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2021 Federal Budget: Tax Highlights

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The Honourable Chrystia Freeland, Canada's Deputy Prime Minister and Minister of Finance, delivered the Liberal Party's first federal budget (Budget 2021) in over two years and the first since the start of the global COVID-19 pandemic.

As part of a recovery plan for "jobs, growth and resilience," Budget 2021, released on April 19, 2021, reflects over $100 billion in stimulus spending, including the extension of the Canada Emergency Wage Subsidy (CEWS), Canada Emergency Rent Subsidy (CERS), Lockdown Support through September 2021 and the introduction of a new Canada Recovery Hiring Program. Other stimulus measures are directed at seniors, parents, small businesses and others impacted by the pandemic and the support of green initiatives. A deficit of $354 billion is reported for 2020, with no balanced budgets and continued deficit spending projected over the next five years, through 2026.

Although Canadian corporations are still recovering from the economic impact of the ongoing pandemic, Budget 2021 includes a number of significant domestic corporate and international tax changes. These include a new earnings stripping rule that limits the deductibility of interest for tax purposes based on earnings, measures targeted at green initiatives and accelerating the expensing by Canadian-controlled corporations of their investments in certain capital property. The government's commitment to taking steps to strengthen and modernize Canada's general anti-avoidance rule through a consultation process, first referenced in the 2020 Fall Economic Statement, is also maintained in Budget 2021.

From an international tax perspective, consistent with Canada's commitment to the Organisation for Economic Co-operation and Development's (OECD's) base erosion and profit shifting (BEPS) initiatives, new rules directed at so-called "hybrid mismatch" arrangements are introduced in Budget 2021. Under these proposals, in general terms, Canadian corporations may be denied a deduction for payments made to non-residents in circumstances in which the non-resident is not taxable on the payment and, similarly, Canadian corporations may be taxable on payments received from a non-resident (including otherwise deductible dividends) where the non-resident was entitled to a deduction in respect of the payment. In addition, Budget 2021 announces the proposed release of a consultation paper and consultation process regarding Canada's transfer pricing rules following the Canada Revenue Agency's (CRA's) loss at the Federal Court of Appeal in *Her Majesty the Queen v Cameco Corporation* (*Cameco*).[1] The Court in *Cameco* held that the purpose of Canada's transfer pricing rules is to ensure that arm's-length parties transact based on arm's-length terms and conditions, and not to permit legally effective transactions to be recharacterized for tax purposes.

Several other revenue-raising measures are included or introduced in Budget 2021. Although Canada remains committed to a consensus-based multilateral approach to the taxation of the digital economy, Budget 2021 moves ahead with draft legislation for Canada's unilateral 3% digital services tax and adjusts the GST/HST rules related to e-commerce businesses, each as previously announced in the 2020 Fall Economic Statement. Also included is a new tax imposed on non-residents that maintain vacant or under-utilized real estate in Canada based on 1% of value, as well as a new luxury tax imposed on purchases of automobiles, aircraft ($100,000 or more) or boats ($250,000 or more).

From a tax administration perspective, consistent with the 2020 Fall Economic Statement and previous budgets, significant resources are allocated to the CRA to combat "tax evasion and aggressive tax avoidance," with a focus on GST/HST audits and risks, tax evasion involving trusts and the collection of tax debts. Budget 2021 also proposes to expand the instances in which the CRA must be notified of aggressive transactions and introduces new requirements for notifiable transactions and mandatory disclosure of uncertain tax positions taken by specified Canadian and non-resident corporations. A tightening measure introduced in the Budget prevents taxpayers from avoiding the collection of tax debts through property transfers. Budget 2021 confirms that CRA officials have the authority to require persons to answer appropriate questions and provide reasonable assistance for any purposes related to the administration or enforcement of tax laws. Measures that may affect Canadian charities are included in initiatives aimed at combatting money laundering and terrorist financing.

While Budget 2021 contains a number of significant proposals discussed in greater detail below, no changes were made to the general corporate or personal rates, or capital gains inclusion rate. The principal residence exemption is unaffected and no general wealth tax is introduced.

International Tax Measures

Hybrid Mismatch Arrangements

Hybrid mismatch arrangements are cross-border structures that utilize differences in the tax treatment of entities or financial instruments under the laws of two or more countries to obtain a particular tax result. Hybrid mismatches were addressed in the 2015 OECD report on *Neutralising the Effects of Hybrid Mismatch Arrangements* (Action 2 report). The Action 2 report recommended rules to limit the tax benefits from the use of hybrid mismatch arrangements.

The two main forms of hybrid arrangements addressed by the Action 2 report are **deduction/non-inclusion mismatches**, which arise where a country allows a deduction in respect of a cross-border payment, the receipt of which is not included within a reasonable period of time in fully taxable income in the other country; and **double deduction mismatches**, which arise where a tax deduction is available in two or more countries in respect of a single economic expense.

The Action 2 report also addresses imported mismatches, which generally arise where a payment is deductible by an entity resident in one country and included in the ordinary income of a recipient entity resident in a second country, but that ordinary income is set off against a deduction under a hybrid mismatch arrangement between the second entity and an entity resident in a third country. Finally, a supplement to the Action 2 report recommends additional rules to address branch mismatch arrangements, which generally produce mismatches similar to hybrid mismatch arrangements.

The Action 2 report recommendations were effectively implemented in the U.S. 2017 *Tax Cuts and Jobs Act* and, in the European Union, by the *Anti-Tax Avoidance Directive 2*, effective January 1, 2020. To date, Canadian tax law does not contain any anti-hybrid rules, except for certain provisions in the Canada-United States Income Tax Convention (1980).

While noting that the government can use existing Canadian income tax rules to challenge certain hybrid arrangements, Budget 2021 now proposes to implement the specific rules to address hybrid mismatch arrangements undertaken by Canadian taxpayers.

In general terms, under the main rules proposed in Budget 2021, payments made by Canadian residents under hybrid mismatch arrangements would not be deductible for Canadian income tax purposes to the extent that they give rise to a further deduction in another country or are not included in the ordinary income of a non-resident recipient. Conversely, to the extent that a payment made under such an arrangement by an entity that is not resident in Canada is deductible for foreign income tax purposes, no deduction in respect of the payment would be permitted against the income of a Canadian resident. Any amount of the payment received by a Canadian resident would also be included in income and, if the payment is a dividend, it would not be eligible for the deduction otherwise available for certain dividends received from foreign affiliates. In effect, these rules would neutralize a mismatch by aligning the Canadian income tax treatment with the income tax treatment in the foreign country.

One type of arrangement that may be a target of the proposed anti-hybrid rule was described in a CRA notice to tax professionals dated July 5, 2019. The situation involved a Canadian corporation that funds the annual interest payments owing on a borrowing from its U.S. parent by entering into agreements for the forward sale of treasury shares with a U.S. LLC subsidiary of the U.S. parent. Prepayments received from the LLC under the forward sale agreements (which are funded by annual contributions from the U.S. parent to the LLC) are used by the Canadian corporation to make interest payments to the U.S. parent. This arrangement presumably was intended to not generate interest income in the United States, while providing an interest deduction in Canada.

Budget 2021 does not contain draft legislation implementing these proposals. However, it provides the following guidance:

- The proposed rules would be mechanical in nature and would not be conditioned on a purpose test.
- With limited exceptions, the proposed rules would apply in respect of payments between related parties and payments under certain arrangements between unrelated parties that are designed to produce a mismatch.
- The ordering rules recommended by the Action 2 report (e.g., deduction denial is given priority over a defensive rule including an amount) would also apply to ensure that the proposed rules are coordinated with similar rules in other countries.

The proposed rules to address hybrid arrangements would be implemented in two separate legislative packages. The first package would comprise rules to neutralize a deduction/non-inclusion mismatch arising from a payment in respect of a financial instrument. This first legislative package would be released for stakeholder comment later in 2021, and those rules would apply as of July 1, 2022. The second legislative package would be released for stakeholder comment after 2021, and those rules would apply no earlier than 2023. This package would comprise rules consistent with the Action 2 recommendations that were not addressed in the first package and that, presumably, address situations that are of lesser concern to the Canadian government.

Transfer Pricing

Under Canada's transfer pricing rules, where the terms or conditions of a cross-border transaction or series of transactions between non-arm's-length persons do not reflect arm's-length terms and conditions, the government may adjust the quantum or nature of the relevant amounts to reflect arm's-length terms and conditions. The transfer pricing rules also include a so-called "recharacterization rule" that applies where a non-arm's-length transaction (i) would not have been entered into between persons dealing at arm's length and (ii) was arranged primarily to achieve a tax benefit. When this is the case, the transaction can be substituted with the transaction that would have been entered into between persons dealing at arm's length.

Budget 2021 announces the government's intention to consult on the transfer pricing rules in light of the Federal Court of Appeal's decision in *Cameco*, in which the Court disagreed with the government's broad interpretation of the recharacterization rule, concluding that the government could not change the nature of a transaction where the arrangements are objectively reasonable, even if the structure is tax-motivated. The Court asserted that the fact that a Canadian corporation would not have entered into a transaction with a non-resident if they had been dealing at arm's length was irrelevant. In Budget 2021, the government expresses the view that there are "shortcomings in the current transfer pricing rules" and its intention to release a consultation paper in the coming months.

Budget 2021 also confirms the government's intention to proceed with the legislative proposals released on July 30, 2019 that (i) give priority to transfer pricing rules over other provisions of the *Income Tax Act* (Canada) (ITA) that also adjust the Canadian tax consequences of transactions between non-arm's-length persons and (ii) extend the normal reassessment period (generally three or four years) by an additional three years for transactions caught by the transfer pricing rules.

Finally, Budget 2021 contains a statement implying that Canada has accepted the new transfer pricing guidance developed under BEPS but this statement does not seem to reflect previous official communications on this matter. More particularly, in Budget 2016, Canada had indicated that it would not be adjusting its administrative practices in connection with two areas of the OECD's BEPS-related transfer pricing work – the proposed simplified approach to low-value-adding services and the treatment of so-called cash boxes – and that it would decide on a course of action with regard to these measures after follow-up work by the OECD is complete. It is unclear whether Budget 2021 is confirming that the Canadian government will adjust its practices in respect of these two specific areas.

Tax on Canadian Housing Owned by Foreign Non-Residents

In its 2020 Fall Economic Statement, the government announced its intention to take steps to implement a national, tax-based measure targeting the unproductive use of domestic housing owned by non-residents of Canada, with the objective of making housing more affordable for younger homebuyers. Budget 2021 proposes to introduce an annual 1% tax on the value of residential real estate owned by non-residents of Canada other than Canadian citizens that is considered to be vacant or underused, effective as of January 1, 2022. All owners of residential real property other than Canadian citizens or permanent residents of Canada will be required to file an annual declaration as to the use of the property and whether an exemption from the tax is applicable, with penalties imposed for failure to file. A consultation paper will be released for comment containing further details and the proposed parameters of the tax.

Digital Services Tax

Budget 2021 proposes to implement the previously announced Digital Services Tax (DST) aimed at large corporations providing digital services, starting from January 1, 2022. The 3% DST would apply on revenue earned from engagement with online users in Canada, including through the collection, processing and monetizing of data and content contributions from Canadian users (such as online marketplaces, social media, online advertising, and user data). The DST targets large businesses, foreign or domestic, with gross global revenue from all sources of €750 million or more that generate more than $20 million of yearly revenue associated with Canadian users. One designated entity in a multinational group would be required to file an annual return with the Canadian government and pay the DST liability on behalf of the group.

The DST is presented as a non-income tax, which seems to imply that it would not be impeded by tax treaty exemptions. The DST is proposed as a temporary measure until an acceptable multilateral approach comes into effect with respect to the implicated businesses. The federal government plans to engage with the provinces and territories to discuss the implications of the DST. It is anticipated that draft legislation for a new statute implementing the DST would be released for public comment during summer 2021, taking into account the feedback received. Written submissions of interested parties may be submitted to the Department of Finance by June 18, 2021.

Income Tax Measures

Limits on Interest Deductibility

Budget 2021 proposes a new general limitation on the deductibility of interest and similar expenses, starting in 2023. Interest deductibility limitation rules of this type have been in the works at least since 2015, when the OECD released guidance for such limitations as part of its BEPS initiative; a number of other countries (including the European Union and the United States) have introduced rules generally in line with the OECD recommendations. Interest deductibility limitation rules also formed part of the 2019 Liberal Party election platform. The stated purpose of these rules is to address the erosion of the Canadian tax base through interest payments to related non-residents in low-tax jurisdictions, the use of debt to finance investments that earn non-taxable income and circumstances where a Canadian business bears a disproportionate amount of a multinational group's third-party borrowing.

Subject to certain exceptions, the deductibility of interest and other financing-related expenses would be denied to corporations, partnerships and trusts to the extent that the expenses, net of interest and financing-related income, exceed a fixed ratio of the entity's tax EBITDA. For 2023, the ratio would be 40% and for subsequent years, it would be reduced to 30%. Generally, small businesses will be excluded from the application of the rules, particularly Canadian-controlled private corporations that (together with their associated group) have less than $15 million of taxable capital employed in Canada, as well as groups of corporations and trusts with less than $250,000 in net interest payments.

The new rules would not apply to interest that is not otherwise deductible, including under the thin capitalization rules, which generally prohibit the deduction of interest on debt owing to certain non-residents where the indebtedness is greater than 1.5 times the equity of the debtor corporation owned by such non-residents, and which will continue to apply. Generally, the deductibility of interest on debts owing between Canadian members of a corporate group (including under a "loss shifting" arrangement) would not be restricted under the new rules. Any interest denied under the new rules would be available to be carried back up to three years and forward up to 20 years, in line with the provisions for non-capital losses.

The rules would include relieving provisions to address groups of entities, which would allow members of a group to effectively share unused capacity to deduct interest. Also, the rules will include a "group ratio" concept, which would allow a taxpayer to deduct net interest in excess of the fixed ratio where it can demonstrate that the ratio of net third-party interest to book EBITDA of its consolidated group implies that a higher deduction limit is appropriate. Budget 2021 materials indicate that, consistent with these relieving rules, it is expected that standalone Canadian corporations that are members of a group that does not include non-residents would typically not have their interest expense deductions limited under the proposed rules.

Special rules are proposed for banks and life insurance companies that would generally prohibit the transfer of unused capacity to other members of their corporate group that are not also regulated banks or insurance entities. As currently proposed, the rules would not address other specific industries, such as real estate investments, which have been subject to special rules in the United States.

Draft legislation is expected to be released this summer, which should provide additional clarity regarding the scope and application of these rules.

New Reporting Requirements

Budget 2021 provides that a consultation will be undertaken with respect to a number of additional reporting requirements. The impetus for these proposed changes is to expand existing reportable transactions and tax shelter reporting rules to ensure that the CRA is notified of aggressive tax positions and to follow emerging international trends, including those proposed under the BEPS project. In connection with these changes, Budget 2021 includes related rules extending reassessment periods so that the normal reassessment period will not begin until the reporting has been completed, and imposing significant penalties where the new compliance and reporting requirements have not been satisfied. In some cases, these penalties can be up to 25% of the tax benefit.

If enacted, the proposed changes will apply to taxation years commencing after 2021, and with respect to transactions entered into on or after January 1, 2022. Penalties will not be imposed in respect of transactions entered into before the legislation receives royal assent.

Draft legislation related to the proposed rules is expected to be released in the coming weeks. Input on these proposed measures must be submitted by September 3, 2021.

Reportable Transaction Rule Changes

The ITA currently requires mandatory disclosure of "avoidance transactions" (meaning a transaction carried out primarily to obtain a tax benefit) where any two of the following three criteria are met:

- Contingent fees are paid to a promoter or tax advisor attributable to the tax benefit or number of participants that participate in the transaction;
- A promoter or tax advisor has confidential protection in respect of the transaction; or
- A promoter, advisor, participant or certain non-arm's length person has or had contractual protection in respect of the avoidance transaction, such as insurance that protects a person against a failure to receive a tax benefit.

In order to bring the reportable transaction rules in line with international norms (including the BEPS report), Budget 2021 proposes to

- require reporting if only one of the above three criteria is present;
- expand the definition of avoidance transaction to include a transaction in which one of its main purposes (as opposed to the principal purpose) is to obtain a tax benefit;
- require that reporting of the transaction generally be made within 45 days of entering into the transaction; and
- require reporting be made by all participants, promoters and advisors of a reportable transaction (subject to an exception for solicitor-client privilege).

The requirement that only one of three eligibility criteria needs to be met, and the change from a "principal purpose" to "one of the main purposes" test may subject a broad range of M&A transactions to reporting requirements, as they often include contractual protections related to tax attributes of a target or may otherwise include confidentiality requirements in favour of certain parties that may be deemed a promoter under these rules.

Notifiable Transactions Reporting

Budget 2021 provides for mandatory reporting for certain types of transactions that may not be subject to the reportable transaction rules. These proposals are based on the U.S. "listed transaction" rules and similar rules in the United Kingdom, Australia and the province of Québec. The specific notifiable transactions will be described in greater detail as part of the consultation process. A participant in a notifiable transaction will generally be required to report the transaction within 45 days of entering into the transaction. Promoters or advisors will have a similar reporting requirement (subject to an exception for solicitor-client privilege).

Reporting of Uncertain Tax Positions by Specified Corporations

Budget 2021 proposes to require certain taxpayers to report any uncertain tax position in their tax return. Similar measures have already been adopted in the United States and Australia, and have been proposed in the United Kingdom. Budget 2021 provides that uncertain tax position reporting will apply to both Canadian and non-resident corporations when the corporation (i) is required to file a Canadian tax return; (ii) has more than $50 million of assets on its non-consolidated balance sheet at the end of the financial year; (iii) has audited financial statements prepared in accordance with Canadian GAAP, IFRS or other country-specific GAAP (such as U.S. GAAP); and (iv) has reported an uncertain tax position in those audited financial statements.

For each reportable uncertain tax position, the corporation will be required to provide prescribed information, such as the quantum of taxes at issue, a concise description of the relevant facts, the tax treatment taken and whether the uncertainty relates to a permanent or temporary difference in tax.

Audit Authorities

While the CRA's audit powers are, generally speaking, quite broad, the Federal Court of Appeal in *Canada (National Revenue) v Cameco Corporation* upheld the Federal Court decision prohibiting a longstanding CRA practice of requiring interviews by taxpayers and their employees in the course of an audit. The Federal Court of Appeal held that the CRA's powers under paragraph 231.1(1)(a) of the ITA to "inspect, audit or examine" a taxpayer's books and records did not permit the CRA to compel oral interviews of a taxpayer or its employees. Budget 2021 proposes amendments to overrule the Cameco decision, giving the CRA the authority to require taxpayers to answer all proper questions, and to provide all reasonable assistance, for any purpose related to the administration or enforcement of the ITA, the *Excise Tax Act* (Canada) (ETA), the *Excise Act* (Canada), the *Air Travellers Security Charge Act* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* (GGPPA). These amendments provide that the CRA has the authority to require persons to respond to questions orally or in writing, and will apply following royal assent.

Avoidance of Tax Debts

The ITA contains rules that are intended to ensure that a taxpayer cannot avoid payment of a tax debt by transferring assets to a non-arm's length person for inadequate consideration. Certain taxpayers have allegedly undertaken transactions that avoid the application of these rules, often in connection with complex tax planning strategies. In certain cases, this planning involves undertaking a transaction that results in a tax debt in the year after a transfer of property has occurred. Budget 2021 includes a number of proposed changes that expand these rules and proposes penalties on those involved in the promotion of these strategies. These rules will apply to transactions that occur on or after Budget Day. Similar rules will also be enacted to the ETA, the *Excise Act* and the GGPPA.

Immediate Expensing

Budget 2021 introduces temporary measures that would permit the immediate expensing of up to $1.5 million per taxation year in respect of "eligible property" that is acquired by a Canadian-controlled private corporation (CCPC) on or after Budget Day and becomes available for use before January 1, 2024.

Eligible property generally includes any depreciable capital property, other than property included in capital cost allowance (CCA) classes for long lived assets (e.g., Class 1 assets). However, eligible property that has been used, or acquired for use, for any purpose before it was acquired by a CCPC would only be eligible for the immediate expensing if (i) neither the CCPC nor a non-arm's-length person previously owned the eligible property and (ii) the eligible property was not acquired by the CCPC on a tax-deferred basis.

CCPCs with capital costs in excess of the $1.5-million limit (which is required to be shared among associated corporate group members) are permitted to select which asset class would be immediately expensed, with any excess subject to the normal CCA rules. Moreover, the immediate expensing applies in addition to other enhanced deductions available to CCPCs under existing rules.

Rate Reduction for Zero-Emission Technology

Budget 2021 proposes to reduce the corporate income tax rates applicable to qualifying zero-emission technology manufacturers. Specifically, the general corporate rate applicable to eligible zero-emission technology manufacturing and processing (M&P) income will be reduced from 15% to 7.5%, and the small business tax rate applicable to such eligible income will be reduced from 9% to 4.5%. Taxpayers that have income subject to both the general corporate rate and small business rate may chose to have eligible income taxed at either the general reduced rate of 7.5%, or the small business reduced rate of 4.5%, provided that the aggregate amount of income taxed at each rate does not exceed the $500,000 business limit ordinarily applicable to CCPCs claiming the small business deduction. To qualify for these reduced tax rates, at least 10% of a taxpayer's gross revenue from all active businesses carried on in Canada must be derived from **eligible activities**.

Eligible activities refer to zero-emission technology M&P activities, such as the manufacturing of renewable energy conversion equipment (e.g., solar, water or wind), or the production of fuels (e.g., wood pellets, renewable diesel and biogas) from specified waste material. However, activities that do not generally qualify as M&P for the purposes of the CCA rules will be excluded from these new measures.

Eligible income will generally be equal to a taxpayer's "adjusted business income" multiplied by the proportion of its total labour and capital costs used in eligible activities. The methods used to determine labour and capital costs would be substantially similar to those used in computing M&P profits under current rules. In that regard, stakeholders will have until June 18, 2021 to submit representations to the government on the proposed cost allocation method.

The reduced tax rates would apply to taxation years beginning after 2021, and would be gradually phased out for taxation years beginning in 2029, and completely phased out for taxation years beginning after 2031. Moreover, given the temporary nature of these measures, Budget 2021 also confirmed that no changes will be made to the current dividend tax credit regime applicable to eligible and non-eligible dividends.

Capital Cost Allowance for Clean Energy Equipment

Under the current CCA regime, asset classes 43.1 and 43.2 provide for accelerated depreciation rates for investments in specified clean energy generation and conservation equipment. In order to support further investment in green technologies, Budget 2021 proposes to expand the types of assets included in classes 43.1 and 43.2. Pumped hydroelectric storage equipment, electricity generation equipment that harnesses kinetic energy and active solar heating systems are but a few examples of assets now eligible for the accelerated depreciation rates.

To ensure the incentive provided by classes 43.1 and 43.2 is consistent with current environmental objectives, Budget 2021 also seeks to restrict certain assets that currently qualify for the accelerated depreciation rates. Consequently, assets that consume fossil fuels and, in certain cases, waste fuels to produce a renewable source of energy, or derive half of their fuel energy input from fossil fuels will no longer qualify as class 43.1 or class 43.2 assets.

The expansion of classes 43.1 and 43.2 would apply to property acquired and made available for use on or after Budget Day, provided that it has not been used or acquired for use for any purpose before that time. However, the removal of certain property from eligibility for classes 43.1 and 43.2 would only apply to property that becomes available for use after 2024.

Registration and Revocation Rules for Charities

Budget 2021 proposes amendments that would make it easier for the CRA to immediately revoke the registration of a charity if it is listed as a terrorist entity under the *Criminal Code*. In addition, if a charity has a director, trustee, officer or controlling party who is a member or is also a director, trustee, officer or controlling party of a listed terrorist entity, the Minister of National Revenue will have the discretion to refuse or revoke its registration, or to suspend its authority to issue donation receipts. The Minister will also have the power to revoke the registration of a charity or suspend its authority to issue receipts if a false statement amounting to culpable conduct was made for the purpose of maintaining (and not just obtaining, as under current law) its charitable registration.

Emergency Business Supports

Budget 2021 proposes to extend the CEWS, the CERS and the Lockdown Support until September 2021, with a gradual decline in the subsidy rates over the July-to-September period.

Budget 2021 also proposes to provide the government with the legislative authority to add additional qualifying periods for the CEWS, the CERS, and the Lockdown Support until November 20, 2021 by regulation.

Canada Emergency Wage Subsidy

Extension of Wage Subsidy

In general terms, the CEWS provides eligible employers that have experienced a decline in revenues during the COVID-19 pandemic with a wage subsidy for eligible remuneration paid to their employees. A detailed discussion of the CEWS can be found in our August 2020 bulletin. The maximum combined base subsidy and "top-up" wage subsidy rate is set at 75% through the qualifying period ending on June 5, 2021 (up to a maximum weekly benefit per employee of $847).

Budget 2021 proposes to extend the CEWS until September 25, 2021. For the qualifying periods beginning on or after July 4, 2021, Budget 2021 proposes to gradually reduce the wage subsidy rate. Under the proposed rules, the maximum combined (base and "top up") subsidy would be equal to 60%, 40% and 20% of eligible remuneration for the qualifying periods beginning on July 4, August 1 and August 29, 2021, respectively (up to a maximum weekly benefit per employee of $677, $452 and $226, respectively). Also starting on July 4, 2021, only employers with a decline in revenues of more than 10% would be eligible for the wage subsidy.

Requirement to Repay Wage Subsidy

Budget 2021 also proposes to require a publicly listed corporation – and its affiliates – to repay wage subsidy amounts received for a qualifying period that begins after June 5, 2021, to the extent that the aggregate compensation for specified executives during the 2021 calendar year exceeds the aggregate compensation for specified executives during the 2019 calendar year. For the purpose of this proposed rule, a publicly listed corporation's specified executives will be officers whose compensation is required to be disclosed under Canadian securities laws, or similar executives in the case of a corporation listed in another jurisdiction. This generally includes its chief executive officer, chief financial officer and three other most highly compensated executives.

Canada Emergency Rent Subsidy

In general terms, the rent subsidy is intended to cover a portion of an eligible entity's commercial rent or property expenses if that entity's revenues have declined during the COVID-19 pandemic. The maximum base rent subsidy rate is set at 65% through the qualifying period ending on June 5, 2021. Budget 2021 proposes to extend the CERS through September 25, 2021, but to gradually reduce the rent subsidy rates starting on July 4, 2021. Furthermore, starting on July 4, 2021, only organizations with a decline in revenues of more than 10% would be eligible for the base rent subsidy (and the Lockdown Support discussed below).

Lockdown Support

The federal government introduced the Lockdown Support through the CERS program to provide additional assistance to locations required to cease operations or significantly limit their activities under a federal, provincial or territorial public health order issued under federal, provincial or territorial law. In order to qualify for the Lockdown Support, an applicant must qualify for the base rent subsidy. See above regarding changes to the eligibility criteria for the base rent subsidy. Budget 2021 proposes to extend the current 25% rate for the Lockdown Support for the qualifying periods from June 6 to September 25, 2021.

Canada Recovery Hiring Program

Budget 2021 proposes to introduce the new Canada Recovery Hiring Program to provide eligible employers with a subsidy of up to 50% on the incremental remuneration paid to eligible employees between June 6 and November 20, 2021. Eligible employers would be permitted to claim either the hiring subsidy or the wage subsidy for a particular qualifying period, but not both.

Eligible Employers and Eligible Employees

Employers eligible for the CEWS would generally be eligible for the hiring subsidy. However, a for-profit corporation would be eligible for the hiring subsidy only if it is a CCPC. Eligible employers (or their payroll service provider) would be required to have had a payroll account open with the CRA on March 15, 2020.

An eligible employee must be employed primarily in Canada by an eligible employer throughout a qualifying period (or the portion of the qualifying period throughout which the individual was employed by the eligible employer). The hiring subsidy would not be available for furloughed employees.

Eligible Remuneration and Incremental Remuneration

The types of remuneration eligible for the CEWS would also be eligible for the hiring subsidy. Incremental remuneration for a qualifying period means the difference between an employer's total eligible remuneration paid to eligible employees for the qualifying period and its total eligible remuneration paid to eligible employees for the baseline period (being March 14 to April 10, 2021). In both the qualifying period and the baseline period, eligible remuneration for each eligible employee would be subject to a maximum of $1,129 per week.

Revenue-Decline Threshold and Subsidy Amount

To qualify for the hiring subsidy in a qualifying period, an eligible employer would need to have experienced a decline in revenues sufficient to qualify for the CEWS in that qualifying period (determined in the same manner as under the CEWS). For qualifying periods in which the CEWS is no longer in effect, an eligible employer would need to have experienced a decline in revenues of more than 10%. As such, an eligible employer's decline in revenues would have to be more than

- 0%, for the qualifying period between June 6 and July 3, 2021; and
- 10%, for qualifying periods between July 4 and November 20, 2021.

Provided that an eligible employer's decline in revenues exceeds the revenue-decline threshold for a qualifying period, its subsidy in that qualifying period would be equal to its incremental remuneration multiplied by the applicable hiring subsidy rate for that qualifying period. The proposed hiring subsidy rates are as follows:

- 50%, for qualifying periods between June 6 and August 28, 2021;
- 40%, for the qualifying period between August 29 and September 25, 2021;
- 30%, for the qualifying period between September 26 and October 23, 2021; and
- 20%, for the qualifying period between October 24 and November 20, 2021.

Excise Tax Measures

GST/HST on E-Commerce

The 2020 Fall Economic Statement proposed detailed changes to the GST/HST rules targeting e-commerce (2020 proposals), as discussed in our December 2020 bulletin. Following comments received on the 2020 proposals, Budget 2021 suggests various amendments, including to mitigate the responsibility of platform operators and allow deductions for bad debts.

The 2020 proposals require distribution platform operators to collect and remit the GST/HST on sales by non-registered vendors to Canadian purchasers. Budget 2021 proposes two rules to protect platform operators by (i) imposing joint and several or solidary liability for the collection and remittance of applicable GST/HST on the third-party operator and non-resident vendor where the non-resident has provided false information, and (ii) limiting the liability of the platform operator where the platform operator reasonably relied on information provided by the non-resident vendor.

The 2020 proposals also require non-residents with no physical presence in Canada selling digital products or services to Canadian consumers to register for GST/HST and collect and remit tax on taxable sales to Canadian consumers, but do not allow such non-residents to claim input tax credits. As a mitigating measure, Budget 2021 proposes to allow non-residents to deduct amounts in respect of uncollectible bad debts from the GST/HST they are required to remit for a reporting period.

Budget 2021 provides for a 12-month grace period following the coming into force of the 2020 proposals on July 1, 2021, during which the government will exercise discretion in administering the new measures, to the extent that the non-resident or platform operator can demonstrate that it has taken reasonable measures to comply with the new rules.

Tax on Select Luxury Goods

Effective as of January 1, 2022, a new luxury tax is proposed on the retail sale of luxury passenger vehicles and personal aircraft priced over $100,000 and boats priced over $250,000. In each case, certain exclusions apply, including with respect to vehicles, aircraft and boats used for commercial or public-sector purposes. This proposed tax would apply at the final point of purchase if the final sale price payable by the consumer (excluding GST/HST or provincial sales tax) exceeds the applicable threshold. In each case, the amount of tax imposed would be the lesser of 10% of the full value of the particular luxury good, or 20% of the value above the applicable threshold. GST/HST would apply to the price inclusive of the proposed tax.

[1] Leave to appeal to the Supreme Court of Canada denied February 18, 2021.

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