TAX HIGHLIGHTS FROM THE 2023 FEDERAL BUDGET

Canada's Finance Minister, the Honourable Chrystia Freeland, tabled the 2023 federal budget on March 28, 2023.

Canada's economy is now 103% the size it was before the pandemic, marking the fastest recovery of the last four recessions, and the second strongest recovery in the G7. The unemployment rate is near its record low and Canada's economic growth was the strongest in the G7 over the last year. At the same time, many Canadians continue to face affordability challenges and inflation remains elevated.

Budget 2023 forecasts a deficit of $43 billion for 2022/23, decreasing each year to $14 billion in 2027/28. The federal debt-to-GDP ratio is expected to rise from 42.4% in 2022/23 to 43.5% in 2023/24, before declining to 39.9% in 2027/28.

From a tax perspective, there were no changes to personal or corporate tax rates. The budget did include a new grocery rebate, changes to Registered Education Savings Plan withdrawal limits, an updated alternative minimum tax regime for high-income individuals, and strengthened intergenerational business transfer rules.

The following is a summary of significant tax and program changes announced in the budget. Please note that the changes are proposals until they are passed by the federal government.

PERSONAL TAX MATTERS

Personal income tax rates and tax brackets

There were no proposed changes to personal income tax rates. Tax brackets and other amounts have been indexed by 6.3% to recognize the impact of inflation. The table below shows federal personal income tax rates and brackets for 2023.

2023 TAX RATES				
Taxable income range	Other income	Capital gains	Eligible dividends	Non-eligible dividends
First $53,359	15.0%	7.5%	0.0%	6.9%
Over $53,359-$106,717	20.5%	10.3%	7.6%	13.2%
Over $106,717-$165,430	26.0%	13.0%	15.2%	19.5%
Over $165,430-$235,675	29.3%	14.7%	19.8%	23.4%
Over $235,675	33.0%	16.5%	24.8%	27.6%

The table below shows the highest marginal federal tax rates for various types of income in 2023.

TYPE OF INCOME	2023 TAX RATES
Regular income	33.0%
Capital gains	16.5%
Eligible dividends	24.8%
Non-eligible dividends	27.6%

The Grocery Rebate

The Goods and Services Tax Credit (GSTC) helps to offset the impact of the GST on low- and modest-income individuals and families. The GSTC is non-taxable, income-tested, and indexed to inflation.

Budget 2023 proposes to introduce an increase to the maximum GSTC amount for January 2023 that would be known as the Grocery Rebate. Eligible individuals would receive an additional GSTC amount equivalent to twice the amount received for January. The Grocery Rebate would be paid as soon as possible following the passage of legislation, through the GSTC system. The maximum amount under the Grocery Rebate would be:

- $153 per adult;
- $81 per child; and
- $81 for the single supplement.

To legislate this change, the maximum GSTC amount for January 2023 would be replaced with an amount that is triple the maximum for that month under the current rules. For this January 2023 replacement payment only, the phase-in and phase-out rates would be tripled to 6% from 2% and to 15% from 5%, respectively. This ensures that the Grocery Rebate would be fully phased in and phased out at the same income levels as under the current GSTC rules for the 2022/23 benefit year. There would be no change to the income thresholds at which the single supplement phases in and GSTC entitlement phases out.

Employee Ownership Trusts

An Employee Ownership Trust (EOT) is a form of employee ownership where a trust holds shares of a corporation for the benefit of the corporation's employees. EOTs can be used to facilitate the purchase of a business by its employees, without requiring them to pay directly to acquire shares. For business owners, an EOT provides an additional option for succession planning.

Budget 2023 proposes new rules to facilitate the use of EOTs to acquire and hold shares of a business. The new rules would define qualifying conditions to be an EOT and propose changes to tax rules to facilitate the establishment of EOTs. These changes would extend the capital gains reserve to ten years for qualifying sales to an EOT, create an exception to the current shareholder loan rule, and exempt EOTs from the 21-year deemed disposition rule that applies to certain trusts.

Facilitating the establishment of EOTs

To better accommodate the establishment and use of EOTs, certain existing tax rules would be modified.

Ten-year capital gains reserve

When taxpayers receive proceeds of a sale of capital property on a deferred basis, they are permitted to defer recognition of the capital gain until the year in which they receive proceeds. A minimum of 20% of the gain must be brought into income each year, creating a maximum five-year deferral period. It is anticipated that sales to an EOT could have an extended period of deferred consideration.

Budget 2023 proposes to extend the five-year capital gains reserve to a ten-year reserve for qualifying business transfers to an EOT. A minimum of 10% of the gain would be required to be brought into income each year, creating a maximum ten-year deferral period. All individuals who disposed of shares in a qualifying business transfer would be eligible to claim the proposed expanded capital gains reserve.

Exception to shareholder loan rules

Taxpayers who receive a shareholder loan are generally required to include the loaned amount in income in the year the loan is received unless the loan is repaid within a year. If an EOT were to borrow from a qualifying business to finance the purchase of shares in a qualifying business transfer, the EOT would be required to repay borrowed amounts within one year of the qualifying business' taxation year-end to avoid paying taxes on the loaned amount.

Budget 2023 proposes to introduce a new exception to extend the repayment period from one to 15 years for amounts loaned to the EOT from a qualifying business to purchase shares in a qualifying business transfer.

Exception to 21-year rule

To prevent the indefinite deferral of tax on accrued capital gains, certain trusts are deemed to dispose of their capital property at 21-year intervals. An EOT is intended to allow for shares to be held indefinitely for the benefit of employees. Consequently, the 21-year rule could create a significant tax liability for the EOT.

Budget 2023 proposes to exempt EOTs from the 21-year rule. 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.

Deduction for Tradespeople's Tool Expenses

Under the deduction for tradespeople's tool expenses, a tradesperson can claim a deduction of up to $500 of the amount by which the total cost of eligible new tools acquired in a taxation year as a condition of employment exceeds the amount of the Canada Employment Credit ($1,368 in 2023). The total cost of eligible new tools cannot exceed the total of the employment income earned as a tradesperson and any apprenticeship grants received to acquire the tools, which are required to be included in income.

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.

Registered Education Savings Plans

When a Registered Education Savings Plan (RESP) beneficiary is enrolled in an eligible post-secondary program, government grants and investment income can be withdrawn from the plan as Educational Assistance Payments (EAPs) in order to assist with post-secondary education-related expenses. EAPs are taxable income for the RESP beneficiary.

The ***Income Tax Act*** requires that RESPs place limits on the amount of EAPs that can be withdrawn. For beneficiaries enrolled full-time (i.e., in a program of at least three consecutive weeks' duration requiring at least 10 hours per week of courses or work in the program), the limit is $5,000 in respect of the first 13 consecutive weeks of enrollment in a 12-month period. For beneficiaries enrolled part-time (i.e., in a program of at least three consecutive weeks' duration requiring at least 12 hours per month of courses in the program), the limit is $2,500 per 13-week period.

Budget 2023 proposes to amend the ***Income Tax Act*** such that the terms of an RESP may permit EAP withdrawals of up to $8,000 in respect of the first 13 consecutive weeks of enrollment for beneficiaries enrolled in full-time programs, and up to $4,000 per 13-week period for beneficiaries enrolled in part-time programs.

These changes would come into force on Budget Day. RESP promoters may need to amend the terms of existing plans in order to apply the new EAP withdrawal limits. Individuals who withdrew EAPs prior to Budget Day may be able to withdraw an additional EAP amount, subject to the new limits and the terms of the plan. The ***Income Tax Act*** allows for EAPs to be withdrawn up to six months after a beneficiary ceases to be enrolled in an eligible program.

Allowing divorced or separated parents to open joint RESPs

At present, only spouses or common-law partners can jointly enter into an agreement with an RESP promoter to open an RESP. Parents who opened a joint RESP prior to their divorce or separation can maintain this plan afterwards but are unable to open a new joint RESP with a different promoter.

Budget 2023 proposes to enable divorced or separated parents to open joint RESPs for one or more of their children, or to move an existing joint RESP to another promoter. This change would come into force on Budget Day.

Retirement Compensation Arrangements

Under the ***Income Tax Act***, a Retirement Compensation Arrangement (RCA) is a type of employer-sponsored arrangement that generally allows an employer to provide supplemental pension benefits to employees.

Employers can choose to pre-fund supplemental retirement benefits through contributions to a trust established under an RCA (RCA trust). Under Part XI.3 of the ***Income Tax Act***, a refundable tax is imposed at a rate of 50% on contributions to an RCA trust, as well as on income and gains earned or realized by the trust. The tax is generally refunded as the retirement benefits are paid from the RCA trust to the employee. For example, $100 in contributions to the RCA trust would result in remitting $50 of refundable tax to the Canada Revenue Agency. Conversely, if the RCA trust pays out $100 in benefits during a year, it would trigger a $50 tax refund.

Employers who do not pre-fund supplemental retirement benefits through contributions to an RCA trust, and instead settle retirement benefit obligations as they become due, can obtain a letter of credit (or a surety bond) issued by a financial institution in order to provide security to their employees. To secure or renew the letter of credit, the employer pays an annual fee or premium charged by the issuer. These fees or premiums are subject to the 50% refundable tax. For example, if the annual fee for a letter of credit is $100,000, the employer must contribute $200,000 to the RCA trust, as $100,000 will be paid to the financial institution to cover the fee and the other $100,000 will be remitted to the Canada Revenue Agency for the refundable tax.

When retirement benefits become due from an unfunded plan, the employer pays the benefits out of corporate revenues. Consequently, there are no benefit payments from an RCA trust to trigger a 50% refund, and employers are required to fund escalating refundable tax balances with no practical mechanism for recovery.

Budget 2023 proposes to amend the ***Income Tax Act*** so that fees or premiums paid for the purposes of securing or renewing a letter of credit (or a surety bond) for an RCA that is supplemental to a registered pension plan will not be subject to the refundable tax. This change would apply to fees or premiums paid on or after Budget Day.

Registered Disability Savings Plans

Registered Disability Savings Plans (RDSPs) are designed to support the long-term financial security of a beneficiary who is eligible for the disability tax credit. Where the contractual competence of an individual who is 18 years of age or older is in doubt, the RDSP plan holder must be that individual’s guardian or legal representative as recognized under provincial or territorial law. However, establishing a legal representative can be a lengthy and expensive process that can have significant repercussions for individuals. Some provinces and territories have introduced measures that provide sufficient flexibility to address this concern.

A temporary measure, which is legislated to expire on December 31, 2023, 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 December 31, 2026. A qualifying family member who becomes a plan holder before the end of 2026 could remain the plan holder after 2026.

Siblings as qualifying family members

To increase access to RDSPs, Budget 2023 also proposes to broaden the definition of 'qualifying family member' to include a brother or sister of the beneficiary who is 18 years of age or older. This will enable a sibling to establish an RDSP for an adult with mental disabilities whose ability to enter into an RDSP contract is in doubt and who does not have a legal representative.

This proposed expansion of the existing qualifying family member definition would apply as of royal assent of the enabling legislation and be in effect until December 31, 2026. A sibling who becomes a qualifying family member and plan holder before the end of 2026 could remain the plan holder after 2026.

Alternative Minimum Tax for High-Income Individuals

The Alternative Minimum Tax (AMT) is a parallel tax calculation that allows fewer deductions, exemptions, and tax credits than under the ordinary income tax rules, and that currently applies a flat 15% tax rate with a standard $40,000 exemption amount instead of the usual progressive rate structure. The taxpayer pays the AMT or regular tax, whichever is highest. Additional tax paid as a result of the AMT can generally be carried forward for seven years and can be credited against regular tax to the extent regular tax exceeds AMT in those years. The AMT does not apply in the year of death.

To better target the AMT to high-income individuals, Budget 2023 proposes several changes to its calculation. Key design features of the new AMT regime are described in detail below. Additional details will be released later this year.

Broadening the AMT base

A number of changes are proposed to broaden the AMT base by further limiting tax preferences (i.e., exemptions, deductions, and credits).

Capital gains and stock options

The government proposes to increase the AMT capital gains inclusion rate from 80% to 100%. Capital loss carry forwards and allowable business investment losses would apply at a 50% rate. It is also proposed that 100% of the benefit associated with employee stock options would be included in the AMT base.

Lifetime capital gains exemption

Under current rules, 30% of capital gains eligible for the lifetime capital gains exemption are included in the AMT base. The government proposes to maintain this treatment.

Donations of publicly listed securities

The government proposes to include 30% of capital gains on donations of publicly listed securities in the AMT base, mirroring the AMT treatment of capital gains eligible for the lifetime capital gains exemption. The 30% inclusion would also apply to the full benefit associated with employee stock options to the extent that a deduction is available because the underlying securities are publicly listed securities that have been donated.

Deductions and expenses

Under the new rules, the AMT base would be broadened by disallowing 50% of the following deductions:

- employment expenses, other than those to earn commission income;
- deductions for Canada Pension Plan, Quebec Pension Plan, and Provincial Parental Insurance Plan contributions;
- moving expenses;
- childcare 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 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; and
- Northern residents deductions.

Expenses associated with film property, rental property, resource property, and tax shelters that are limited under the existing AMT rules would continue to be limited in the same manner.

Non-refundable credits

Currently, most non-refundable tax credits can be credited against the AMT. The government proposes that only 50% of non-refundable tax credits would be allowed to reduce the AMT, subject to the following exceptions:

- The Special Foreign Tax Credit would continue to be allowed in full and would be based on the new AMT tax rate.
- The proposed AMT would continue to use the cash (i.e., not grossed-up) value of dividends and fully disallow the Dividend Tax Credit.
- Some non-refundable credits that are currently disallowed would continue to be disallowed in full: the Political Contribution Tax Credit, the Labour Sponsored Venture Capital Corporations Credit, and the non-refundable portion of investment tax credits.

Raising the AMT exemption

The exemption amount is a deduction available to all individuals (excluding trusts, other than graduated rate estates) that is intended to protect lower- and middle-income individuals from the AMT. 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.

Increasing the AMT rate

The government proposes to increase the AMT rate from 15% to 20.5%, corresponding to the rates applicable to the first and second federal income tax brackets, respectively.

Carry forward period

The length of the carry forward would be maintained at seven years.

Treatment of trusts

Trusts that are currently exempt from the AMT would continue to be exempt. The government will continue to examine whether additional types of trusts should be exempt from the AMT.

Coming into force

The proposed changes would come into force for taxation years that begin after 2023.

CORPORATE TAX MATTERS

Corporate income tax rates

With the exception of an extension of the temporary measure to reduce corporate income tax rates for qualifying zero-emission technology manufacturers, there were no proposed changes to federal corporate income tax rates or the small business limit for 2023. The table below shows federal tax rates and the small business limit for 2023.

Category	2023 tax rates
General rate	15.0%
Manufacturing & processing rate	15.0%
Small business rate	9.0%
Small business limit	$500,000

Strengthening the intergenerational business transfer framework

A private member's bill from the 43rd Parliament (Bill C-208) introduced an exception to section 84.1, effective June 29, 2021, to facilitate certain share transfers from parents to corporations owned by their children or grandchildren. Prior to this Bill, these transfers were generally caught under section 84.1 and were re-characterized from a preferentially taxed capital gain to a less preferentially taxed dividend.

Although the stated purpose of Bill C-208 was to facilitate intergenerational business transfers in circumstances where section 84.1 inappropriately applied, the rules introduced by Bill C-208 contain insufficient safeguards and are available where no transfer of a business to the next generation has taken place. More specifically, the amendments introduced by Bill C-208 do not require that:

- the parent cease to control the underlying business of the corporation whose shares are transferred;
- the child have any involvement in the business;
- the interest in the purchaser corporation held by the child continue to have value; or
- the child retain an interest in the business after the transfer.

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. A genuine intergenerational share transfer would be 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 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" (both as defined in the ***Income Tax Act***), at the time of the transfer; and
- 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).

To ensure that only genuine intergenerational share transfers are excluded from the application of section 84.1, additional conditions are proposed to be added. To provide flexibility, it is proposed 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 (three-year test) based on arm's length sale terms; or
- a gradual intergenerational business transfer (five-to-ten-year test) based on traditional estate freeze characteristics (an estate freeze typically involves a parent 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).

The rules introduced by Bill C-208 that apply to subsequent share transfers by the Purchaser Corporation and the lifetime capital gains exemption are proposed to be replaced by relieving rules that would apply upon a subsequent arm's length share transfer or upon the death or disability of a child. There would be no limit on the value of shares transferred in reliance upon this rule.

The Transferor and child (or children) would be required to jointly elect for the transfer to qualify as either an immediate or gradual intergenerational share transfer. The child (or children) would be jointly and severally liable for any additional taxes payable by the Transferor, because of section 84.1 applying, in respect of a transfer that does not meet the above conditions. The joint election and joint and several liability recognize that the actions of the child could potentially cause the parent to fail the conditions and to be reassessed under section 84.1.

In order to provide the Canada Revenue Agency with the ability to monitor compliance with these conditions and to assess taxpayers that do not so comply, the limitation period for reassessing the Transferor's liability for tax that may arise on the transfer is proposed to be extended by three years for an immediate business transfer and by ten years for a gradual business transfer.

Capital Gains Reserve

Budget 2023 also proposes to provide a ten-year capital gains reserve for genuine intergenerational share transfers that satisfy the above proposed conditions.

Coming into Force

These measures would apply to transactions that occur on or after January 1, 2024.

Investment in clean energy

Budget 2023 proposes several updates to tax measures specifically impacting the clean energy industry.

Investment tax credit for clean hydrogen

- Clean Hydrogen Investment Tax Credit (CH Tax Credit) introduced for projects that produce all, or substantially all, hydrogen through their production process would be eligible for the CH Tax Credit.
- The CH Tax Credit would be refundable and could be claimed when eligible equipment becomes available for use, at the applicable credit rate. The credit starts at 40% for a carbon intensity of less than 0.75kg and reduces to 15% for a carbon intensity greater than or equal to 2kg (but less than 4kg).
- The CH Tax Credit would be phased out starting in 2034, with property that becomes available for use in 2034 subject to a credit rate that is reduced by one half. The CH Tax Credit would be fully phased out for property that becomes available for use after 2034.
- This measure would apply to property that is acquired and that becomes available for use on or after Budget Day.

Expanding eligibility for the clean technology tax credit – geothermal energy

- The 2022 Fall Economic Statement proposed a 30% Clean Technology Investment Tax Credit available to businesses investing in eligible property that is acquired and that becomes available for use on or after Budget Day.
- Budget 2023 proposes to expand eligibility of the tax credit to include geothermal energy systems that are eligible for Class 43.1 of Schedule II of the ***Income Tax Regulations***; including equipment used primarily for the purpose of generating electrical energy or heat energy, or both electrical and heat energy, solely from geothermal energy, that is described in subparagraph (d)(vii) of Class 43.1.

- Budget 2023 also proposes to modify the phase-out schedule of the tax credit: it would remain at 30% for property that becomes available for use in 2032 and 2033 and would be reduced to 15% in 2034. The credit would be unavailable after 2034.

Investment tax credit for clean technology manufacturing

- A 30% refundable tax credit introduced for clean technology manufacturing and processing, and critical mineral extraction and processing based on the capital cost of eligible property associated with eligible activities.
- Eligible property would generally include machinery and equipment, including certain industrial vehicles, used in manufacturing, processing, or critical mineral extraction, as well as related control systems.
- The tax credit would apply to property that is acquired and becomes available for use on or after January 1, 2024. The Investment Tax Credit for Clean Technology Manufacturing would be gradually phased out starting with property that becomes available for use in 2032 and would no longer be in effect for property that becomes available for use after 2034.

Enhancing the reduced tax rates for zero-emission technology manufacturers

- Budget 2023 proposes that income from additional certain nuclear manufacturing and processing activities would also qualify for the reduced tax rates for zero-emission technology manufacturers.
- This expansion of eligible activities would apply for taxation years beginning after 2023.
- Budget 2023 proposes to extend the availability of these reduced rates by three years, such that the planned phase-out would start in taxation years that begin in 2032. The measure would be fully phased out for taxation years that begin after 2034.

Enhancing the carbon capture, utilization, and storage investment tax credit (CCUS Tax Credit)

- Budget 2023 proposes that dual use equipment that produces heat and/or power or uses water, that is used for carbon capture, utilization, and storage (CCUS) as well as another process, be eligible for the CCUS Tax Credit.
- The budget also proposes that British Columbia be added to the list of eligible jurisdictions for dedicated geological storage, applicable to expenses incurred on or after January 1, 2022.
- Taxpayers would need to have their technology validated by a qualified third party, which would confirm that the process meets the minimum 60% mineralization requirement.
- These measures would apply to eligible expenses incurred after 2021 and before 2041.

Investment Tax Credit for Clean Electricity

- Budget 2023 proposes to introduce a 15% refundable tax credit for eligible investments in certain clean electrical systems.
- The Clean Electricity Investment Tax Credit would be available as of the day of Budget 2024 for projects that did not begin construction before the day of Budget 2023. The Clean Electricity Investment Tax Credit would not be available after 2034.

Note that businesses would be able to claim only one of the Investment Tax Credit for Clean Technology Manufacturing, the Investment Tax Credit for Clean Technology, the Investment Tax Credit for Clean Electricity, or the Investment Tax Credit for Clean Hydrogen, if a particular property is eligible for more than one of these tax credits.

Labour requirements related to certain investment tax credits

The 2022 Fall Economic Statement announced the government's intention to attach prevailing wage and apprenticeship requirements to the proposed Clean Technology and Clean Hydrogen Investment Tax Credits. The government also proposes to have these requirements apply to the proposed Clean Electricity Investment Tax Credit, as well as the Investment Tax Credit for Carbon Capture, Utilization, and Storage.

The labour requirements would apply in respect of workers engaged in project elements that are subsidized by the respective investment tax credit, whether they are engaged directly by the business or indirectly by a contractor or subcontractor. The labour requirements would apply to workers whose duties are primarily manual or physical in nature (e.g., labourers and tradespeople). The labour requirements would not apply to workers whose duties are primarily administrative, clerical, supervisory, or executive.

The requirements would apply to work that is performed on or after October 1, 2023.

Flow-through shares and critical mineral exploration tax credit – lithium from brines

Budget 2023 proposes to amend the ***Income Tax Act*** to include lithium from brines as a mineral resource. Budget 2023 also proposes to expand the eligibility of the Critical Mineral Exploration Tax Credit (CMETC) to lithium from brines. The expansion of the eligibility for the CMETC to lithium from brines would apply to flow-through share agreements entered into after Budget Day and before April 2027.

Tax on repurchases of equity

Budget 2023 provides the design and implementation details of the proposed measure introduced during the 2022 Fall Economic Statement. The tax would apply to public corporations (excluding mutual fund corporations), real estate investment trusts and specified investment flow-through trusts and partnerships.

The tax would be equal to 2% of the net value of an entity's repurchase of equity (meaning shares of the corporation or units of the trust or partnership), 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 (for income tax purposes).

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; and
- 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 tax would apply in respect of repurchases and issuances of equity that occur on or after January 1, 2024.

Dividend received deduction by financial institutions

The policy behind the dividend received deduction conflicts with the policy behind the mark-to-market rules. Although the mark-to-market rules essentially classify gains on portfolio shares as business income, dividends received on those shares remain eligible for the dividend received deduction and are excluded from income. The tax treatment of dividends received by financial institutions on portfolio shares held in the ordinary course of their business is inconsistent with the tax treatment of gains on those shares under the mark-to-market rules.

To align the treatment of dividends and gains on portfolio shares under the mark-to-market rules, Budget 2023 proposes to deny the dividend received deduction in respect of dividends received by financial institutions on shares that are mark-to-market property. This measure would apply to dividends received after 2023.

SALES & EXCISE TAX MEASURES

GST/HST Treatment of Payment Card Clearing Services

Budget 2023 proposes to amend the GST/HST definition of "financial service" to clarify that payment card clearing services rendered by a payment card network operator are excluded from the definition to ensure that such services generally continue to be subject to the GST/HST.

This measure would apply to a service rendered under an agreement for a supply if any consideration for the supply becomes due, or is paid without becoming due, after Budget Day. This measure would also apply to a service rendered under an agreement for a supply if all of the consideration for the supply became due, or was paid, on or before Budget Day, except in certain situations, generally being where the following two conditions were both met:

(1) the supplier did not, on or before Budget Day, charge, collect or remit any amount as or on account of tax in respect of the supply; and

(2) the supplier did not, on or before Budget Day, charge, collect or remit any amount as or on account of tax in respect of any other supply that is made under the agreement and that includes the provision of a payment card clearing service.

Alcohol Excise Duty

Under the *Excise Act* and the *Excise Act, 2001*, alcohol excise duties are automatically indexed to total Consumer Price Index (CPI) inflation at the beginning of each fiscal year (i.e., on April 1st). Budget 2023 proposes to temporarily cap the inflation adjustment for excise duties on beer, spirits and wine at 2%, for one year only, as of April 1, 2023.

Cannabis Taxation – Quarterly Duty Remittances

The federal government imposes an excise duty on cannabis products, which is generally remittable on a monthly basis. Budget 2022 brought forward a measure that allowed certain smaller licensed cannabis producers to remit excise duties on a quarterly basis. 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.

OTHER PROPOSALS

Automatic Tax Filing

To ensure more low-income Canadians have the ability to quickly and easily auto-file their tax returns, Budget 2023 announces that the federal government will increase the number of eligible Canadians for File My Return to two million by 2025—almost triple the current number. The government will report on its progress in 2024.

Budget 2023 also announces that, starting next year, the Canada Revenue Agency will pilot a new automatic filing service that will help vulnerable Canadians who currently do not file their taxes receive the benefits to which they are entitled. Following consultations with stakeholders and community organizations, the Canada Revenue Agency will present a plan in 2024 to expand this service even further.

General anti-avoidance rule

The general anti-avoidance rule (“GAAR”) in the ***Income Tax Act*** is intended to prevent abusive tax avoidance transactions while not interfering with legitimate commercial and family transactions. If abusive tax avoidance is established, the GAAR applies to deny the tax benefit created by the abusive transaction.

Budget 2023 proposes to amend the GAAR by:

- Introducing a preamble to help address interpretive issues and ensure that the GAAR applies as intended;
- Changing the avoidance transaction standard to a "one of the main purposes" test;
- Introducing an economic substance rule;
- Introducing a penalty equal to 25% of the amount of the tax benefit; and
- Extending the reassessment period in certain circumstances.

A penalty would be introduced for transactions subject to the GAAR, equal to 25% of the amount of the tax benefit. Where the tax benefit involves a tax attribute that has not yet been used to reduce tax, the amount of the tax benefit would be considered to be nil. The penalty could be avoided if the transaction is disclosed to the Canada Revenue Agency, either as part of the proposed mandatory disclosure rules or voluntarily. As such, a consequential amendment would be made to the proposed reportable transaction rules to permit voluntary reporting.

Provincial Public Accounting

The federal government values the need for transparency and accountability in public reporting. 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 will work with the Government of Ontario to develop viable solutions to address this issue.

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 November 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 November 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 August 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 Investment Tax Credit for Carbon Capture, Utilization and Storage;
  - 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 9th release; and
- remaining legislative and regulatory proposals relating to the Goods and Services Tax/Harmonized Sales Tax, 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 February 4, 2022 with respect to the Goods and Services Tax/Harmonized Sales Tax treatment of Cryptoasset Mining.
- Legislative proposals tabled in a Notice of Ways and Means Motion on December 14, 2021 to introduce the Digital Services Tax Act.
- The transfer pricing consultation announced in Budget 2021.
- The income tax measure announced on December 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 Goods and Services Tax/Harmonized Sales Tax 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.

WE CAN HELP

Your Assante advisor can help you assess the impact of these proposals on your personal finances or business affairs and show you ways to take advantage of their benefits or ease their impact. The resources available to you and your advisor include CI Assante Private Client's Wealth Planning Group, a multi-disciplinary team of accountants, lawyers and financial planners.

For more information, we encourage you to speak to your advisor or visit us at assante.com

Published March 28th, 2023.