Freeland to taxpayers: Talk to the hand

June 12, 2024

On Monday, June 10, 2024, the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, introduced a notice of ways and means motion (the NWMM) to implement the changes in the taxation of capital gains as announced in Budget 2024. As of June 25, 2024 (the Effective Date), the capital gains inclusion rate (the portion of a capital gain that is included in a taxpayer's income) will increase from one-half to two-thirds on, (1) all capital gains realized by corporations and trusts, and (2) capital gains realized each year above $250,000 by individuals (this $250,000 is reduced by the amount of certain favourably-taxed stock option benefits received in the year). The NWMM contains very few changes from the proposals contained in Budget 2024.

Key takeaways

1. Despite significant concerns raised by the public and the business community, the NWMM essentially provides no significant incremental relief from the Budget 2024 proposals. In particular:
    a. The Effective Date will not be deferred to allow more time for taxpayers to make considered decisions and take action accordingly.
    b. No elective mechanism to allow taxpayers to choose to realize accrued gains only for tax purposes (*i.e.*, without going to the expense and effort of an actual sale) has been provided.
    c. The $250,000 annual threshold for an individual has not been increased, extended to corporations and trusts, made shareable with a corporation controlled by the individual, or allowed to be carried over to another year to the extent unused in a particular year.
    d. No relief has been provided for cottages and other personal-use property, capital gains on which are subject to tax but losses on which are not recognized for tax purposes.
2. The NWMM has to some extent clarified the tax treatment of a number of residual items, including:
    a. Reserves claimed on capital gains realized before the Effective Date that are brought into income for tax purposes in 2024 or later years.
    b. The carry forward of losses from periods including or before the Effective Date against gains realized after June 24, and *vice versa*.
    c. The interaction of this change with taxable benefits arising in connection with stock options.

d. Capital gains realized by partnerships and trusts that are allocated out to members and beneficiaries (respectively).
e. The taxation of Canadian residents with significant interests in foreign entities (foreign affiliates).

3. If you are (or acquiring property from) a non-resident disposing of taxable Canadian property, the withholding tax rate pursuant to section 116 of the Act will increase from 25 per cent to 35 per cent for dispositions on or after Jan. 1, 2025.

Updated draft legislation will be released in July expanding on further aspects of this change and related tax initiatives, including the new Canadian Entrepreneurs' Initiative and potential relief for mining exploration corporations. For a detailed review of the Budget 2024 capital gains proposals, please see our previous article.

Taxpayers with accrued but unrealized capital gains or unrealized employee stock option benefits should review whether pre-June 25 action items should be undertaken. In particular, taxpayers should consider:

- Practical and legal requirements to complete a disposition by June 24 (*e.g.*, settlement dates on trades of listed securities);
- The potential benefit of completing a disposition to a non-arm's-length party before June 25 in order to crystallize realization of an accrued gain at the current 50 per cent inclusion rate;
- In the case of individuals, arranging their affairs so as to optimize the use of the annual $250,000 low inclusion rate threshold available to each person (*e.g.*, family members holding property jointly);
- Where shares of a corporation are being disposed of such that accrued gains are realized (whether in an arm's-length disposition or on a sale to a non-arm's party), the potential importance of utilizing any available "safe income" to reduce accrued gains before such gains are realized; and
- In the case of taxpayers other than corporations, the possible application of the Alternative Minimum Tax.

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