# Federal Budget 2023: A masterclass in increasing taxes without increasing rates

**March 28, 2023**

The 2023 Federal Budget's (Budget 2023) tax measures are predominantly domestic, with relatively little directed towards non-residents of Canada. The Government appears very focused on how the Canadian economy responds to climate change. Several major "clean tech" tax credits are being offered in response to the extremely generous comparable measures announced in the U.S. last year. Businesses in (or hoping to be in) the "green economy" in one form or another should be reviewing eligibility criteria closely. Moreover, new measures bringing employee ownership trusts to Canada and limiting the scope of tax-efficient intergenerational business transfers address issues around succession planning in a significant way and taxpayers contemplating the sale of a business in the near future will need to familiarize themselves with these rules. On the revenue-raising side, substantial changes to increase the alternative minimum tax (AMT) and further focus it towards higher-income individuals accompany rules for the public company share buy-back tax (another measure inspired by U.S. developments) first announced in the fall of 2022. Various smaller initiatives and announcements are also found in Budget 2023, as discussed below.

## Personal income tax measures

### Employee Ownership Trusts

Budget 2023 proposes new rules to facilitate the use of Employee Ownership Trusts (EOTs) in Canada to acquire and hold shares of a business effective Jan. 1, 2024. With more than 75 per cent of small business owners planning to retire in the next decade, EOTs may be an attractive option for succession planning.

*Qualifying conditions*

A trust would be considered an EOT if it is an irrevocable Canadian resident trust where at all relevant times:

- The trust holds shares of qualifying businesses for the exclusive benefit of all individuals employed by a qualifying business and any other qualifying businesses it controls, with the exclusion of employees who are significant economic interest holders or have not completed a reasonable probationary

period of up to 12 months. Individuals and their related persons who hold, or held prior to the sale to an EOT, a significant economic interest in a qualifying business of the EOT would also be excluded from being beneficiaries.
- The interests of the beneficiaries are determined in the same manner, based solely on a reasonable application of any combination of hours worked, length of service and remuneration.
- The trust cannot act in the interest of one or more beneficiaries to the prejudice of one or more other beneficiaries.
- Each trustee has an equal vote in all decisions and must be either a Canadian resident licensed trust company or an individual (other than a trust) who is elected to the position (by the beneficiaries over age 18) for a period of up to five years. When an existing business is sold to an EOT, individuals and their related persons who held a significant economic interest in the existing business prior to the sale would not be able to account for more than 40 per cent of the trustees of the EOT, directors of the board of a corporation serving as a trustee of the EOT or directors of any qualifying business of the EOT.

An EOT would be required to hold a controlling interest in the shares of one or more qualifying businesses and all or substantially all of an EOT's assets must be shares of qualifying businesses. A qualifying business is a Canadian-controlled private corporation that would need to meet certain conditions, including that all or substantially all of the fair market value of its assets are attributable to assets used in an active business carried on in Canada at all relevant times (which may be difficult to maintain). A qualifying business must not carry on its business as a partner of a partnership.

*Tax treatment of EOTs and distributions to employees*

The EOT would be a taxable trust and would therefore generally be subject to the same rules as other personal trusts. Undistributed trust income would be taxed in the EOT at the top personal marginal tax rate, whereas trust income distributed from an EOT to a beneficiary would be taxed in the hands of the beneficiary, with dividends retaining their character. An EOT would not be permitted to distribute shares of qualifying businesses to individual beneficiaries.

Favourable tax treatment will be available to both the EOT and the selling business owners on a "qualifying business transfer" by the following amendments to existing rules under the *Income Tax Act*:

- Extending the five-year capital gains reserve to a ten-year reserve for qualifying business transfers to an EOT, since it is expected that sales to an EOT could have an extended payout period.
- Amending the shareholder loan rules to extend a new exemption for EOTs. One of the requirements for the exemption is that the EOT, when borrowing from a qualifying business to finance the purchase of shares in a qualifying business transfer, must, at the time the debt is incurred, have a bona fide arrangement to repay the loan within 15 years.
- Exempting EOTs from the significant tax liability arising from the 21-year deemed disposition rule, thereby allowing EOTs to hold the shares beyond that time. If a trust no longer meets the conditions to be considered an EOT, the 21-year rule would be reinstated until the trust next meets the EOT conditions.

A qualifying business transfer must meet the following conditions:

- A taxpayer disposes of shares of a qualifying business for no more than fair market value.
- The shares must be disposed of to either a trust that qualifies as an EOT immediately after the sale or a corporation wholly-owned by the EOT.
- The EOT must own a controlling interest in the qualifying business immediately after the qualifying business transfer.

Budget 2023 announced the Government's commitment to create these trusts while consulting with stakeholders to address remaining barriers.

## Alternative Minimum Tax (AMT) for high-income individuals

Budget 2023 provides some additional detail about proposed changes to the AMT regime, which will be implemented for tax years starting after 2023.

Taxpayers are required to calculate their tax liability using the normal method and the AMT method, then pay the greater of the two amounts. Taxpayers may also be subject to provincial AMT, which is typically calculated as a percentage of the federal AMT.

Historically, the AMT was targeted at ensuring individuals could not abuse the preferential tax treatment available for certain types of income or deductions/credits to pay little or no tax.

In Budget 2023, the Government proposes an overhaul of the AMT that:

- Broadens the tax base by including a greater share of taxpayer income and denying various expenses and deductions.
- Reduces the tax credits that can be used to reduce the AMT.
- Raises the AMT tax rate from 15 per cent to 20.5 per cent.
- Increases the AMT exemption amount from $40,000 to an estimated $173,000 for 2024.

*Broader tax base*

The most surprising change to the AMT is that only 50 per cent of many expenses incurred to earn income will be deductible. This includes interest and carrying charges incurred to earn income from property and employment expenses that are not expenses incurred to earn commission income. Since the AMT only applies to individuals and trusts, and 100 per cent of many of these expenses and deductions continue to be available to corporations, this might encourage more taxpayers to shift their investment activities into a corporation.

*Fewer credits*

Charities may see donations fall as a result of the new AMT changes. A common strategy for avoiding or reducing AMT has been for individuals to make large donations to registered charities in years that they realize large capital gains. With only 50 per cent

of the associated credit available to reduce the AMT, some individuals may change their charitable giving practices.

*Raising the AMT exemption and AMT rate*

The Government proposes to increase the exemption from $40,000 to the start of the fourth federal tax bracket. Based on expected indexation for the 2024 taxation year, this would be approximately $173,000. The exemption amount would be indexed annually to inflation. This means that there is effectively no longer a minimum tax for all individuals with income up to $173,000. This will increase the benefit to taxpayers of spreading income over multiple years to avoid the application of the AMT.

The following table compares the existing AMT, the proposed AMT and the normal income tax calculation:

| Existing AMT | Proposed AMT | Non-AMT Tax Calculation |
|---|---|---|
| • 80 per cent of Capital Gains Included | • 100 per cent of Capital Gains Included | • 50 per cent of Capital Gains Included |
| • 50-100 per cent of Employee Stock Options | • 100 per cent of Employee Stock Options | • 50-100 per cent of Employee Stock Options |
| • Cash value of dividends included | • Cash value of dividends included | • Grossed-up value of dividends |
| • No Dividend Tax Credit | • No Dividend Tax Credit | • No Dividend Tax Credit |
| • 30 per cent of LCGE | • 30 per cent of LCGE | • 0 per cent of LCGE |
| • 0 per cent of capital gains on charitable donations of publicly listed securities | • 30 per cent of capital gains on charitable donations of publicly listed securities | • 0 per cent of capital gains on charitable donations of publicly listed securities |
| • 100 per cent donation credit for donated securities | • 50 per cent donation credit for donated securities | • 100 per cent donation credit for donated securities |
| • 100 per cent Deduction for most expenses and deductions | • 50 per cent Deduction for many expenses and deductions | • 100 per cent Deduction for most expenses and deductions |

| | | |
|---|---|---|
| • AMT reduced by 100 per cent of most non-refundable tax credits | • AMT reduced by 50 per cent of most non-refundable tax credits | • 100 per cent of non-refundable tax credits applied to reduce AMT |
| • AMT reduced by 100 per cent of Special Foreign Tax Credit | • AMT reduced by 100 per cent of Special Foreign Tax Credit, calculated at 20.5 per cent | • 100 per cent of Special Foreign Tax Credit, calculated at 15 per cent |
| AMT not reduced by:<br>• Political Contribution Tax Credit<br>• Labour Sponsored Venture Capital Corporations Credit<br>• Non-Refundable portion of Investment Tax Credits | AMT not reduced by:<br>• Political Contribution Tax Credit<br>• Labour Sponsored Venture Capital Corporations Credit<br>• Non-Refundable portion of Investment Tax Credits | Tax reduced by:<br>• Political Contribution Tax Credit<br>• Labour Sponsored Venture Capital Corporations Credit<br>• Non-Refundable portion of Investment Tax Credits |
| • $40,000 Exemption | • $173,000 Exemption | • $15,000 Basic Personal Amount |

The changes to the AMT would see 50 per cent of the following expenses and deductions disallowed when calculating the AMT:

- Employment expenses (except for expenses to earn commission income)
- CPP, QPP, and Provincial Parental Insurance Plan contributions
- Moving expenses
- Child care expenses
- Disability supports deduction
- Deduction for workers' compensation payments
- Deduction for social assistance payments
- Deduction for guaranteed income supplement and allowance payments
- Canadian armed forces and personnel and police deduction
- Interest and carrying charges incurred to earn income from property
- Deduction for limited partnership losses of other years
- Non-capital loss carryovers
- Northern residents deductions

Limits on expenses associated with film property, rental property, resource property, and tax shelters will continue to apply.

## Intergenerational business transfers

A private member's bill from the 43rd Parliament (Bill C-208), introduced an exception to section 84.1 of the *Income Tax Act*, effective June 29, 2021, for certain share transfers from parents to corporations owned by their children or grandchildren.

Budget 2023 proposes to amend the rules introduced by Bill C-208 to ensure that they apply only where a "genuine intergenerational business transfer" takes place. This will be defined with reference to a transfer of shares of a corporation (the Transferred Corporation) by a natural person (the Transferor) to another corporation (the Purchaser Corporation) where a number of conditions are satisfied.

The following existing conditions imposed by Bill C-208 would be maintained:

- 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" at the time of the transfer.
- 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).

Budget 2023 proposes to provide flexibility in the context of intergenerational transfers. Specifically, it proposes that taxpayers who wish to undertake a genuine intergenerational share transfer may choose to rely on one of two transfer options:

- An immediate intergenerational business transfer based on arm's length sale terms, requiring that the parent immediately give up both *de jure* and *de facto* control, together with a majority of the common growth shares in the company, with the remainder transferred over not more than three years.
- A gradual intergenerational business transfer, with more relaxed rules but allowing for transition to occur over five to ten years.

The structures contemplate a traditional estate freeze, which generally involves the Transferor crystalizing the value of their economic interest in a corporation 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 interest.

In both cases, the parents must transfer management of the business to the next generation within a reasonable time based on the particular circumstances (with a 36-month safe harbour). Parties would be required to file a joint election to identify the particular type of transfer, in addition to several ongoing requirements. Budget 2023 also proposes a ten-year capital gains reserve for transfers that satisfy these conditions.

# Business income tax measures

## General Anti-Avoidance Rule

Budget 2023 proposes to amend the general anti-avoidance rule (GAAR) in the *Income Tax Act* by:

- Introducing a preamble to create interpretative rules for applying GAAR.

- Lowering the requirements necessary for a transaction to be an “avoidance transaction” such that GAAR potentially applies.
- Introducing a rule making the absence of “economic substance” in a transaction potentially relevant to determining whether a “misuse or abuse” has occurred.
- Introducing a penalty where GAAR is applied.
- Extending the reassessment period to apply GAAR by three years.

The Government will establish a consultation period, allowing interested parties to submit their views on these proposals until May 31, 2023, after which the Government intends to publish revised legislative proposals and announce the application date of the amendments.

*Preamble*

The preamble would be added in order to help address interpretive issues and ensure that the GAAR applies as intended. Specifically, it addresses three areas as follows, as set out in the text of the proposed draft amendment:

> **Preamble**
>
> [245](0.1) This section of the Act contains the general anti-avoidance rule, which
>
> (a) applies to deny the tax benefit of avoidance transactions that result directly or indirectly either in a misuse of pro-visions of the Act (or any of the enactments listed in subparagraphs (4)(a)(ii) to (v)) or an abuse having regard to those provisions read as a whole, while allowing taxpayers to obtain tax benefits contemplated by the relevant provi-sions;
>
> (b) strikes a balance between
>
> (i) taxpayers’ need for certainty in planning their affairs, and
>
> (ii) the government of Canada’s responsibility to protect the tax base and the fairness of the tax system; and
>
> (c) can apply regardless of whether a tax strategy is foreseen.

*Avoidance transaction standard*

Currently, the threshold for a transaction to constitute an “avoidance transaction” to which GAAR may potentially apply is that obtaining a tax benefit be a “primary purpose” of the transaction (or the series of transactions of which the particular transaction is part). Budget 2023 proposes to reduce the avoidance transaction threshold such that a transaction will be an avoidance transaction if “one of the main purposes” of the transaction or series of transactions is to obtain a tax benefit. This is intended to broaden the applicability of the GAAR to transactions with a significant tax avoidance purpose, even if tax avoidance was not a “primary purpose” but (says the Government) would not apply to transactions where tax was simply a consideration.

*Economic substance*

Current jurisprudence has given only a limited role for economic substance when determining whether the GAAR applies. Budget 2023 proposes to add a new "economic substance" element to the "misuse or abuse" element of a GAAR analysis, ostensibly on the basis that GAAR's "initial objective" required economic substance as well as literal compliance with the words of the *Income Tax Act*. This new rule would apply where a transaction lacks economic substance; otherwise, the existing misuse or abuse jurisprudence would continue to apply.

Under the proposed amendments, a lack of economic substance alone would not always mean that a transaction is abusive, but its absence will be considered a factor that is indicative of abusive tax avoidance. As is currently the case, the object, spirit and purpose of the provisions or scheme relied upon would still need to be determined. Where the tax results sought are consistent with the purposes of the provisions or scheme, there would be no finding of abusive tax avoidance even in cases lacking economic substance.

Additionally, the proposed amendments provide a non-exhaustive list of indicators for determining whether a transaction or series of transactions is lacking in economic substance. Where they apply, the existence of one or more of these indicators would strongly point to a transaction lacking economic substance. The indicators are:

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

An example provided of a transaction that lacks economic substance but is not considered abusive is the transfer of funds from an individual's taxable account to a tax-free savings account. While the transaction is entirely tax motivated, it does not result in a change of economic position and does not provide potential for pre-tax profit, it is clearly not a misuse or abuse of the relevant provisions of the *Income Tax Act* as those provisions are being used in the manner that Parliament intended.

Budget 2023 claims that the proposed amendment would not supplant the general approach under Canadian income tax law respecting the legal form of an arrangement, and would not require an enquiry into or determination of what the economic substance of a transaction actually is (*e.g.,* whether a particular financial instrument is, in substance, debt or equity). Rather, the intended purpose of the amendment is to require the consideration of a lack of economic substance in determining whether a transaction is abusive tax avoidance.

*Penalty*

Budget 2023 proposes to introduce a new penalty for transactions subject to the GAAR equal to 25 per cent of the amount of the tax benefit. This penalty does not apply to tax attributes that have not yet been used to reduce tax. This penalty will only apply to tax benefits received from transactions that were not disclosed to the Canada Revenue Agency (CRA) in a prescribed form. Where a transaction is disclosed to the CRA either specifically for this purpose or as part of the proposed mandatory disclosure rules, the penalty will not apply.

*Extended reassessment period*

Budget 2023 proposes the addition of a three-year extension to the normal reassessment period for GAAR assessments on undisclosed transactions. Where a transaction is disclosed to the CRA, the normal reassessment period would apply.

*Commentary*

It is somewhat surprising that the Government chose Budget 2023 to advance the proposed amendment of GAAR in this manner to further tilt the playing field in GAAR cases in its favour. The August 2022 Discussion Paper released by the Government on this issue never explained exactly what its concerns were that required legislative amendment. Before proceeding with legislative proposals, answering questions about which cases the Government lost and should have won, and why, would have allowed a more informed and useful discussion of potential solutions. Instead, the Government has lurched forward into legislative amendments that constitute a major departure from existing tax policy.

For example, no explanation has been provided as to why penalties should apply whenever the Government successfully applies GAAR, separate and apart from the existing rules providing for penalties where gross negligence has been found (the CRA should expect to receive many, many notice filings of benign transactions as GAAR penalty insurance). The proposed new rule on economic substance is especially troubling in this regard. Notwithstanding the reference in Budget 2023 to requiring economic substance being part of GAAR's "initial objective," there is little or no evidence of that in the Explanatory Notes that accompanied GAAR's enactment adding such a requirement now is a substantive moving of the goalposts. The term "economic substance" can mean may different things to different people, and the legislative inclusion of its absence as a potential marker of "bad" transactions is unwarranted and likely to embolden the CRA to apply GAAR beyond its intended scope. The Government has drawn the wrong conclusions from the GAAR cases in which it has been unsuccessful, and it should instead focus its attention on the proposals made in the Discussion Paper to better explain the legislative rationale of the *Income Tax Act*'s provisions. Further submissions on this development are likely in advance of the May 31 deadline.

## Tax on repurchases of equity

As previously announced, Budget 2023 proposes a 2 per cent tax on the net value of share (and unit) repurchases by publicly traded Canadian corporations (excluding mutual fund trusts), REITS, SIFT trusts and partnerships (generally remnants from the Income Trust days) and certain other trusts and partnerships. The tax would apply in respect of repurchases of equity that occur on or after Jan. 1, 2024.

The tax is equal to 2 per cent of the net value of an entity's repurchase of equity (*i.e*. shares or unit of the corporation, trust or partnership) which is defined as the fair market value of equity repurchased less the fair market value of equity issued from treasury. This "netting rule" would apply on an annual basis, corresponding to the entity's taxation year. Both normal course issuer bids and substantial issuer bids would constitute the repurchase of equity for the purposes of the rule.

Certain exceptions to the netting rule are proposed. Specifically, the following transactions would not be considered an issuance or repurchase of equity:

- The issuance and cancellation of debt-like preferred shares and units, meaning shares and units with a fixed dividend and redemption entitlement.
- The issuance and cancellation of shares or units in certain corporate reorganizations and acquisitions, including certain amalgamations, liquidations, and share-for-share exchanges.

The tax would not apply to an entity in a taxation year if it repurchased less than $1 million of equity during that taxation year (prorated for short taxation years) as determined on a gross basis.

The acquisition of equity by certain affiliates of an entity would be deemed to be a repurchase of equity by the entity itself. Certain exceptions to this rule are proposed, including those intended to facilitate certain equity-based compensation arrangements, and acquisitions made by registered securities dealers in the ordinary course of business.

A similar tax in the U.S. is levied at the rate of 1 per cent. Under guidance issued by the Internal Revenue Service (Notice 2023-2, issued Dec. 27, 2022), the U.S. tax may also apply to a share buy-back by a non-U.S. (*i.e.*, Canadian) public company if a U.S. affiliate "funds by any means (including through distributions, debt or capital contributions) the acquisition or repurchase" of the stock of the Canadian corporation. The proposed Canadian rules do not appear to levy the tax against a Canadian affiliate of a publicly-traded U.S. corporation where the Canadian affiliate funds the repurchase of share by the U.S. corporation.

## Dividend received deduction by financial institutions

Budget 2023 has targeted the intercorporate dividend deduction taken by financial institutions (FIs) on shares that are subject to the mark-to-market rules, *i.e.*, shares of corporations resident in Canada that an FI has less than 10 per cent of the votes or value of (portfolio shares). Budget 2023 also proposes that, for purposes of this new provision, a share (other than a share of an FI) that is a "tracking property" of a corporation at any time in a taxation year will be deemed to be "mark-to-market property" of the corporation for the year. This proposed amendment is meant to align the treatment of dividends and gains (treated on income account) on portfolio shares under the mark-to-market rules. This measure, which will apply to deny the deduction on dividends received by FIs on mark-to-market property after 2023, is projected to result in $3.15 billion in additional revenue over the next four years.

## Energy transition

Budget 2023 proposes to introduce or expand a variety of measures to help with the Government's energy transition strategies, including the following:

*Clean electricity*

- **Clean Electricity Investment Tax Credit**: Budget 2023 proposes a 15 per cent refundable tax credit for eligible investments in: (a) Non-emitting electricity generation systems (wind & solar); (b) Abated natural gas-fired electricity generation; (c) Non fossil fuel stationary electricity storage systems; and (d) Equipment for the transmission of electricity between provinces and territories.

- **Clean Technology Investment Tax Credit – Geothermal Energy (CTI Tax Credit)**: The 2022 Fall Economic Statement had proposed the CTI Tax Credit as a 30 per cent refundable credit available to businesses investing in eligible property that is acquired and that becomes available for use on or after Budget Day 2023. Budget 2023 proposes to expand the eligibility of the CTI Tax Credit to include equipment used primarily for the purpose of generating electrical energy and/or heat energy solely from geothermal energy systems that are eligible for Class 43.1 of Schedule II of the Income Tax Regulations.

*Manufacturing and mining*

- **Investment Tax Credit for Clean Technology Manufacturing**: Budget 2023 proposes to introduce a refundable investment tax credit for depreciable property that is used all or substantially all for certain clean technology manufacturing and processing, including: (a) manufacturing of certain renewable energy equipment for solar, wind, water or geothermal projects; (b) manufacturing of nuclear energy equipment; and (c) processing or recycling of nuclear fuels and heavy water; (d) manufacturing of nuclear fuel rods; (e) manufacturing of electrical energy storage equipment used to provide grid-scale storage or other ancillary services; (f) manufacturing of equipment for air- and ground-source heat pump systems; (g) manufacturing of zero-emission vehicles, including conversions of on-road vehicles; (h) manufacturing of batteries, fuel cells, recharging systems and hydrogen refueling stations for zero-emission vehicles; (i) manufacturing of equipment used to produce hydrogen from electrolysis; and (j) manufacturing or processing upstream components, sub-assemblies and materials provided that the output would be purpose-built or designed exclusively to be integral to other eligible clean energy technology manufacturing and processing activities, such as anode and cathode materials used for electric vehicle batteries.

In addition, the tax credit will apply to eligible equipment included in extraction and certain processing activities related to six critical minerals essential for clean technology supply chains: lithium, cobalt, nickel, graphite, copper, and rare earth elements.

- **Flow-Through Shares and Critical Mineral Exploration Tax Credit (CMETC) – Lithium from Brines**: Budget 2023 proposes to include lithium from brines as a mineral resource for the purposes of the Flow-Through Share Regime and CMETC.

*Hydrogen production and carbon capture*

- **Clean Hydrogen Investment Tax Credit (CH Tax Credit)**: The CH Tax Credit will apply to the cost of purchasing and installing equipment for projects that produce (all or substantially all) hydrogen from: (a) electrolysis; or (b) natural gas, as long as emissions are abated using carbon capture and storage. The following credit rates would apply: (a) 40 per cent for a carbon intensity (CI) of less than 0.75kg; (b) 25 per cent for CI greater than or equal to 0.75kg, but less than 2kg; and (c) 15 per cent for a CI greater than or equal to 2kg, but less than 4kg. This will be determined without reference to any produced CO2 that is captured and stored or used, or excess electricity that may be sold to the electricity grid.

- **Investment Tax Credit for Carbon Capture, Utilization, and Storage (CCUS Tax Credit)**: The CCUS Tax Credit was proposed in Budget 2022 as a refundable investment tax credit that would be available to businesses that incur eligible expenses starting on Jan. 1, 2022. Budget 2023 proposes that dual use equipment that produces heat and/or power or uses water, that is used for CCUS as well as another process would be eligible for the CCUS Tax Credit and would be treated as capture equipment.

In each case, the credits described above have a variety of other requirements and details, which should be reviewed together with the start and end dates applicable to each credit.

*Labour requirements*

In addition, the 2022 Fall Economic Statement announced the Government's intention to attach prevailing wage and apprenticeship requirements (together referred to as "labour requirements") to the proposed CH Tax Credit and CTI Tax Credit. The Government also proposes to have these requirements apply to the proposed Clean Electricity Investment Tax Credit and the CCUS Tax Credit. The requirements would apply to work that is performed on or after Oct. 1, 2023. The Government announced that it is interested in feedback in the course of preparing draft legislative proposals. Budget 2023 sets out further details regarding these requirements:

- **Prevailing wage** – This proposed requirement would require that the total compensation of the relevant workers meet or exceed the relevant wage specified in an "eligible collective agreement".
- **Apprenticeship requirements** – This proposed requirement would require that not less than 10 per cent of the total labour performed by Red Seal trades be performed by registered apprentices.

# International tax measures

Budget 2023 contained no new international tax measures. In particular, while Budget 2023 reiterates the Government's commitment to implementing the first package of cross-border hybrid mismatch arrangement proposals that were initially released in April 2022, it makes no reference to an anticipated second package of hybrid mismatch proposals addressing hybrid entities.

The Government also recommitted to implementing the two-pillar plan for international tax reform agreed to in 2021 by the members of the Organisation for Economic Co-operation and Development (OECD)/Group of 20 (G20). Pillar One deals with the digitization of the economy and Pillar Two proposes a global minimum tax regime. The Government intends to continue with its previously announced Digital Services Tax with effect retroactive to 2022, if the OECD Pillar One framework does not come into force by Jan. 1, 2024. In the coming months, the Government intends to release draft legislation related to portions of the Pillar Two global minimum tax regime, with the proposals taking effect in fiscal years beginning after Dec. 30, 2023.

# Sales and excise tax measures

## GST/HST treatment of payment card clearing services

Budget 2023 proposes to amend the GST/HST definition of "financial service" to exclude payment card clearing services rendered by a payment card network operator to ensure that such services are subject to GST/HST. The proposed GST/HST amendments respond to a recent court decision which found that GST/HST does not apply to the supply of payment card clearing services.

Payment card network operator is a defined term under the *Payment Card Networks Act* and includes all major credit cards networks that maintain clearing systems in respect of payment cards (credit, debit and charge cards) and render payment card clearing services (*e.g*., payment processing and messaging services) to system participants (*e.g.*, a payment card issuer such as a bank). The proposed amendments will apply to the following services rendered by a payment card network operator under an agreement for:

a. a service in respect of the authorization of a transaction in respect of money, an account, a credit card voucher, a charge card voucher or a financial instrument;
b. a clearing or settlement service in respect of money, an account, a credit card voucher, a charge card voucher or a financial instrument; or
c. a service provided in conjunction with a service referred to above.

The proposed amendments will generally apply to any consideration for the services which became due or was paid after Budget Day.

The Government has also proposed to allow the CRA to assess, reassess, or make an additional assessment of any amounts payable or remittable by a person under the proposed amendment to the definition of "financial service" at any time on or before the later of the day that is one year after the date on which the legislation receives Royal Assent and the "normal assessment period" date under the *Excise Tax Act*, which generally provides the CRA a four year period.

## Alcohol excise duty

Budget 2023 proposes to temporarily cap the inflation adjustment for excise duties on beer, spirits and wine at 2 per cent, for one year only, as of April 1, 2023. The proposed measure would come into force on April 1, 2023.

## Cannabis taxation – quarterly duty remittances

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 (ATSC)

Budget 2023 proposes to provide $1.8 billion over five years, starting in 2023-24, to maintain and increase the Canadian Air Transport Security Authority's level of service, improve screening wait times, and strengthen security measures at airports. To support financing of this proposal, Budget 2023 proposes to increase ATSC rates by 32.85 per

cent. The ATSC rates were last increased in 2010, at which time they were raised by 52.4 per cent.

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. For transborder and international travel, the ATSC generally applies only to flights departing from Canada. Foreign governments may impose similar security charges on return travel, but those charges are not affected by this proposal.

# Other measures

## Other personal tax measures

- **Retirement Compensation Arrangements (RCAs)**: Budget 2023 proposes to amend certain rules in respect of unfunded RCAs (*i.e*., arrangements where the employer does not pre-fund their obligations by making contributions, since the benefits are paid by the employer through its revenues). The effect of this amendment is that fees or premiums paid for the purposes of securing or renewing a letter of credit or a surety bond will not be subject to the refundable tax regime in Part XI.3 of the *Income Tax Act*.
- **Registered Education Savings Plans (RESP)**: Budget 2023 proposes to amend the *Income Tax Act* such that the terms of an RESP may permit Educational Assistance Payments withdrawals of up to $8,000 (up from $5,000) in respect of the first 13 consecutive weeks of enrollment for beneficiaries enrolled in full-time programs, and up to $4,000 (up from $2,500) per 13-week period.
- **Registered Disability Savings Plans (RDSP)**: A temporary measure allows a qualifying family member, who is a parent, spouse or common-law partner to open an RDSP and be the plan holder for an adult whose capacity to enter into an RDSP contract is in doubt, and who does not have a legal representative. Budget 2023 proposes to extend the qualifying family member measure by three years to the end of 2026 and to broaden the definition to include a brother or sister of the beneficiary who is 18 years of age or older.
- **Grocery Rebate**: Budget 2023 proposes to introduce an increase to the maximum Goods and Services Tax Credit (GSTC) amount for January 2023, which helps to offset the impact of the GST on low- and modest-income individuals and families, that would be known as the Grocery Rebate. Eligible individuals would receive an additional GSTC amount equivalent to twice the amount received for January.
- **Deduction for Tradespeople's Tool Expenses**: 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.
- **Taxpayer Information Sharing for the Canadian Dental Care Plan**: In order for Health Canada and Employment and Social Development Canada to have access to taxpayer information needed to deliver the permanent Canadian Dental Care Plan, Budget 2023 proposes to amend the *Income Tax Act*, the *Excise Tax Act* and the *Excise Act*, 2001 to provide legislative authority for the CRA to share taxpayer information.
- **Automatic Tax Filing**: Since 2018, in an effort to increase the number of low-income taxpayers who file their annual tax returns, the CRA has delivered the free *File My Return* service, allowing eligible Canadians to auto-file their tax

returns over the phone after receiving an invitation letter from the CRA. Budget 2023 announced an increase to the number of eligible Canadians to two million by 2025, nearly tripling current numbers. Additionally, Budget 2023 announced that the CRA will pilot a new automatic filing service aimed at assisting vulnerable Canadians to receive the tax benefits they are eligible.

- **COVID-19 Benefit Overpayments**: Budget 2023 proposes providing $53.8 million in 2022-23 to Employment and Social Development Canada to support integrity activities relating to overpayments of COVID-19 income supports and continuing to support the CRA in recovering overpayments. We anticipate this will lead to increased audit activities in this area and suggest those who received COVID-19 benefits ensure their documentation is complete and up to date in advance of any audit.

## Income Tax and GST/HST treatment of Credit Unions

Budget 2023 proposes to amend the definition of "credit union" under the *Income Tax Act* to accommodate how credit unions currently operate by eliminating the revenue test which disqualifies credit unions that earn more than 10 per cent of their revenues from sources other than certain specified sources (such as interest income from lending activities). The amendment would apply in respect of taxation years of a credit union ending after 2016.

## Provincial public accounting

In a November 2022 report, the Auditor General of Ontario identified challenges in performing her audit of Ontario's Public Accounts due to limitations on her access to taxpayer data used in estimating provincial corporate income tax revenue. The Government announced that it will work with the Government of Ontario to develop viable solutions to address this issue.

## Implementing a publicly accessible federal beneficial ownership registry

In Budget 2022, the Government committed to implementing a public, searchable beneficial ownership registry of federal corporations by the end of 2023. This registry will cover corporations governed under the *Canada Business Corporations Act* and will be scalable to allow access to the beneficial ownership data held by provinces and territories that agree to participate in a national registry.

While an initial round of amendments to the *Canada Business Corporations Act* received Royal Assent in June 2022, further amendments are needed to implement a beneficial ownership registry. The Government is introducing further amendments to the Canada Business Corporations Act and other laws, including the Proceeds of Crime (Money Laundering) and *Terrorist Financing Act* and the *Income Tax Act*, to implement a publicly accessible beneficial ownership registry through Bill C-42.

The Government announced that it will continue calling upon provincial and territorial governments to advance a national approach to beneficial ownership transparency to strengthen the fight against money laundering, tax evasion, and terrorist financing.

### Review of the Scientific Research and Experimental Development (SR&ED) Tax Incentive Program

In Budget 2022, the Government announced its intention to review the SR&ED program to ensure it is providing adequate support and improving the development, retention, and commercialization of intellectual property, including the consideration of adopting a patent box regime. Budget 2023 confirms that the Department of Finance will continue to engage with stakeholders on the next steps in the coming months.

## 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 Nov. 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 Nov. 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 Aug. 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 CCUS Tax Credit;
    - 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 9 release; and
    - remaining legislative and regulatory proposals relating to the GST/HST, 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 Feb. 4, 2022 with respect to the GST/HST treatment of Cryptoasset Mining.
- Legislative proposals tabled in a Notice of Ways and Means Motion on Dec. 14, 2021 to introduce the *Digital Services Tax Act*.
- The transfer pricing consultation announced in Budget 2021.
- The income tax measure announced on Dec. 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 GST/HST joint venture election.

Budget 2023 also reaffirms the Government's commitment to move forward as required with other technical amendments to improve the certainty and integrity of the tax system.

Expertise

Tax, Business Tax, Financial Services, Renewable Energy

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

**blg.com**

## BLG Offices


**Calgary**

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

**Ottawa**

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

**Vancouver**

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749



The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.