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2013 Federal Budget Commentary

"Jobs, Growth and Long-Term Prosperity"

March 21, 2013

INTRODUCTION

The Honourable Jim Flaherty, Minister of Finance, today tabled Canada's Economic Action Plan 2013, a budget focused on balancing the budget during this Parliament. This budget introduces skills training initiatives, a federal infrastructure plan and new investments to support manufacturing and innovation in Canada.

Budget 2013 focused on four key areas:

- **Connecting Canadians with Available Jobs –** by equipping Canadians with the skills and training they require to obtain high-quality, well-paying jobs;
- **Helping Manufacturers and Businesses Succeed in the Global Economy -** by enhancing the conditions for creating and growing businesses, including measures to support a globally competitive manufacturing sector, build on Canada's financial sector advantage, increase and diversify our exports, and develop our natural resources in a safe, responsible and secure way, in order to sustain and create high-quality, value-added jobs;
- **Creating a New Building Canada Plan –** that adds to the unprecedented investments in public infrastructure since 2006 with a new infrastructure plan focused on projects that create jobs and economic growth and provide a high quality of life for Canadian families;
- **Investing in World-Class Research and Innovation –** by fostering a vibrant entrepreneurial culture where new ideas are translated from laboratories into the marketplace;
- **Supporting Families and Communities –** by expanding opportunities for Canadians to succeed and enjoy a high quality of life.

The following is a brief overview of the key tax measures.

PERSONAL TAX MEASURES

There are no proposed changes to the marginal personal tax rates.

Adoption Expense Tax Credit

The adoption expense tax credit (AETC) is a 15% non-refundable tax credit that allows adoptive parents to claim eligible adoption expenses related to the completed adoption of a child under the age of 18. To better recognize that there are costs that adoptive parents must incur prior to being matched with a child, Budget 2013 proposes to extend the eligible adoption period by treating the time at which the adoption period begins as the time that an adoptive parent makes an application to register with a provincial ministry responsible for adoption or with an adoption agency licensed by a provincial government; or if an adoption-related application is made to a Canadian court at an earlier time, that earlier time.

This measure will apply to adoptions finalized after 2012.

First-Time Donor's Super Credit

Budget 2013 proposes to introduce a temporary First-time Donor's Super Credit (FDSC) which will supplement the Charitable Donations Tax Credit (CDTC) with an additional 25% tax credit for a first-time donor on up to $1,000 of donations. Accordingly, a first-time donor will be entitled to a 40% federal credit for donations of $200 or less, and a 54% federal credit for the portion of donations over $200 but not exceeding $1,000. Only donations of money will qualify for the FDSC.

An individual will be considered a first-time donor if neither the individual nor the individual's spouse or common-law partner has claimed the CDTC or FDSC in any taxation year after 2007.

The FDSC will be available in respect of donations made on or after Budget Day and may be claimed only once in the 2013 or a subsequent taxation year before 2018.

Lifetime Capital Gains Exemption

Budget 2013 proposes to increase the Lifetime Capital Gains Exemption (LCGE) by $50,000 to $800,000 of capital gains realized by an individual on qualified property, effective for the 2014 taxation year.

In addition, the LCGE will be indexed to inflation for taxation years after 2014. The new LCGE limit will apply for all individuals, even those who have previously used the LCGE.

Deduction for Safety Deposit Boxes

Budget 2013 proposes to make the cost to a taxpayer of renting a safety deposit box from a financial institution non-deductible for income tax purposes.

This measure will apply to taxation years that begin on or after Budget Day.

Dividend Tax Credit

Budget 2013 proposes to adjust the gross-up factor applicable to non-eligible dividends from 25% to 18% and the corresponding dividend tax credit (DTC) from 2/3 of the gross-up amount to 13/18 of the gross up. The effective top federal tax rate on non-eligible dividends increases from 19.58% to 21.22%.

This measure will apply to non-eligible dividends paid after 2013.

Registered Pension Plans (RPPs): Correcting Contribution Errors

Budget 2013 proposes to enable administrators of RPPs to make refunds of contributions in order to correct reasonable errors without first obtaining approval from the Canada Revenue Agency (CRA).

This measure will apply in respect of RPP contributions made on or after the later of January 1, 2014 and the day of Royal Assent to the enacting legislation.

Extended Reassessment Period: Tax Shelters and Reportable Transactions

Budget 2013 proposes to extend the normal reassessment period, in respect of a participant in a tax shelter or reportable transaction where an information return required for the tax shelter or reportable transaction is not filed on time, to three years after the date that the relevant information return is filed.

This measure will apply to taxation years that end on or after Budget Day.

Taxes in Dispute and Charitable Donation Tax Shelters

Budget 2013 proposes to modify the prohibition on the CRA from taking collection action in respect of assessed income taxes and related interest and penalties where a taxpayer has objected to the assessment. If a taxpayer has objected to an assessment that results from the disallowance of a deduction or tax credit claimed in respect of a tax shelter that involves a charitable donation, the CRA will be permitted, pending the ultimate determination of the taxpayer's liability, to collect 50% of the disputed tax, interest or penalties.

This measure will apply in respect of amounts assessed for the 2013 and subsequent taxation years.

Extension of the Mineral Exploration Tax Credit for Flow-Through Share Investors

Budget 2013 proposes to extend eligibility for the Mineral Exploration Tax Credit, equal to 15% of specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors, for one year.

This measure will apply to flow-through share agreements entered into on or before March 31, 2014.

Labour-Sponsored Venture Capital Corporations Tax Credit

Budget 2013 proposes to phase out the federal Labour-Sponsored Venture Capital Corporations (LSVCC) tax credit provided to individuals for the acquisition of shares of LSVCCs on investments of up to $5,000 each year. The federal LSVCC tax credit will remain at 15% when it is claimed for a taxation year that ends before 2015 and will be reduced to 10% for the 2015 taxation year and 5% for the 2016 taxation year. The federal LSVCC tax credit will be eliminated for the 2017 and subsequent taxation years.

In addition, applications for registration will not be accepted after Budget Day.

Synthetic Dispositions

A synthetic disposition transaction is a financial arrangement that seeks to defer tax or obtain other tax benefits by allowing a taxpayer to economically dispose of a property while continuing to own it for income tax purposes.

A synthetic disposition transaction typically involves a taxpayer entering into an arrangement under which the taxpayer eliminates their future risk of loss and opportunity for gain or profit in respect of a property and acquires another property (or a right to acquire another property) the value of which approximates what the taxpayer would have received as proceeds from disposing of the property. A taxpayer may enter into a synthetic disposition transaction to defer the tax associated with a sale or to obtain tax benefits associated with the continued ownership of a property.

<u>Deemed Disposition</u>

Budget 2013 proposes to treat certain transactions as dispositions for income tax purposes to ensure that taxpayers cannot obtain tax benefits associated with the continued ownership of a property after entering into a synthetic disposition transaction.

This measure will apply regardless of the particular form of the agreement or agreements. This measure will generally not apply to ordinary hedging transactions, which typically only involve managing the risk of loss. Nor will this measure affect the tax treatment of ordinary-course securities lending arrangements. Lastly, this measure will not apply to ordinary commercial leasing transactions.

If a taxpayer (or a person who does not deal at arm's length with the taxpayer) enters into one or more agreements (or arrangements) that have the effect of eliminating all or substantially all the taxpayer's risk of loss and opportunity for gain or profit in respect of a property of the taxpayer, the taxpayer will be deemed to have disposed of the property for proceeds equal to its fair market value. The taxpayer will also be deemed to have reacquired the property immediately after the deemed disposition at a cost equal to that fair market value. The deemed disposition and reacquisition will not have tax consequences for other parties involved in the synthetic disposition transaction.

<u>Continued Ownership</u>

Budget 2013 also proposes that if a taxpayer is, as described above, deemed to have disposed of and reacquired a property, the taxpayer will be considered to not own the property for the purposes of determining whether the taxpayer meets holding-period tests.

If the taxpayer later regains the risk of loss or the opportunity for gain or profit in respect of the property such that it is no longer the case that all or substantially all the risk of loss and opportunity for gain or profit lies with someone other than the taxpayer, the property would be considered to be owned from that point onward for the purposes of these holding-period tests.

This measure will apply to agreements and arrangements entered into on or after Budget Day. It will also apply to agreements and arrangements entered into before Budget Day if their term is extended on or after Budget Day.

Character Conversion Transactions

A character conversion transaction is a financial arrangement that seeks to reduce tax by converting, through the use of derivative contracts, the returns on an investment that would have the character of ordinary income to capital gains, only 50% of which are included in income.

Budget 2013 proposes to treat the derivative-based return on a derivative forward agreement as being distinct from the disposition of a capital property that is purchased or sold under the derivative forward agreement. This measure will apply to derivative forward agreements that have duration of more than 180 days.

Any return arising under a derivative forward agreement that is not determined by reference to the performance of the capital property being purchased or sold will be treated as being on income account.

The income (or loss) will be included (or deductible) in computing income at the time of disposition if the capital property is subject to a derivative forward sale agreement and at the time of acquisition if the capital property is subject to a derivative forward purchase agreement.

In order to prevent double tax, Budget 2013 also proposes that the income (or loss) described above be added to (or deducted from) the adjusted cost base of the capital property.

This measure will apply to derivative forward agreements entered into on or after Budget Day. It will also apply to derivative forward agreements entered into before Budget Day if the term of the agreement is extended on or after Budget Day.

TRUST TAX MEASURES

Trust Loss Trading

Budget 2013 proposes to extend to trusts, with appropriate modifications, the loss-streaming and related rules that currently apply on the acquisition of control of a corporation, including the limited exception allowing the ongoing use of non-capital losses from a business.

This measure, including any relieving changes that may be made as a result of a public consultation, will apply to transactions that occur on or after Budget Day, other than transactions that the parties are obligated to complete pursuant to the terms of an agreement in writing between the parties entered into before Budget Day.

Non-Resident Trusts

Budget 2013 proposes to amend the deemed residence rules to apply if a trust holds property on conditions that grant effective ownership of the property to a Canadian-resident taxpayer. In these circumstances, any transfer or loan of the property (regardless of the consideration exchanged) made directly or indirectly by the Canadian resident taxpayer will be treated as a transfer or loan of restricted property (as defined in the tax rules) by the taxpayer. As a result, the Canadian-resident taxpayer will generally be treated as having made a contribution to the trust and the deemed residence rules will apply to the trust. As well, the rule preventing a tax-deferred distribution of property from a trust where property of the trust is, or has been, subject to the trust attribution rule will be extended to apply to the trust.

To clarify the application of the tax rules that apply to non-resident trusts, Budget 2013 also proposes to restrict the application of the trust attribution rule so that it applies only in respect of property held by a trust that is resident in Canada (determined without regard to the deemed residence rules).

This measure will apply to taxation years that end on or after Budget Day.

Consultation on Graduated Rate Taxation of Trusts and Estates

Budget 2013 announces the Government's intention to consult on possible measures to eliminate the tax benefits that arise from taxing at graduated rates grandfathered *inter vivos* trusts, trusts created by will, and estates (after a reasonable period of estate administration). A consultation paper will be publicly released to provide stakeholders with an opportunity to comment on those possible measures.

BUSINESS INCOME TAX MEASURES

There are no proposed changes to corporate income tax rates or the small business deduction limit of $500,000 applicable to active income for Canadian Controlled Private Corporations (CCPC).

Canada Job Grant

Budget 2013 introduces the Canada Job Grant – a means of providing $15,000 or more per person, including a maximum federal contribution of $5,000 and matching by provinces or territories and employers, to help ensure Canadians are able to access the training they need to get jobs in high demand fields. Businesses with a plan to train unemployed or underemployed Canadians for an existing job or a better job will be eligible to apply for a Canada Job Grant.

Details of the grant will be negotiated with the provinces and territories over the next year, and will be announced in 2014-15.

Extending the Hiring Tax Credit for Small Business

Budget 2013 proposes to extend the temporary Hiring Credit for Small Business for another year, providing a credit of up to $1,000 against a small employer's increase in its 2013 EI premiums over those paid in 2012.

Manufacturing and Processing Machinery and Equipment: Accelerated Capital Cost Allowance

Budget 2013 proposes to extend the temporary support for investment in machinery and equipment for the manufacturing and processing sector by an additional two years. Manufacturing and processing machinery and equipment that is acquired in 2014 and 2015 will be included in Class 29 and qualify for the 50% straight-line CCA rate. These eligible assets would otherwise be included in Class 43 and qualify for a CCA rate of 30% calculated on a declining balance basis.

Clean Energy Generation Equipment: Accelerated Capital Cost Allowance

Budget 2013 proposes to further expand Class 43.2 by making biogas production equipment that uses more types of organic waste eligible for inclusion in Class 43.2.

Budget 2013 also proposes to broaden the range of cleaning and upgrading equipment used to treat eligible gases from waste that is eligible for inclusion in Class 43.2.

<u>Biogas Production Equipment – Eligible Organic Waste</u>

Budget 2013 proposes to expand the biogas production equipment that is eligible for inclusion in Class 43.2 by providing that more types of eligible organic waste can be used in qualifying biogas production equipment and specifically, to include pulp and paper waste and wastewater, beverage industry waste and wastewater (for example, winery and distillery wastes) and separated organics from municipal waste.

This measure will apply in respect of property acquired on or after Budget Day that has not been used or acquired for use before Budget Day.

<u>Cleaning and Upgrading Equipment - Biomethane</u>

Budget 2013 proposes to expand eligibility under Class 43.2 by removing certain restrictions, such that all types of cleaning and upgrading equipment than can be used to treat eligible gases from waste will be included in Class 43.2

This measure will apply in respect of property acquired on or after Budget Day that has not been used or acquired for use before Budget Day.

Scientific Research and Experimental Development

Budget 2013 introduces measures to provide the CRA with new resources and administrative tools to better respond to the minority of Scientific Research and Experimental Development (SR&ED) program tax preparers and SR&ED performers who participate in claims where the risk of non-compliance is perceived to be high and eligibility for the SR&ED program unlikely.

In particular, in instances where one or more third parties have assisted with the preparation of a claim, the Business Number of each third party will be required, along with details about the billing arrangements including whether contingency fees were used and the amount of the fees payable. In instances where no third party was involved, the claimant will be required to certify that no third party assisted in any aspect of the preparation of the SR&ED program claim.

In order to support the requirement to provide more detailed information, Budget 2013 proposes that a new penalty of $1,000 be imposed in respect of each SR&ED program claim for which the information about SR&ED program tax preparers and billing arrangements is missing, incomplete or inaccurate. In the case where a third-party SR&ED program tax preparer has been engaged, the SR&ED program claimant and tax preparer will be jointly and severally, or solidarily, liable for the penalty.

These measures will apply to SR&ED program claims filed on or after the later of January 1, 2014 and the day of Royal Assent to the enacting legislation.

Other SR&ED Measures

A new CRA in-person service will be implemented to help new claimants better understand the SR&ED program parameters and contribute to reducing taxpayers' reliance on third-party tax preparers. The CRA will also develop new web-based seminars that will be available to the SR&ED community at no cost

Mining Expenses

Budget 2013 proposes changes to better align the deductions available for expenses in the mining sector with those available in the oil and gas sector.

Pre-Production Mine Development Expenses

Pre-production mine development expenses are currently treated as Canadian exploration expense (CEE) and may be deducted in full in the year incurred or carried forward indefinitely for use in future years.

Budget 2013 proposes that pre-production mine development expenses be treated as Canadian Development Expenses (CDE). The transition from CEE to CDE treatment will be phased in, with pre-production mine development expenses being allocated proportionately to CEE and CDE according to the following schedule based on a calendar year in which the expense is incurred:

Transition Schedule

Year	2013	2014	2015	2016	2017	After 2017
CEE proportion	100%	100%	80%	60%	30%	–
CDE proportion	–	–	20%	40%	70%	100%

This measure will generally apply to expenses incurred on or after Budget Day.

Accelerated Capital Cost Allowance for Mining

Most machinery, equipment and structures used to produce income from a mine or an oil or gas project are currently eligible for a CCA rate of 25% on a declining-balance basis plus an accelerated CCA in the form of an additional allowance for certain assets acquired for use in new mines or eligible mine expansions. The additional allowance allows the taxpayer to deduct in computing income for a taxation year up to 100% of the remaining cost of eligible assets acquired for use in a new mine or an eligible mine expansion, not to exceed the taxpayer`s income for the year from the mining project.

Budget 2013 proposes to phase out the additional allowance available for mining (other than for bituminous sands and oil shale, for which the phase-out will be complete in 2015). The additional allowance will be phased out over the 2017 to 2020 calendar years according to the following schedule:

Transition Schedule

Year	2013-2016	2017	2018	2019	2020	After 2020
Percentage	100%	90%	80%	60%	30%	–

Where a taxpayer`s taxation year included more than one calendar year the additional allowance will be prorated, based on the number of days in each calendar year.

This measure will generally apply to expenses incurred on or after Budget Day.

Reserve for Future Services

Budget 2013 proposes to amend the *Income Tax Act* to ensure that the reserve for future services under paragraph 20(1)(*m*) cannot be used by taxpayers with respect to amounts received for the purpose of funding future reclamation obligations.

This measure will apply to amount received on or after Budget Day, other than amounts received that are directly attributable to future reclamation costs that were authorized by a government or regulatory authority before Budget Day and that are received

- under a written agreement between the taxpayer and another party (other than a government or regulatory authority) that was entered into before Budget Day and not extended or renewed on or after Budget Day, or
- Before 2018.

Additional Deduction for Credit Unions

Budget 2013 proposes to phase out the additional deduction for credit unions over five calendar years, beginning in 2013. For 2013, a credit union will be permitted to deduct only 80% of the amount of the additional deduction otherwise calculated. The percentage of the additional deduction, otherwise calculated, that a credit union will be permitted to deduct will be 60% for 2014, 40% for 2015 and 20% for 2016. For 2017 and subsequent years, the additional deduction will be eliminated.

This measure will apply to taxation years that end on or after Budget Day. For a taxation year that includes Budget Day, the measure will be prorated to apply only to the portion of the year that is on or after Budget Day. The measure will also be prorated for all taxation years during the phase out period that do not coincide with the calendar year.

Leveraged Life Insurance Arrangements

The Government is acting to eliminate multiple and unintended tax benefits relating to two leveraged life insurance arrangements commonly referred to as “leveraged insured annuities” and “10/8 arrangements”.

<u>Leveraged Insured Annuities</u>

Budget 2013 proposes to eliminate the unintended tax benefits of a leveraged insured annuity by introducing rules for “LIA policies”. A life insurance policy issued on the life of an individual will be an LIA policy if:

- a person or partnership becomes obligated on or after Budget Day to repay an amount to another person or partnership (the lender) at a time determined by reference to the death of the individual; and
- an annuity contract, the terms of which provide that payments are to continue for the life of the individual, and the policy are assigned to the lender.

Income accruing in an LIA policy will be subject to annual accrual-based taxation, no deduction will be allowed for any portion of a premium paid on the policy, and the capital dividend account of a private corporation will not be increased by the death benefit received in respect of the policy. In addition, for the purposes of a deemed disposition on death, the fair market value of an annuity contract assigned to the lender in connection with an LIA policy will be deemed to be equal to the total of the premiums paid under the contract.

This measure will apply to taxation years that end on or after Budget Day, but will not apply in respect of leveraged insured annuities for which all borrowings were entered into before Budget Day.

10/8 Arrangements

Budget 2013 proposes to ensure that unintended tax benefits are not available in relation to 10/8 arrangements. In respect of taxation years that end on or after Budget Day, if a life insurance policy, or an investment account under the policy, is assigned as security on a borrowing, and either the interest rate payable on an investment account under the policy is determined by reference to the interest rate payable on the borrowing or the maximum value of an investment account under the policy is determined by reference to the amount of the borrowing, then the following income tax benefits will be denied:

- the deductibility of interest paid or payable on the borrowing that relates to a period after 2013;
- the deductibility of a premium that is paid or payable under the policy that relates to a period after 2013; and
- the increase in the capital dividend account by the amount of the death benefit that becomes payable after 2013 under the policy and that is associated with the borrowing.

Budget 2013 also proposes to alleviate the income tax consequences on a withdrawal, from a policy under a 10/8 arrangement, made to repay a borrowing under the arrangement, if the withdrawal is made on or after Budget Day and before January 1, 2014.

Restricted Farm Losses

The restricted farm loss (RFL) rules apply to taxpayers who have incurred a loss from farming unless their chief source of income for a taxation year is farming or a combination of farming and some other source of income. The RFL rules limit the deduction of farm losses to a maximum of $8,750 annually ($2,500 plus ½ of the next $12,500).

Budget 2013 proposes to amend the RFL rules to codify the chief source of income test. This amendment will clarify that a taxpayer's other sources of income must be subordinate to farming in order for farming losses to be fully deductible against income from those other sources.

Budget 2013 also proposes to increase the RFL limit to $17,500 of deductible farm losses annually ($2,500 plus ½ of the next $30,000)

These measures will apply to taxation years that end on or after Budget Day.

Corporate Loss Trading

Budget 2013 proposes to introduce an anti-avoidance rule to support the existing loss restriction rules that apply on the acquisition of control of a corporation. The rule will deem there to have been an acquisition of control of a corporation that has loss pools when a person (or group of persons) acquires shares of the corporation that have more than 75% of the fair market value of all the shares of the corporation without otherwise acquiring control of the corporation, if it is reasonable to conclude that one of the main reasons that control was not acquired is to avoid the restrictions that would have been imposed on the use of loss pools.

Related rules are also proposed to ensure that this anti-avoidance rule is not circumvented.

This measure will apply to a corporation the shares of the capital stock of which are acquired on or after Budget Day unless the shares are acquired as part of a transaction that the parties are obligated to complete pursuant to the terms of an agreement in writing between the parties entered into before Budget Day.

Taxation of Corporate Groups

Budget 2010 and Budget 2012 noted the Government's interest in exploring the issue of whether new rules for the taxation of corporate groups could improve the functioning of the corporate tax system in Canada. After public consultations and discussions with provincial and territorial officials, the Government has determined that moving to a formal system of corporate group taxation is not a priority at this time.

INTERNATIONAL TAX MEASURES

Budget 2013 proposes a number of measures to strengthen the capacity of the CRA to combat international tax evasion and aggressive tax avoidance.

Reporting of International Electronic Fund Transfers (EFTs)

Budget 2013 proposes that *the Income Tax Act, the Excise Tax Act and the Excise Act, 2001* be amended to require that certain financial intermediaries report to the CRA international electronic fund transfers (EFTs) of $10,000 or more. This requirement will apply to banks, credit unions, caisse populaires, trust and loan companies, money services businesses and casinos.

Reporting will be required beginning in 2015.

Information Requirements Regarding Unnamed Persons

Budget 2013 proposes to eliminate the *ex parte* aspect of the tax rules which allow the CRA to require any person to provide information or documents for the purposes of tax administration or enforcement. The proposed rules will require CRA to give notice to the third party when it initially seeks a court order from a judge of the Federal Court. As a result, the third party will be required to make any representations it chooses to make at the hearing of the application for the order, thus eliminating the need for a review for that purpose.

The measure will apply on Royal Assent.

Stop International Tax Evasion Program

Budget 2013 proposes to launch the Stop International Tax Evasion Program under which it will pay rewards of up to 15% of the federal tax collected to individuals with knowledge of major international tax non-compliance when they provide information to the CRA that leads to the collection of outstanding federal taxes in excess of $100,000. To be eligible, the individual cannot have been convicted of the tax evasion about which they have information, and all reward payments will be subject to income tax. Details on the program will be announced at a later date.

Foreign Reporting Requirements of Form T1135 – Foreign Income Verification Statement

<u>Extended Reassessment Period</u>

Budget 2013 proposes to extend the normal reassessment period of a taxpayer by three years if the taxpayer has failed to report income from a specified foreign property on their annual income tax return, and the Form T1135 was not filed on time by the taxpayer, or a specified foreign property was not identified, or was improperly identified on the Form T1135.

The measure will apply to the 2013 and subsequent taxation years.

<u>Revised Form</u>

CRA will revise Form T1135 to require taxpayers to provide more detailed information regarding each specified foreign property, including:

- The name of the specific foreign institution or other entity holding funds outside of Canada;
- The specific country to which the property relates; and
- The foreign income generated from the property.

The revised Form T1135 will be required to be used for the 2013 and subsequent taxation years.

Beginning with the 2013 taxation year, the CRA will clarify the instructions on Form T1135 and will remind taxpayers, on their Notices of Assessment, of the obligation to file Form T1135 if they have checked the "Yes" box on their income tax returns, indicating that they have specified foreign property with a total cost of more than $100,000. The CRA is also developing a system to allow the T1135 to be filed electronically.

Thin Capitalization Rules

The thin capitalization rules were implemented to limit the deductibility of interest expense of a Canadian resident corporation in circumstances where the amount of debt owing to certain non-residents exceeds a 1.5:1 debt to equity ratio. Budget 2012 extended the rules to apply to partnerships of which a Canadian resident corporation is a member. Budget 2013 proposes to further extend the scope of their application to:

- Canadian resident trusts; and
- Non-resident corporations and trusts that operate in Canada.

Budget 2013 builds on the 2012 partnership changes and will apply where a Canadian resident trust or a non-resident corporation or trust is a member of a partnership.

These measures will apply to taxation years that begin after 2013 and will apply with respect to existing as well as new borrowings.

International Banking Centres (IBC)

Budget 2013 proposes to repeal the IBC rules in order to simplify Canada's tax system and make it more neutral across business sectors and regions.

The measure will apply to taxation years that begin on or after Budget Day.

Treaty Shopping

Treaty shopping effectively extends tax treaty benefits to third country residence in circumstances that were not contemplated when the tax treaty was entered into and without any reciprocal benefits accruing to Canadian investors or to Canada. This practice undermines the bilateral nature of tax treaties and the balance of compromises reached between Canada and its treaty partners. Budget 2013 announces the Government's intention to consult on possible measures that would protect the integrity of Canada's tax treaties while preserving a business tax environment that is conducive to foreign investment.

SALES AND EXCISE TAX MEASURES

GST/HST on Home and Personal Care Services

Budget 2013 proposes to expand the GST/HST exemption for homemaker services to exempt publicly subsidized or funded personal care services, such as bathing, feeding and assistance with dressing and taking medication, rendered to an individual who, due to age, infirmity or disability, requires assistance in his or her home. The proposal will result in an exemption for home and personal care services that are more in line with current provincial and territorial practices for health related assistive services delivered to persons in their homes.

The measure will apply to supplies made after Budget Day.

GST/HST on Reports and Services for Non-Health Care Purposes

Budget 2013 proposes to clarify that GST/HST applies to reports, examinations and other services that are not performed for the purpose of the protection, maintenance or restoration of the health of a person or for palliative care. Reports for the purpose of determining liability in a court proceeding or under an insurance policy would be a taxable supply. Reports paid for by a provincial or territorial health insurance plan will continue to be exempt.

The measure will apply to supplies made after Budget Day.

GST/HST Pension Plan Rules

Budget 2013 proposes two measures to simplify employer compliance with the GST/HST Pension Plan rules in certain circumstances.

<u>Election to not Account for GST/HST on Actual Taxable Supplies</u>

Budget 2013 proposes that an employer participating in a registered pension plan be permitted to jointly elect with a pension entity of that pension plan to treat an actual taxable supply by the employer to the pension entity as being for no consideration where the employer accounts for and remits tax on the deemed taxable supply.

Once a joint election is made, it would remain in effect until it is jointly revoked by the employer and the pension entity effective from the beginning of a fiscal year of the employer. Also, the Minister of National Revenue would have discretion to cancel the election, effective from the beginning of a fiscal year of the employer, if the employer has failed to remit tax on deemed taxable supplies made in that fiscal year where those deemed taxable supplies relate to actual taxable supplies to the pension entity. The Minister could then assess the employer for both the tax on deemed taxable supplies and the tax on all actual taxable supplies made since the effective date of the election's cancellation (with "tax adjustments" that otherwise would be available under the GST/HST legislation in respect of those tax amounts) and the employer could be subject to interest.

This measure will apply to supplies made after Budget Day.

Relief from Accounting for Tax on Deemed Taxable Supplies

Budget 2013 proposes that an employer participating in a registered pension plan be permitted to be fully or partially relieved from accounting for tax on deemed taxable supplies where the employer's pension plan-related activities fall below certain thresholds. Specifically, an employer would be relieved from applying the deemed taxable supply rules for a fiscal year of the employer where the amount of the GST (and the federal component of the HST) that the employer was (or would have been, but for this measure) required to account for and remit under the deemed taxable supply rules in the preceding fiscal year of the employer is less than each of the following amounts:

- $5,000; and
- 10% of the total net GST (and the federal component of the HST) paid by all pension entities of the pension plan in that preceding fiscal year.

An employer is not permitted to benefit from the full relief proposed under this measure for deemed taxable supplies made in a fiscal year of the employer where the employer has a joint election in effect to not account for tax on actual taxable supplies made in that fiscal year.

For employers not satisfying the above $5,000 and 10% thresholds, more limited relief would be available in certain circumstances.

This measure will apply in respect of any fiscal year of an employer that begins after Budget Day.

GST/HST Business Information Requirement

Budget 2013 proposes that the Minister of National Revenue be given the authority to withhold GST/HST refunds claimed by a business until such time as all the prescribed business identification information is provided.

This measure will apply on Royal Assent to the enacting legislation.

GST/HST on Paid Parking

Budget 2013 proposes two measures to clarify that certain special exempting provisions for public sector bodies (PSBs) such as municipalities, universities, public colleges, school authorities, hospital authorities, charities, non-profit organizations or government – do not apply to supplies of paid parking.

Supplies of Paid Parking by PSBs

A special provision exempts from GST/HST all of a PSB's supplies of a property or a service if all or substantially all (generally 90% or more) of the supplies of the property or service are made for free. Budget 2013 proposes to clarify that this special simplifying exempting provision does not apply to supplies of paid parking that are made by way of lease, license or similar arrangement in the course of business carried on by the PSB.

This measure will be effective the date the GST/HST legislation is enacted.

Supplies of Paid Parking through Charities

A special exemption from GST/HST applies to parking provided by charities that are not a municipality, university, public college, school or hospital. Budget 2013 proposes to clarify that the special GST/HST exemption for parking supplied by charities does not apply to supplies of paid parking that are made by way of lease, license or similar arrangement in the course of a business carried on by a charity set up or used by a municipality, university, public college, school or a hospital to operate a parking facility.

This measure will apply to supplies made after Budget Day.

OTHER TAX MEASURES

Electronic Suppression of Sales Software Sanctions

Electronic suppression of sales (ESS) software (also commonly known as "zapper" software) has been used by some businesses to hide their sales to evade the payment of GST/HST and income taxes. Budget 2013 proposes new administrative monetary penalties and criminal offences under the *Excise Tax Act* and the *Income Tax Act*.

New Administrative Monetary Penalties

- For the use of ESS software, an administrative monetary penalty of $5,000 on the first infraction and $50,000 on any subsequent infraction.
- For the possession or acquisition of ESS software, an administrative monetary penalty of $5,000 on the first infraction and $50,000 on any subsequent infraction, except where a person exercised due diligence.
- For the manufacture, development, sale, possession for sale, offer for sale or otherwise making available of ESS software, an administrative monetary penalty of $10,000 on the first infraction and $100,000 on any subsequent infraction, except where a person exercised due diligence.

New Criminal Offences

- For the use, possession, acquisition, manufacture, development, sale, possession for sale, offer for sale or otherwise making available of ESS software:
  - On summary conviction, a fine of not less than $10,000 and not more than $500,000 or imprisonment for a term of not more than 2 years, or both; or
  - On conviction or indictment, a fine of not less than $50,000 and not more than $1,000,000 or imprisonment of not more than 5 years, or both.

These measures will apply on the later of January 1, 2014 and Royal Assent to the enacting legislation.

ABOUT COLLINS BARROW

Collins Barrow is Canada's largest association of Chartered Accountancy firms and the eighth largest group of chartered accountants in Canada with more than 35 offices from coast to coast. Known as Canada's mid-market alternative for audit, tax and advisory solutions, we have developed a reputation for being a real choice for quality and value added financial advice due to the depth and breadth of in-house skills, customized offerings, commitment to excellence in customer service and our national reach. Our unmatched service and deep financial offerings make Collins Barrow the right choice for maximizing shareholder value.

We serve companies at all stages of their development from large publicly traded companies to emerging and owner managed businesses. We service clients from a cross section of industries including: Manufacturing, Industrials, Wholesale, Retail and Distribution, Professional Services, Farming and Agriculture, Financial Services, Technology and Communications, Energy and Mining, and more. Our understanding and first-hand experience in the trends that are impacting these industries continues to prove that our professionals are well positioned to offer valued and effective solutions.

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