MARCH 28, 2023

2023 FEDERAL BUDGET SUMMARY

On March 28, 2023 in Ottawa, Canada's Deputy Prime Minister and Minister of Finance, Chrystia Freeland, delivered her third Federal Budget (2023 Budget), titled "A Made-In-Canada Plan". The federal government has focused this year's budget on three overarching pillars: a strong middle class, an affordable economy, and a healthy future.

Please note that this is not a comprehensive review of the 2023 Budget. Rather, we have provided a summary of the most significant tax measures announced in the budget and the potential impact on you, your family and your business.

The 2023 Budget does not contain any personal or corporate income tax rate changes.

REGISTERED EDUCATION SAVINGS PLAN (RESP)

The 2023 Budget proposes changes to the terms of an RESP that would permit Educational Assistance Payment (EAP) withdrawals of up to $8,000 (currently $5,000) in respect of the first 13 consecutive weeks of enrollment for beneficiaries enrolled in full-time programs, and up to $4,000 (currently $2,500) per 13-week period for beneficiaries enrolled in part-time programs.

These changes come into force on March 28, 2023, budget day.

Individuals who withdrew EAPs before budget day may be able to withdraw an additional EAP amount, subject to these new enhanced limits.

The 2023 Budget also proposes changes to the rule for subscribers allowing divorced or separated parents to open joint RESPs for one or more of their children, or to move an existing joint RESP to another promoter.

These changes also come into force on budget day.

REGISTERED DISABILITY SAVINGS PLAN (RDSP)

The 2023 Budget proposes to extend the qualifying family member measure by three years, to December 31, 2026. This measure allows a qualifying family member who is a parent, spouse or common-law partner, to open an RDSP and be the plan holder for an adult whose capacity to enter into an RDSP contract is in doubt, and who does not have a legal representative.

The 2023 Budget also proposes to broaden the definition of "qualifying family member" to include a sibling of the beneficiary if they are age 18 or older. A qualifying family member who becomes a plan holder before the end of 2026 could remain the plan holder after 2026.

These proposed changes would apply upon royal assent of this legislation and would be in effect until December 31, 2026.

ALTERNATIVE MINIMUM TAX (AMT)

The 2023 Budget proposes to broaden the tax base for the AMT calculation by limiting various tax preferences (i.e., exemptions, deductions, and credits). AMT is a parallel tax calculation that uses fewer exemptions, deductions, and credits than the regular tax calculation. It allows for an exemption of $40,000 of taxable income and applies a flat 15% tax rate. Taxpayers are required

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to pay the higher of the two tax calculations (AMT and regular). AMT generally applies in situations where there are significant tax preferences and ensures that a minimum amount of tax is paid.

The proposed changes to the AMT calculation would increase the exemption to the start of the fourth federal income tax bracket, or approximately $173,000 for the 2024 taxation year. The changes would also increase the AMT rate to 20.5%, while limiting certain tax preferences.

The proposed changes would come into force for taxation years that begin after 2023.

INTERGENERATIONAL BUSINESS TRANSFERS

Bill C-208 was previously introduced and was effective on June 29, 2021. The stated purpose of this bill was to facilitate more tax-efficient intergenerational business transfers.

The 2023 Budget includes proposed amendments to ensure that these rules only apply to genuine intergenerational business transfers.

A genuine intergenerational share transfer would be a transfer of shares of a corporation by an individual to another corporation where a number of conditions are satisfied. The following existing conditions would be maintained:

- Each share transferred must be a qualified small business corporation share or a share of the capital stock of a family farm or fishing corporation; and
- The purchaser corporation must be controlled by one or more persons, each of whom is an adult child of the transferor.

The meaning of "child" for these purposes would include grandchildren, stepchildren, children-in-law, nieces, nephews, grandnieces, and grandnephews.

In addition, to ensure that only genuine intergenerational share transfers are subject to this preferential tax treatment, it is proposed that taxpayers may choose to rely on one of the two following transfer options, which include respective additional conditions on the transfer of control, economic interest, and management of the business:

- An immediate intergenerational business transfer (three-year test); or
- A gradual intergenerational business transfer (five-to-10-year test).

The immediate transfer rule would provide finality earlier in the process, although with more stringent conditions. In recognition of the fact that not all business transfers are immediate, the gradual transfer rule would provide additional flexibility for those who choose that approach.

The transferor and child (or children) would be required to jointly elect for the transfer to qualify as either an immediate or gradual intergenerational share transfer.

The 2023 Budget also proposes to provide a 10-year capital gains reserve for genuine intergenerational share transfers that satisfy the conditions.

These measures would apply to transactions that occur on or after January 1, 2024.

EMPLOYEE OWNERSHIP TRUST (EOT)

An EOT holds shares of a private corporation for the benefit of the corporation's employees. EOTs can be used to facilitate the purchase of a business by its employees, without requiring them to pay directly to acquire shares.

The 2023 Budget introduces rules to facilitate the use of EOTs to acquire and hold shares of a business. The new rules would define qualifying conditions to be an EOT and propose changes to tax rules to facilitate the establishment of EOTs.

Generally, an EOT would be a Canadian resident trust that has two purposes: 1) it would hold shares of a qualifying business for the benefit of the trust's employee beneficiaries; and 2) it would make distributions to employee beneficiaries under a distribution formula that could only consider an employee's length of service, remuneration, and hours worked. Otherwise, all beneficiaries must generally be treated in a similar manner.

These changes would extend the capital gains reserve to 10 years for qualifying sales to an EOT, create an exception to the current shareholder loan rule, and exempt EOTs from the 21-year deemed disposition rule that applies to certain trusts.

These proposed changes would apply as of January 1, 2024.

RETIREMENT COMPENSATION ARRANGEMENT (RCA)

The 2023 Budget proposes amendments to the RCA rules, such that fees or premiums paid for the purposes of securing or renewing a letter of credit by an RCA trust that is supplemental to a registered pension plan, would not be subject to the 50% refundable tax.

This change would apply to fees or premiums paid on or after budget day.

The 2023 Budget also proposes to allow employers to request a refund of previously remitted refundable taxes in respect of fees or premiums paid for letters of credit by RCA trusts, based on retirement benefits paid by the corporation to employees. The employer would be eligible for a refund of 50% of retirement benefits paid, up to the refundable tax previously paid.

This change would apply to retirement benefits paid after 2023.

A GROWING CLEAN ECONOMY

The 2023 Budget introduces and expands several investment tax credits (ITC) to incentivize investment in clean energy. These business income tax measures include introducing an ITC for Clean Hydrogen, expanding the Clean Technology ITC for Geothermal Energy, an ITC for Clean Technology Manufacturing, and expanding the ITC for Carbon Capture Utilization and Storage. To support the implementation of these measures, the 2023 Budget also introduces labour requirements for certain ITCs.

GENERAL ANTI-AVOIDANCE RULE (GAAR)

The 2023 Budget proposes to amend the GAAR by introducing a preamble to the legislation, changing the avoidance transaction standard, implementing an economic substance rule, introducing a penalty of 25% of the amount of the tax benefit, and extending the reassessment period in certain circumstances. The federal government is seeking input from stakeholders through a consultation process and intends to publish revised legislative proposals and announce an application date for the proposals.