2023 YEAR-END TAX PLANNER

Critical tax issues for end-of-year planning

Building on previous years' budgets, 2023 held some significant tax changes. The mandatory disclosure rules received royal assent, and the Department of Finance tabled draft legislation for a variety of new and existing measures, including intergenerational transfers, dividends received by financial institutions, and the general anti-avoidance rule, to name just a few.

This 2023 year-end tax guide summarizes the key federal, provincial, and territorial tax updates taxpayers should consider when preparing for 2023 planning opportunities and year-end obligations.

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AUDIT AND ENFORCEMENT CONSIDERATIONS

Revisions to the general anti-avoidance rule

The general anti-avoidance rule (GAAR) is a tool used by the Canada Revenue Agency (CRA) to counteract abusive tax avoidance strategies not addressed by specific anti-avoidance rules within the *Income Tax Act* (ITA). The government has proposed amendments to the GAAR to bolster its effectiveness in curbing abusive tax avoidance. These amendments are proposed to apply to transactions from Jan.1, 2024.

Economic substance amendment: The GAAR applies where a transaction misuses or abuses provisions of the ITA. The proposals add a presumption that transactions which lack economic substance meet this "misuse and abuse" test. The draft legislation presents three criteria to ascertain if a transaction significantly lacks economic substance including: (1) have gains/losses remained mostly unchanged, (2) does the anticipated tax benefit exceed the expected nontax economic return and (3) was the transaction (or series of) primarily undertaken to achieve the tax benefit.

Revised GAAR penalty structure: A new penalty to deter tax avoidance is also proposed. The penalty will be equal to (tax payable under the GAAR minus tax payable without the GAAR) x 25 per cent less any applicable gross negligence penalties.

Reassessment period amendment: The government has proposed a three-year extension to the normal reassessment period under subsection 152(4) of the ITA for GAAR assessments. This extension reflects the complexity and detection challenges with GAAR transactions.

Mandatory disclosure rules exception: The penalty and extended reassessment period will be reduced or eliminated where the taxpayer has disclosed the transactions (or series of) under the notifiable transaction rules in section 237.4 of the ITA or disclosed the transactions under the reportable transaction rules in section 237.3 of the ITA. The proposals include introducing voluntary reportable transaction disclosures.

Mandatory disclosure rules

A revised version of the mandatory disclosure rules (MDR) within the ITA received royal assent on June 22, 2023. These changes aim to equip the CRA with timely information to identify aggressive tax planning transactions. The new MDR framework introduces two key provisions: Notifiable Transactions rules under section 237.4 of the ITA and Reportable Uncertain Tax Positions (RUTT) rules outlined in section 237.5 of the ITA. Moreover, the scope of the Reportable Transaction rules in section 237.3 of the ITA has been substantially expanded.

Reporting obligations apply to those benefiting from tax advantages, those executing transactions on their behalf, advisors and promoters. Compliance with these requirements involves using Form RC312 for reportable transactions and notifiable transactions, along with Form RC3133 for reportable uncertain tax treatment. Noncompliance can result in significant penalties and extended periods for reassessment.

MDR and its compliance obligations have far-reaching implications for taxpayers, advisors and promoters. Staying on top of further developments is important for tax practitioners and their clients to understand the ramifications and obligations for taxpayers.

FEDERAL BUSINESS TAX CONSIDERATIONS

Financial institutions dividend

Introduced in the 2023 federal budget (Budget 2023), the federal government proposes to deny the intercorporate dividend deduction for dividends received by financial institutions on Canadian corporation shares that qualify as mark-to-market property.

The Department of Finance (Finance) found that claiming the dividend deduction on shares classified as mark-to-market property contravened the rationale behind those rules in the ITA. As such, Budget 2023 proposes to disallow the intercorporate dividend deduction. Additionally, the proposed legislation deems tracking property, as defined under subsection 142.2(1) of the ITA, not a share of a financial institution to be mark-to-market property for purposes of the denied deduction.

As proposed, the denial of the deduction will apply to dividends received after 2023.

While the proposed amendment is still in draft form, financial institutions that hold portfolio shares should prepare for a more significant annual tax burden as a result of the disallowed deduction.

Tax on repurchase of equity

First introduced in 2022, the government proposes to implement a two per cent tax on equity repurchases, effective Jan. 1, 2024. Broadly, the tax on repurchase of equity creates a new tax under Part II.2 of the ITA equal to two per cent of a covered entity's net value of equity repurchases during the year.

Where a covered entity redeems, acquires, or cancels equity in a taxation year, the rules will require the covered entity to file a return for the taxation year under Part II.2 in a prescribed form. A payment of the tax payable by the balance due date for the taxation year will also be required.

Although still in draft form, once enacted, this tax may have the unintended effect of increasing the cost of capital for public companies. The rules may also disincentivize private companies from going public.

Changes to common elections

This year, the CRA updated the tax election forms used to rollover assets at cost into a new entity. Specifically, the CRA amended Form T2057, dealing with rollovers to a corporation, and Forms T2058 and T2059, dealing with rollovers from a partnership to a corporation and from a taxpayer to a partnership, respectively. These forms now require additional taxpayer information to be disclosed as part of the election process.

Most notably, the amended forms will now require a computation of the adjusted cost base (ACB) of all transferred properties alongside the election (previously, the backup computation of ACB for most types of transferred property was kept on hand in the event that the CRA requested this information) among other things.

Taxpayers will have additional compliance considerations when rolling over assets into a partnership or a corporation. The CRA may be more likely to audit transactions where taxpayers have indicated they did not obtain a valuation report.

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Small business deduction

On Dec. 15, 2022, Bill C-32 received royal assent, allowing more medium-sized Canadian-controlled private corporations (CCPCs) to qualify for the small business deduction (SBD) by expanding eligibility criteria.

The SBD provides eligible small businesses with a reduced federal corporate tax rate of nine per cent on up to $500,000 of active business income (compared to the general federal corporate tax rate of 15 per cent), which is also shared with associated CCPCs.

Under the new rule, the upper limit of aggregate taxable capital at which the SBD is fully eliminated increases to $50 million, a significant increase from the previous upper limit of $15 million. This change applies to taxation years that begin on or after April 7, 2022. A CCPC will see the change starting with its taxation year ending Dec. 31, 2023.

This change makes CCPC status more desirable for medium-sized corporations, specifically if they have taxable capital of less than $50 million (taking into consideration associated entities).

Excessive interest and financing expense limitation rules

The excessive interest and financing expense limitation (EIFEL) rules restrict the deductibility of interest and financing expenses (IFE) for Canadian resident corporations and trusts for taxation years that begin on or after Oct. 1, 2023. These rules apply to arm's length and non-arm's length IFE. Rather than replace them, these rules apply in conjunction with other existing interest limitation rules, including thin capitalization, transfer pricing limitations and hybrid mismatch arrangement rules.

- **Application**: EIFEL will apply to corporations and trusts that are not "excluded entities." An excluded entity is normally a taxpayer that, along with group members:
  - Has taxable capital of less than $50 million (CCPCs only),
  - Has less than $1 million in net IFE, or
  - Satisfies all of the following criteria:
    - does not have greater than 25 per cent foreign ownership,
    - does not pay significant IFE to certain non-arm's length persons, and,
    - does not have a material foreign affiliate (i.e., one that can be valued at greater than $5M).

- **Main rule:** EIFEL will limit a taxpayer's net IFE deduction to a fixed percentage of 30 per cent of its earnings before interest, taxes, depreciation and amortization (EBITDA) (calculated for tax purposes) subject to a limited phase-in of 40 per cent for any tax years starting between Oct. 1, 2023, and Dec. 31, 2023.
- **Group ratio rule:** Taxpayers that are part of a consolidated group with audited financial statements may file a joint election to calculate their ratio of permissible expenses according to a group ratio, which could yield a higher deduction capacity than the fixed percentage of EBITDA.

Taxpayers who may be affected by the EIFEL rules should consider planning opportunities leading up to the application of EIFEL at the end of 2023 and 2024. These may include:

- Determining whether a pre-regime election is beneficial, which can be used to carry forward deduction capacity from the three preceding years to the first tax year when EIEFL first becomes effective
- Determining whether a group ratio election is beneficial for a group with audited-consolidated financial statements.

Additionally, affected taxpayers may want to review current and anticipated debt and financing obligations in light of EIFEL, especially if operating in a highly leveraged industry.

Case law developments

Distribution on wind-up

The purpose of the ITA provision dealing with corporate distributions on winding up, discontinuing or reorganizing a business is to tax all such distributions to shareholders as a dividend, except to the extent the distribution represents a return of a shareholder's investment. There must be an impoverishment of a corporation for the benefit of its shareholders to apply.

In *Foix v. The King*, 2023 FCA 38 (Foix), the parties to a hybrid business sale—combining the sale of shares and assets—left a promissory note owed to the corporation (vendor of assets) unpaid, with the intent to enrich the shareholders of the corporation with that amount on the sale of their shares. The additional consideration received by the shareholders directly was reported as a capital gain. If the same cash were received by the corporation on selling its business assets, then it would have been paid out to the shareholders as a dividend.

The Federal Court of Appeal (FCA) determined that because the purchaser acted as a third-party facilitator to impoverish the corporation for the benefit of its shareholders, a portion of the capital gains should be recharacterized as a dividend instead.

The FCA's opinion creates some uncertainty on the application of this provision, dealing with corporate distributions and potentially other anti-avoidance provisions in the ITA. The FCA stated that the uncertainty resulting from an anti-avoidance provision is appropriate and that this provision should be given a broad interpretation.

Acquisition of control

The acquisition of control (AOC) rules in the ITA generally state that when control of a corporation is acquired by new owners, these new owners may not carry over the non-capital losses to deduct from future income unless the corporation continues to operate the same or a similar business.

There is an increased onus on taxpayers to consider the rationale behind the ITA when undertaking business transactions to avoid the application of the GAAR.

Recently, the Supreme Court of Canada (SCC) in *Deans Knight Income Corporation v Canada*, 2023 SCC 16 *(Deans Knight)* found that the GAAR applied because the taxpayer defeated the rationale of the acquisition of control rules. While the parties involved did not explicitly trigger these rules, they achieved the "functional equivalent" of an acquisition of control by restricting the powers of the original shareholders with external agreements.

In its decision, the SCC clarified that the object, spirit and purpose (OSP) of a provision is determined by reviewing the underlying rationale of a provision (i.e., why the provision was enacted), not on the sole basis of what the provision does (i.e., how it works). Applying this test, the SCC determined that the OSP of the AOC rules was "to prevent corporations from being acquired by unrelated parties to deduct unused losses against income from another business for the benefit of new shareholders."

In light of this decision, there is an increased onus on taxpayers to consider the rationale behind the ITA when undertaking business transactions to avoid the application of the GAAR.

INDIVIDUAL TAX CONSIDERATIONS

Changes to registered plans

Bill C-47, which received royal assent on June 22, 2023, implemented various changes to registered plans in Canada, including the following:

- Former spouses and common-law partners may jointly open Registered Educational Savings Plans (RESPs) where both individuals are the legal parents of the beneficiary.
- The limit on educational assistance amounts paid from RESPs has increased.
- Qualifying family members, which now includes siblings, will be able to open and hold a Registered Disability Savings Plan (RDSP) on behalf of a beneficiary for plans entered into before Jan. 1, 2027.
- Subject to certain conditions, plan members are now able to correct over and under contributions to defined contribution registered pension plans made in the past 10 years. Corrections to contributions will affect Registered Retirement Savings Plan (RRSP) contribution limits.
- Starting in 2023, carriers of RRSPs and registered retirement income funds must annually report the fair market value of all assets in the account.
- Subject to certain conditions, a new borrowing limit is now available for administrators of defined benefit registered pension plans.

Proposed changes to employee ownership trusts

Originally proposed in the 2022 federal budget (Budget 2022) and updated in August of this year, the government is continuing to work toward introducing employee ownership trusts (EOTs) as an option to facilitate succession planning.

An EOT holds shares in a corporation, which is a qualifying business for the benefit of employees, and makes distributions to these employees based on their length of service, remuneration, and hours worked. EOTs will generally be taxed at the top marginal tax rate, but it is proposed to provide some other advantages, including:

- an extended period to claim capital gains reserves from a qualifying business transfer,
- an exception to deemed interest on shareholder loans for up to 15 years, and,
- an exemption from the 21-year deemed disposition rule normally applicable to trusts.

These rules are proposed to come into effect on Jan. 1, 2024, and will likely create new tax planning and compensation structure opportunities.

Proposed changes to calculating the alternative minimum tax

Introduced in Budget 2023 with draft legislation released in August of this year, the alternative minimum tax (AMT) regime is being amended to target high-income individuals better. AMT operates by computing a notional "adjusted taxable income" based on alternative calculation rules, applies a flat rate of tax, and requires the payment of any shortfall compared to ordinary payable taxes. These proposals are slated to come into effect for taxation years that begin after 2023. The proposed changes to these rules from a computational perspective include the following, among others:

- an increase to the inclusion rate for capital gains from 80 per cent to 100 per cent,
- an increase to the inclusion rate for capital gains on gifts of publicly listed securities to a qualified donee from zero per cent to 30 per cent,
- an increase to the flat rate of tax applied from 15 per cent to 20.5 per cent,
- an increase to the basic AMT exemption amount from $40K to the fourth federal bracket amount (about $173K for 2024),
- a decrease from the deductibility of certain losses from 80 per cent to 50 per cent, and,
- a denial of 50 per cent of certain deductions and basic credits.

The proposals now also exempt graduated rate estates from AMT.

Individuals who have historically relied on significant charitable donations to offset their taxes annually are at the highest risk of needing to pay AMT starting in 2024. Additionally, inter vivos trusts, under certain circumstances, may be stuck with paying AMT despite allocating all their income to their beneficiaries.

Proposed changes to intergenerational business transfers

In 2021, new rules were introduced to better accommodate intergenerational transfers of corporate shares owned by a parent to a purchaser corporation controlled by one or more children or grandchildren of the parent. These new rules, as introduced in Bill C-208, were considered unclear and to have created loopholes. In Budget 2023, the government proposed new conditions to limit the earlier changes to genuine intergenerational business transfer. The amendments provide two transfer options to transfer shares to the next generation:

1. An "immediate intergenerational business transfer" takes place over three years.
2. A "gradual intergenerational business transfer" takes place over five to 10 years.

The transfer of shares will need to comply with certain conditions to take advantage of the new intergenerational transfer rules. These conditions are in place to ensure control and management are transferred to the next generation within an appropriate timeframe, and the children actually carry the business on after the transfer. All changes are proposed to enter into force effective Jan. 1, 2024.

Trust reporting rules in effect now

New trust reporting rules apply for taxation years ending after Dec. 30, 2023. These new rules expand the types of trusts with a filing obligation, including creating a filing obligation for bare trust arrangements. They also require additional information to be disclosed as part of reporting, including the name, address, date of birth, country of residence and taxpayer identification number for all the trust's settlors, trustees, beneficiaries and protectors. This information will need to be provided on the new Schedule 15, Beneficial Ownership Information of a Trust, when filing the T3 tax return.

Underused Housing Tax Act in effect now

Effective Jan. 1, 2022, the federal Underused Housing Tax Act (UHTA) requires affected owners of vacant or underused property in Canada to file an annual return. In addition, the affected owners must pay a one per cent tax on the value of any residential property owned unless the ownership qualifies for an exemption. UHTA returns and tax payments are due April 30 of the following calendar year. The CRA pre-emptively waived penalties for late filing and payment so long as all outstanding obligations under the UHTA for 2022 are met by Oct. 31, 2023.

INTERNATIONAL TAX CONSIDERATIONS

Canada's digital services tax and substantial international tax reform

On Oct. 8, 2021, the Organisation of Economic Co-operation and Development (OECD) announced that 136 countries, including Canada, had agreed on the elements of the landmark two-pillar solution on international tax reform.

- Pillar One aims to reallocate some taxing rights over multinationals from their home countries to the markets where they have business activities and earn profits, regardless of whether multinationals have a physical presence there. The goal was to implement Pillar One beginning in 2023, but implementation was recently delayed until at least 2025. In the meantime, the Canadian federal government will move forward with its digital services tax (DST) as a proxy for Pillar One, and the DST will come into force on a day to be fixed by order of the Governor in Council, but not earlier than Jan. 1, 2024.

  Once implemented, DST will impose a three per cent tax on Canadian-sourced revenue from digital services exceeding $20 million earned by an individual entity or consolidated group with at least 750 million euros in global revenue. For the first year the tax applies, the tax liability will be calculated by reference to certain Canadian digital services revenue earned from Jan. 1, 2022 (i.e., with retroactive effect).

- Pillar Two aims to implement a global anti-base erosion rule through the introduction of a global minimum corporate tax rate of 15 per cent that countries can use to protect their tax bases. It will apply to companies with revenue above 750 million euros. On July 17, 2023, the OECD released a new package of documents containing additional administrative guidance, a finalized information return, and a standalone subject to tax rule (STTR) to be included in the model treaty.

The OECD's two-pillar solution and the Canadian DST will shift the compliance landscape for multinational enterprises as early as 2024.

A Bill C-47 update to upstream loans

Subsection 90(6) of the ITA is designed to prevent taxpayers from deferring tax payments by utilizing a loan from a foreign affiliate (an upstream loan) in lieu of dividend payments when repatriating funds to Canada. The loan will be included in the borrower's Canadian income if it is not repaid within two years or if another exception does not apply.

Prior to Bill C-47, which became law on June 22, 2023, an exception was applied when an upstream loan was part of a foreign affiliate's money lending business. Bill C-47 narrowed the scope of this money lending exception to cases where the foreign affiliate is predominantly involved in arm's length lending activities.

If an upstream loan is outstanding after 2023, and a borrower was previously relying on the money lender exception to avoid an income inclusion, the borrower may then be required to include the principal amount of the loan in income two years after Jan. 1, 2023, if not repaid.

Hybrid mismatch arrangements

On April 29, 2022, the government released the first set of draft legislative proposals to address cross-border tax avoidance arrangements known as hybrid mismatch arrangements (HMA). Generally, HMAs are non-arm's length, cross-border tax avoidance structures that exploit differences in the income tax treatment of business entities or financial instruments under the laws of two or more countries to produce mismatches in tax results.

The draft legislation applies to payments arising on or after July 2022. Taxpayers who have hybrid instruments in their cross-border transactions or receive any dividends from a foreign affiliate that are deductible for the payer should be aware of these proposed HMA rules.

Foreign residential property ownership

Both non-resident purchasers of Canadian real estate and renters of Canadian real estate owned by non-residents must be mindful of recent developments that increase compliance and tax obligations for cross-border real property ownership.

Non-resident purchasers

Purchasers must be mindful that the federal, as well as many provincial and municipal governments, have implemented a series of measures to curb speculation by non-residents in Canadian residential real estate.

Federal measures include:

- A foreign homebuyers ban that prohibits non-Canadians from purchasing residential property in Canada for two years, effective January 1, 2023. A non-Canadian that acquires residential property for development is exempt from this rule.
- A new Underused Housing Tax Act (UHTA), as previously discussed. Canadian citizens or permanent residents who own residential property through a partnership, trust or corporation will also have a filing obligation under the UHTA.

A patchwork of provincial and municipal legislation already impacts foreign buyers. For example, Ontario has a non-resident speculation tax (NRST) applicable to foreign nationals purchasing property in Canada, which imposes 25 per cent on consideration for a conveyance. The NRST may also possibly apply to developers. In some areas, such as Vancouver, there may be three layers of annual tax on non-residents who own residential property, including a Vancouver empty homes tax, a British Columbia speculation and vacancy tax and the federal UHTA.

Canadian resident renters

On the other side of the coin, a recent Tax Code of Canada (TCC) decision raises the bar for Canadian renters to establish that their landlords are tax residents of Canada. In 3792391 Canada Inc v The King, 2023 TCC 37, a Canadian resident corporation entered a three-year lease agreement with an individual who listed a Canadian address and telephone number on the lease agreement and had a Canadian social insurance number. Rental payments were also made to a Canadian bank account. Unbeknownst to the renter, their landlord was not a resident of Canada during the duration of the lease agreement. The TCC found that 3792391 Canada Inc. was liable for withholding tax on rental payments made to the non-resident landlord, levied at a rate of 25 per cent. The TCC rejected the taxpayer's arguments that they had no knowledge of the landlord's non-resident status or that they were duly diligent in determining the residency status of the landlord (based on the information available).

Foreign entities or individuals looking to purchase Canadian residential property going forward will be required to navigate increasing compliance and tax obligations that also carry significant penalties if not adhered to. Further, Canadians should verify the residency status of their landlords before making rental payments to avoid any potential withholding tax liability.

Substantive Canadian-controlled private corporations and foreign investment income

The government introduced the concept of substantive CCPCs (SCCPCs) in Budget 2022 to ensure that the investment income earned and distributed by SCCPCs is taxed similarly to CCPCs. On Aug. 9, 2022, the government released draft legislation to implement this concept into the ITA.

An SCCPC is broadly defined as a non-CCPC, controlled directly or indirectly in any manner by one or more Canadian resident individuals. An SCCPC will be subject to a less favourable regime under the ITA compared to the corporation's previous categorization as a non-CCPC. Specifically, SCCPCs will be subject to the same refundable tax on investment income as a CCPC and not eligible for the general rate reduction—eliminating the tax-planning benefit of this status—and not be entitled to certain benefits available to a CCPC.

Non-CCPCs are encouraged to review whether they can be captured by the definition of SCCPC and how their reporting of FAPI will change, given the amendment.

The government will also amend the foreign accrual property income (FAPI) rules to prevent taxpayers from gaining a tax deferral advantage by holding investments through a controlled foreign affiliate of a CCPC or SCCPC.

Given these changes, non-CCPCs are encouraged to review whether they can be captured by the definition of SCCPC and how their reporting of FAPI will change, given the amendment.

These measures will apply to taxation years that begin on or after April 7, 2022.

TRANSFER PRICING CONSIDERATIONS

Transfer pricing consultation paper

Finance released a consultation paper titled "Consultation on Reforming and Modernizing Canada's Transfer Pricing Rules" on June 6, 2023. This consultation paper outlines draft revisions to section 247 of the ITA, along with potential additional administrative measures related to transfer pricing. These measures encompass documentation, penalty provisions and consideration of more modern or simplified approaches in specific situations. It also emphasizes "economically relevant characteristics" to ensure that transfer pricing rules align more consistently with the 2022 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The decision in *The Queen v. Cameco Corporation* highlighted issues within Canada's domestic transfer pricing rules, and finance identified perceived shortcomings in the current version of section 247. The deficiencies pertain to the determination of the starting point for the comparison central to the arm's length principle and the operation of this comparison. The result has been a perceived overemphasis on intragroup contracts rather than on the actual substance of transactions. Consequently, this has led to situations where profit allocations between

Canadian and non-resident taxpayers did not align with the economic contributions of the parties involved. In light of the court's reasoning, the government believes that, without reform, the current transfer pricing rules allow for the excessive shifting of income out of Canada, thereby adversely affecting the Canadian tax base.

Once the draft legislation is in place, it should provide greater clarity in interpreting transfer pricing rules in Canada.

APA update

The United States and Canada share one of the largest trade relationships globally, and often, U.S. companies have subsidiaries or operations in Canada, and vice versa. These cross-border transactions between related entities often necessitate transfer pricing agreements to ensure they are conducted at arm's length and in compliance with tax regulations. One such agreement is the advance pricing agreement (APA) program.

The CRA and the IRS are actively working on updating guidance pertaining to APAs. In Canada, the CRA is working on updating Information Circular 94-5 and the transfer pricing memorandum. Once in place, the updated guidance will assist staff in administering their respective APA programs more effectively, alleviating backlog and determining whether an APA is the best method to ensure tax certainty. Overall, it seeks to create efficiencies and provide potential alternatives for taxpayers who do not qualify.

GLOBAL EMPLOYEE CONSIDERATIONS

Global mobility in a virtual world

Over the last few years, there has been an increase in the number of employees working from home.

The current trend of virtual assignments could lead to some Canadian payroll and individual tax implications, such as:

- Requiring the foreign employee to be on Canadian payroll and be subject to Canadian payroll source deductions
- Requiring the foreign employee to be subject to Canadian individual taxation on their Canadian source employment income and have to file a Canadian income tax return
- Subjecting the employee to payroll withholding and individual income tax in the foreign country, should they travel to the foreign country of their employer

Businesses that utilize virtual assignments may have additional tax obligations to consider.

INDIRECT TAX CONSIDERATIONS

GST/HST treatment of payment card clearing services

Budget 2023 proposed to exclude payment card clearing services rendered by a payment card network operator from the goods and services tax/harmonized sales tax (GST/HST) definition of "financial service." Under the *Excise Tax Act*, supplies of financial services are generally "exempt" for GST/HST purposes.

This measure applied to a service rendered under an agreement for a supply if any consideration for the supply becomes due or is paid without becoming due after March 28, 2023. The measure will not apply in respect of any other supply made under the agreement and includes the provision of a payment card clearing service.

In the Aug. 4, 2023 draft legislation, a new exception is proposed to the general four-year limitation period for an assessment of the net tax of a person for a reporting period.

CUSTOMS CONSIDERATIONS

Customs verification priorities

The Canada Border Services Agency (CBSA) has announced its current verification priorities. These include new tariff classification priorities for freezers and other freezing equipment, washers and dryers, as well as apparel as a valuation priority. No origin priorities are currently announced, but the CBSA reminds importers that Russia and Belarus are no longer eligible for most-favoured-nation (MFN) tariff treatment for goods originating from those countries.

Fighting Against Forced Labour and Child Labour in Supply Chains Act

The *Fighting Against Forced Labour and Child Labour in Supply Chains Act* will come into force on Jan. 1, 2024. This Act introduces new reporting requirements for certain entities intended to combat forced and child labour and restricts the import of goods created with child labour. Reporting under this Act will be due on or before May 31, 2024, for tax year 2023.

Updates to CBSA's Assessment and Revenue Management system

CBSA Assessment and Revenue Management (CARM) is CBSA's new electronic system for managing the collection of duties and taxes. There will be a soft launch of CARM's new services in October 2023 and a full launch in May 2024. Once CARM is implemented, importers will need to post their security for release prior to payment rather than utilizing their custom brokers' bond as security. Importers are encouraged to open a CARM portal account, which will be required for release before payment privileges.

Value for duty proposals

The CBSA is proposing regulatory changes to use the last sale for import purposes to determine value for duty (VFD). VFD is used to determine customs duties for sales tax levied on imported goods. The proposed change will likely lead to significant increases in customs duties and additional operational and finance costs for affected importers.

CREDIT AND GRANT CONSIDERATIONS

Government grants and funding

Government grants can provide Canadian businesses with nondilutive funding as a zero per cent interest loan or nonrepayable grant to support the execution of business goals and initiatives. Canadian funding programs focus on six strategic objectives, including (1) capital investments, (2) export market expansion, (3) human resource development, (4) environmental and clean technology, (5) research and development (R&D) and innovation, and (6) food processing and agriculture.

Each year, $30 billion in grants and incentives are provided to Canadian businesses and non-profits through more than 500 different funding programs. New funding programs are released every year based on current government plans and priorities. It is important to embed government grants in the business planning process to take advantage of funding opportunities. Applications must be submitted before incurring any eligible project costs.

Scientific research and experimental development

In 2022, the federal government announced intentions to review the Scientific Research and Experimental Development (SR&ED) program to safeguard and encourage R&D that benefits Canada. Specific modernization and simplification efforts for the SR&ED are expected to be released in late 2023.

The SR&ED program is intended to offset the risks associated with R&D performed by businesses within Canada. SR&ED tax incentives are returned in the form of earned income deductions or an investment tax credit available federally and in many provinces.

Previously, the policy for determining SR&ED eligibility was a series of five questions but has since changed to the questions of 'why' and 'how' the work is carried out. SR&ED-eligible work must be undertaken to advance scientific/technological knowledge and performed by systematic investigation, experimentation and/or analysis.

Although the SR&ED eligibility policy has changed, the SR&ED references and descriptions remain the same under the ITA. Eligible claims primarily include experimental development or incremental improvements to existing products or processes, and as such, many businesses of all sizes meet SR&ED qualification criteria for work already being performed.

PROVINCIAL CONSIDERATIONS

Alberta

Agri-processing investment tax credit: The government introduced a new agri-processing investment tax credit (APITC), which is a non-refundable tax credit equal to 12 per cent of certain eligible capital investments of at least $10 million made by corporations on or after Feb. 7, 2023. The APITC will be eligible for a 10-year carry forward period.

British Columbia (BC)

Extension of interactive digital media tax credit: The interactive digital media tax credit, which is a refundable tax credit for eligible registered corporations that develop interactive digital media products, is extended by five years to Aug. 31, 2028.

BC provincial sales tax: The 2023 BC budget proposed numerous changes to the tax treatment of various provincial sales tax (PST) items, including:

- Effective March 1, 2023, automated external defibrillators (AEDs) and parts and services for AEDs are exempt from PST.
- Effective July 1, 2023, the rules regarding the tax collection obligations of online marketplace facilitators and online marketplace services will be amended. These changes will clarify how to apply the rules and make it easier for businesses to meet their PST obligations.
- Effective July 1, 2023, heated tobacco products will continue to be subject to tobacco tax as well as PST indefinitely.
- Effective April 1, 2013, clarifications have been added that, for PST purposes, the federal goods and services tax does not form part of the taxable purchase price of goods brought or sent into BC for use.
- Effective Sept. 1, 2022, clarifications have been added that, for PST purposes, the federal luxury tax imposed under the *Select Luxury Items Tax Act* does not form part of the taxable purchase or lease price.

Ontario

Ontario small business corporate income tax: The 2023 Ontario budget proposed to extend the top end of the phase-out range to $50 million to mimic the federal government's SBD amendments. This change will apply to all tax years on or after April 7, 2022, to ensure consistency with the federal effective date.

Increasing the non-resident speculation tax: The Ontario government introduced the NRST to deter non-resident investors, and it applies to the purchase or acquisition of an interest in residential property located anywhere in Ontario by non-Canadian citizens or permanent residents, foreign corporations or foreign taxable trustees. Effective Oct. 25, 2022, the government increased the NRST rate from 20 per cent to 25 per cent and expanded the tax to apply province wide.

Ontario Made Manufacturing Investment Tax Credit: The Ontario Made Manufacturing Investment Tax Credit is a new 10 per cent refundable tax credit that provides up to $2 million corporate income tax relief for CCPCs that make certain qualifying investments. In order to be eligible, a CCPC (i) must carry on business in Ontario in the taxation year through a physical permanent establishment and (ii) should not be exempt from Ontario corporate income tax for the taxation year.

Qualifying investments would include expenditures in certain capital property, which generally includes capital investments in capital cost allowance (CCA) classes 1 and 53.

CCPCs are limited to $20 million of qualifying investments eligible for the tax credit, which must be shared among groups of associated corporations. Any one group of associated corporations would be entitled to up to $2 million of this refundable income tax credit annually.

Ontario Interactive Digital Media Tax Credit administration fee reduced: Effective May 1, 2023, the minimum administrative fee for the Ontario Interactive Digital Media Tax Credit (OIDMTC) was reduced to $500 per application. This fee reduction will help make the OIDMTC attainable again for smaller or startup companies looking to (re)invest in retaining talent.

Quebec

New tax holiday for large investment projects: The provincial government introduced a new tax holiday for companies that carry out large investment projects of $100 million to $1 billion per project. This new holiday replaces the previous tax holiday and will:

- allow more sectors to qualify for the holiday
- provide basic assistance of up to 15 per cent of eligible investments for a project in metropolitan areas, and an enhanced incentive of up to 25 per cent of eligible investments in territories that score lower on the economic vitality index
- simplify the application process and allow businesses to apply the tax holiday to all eligible tax expenses

The maximum period to benefit from the tax holiday is 10 years, divided into 10 equal parts. The new measure is effective March 22, 2023, and businesses will have until Dec. 31, 2029, to submit their projects.

Tax credit for the production of multimedia titles: To support businesses in the digital creativity sector, the Quebec government proposed to improve the existing tax credit for eligible multimedia productions by:

- expanding the scope of qualified labour to all services rendered in Quebec to produce an eligible project and
- increasing the cap on labour expenditures from 10 per cent to 60 per cent

In addition, due to the enactment of the Charter of the French Language (la Charte de la langue française) in July, applicants of the e-business tax credit and/or the production of multimedia titles tax credits must submit their applications in French and communicate with the reviewers in French.

Personal income tax rate reduction: The Quebec government reduced the personal income tax rate by one per cent in the bottom two tax brackets. In addition, the conversion rate for personal tax credits is also being reduced by one per cent.

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