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TAXSTRATEGY

2022 Fall Economic Statement

Another Drop In the Bucket

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Earlier this year I wrote about how the CRA came out swinging with not one but two releases in the first four months of 2022, first with the February 4 release and then the Federal Budget on April 7, 2022. Although both releases contained extensive sets of rules, the CRA only released the actual legislation in early August of this year, so many tax practitioners had quite a bit of end-of-summer reading to understand how the newly released rules were going to be applied. So, when I heard a rumour at the end of October that there might be a Fall Economic Statement, I wasn't quite sure if it was true. But yes, Finance didn't let the grass grow under its feet as the 2022 Fall Economic Statement was released on November 3, 2022. Although the statement was not as comprehensive as the releases earlier in the year, there were a few items worth noting.

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A Tax on Share Buybacks

Canada announced that it was going to follow the U.S. and apply a tax to public companies on share buybacks. A share buyback occurs when a company buys its own stock back from existing shareholders so as to return value to such shareholders (as opposed to paying dividends). The government's motives in taxing the corporations is to try to get companies to invest back into their business and their workers.

The 2022 Fall Economic Statement announced a corporate-level tax of 2 per cent to apply on the net value of all types of share buybacks by public corporations in Canada. No details were released. Rather, they will be announced as part of Budget 2023, with the tax coming into force as of January 1, 2024. The government release estimated that this new tax would increase federal revenues by $2.1 billion over five years.

International Tax Reform

The government also announced its commitment to ensure that multinational corporations pay their fair share of tax wherever they do business (including in other jurisdictions). The tax reform is to focus on: (1) the reallocation of taxing rights, with the largest and most profitable global corporations having to pay tax in jurisdictions where their users and customers are located; and (2) a global minimum tax regime to ensure that multinational corporations are subject to a minimum effective tax rate of 15 per cent on profits in every jurisdiction in which they operate. This tax reform will require cooperation and consultation with the OECD and Canada's various international partners.

Residential Property Flipping Rule

Budget 2022 released back in April proposed a new deeming rule to ensure that profits from flipping residential real estate are always subject to full taxation (and not as capital gains or sheltering it under the principal residence exemption). Specifically, profits arising from sales of residential property (including a rental property) that was owned for less than 12 months would be deemed to be business income, unless the disposition occurred as a result of death, an addition to your family (i.e. birth, care of an elderly parent), separation, personal safety, disability or illness, change of employment to work at a new location (or due to an involuntary termination of employment), insolvency or involuntary sale (i.e. expropriation or due to a natural or man-made disaster).

The Fall Statement proposes to extend this new deeming rule to profits arising from the sale of the rights to purchase a residential property via an assignment sale. Profits arising from an assignment sale would be deemed to be business income (and taxed at full rates) if the rights to purchase a property were assigned after having been owned for less than 12 months. Moreover, the 12-month holding period (originally announced in April 2022) will reset once a taxpayer secures ownership of the property (i.e., closes on the property). The government wants to ensure that the Residential Property Flipping Rule announced in April cannot be bypassed when selling a constructed property simply because a taxpayer held the rights to purchase the property before it was constructed.

Note: The same exemptions listed above with respect to the 12-month ownership of the property will also be available for this new extended deeming rule, for an assignment of an agreement of purchase and sale.

And as a reminder, these new rules will apply as of January 1, 2023.

The Canada Workers Benefit (CWB)

To provide CWB beneficiaries with more timely support throughout the year, the 2022 Fall Economic Statement proposes to automatically provide individuals who received the CWB refundable tax credit (to supplement the earnings of low and modest income workers) for the previous taxation year an entitlement for the current taxation year through quarterly advance payments. To qualify, their income tax return for the previous year must be received and assessed by the CRA prior to November 1 of the current year. Advance payments would be issued automatically starting in July 2023 for the 2023 taxation year, and the current option to apply for an advance payment under the existing provision would no longer be available after January 1, 2023.

Investment Tax Credit for Clean Technologies

In an effort to encourage the adoption of clean technologies by businesses, the government introduced a new refundable Clean Technology Investment Tax Credit equal to 30 per cent of the capital cost of eligible equipment. Some examples of eligible equipment are equipment to generate electricity from solar, wind and water energy, stationary electricity-storage equipment that does not use fossil fuels, equipment to generate heat or electricity from concentrated solar energy or mall modular nuclear reactors, and non-road zero-emission vehicles, such as hydrogen or electric heavy-duty equipment used in mining or construction). The Clean Technology Investment Tax Credit rate for eligible investments would require that all labour conditions be fulfilled in order to obtain the 30 per cent rate (otherwise the credit will be reduced to 20 per cent).

One interesting thing to note is that in a release accompanying the Fall Statement, Finance announced that it will delay the implementation of certain updates to the mandatory disclosure rules imposed on taxpayers and advisors, which were announced earlier this year, in order to fully assess the feedback received on the draft legislation released. Under the proposed update, avoidance transactions that have tax avoidance as their primary purposes would need to be reported by taxpayers and advisors. In this recent announcement, the government said it will delay the coming-into-force date of the reporting requirements for reportable transactions and notifiable transactions until the date on which a bill implementing these changes receives royal assent. The legislation's coming-into-force date would still be the beginning of the 2023 tax year, but penalties would only apply after the bill receives royal assent. ❑