2022 fall economic update – Helping Canadians and tackling inflation

November 04, 2022

On Nov. 3, 2022, the Honourable Chrystia Freeland presented the federal government's (the government's) Fall Economic Statement 2022 (the Statement). The Statement outlines the government's plan to continue helping Canadians with the cost of living and building a country where nobody is left behind. The Statement focuses on three key priorities:

- Making life more affordable;
- Jobs, growth and an economy that works for everyone; and
- Fair and effective government.

In this article, we summarize the significant tax measures affecting the *Income Tax Act*[1](the Tax Act) that were included in the Statement.

Extension of the residential property flipping rule to assignments

Budget 2022 proposed a new deeming rule to ensure that profits from certain residential real estate transactions are subject to full taxation, rather than being preferentially taxed as capital gains (the Flipping Rule). Under the Flipping Rule, profits arising from dispositions of residential property (including rental property) owned for less than 12 months would be deemed to be business income.

The Statement proposes to extend the Flipping Rule to profits arising from the disposition of the rights to purchase a residential property via an assignment sale. Profits arising from an assignment sale would be deemed to be business income if the rights to purchase a property were assigned after having been owned for less than 12 months. The Statement proposes that the 12-month holding period for the Flipping Rule will reset once the property is owned by the taxpayer who entered into a purchase and sale agreement. The 12-month holding period would reset every time a taxpayer secures ownership of the property.

The Flipping Rule, including the extension for assignment sales, would apply in respect of transactions occurring on or after Jan. 1, 2023.

Investment tax credit for clean technologies

The Statement proposes to introduce a refundable Clean Technology Investment Tax Credit, beginning with eligible equipment that becomes available for use no earlier than next year, when the 2023 Budget is released.

Provided the taxpayer meets certain labour conditions (which have not yet been announced), the credit is equal to 30 per cent of the capital cost of the eligible equipment. This is not intended to be a permanent tax credit, as it will be gradually phased out beginning with eligible equipment available for use after 2032 and entirely phased out for equipment available for use after 2034.

Eligible equipment for purposes of this new tax credit are the following:

- Certain equipment to generate electricity from solar, wind and water energy;
- Certain stationary electricity storage equipment that does not use any fossil fuels in operation (examples include batteries, flywheels, supercapacitors, magnetic energy storage, compressed air energy storage, pumped hydroelectric energy storage, gravity energy storage, and thermal energy storage);
- Certain active solar heating equipment, air-source heat pumps, and ground-source heat pumps;
- Equipment to generate heat or electricity from concentrated solar energy;
- Equipment to generate heat or electricity from small modular nuclear reactors; and
- Certain non-road zero-emission vehicles and charging or refuelling equipment.

Tax on share buybacks

The Statement announces the government's intention to introduce a corporate-level two per cent tax that would apply on the net value of all types of share buybacks by public corporations in Canada, similar to a recent measure introduced in the United States. A share buyback occurs when a corporation buys its own stock back from existing shareholders as a way to return value to shareholders. The measure is expected to encourage corporations to reinvest their profits in their workers and business.

Details will be announced in Budget 2023 and the tax would come into force on Jan. 1, 2024.

Minimum tax

In Budget 2022, the government announced it would examine a new minimum tax regime as the existing regime has not been substantially reviewed since it was introduced in 1986. The Statement confirms a detailed path for implementation will be released in Budget 2023.

International tax reform

In the Statement, the government signaled its intention to continue working with other jurisdictions in order to ensure that multinational corporations pay their fair share of tax wherever they do business.

The government confirmed its commitment to the *Inclusive Framework on Base Erosion and Profit Shifting*. In particular, the government remains committed to the following:

- *Pillar One*, which deals with the reallocation of taxing rights so that multinational corporations (including large digital corporations) pay their fair share of tax in the jurisdictions where their users and customers are located; and
- *Pillar Two*, which is a global minimum tax regime that ensures multinational corporations are subject to a minimum effective tax rate of 15 per cent on profits in every jurisdiction in which they operate.

Mandatory Disclosure Rules

In order to properly assess the feedback received as part of the public consultation on mandatory disclosure rules launched Aug. 9, 2022, the government intends to delay the coming into force of the reporting requirements for reportable transactions and notifiable transactions until the changes receive Royal Assent. The coming into force date for uncertain tax treatments would remain the same as described in August.

Previously announced measures

The Statement confirms the government's intention to proceed with previously announced tax measures, including the following:

- Legislative proposals released on Aug. 9, 2022, including the Canada recovery dividend and the additional tax on banks and life insurers; the investment tax credit for carbon capture, utilization and storage; the critical mineral exploration tax credit; eliminating flow-through shares for oil, gas and coal activities; the application of the general anti-avoidance rule to tax attributes; and substantive Canadian-controlled private corporations.
- Legislative proposals released on April 29, 2022 with respect to hybrid mismatch arrangements,
- Legislative proposals released on Feb. 4, 2022, including measures relating to the allocation to redeemers methodology for mutual fund trusts; taxes applicable to registered investments; audit authorities; interest deductibility limits; and crypto asset mining.
- Legislative proposals tabled on Dec. 14, 2021 regarding the *Digital Services Tax Act*.
- The transfer pricing consultation announced in Budget 2021.
- The anti-avoidance rules consultation announced in the 2020 Fall Economic Statement and updated in a consultation paper released on Aug. 9, 2022.
- Measures confirmed in Budget 2016 relating to the GST/HST joint venture election.

Legislative proposals

On the same day the Statement was presented, the Department of Finance also released legislative proposals (the Proposals) relating to the Excessive Interest and Financing Expenses Limitation (EIFEL) regime and reporting rules for digital platform operators. These will be the subject of a later BLG article.

EIFEL regime

The EIFEL regime, first released as draft legislation back in February, comprises rules consistent with the recommendations in the report under Action 4 of the Group of 20 and Organization for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting Project (the BEPS Action 4 report).

Of note, the Proposals have moved the effective date to taxation years beginning on or after Oct. 1, 2023 (as compared to the effective date of Jan. 1, 2023 that was proposed in the draft legislation released back in February). The Proposals have also increased the *de minimus* threshold from $250,000 to $1,000,000.

Digital platform operators

The new reporting rules for digital platform operators to be contained in new Part XX of the Tax Act, are proposed to be effective Jan. 1, 2024. Digital platform operators are entities that contract with sellers to make a platform available to sellers. These new rules are based on the OECD's *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*.

The proposals introduce due diligence and reporting obligations similar to those already in place for financial institutions in respect of the Enhanced International Information Reporting for U.S. FATCA (*Foreign Account Tax Compliance Act*, contained in Part XVIII of the Tax Act) and the OECD's Common Reporting Standard (contained in Part XIX of the Tax Act).

For more information on the 2022 fall economic update, please reach out to any of the authors or key contacts listed below.

[1] RSC 1985, c 1 (5th Supp).

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