ORDRE DES COMPTABLES PROFESSIONNELS AGRÉÉS DU QUÉBEC

PSB BOISJOLI

2023 FALL ECONOMIC UPDATE SUMMARY – FEDERAL

November 21, 2023

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INTRODUCTION

On November 21, 2023, Canada's Deputy Prime Minister and Minister of Finance, Chrystia Freeland, presented the 2023 Fall Economic Update. This update proposes new measures aimed at making changes to the Underused Housing Tax, supporting employee ownership trusts, providing amendments to concessional loans and expanding eligibility for the Clean Technology and Clean Electricity Investment Tax Credits.

Here are the highlights of the 2023 fall economic update.

MEASURES PERTAINING TO INDIVIDUALS

Employee Ownership Trusts

An Employee Ownership Trust owns shares in a business on behalf of its employees, enabling greater worker participation in business decisions and profits. Budget 2023 introduced tax rules to facilitate the creation of Employee Ownership Trusts.

The *Economic Statement* proposes to exempt the first $ 10 million in capital gains realized on the sale of a business to an Employee Ownership Trust from taxation, subject to certain conditions.

This incentive would be in effect for the 2024, 2025, and 2026 tax years. Further details will be provided in the coming months.

Taxpayer Information Sharing for the Canadian Dental Care Plan

The *Economic Statement* proposes to amend the *Income Tax Act* (ITA) to provide legislative authority for the Canada Revenue Agency (CRA) to share taxpayer information with an official of Public Services and Procurement Canada solely for the purposes of the administration or enforcement of the Canadian Dental Care Plan.

These amendments would come into force upon royal assent.

MEASURES PERTAINING TO BUSINESSES

Concessional Loans

Under the ITA, if a taxpayer receives government assistance in the course of earning income from a business or property, the amount of that assistance may reduce the amount of a related expense or the cost or capital cost of a related property, or may be included in the taxpayer's income. The amount of assistance may also reduce the amount of an expenditure on which an associated investment tax credit is based.

Historically, non-forgivable loans from public authorities were generally not considered government assistance. This position extended to concessional loans (meaning loans that do not bear interest or that bear interest at below-market rates) from public authorities. However, in a 2021 decision, the Tax Court of Canada determined that the full principal amount of a concessional loan was government assistance. This decision was affirmed by the Federal Court of Appeal in 2022.

The *Economic Statement* proposes to amend the ITA to provide that bona fide concessional loans with reasonable repayment terms from public authorities will generally not be considered government assistance.

This amendment would come into force on November 21, 2023.

Dividend Received Deduction by Financial Institutions – Exception

The ITA permits corporations to claim a deduction in respect of dividends received on shares of other corporations resident in Canada. Budget 2023 proposed to deny the dividend received deduction in respect of dividends received by financial institutions on shares that are mark-to-market property.

The *Economic Statement* proposes an exception to this measure for dividends received on "taxable preferred shares" (as defined in the ITA). This exception, along with the rest of the measure, would apply to dividends received on or after January 1, 2024.

Clean Hydrogen Investment Tax Credit

Budget 2023 proposed to introduce the Clean Hydrogen Investment Tax Credit (ITC) and announced the credit's main design elements in respect of eligible projects, credit rates, measuring carbon intensity, eligible equipment, verification, and compliance.

Budget 2023 also indicated that additional details on the design elements of the Clean Hydrogen ITC would be announced at a later date. The *Economic Statement* proposes the details in respect of these design elements :

- Eligible Clean Ammonia Production Equipment
- Power Purchase Agreements and Other Similar Instruments
- Renewable Natural Gas
- Initial Project Carbon Intensity Assessment and Validation
- Compliance and Recovery

Clean Technology and Clean Electricity Investment Tax Credits – Equipment Using Waste Biomass

The *Economic Statement* proposes to expand eligibility for:

> The 30-per-cent Clean Technology investment tax credit to include systems that produce electricity, heat, or both electricity and heat from waste biomass. This expansion of the Clean Technology Investment Tax Credit would be available to businesses investing in eligible property that is acquired and becomes available for use on or after November 21, 2023.

> The 15-per-cent Clean Electricity investment tax credit to include systems that produce electricity or both electricity and heat from waste biomass, which would be available as of the date of Budget 2024 for projects that did not begin construction before March 28, 2023.

The labour requirements to pay prevailing wages and provide apprenticeship training opportunities will apply to the expanded investment tax credits.

Canadian Journalism Labour Tax Credit

The *Economic Statement* proposes to increase the cap on labour expenditures per eligible newsroom employee from $55,000 to $85,000. It is further proposed that the Canadian journalism labour tax credit rate be temporarily increased from 25 per cent to 35 per cent for a period of four years.

These changes would apply to qualifying labour expenditures incurred on or after January 1, 2023. The credit rate would return to 25 per cent for expenditures incurred on or after January 1, 2027.

MEASURES PERTAINING TO COMMODITY TAXES

Removing the GST From New Co-op Rental Housing

The *Economic Statement* announces that co-operative housing corporations that provide long-term rental accommodation would also be eligible for the removal of the Goods and Services Tax (GST) on new rental housing, provided the other conditions have been met. The measure is not intended to apply to co-operative housing corporations where occupants have an ownership or equity interest.

To protect Canadian renters from renovictions, the removal of GST will not apply to substantial renovations of existing residential complexes.

Removing the GST/HST From Psychotherapists' and Counselling Therapists' Services

The *Economic Statement* proposes that psychotherapists and counselling therapists be added to the list of health care practitioners whose professional services rendered to individuals are exempt from the Goods and Services Tax/Harmonized Sales Tax (GST/HST).

This measure would apply on royal assent of the enacting legislation.

Joint Venture Election

The government is seeking stakeholders' views and comments on the below proposed new (GST/HST) joint venture election rules.

The federal government invites Canadians to share their feedback on these proposals by March 15, 2024.

Background

Under the GST/HST, a joint venture is not a person and therefore cannot register and account for tax. Instead, under the general GST/HST rules, each participant would account separately for their proportionate share of tax that is collectible, payable or recoverable in the course of their joint venture activities.

To simplify tax accounting, a joint venture participant that is a registrant (the operator) can make an election (a joint venture election) with another participant (the co-venturer) if the activities under their joint venture agreement are eligible activities set out in subsection 273(1)[1] or prescribed activities in the *Joint Venture (GST/HST) Regulations*. The election, or a

[1] Part IX of the Excise Tax Act

revocation of the election, must be made in prescribed form, contain prescribed information and specify the effective date.

Proposed New Joint Venture Election Rules

To allow more participants in commercial joint ventures access to the simplification benefits of the joint venture election, new joint venture election rules are proposed. Key elements of these proposed new rules include:

- Replacing the condition that the joint venture activities must be eligible activities set out in the legislation or regulations with an all or substantially all commercial activities condition (within the meaning of the GST/HST legislation);
- Requiring all electing participants to be registered for GST/HST purposes; and,
- Replacing existing deeming measures with revised deeming measures that are more precisely focused on tax accounting.

Under the proposed new rules, a qualifying operator and a qualifying participant in a qualifying joint venture could jointly make or revoke a joint venture election. Only one person could make the election as the qualifying operator in respect of a qualifying joint venture at any given time.

As part of the consultations, the government is seeking views and comments on coming into force considerations for the proposed new joint venture election rules, which are currently proposed to come into force on the day on which the Act enacting the new rules receives royal assent.

Underused Housing Tax

The government is now proposing to make several changes to the Underused Housing Tax (UHT) to help facilitate compliance, while ensuring that the tax continues to apply as intended.

Following a consultation period, the government intends to bring forward legislation for consideration by Parliament. The federal government invites Canadians to share their feedback on these proposals by January 3, 2024.

Elimination of Filing Requirement for Certain Owners

Currently, every person that, as of December 31 of a calendar year, is an “owner” of residential property in Canada, other than an “excluded owner”, is required to file a UHT return for the calendar year in respect of the property.

With limited exceptions, if an owner of a residential property is a corporation or is the owner of the residential property on behalf of a partnership or as a trustee of a trust, the owner must file an annual UHT return in respect of the property. If the entity is substantially or entirely Canadian, however, they may be eligible to claim an exemption from the UHT in their UHT return. Specifically, exemptions may be claimed by:

- A “specified Canadian corporation”, which is generally a Canadian corporation having less than 10 per cent of its votes or equity value owned by foreign individuals or corporations;
- A partner of a “specified Canadian partnership”, which is generally a partnership whose partners are exclusively “Canadian”; or,
- A trustee of a “specified Canadian trust”, which is generally a trust whose beneficiaries are exclusively “Canadian”.

To reduce the UHT compliance burden in relation to these Canadian entities, the government is proposing to make “specified Canadian corporations”, partners of “specified Canadian partnerships” and trustees of “specified Canadian trusts”, “excluded owners” for UHT purposes. As excluded owners, these owners would no longer have UHT reporting obligations.

The government is also proposing to expand the definitions “excluded owner”, “specified Canadian partnership” and “specified Canadian trust” to provide UHT filing and tax relief in respect of a broader range of Canadian ownership structures.

These changes would apply in respect of 2023 and subsequent calendar years.

Reduction to Minimum Failure to File Penalties

Currently, the minimum penalty for an individual, who is required to file a UHT return for a residential property but who fails to do so by the filing deadline, is $5,000 per failure. The minimum penalty for a corporation that fails to file by the filing deadline is $10,000 per failure.

The government is proposing to reduce these minimum penalties to $1,000 for individuals and $2,000 for corporations, per failure.

These changes would apply in respect of 2022 and subsequent calendar years.

Exemption for Certain Employee Accommodations

The government is proposing to introduce a new UHT exemption for residential properties held as a place of residence or lodging for employees. This exemption would be available in respect of residential properties located anywhere in Canada other than in a population centre within either a census metropolitan area or a census agglomeration having 30,000 or more residents.

This exemption would apply in respect of 2023 and subsequent calendar years.

Additional Technical Changes

The government is also proposing to introduce other UHT changes of a more technical nature. For example, these changes would:

- Provide that unitized (‘condominiumized’) apartment buildings are not “residential property” for UHT purposes, effective in respect of 2022 and subsequent calendar years; and,
- Ensure that an individual or a spousal unit can claim the UHT “vacation property” exemption for only one residential property for a calendar year, effective in respect of 2024 and subsequent calendar years.

Additional Time to File 2022 UHT Returns

The deadline for filing the inaugural UHT returns (for the 2022 calendar year) was April 30, 2023. However, on March 27, 2023, the CRA announced that it would waive penalties and interest provided UHT returns are filed or the UHT is paid by October 31, 2023.

On October 31, 2023, the Minister of National Revenue announced that this transitional filing relief would be extended by six more months, giving owners until April 30, 2024, to file their 2022 UHT returns.

UHT returns for the 2023 calendar year will also need to be filed by the normal deadline of April 30, 2024, to avoid penalties and interest.

MEASURES PERTAINING TO INTERNATIONAL TAX

International Shipping

To ensure consistency with international tax norms, as well as greater consistency between the international shipping provisions of the ITA and the proposed new *Global Minimum Tax Act* (15 per cent), it is proposed to make the exemption for international shipping income in the ITA generally available to Canadian resident companies. This would allow shipping companies with management in Canada to continue their operations in line with both the Pillar Two international shipping exclusion and the exemption in the ITA. This measure would also effectively remove the incentive that the current tax rules create for shipping companies with management in Canada to incorporate and carry on certain international shipping activities in foreign jurisdictions.

This measure would apply to taxation years that begin on or after December 31, 2023.

OTHER MEASURES

Cracking Down on Non-Compliant Short-Term Rentals

The *Economic Statement* announces that the federal government intends to deny income tax deductions for expenses incurred to earn short-term rental income, including interest expenses, in provinces and municipalities that have prohibited short-term rentals.

The *Economic Statement* also announces that the federal government intends to deny income tax deductions when short-term rental operators are not compliant with the applicable provincial or municipal licensing, permitting, or registration requirements.

These measures would apply to deny all expenses incurred on or after January 1, 2024.

PREVIOUSLY ANNOUNCED MEASURES

The *Economic Statement* 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 August 4, 2023, including with respect to the following measures:

- The Carbon Capture, Utilization, and Storage Investment Tax Credit;
- The Clean Technology Investment Tax Credit;
- Labour Requirements Related to Certain Investment Tax Credits;
- Enhancing the Reduced Tax Rates for Zero-Emission Technology Manufacturers;
- Flow-Through Shares and the Critical Mineral Exploration Tax Credit – Lithium from Brines;
- Employee Ownership Trusts;
- Registered Compensation Arrangements;
- Strengthening the Intergenerational Business Transfer Framework;
- The Income Tax and GST/HST Treatment of Credit Unions;
- The Alternative Minimum Tax for High-Income Individuals;
- A Tax on Repurchases of Equity;
- Modernizing the General Anti-Avoidance Rule;
- Global Minimum Tax (Pillar Two);
- Digital Services Tax;
- Technical amendments to Goods and Services Tax / Harmonized Sales Tax (GST/HST) rules for financial institutions;
- Enhancements to the vaping product taxation framework;
- Tax-exempt sales of motive fuels for export;
- Excessive Interest and Financing Expenses Limitations;
- Extending the quarterly duty remittance option to all licensed cannabis producers;
- Revised Luxury Tax draft regulations to provide greater clarity on the tax treatment of luxury items; and,
- Proposed amendments to implement technical tax amendments to the *Income Tax Act* and the *Income Tax Regulations*.

> Legislative amendments to implement changes discussed in the transfer pricing consultation paper released on June 6, 2023.

> Tax measures announced in Budget 2023, including:

- The Dividend Received Deduction by Financial Institutions;
- The Clean Hydrogen Investment Tax Credit;
- The Clean Technology Manufacturing Investment Tax Credit; and,
- The Clean Electricity Investment Tax Credit.

> Legislative proposals released on August 9, 2022, including with respect to the following measures:

- Substantive Canadian-Controlled Private Corporations;
- Technical amendments to the *Income Tax Act* and *Income Tax Regulations* not yet enacted; 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 9, 2022 release.

> Legislative proposals released on April 29, 2022, with respect to Hybrid Mismatch Arrangements.

> Legislative proposals released in Budget 2021 with respect to the Rebate of Excise Tax for Goods Purchased by Provinces.

> Regulatory proposals released in Budget 2021 related to information requirements to support input tax credit claims under the Goods and Services Tax/Harmonized Sales Tax.

> The income tax measure announced on December 20, 2019, to extend the maturation period of amateur athlete trusts maturing in 2019 by one year, from eight years to nine years.

NOTICE TO USERS

This economic statement summary is based on the documents issued by the government of Canada. The legislation, when enacted, may vary from the summary described herein. Professional advice should be obtained.

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