Federal budget 2024: An attempt to restore generational fairness by targeting the wealthy

April 17, 2024

On April 16, 2024 (Budget Day), the Honourable Chrystia Freeland tabled the federal budget titled “Budget 2024: Fairness for Every Generation” (Budget 2024). The title proclaims fairness for all though the clear driving force behind Budget 2024 is to create affordable housing by applying tax measures on the wealthy.

The implementation of these new tax measures is set to generate $21.9 billion over the next five years and asks “…the wealthiest Canadians to pay their fair share.”

Budget 2024 continues prior budget themes that placed significant emphasis on making housing more affordable for middle class Canadians. This strategy includes 3.87 million new homes built by 2031. Federal actions will support at least 1.2 million new homes, and the Government is calling on all orders of government to support the construction of at least 800,000 more. The Government's plan provides incentives for all orders of government and contemplates the involvement of private and non-profit sector partners with the goal of building more affordable homes for Canadians.

Key tax measures announced in Budget 2024 include amendments to the *Income Tax Act,* RSC, 1985, c. 1 (5th Supp) (*Income Tax Act*) to increase the capital gains inclusion rate (from one-half to two-thirds) and the lifetime capital gains exemption (LCGE) (to $1.25 million). The tax measures also detail the expansion of Canada Revenue Agency (CRA) audit powers with regard to information gathering and include further amendments to the previously announced alternative minimum tax (AMT).

Personal income tax measures

Increase to capital gain inclusion rate

Budget 2024 proposes to increase the capital gains inclusion rate from one-half to **two-thirds** for corporations and trusts, and from one-half to two-thirds on the portion of capital gains realized in the year that exceed $250,000 for individuals. This change will apply to all capital gains realized **on or after June 25, 2024.**

The $250,000 threshold applies to capital gains net of any current-year capital losses, capital losses of other years applied to reduce current-year capital gains, and capital gains in respect of which the LCGE or similar exemption applies. Net capital losses from prior years will continue to be deductible against taxable capital gains in the current year and will also receive an adjustment to their value to reflect the inclusion rate of the capital gains being offset (meaning capital losses realized prior to the change will fully offset equivalent capital gains realized after the change).

The idea of a capital gain exemption was first introduced in 1972, with the inclusion rate being one-half. With each changing of the guard of federal governments in power, there is always a question as to whether the capital gains inclusion rate will be changed, as it undoubtedly represents a major cash revenue stream. In 1988, the rate was increased for the first time to two-thirds. In 1990, it was further increased to three quarters before being reduced to one-half in 2000. One can speculate that the increase in the rate this year to two-thirds from one-half is a response to increased pressure for Canada to find macroeconomic stability in the current volatile global financial climate.

The increase to the capital gain inclusion rate represents the most significant revenue generating amendment from Budget 2024 and will impact many Canadians, not just the ultra-rich. Individuals who own a single investment property or secondary residence (such as a cottage), while not necessarily the wealthiest Canadians, will now be exposed to significant additional taxes on the disposition of their property.

Claimants of the employee stock option deduction are eligible for a one-third deduction of the taxable benefit to reflect the new inclusion rate but will be entitled to a deduction of one-half the taxable benefit up to a combined limit of $250,000 for both employee stock options and capital gains.

Transitional rules will be implemented for tax years that begin before and end on or after June 25, 2024. Because two different inclusion rates will apply in this case, for transactions before and after the effective date, the Government has identified these periods as “Period 1” and “Period 2”. There will be no prorating of the new threshold imposed on individuals and the full $250,000 threshold is available in 2024. The threshold will only apply for net capital gains realized in Period 2.

Additional design details will be released in the coming months.

Increase to the LCGE exemption

A lifetime tax exemption is available to individuals for capital gains realized on the disposition of qualified small business corporation shares (QSBCS) and qualified farm or fishing property. The current amount of the LCGE is $1,016,836 in 2024. Budget 2024 proposes to increase the LCGE up to $1.25 million of eligible capital gains, effective for dispositions occurring **on or after June 25, 2024**. The LCGE will continue to be indexed to inflation beginning in 2026.

Canadian Entrepreneurs’ Incentive (CEI)

The proposed CEI is designed to reward entrepreneurial ventures by reducing the prevailing tax rate on capital gains by half for certain businesses (from two-thirds to one-third under Budget 2024’s capital gains inclusion rate) on up to $2 million in capital

gains per individual. This reduced tax rate will be applicable on the disposition of qualifying shares by a founding investor who received shares during initial capitalization and subsequently holds the shares for a minimum of five years before disposition.

This incentive is similar to the current LCGE regime and includes comparable holding periods and fair market value requirements applicable to QSBCS. Novel criteria for the CEI include the following:

- the claimant must own the shares directly for five years;
- the shares must represent more than 10 per cent of both the fair market value and the voting rights of all the issued and outstanding shares of the corporation;
- the individual was actively engaged in a regular, continuous and substantial basis in the activities of the business throughout the five-year period; and
- the shares must have been obtained for fair market value consideration.

Shares that represent an interest in the following businesses will **not qualify** for the CEI:

- a direct or indirect interest in a professional corporation;
- a corporation whose principal asset is the reputation or skill of one or more employees;
- a corporation that carries on a financial, insurance, real estate, food and accommodation, arts, recreation, or entertainment sector business; or
- a business of providing consulting or personal care services.

The CEI can be combined with the LCGE. Taxpayers can benefit from $3.25 million in total and partial capital gains exemptions with the proposed increase of the LCGE to $1.25 million.

Alternative minimum tax (AMT) amendments

Budget 2024 affirms the Government's intention to proceed with the AMT proposals introduced in Budget 2023. Our discussion of the 2023 AMT proposals can be found here. Taxpayers currently pay either regular tax or AMT, whichever is highest. The AMT is a simplified calculation of tax that offers fewer deductions and credits.

As the AMT proposals are intended to apply to tax years after 2023, it came as a surprise that they were not included in the budgetary measures bill, Bill C-59 tabled in Parliament on Nov. 21, 2023. Budget 2024 proposes that the tax treatment of charitable donations be revised to allow individuals to claim 80 per cent (instead of the previously proposed 50 per cent) of the Charitable Donation Tax Credit when calculating AMT. This development addresses outcry from the charitable sector community in response to previously proposed drafting. Budget 2024 also confirms the Government's intention to proceed with the other previously announced AMT amendments, notably (i) an increase in the capital gains inclusion rate on donations of shares or employee stock options of publicly listed securities from 0 per cent to 30 per cent; and (ii) an increase in the capital gains inclusion rate on donations of property (other than publicly listed securities) to 100 per cent.

The following amendments to the AMT are also included in Budget 2024:

- fully allow deductions for the Guaranteed Income Supplement, social assistance, and workers' compensation payments;
- allow individuals to fully claim the federal logging tax credit under the AMT;
- fully exempt Employee Ownership Trusts from the AMT; and
- allow certain disallowed credits under the AMT to be eligible for the AMT carry-forward (*i.e.*, the federal political contribution tax credit, investment tax credits, and labour-sponsored funds tax credit).

Exchange traded funds that fail to or cease to meet "mutual fund trust" status are proposed to be exempt from AMT. This development and the addition of new proposed exceptions for "investment funds" are relevant for taxpayers in the asset management industry.

Charities and qualified donees measures

Budget 2024 proposes to improve the operation of rules related to registered charities and other qualified donees as follows:

- **Foreign Charities Registered as Qualified Donees**: Extend the period for which qualifying foreign charities are granted status as a qualified donee from 24 months to 36 months and require foreign charities to submit a publicly available annual information return to the CRA.
- **Modernizing service:** Allow the CRA to communicate certain official notices to charities digitally where the charity has opted to receive information from the CRA electronically.
- **Donation receipts**: Changes to simplify the issuance of official donation receipts and to align the process for issuing receipts with modern practices of charities.
- **Alternative minimum tax (AMT):** Amendment to the AMT calculation announced in Budget 2023 which impacts the tax treatment of charitable donations, as noted above.

Employee Ownership Trust (EOT) Tax Exemption

Budget 2023 proposed tax rules to facilitate the creation of EOTs. These legislative proposals are currently before Parliament in Bill C-59. The 2023 Fall Economic Statement proposed to exempt from tax the first $10 million in capital gains realized on the sale of a business to an EOT subject to certain conditions.

Budget 2024 provides details on the proposed exemption and the specific qualifying conditions required. Qualifying conditions include: 90 per cent of the beneficiaries of the EOT being resident in Canada. Where the extensive list of conditions are met, and multiple individuals disposed of shares to an EOT, they may each claim the exemption, but the total exemption amount cannot exceed $10 million. In such a case, the individuals would be required to agree on how to allocate the exemption amounts.

Home Buyers Plan (HBP)

Budget 2024 proposes to increase the withdrawal limit for the HBP from $35,000 to $60,000. This increase would also apply to withdrawals made for the benefit of a disabled individual.

Amounts withdrawn under the HBP must be repaid to an RRSP over 15 years with the timeline for repayments starting the second year following the first withdrawal. the start of the 15-year repayment period will be deferred by an additional three years for participants making first withdrawals between Jan. 1, 2022, and Dec. 31, 2025, as a temporary measure.

Qualified investments for registered plans

Budget 2024 invites response from the asset management industry to provide suggestions on how the qualified investment rules for registered plans could be modernized on a prospective basis.

Budget 2024 further invites suggestions on how to harmonize the rules relating to investments in small business including:

- whether annuities that are qualified investments only for RRSPs, RRIFs, and RDSPs should continue to be qualified investments;
- whether the conditions that certain pooled investment products must meet to be a qualified investment are appropriate;
- whether and how qualified investment rules could promote Canadian based investments;
- whether crypto-backed assets are appropriate as qualified investments for registered savings plans.

Questioning whether annuities should be qualified investments will undoubtably raise concerns amongst insurers. The suggestion that crypto-backed assets may not be appropriate as qualified investments will also be a concern for Canadian crypto funds that have recently taken a hit from new U.S. competition.

Stakeholders are invited to submit comments to QI-consultation-PA@fin.gc.ca by July 15, 2024.

Corporate income tax measures

Expansion of CRA powers

Following the Supreme Court of Canada decision in *Cameco*, the 2021 Federal Budget implemented changes to the *Income Tax Act* (and related acts) to increase the audit powers of the CRA. Now, in Budget 2024, additional measures are being added to expand the scope of the CRA' s information gathering powers – not only under audit but more generally.

Given the broad scope of the expanded powers, the costs that may be incurred to comply with an unreasonable demand for information, and the risk of significant penalties for non-compliance, **it will be more important than ever that taxpayers obtain legal advice early in the audit process.**

Notice of non-compliance

Budget 2024 proposes to amend the *Income Tax Act* to allow the CRA to issue a new type of notice (referred to as a "notice of non-compliance") to a person that has not complied with a requirement or notice to provide assistance or information issued by the CRA. In addition to requiring any person to answer any proper question, whether orally, virtually, in writing, or at a particular place designated by the Minister of National Revenue, the new paragraph 231.1(1)(f), as proposed, will allow the Minister of National Revenue to "at all reasonable times" require a taxpayer **or any other person** to provide "any information" or "any document" to the CRA.

Once a notice of non-compliance is issued, Budget 2024 proposes to impose a penalty of $50 a day until the request is complied with (to a maximum of $25,000). Again, these notices can be issued to **any person**, including the accountant of a taxpayer, with penalties applied accordingly.

A recipient could challenge the issuance of a notice of non-compliance, and after an internal administrative review, the notice could be vacated if the CRA determines that it was unreasonable. If unsuccessful, the recipient would need to seek judicial review at the Federal Court to challenge the matter further. Importantly, where a notice of non-compliance is issued, the reassessment period for the taxpayer's tax years will be extended by the period of time the notice of non-compliance is outstanding. Even if the taxpayer successfully challenges the notice of non-compliance, the reassessment period will be extended by the time it takes to appeal the notice.

Questioning under oath

Budget 2024 proposes to amend the *Income Tax Act* to allow an authorized person of the CRA to, for any purpose related to the administration or enforcement of the *Income Tax Act*, demand that **any person** provide information either orally and under oath or by sworn affidavit.

Compliance Orders

Budget 2024 also proposes to amend the *Income Tax Act* to impose a penalty equal to 10 per cent of the tax payable when the CRA obtains a compliance order against a taxpayer. The penalty would only apply if the tax owing exceeds $50,000.

Further amendments are proposed to allow the CRA to seek a compliance order when a person has failed to comply with a requirement to provide foreign based information or documents.

Other tax statutes administered by the CRA

Budget 2024 proposes that other tax statutes administered by the CRA, which have provisions similar to section 231.1 of the *Income Tax Act*, also be amended, as needed, to address the issues discussed above. Those statutes include the *Excise Tax Act* (*e.g.*, GST/HST, fuel excise tax), *Air Travellers Security Charge Act*, *Excise Act*, 2001 (alcohol, tobacco, cannabis, and vaping duties), the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

Clean Electricity Investment Tax Credit

Budget 2023 announced the Government's intention to introduce a refundable clean electricity investment tax credit (the Clean Electricity Credit) equal to 15 per cent of the capital cost of eligible property. Additional changes were announced in the Government's 2023 Fall Economic Statement and included the addition of electricity generation through waste biomass. Budget 2024 provides additional details on the Clean Electricity Credit.

The Clean Electricity Credit will be available only to eligible Canadian corporations, as follows:

- taxable Canadian corporations;
- provincial and territorial Crown corporations, subject to additional requirements;
- corporations owned by municipalities;
- corporations owned by Indigenous communities; and
- pension investment corporations.

Tax exempt corporations are entitled to claim the Clean Electricity Credit only if they agree to be subject to the provisions in the *Income Tax Act* applicable to the tax credit (including audit, penalties and collections) and agree not to assert their exemption in respect of the Clean Electricity Credit.

Where eligible property is acquired by a partnership with corporate partners that are themselves eligible to claim the Clean Electricity Credit, those partners can claim their share of the Clean Electricity Credit (subject to partnership rules generally consistent with those proposed for the clean technology investment tax credit currently before Parliament as Bill C-59). This is significant for Clean Electricity Credit eligible projects given the present uncertainty associated with whether clean technology investment tax credit eligible expenditures in excess of a limited partner's at-risk amount may be allocated to the partnership's general partner or are lost since there is no ability to carry-forward eligible expenditures to future taxation years.

Various types of equipment are eligible for the credit, including equipment used to generate electricity from solar, wind, water energy, nuclear fission, geothermal energy (excluding any equipment that is part of a system that extracts fossil fuel for sale) and certain waste materials described in the 2023 Fall Economic Statement. Also included is stationary electricity storage equipment, equipment used for pumped hydroelectric energy storage, equipment that is part of an eligible natural gas energy system and equipment and structures used for the transmission of electricity between provinces and territories. Qualifying expenditures will also include capital expenditures to refurbish existing facilities.

To qualify for the 15 per cent Clean Electricity Credit, certain labour requirements (prevailing wage and apprenticeship requirements) will need to be met as presently contained in Bill C-59 in respect of the clean technology investment tax credit. Where the labour requirements are not met, the Clean Electricity Credit will be limited to 5 per cent.

Taxpayers incurring expenditures that may be eligible for more than the Clean Electricity Credit are cautioned that they will be entitled to **claim only one of** the following:

- Clean Electricity Credit,
- Clean Technology Investment Tax credit,
- Carbon Capture, Utilization, and Storage Investment Tax Credit,
- Clean Hydrogen Investment Tax Credit,
- Clean Technology Manufacturing Investment Tax Credit and,
- Clean Electric Vehicle Supply Chain Investment Tax Credit.

The Clean Electricity Credit will apply to eligible property that is acquired and become available for use on or after today and before 2035 (provided it has not been used for any purpose prior to its acquisition) and not part of a project that began construction before March 28, 2023.

Polymetallic Extraction and Processing

The Government proposed the Clean Technology Manufacturing investment tax credit in Budget 2023, providing a refundable tax credit of 30 per cent on the cost of investments in eligible property used all or substantially all in eligible extraction and mining activities. The tax credit applies to property acquired and available for use on or after Jan. 1, 2024, and is subject to reduction starting in 2032.

Because the extraction of materials may happen at polymetallic projects (*i.e.*, where multiple metals are being extracted from one site), Budget 2024 provides adjustments and clarifications to the Clean Technology Manufacturing investment tax credit; notably, adding a "primarily" test for expenditure eligibility and implementing a safe harbour rule to mitigate the application of recapture. Specifics will be released at a future date.

Accelerated capital cost allowance (CCA)

The CCA rules determine the rate at which a business may claim tax depreciation on its capital assets.

Purpose-built rental housing

Currently, purpose-built rental buildings are eligible for a CCA rate of four per cent under Class 1. Budget 2024 proposes to provide an accelerated CCA of 10 per cent for new eligible purpose-built rental projects that begin construction on or after Budget Day and before Jan. 1, 2031, and are available for use before Jan.1, 2036.

Eligible property would be new purpose-built rental housing that is a residential complex:

- with at least four private apartment units (*i.e.*, a unit with a private kitchen, bathroom, and living areas), or 10 private rooms or suites; and
- in which at least 90 per cent of residential units are held for long-term rental.

Projects that convert existing non-residential real estate, such as an office building, into a residential complex would be eligible if the conditions above are met. The accelerated CCA would not apply to renovations of existing residential complexes. However, the cost of a new addition to an existing structure would be eligible, provided the addition meets the conditions above. Investments eligible for this measure would also continue

to benefit from the Accelerated Investment Incentive, which suspends the half-year rule for eligible property put in use before 2028.

Productivity-enhancing assets

Currently, assets included in Class 44 (patents or the rights to use patented information for a limited or unlimited period), Class 46 (data network infrastructure equipment and related systems software), and Class 50 (general-purpose electronic data-processing equipment and systems software) have CCA rates of 25 per cent, 30 per cent, and 55 per cent, respectively. Budget 2024 proposes to provide immediate expensing for new additions of property in respect of these three classes, if the property is acquired on or after Budget Day and becomes available for use before Jan. 1, 2027. The enhanced allowance would provide a 100 per cent first-year deduction and would be available only for the year in which the property becomes available for use.

There will be restrictions in eligibility for assets that have been previously used, and the CCA deduction will generally be prorated for taxation years of less than 12 months.

Canada Carbon Rebate for small businesses

Budget 2024 proposes to return a portion of fuel charge proceeds from a province via the new Canada Carbon Rebate to small and medium-sized business. This will be an automatic (*i.e.*, no application required) and refundable tax credit for eligible businesses, which is sized in proportion to the number of persons employed by the business in the province.

With respect to the 2019-20 to 2023-24 fuel charge years, the tax credit would be available to a Canadian-controlled private corporation that files a tax return for its 2023 taxation year by July 15, 2024. Additionally, to be eligible for a credit in respect of an applicable fuel charge year, the corporation must have less than 499 employees throughout Canada in the calendar year in which the fuel charge year begins.

The Minister of Finance will specify payment rates for the 2019-20 to 2023-24 fuel charge years once sufficient information is available from the 2023 taxation year. For future tax years, including 2024-25, the credit would apply in a similar manner – a payment rate would be specified for each applicable province for a particular fuel charge year, and a payment made to an eligible corporation that has filed a tax return for a taxation year ending in the calendar year in which the fuel charge year begins.

Interest deductibility limits: Purpose-built rental housing

The excessive interest and financing expenses limitation rules announced in Budget 2021 provide an exemption for interest and financing expenses incurred in respect of arm's length financing for certain public-private partnership infrastructure projects. Budget 2024 proposes expanding this exemption to also include an elective exemption for certain interest and financing expenses incurred before Jan. 1, 2036, in respect of arm's length financing used to build or acquire eligible purpose-built rental housing in Canada.

Avoidance of tax debts

To close an apparent opening in the *Income Tax Act* that would allow a tax debtor to avoid paying tax for which they are already liable, Budget 2024 proposes to expand the CRA's powers to collect tax debts from persons that do not deal at arm's length with the tax debtor. The proposed amendments would allow the CRA to issue an assessment to a person that, through a transaction or series of transactions, receives property from a third-party (the Planner), and in the same transaction or series of transactions, the tax debtor has transferred property to the Planner. The proposed amendments would apply to tax for which the tax debtor is already liable or tax that is incurred by the tax debtor at any time in the year in which the series of transactions occurs.

Additionally, the proposed amendments would allow the CRA to assess a penalty against the Planner where the Planner knew, or but for their gross negligence would have known, that they were participating in section 160 avoidance planning. The amount of the penalty is the lesser of 50 per cent of the amount that they sought to avoid and $100,000, plus the Planner's gross entitlements at the time the penalty was assessed.

While the amendments appear to be intended to prevent a very specific type of avoidance transaction, they create an additional trap that may result in taxpayers unexpectedly being assessed for a tax liability that they knew nothing about.

If passed, the proposed amendments will apply to transactions that occur on or after Budget Day. Taxpayers will need to be even more vigilant to avoid becoming a party to a section 160 avoidance transaction.

Reportable and notifiable transactions penalty

The *Income Tax Act* includes a general provision that provides that a person who fails to file or make a return or comply with certain specified rules is guilty of an offence, and liable to penalties up to $25,000 and imprisonment up to a year. The mandatory disclosure rules also include specific penalties that apply in these circumstances. Budget 2024 announces the intention to remove from the scope of this general penalty provision the failure to file an information return in respect of a reportable or notifiable transaction. This amendment would be deemed to have come into force on June 22, 2023.

Mutual fund corporations

Budget 2024 proposes amendments to the *Income Tax Act* to preclude a corporation from qualifying as a "mutual fund corporation" for tax purposes (and availing itself of the benefits of such status) where it is controlled by or for the benefit of a corporate group (including a corporate group that consists of any combination of corporations, individuals, trusts and partnerships that do not deal with each other at arm's length. More specifically, the proposed amendments target transactions where a person or partnership, or any combination of persons and partnerships (referred to as specified persons) own, in aggregate, shares of a corporation having a fair market value of more than 10 per cent of the fair market value of all of the issued and outstanding shares of the corporation, and the corporation is controlled by or for the benefit of one or more specified persons. This measure would apply to taxation years that begin after 2024.

Synthetic equity arrangements

Synthetic equity arrangements include agreements that provide all or substantially all of the risk of loss and opportunity for gain or profit respect of a share to another person. Where a taxpayer enters into a synthetic equity arrangement in respect of a share, the taxpayer is generally obligated to compensate the other person for the amount of any dividends paid on the share. This compensation payment may result in a tax deduction for the taxpayer in addition to the dividend received deduction.

Unless the anti-avoidance rule for synthetic equity arrangements applies to deny the dividend received deduction, the taxpayer would generally be able to claim two deductions (*i.e.*, the dividend received deduction and the compensation payment deduction).

However, the anti-avoidance rule currently does not apply to certain exceptions, including where the taxpayer acquires the agreement on a recognized derivatives exchange unless it can be established that no tax-indifferent investor has all or substantially all of the opportunity for gain or profit in respect of the share.

Budget 2024 proposes to remove the tax-indifferent investor exception (including the exchange traded exception) to the anti-avoidance rule. This measure would simplify the anti-avoidance rule and prevent taxpayers from claiming the dividend received deduction for dividends received on a share in respect of which there is a synthetic equity arrangement.

This measure would apply to dividends received on or after Jan. 1, 2025.

Manipulation of bankrupt status

Bankrupt taxpayers are generally excluded from the debt forgiveness rules. Instead, a separate loss restriction rule applies to extinguish the losses of bankrupt corporations that have received an absolute order of discharge. Some taxpayers have sought to manipulate the bankrupt status of an insolvent corporation, with a view to benefiting from the exception in the debt forgiveness rules while also avoiding the loss restriction rule applicable to bankrupt corporations. Such planning is intended to preserve tax losses and other attributes of the insolvent corporation, such that they would be available for use by a profitable corporation.

Budget 2024 proposes to repeal the exception to the debt forgiveness rules for bankrupt corporations and the loss restriction rule applicable to bankrupt corporations. This change would subject bankrupt corporations to the general rules that apply to other corporations whose commercial debts are forgiven. While bankrupt corporations would be subject to the reduction of their loss carryforward balances and other tax attributes upon debt forgiveness, as insolvent corporations they could qualify for relief from the debt forgiveness income inclusion rule provided under the existing deduction for insolvent corporations.

The bankruptcy exception to the debt forgiveness rules would remain in place for individuals.

These proposals would apply to bankruptcy proceedings that are commenced on or after Budget Day.

International tax measures

Crypto-Asset Reporting Framework

Budget 2024 proposes to implement the OECD's Crypto-Asset Reporting Framework, or CARF, in Canada. The measure would impose a new annual reporting requirement in the *Income Tax Act* on entities and individuals (referred to as crypto-asset service providers) that are resident in Canada, or that carry on business in Canada, and that provide business services effectuating exchange transactions in crypto-assets. This would include crypto exchanges, crypto-asset brokers and dealers, and operators of crypto-asset automated teller machines.

Crypto-asset service providers would be required to report to the CRA, in respect of each customer and in respect of each crypto-asset, the annual value of:

- exchanges between the crypto-asset and fiat currencies;
- exchanges for other crypto assets; and
- transfers of the crypto asset, including the requirement to report information in respect of a customer of a merchant where the crypto-asset service provider processes payments on behalf of the merchant and the customer has transferred crypto-assets to the merchant in exchange for goods or services with a value exceeding US$50,000.

Reportable crypto assets would exclude central bank digital currencies and specified electronic money products (*e.g.*, digital representations of fiat currencies), which would be reportable under the amendments to the Common Reporting Standard (CRS) due diligence and reporting obligations already contained in Part XIX of the *Income Tax Act* described below.

In addition to information on crypto-asset transactions, crypto-asset service providers would be required to obtain and report information on each of their customers, including name, address, date of birth, jurisdiction(s) of residence, and taxpayer identification numbers for each jurisdiction of residence. If a customer is a corporation or other legal entity, the same information would need to be collected and reported in respect of the natural persons who exercise control over the entity. Reporting would be required with respect to both Canadian resident and non-resident customers.

Common Reporting Standard (CRS)

In connection with the CARF, Budget 2024 also proposes to implement amendments to the CRS that are previously endorsed by the OECD. The changes would broaden the scope of the CRS to include specified electronic money products and central bank digital currencies which are not covered by the CARF. The amendments would also ensure effective coordination between the CRS and the CARF and limit instances of duplicative reporting between the two frameworks. Other changes would require that additional information be reported in respect of financial accounts and account holders

and would strengthen the due diligence procedures financial institutions are already required to follow.

In response to recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes, Budget 2024 proposes two other changes to the CRS:

- First, the CRS would be amended to remove Labour-Sponsored Venture Capital Corporations (LSVCCs) from the list of non-reporting financial institutions and treat a non-registered account held in an LSVCC as an excluded account provided that annual contributions to the account do not exceed US$50,000.
- Second, the anti-avoidance provision of the CRS would be amended to clarify that it 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 an obligation of any person under the CRS. This last amendment is not surprising in light of new Guidance from the CRA on FATCA and CRS that was released on April 5, 2024, indicating that a Financial Institution's verification of an account holder's global intermediary identification number or GIIN is no longer considered sufficient to address their due diligence obligations under FATCA and CRS. For more information, please see our latest bulletin on this topic.

Coming into force

These measures would apply to the 2026 and subsequent calendar years. This would allow the first reporting and exchange of information under the CARF and amended CRS to take place in 2027 with respect to the 2026 calendar year.

Withholding for non-resident service providers

Existing income tax rules require a person who pays a non-resident for services provided in Canada to withhold 15 per cent of the payment and remit such amount to the CRA. Currently, the CRA has discretionary power to waive this withholding requirement on a transaction-by-transaction basis and upon application by the non-resident service provider.

Budget 2024 proposes to simplify the waiver application process by allowing the CRA to waive the withholding requirement on multiple transactions with a single waiver, where the non-resident is exempt from Canadian income tax under a tax treaty, or the income is exempt income from international shipping or operating an aircraft in international traffic. This measure would come into force on royal assent of the enacting legislation.

Sales tax measures

GST Rental Rebate on student residences

Universities, public colleges and school authorities that construct new student housing are currently precluded from using the enhanced Goods and Services Tax (GST) rental rebate previously announced by the Government on Sep.14, 2023. For more information on the enhanced GST rental rebate, see our previous article on this topic.

One of the main eligibility conditions for the GST rental rebate is that a unit be for long-term rental. However, many universities, public colleges, and school authorities would likely not meet this condition in respect of traditional student residences due to the more temporary nature of the housing. Budget 2024 proposes to amend the *Excise Tax Act* such that these entities are subject to the same rules as other builders of new student housing.

Budget 2024 also proposes to relax the rebate conditions for universities, public colleges and school authorities that operate on a not-for-profit basis (*i.e.*, entities that would currently qualify for the GST/HST Public Service Body rebates) such that these entities can claim the enhanced GST rental rebate in respect of any new student residence that they acquire or construct, provided that the primary purpose is to provide a place of residence for students.

These proposed measures would apply to student residences that begin construction after Sept. 13, 2023 and before 2031, and that complete construction before 2036.

Tobacco and vaping

Budget 2024 announces the Government's intention to increase the tobacco excise duty rate by $4 per carton of 200 cigarettes. There will also be an inventory tax, where manufacturers, wholesalers and retailers will be subject to an inventory tax of $0.02 per cigarette.

Budget 2024 also increases the vaping product excise duty rate, effective July 1, 2024. This proposed increase would also apply to the additional duty imposed in respect of participating jurisdictions under the coordinated vaping product taxation framework.

The excise duty rate is proposed to increase as follows:

- **Non-participating jurisdictions** — $1.12 per 2 ml or fraction thereof for the first 10 ml of vaping substance in the vaping device or immediate container, and $1.12 per 10 ml or fraction thereof for amounts over the first 10 ml.
- **Participating jurisdictions** — $2.24 per 2 ml or fraction thereof for the first 10 ml of vaping substance in the vaping device or immediate container, and $2.24 per 10 ml or fraction thereof for amounts over the first 10 ml.

FNGST and FACT

Budget 2024 proposes to amend the *First Nations Goods and Services Tax Act*, which provides a legislative framework for interested Indigenous governments to levy the First Nations Goods and Services Tax (FNGST), to provide additional flexibility to Indigenous governments seeking to exercise taxing authority on their lands. The amendments would allow Indigenous governments, under their own laws, to enact a value-added sales tax on fuel, alcohol, cannabis, tobacco and vaping (FACT) products within their reserves or settlement lands.

The FACT sales tax would be analogous to the FNGST, including applying at the same five percent GST rate, but would be limited to FACT products. However, the amendments as proposed still include what the Government calls "appropriate sharing"

of the tax revenues between Indigenous Governments and Canada, therefore still imposing limits on the control of taxation (and self-governance) of Indigenous people.

Other measures

Budget 2024 introduces various other measures, including:

1. **Reducing CRA call centre wait times**: Budget 2024 proposes to provide $336 million over two years, starting in 2024/25, to reduce or improve call center wait times.
2. **Single sign-in portal**: The Government has slated $25.1 million over five years to help fund the effort to streamline and simplify signing into online Government platforms. What is unclear is if this funding will help to modernize or improve the CRA's My Business Account platform, along with the slew of problems currently plaguing online access and authorization.
3. **Self-represented litigants at the TCC:** Budget 2024 proposes to amend the *Tax Court of Canada Act* to allow taxpayers to self-represent themselves during general procedures trials. The Tax Court will now be able to grant leave in special circumstances to a corporation, or other unincorporated association or entity, to be represented by a director, officer, employee, member, or partner. Currently, corporations generally require representation by counsel at the Tax Court of Canada.
4. **Residentially owned vacant land:** Budget 2024 announces that the Government will consider introducing a new tax on residentially zoned vacant land. The Government will launch consultations later this year.
5. **Halal mortgages:** Budget 2024 announces that the Government is exploring new measures to expand access to alternative financing products, like halal mortgages. This could include changes in the tax treatment of these products.
6. **Scientific research and experimental development (SR&ED):** The Government launched consultations on Jan. 31, 2024, to explore cost-neutral ways to enhance the SR&ED program. Budget 2024 announces that: (1) the Government is launching a second phase of consultations on more specific policy parameters, to hear further views from businesses and industry on specific and technical reforms; and (2) the provision of $600 million over four years, starting in 2025-26, with $150 million per year ongoing for future enhancements to the SR&ED program. The second phase of consultations will inform how this funding could be targeted to boost research and innovation.
7. **EV Supply Chain Investment Tax Credit:** Budget 2024 announces the Government's intention to introduce a new 10 per cent Electric Vehicle Supply Chain investment tax credit on the cost of buildings used in key segments of the electric vehicle supply chain, for businesses that invest in Canada. The tax credit would apply to property that is acquired and becomes available for use on or after Jan.1, 2024. The credit would be reduced to 5 percent for 2033 and 2034, with subsequent termination after 2034.
8. **Foreign investment in Canadian housing:** In addition to the vacancy tax and underused housing tax, the Government seeks to increase access to affordable housing by introducing new restrictions under the Prohibition on the *Purchase of Residential Property by Non-Canadians Act*, with the intention of further limiting foreign investment.

9. **Personal tax credits:** Budget 2024 introduces increases and expansions to various personal tax credits, including the Volunteer Firefighters and Search and Rescue Volunteers and Mineral Exploration tax credits.
10. **Canada Child Benefit:** Budget 2024 proposes to amend the *Income Tax Act*, extending the eligibility for the Canada Child Benefit in respect of a child for six months after the child's death.
11. **Disability Supports Deduction:** Budget 2024 proposes to expand the list of expenses recognized under the Disability Supports Deduction. It is also proposed that expenses for service animals be recognized under the Disability Supports Deduction.

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