partners to introduce measures including an announcement that OSFI will consult FRFIs and federally regulated pension plans on guidelines for publicly disclosing their exposure to crypto-assets.

Additional Anti-money Laundering Measures

Other proposed key anti-money laundering measures in the budget include:

- Give law enforcement the ability to freeze and seize virtual assets with suspected links to crime.
- Improve financial intelligence information sharing between law enforcement and the Canada Revenue Agency, and law enforcement and FINTRAC.
- Introduce a new offence for structuring financial transactions to avoid FINTRAC reporting.
- Strengthen the registration framework, including through criminal record checks, for currency dealers and other money services businesses to prevent their abuse.
- Criminalize the operation of unregistered money services businesses.
- Set up obligations for the financial sector to report sanctions-related information to FINTRAC.

For more on Budget 2023, please read our Tax Group's discussion of some key provisions that will impact businesses.