



Canadian transfer pricing alert

2019-2020 federal budget transfer pricing highlights

April 25, 2019

From a transfer pricing perspective, Canada's 2019 federal budget, released March 19, 2019, provides commentary on the ongoing base erosion and profit shifting (BEPS) project and also proposes two new measures concerning the relationship between the transfer pricing rules in the Income Tax Act (ITA) and other provisions of the ITA.

A summary of transfer pricing related measures contained in the budget is provided below.

Transfer pricing measures

The two measures related to transfer pricing proposed in the budget include the order of application of the transfer pricing rules and the definition of transaction for extended reassessment period.

Order of application of the transfer pricing rules

Firstly, the government proposes to amend the ITA to clarify that the transfer pricing rules in Part XVI.1 (s. 247) apply in priority to the application of the provisions in other parts of the ITA. The budget notes that the current rules may have various

implications, including with respect to the calculation of transfer pricing penalties imposed under Part XVI.1 of the ITA.

The budget notes that the current exceptions to the application of transfer pricing rules that pertain to Canadian resident corporations that have amounts owing from controlled foreign affiliates, or have extended a guarantee in respect of amounts owing by controlled foreign affiliates, will continue to apply.

The order of application measure will apply to taxation periods that begin on or after March 19, 2019.

Definition of transaction for extended reassessment period

The government also proposes to amend the ITA to ensure that the term “transaction” has the same meaning in both the transfer pricing rules and the applicable reassessment rules.

As background, an extended three-year reassessment period exists in respect of a reassessment made as a consequence of a transaction involving a taxpayer and a non-resident with whom the taxpayer does not deal at arm’s length. The budget notes that this reassessment extension is intended to apply in the transfer pricing context, but that the expanded definition of “transaction” used in the transfer pricing rules does not apply for the purposes of the extended reassessment period. As such, the change in definition of transaction for reassessment purposes is intended to better align the transfer pricing rules and the extended three-year reassessment period.

The change to the definition of “transaction” for the purposes of the extended reassessment period will apply to taxation periods of a taxpayer for which the normal reassessment period for the taxpayer ends on or after March 19, 2019.

Update on the BEPS project

The budget reiterates that the Canadian government continues to cooperate and actively participate in the Organisation for Economic Co-operation and Development (OECD) project known as the BEPS initiative.

Multilateral instrument

In particular, the budget notes that the Canadian government is taking the necessary steps to enact the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) into Canadian law and to ratify the MLI as needed to bring the tool into force.

Country-by-country reporting

In addition, the budget notes that Canada is currently participating in an OECD review of the standard of the country-by-country reports to ensure that they provide tax administrations with information that facilitates accurate assessment for transfer pricing and other BEPS risks. This review is scheduled to be completed in 2020.

For further details, we refer you to the [Ministry of Finance website](#).

Your dedicated team:

National Transfer Pricing Leader

Tony Anderson

Tel: 905-315-6731

Regional

Quebec

Hernan Allik

Tel: 514-393-3643

Toronto

Christine Ramsay

Tel: 416-601-6485

Eastern Region

Tony Anderson

Tel: 905-315-6731

Western Region

Rob Stewart

Tel: 604-640-3325

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Deloitte LLP
Bay Adelaide Centre, East Tower
8 Adelaide Street West, Suite 200
Toronto ON M5H 0A9
Canada

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