Wealth Management

A SPECIAL REPORT FROM RBC FAMILY OFFICE SERVICES

2023 Federal Budget March 28, 2023

A summary of the key measures that may have a direct impact on you

Deputy Prime Minister and Minister of Finance Chrystia Freeland released the federal budget on March 28, 2023, against a backdrop of slowing global and Canadian economies, elevated interest rates and high inflation. The budget projects the federal debt-to-GDP ratio to rise slightly in 2023–2024 due to the global economic slowdown and lower forecasted GDP before continuing a declining path from 2024–2025 onward. In light of the economic uncertainty, measures in the budget are targeted with the stated goal not to exacerbate inflation. Spending measures include stronger public health care and dental care, as well as measures to mobilize private investment in building Canada's clean economy.

No changes to personal or corporate income tax rates, capital gain inclusion rates or other measures coveted by Canadians, such as the principal residence exemption, are proposed. However, the budget revises the Alternative Minimum Tax (AMT) regime to further focus on wealthy taxpayers. The government estimates that under the AMT reforms, more than 99% of the AMT paid by individual Canadians would be paid by those who earn more than $300,000 per year, and about 80% of the AMT paid would be by those who earn more than $1 million per year. These amendments are estimated to generate $3.0 billion in revenues over five years, beginning in the 2024 taxation year.

The following is a summary of the most significant tax and wealth planning measures announced in the budget.

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Personal tax measures

Alternative Minimum Tax (AMT)

AMT is a parallel tax calculation that prevents high-income earners and trusts from paying little or no tax as a result of certain tax incentives, such as claiming certain tax deductions and credits. You pay the AMT or regular tax, whichever is highest. You can carry forward the additional tax you pay as a result of AMT for seven years as a credit against your regular tax liability to the extent that your regular tax liability exceeds AMT. AMT is more likely to be triggered in a year when you invest in tax shelters, such as flow-through shares and limited partnership units, which may allow you to take disproportionately high deductions when compared to your income that is subject to tax. AMT may also apply to a business owner who realizes a gain on the sale of their qualifying small business corporation shares and claims the lifetime capital gains exemption.

AMT liability is determined in a separate tax computation based on your “adjusted taxable income.” Adjusted taxable income is determined by taking your net taxable income and adjusting for certain “tax preference items.” Tax preference items include tax shelter deductions, interest expenses and/or carrying charges related to tax shelter loans, employee stock option deductions, the lifetime capital gains exemption, Canadian dividends and realized capital gains. Your adjusted taxable income is then reduced by an AMT exemption amount and multiplied by the AMT tax rate. Lastly, certain non-refundable tax credits are deducted to determine the AMT amount. If this AMT amount is greater than your net federal taxes payable, the AMT amount becomes your federal tax liability for the year. There is also provincial AMT. The applicable provincial AMT is applied to determine your final combined federal and provincial tax liability.

To better target AMT to high-income individuals, the budget proposes the following changes:

- Increase the AMT exemption from $40,000 to the start of the fourth federal tax bracket (expected to be about $173,000 in 2024). The exemption amount would be indexed annually.
- Increase the AMT tax rate from 15% to 20.5%.
- Increase the capital gains inclusion rate only for AMT purposes from 80% to 100%. Currently, the capital gains inclusion rate under the regular tax system is 50%.
- Capital loss carry-forwards and allowable business investment losses would apply at a 50% rate.
- Include 100% of the benefit associated with employee stock options in the AMT calculation. Under the regular tax system, you may be entitled to a 50% security options deduction.
- Include 30% of capital gains realized on the donation of publicly listed securities that are eligible for the 0% inclusion rate under the regular tax system. The 30% inclusion will also apply to the full benefit associated with employee stock options to the extent that a deduction is available because the underlying securities are publicly listed and have been donated.
- Only 50% of non-refundable tax credits will be allowed to reduce AMT, subject to certain exemptions. Currently, most non-refundable tax credits can be fully credited against AMT. Some non-refundable credits that are currently disallowed would continue to be disallowed, such as the dividend tax credit.
- Disallowing 50% of the following deductions (this list is not exhaustive):
    - Interest and carrying charges incurred to earn income from property;
    - Deduction for limited partnership losses of other years;
    - Non-capital loss carryovers;
    - Employment expenses, other than those incurred to earn commission income;
    - Deductions for Canada Pension Plan (CPP), Quebec Pension Plan (QPP), and Provincial Parental Insurance Plan contributions;
    - Moving expenses;
    - Child care expenses.

The government proposes to maintain:

- The 30% inclusion rate for capital gains that are eligible for the lifetime capital gains exemption.
- Trusts that are currently exempt from AMT would continue to be exempt. The government will continue to examine whether additional types of trusts should also be exempt from AMT.
- Limits on expenses associated with film property, rental property, resource property and tax shelters.

The proposed changes would apply to tax years that begin after 2023. Additional details will be released later this year.

An AMT example

Here’s an example that illustrates how federal AMT is calculated under the current rules and the proposed rules. Assume an individual Canadian resident has employment income of $600,000 and has deductions of $450,000 from a flow-through investment (tax shelter). Therefore, their taxable income is $150,000. Assuming an average tax rate of 22% and tax credits of $2,250 (15% x $15,000), their federal tax payable under the regular tax system would be $30,750.

Alternatively, under the current AMT regime, their taxable income would be $600,000 and the AMT liability would be $81,750 ([$600,000 – $40,000] x 15% – $2,250). Under the proposed AMT rules, the AMT liability would be $86,410 ([$600,000 – $173,000] x 20.5% – $1,125). This individual would be able to carry forward $51,000 in AMT credits under current rules or $55,660 for the next seven years.

GST rebate ("The Grocery Rebate")

Since many Canadians are worried about higher prices on essential groceries, the budget proposes to introduce a one-time GST rebate. For low- and modest-income Canadians and families, the GST rebate will provide eligible couples with two children with up to an extra $467, single Canadians without children with up to an extra $234, and seniors with an extra $225, on average. The GST rebate will be delivered through a one-time payment from the Canada Revenue Agency (CRA) as soon as the legislation passes.

Canadian Dental Care Plan

The budget proposes a new Canadian Dental Care Plan to provide dental coverage for uninsured Canadians with annual family income of less than $90,000, with no co-pays for those with family incomes under $70,000. The plan would begin providing coverage by the end of 2023. Details on eligible coverage will be released later this year.

The budget also proposes to introduce legislation to compel employers and employer pension plans to report dental coverage offered to their employees and plan members through T4/T4A reporting. This requirement would ensure the new Dental Care Plan is limited to Canadians with an unmet need for dental care who don't have access to private insurance.

Registered Education Savings Plans (RESPs)

Increasing Educational Assistance Payment withdrawal limits

An RESP is a tax-deferred savings vehicle designed to help families save for the post-secondary education of their children. A subscriber, typically a parent or grandparent, would open an RESP to save for a beneficiary's post-secondary education.

When an RESP beneficiary is enrolled in an eligible post-secondary program, government grants and investment income can be withdrawn from the plan as an Educational Assistance Payment (EAP) in order to assist with education-related expenses. EAPs are taxable income for the beneficiary.

There are limits on the amount of EAPs that can be withdrawn in the first 13 consecutive weeks of a program, which for many students is the first term of enrollment. These withdrawal limits have not increased in 25 years.

The budget proposes to increase limits on these RESP withdrawals from $5,000 to $8,000 for full-time students, and from $2,500 to $4,000 for part-time students.

These changes will come into force on Budget Day. Individuals who withdrew EAPs prior to Budget Day may be able to withdraw an additional EAP amount, subject to the new limits and the terms of their plan.

Allowing divorced or separated parents to open joint RESPs

Currently, only spouses or common-law partners can open an RESP as joint subscribers. Parents who opened a joint RESP prior to their divorce or separation can maintain this plan afterwards, but they are unable to open a new joint RESP with a different promoter.

The budget proposes to allow divorced or separated parents to open joint RESPs for one or more of their children, or to move an existing joint RESP to another promoter. This change would come into force on Budget Day.

Registered Disability Savings Plans (RDSPs)

RDSPs are designed to support the long-term financial security of a beneficiary who is eligible for the disability tax credit. Where the contractual competence of an individual who is 18 years of age or older is in doubt, the RDSP plan holder must be that individual's guardian or legal representative as recognized under provincial or territorial law. However, establishing a legal representative can be a lengthy and expensive process.

Qualifying Family Members (QFMs)

As a temporary measure, which is set to expire on December 31, 2023, the government has allowed a QFM — such as a parent, a spouse or a common-law partner — to open an RDSP and to be the plan holder for an adult whose capacity to enter into an RDSP contract is in doubt, and who does not have a legal representative.

The budget proposes to extend this QFM measure by three years, to December 31, 2026. A QFM who becomes a plan holder before the end of 2026 can remain the plan holder after 2026.

Siblings as QFMs

The budget also proposes to broaden the definition of QFM to include a brother or sister of the beneficiary who is 18 years of age or older. This will increase access to RDSPs by allowing a sibling to establish an RDSP for a beneficiary with a disability.

This proposed expansion of the existing QFM definition will apply as of royal assent of the enabling legislation and be in effect until December 31, 2026. A sibling who becomes a QFM and plan holder before the end of 2026 can remain the plan holder after 2026.

Automatic tax filing

Up to 12% of Canadians currently do not file their tax returns — the majority of whom are low-income and would pay little to no income tax. Many of these low-income Canadians are missing out on valuable benefits and support to which they are entitled, such as the Canada Child Benefit and the Guaranteed Income Supplement. Since 2018, the CRA has delivered a free and simple File My Return service, which allows eligible Canadians to auto-file their tax return over the phone after answering a series of short questions. Canadians with simple tax situations and lower or fixed income receive an invitation letter from the CRA to use File My Return. To ensure more low-income Canadians have the ability to quickly and easily auto-file their tax returns, the budget announces that the federal government will increase the number of eligible Canadians for File My Return to two million by 2025 — almost triple the current number. The government will report on its progress in 2024.

Tradespeople's tool expenses

To help tradespeople such as electricians, painters and plumbers invest in the equipment they need, the budget proposes to double the maximum employment deduction for tradespeople's tools from $500 to $1,000, effective for 2023 and subsequent taxation years.

Business tax measures

Intergenerational business transfers

Bill C-208 was introduced as a private member's bill and became effective June 29, 2021, for certain transfers from parents to corporations owned by their children or grandchildren. Bill C-208 introduced an exception to rules that inappropriately applied to intergenerational transfers that convert a capital gain into a dividend, which is taxed at a higher rate. This made it more tax-advantaged to transfer a family business to a third party rather than to family members.

However, the rules introduced by Bill C-208 contained insufficient safeguards and applied even where no transfer of a business to the next generation has taken place. The budget proposes to amend the rules introduced by Bill C-208 to ensure they apply only where there is a genuine intergeneration business transfer.

A genuine intergenerational transfer would be a transfer of shares of a corporation (the Transferred Corporation) by a natural person (the Transferor) to another corporation (the Purchaser Corporation) where a number of conditions are satisfied. These rules apply where each share of the Transferred Corporation is a "qualified small business corporation share" or a "share of the capital stock of a family farm or fishing corporation," at the time of the transfer; and the Purchaser Corporation must be controlled by one or more persons, each of whom is an adult child of the Transferor. The meaning of "child" for these purposes would include grandchildren, step-children, children-in-law, nieces and nephews, and grandnieces and grandnephews.

The government is proposing additional conditions to ensure that only genuine intergenerational share transfers are subject to the exclusion. To provide flexibility, it is proposed that taxpayers who wish to undertake a genuine intergenerational share transfer may choose to rely on one of two transfer options:

- An immediate intergenerational business transfer (three-year test) based on arm's-length sale terms; or
- A gradual intergenerational business transfer (five- to 10-year test) based on traditional estate freeze characteristics (an estate freeze typically involves a parent crystalizing the value of their economic interest in a corporation to allow future growth to accrue to their children while the parent's fixed economic interest is then gradually diminished by the corporation repurchasing the parent's interest).

The immediate transfer rule would provide finality earlier in the process, though with more stringent conditions. In recognition of the fact that not all business transfers are immediate, the gradual transfer rule would provide additional flexibility for those who choose that approach.

Both the immediate and gradual business transfer options would reflect the characteristics of a genuine intergenerational business transfer. The proposed conditions to qualify as a genuine intergenerational business transfer under both options (transfers to grandchildren, nieces and nephews would also qualify) would include the following (see Appendix for more detailed descriptions of these conditions):

1. Transfer of control of the business
2. Transfer of economic interest in the business
3. Transfer of management of the business
4. Child retains control of the business
5. Child works in the business

The rules introduced by Bill C-208 that apply to subsequent share transfers by the Purchaser Corporation and the lifetime capital gains exemption are proposed to be replaced by relieving rules that would apply upon a subsequent arm's-length share transfer or upon the death or disability of a child. There would be no limit on the value of shares transferred in reliance upon this rule.

The Transferor and child (or children) would be required to jointly elect for the transfer to qualify as either an

immediate or gradual intergenerational share transfer. The child (or children) would be jointly and severally liable for any additional taxes payable by the Transferor, in respect of a transfer that does not meet the conditions. The joint election and joint and several liability recognize that the actions of the child could potentially cause the parent to fail the conditions and to be reassessed.

The limitation period for reassessing the Transferor's liability for tax that may arise on the transfer is proposed to be extended by three years for an immediate business transfer and by 10 years for a gradual business transfer.

The budget also proposes to provide a 10-year capital gains reserve for genuine intergenerational share transfers that satisfy the above proposed conditions.

These measures would apply to transactions that occur on or after January 1, 2024.

Employee ownership trusts (EOT)

An EOT is a form of employee ownership where a trust holds shares of a corporation for the benefit of the corporation's employees. EOTs can be used to facilitate the purchase of a business by its employees, without requiring them to pay directly to acquire shares. For business owners, an EOT provides an additional option for succession planning.

The budget proposes new rules to facilitate the use of EOTs to acquire and hold shares of a business. The new rules would define qualifying conditions to be an EOT and propose changes to tax rules to facilitate the establishment of EOTs. These changes would extend the capital gains reserve to 10 years for qualifying sales to an EOT, create an exception to the current shareholder loan rule, and exempt EOTs from the 21-year deemed disposition rule that applies to certain trusts.

Qualifying conditions

A trust would be considered an EOT if it is a Canadian resident trust (excluding deemed resident trusts) and has only two purposes. First, it would hold shares of qualifying businesses for the benefit of the employee beneficiaries of the trust. Second, it would make distributions to employee beneficiaries, where reasonable, under a distribution formula that could only consider an employee's length of service, remuneration and hours worked. Otherwise, all beneficiaries must generally be treated in a similar manner.

An EOT would be required to hold a controlling interest in the shares of one or more qualifying businesses. All or substantially all of an EOT's assets must be shares of qualifying businesses. A qualifying business would need to meet certain conditions, including that all or substantially all of the fair market value of its assets are attributable to assets used in an active business carried on in Canada. An EOT would not be permitted to allocate shares of qualifying businesses to individual beneficiaries. A qualifying business must not carry on its business as a partner to a partnership.

Trust beneficiaries

Beneficiaries of the trust must consist exclusively of qualifying employees. Qualifying employees would include all individuals employed by a qualifying business and any other qualifying businesses it controls, with the exclusion of employees who are significant economic interest holders or have not completed a reasonable probationary period of up to 12 months.

Individuals and their related persons who hold, or held prior to the sale to an EOT, a significant economic interest in a qualifying business of the EOT would also be excluded from being qualifying employees.

Tax treatment

The EOT would be a taxable trust and would therefore generally be subject to the same rules as other personal trusts.

Qualifying business transfer

A qualifying business transfer would occur when a taxpayer disposes of shares of a qualifying business for no more than fair market value. The shares must be disposed of to either a trust that qualifies as an EOT immediately after the sale or a corporation wholly owned by the EOT. The EOT must own a controlling interest in the qualifying business immediately after the qualifying business transfer.

These amendments would apply as of January 1, 2024.

Retirement Compensation Arrangements (RCAs)

An RCA is an employer-sponsored arrangement that allows an employer to provide supplemental pension benefits to employees. Employers can choose to pre-fund these benefits by making contributions to an RCA trust. There is a 50% refundable tax imposed on contributions to an RCA trust, as well as on income and gains earned or realized by the trust. The tax is generally refunded as the retirement benefits are paid from the RCA trust to the employee.

If employers chose not to pre-fund retirement benefits, they can obtain a letter of credit (or a surety bond) issued by a financial institution. To secure or renew the letter of credit, there is an annual fee or premium charged by the issuer. These fees or premiums are subject to a 50% refundable tax. For example, if the annual fee for a letter of credit is $100,000, the employer must contribute $200,000 to the RCA trust, as $100,000 will be paid to the financial institution to cover the fee and the other $100,000 will be remitted to the CRA for the 50% refundable tax.

When retirement benefits become due from an unfunded plan, the employer pays the benefits out of corporate revenues. Consequently, there are no benefit payments from an RCA trust to trigger a 50% refund and no practical mechanism for recovery.

The budget proposes that fees or premiums paid on or after Budget Day for the purposes of securing or renewing a letter of credit (or a surety bond) will not be subject to the refundable tax. The budget also proposes to allow employers to request a refund of previously remitted refundable taxes in respect of fees or premiums paid for letters of credit (or surety bonds) by RCA trusts, based on the retirement benefits that are paid out of the employer's corporate revenues. Employers would be eligible for a refund of 50% of the retirement benefits paid, up to the amount of refundable tax previously paid. This change would apply to retirement benefits paid after 2023.

Growing Canada's clean economy

As a significant part of the government's plan to decarbonize and build Canada's clean economy, the government proposes the following:

- Introduce the Clean Hydrogen Investment Tax Credit (CH Tax Credit). Only projects that produce all, or substantially all, hydrogen through their production process would be eligible for the CH Tax Credit. This measure will apply to property that is acquired and is available for use on or after Budget Day.
- Introduce the Clean Technology Investment Tax Credit – Geothermal Energy, which is a 30% refundable credit that will be available to businesses investing in eligible property that is acquired and that becomes available for use on or after Budget Day.
- Introduce the Investment Tax Credit for Clean Technology Manufacturing, a refundable investment tax credit for clean technology manufacturing and processing, and critical mineral extraction and processing. This credit will be equal to 30% of the capital cost of eligible property associated with eligible activities and will apply to property that is acquired and becomes available for use on or after January 1, 2024. It will be gradually phased out starting with property that becomes available for use in 2032 and no longer available for property that becomes available for use after 2034.
- Budget 2021 introduced a temporary measure to reduce corporate income tax rates for qualifying zero-emission technology manufacturers by one-half. The budget proposes to expand the list of eligible activities that would qualify for reduced tax rates to include certain nuclear manufacturing and processing activities. This measure will apply for tax years beginning after 2023.
- Budget 2022 proposed a refundable investment tax credit for carbon capture, utilization, and storage (the CCUS Tax Credit). The budget proposes additional design features and further details will be included in the legislative proposals to be released in the coming months.
- Flow-through share agreements allow certain corporations to renounce or "flow through" certain eligible expenses to investors, who can deduct the expenses for tax purposes on their personal tax returns. In addition to claiming these deductions, individuals who invest in flow-through shares of a corporation can claim the Critical Mineral Exploration Tax Credit (CMETC), a 30% non-refundable tax credit in respect of specified critical mineral exploration expenses. The budget proposes to include lithium from bines as a mineral resource. This expansion of the eligibility for the CMETC would apply to flow-through share agreements entered into after Budget Day and before April 2027.

Other measures

Protecting Canadians from the risks of crypto-assets

Ongoing turbulence in crypto-asset markets have demonstrated that crypto-assets can threaten the financial well-being of people, national security, and the stability and integrity of the global financial system. To protect Canadians from the risks that come with crypto-assets, the budget proposes the following new measures:

- In order to protect Canadian savings and security of our financial sector, the Office of the Superintendent of Financial Institutions (OSFI) will consult federally regulated financial institutions on guidelines for publicly disclosing their exposure to crypto-assets.
- To help protect Canadians' retirements, the government will require federally regulated pension funds to disclose their crypto-asset exposures to OSFI. The government will also work with provinces and territories to discuss crypto-asset or related activities disclosures by Canada's largest pension plans.

The government will continue to work closely with partners and bring forward proposals to protect Canadians from the risks of crypto-asset markets, and will provide further details in the 2023 fall economic and fiscal update.

Tax on repurchases of equity

A repurchase of equity occurs when an entity buys back its own shares or units from existing holders. Repurchasing equity is one way for public entities to return value to their shareholders. However, the government recognizes this may result in entity resources being diverted away from investments in Canadian workers and businesses.

The budget proposes a 2% tax on the net value of an entity's repurchase of equity (meaning shares of the corporation or units of the trust or partnership), defined as the fair market value of equity repurchased less the fair market value of equity issued from treasury. The tax would not apply to an entity if it repurchased less than $1 million of equity during a taxation year (prorated for short taxation years).

The tax would apply to public corporations (i.e. Canadian-resident corporations whose shares are listed on a designated stock exchange) but excludes mutual fund corporations. The tax would also apply to real estate investment trusts (REITs), specified investment flow-through (SIFT) trusts and SIFT partnerships, if they have units listed on a designated stock exchange.

The tax would apply in respect of repurchases and issuances of equity that occur on or after January 1, 2024.

General anti-avoidance rule (GAAR)

The GAAR is intended to prevent abusive tax avoidance transactions and if abusive tax avoidance is established, the GAAR applies to deny the tax benefit created by the transaction. To modernize and strengthen the GAAR, the budget proposes to amend the GAAR by:

- Adding a preamble to address interpretive issues and ensure that the GAAR applies as intended, regardless of whether or not the tax planning strategy used to obtain the tax benefit was foreseen.
- The threshold for the avoidance transaction test in the GAAR will be reduced from a "primary purpose" test to a "one of the main purposes" test.
- Providing that economic substance be considered when determining whether the GAAR applies as a lack of economic substance tends to indicate abusive tax avoidance. The amendments will provide a non-exhaustive list of indicators for determining whether a transaction or a series of transactions is lacking in economic substance. These indicators are: whether there is a potential for pre-tax profit, whether the transaction has resulted in a change of economic position, and whether the transaction is entirely or almost entirely tax motivated.
- Introducing a penalty for transactions subject to the GAAR, equal to 25% of the amount of the tax benefit. The penalty could be avoided if the transaction is disclosed to the CRA.
- Extending the normal reassessment period by three years, unless the transaction has been disclosed to the CRA.

The government is inviting interested parties to provide their views on these proposals by May 31, 2023.

Alcohol excise duty

The budget proposes to temporarily cap the inflation adjustment for excise duties on beer, spirits and wine at 2%, for one year only, as of April 1, 2023.

International tax reform

The government provided an update on recent developments and upcoming implementation steps in relation to the Inclusive Framework on Base Erosion and Profit Shifting which is a two-pillar plan for international tax reform agreed to by the Organisation for Economic Co-operation and Development (OECD)/Group of 20 (G20) on October 8, 2021.

Pillar One is focused on reallocating taxation rights to market countries (i.e. where their users and customers are located). The government is working with other countries towards completing multilateral negotiations so that the convention to implement Pillar One can be signed by mid-2023, with a view to it entering into force in 2024.

Pillar Two is a multilateral framework for a global minimum tax regime that is designed to ensure that multinational enterprises (MNEs) with annual revenues of €750 million or more are subject to a minimum effective tax rate of 15% on their profits in every jurisdiction in which they operate. Consistent with the announcement in the 2022 budget, the budget announces the government's intention to introduce legislation implementing these rules with effect for fiscal years of MNEs that begin on or after December 31, 2023.

The government intends to release draft legislative proposals for some of these rules for public consultation in the coming months, with other draft legislative proposals to follow at a later time.

Previously announced tax measures

The budget confirms the government's intention to proceed with previously announced legislative proposals including, but not limited to:

- Tax measures announced in the Fall Economic Statement on November 3, 2022, for which legislative proposals have not yet been released, including:
  - Automatic Advance for the Canada Workers Benefit;
  - Investment Tax Credit for Clean Technologies; and
  - Extension of the Residential Property Flipping Rule to Assignment Sales.

- Legislative proposals released on August 9, 2022, including with respect to the following measures:
  - Reporting Requirements for Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs);
  - Substantive Canadian-Controlled Private Corporations;
  - Mandatory Disclosure Rules.

Prior to implementing any strategies, individuals should consult with a qualified tax advisor, legal professional or other applicable professional.

While it has been the long-standing practice of the CRA to allow taxpayers to file their tax returns based on proposed legislation, a taxpayer remains potentially liable for taxes under current law in the event that a budget proposal is not ultimately passed. Therefore, if proposed legislation does not become law, it is possible that the CRA may assess or re-assess your tax return based on existing legislation. It is recommended that you consult a professional tax advisor to assist you in assessing the costs and benefits of proceeding with specific budget proposals as they relate to you.

Appendix

The proposed conditions to qualify as a genuine intergenerational business transfer under both options (transfers to grandchildren, nieces and nephews would also qualify) would include the following:

1. Transfer of control of the business

Immediate business transfer: Parents immediately and permanently transfer both legal and "factual control," including an immediate transfer of a majority of voting shares, and a transfer of the balance of voting shares within 36 months.

Factual control means economic and other influence that allows for effective control of a corporation (for example, economic dependence on a person who also acts as the controlling mind).

Gradual business transfer: Parents immediately and permanently transfer only legal control, including an immediate transfer of a majority of voting shares (no transfer of factual control), and a transfer of the balance of voting shares within 36 months.

Legal control generally means the right to elect a majority of the directors of a corporation.

2. Transfer of economic interest in the business

Immediate business transfer: Parents immediately transfer a majority of the common growth shares, and transfer the balance of common growth shares within 36 months. (It is expected that the transfers of legal and factual control as well as future growth of the business are sufficient to ensure the parents have transferred a substantial economic interest in the business to their child(ren).)

Gradual business transfer: Parents immediately transfer a majority of the common growth shares, and transfer the balance of common growth shares within 36 months.

In addition, within 10 years of the initial sale, parents reduce the economic value of their debt and equity interests in the business to:

(a.) 50% of the value of their interest in a farm or fishing corporation at the initial sale time; or

(b.) 30% of the value of their interest in a small business corporation at the initial sale time.

3. Transfer of management of the business

Immediate business transfer: Parents transfer management of the business to their child within a reasonable time based on the particular circumstances (with a 36-month safe harbour).

Gradual business transfer: Parents transfer management of the business to their children within a reasonable time based on the particular circumstances (with a 36-month safe harbour).

4. Child retains control of the business

Immediate business transfer: Child(ren) retains legal (not factual) control for a 36-month period following the share transfer.

Gradual business transfer: Child(ren) retains legal (not factual) control for the greater of 60 months or until the business transfer is completed.

5. Child works in the business

Immediate business transfer: At least one child remains actively involved in the business for the 36-month period following the share transfer.

Gradual business transfer: At least one child remains actively involved in the business for the greater of 60 months or until the business transfer is completed.

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