Canadian Tax and Legal alert

2023 Fall Economic Statement Tax Highlights

November 22, 2023

Deputy Prime Minister and Minister of Finance, the Honourable Chrystia Freeland, presented the 2023 Fall Economic Statement in the House of Commons on November 21, 2023.

A summary of the tax highlights contained in the Fall Economic Statement is provided below.

What wasn't there

- There were no broad increases to personal or corporate tax rates, no increases in goods and services tax (GST), or harmonized sales tax (HST), and no new taxes on wealth, inheritance or capital. The capital gains inclusion rate remains at 50%.
- No updated draft legislation or detailed rules were announced on existing tax proposals, including interest deductibility limitations, the global minimum tax, amendments to the general anti-avoidance rule, modifications to the alternative minimum tax, or hybrid mismatch arrangements.

- Several details on previous budget initiatives were not mentioned, including potential updates on the review of the Scientific Research and Experimental Development (SR&ED) program (including work on a potential patent box regime), which was first announced in Budget 2022.

Timelines for the clean economy investment tax credits announced

The government announced a more detailed implementation timeline for various clean economy investment tax credits. While many of these investment tax credits were previously announced, the various consultation processes underway have meant that none of the investment tax credits have been introduced in Parliament.

- Carbon capture, utilization and storage (CCUS) investment tax credit – legislation to be introduced this fall
- Clean technology investment tax credit – legislation to be introduced this fall
- Clean hydrogen investment tax credit – legislation is targeted to be introduced in early 2024
- Clean technology manufacturing investment tax credit – legislation is targeted to be introduced in early 2024
- Clean electricity investment tax credit – legislation is targeted to be introduced in fall 2024
- Labour requirements for investment tax credits – legislation to be introduced this fall

Other announcements related to building Canada's clean economy

Design elements for the clean hydrogen investment tax credit were announced, including a description of eligible clean ammonia production equipment. Additional details regarding the calculation of the carbon intensity for hydrogen projects and compliance mechanisms were announced. The clean hydrogen investment tax credit will be subject to a consultation on draft legislation, to be launched this fall.

The clean technology and clean electricity investment tax credits are proposed to be expanded to include waste biomass systems, having relevance to the forestry, agriculture, and utilities sectors. The expansion, as it pertains to the clean technology investment tax credit, would be applicable to eligible equipment that is acquired and becomes available for use on or after November 21, 2023, while the clean electricity investment tax credits would be available as of the date of Budget 2024 for projects that did not begin construction before March 28, 2023.

The Canada Growth Fund will be the principal federal entity issuing carbon contracts for difference. It will allocate, on a priority basis, up to $7 billion of its current $15 billion in capital to issue all forms of contracts for difference and offtake agreements.

The government will advance the development of an Indigenous Loan Guarantee Program to help facilitate Indigenous equity ownership in major projects in the natural resource sector. Next steps will be announced in Budget 2024.

Proposed new concessional loan tax treatment

There was a concern prior to the release of the Fall Economic Statement that any loan advanced by a government (or a government agency including crown corporations) to a taxpayer should be assessed with respect to whether the loan included any concessions in the terms that may otherwise have been construed as government assistance in light of the *CAE Inc.*[1] decision, in which the full principle amount of a concessional loan (meaning a loan that did not bear interest or that bears interest at below-market rates) was included in income as government assistance.

In the Fall Economic Statement, the government proposed to provide amendments and clarity that bona fide concessional loans with reasonable repayment terms from public authorities will generally not be considered government assistance. The proposed amendment would come into force as of November 21, 2023.

[1] *CAE Inc. v. Canada*, 2022 FCA 178.

Enhancements for employee ownership trusts

Budget 2023 proposed Employee Ownership Trusts to encourage the transfer of all or part of eligible businesses to employee groups. The Fall Economic Statement provides a meaningful enhancement to the proposed rules by allowing an exemption of capital gains on the first $10 million realized on the sale of a business to an Employee Ownership Trust, subject to certain restrictions. It remains to be seen how this enhanced capital gains exemption would intersect with the alternative minimum tax, which includes a minimum amount of income on the realization of certain other capital gains subject to exemptions. This exemption would be in effect for the 2024, 2025, and 2026 years.

Possible pension fund investment restriction relief

The government is considering the removal of a restriction applicable to pension funds from holding more than 30% of the voting shares of investments in Canada. There is no indication of a possible effective date.

Ongoing progress on previously announced tax measures

The government confirmed its intention to proceed with the implementation of the Digital Services Tax (DST), with forthcoming legislation that would allow the government to determine the coming into force date. The Digital Services Tax Act, most recently released in draft on August 4, 2023, allows for the government to determine the coming into force date no earlier than January 1, 2024, in respect of revenues earned as of January 1, 2022. The proposed DST is a tax equal to 3% on revenue from certain Canadian digital services for relevant taxpayers.

The government also reconfirmed its intention to enact legislation to implement a global minimum tax in line with the OECD's Global Anti-Base Erosion (GloBE) Model Rules. The Fall Economic Statement contained proposals to expand the tax exemption for international shipping activities to all Canadian-resident corporations in order to bring Canada's rules in line with international norms and associated provisions in the OECD's GloBE Model Rules.

Building on several government initiatives were clarifications and amendments to previously announced measures, including:

- Budget 2019 introduced the Canadian journalism labour tax credit. The Fall Economic Statement increases the maximum expenditure per employee from $55,000 to $85,000. The tax credit rate would be temporarily increased from 25% to 35% for a period of four years (January 1, 2023 through December 31, 2026).
- Budget 2023 proposed to deny financial institutions a deduction for dividends on shares that are mark-to-market property effective January 1, 2024. The Fall Economic Statement affirms the budget proposal, but also includes an exception to permit financial institutions to deduct dividends on taxable preferred shares.

Proposed new joint venture election rules for GST/HST

The government proposed that the GST/HST joint venture election rules, which historically have been quite restrictive, be adjusted to include several components, most notably:

- Eliminate the requirement that joint venture activities be eligible activities per the legislation or regulations, thus opening up this election to more activities;
- Limit the availability of these elections to those that are registered for GST/HST purposes, engaged all or substantially all in commercial activities, and not be a public sector body or listed financial institution;
- Replace the current deeming measures with revised measures to clarify certain historical ambiguities.

Draft legislation proposals were released for public consultation, concurrently with the Fall Economic Statement. Feedback is requested by March 15, 2024.

Underused housing tax filing requirements curtailed

The Underused Housing Tax Act took effect on January 1, 2022, which resulted in broad compliance obligations for common structures for many Canadians, including residential properties held within a Canadian corporation, trust or partnership. The initial filings for the 2022 calendar year, originally due April 30, 2023, were previously extended twice and are now due on April 30, 2024.

The Fall Economic Statement proposes to eliminate filing requirements for certain Canadian owners, including those that hold residential properties within certain Canadian corporations, Canadian partnerships and Canadian trusts. Such changes would take effect for the 2023 calendar year. Certain residential condominium units owned by a single building owner are also exempt from filing, effective for the 2022 calendar year. Finally, late filing penalties are reduced for individuals from $5,000 to $1,000 and for corporations from $10,000 to $2,000, effective for 2022 filings. These changes were reflected in draft legislation released concurrently with the Fall Economic Statement, which is open for comment until January 3, 2024.

Non-compliant short-term rentals

The Fall Economic Statement proposes to deny income tax deductions for expenses incurred, including interest expense, to earn short-term rental income in provinces and municipalities that have prohibited short-term rentals. Denial of income tax deductions would also be extended where a short-term rental operator is not in compliance with local applicable law and requirements. These measures would take effect on January 1, 2024. Additional funding is proposed in support of municipal enforcement of restrictions on short-term rentals.

How can Deloitte help you?

Deloitte professionals can help you understand how these measures may impact your business. If you have any questions, please reach out to your Deloitte advisor or any of the individuals noted in this alert.

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