Fall Economic Statement 2020 — Key Tax Announcements

December 01, 2020

On Nov. 30, 2020, The Honourable Chrystia Freeland tabled the Fall Economic Statement 2020 (the Statement). The Statement proposes short-term pandemic relief measures, including more support for families and those working remotely from home, as well as extensions of the Canada Emergency Wage Subsidy (CEWS) and the Canada Emergency Rent Subsidy (CERS). The Statement also provides a preview of longer-term initiatives aimed at tackling this year's $381 billion fiscal deficit. Of note, the Government announced that it will impose GST/HST on many digital products, goods supplied through fulfillment warehouses, and platform-based short-term accommodation and that it is moving forward with the previously announced $200,000 annual limit on employee stock options eligible for the stock option deduction.

Income tax measures

COVID-19 RELATED MEASURES

Emergency business supports

Unsurprisingly, both the CEWS and the CERS have been extended. The three newest periods, ending on March 13, 2021 (11-13), and their corresponding reference periods under both the general and alternative approach for calculating revenue declines are as follows:

Timing	**Period 11 December 20, 2020 – January 16, 2021**	**Period 12 January 17, 2021 – February 13, 2021**	**Period 13 February 14, 2021 – March 13, 2021**
General approach	December 2020 over December 2019 or November 2020 over November 2019	January 2021 over January 2020 or December 2020 over December 2019	February 2021 over February 2020 or January 2021 over January 2020
Alternative approach	December 2020 or November 2020 over	January 2021 or December 2020 over	February 2021 or January 2021 over

	average of January and February 2020	average of January and February 2020	average of January and February 2020

Applicants that had chosen to use the general approach in prior periods would continue to use that approach. Those that had chosen to use the alternative approach would continue to use the alternative approach.

All other parameters of the CEWS program remain unchanged. Further details of this program, which has been extended to June 2021, will become available at a later date.

Lockdown support measures under the CERS have also been extended until March 13, 2021 at the current 25 per cent rate.

The maximum combined base subsidy and top-up wage subsidy rate is set to rise from 65 per cent (the current qualifying period) to 75 per cent for the next three qualifying periods (January 17, 2021 to February 13, 2021 and from February 14, 2021 to March 13, 2021) for active employees. The new subsidies from December 20, 2020 to March 13, 2021 can be summarized as follows:

Revenue decline	**Base subsidy**	**Top-up wage subsidy**
70 per cent and over	40 per cent	35 per cent
50-69 per cent	40 per cent	(Revenue decline - 50 per cent) x 1.75
1-49 per cent	Revenue decline x 0.8	0 per cent

The separate wage subsidy program for furloughed employees has also been extended and amended to ensure its continued alignment with benefits provided through Employment Insurance.

Simplified home office expenses

In order to simplify the process for both taxpayers and businesses, the Statement outlines the Government's intention to allow employees working from home in 2020 due to COVID-19 with modest expenses to claim up to $400 for home office expenses, based on the amount of time working from home, without the need to track detailed expenses and without a signed form from their employers. Further detail will be communicated by the CRA in the coming weeks.

Support for families with young children

In addition to amounts ordinarily payable to families eligible for the Canada Child Benefit (CCB), the Government is proposing four additional payments in 2021 of $300 per child under the age of six to families entitled to the CCB with family net income equal to or less than $120,000, and $150 per child under the age of six to families entitled to the CCB with family net income above $120,000. The first of these amounts would be payable after the enabling legislation is passed, with subsequent amounts payments payable at the end of April, July, and October 2021.

EMPLOYEE STOCK OPTIONS

The current tax rules provide preferential tax treatment to employee stock options in the form of a deduction, which effectively results in the benefit being taxed at a rate equal to one half of the normal rate of personal taxation, the same effective rate as for capital gains. Following legislative proposals released in June 2019 and a public consultation period, the Statement introduces draft legislation to limit the availability of the stock option deduction. The draft legislation will apply to employee stock options granted after June 2021.

The Statement proposes to move forward with changes to limit the benefit of the employee stock option deduction by applying a $200,000 annual cap on employee stock option grants (based on the fair market value of the underlying shares at the date of grant) that may receive tax-preferred treatment for employees of large, long-established, mature firms.

The new rules would apply to employers that are corporations or mutual fund trusts with annual gross revenue exceeding $500 million. Canadian-controlled private corporations (CCPCs) and employers who do not generate more than $500 million in revenue will generally not be subject to the new rules.

Employers would be entitled to deduct the employment benefit on stock options for corporate income tax purposes to the extent that the stock option deduction was unavailable to an employee because the vesting exceeded the $200,000 annual cap. Employers with stock options captured under the new rules would have also had the right to designate all stock options as non-qualifying, rendering them ineligible for the stock option deduction and allowing the employer to deduct the employment benefit in the year it is included in the employee’s income. Subject employers will face additional compliance costs, as they are required to notify both employees and the CRA whether options granted are subject to the new tax treatment.

OTHER MEASURES

- ***Strengthening tax compliance***: Building off a commitment of $350 million made in Budget 2016, the Government is dedicating an additional $606 million over five years to support the CRA’s efforts to crack down on tax evasion and combat aggressive tax avoidance.
- ***Modernizing anti-avoidance rules***: The Government will launch consultations in the coming months on the modernization of Canada’s anti-avoidance rules, in particular the General Anti-Avoidance Rule, in an effort to prevent individuals to artificially lower their tax obligations.
- ***Taxing unproductive use of Canadian housing by foreign owners***: The Government plans to take steps to introduce a national, tax-based measure targeting the unproductive use of domestic housing owned by non-residents to help make housing more secure and affordable for Canadians.
- ***Registered disability savings plans (RDSP)***: Budget 2019 proposed changes to the RDSP regime for beneficiaries with episodic disabilities as discussed in our earlier bulletin. To address concerns of unfairness raised with the initial

proposals, the Statement outlines further revisions to the formula for calculating the assistance holdback amount required to be set aside by RDSP issuers to those over the age of 50 who are ineligible for the disability tax credit (DTC) when measured against and individual of the same age who is DTC eligible.

- ***Agricultural cooperatives*** : The Statement outlines the Government's intention to extend the preferential treatment it provides to agricultural cooperatives to 2026.

Sales tax measures

APPLICATION OF THE GST/HST IN RELATION TO E-COMMERCE SUPPLIES

In response to the ongoing digitalization of the global economy and the continuous development of new types of digital products, the Statement proposes a number of changes aimed at ensuring that the GST/HST applies in a fair and effective manner to the growing digital economy and to ensure that resident retailers are no longer at a competitive disadvantage.

These proposed new rules would generally apply to supplies made on or after July 1, 2021 and supplies made before July 1, 2021 if all of the consideration is payable on or after July 1, 2021.

GST/HST on cross-border digital products and cross-border services

Non-resident vendors may have new GST/HST registration obligations

The most transformative GST/HST proposal in the Statement is the simplified online registration and remittance mechanism (the Simplified Registration Regime) imposed on non-resident businesses who do not carry on business in Canada but who have Canadian customers. This Simplified Registration Regime will operate to require Canadian businesses and individuals who are not registered for GST/HST purposes to pay GST/HST on services and digital products purchased from non-resident vendors.

Currently, non-resident businesses that do not carry on business in Canada are generally not required to register for GST/HST purposes and collect GST/HST from their Canadian customers. The Simplified Registration Regime now requires non-resident businesses to register for GST/HST if they make more than $30,000 in taxable revenues from non-GST/HST-registered Canadian clients.

A significant aspect of this Simplified Registration Regime is that it applies to revenues generated from all customers that are not GST/HST registered, not just individual consumers. These customers could include charities and not-for-profit organizations, certain businesses in the education and health care sectors, and entities like holding corporations or investment vehicles that are not GST/HST registered.

For example, under the current rules, a non-resident investment advisor who occasionally advises charities and individuals in Canada would not charge GST/HST on its services if it was not registered for GST/HST purposes and was not carrying on business in Canada. Instead, the Canadian customer would have a GST/HST self-assessment requirement. Under the new rules, this non-resident investment advisor would have to register for and charge GST/HST to its clients if its clients were themselves not registered for GST/HST purposes and the advisor generated more than $30,000 in revenue from these clients.

Non-resident businesses must revisit their GST/HST registration and compliance obligations in light of this proposed Simplified Registration Regime if they deal with Canadian customers who are not GST/HST registered. Conversely, Canadian businesses who are not GST/HST-registered need to revisit their business relationships with non-resident vendors, and may need to ensure their non-resident vendors are aware of these new proposed obligations and prepared to register for and collect GST/HST where required.

Digital marketplace operators may have to collect GST/HST on behalf of their vendors

Further, operators of “digital marketplaces” such as websites or other forms of online stores have new registration and collection obligations regarding cross-border transactions by non-resident vendors using their digital marketplace. Where a non-GST/HST-registered, non-resident vendor sells services or digital products to Canadians through a digital marketplace, and the Canadian customers are also not-registered for GST/HST purposes, the operator of the digital marketplace may be required to register for GST/HST (if not already registered) and to collect and remit GST/HST on behalf of the non-resident vendors using their marketplace.
For example, under the current rules, an online store that facilitates third party vendors to make sales to Canadians would have no GST/HST registration or collection obligations regarding those third party vendors’ sales – the online store would only collect GST/HST on behalf of the third party vendor if instructed to by the vendor. The new rules essentially shift the GST/HST collection obligation to the online store if the third party vendor was not themselves registered for GST/HST purposes.

GST/HST on goods supplied through fulfillment warehouses

The GST/HST proposals also seek to impose additional GST/HST requirements on non-registered, non-resident vendors who sell goods to Canadian customers where those goods are sold through online platforms and located in Canadian fulfillment warehouses. The current rules would require such non-registered, non-resident vendors to pay GST on the wholesale value of the goods upon importation, but do not require these vendors to collect GST/HST on the final sale price of the goods to the customer.

The GST/HST proposals operate to require distribution platform operators to collect and remit GST/HST in respect of sales of goods made by non-registered non-resident vendors through their digital platform where those goods are located in fulfillment warehouses in Canada (or shipped from a place in Canada to a purchaser in Canada).

For example, if an online store facilitated non-resident artists to sell their art prints to Canadian consumers, and the online store business also provided fulfillment services to those artists by storing and shipping prints through a Canadian warehouse, the online store would be required to charge and collect GST/HST from those artists’ customers to the extent the artists were not registered for GST/HST purposes. Conversely, if an artist selling through the online store was themselves registered for GST/HST purposes, the artist would continue charging GST/HST on their sales and the online store would have no new GST/HST compliance obligations.

The GST/HST proposals contain other incidental amendments, such as requiring fulfillment warehouse businesses to report their activities to the CRA, and revisions to the GST/HST drop shipment rules.

GST/HST ON PLATFORM-BASED SHORT-TERM ACCOMMODATION

GST/HST applies to supplies of short-term rental accommodation. However, the short-term rental market increasingly includes individual property owners renting out accommodation through digital platforms that list properties and process the acceptance and payments between the property owner and the customer. Individual property owners sometimes do not generate enough short-term rental revenue to trigger GST/HST registration obligations, or are unaware of or otherwise non-compliant with their registration obligations.

Under the current GST/HST rules, the property owner is generally considered to be the supplier of the accommodation who must charge and collect GST/HST from their customers. The Statement proposes to apply the GST/HST on all supplies of short-term accommodation in Canada facilitated through a digital platform by a mechanism similar to the digital marketplace proposals.

Under this proposal, the accommodation platform operator will be required to collect GST/HST on transactions made through the platform where the property owner is not themselves registered for GST/HST purposes. If the property owner is GST/HST registered, they will continue to be the party responsible for collecting GST/HST on their rentals.

Additionally, non-resident accommodation platform operators would be subject to the new Simplified Registration Regime if they are not carrying on business in Canada or are otherwise required to be registered for GST/HST purposes.

GST/HST RELIEF ON FACE MASKS AND FACE SHEILDS

In order to support public health during the COVID-19 pandemic, the supply of certain face masks and face shields will be relieved from GST/HST (i.e. zero rated) on a temporarily basis beginning from December 6, 2020 until their use is no longer broadly recommended by public health officials for the COVID-19 pandemic.

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