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On March 28, 2023, the Deputy Prime Minister and Finance Minister, the Honourable Chrystia Freeland, presented "Budget 2023 – A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future", to the House of Commons.

No changes were made to personal or corporate tax rates or to the inclusion rate on taxable capital gains. Some highlights include the following:

A. Personal Measures
   - Modifications to the alternative minimum tax regime focused on high-income individuals.
   - A one-time grocery rebate equal to two quarterly GST/HST credit payments.
   - Additional flexibility and possibilities with Registered Disability and Registered Education Savings Plans were introduced.

B. Business Measures
   - Modifications to the intergenerational business transfer rules to set requirements for activity by the children in the business and the transfer of control, equity ownership and management from the parents to the children.
   - Introduction of the employee ownership trust structure to provide a mechanism for business owners to transfer ownership in their private corporations to employee groups.
   - Several investment tax credits and other incentives were introduced or modified to encourage investment in clean energy.

C. Other Measures
   - New income-tested dental care program for uninsured Canadians.

D. Previously Announced Measures
   - Intention to proceed with previously announced measures, including those related to excessive interest and financing expenses limitations; reporting rules for digital platform operators; extension of the residential property flipping rule to assignment sales; substantive Canadian-controlled private corporations; the mandatory disclosure rules; the electronic filing and certification of tax and information returns; and GST/HST changes in respect of cryptoasset mining.

THE NUMBERS

The Government's fiscal position includes the following projected surplus (deficit):

Year	Surplus/(Deficit) billions
2022–2023	**($43.0)**
2023–2024	**($40.1)**
2024–2025	**($35.0)**
2025–2026	**($26.8)**
2026–2027	**($15.8)**
2027–2028	**($14.0)**

A. Personal Measures

Alternative Minimum Tax (AMT) for High-Income Individuals

Individuals will owe AMT if the tax amount calculated under the AMT regime is greater than the tax calculated under the ordinary progressive tax rate regime. Under the current rules, the calculation of AMT allows fewer deductions, exemptions and tax credits than under the ordinary income tax rules and applies a flat 15% tax on income over a standard $40,000 exemption.

Budget 2023 proposes several changes to the AMT calculation. First, the AMT rate is proposed to increase from 15% to 20.5%.

Second, the exemption would increase from $40,000 to the start of the fourth tax bracket (for 2024 this is approximately $173,000). Third, the AMT base would be broadened by further limiting tax preferences (i.e., exemptions, deductions and credits) as follows:

- The capital gains inclusion rate would increase from 80% to 100%.
- 30% of capital gains eligible for the lifetime capital gains exemption would be included.
- Deductions of capital loss carry forwards and allowable business investment losses would apply at a 50% rate.
- 100% of employee stock options benefits would be included.
- 30% of capital gains on donations of publicly listed securities would be included.
- Only 50% of many deductions would be allowed, including the following: employment expenses (other than those incurred to earn commission income); moving expenses; child care expenses; interest and carrying charges incurred to earn income from property; northern residents deduction; and non-capital and limited partnership losses of other years.
- Only 50% of non-refundable tax credits historically allowed for AMT purposes would be allowed.

The ability to recover AMT in the seven subsequent years, to the extent that tax computed under the ordinary progressive tax rate regime exceeds AMT, is not proposed to change.

The proposed changes would come into force for the 2024 personal tax year.

Grocery Rebate

Individuals and families with modest incomes receive the Goods and Services Tax Credit (GSTC). The maximum 2022/2023 GSTC is $467 for a single person, and $612 plus $161 per child for a married or common-law couple. Budget 2023 proposes a one-time payment called the Grocery Rebate which will equal half of the annual maximum (twice the quarterly payment received in January, 2023) to be paid as soon as possible after the legislation is passed.

Deduction for Tradespeople's Tool Expenses

Under the current law, a tradesperson can claim a deduction of up to $500 of eligible new tools acquired in a taxation year as a condition of employment. Budget 2023 proposes to double the maximum employment deduction for tradespeople's tools from $500 to $1,000, effective for 2023 and subsequent taxation years. As a consequence of this change, extraordinary tool costs that are eligible to be deducted under the apprentice vehicle mechanics' tools deduction would be those costs that exceed the combined amount of the increased deduction for tradespeople's tool expenses ($1,000) and the Canada employment credit ($1,368 in 2023) or 5% of the taxpayer's income earned as an apprentice mechanic, whichever is greater.

Registered Education Savings Plans (RESPs)

Government grants and investment income can be withdrawn from RESPs as an education assistance payment (EAP) when a beneficiary is enrolled in an eligible post-secondary program. These withdrawals are taxable.

Under the current law, beneficiaries that are full-time students cannot withdraw more than $5,000 in EAPs in respect of the first 13 consecutive weeks of enrollment in a 12-month period. For part-time students, the limit is $2,500 per 13-week period. Budget 2023 proposes to increase these limits to $8,000 for full-time students and $4,000 for part-time students.

Budget 2023 also proposes to enable divorced or separated parents to open joint RESPs for one or more of their children or to move an existing joint RESP to another promoter. Under the current law, only spouses or common-law partners can jointly enter into an agreement with an RESP promoter to open an RESP.

These changes would come into force on Budget Day.

Registered Disability Savings Plans (RDSPs)

Where the contractual competence of a person with a disability who is 18 years of age or older is in doubt, the RDSP plan holder must be that person's guardian or legal representative. A temporary measure allowed the person's parent, spouse or common-law partner (a "qualifying family member") to open an RDSP and be the plan holder where the person does not have a legal representative.

Budget 2023 proposes to extend this measure by three years, to December 31, 2026. Budget 2023 also proposes to broaden the definition of qualifying family members to include a brother or sister of the beneficiary who is 18 years of age or older. Qualifying family members who become a plan holder before the end of 2026 could remain the plan holder after 2026.

These proposals would apply as of royal assent of the enacting legislation.

B. Business Measures

Strengthening the Intergenerational Business Transfer Framework

Historically where parents transferred shares of their corporation to a corporation owned by their children, deemed dividends rather than capital gains would arise on the disposition (due to Section 84.1 of the Income Tax Act). In 2021, legislation was passed (Bill C-208) to provide an exception from this deemed dividend treatment to facilitate the transfer of family businesses to the next generation. This exception allowed parents to utilize the lifetime capital gains exemption or simply receive capital gain treatment on the disposition, and enjoy the same tax benefits available on a sale to unrelated third parties.

However, the government was concerned that this exception contained insufficient safeguards and may have provided an inappropriate tax advantage where there was no transfer of a business to the next generation.

More specifically, this exception did not require that:

- the parent cease to control the underlying business of the corporation whose shares are transferred,
- the child(ren) purchasing the shares have any involvement in the business,
- the interest in the purchaser corporation held by the child(ren) continue to have value, or
- the child(ren) retain an interest in the business after the transfer.

Proposed Amendments

Budget 2023 proposes to amend these rules to ensure that they apply only where a genuine intergenerational business transfer (IBT) takes place.

A genuine IBT under the current law would be a transfer of shares of a corporation (the Transferred Corporation) by an individual shareholder (the Transferor) to another corporation (the Purchaser Corporation) where both of the following conditions are satisfied:

1. each share of the Transferred Corporation must be a "qualified small business corporation share" or a "share of the capital stock of a family farm or fishing corporation" (both as defined in the Income Tax Act), at the time of the transfer (in general terms, this requires that all or substantially all of its assets be used in an active business carried on in Canada); and
2. the Purchaser Corporation must be controlled by one or more persons each of whom is an adult child of the Transferor (the meaning of "child" for these purposes would include grandchildren, step-children, children-in-law, nieces and nephews, and grandnieces and grandnephews).

To ensure that only genuine IBTs are excluded from the deemed dividend rules, Budget 2023 proposes additional conditions be added. To provide flexibility, taxpayers who wish to undertake a genuine IBT may choose to rely on one of two transfer options:

1. an immediate business transfer (three-year test) based on arm's length sale terms; or
2. a gradual business transfer (five-to-ten-year test) based on traditional estate freeze characteristics (an estate freeze typically involves a parent crystalizing the value of their economic interest in a corporation into shares that no longer share in growth in the corporate value to allow future growth to accrue to their children while the parent's fixed economic interest is then gradually diminished by the corporation repurchasing the parent's shares).

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

Both the immediate and gradual business transfer options would reflect the hallmarks of a genuine IBT. The chart on the next page outlines the proposed conditions to qualify as a genuine IBT under each option.

Proposed Conditions	Immediate Business Transfer (three-year test)	Gradual Business Transfer (five to ten-year test)
1) Transfer of Control of the Business	Parents immediately and permanently transfer **both legal and factual*** control, including an immediate transfer of a majority of voting shares, and a transfer of the balance of voting shares within 36 months *Factual control means economic and other influence that allows for effective control of a corporation (for example, economic dependence on a person who also acts as the controlling mind)	Parents immediately and permanently transfer **only legal**** control, including an immediate transfer of a majority of voting shares (no transfer of factual control), and a transfer of the balance of voting shares within 36 months **Legal control generally means the right to elect a majority of the directors of a corporation
2) Transfer of Economic Interests in the Business	Parents immediately transfer a majority of the common growth shares, and transfer the balance of common growth shares within 36 months (It is expected that the transfers of legal and factual control as well as future growth of the business are sufficient to ensure the parents have transferred a substantial economic interest in the business to their child(ren).)	Parents immediately transfer a majority of the common growth shares, and transfer the balance of common growth shares within 36 months In addition, within 10 years of the initial sale, parents reduce the economic value of their debt and equity interests in the business to: (a) 50% of the value of their interest in a farm or fishing corporation at the initial sale time, or (b) 30% of the value of their interest in a small business corporation at the initial sale time
3) Transfer of Management of the Business	Parents transfer management of the business to their child within a reasonable time based on the particular circumstances (with a 36-month safe harbour)	Parents transfer management of the business to their children within a reasonable time based on the particular circumstances (with a 36-month safe harbour)
4) Child Retains Control of the Business	Child(ren) retains legal (not factual) control for a 36-month period following the share transfer	Child(ren) retains legal (not factual) control for the greater of 60 months or until the business transfer is completed
5) Child Works in the Business	At least one child remains actively involved in the business for the 36-month period following the share transfer	At least one child remains actively involved in the business for the greater of 60 months or until the business transfer is completed

When the current exception was introduced, it was intended that there be restrictions for transfers of large corporations. However, these restrictions were not effectively implemented. Budget 2023 indicates that there would be no limit on the value of shares transferred in reliance upon this rule.

The current exception includes restrictions on sale of the business by the purchaser corporation within five years of the share transfer. Budget 2023 proposes that these requirements would be eliminated. In addition, new relieving rules would apply to deem requirements 3, 4 and 5 in the above chart to be met in respect of a child where either of the following occurs:

- the child dies or becomes permanently disabled; or
- the child disposes of their entire their interest in the business in an arm's length disposition.

In order to benefit from the exception to the deemed dividends, the Transferor and child(ren) would be required to jointly elect for the transfer to qualify as either an immediate or gradual intergenerational share transfer. The child(ren) would be jointly and severally liable for any additional taxes payable by the Transferor on deemed dividends resulting from a transfer that does not meet the above conditions. The joint election and joint and several liability recognize that the actions of the child could potentially cause the parent to fail the conditions and to be reassessed in this regard.

The limitation period for reassessing the Transferor's liability for tax that may arise on the transfer is proposed to be extended by three years for an immediate business transfer and by ten years for a gradual business transfer, ensuring that the Transferor can be reassessed if the requirements are not met throughout the applicable period.

Budget 2023 also proposes to provide a ten-year capital gains reserve for genuine intergenerational share transfers that satisfy the above proposed conditions, which would allow capital gains to be brought into income over a period of up to ten years, in proportion to proceeds received. The normal limit for such reserves is five years.

These rules would apply to share sales occurring on or after January 1, 2024.

General Anti-Avoidance Rule (GAAR)

The GAAR in the Income Tax Act is intended to prevent abusive tax avoidance transactions while not interfering with legitimate commercial and family transactions. If abusive tax avoidance is established, the GAAR applies to deny the tax benefit created by the abusive transaction.

A consultation on various approaches to modernizing and strengthening the GAAR has recently been conducted. A consultation paper released last August identified a number of issues with the GAAR and set out potential ways to address them. As part of the consultation, the government received a number of submissions, representing a wide variety of viewpoints.

Preamble

A preamble would be added to the GAAR, in order to help address interpretive issues and ensure that the GAAR applies as intended. While the GAAR informs the interpretation of, and applies to, every other provision of the Income Tax Act, it fundamentally denies tax benefits sought to be obtained through abusive tax avoidance transactions. It in effect draws a line: while taxpayers are free to arrange their affairs so as to obtain tax benefits intended by Parliament, they cannot misuse or abuse the tax rules to obtain unintended benefits. The preamble would also clarify that the GAAR is intended to apply regardless of whether or not the tax planning strategy used to obtain the tax benefit was foreseen.

Avoidance Transaction

The threshold for an “avoidance transaction” potentially subject to the GAAR would be reduced from a “primary purpose” test to a “one of the main purposes” test. This is consistent with the standard used in many modern anti-avoidance rules in other countries and is considered by the government to strike a reasonable balance, as it would apply to transactions with a significant tax avoidance purpose but not to transactions where tax was simply a consideration.

Economic Substance

A rule would be added to the GAAR to better meet the objective of requiring economic substance in addition to literal compliance with the words of the Income Tax Act. Currently, Supreme Court of Canada jurisprudence has established a more limited role for economic substance.

The proposed amendments would provide that economic substance is to be considered at the ‘misuse or abuse’ stage of the GAAR analysis and that a lack of economic substance tends to indicate abusive tax avoidance. A lack of economic substance will not always mean that a transaction is abusive. It would still be necessary to determine the object, spirit and purpose of the provisions or scheme relied upon, in line with existing GAAR jurisprudence. In cases where the tax results sought are consistent with the purpose of the provisions or scheme relied upon, abusive tax avoidance would not be found even in cases lacking economic substance.

The amendments would provide indicators for determining whether a transaction or series of transactions lacks economic substance. These are not an exhaustive list of factors that might be relevant and different indicators might be relevant in different cases. However, in many cases, the government believes that the existence of one or more of these indicators would strongly point to a transaction lacking economic substance. These indicators are:

1. whether there is the potential for pre-tax profit;
2. whether the transaction has resulted in a change of economic position; and
3. whether the transaction is entirely (or almost entirely) tax motivated.

Budget 2023 provided the example of an individual contributing to a tax-free savings account. Such a transfer could be considered to be entirely tax motivated, with no change in economic position or potential for profit other than as a result of tax savings. Even if the transfer is considered to be lacking in economic substance, it is clearly not a misuse or abuse of the relevant provisions of the Income Tax Act. The individual is using their tax-free savings account in precisely the manner that Parliament intended. There are contribution rules that specifically contemplate such a transfer and, perhaps more fundamentally, the basic tax-free savings account rules would not work if such a transfer was considered abusive.

The proposal would not supplant the general approach under Canadian income tax law, which focuses on the legal form of an arrangement. In particular, it would not require an enquiry into what the economic substance of a transaction actually is (e.g., whether a particular financial instrument is, in substance, debt or equity). Rather, it would require consideration of a lack of economic substance in the determination of abusive tax avoidance.

Penalty

A penalty would be introduced for transactions subject to the GAAR, equal to 25% of the amount of the tax benefit. Where the tax benefit involves a tax attribute that has not yet been used to reduce tax, the amount of the tax benefit would be considered to be nil. The penalty could be avoided if the transaction is disclosed to CRA, either as part of mandatory disclosure rules which are currently proposed or voluntarily.

Reassessment Period

A three-year extension to the normal reassessment period would be provided for GAAR assessments, unless the transaction had been disclosed to CRA as discussed above.

Consultation

Budget 2023 announced a consultation on these proposals to close on May 31, 2023. Following this consultation, the government intends to publish revised legislative proposals and announce the application date of the amendments.

D. Sales and Excise Tax

Alcohol Excise

Alcohol excise duties are automatically indexed to total Consumer Price Index (CPI) inflation at the beginning of each fiscal year (i.e., on April 1st). Budget 2023 proposes to temporarily cap the inflation adjustment for excise duties on beer, spirits and wine at 2%, for one year only, as of April 1, 2023.

Cannabis Taxation – Quarterly Duty Remittances

Excise duties are imposed on cannabis products, and are generally remittable on a monthly basis. Budget 2022 brought forward a measure that allowed certain smaller licensed cannabis producers to remit excise duties on a quarterly basis. Budget 2023 proposes to allow all licensed cannabis producers to remit excise duties on a quarterly rather than monthly basis, starting from the quarter beginning on April 1, 2023.

Air Travellers Security Charge

The Air Travellers Security charge (ATSC) is generally paid by passengers when they purchase airline tickets. Budget 2023 proposes to increase ATSC rates by 32.85%, noting that these rates were last increased in 2010, at which time they were raised by 52.4%.

The proposed new ATSC rates will apply to air transportation services that include a chargeable emplanement on or after May 1, 2024, for which any payment is made on or after that date. The charge for a domestic one-way flight will rise from $7.48 to $9.94. The transborder charge will increase from $12.71 to $16.89, and the charge for other international travel will increase from $25.91 to $34.42. These rates include the GST or federal portion of HST.

E. Other Measures

Small Business Credit Card Fees

Budget 2023 announced that commitments had been obtained from Visa and Mastercard to lower fees for small businesses. More than 90% of credit card-accepting businesses are expected to see their fees reduced by up to 27%.

Student Benefits

Budget 2023 proposes increasing Canada student grants by 40%, raising the interest-free Canada student loan limit from $210 to $300 per study week, and waiving the requirement for mature students (aged 22 or older) to undergo credit screening in order to qualify.

Dental Care for Canadians

The Canadian dental care plan would provide coverage for all uninsured Canadians with an annual family income of less than $90,000 (the Canada dental benefit only provided benefits for children under 12) by the end of 2023. The plan will be administered by Health Canada with support from a third-party benefits administrator. Benefits are reduced for families with income between $70,000 and $90,000.

F. Previously Announced Measures

Budget 2023 confirms the government’s intention to proceed with the following previously announced tax and related measures, as modified to take into account consultations and deliberations since their release.

- Legislative proposals released on November 3, 2022 with respect to Excessive Interest and Financing Expenses Limitations and Reporting Rules for Digital Platform Operators.
- Tax measures announced in the Fall Economic Statement on November 3, 2022, for which legislative proposals have not yet been released, including: automatic advance for the Canada workers benefit; investment tax credit for clean technologies; and extension of the residential property flipping rule to assignment sales.
- Legislative proposals released on August 9, 2022, including with respect to the following measures:
    - borrowing by defined benefit pension plans;
    - reporting requirements for Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs);
    - fixing contribution errors in defined contribution pension plans;
    - the investment tax credit for Carbon Capture, Utilization and Storage;
    - hedging and short selling by Canadian financial institutions;
    - substantive Canadian-controlled private corporations;
    - mandatory disclosure rules;
    - the electronic filing and certification of tax and information returns;
    - Canadian forces members and veterans amounts;
    - other technical amendments to the Income Tax Act and Income Tax Regulations proposed in the August 9th release; and
    - remaining legislative and regulatory proposals relating to the Goods and Services Tax/Harmonized Sales Tax, excise levies and other taxes and charges announced in the August 9th release.
- Legislative proposals released on April 29, 2022 with respect to hybrid mismatch arrangements.
- Legislative proposals released on February 4, 2022 with respect to the Goods and Services Tax/Harmonized Sales Tax treatment of cryptoasset mining.
- Legislative proposals tabled in a Notice of Ways and Means Motion on December 14, 2021 to introduce the Digital Services Tax Act.
- The transfer pricing consultation announced in Budget 2021.
- The income tax measure announced on December 20, 2019 to extend the maturation period of amateur athletes trusts maturing in 2019 by one year, from eight years to nine years.
- Measures confirmed in Budget 2016 relating to the Goods and Services Tax/Harmonized Sales Tax joint venture election.