The TaxLetter®

Vol. 35, No. 4 Your Guide to Tax-Saving Strategies April 2017

TAXSTRATEGY

Federal budget

Takeaways

Samantha Prasad

According to the Liberal government, it's all about the future. And not necessarily a bright future. Rather, Finance Minister Bill Morneau spoke about getting Canadians ready for a changing world that includes rapid technological change, the constant need for new skills, and the growing demand on our time. The budget, released on March 22, projected a deficit of $28.6 billion this coming fiscal year (in line with what the Liberals predicted last year). This includes about $5.2 billion for skills development to help address the need for education and employment training. So, while at a big-picture level the budget is aimed at helping Canadians adapt to new and constantly changing circumstances, the question remains: What does this all mean for your final tax bill?

Samantha Prasad, LL.B., is a tax partner with the Toronto-based law firm Minden Gross LLP, a member of Meritas Law Firms Worldwide, and a Contributing Editor of The TaxLetter, published by MPL Communications.

sprasad@mindengross.com

Personal tax measures

Tax rates

Despite the rumours circulating among tax practitioners and beyond regarding a possible increase to the capital-gains inclusion rate, the budget did not include any changes to personal income tax rates. As a result, many people were able to finally let out that breath they were holding.

Tax credits/deductions

There were a number of changes to various tax credits and deductions that affect individuals, some which were welcome and others that left me scratching my head:

☞ Tuition Tax Credit: In keeping in line with their message about developing skills for Canadians, the government proposes to extend the availability of the Tuition Tax Credit to be claimed for occupational skills courses that are not at the post-secondary level. The credit is available in circumstances where the course is taken for the purpose of providing the individual with skills or improving their skills in an occupation (and where the person will be 16 years old before the end of the year).

☞ Canada Caregiver Credit: This single, new credit will replace the following three existing credits: the caregiver credit, the infirm dependent credit, and the family caregiver credit. (The new credit is available for 2017 onwards). The credit will be available for each person who, at any time in the year, is dependent on the taxpayer due to mental or physical infirmity AND is either a spouse/common-law partner, or has reached the age of 18 and is dependent on the taxpayer. The dependent will not be required to live with the caregiver, but on the flip side, this credit will no longer be available for non-infirm seniors who live with their adult children. The maximum amount of the credit is $6,883 (which is reduced dollar for dollar by the amount by which the dependent's income exceeds $16,163) for expenses for care of dependent relatives with infirmities, and a maximum amount of $2,150 for expenses for care of a dependent spouse/common-law partner or minor child with an infirmity.

☞ Disability Tax Credit:

The budget proposes to add nurse practitioners to the list of medical practitioners who are allowed to certify eligibility for the disability tax credit.

☞ Medical Tax Credit: For 2017 and future years, the budget proposes to clarify the types of fertility-related expenses that are eligible for the medical tax credit. Specifically, individuals who do not have a medical infertility condition, but who incur costs related to the use of reproductive technologies (i.e. IVF), will be eligible to claim medical tax credits. This measure is available from 2017 onwards, although you can elect a year for this measure to be applied from any of the immediately preceding 10 years.

☞ Public Transit Tax Credit: In what seems to be a move against low-income and middle class taxpayers, the budget proposes to eliminate the public-transit tax credit, which currently provides a 15 per cent, non-refundable tax credit for the cost of eligible public transit passes. This measure will apply effective July 1, 2017.

☞ Mineral exploration Tax Credit: The budget proposes to extend this credit for one year; it will apply to flow-through share agreements entered into on or before March 31, 2018 (the credit was scheduled to expire on March 31, 2017).

☞ Home Relocation Loans Deduction: Currently, the taxable benefit associated with a loan from an employer may be reduced if the loan relates to an eligible home relocation; however, for benefits arising in 2018 and onward, the applicable deduction to offset some of this taxable benefit will be eliminated.

Miscellaneous Personal Tax Measures

☞ Registered Plans – Anti-avoidance rules: There are currently certain anti-avoidance rules with respect to certain registered plans, such as TFSAs, RRSP and RRIFs. These rules (i.e. prohibited investment rules, non-qualified investment rules and the advantage rules) are aimed at preventing the plans from providing excessive tax advantages. These rules will be extended to RESPs and RDSPs as of March 22, 2017 (subject to certain exceptions, such as swap transactions occurring on or before June 30, 2017, for example).

☞ Allowances for Members of Legislative Assemblies and Municipal Officers: The budget proposes to include non-accountable allowances paid to certain officials in their income starting with the 2018 taxation year.

☞ National Child Benefit Supplement: The budget proposes to further delay, until July 1, 2018, the repeal of the National Child Benefit Supplement reference in the Canada Child Benefit rules in the Tax Act.

Business Tax Measures

Although there were no changes to the corporate tax rates, the government did identify the following areas for review in the hope of limiting high-income individuals from gaining an unfair tax advantage through the use of private corporations:

☞ Income splitting: sprinkling income among low-tax-rate family members by way of dividends or capital gains

☞ Holding of portfolio investments: taking advantage of lower corporate tax rates available on ordinary business income by retaining income in the corporation

☞ Conversion of regular income into capital gains: causing income that would normally be paid to the shareholder as salary or dividends to be converted into capital gains (which have a 50 per cent inclusion rate).

The government proposes to review current legislation that may have inappropriate tax consequences in connection with genuine business transactions among family members (including succession planning between generations for family businesses).

Professionals – Billed Basis Accounting: In a move which hits close to home for me, the budget proposes to eliminate the ability of designated professionals (accountants, dentists, medical doctors, vets, chiropractors and, yes, lawyers too) to defer the inclusion in income of the value of work in progress (WIP) until such time as the WIP is actually billed to clients. Currently, such professionals can elect to defer such tax inclusion until the year in which they actually bill clients for such work. Under the new proposals, the value of WIP will need to be included in income (even it not billed to the client). This proposal will come into effect over a two-year period; 50 per cent of the lesser of cost and fair market value of WIP must be recognized for tax purposes and included in income in the first affected tax year. For subsequent years, WIP, valued at the lesser of its cost and fair market value, must be recognized each year.

Meaning of Factual Control

Under the Tax Act, there are two different meanings of control: de jure control (legal control) and de facto control (factual control). These definitions are most relevant for private corporations when determining control for "Canadian controlled private company (CCPC)" status and the sharing of the small business deduction and R&D tax credits among associated corporations. As a result of a Federal Court of Appeal (FCA) decision that restricted the scope of factual control, the budget proposes to clarify the circumstances where de facto control exists, so as to remove the restraints imposed by the FCA decision. Accordingly, for taxation years after March 21, 2017, all factors relevant to the particular situation (and not just those that meet the criteria set out by the FCA) are to be included in assessing whether de facto control exists.

Miscellaneous Business Measures:

☛ The budget clarified the taxation of derivative instruments to include an elective method of reporting gains and losses from derivatives held in an income account, such as interest-rate swaps or currency hedges. Anti-avoidance "stop-loss" rules were also proposed, to limit the ability to defer income on certain hedging arrangements (commonly referred to as a straddle transaction). This proposal will apply to any loss realized on a position entered into after March 21, 2017.

☛ Currently under the Tax Act, the merger of mutual funds can occur on a tax-deferred basis, although the current rules do not allow for the reorganization of a mutual fund corporation into multiple mutual fund trusts. The budget proposes to allow for such tax-deferred restructuring as of March 22, 2017.

☛ The budget proposes to eliminate the investment tax credit for child-care-space expenditures as of March 21, 2017, although expenditures incurred before 2020, pursuant to a written agreement entered into before March 22, 2017, will still be eligible for the investment tax credit. ❐