OSLER

Federal budget briefing 2024

APRIL 16, 2024 38 MIN READ

Related Expertise

- Indirect Tax
- International Tax
- Private Client
- Private Client Taxation
- Tax
- Tax Advisory Services
- Tax Disputes
- Tax: M&A, Reorganizations and Restructuring Transactions
- Transfer Pricing

The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, tabled the Liberal government's eighth budget on April 16, 2024. Budget 2024 includes a proposal to increase the capital gains inclusion rate for corporations and certain individuals, new reporting obligations for crypto assets, further details about various clean energy initiatives, and amendments to the CRA's audit powers. Budget 2024 also provides general economic and fiscal information and projections, as well as updates on some previously announced tax measures and international tax reform under Pillar One and Pillar Two.

Budget 2024 did not provide any updates on the second package of anti-hybrid rules and amendments to Canada's transfer pricing regime following the consultation paper released in June 2023. It confirmed the government's intention to proceed with amendments relating to the transfer pricing consultation, as well as the numerous significant tax measures that are currently being considered by Parliament as Bill C-59. Bill C-59 has received second reading and is now before the Finance Committee of the House of Commons. Tax measures in Bill C-59 include amendments to the general anti-avoidance rule (GAAR), implementing legislation for the excessive interest and financing expenses limitation (EIFEL), some of the clean energy measures, the first package of anti-hybrid rules, the Canadian digital services tax (DST) and a share buyback tax (for further details on Bill C-59, please see our earlier Update).

In this briefing

The following areas will be covered in this budget briefing:

- Report from Osler Special Advisor Stephen Poloz, former Governor of the Bank of Canada
  - Federal budget 2024: Moving the needle, but respecting the limits
- Business income tax measures
  - Capital gains inclusion rate increase
  - Clean energy measures
  - CRA information requests
  - Avoidance of tax debts
  - Qualified investments for registered plans
  - Bankruptcy and debt forgiveness rules
  - Synthetic equity arrangements
  - Mutual fund corporations
  - Reportable and notifiable transactions penalty
  - SR&ED and patent box consultations
  - Purpose-built rental housing
  - Accelerated CCA for certain classes
  - Extension of mineral exploration tax credit for flow-through share investors
  - Pension fund consultation
  - Taxing vacant land
- International tax measures
  - Update on Pillar One and Pillar Two
  - Tax reporting of cryptoassets and the Common Reporting Standard
  - Withholding on services
- Personal income tax measures
  - Lifetime capital gains exemption increase
  - Alternative minimum tax
  - Employee ownership trusts
  - Canadian entrepreneurs' incentive
  - Home buyers' plan
- Other measures
  - Increased funds to the Canada Revenue Agency
  - Confirmation of intention to proceed

Report from Osler Special Advisor Stephen Poloz, former Governor of the Bank of Canada

Federal budget 2024: Moving the needle, but respecting the limits

A tradition that began when Paul Martin was Finance Minister continued this year — namely, "under-promise and over-deliver". It was under Martin that federal budgets began to be built

not on a rosy economic forecast developed by government officials, but rather on a consensus forecast from private sector economists. A cautious group, the consensus has a tendency to underestimate Canada's economic performance. This has been especially true in the budgets tabled during and after the pandemic.

As a result, at budget time governments usually discover that they have higher fiscal revenues than had been built into the forecast, and therefore a fiscal deficit that is lower than forecast. This time, prior to Budget 2024, the widely touted projected deficit of $40 billion for fiscal 2023–24 (the year just ended on March 31) would have been $36.7 billion, a windfall of $3.4 billion. For fiscal 2024–25, the windfall prior to Budget 2024 relative to last fall's expectations was $3.9 billion, and in 2026 and 2027 it is nearly $7 billion. These positive results are being driven by unexpectedly strong immigration levels — most baseline forecasts would have assumed steady population growth of around 1% per year, but in the past year a surge in immigration has taken population growth above 3%. This delivers GDP growth and government revenue growth, despite the fact that consumption spending per household and business investment have been declining, just like in a recession. In other words, population growth is masking recession-like conditions.

This extra growth in the economy and fiscal revenues has given the government wiggle room to introduce some new initiatives while remaining within its "fiscal anchor". That anchor consists of keeping the deficit for this past fiscal year under $40.1 billion, keeping the debt/GDP ratio on a declining trend, and keeping deficits below 1% of GDP from 2026–27 onward. Extra spending announced during the pre-budget roadshow and in the budget itself used up all of this room to maneuver, and more, necessitating some tax increases to square the circle.

Accordingly, the projection of a $40-billion deficit for the fiscal year just ended fell to $36.7 billion, but new initiatives since the Fall Economic Statement take it back up to $40 billion. Another $40-billion deficit is on tap for the current fiscal year, but then the declines set in. It is worth noting that, these days, even $40 billion constitutes only 1.4% of Canada's GDP, so the federal debt/GDP ratio is on a (barely perceptible) downward trend, moving from 42% this year to 38% by fiscal 2028–29. By all counts, this is a minimalist version of a fiscal anchor, for it leaves the debt/GDP ratio nearly 10% above where it was pre-pandemic. The cost of carrying this debt load amounts to about 1.8% of GDP for the foreseeable future; for comparison, prior to 2015 those costs were lower, but only modestly so, at 1.3–1.5% of GDP.

The government has been criticized widely for contributing to the inflation pressures that the Bank of Canada has been wrestling with. Given that fiscal policy has remained stimulative throughout the post-pandemic period, despite a robust economic recovery and low unemployment, this argument is undeniable, with the implication that a more conservative fiscal profile would have meant a lower peak in interest rates. However, it would be difficult to argue that the Budget 2024 package will add to those inflation pressures. Indeed, the government's housing initiatives and its cap on immigration are aimed at reducing inflation pressures coming from housing and rents which, by the way, are really the only important sources of inflation pressure remaining in the economy.

It is worth looking back to 2015 to get a sense of how the structure of the economy has changed under the Liberal government. Back then, federal government spending represented about 13% of Canada's economy. Today, that figure is 15.6%, and it is projected to remain in the range of 15.5–16.0% for the coming years. What this means is that the cumulative impact of the government's policy changes since 2015 has been a permanent increase in government spending equal to about 2.5% of GDP. Accordingly, the share of the economy provided by the private sector must shrink by about the same amount in order for the economy to remain within its capacity. Lower private sector investment in new capacity is the main way in which this structural adjustment is taking place, with the attendant consequences for private sector productivity which has been much discussed lately.

This is not to say that an economy with larger government participation in the economy cannot enjoy good productivity growth. For evidence, simply note that the U.S. has a far larger government deficit than here in Canada, and is seeing a productivity boom at the same time. Productivity outcomes depend on a wide range of factors, including burdensome regulatory processes. As an illustration, 12 years of investment in the Trans-Mountain pipeline have created negative productivity growth, but productivity in Canada will pick up as soon as oil begins to flow through it in the next few months. In the U.S., a wide range of incentives are in place to encourage private sector investment, and they are working — and the productivity increase is the result. Budget 2024 contains numerous initiatives designed to boost business investment and productivity. These will need to be judged in the fullness of time.

Some will lament the need to raise taxes, for higher taxes arguably frustrate economic growth and productivity. However, this government has made some permanent changes that will cost money forever, including higher payments for health care and elements of dental care and pharmacare. If a society chooses to provide a richer public service offering, such as having a better equipped military, a permanent increase in a tax line is generally necessary to cover it. No other route is fiscally sustainable. Objectively, tapping the high end of the income distribution to achieve higher revenues is preferable in the current context, because rising income inequality is perhaps the most pressing challenge the world faces today. As the digitalization of businesses and the deployment of AI progress, these income inequality stresses, and the associated discontent running through the citizenry, will continue to increase. Historically, income inequality stresses have led to major economic and political convulsions, which are worth avoiding. U.S. President Biden was elected on a promise to address the same problem in the U.S., but has not managed to do so, for political reasons.

The bottom line? Budget 2024 will be seen by many as highly political, but at least it addresses a number of economic issues worth tackling. It also respects the fiscal guardrails, minimalist as they may be, that economists have been widely advocating. What remains to be seen is how these ideas translate into actual concrete policies — and many of them will be slow to bear fruit.

Business income tax measures

Capital gains inclusion rate increase

Budget 2024 proposes to increase the capital gains inclusion rate from one half (50%) to two thirds (66 2/3%) for corporations and trusts.

The rate for individuals (including capital gains realized indirectly through a partnership or trust) will remain 50% for the first $250,000 of capital gains in a taxation year (net of capital losses, including those carried forward or back from other taxation years, and certain specified capital gains, including those in respect of which the lifetime capital gains exemption is claimed — which, as discussed below, Budget 2024 proposes to increase). Capital gains realized by individuals in excess of $250,000, net of the amounts listed above, will be subject to the 66 2/3% inclusion rate.

Net capital losses from prior years can be carried forward but will be adjusted to reflect the new inclusion rate. For example, if a corporation incurs a $90-million capital loss in 2022, under the current inclusion rate it can carry forward $45 million of net capital losses, but under the proposed inclusion rate it will be allowed to carry forward $60 million of net capital losses so as to fully offset a $90-million capital gain incurred once the higher inclusion rate is effective.

In announcing this change, Budget 2024 notes that "[f]or 99.87 per cent of Canadians, personal income taxes on capital gains will not increase" because "[n]ext year, 28.5 million Canadians are not expected to have any capital gains income, and 3 million are expected to earn capital gains below the $250,000 annual threshold. Only 0.13 per cent of Canadians with an average income of $1.4 million are expected to pay more personal income tax on their capital gains in any given year." A backgrounder released with Budget 2024 also states that "[a]bout 12 per cent of Canada's corporations would face the higher inclusion rate on their capital gains" and that "corporations in most other countries, including the United States, pay corporate income tax on 100 per cent of their capital gains."

The employee stock options rules will be adjusted to reflect the new capital gains inclusion rate. Claimants will generally only receive a one-third deduction of the stock option taxable benefit, but can still receive a one-half deduction of the taxable benefit up to the $250,000 limit (combined with any capital gains).

The changes to the capital gains inclusion rate are proposed to apply to capital gains realized on or after June 25, 2024. The $250,000 threshold for individuals applies on an annual basis and will not be prorated for 2024.

This measure is forecasted to increase federal revenues by $19.4 billion over five years starting in 2024–25, and to increase provincial and territorial revenues by up to approximately $11.64 billion.

Clean energy measures

Budget 2024 includes updates and announcements in respect of the following clean energy-related tax measures, the first three of which were all previously addressed in Budget 2023 and the 2023 Fall Economic Statement:

- Clean Electricity investment tax credit
- Clean Technology Manufacturing investment tax credit
- Clean Hydrogen investment tax credit
- EV Supply Chain investment tax credit (newly proposed)

See our separate Update on these proposals, providing a more detailed discussion of their content and implications.

CRA information requests

Budget 2024 proposes a number of legislative amendments in respect of the Canada Revenue Agency (CRA)'s audit powers. These proposals follow a recent expansion of the CRA's general audit power under section 231.1 of the *Income Tax Act* (Canada) (ITA) and successive investments in audit and enforcement activities over the past decade.

Compliance orders – penalty

Budget 2024 proposes to impose a penalty where the CRA is successful in obtaining a compliance order under subsection 231.7(6). In that case, a penalty of 10% of the "aggregate amount of tax payable by the taxpayer under the Act for each taxation year of the taxpayer in respect of which the order relates" can be imposed if there is more than $50,000 of tax owing in any relevant taxation year. This penalty can be assessed "at any time".

Budget 2024 states that the purpose of this new penalty is to “create an incentive for taxpayers to comply with the original request for information or assistance.” If implemented in its current form, this new penalty creates significant uncertainty for taxpayers, given that the final determination of the aggregate tax payable by a taxpayer can take years, and sometimes decades, to finalize.

Moreover, the penalty is apparently not impacted by whether (or to what extent) the taxpayer ultimately complies with the compliance order or whether the information sought by way of the compliance order ultimately resulted in the assessment (or not) of incremental taxes. It therefore is likely to result in an increased compliance burden for taxpayers. The proposed notice of non-compliance rules would allow the CRA to impose immediate consequences if a taxpayer objects to providing certain requested information or to the timeline within which it has been requested, placing the burden on the taxpayer to demonstrate that it did everything reasonably necessary to comply or that the notice is unreasonable. As a result, the penalty may lead the CRA to be more aggressive in issuing overly broad and potentially unreasonable requests for information or assistance.

A related potential issue is that the penalty may discourage taxpayers from advancing legitimate challenges to the scope of the CRA’s demands, even where the CRA’s request is unreasonable and there is a high likelihood that a court would deny a request for a compliance order. If, as suggested by Budget 2024, one of the concerns is that “the use of compliance orders has generally not been effective in compelling compliance” due to courts not imposing material financial costs on taxpayers that fail to comply with such orders, one would think that the better way to deal with this issue is to impose the penalty only where the CRA obtains a compliance order and the taxpayer fails to comply, rather than permitting a penalty in every case where the CRA obtains a compliance order (and the tax payable threshold has been exceeded).

Notice of non-compliance

The proposed amendments also give the CRA the ability to issue a “notice of non-compliance” to a person that, in its view, has not complied (in full or in part) with a requirement to provide information or assistance under section 231.1 or a notice under subsection 231.2(1) or 231.6(2). The proposed consequences of receiving a “notice of non-compliance” are significant and include the potential imposition of penalties and the suspension of the normal reassessment period while the notice of non-compliance is outstanding (which, for these purposes, are until the person has complied or demonstrated that they have done everything reasonably necessary to comply with each requirement or notice that is the subject of the notice of non-compliance).

The proposed legislation provides a process for administrative review by the Minister of National Revenue of a notice of non-compliance (with the ability for the Minister to confirm, vacate or vary the notice), as well as the ability to seek judicial review of the Minister’s decision.

The rule suspending the normal reassessment period while a notice of non-compliance is outstanding also provides for the suspension of the normal reassessment period until the final disposition of an application for judicial review of the notice, even if ultimately vacated.

A penalty of $50 per day, to a maximum of $25,000 (500 days), will apply while a notice of non-compliance is outstanding. This penalty can be assessed “at any time”.

Suspension of the normal reassessment period and other changes

The proposed amendments augment the circumstances in which the normal reassessment period of a taxpayer is suspended. This suspension will occur where

- as noted above, a notice of non-compliance of the taxpayer (or a person that does not deal at arm's length with the taxpayer) is outstanding, even if a judge subsequently vacates the notice
- the taxpayer (or a person that does not deal at arm's length with the taxpayer) seeks judicial review of any requirement or notice relating to audit or enforcement activities by the CRA under sections 231.1, 231.2, 231.6 and 231.7

Budget 2024 also expands the circumstances in which the CRA may seek compliance orders, adding foreign-based information requirements, and empowers the CRA to require that audit information or documents be provided under oath or affirmation (whether provided orally or in writing).

Similar changes will be made to other statutes administered by the CRA, including the *Excise Tax Act*.

Avoidance of tax debts

Section 160 is a tax debt collection provision applicable to persons who receive a transfer of property from a non-arm's length person for consideration that is less than the fair market value (FMV) of the transferred property. In these circumstances, section 160 makes the transferee jointly liable for the transferor's tax debts that arise before the end of the tax year in which the transfer was made, with such liability being limited to the lesser of (1) the deficiency in the consideration given by the transferee and (2) the amount of the transferor's tax debt. The government introduced significant amendments to section 160 in 2022 to expand its scope and introduce a new third-party civil penalty regime for section 160 planning activity.

Budget 2024 proposes further amendments to section 160 that will apply when a tax debtor transfers property to another person, then, as part of the same transaction or series of transactions, there is a separate transfer of property from another person to a transferee that does not act at arm's length to the tax debtor. One of the purposes of the transaction or series has to be to avoid joint and several (or solidary) liability. In such circumstances, the property transferred by the tax debtor to another person is deemed to have been transferred to the transferee. The existing penalty is also extended to apply to such circumstances.

In response to case law — presumably referring to the Federal Court of Appeal's 2023 decision in *Canada v. Microbjo Properties Inc.* — Budget 2024 further proposes that taxpayers who engage in tax debt avoidance planning, as defined in section 160.01, will be liable for the full amount of the avoided tax debt even if a portion of that tax debt was retained by a planner that helped the tax debtor implement its tax debt avoidance planning.

The effective date of these changes will be April 16, 2024.

Similar changes will be made to other statutes administered by the CRA, including the *Excise Tax Act*.

Qualified investments for registered plans

Registered plans are subject to a number of punitive tax consequences if they acquire a property that is not a qualified investment.

Budget 2024 solicits from stakeholders suggestions for improving and modernizing the rules as to what counts as a qualified investment for the following registered plans: registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs), tax-free savings accounts, registered education savings plans, registered disability savings plans, first home savings accounts and deferred profit sharing plans.

The government notes that the qualified investment rules have been incrementally amended over decades, and as a result they can be inconsistent or difficult to understand in some cases. Many investors and investment professionals also find the rules overly restrictive.

Budget 2024 invites stakeholder input by July 15, 2024, on how to modernize the qualified investment rules, and mentions that the specific issues under consideration include

- potential changes to the qualified investment rules to promote an increase in Canadian-based investments
- whether crypto-backed assets are appropriate as qualified investments for registered savings plans
- the appropriateness of the conditions that certain pooled investment products must meet to be a qualified investment, including the formal registration process for registered investments
- potential harmonization across all registered savings plans of the rules relating to investments in small businesses
- whether annuities that are qualified investments only for RRSPs, RRIFs and RDSPs should retain that status

It is notable that the list mentions “crypto-backed” assets, which suggests the government is seeking comments on the appropriateness of registered plans holding, for example, investment funds that hold cryptocurrency rather than a direct investment in the cryptocurrency. Moreover, it is understood that the government may be considering tightening rather than liberalizing the eligibility of such indirect investments by registered plans in cryptoassets.

Bankruptcy and debt forgiveness rules

The debt forgiveness rules of the ITA generally provide that losses and other tax attributes that arise from expenditures for which a taxpayer does not ultimately bear the cost should not be recognized. Where a commercial debt obligation is settled or extinguished for less than its principal amount, the “forgiven amount” applies to reduce various tax attributes with any excess unapplied forgiven amount potentially resulting in an income inclusion. Bankrupt taxpayers are effectively excluded from the application of these rules. However, bankrupt corporations are subject to a separate loss restriction rule that applies to extinguish their losses once they have received an absolute order of discharge.

The CRA has long been concerned with what it considers to be the misapplication of the bankruptcy exception, arguing that some corporations temporarily enter into bankruptcy, settle their commercial debt obligations without consequence under the debt forgiveness

rules, and then reverse their bankruptcy (with a further consequence that the loss restriction rule also does not apply). Such transactions have been designated as notifiable transactions for purposes of the notifiable transaction reporting regime of the ITA (for more information, see our Update dated November 3, 2023).

Budget 2024 proposes a specific legislative measure to deal with these concerns, indicating that although offending transactions could be challenged under the existing rules of the ITA, such challenges are time-consuming and costly. The exclusion from the application of the debt forgiveness rules will no longer apply to bankrupt corporations, which will instead be fully subject to the regime in the manner of any other corporation. The loss restriction rule for bankrupt corporations is also eliminated. These new rules would apply in the case of bankruptcy proceedings that are commenced on or after April 16, 2024.

Synthetic equity arrangements

Budget 2024 proposes to eliminate two exceptions to the application of the “synthetic equity arrangement” rules.

The synthetic equity arrangement rules deny the dividends-received deduction normally available to corporate taxpayers upon receipt of dividends from Canadian resident corporations when the taxpayer has entered into a synthetic equity arrangement, which includes the transfer to another person of all or substantially all of the risk of loss and opportunity for gain or profit from the share.

The synthetic equity arrangement rules contain certain carve-outs, including where the taxpayer can establish that no “tax-indifferent investor” — meaning, generally, a non-resident or tax-exempt entity or certain entities owned by such persons — has all or substantially all of the economic exposure in respect of the share at any time during the term of the arrangement. There is also a carve-out for certain synthetic equity arrangements traded on derivatives exchanges.

Without providing any explanation other than simplification of the rules, Budget 2024 proposes to remove both the tax-indifferent investor carve-out and the exchange traded carve-out. Budget 2024 does not forecast any new tax revenue expected to be raised by this proposed measure.

Mutual fund corporations

Budget 2024 proposes to restrict the eligibility conditions for “mutual fund corporation” status.

An investment fund organized as a corporation that meets the “mutual fund corporation” conditions in the ITA and the shareholders of such a corporation are eligible for a number of tax benefits in the ITA, including some ability for the mutual fund corporation to shift tax liability for the corporation’s net income to its investors and the preservation of the tax character of fund-level capital gains and dividends from taxable Canadian corporations when paid to the investors.

A condition for such status is that the corporation be a “public corporation”, which status can be obtained by having a class of shares listed on a designated stock exchange in Canada. This condition is currently met if a class of shares of a corporation is listed on such an exchange. The government observes that it is possible for the listing requirement to be met while a class of unlisted shares of the corporation that provide control and most of the

economic returns from the mutual fund corporation are held by one or more persons or partnerships that do not deal with each other at arm's length.

Budget 2024 proposes to deny mutual fund corporation status to a corporation that is controlled by or for the benefit of a corporate group. More specifically, under draft legislation included with the budget, a corporation would be deemed not be a mutual fund corporation if two conditions are met:

1. the corporation is controlled by (or for the benefit of) one or more "specified persons" (meaning a person or partnership, or any combination of persons or partnerships that do not deal with each other at arm's length)
2. specified persons own more than 10% by value of all the issued and outstanding shares of the corporation

Under a "seed money" exception, the proposed rule denying mutual fund corporation status would not apply at any time in the first two years after incorporation if, at that time, specified persons do not hold shares of the corporation with a fair market value greater than $5 million.

Reportable and notifiable transactions penalty

The reportable and notifiable transaction rules include a penalty for failure to disclose such transactions where required. Budget 2024 proposes to amend section 238, which provides that it is an offence to fail to file or make a return as required, to exclude information returns in respect of reportable and notifiable transactions, effective as of June 22, 2023.

SR&ED and patent box consultations

The government opened two consultations earlier this year on a potential patent box regime and on Canada's existing Scientific Research and Experimental Development (SR&ED) program.

Budget 2024 announces a second phase of consultations on the SR&ED program that will set out "more specific policy parameters" and seek input from "businesses and industry on specific and technical reforms", including the possibility of Canadian public companies being eligible for the enhanced SR&ED credit. It also proposes to provide $600 million of additional funding for enhancing the SR&ED program over four years, beginning in 2025–2026, with the use of such funds to be informed by the second phase on consultations.

In respect of the potential patent box regime, Budget 2024 only states that the government is still reviewing the submissions received in response to the consultation and that the submissions will inform their future decisions.

Purpose-built rental housing

Two measures relate to purpose-built rental housing. First, as announced prior to Budget Day, the capital cost allowance rate (CCA) is increased from 4% to 10% for qualifying new rental properties (including conversion of non-residential real estate). Construction must begin between April 16, 2024, and December 31, 2031, and the property must be available for use before 2036. This measure is in addition to the prior GST rebate provided for qualifying rental properties, which was expanded in Budget 2024 to certain student residences, and the Accelerated Investment Incentive, which suspends the half-year rule until

2028 for eligible property.

Second, for purposes of the EIFEL rules, arm's length financing for purpose-built rental housing incurred before January 1, 2036, will benefit from an exemption (similar to the existing exemption for certain public-private partnership projects). The exemption is available for taxation years that begin on or after October 1, 2023.

Accelerated CCA for certain classes

Budget 2024 proposes to increase the CCA rate for certain "productivity-enhancing assets" to 100% in the first year, as long as it is claimed in the year during which the property becomes available for use. The property must be acquired after April 16, 2024, and be available for use before 2027.

The following classes qualify for the accelerated CCA:

- Class 44 (patents and related rights): currently 25%
- Class 46 (data network infrastructure equipment): currently 30%
- Class 50 (general-purpose electronic data-processing equipment and systems software): currently 55%

Property in the above classes must become available for use during 2027 to be eligible for the Accelerated Investment Incentive. If the property was used or acquired for use prior to its acquisition by the taxpayer, the accelerated CCA will only be available if the prior owners were not the taxpayer or a non-arm's length person and if the property was not transferred to the taxpayer by means of a tax-deferred rollover. The accelerated CCA will be prorated for short taxation years and will not be available for the taxation year that follows the short taxation year.

Extension of mineral exploration tax credit for flow-through share investors

Resource companies can renounce or "flow-through" certain expenses related to Canadian exploration activities to their investors via flow-through shares. The investors can then deduct those expenses in computing their own taxable income. In addition, investors in mining flow-through shares can take advantage of the mineral exploration tax credit, which provides an additional deduction of 15% of mineral exploration expenses incurred in Canada that are flowed through to investors.

Currently, the mining exploration tax credit no longer applies to flow-through share agreements entered into after March 31, 2024. Budget 2024 proposes to extend the eligibility for the mining exploration tax credit for an additional year so that it applies to flow-through share agreements entered into on or before March 31, 2025.

Pension fund consultation

Budget 2024 announces that the government, working with pension plans, will create a working group, led by Stephen Poloz (former Governor of the Bank of Canada) and supported by the Deputy Prime Minister and Minister of Finance, to explore how to catalyze greater domestic investment opportunities for Canadian pension funds. The working group will be tasked with identifying priority investment opportunities that are intended to meet Canadian pension plans' fiduciary and actuarial responsibilities, spur innovation and drive

economic growth. Its efforts will focus on areas such as digital infrastructure and AI investment; physical infrastructure; airport facilities; venture capital investments; building more homes, including on public lands; and the removal of the 30 per cent rule for domestic investments. This announcement comes after months of press coverage on the issue as well as prior statements from the government regarding pension plans being encouraged to invest more domestically and the application of the 30% rule.

Following up on the 2023 Fall Economic Statement, Budget 2024 also proposes to amend the *Pension Benefits Standards Act, 1985* to enable and require the Office of the Superintendent of Financial Institutions to publicly release information related to the plan investments of large federally regulated pension plans. The information to be disclosed would be set out in regulations and would include the distribution of plan investments by jurisdiction and, within each jurisdiction, by asset class. The government further announced that it will continue to engage with provinces and territories to discuss similar disclosures by Canada's largest pension plans in a simple and uniform format.

Taxing vacant land

Budget 2024 includes a brief announcement that the government is considering imposing a tax on vacant land that is zoned for residential use, and intends to hold a consultation later this year.

International tax measures

Update on Pillar One and Pillar Two

Budget 2024 provides a brief update on Pillar One and Pillar Two, which were approved by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting on October 8, 2021. Pillar One contains a new taxing right for market jurisdictions (where customers are located) to be allocated a share of residual profit of large multinational enterprises that the market jurisdiction can tax under a multilateral convention, and transfer pricing simplification for certain baseline wholesale marketing and distribution activities. Pillar Two contains model rules designed to assist jurisdictions in introducing, on a uniform and coherent basis, a 15% global minimum tax paid by large multinational enterprises.

With respect to Pillar One, Budget 2024 reaffirms the government's commitment to a multilateral approach and readiness to continue working with international partners to finalize the multilateral convention. However, citing the delays in reaching a consensus on the multilateral convention and the existing digital services taxes already in place in seven countries, Budget 2024 reaffirms the federal government's commitment to implement a unilateral digital services tax (DST). Legislation to implement Canada's DST is included in Bill C-59 and, once passed by Parliament, will be payable as of 2024 in respect of revenue earned as of January 1, 2022. The Canadian DST is forecast to raise $5.9 billion of taxes over the first five years. The decision to move forward with the Canadian DST is also aligned with Canada's decision to reject the OECD's one-year extension of the digital services tax moratorium in July 2023.

It remains unfortunate that the federal government continues to advocate for the DST to apply retroactively back to January 1, 2022, particularly in light of Finance Minister Freeland's recent comment before the Finance Committee of the House of Commons that she has "been having some good, collaborative conversations about this with many international partners and specifically with Secretary Janet Yellen, the Secretary of the Treasury" in respect of the DST and Pillar One.

Budget 2024 is silent on Canada's position with respect to the simplified and streamlined approach to pricing certain baseline wholesale marketing and distribution activities that was outlined in the OECD report on Amount B of Pillar One released on February 19, 2024.

With respect to Pillar Two, Budget 2024 reiterates the federal government's plans to move forward with introducing a 15% global minimum tax. The government released draft legislation on August 4, 2023, that sets out two key measures of Pillar Two in Canada: a top-up tax under the income inclusion rule (IIR) and a domestic minimum top-up tax that is intended to be a qualified domestic minimum top-up tax (QDMTT) (see also Osler's submission on the draft legislation). The first two measures are expected to be effective for taxation years beginning on or after December 31, 2023.

Budget 2024 states that the government intends to introduce legislation to Parliament "soon". It is unclear whether revised draft legislation will be released ahead of any implementation bill so that the public can provide further comments and submissions. It is also unclear whether additional draft legislation will be released that addresses the interaction of the proposed global minimum tax legislation with the ITA. No further details were provided regarding when draft legislation to implement the undertaxed profits rule (UTPR), which is expected to be effective for taxation years beginning on or after December 31, 2024, will be released.

The Global Minimum Tax is forecast to raise $6.6 billion of taxes over three years, beginning in 2026–2027.

Tax reporting of cryptoassets and the Common Reporting Standard

Tax reporting of cryptoassets

Budget 2024 introduces a new information reporting regime that will require crypto exchanges, among others, to provide information to the CRA on transactions in cryptoassets of their customers who are resident in Canada or outside Canada.

Over the past decade, the U.S. Foreign Account Tax Compliance Act (FATCA) regime and the OECD's Common Reporting Standard (CRS) have greatly enhanced tax authorities' access to information about their residents' "financial accounts" held through offshore "financial institutions" (which include not only banks, brokerages and custodians but also most investment funds). It is generally understood, however, that those regimes do not require reporting of offshore holdings of cryptoassets (including cryptocurrency, stablecoins and various types of blockchain tokens). In order to address that gap, the OECD in 2022 introduced the Crypto-Asset Reporting Framework (CARF), which contains model rules for countries to adopt to provide for due diligence, reporting and information exchange relating to cryptoassets.

Budget 2024 proposes to implement the CARF under Canadian law, albeit in an enhanced form that will require the reporting to the CRA of cryptoasset transactions of residents as well as non-residents. Beginning in 2026, the proposed rules would impose due diligence and reporting obligations on any "crypto-asset service provider", which generally is a person that

- is a Canadian resident or carries on business in Canada
- provides business services effectuating exchange transactions in cryptoassets

It is expected that this would include crypto exchanges, cryptoasset brokers and dealers and operators of cryptoasset ATMs.

Cryptoasset service providers would be required to report to the CRA identifying information on each of their resident and non-resident customers who are natural persons, including name, address, date of birth, jurisdiction of residence and taxpayer identification number. If a customer is a corporation or other legal entity, the same information would need to be collected and reported for each of the natural persons who exercise control over the entity. It would appear that the types of legal entities that are required to report on their controlling persons are not limited in the same manner as in the CRS; for example, there are no exceptions for active non-financial entities, pension funds and registered charities. Moreover, no mention is made of an exception in the CARF for reporting on controlling persons of a legal entity customer that is an “Active Entity”.

In addition, cryptoasset providers would have to report to CRA, in respect of each customer and in respect of each cryptoasset, the annual value of

- exchanges between the cryptoasset and fiat currencies
- exchanges of the cryptoasset into other cryptoassets
- transfers of the cryptoasset

Where a cryptoasset service provider processes payments on behalf of merchant, the payment by a customer of the service provider made in cryptoassets to acquire over $50,000 worth of goods or services from the merchant would be a reportable transfer of the cryptoasset.

Unlike the CRS, the proposed CARF rules do not exempt registered plans, pension plans, registered charities and certain other types of “non-reporting financial institutions” or holders of “excluded accounts” from information reporting.

Common Reporting Standard

Budget 2024 also proposes a number of changes to the existing rules in Part XIX of the ITA, which implements the CRS under Canadian law:

- broaden the scope of the types of “financial assets” to which the CRS applies to include specified electronic money products and central bank digital currencies
- amend the CRS to ensure effective coordination between the CRS and the CARF, including by not requiring duplicative reporting under the two regimes
- add to the types of information that have to be reported in respect of financial accounts and account holders
- strengthen the due diligence requirements applicable to reporting financial institutions,
- amend the CRS rules as they apply to labour-sponsored venture capital corporations (LSVCCs)
- “clarify” that an anti-abuse rule in the CRS rules applies when an individual or any entity enters into an arrangement or engages in a practice, if it can reasonably be considered that the primary purpose is to avoid a reporting obligation of any entity under the CRS (the rule could have previously been read as only applying where such individual or entity was the same person whose obligation was being avoided)

The CARF and CRS measures would apply beginning in 2026, such that the first reporting under the new/expanded rules would be due in 2027.

OSLER

Withholding on services

Currently, a 15% withholding obligation is imposed on payments made to non-residents of Canada in respect of services provided in Canada (pursuant to Regulation 105 of the *Income Tax Regulations*). The purpose of the withholding, which is an unusual measure in comparison to peer jurisdictions, is to protect Canada's ability to collect any Canadian tax the non-resident might ultimately owe on the payment. Non-residents can apply to the CRA for a waiver of the withholding tax on specific payments that are unlikely to be taxable in Canada (for example, due to an exemption under a tax treaty). In practice, such waivers are sought only exceptionally because the process to do so can be cumbersome. Budget 2024 notes that the economic burden of the withholding tax is often borne contractually by Canadian-resident payors.

Budget 2024 proposes to give the CRA the ability to waive withholding on all payments to a particular non-resident for a specified period on the basis that a tax treaty exemption applies, or the relevant income is exempt because it is from international shipping or operating an aircraft in international traffic. Draft language included in the budget allows the CRA to impose additional conditions but gives no indication of what those conditions might be. The ability to grant such a waiver will be available from the date the measure receives royal assent.

Personal income tax measures

Lifetime capital gains exemption increase

The lifetime capital gains exemption allows taxpayers to realize a certain amount of capital gains "free of tax" on the sale of certain small business corporation shares and farm or fishing property. The exemption is indexed to inflation and is currently $1,016,836 for 2024. Budget 2024 proposes to increase the exemption to $1.25 million for dispositions starting June 25, 2024, with indexing of the quantum of the exemption to resume in 2026.

Alternative minimum tax

The government released draft legislation in August 2023 for the significant changes to the Alternative Minimum Tax (AMT) proposed in Budget 2023. The AMT is a separate tax calculation that allows fewer deductions, exemptions and tax credits than are available under regular income tax rules. Currently, it has a flat 15% tax rate with a standard $40,000 exemption instead of the ordinary progressive rate structure. Taxpayers must pay either the AMT or the ordinary income tax, whichever is higher.

Budget 2024 proposes further changes to the August draft legislation. The additional changes would

- allow 80% of charitable donations to be claimed rather than the proposed 50%
- allow the deduction in full of the Guaranteed Income Supplement, social assistance and workers' compensation payments
- allow the federal logging tax credit to be fully claimed
- fully exempt Employee Ownership Trusts from the AMT
- make certain credits disallowed under the AMT — federal political contribution tax credit, investment tax credits and labour-sponsored funds tax credit — eligible for the AMT carry-

forward

- fully exempt certain trusts relating to Indigenous groups, communities and peoples that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*

The effective date for the proposed further amendments is January 1, 2024, the same effective date as the original AMT amendments.

Employee ownership trusts

Bill C-59, which is currently before Parliament, includes amendments to introduce the employee ownership trust (EOT) tax measure first proposed in Budget 2022. An EOT is an arrangement where a trust holds shares of a corporation for the benefit of the corporation's employees. EOTs are intended to provide an alternative business succession method for retiring business owners.

Budget 2024 provides further details on the conditions required to benefit from a proposed exemption from taxation for the first $10 million in capital gains realized on the sale of a business to an EOT. This exemption was announced in the 2023 Fall Economic Statement but was not included in Bill C-59.

The $10-million exemption will be available to individuals other than trusts in respect of shares sold to an EOT if

- the shares are not of a professional corporation and are sold by the individual (or a personal trust or partnership of which the individual is a beneficiary or member, respectively)
- the transaction is a qualifying business transfer (within the definition of the EOT rules in Bill C-59) and the trust buying the shares is not already an EOT (or a similar trust — namely, with employee beneficiaries)
- during the 24 months before the qualifying business transfer, the shares were only owned by the individual claiming the exemption (or a related person or a partnership in which the individual was a member) and over half of the corporation's assets are used principally in an active business (based on their FMV)
- the individual (or their spouse or common-law partner) was "actively engaged in the qualifying business on a regular and continuous basis" for any 24-month (minimum) period before the transfer
- at least 90% of the beneficiaries immediately after the transfer are resident in Canada

Where a qualifying business transfer involves multiple individuals disposing of their shares to an EOT, the individuals must decide how to allocate the $10-million exemption between themselves.

The following events will either disqualify an individual from being able to claim the exemption (including a retroactive denial), if they occur within 36 months of the qualifying business transfer, or will cause the EOT to be deemed to realize a capital gain in the amount of the exempt capital gains, if they occur after 36 months:

- The EOT loses its EOT status.
- Less than half of the values of the qualifying business's shares derives from assets used principally in an active business for two taxation years in a row.

Canadian entrepreneurs' incentive

Budget 2024 proposes to reduce the capital gains inclusion rate to one half the prevailing ordinary inclusion rate on dispositions of qualifying shares by eligible individuals up to a lifetime individual limit of $2 million in capital gains. The $2-million limit will be phased in between 2025 and 2034 in $200,000 increments. This incentive applies in addition to any available capital gains exemption.

To be qualifying shares, the following conditions must be met:

- The shares must be of a small business corporation at the time of the sale owned by the individual claiming the incentive.
- The small business corporation must have been a Canadian-controlled private corporation (CCPC) for the 24 months prior to the sale and over 50% of the corporation's assets (as measured by FMV) were either used principally in an active business carried on primarily in Canada by the CCPC (or a related corporation) or were certain shares or debts of a connected corporation (or some combination of these two categories of assets).
- The individual claiming the incentive
  - is a founding investor when the corporation was first capitalized and held the shares for at least five years before the sale
  - at all times from the initial share subscription to the sale, directly owned more than 10% by FMV and votes of all issued and outstanding shares
  - was "actively engaged on a regular, continuous, and substantial basis in the activities of the business" during the five years prior to the sale
- The shares do not represent a direct or indirect interest in
  - a professional corporation
  - a corporation where the principal asset is the reputation or skill of any employee(s)
  - a corporation that carries on specified types of businesses, including ones that operate in the financial, insurance, real estate, food and accommodation, arts, recreation or entertainment sectors, or that provide consulting or personal care services
- The sale of the shares must take place at FMV.

The incentive is available for dispositions that occur on or after January 1, 2025.

Home buyers' plan

Currently, the Home Buyers' Plan (HBP) allows first-time home buyers to withdraw up to $35,000 from their Registered Retirement Savings Plan (RRSP) to purchase a home without having to pay tax on the withdrawn amount. Budget 2024 proposes to increase the HBP limit to $60,000 per first-time home buyer. The limit was last increased in Budget 2019, from $25,000 to $35,000. The changes will apply to HBP withdrawals made after April 16, 2024. Individuals who make a withdrawal between January 1, 2022, and December 31, 2025, will also have five years to begin repaying the amount into their RRSP — an increase of three years — and will still have 15 years to complete the full repayment.

Other measures

Increased funds to the Canada Revenue Agency

Budget 2024 proposes several targeted funding increases for the CRA, including

- $73.1 million over five years, starting in 2024–25, and $14.7 million per year ongoing, to address tax non-compliance in real estate transactions
- up to $90.9 million over 11 years, starting in 2024–25, to administer the new major economic investment tax credits
- $336 million over two years, starting in 2024–25, to maintain the CRA's call centre resources and improve the efficiency of its call centres
- $51.6 million over five years, starting in 2024–25, and $7.3 million per year ongoing, to implement and administer the cryptoasset transactions reporting and changes to the CRS

Confirmation of intention to proceed

Budget 2024 reaffirms the federal government's intention to proceed with numerous previously announced tax measures, including the following (many of which are currently before Parliament as part of Bill C-59):

- legislative proposals released on December 20, 2023, including with respect to the following measures:
  - the Clean Hydrogen investment tax credit
  - the Clean Technology Manufacturing investment tax credit
  - concessional loans
  - international shipping
- legislative and regulatory proposals announced in the 2023 Fall Economic Statement, including with respect to the following measures:
  - proposed expansion of eligibility for the Clean Technology and Clean Electricity investments tax credits to support generation of electricity and heat from waste biomass
  - proposals relating to the GST/HST joint venture election rules
- legislative and regulatory amendments to implement the enhanced (100-percent) GST rental rebate for purpose-built rental housing announced on September 14, 2023
- legislative proposals released on August 4, 2023, including with respect to the following measures:
  - the Carbon Capture, Utilization, and Storage investment tax credit
  - the Clean Technology investment tax credit
  - labour requirements related to certain investment tax credits
  - enhancing the reduced tax rates for zero-emission technology manufacturers
  - flow-through shares and the Critical Mineral Exploration tax credit – lithium from brines
  - employee ownership trusts

OSLER

    - retirement compensation arrangements
    - intergenerational business transfers
    - alternative minimum tax
    - share buyback tax
    - amendments to the general anti-avoidance rule
    - global minimum tax (Pillar Two)
    - digital services tax
    - technical amendments to GST/HST rules for financial institutions
    - GST/HST treatment of payment card clearing services
    - excessive interest and financing expenses limitations (EIFEL)
    - revised luxury tax draft regulations to provide greater clarity on the tax treatment of luxury items
- legislative amendments to implement changes discussed in the transfer pricing consultation paper released on June 6, 2023
- tax measures announced in Budget 2023, including the dividend received deduction by financial institutions
- legislative proposals released on August 9, 2022, including with respect to the following measures:
    - substantive Canadian-controlled private corporations
    - other technical amendments to the *Income Tax Act* and *Income Tax Regulations* proposed in the August 9 release
- legislative proposals released on April 29, 2022, with respect to hybrid mismatch arrangements
- other technical amendments as required to improve the certainty and integrity of the tax system

If you have any questions or require additional analysis on Budget 2024, please contact any member of our National Tax Department. We invite you to register for our seminar on Thursday, April 18 for further analysis of Budget 2024.

Let us help you stay informed

Subscribe now to stay up to date on the latest changes in taxation and other areas of relevance to your business.

Subscribe now