

2010 FEDERAL BUDGET – THOMSON REUTERS HIGHLIGHTS

MARCH 2010

Below is a high-level summary of tax proposals contained in the 2010 Budget:

Corporate Tax Measures

- Budget 2010 proposes to require the reporting of certain tax avoidance transactions to the CRA. Under the proposed regime, a tax “avoidance transaction” that features at least two of three “hallmarks” would be a “reportable transaction”. Generally, the three “hallmarks” would be: 1) a promoter or tax advisor in respect of the transaction is entitled to fees that are to any extent attributable or contingent upon a taxpayer obtaining a benefit, 2) a promoter or tax advisor in respect of the transaction requires “confidential protection” about the transaction and 3) the taxpayer or the person who entered into the transaction for the benefit of the taxpayer obtains “contractual protection” in respect of the transaction;
- The existing proposed foreign investment entity (FIE) and non-resident trust (NRT) rules will be replaced. The revised FIE proposals will completely replace the current proposed rules and will instead propose limited amendments to the existing rules contained in the Act. The revised NRT proposals are based on the outstanding proposals, but with substantial modifications that are intended to simplify the outstanding proposals and to better target arrangements that are considered abusive;
- To target certain income fund privatizations structured to benefit from unrelated corporate loss pools a proposal will trigger an acquisition of control in certain circumstances. In the case of a “reverse takeover” of a public corporation, an existing rule in the Act generally deems there to be an acquisition of control of the public corporation in situations where shares of the public corporation are exchanged for shares of another corporation. Budget 2010 proposes to extend this rule to ensure that it also applies to impose restrictions on the use of losses in situations where units of a SIFT trust or partnership are exchanged for shares of a corporation;
- The acquisition-of-control rules will be amended to ensure that they do not inappropriately restrict the use of losses where a SIFT trust is wound up and distributes the shares of a corporation it holds;
- Proposed measures will deny claims for foreign tax credits, and foreign accrual tax and underlying foreign tax deductions, in certain circumstances. The proposals are intended to apply to so-called “foreign tax credit generators” that are designed to shelter tax otherwise payable in respect of interest income on indirect loans made to foreign corporations;

- The Government will explore whether new rules for the taxation of corporate groups (such as the introduction of a formal system of loss transfers or consolidated reporting) should be introduced;
- The definition of “taxable Canadian property” will be amended to exclude shares of corporations (and certain other interests) that do not derive their value principally from real or immovable property situated in Canada, Canadian resource property, or timber resource property (subject to a 60 month rule) in order to eliminate section 116 compliance obligations for these types of properties and to bring Canada’s domestic tax rules more in line with Canada’s tax treaties;
- An amendment will be made to permit the issuance of a refund of an overpayment of tax if the overpayment is related to an assessment of the payor or purchaser in respect of a required withholding under Regulation 105 or section 116 of Act and the taxpayer files a return no more than two years after the date of that assessment;
- Effective July 1, 2010, the interest rate payable by the Minister to corporations will be set at the average yield of three-month Government of Canada Treasury Bills sold in the first month of the preceding quarter, rounded up to the nearest percentage point;
- Certain amendments may be made to provide that federal credit unions that satisfy the existing definition of a “credit union” in the Act will be subject to the same income tax rules as other credit unions;
- The CCA rate applicable to new satellite and cable set-top boxes that are acquired after March 4, 2010 will be 40%;
- Class 43.2 will be expanded to include heat recovery equipment used in a broader range of applications and distribution equipment used in district energy systems that rely primarily on ground source heat pumps, active solar systems or heat recovery equipment;
- The definition “principal-business corporation” will be amended to clarify that flow-through share eligibility extends to corporations the principal business of which is one, or any combination, of using Class 43.1 or Class 43.2 property;
- The Specified Leasing Property rules will be extended to otherwise exempt property that is the subject of a lease to a government or other tax-exempt entity, or to a non-resident. Such a lease will continue to be exempt if the total value of the property that is the subject of the lease is less than \$1 million; an anti-avoidance rule will apply if it may reasonably be considered that one of the purposes of dividing property (or a class of property) among separate leases is to meet the \$1 million exception); and
- The temporary 15-per-cent mineral exploration tax credit will be extended by one-year.

Personal Tax Measures

- The existing tax deferral available in respect of public company employee security option benefits will be repealed;

- Special elective tax treatment will be introduced for taxpayers who took advantage of the tax deferral election on stock options that have experienced financial difficulties as a result of a decline in the value of the optioned securities to the extent that the value of the securities is less than the deferred tax liability on the underlying stock option benefit;
- Existing withholding requirements will be clarified to ensure that an amount in respect of tax on the value of an employment benefit associated with an employee security option is required to be remitted to the government by the employer;
- Budget 2010 proposes to allow a deceased individual's RRSP or RRIF proceeds to be transferred, on a rollover basis, to the RDSP of a financially dependent infirm child or grandchild;
- In recognition of the fact that families of children with disabilities may not be able to contribute regularly to their RDSPs, a 10-year carryforward of Canada Disability Savings Grants and Canada Disability Savings Bonds entitlements will be introduced (i.e., entitlements will be determined and paid into the plan for the preceding 10 years based on the beneficiary's family income in those years);
- Budget 2010 proposes to clarify that all payments made to an RESP or an RDSP through a program funded, directly or indirectly, by a province or administered by a province will be treated the same way as federal grants and bonds and will therefore not themselves attract or reduce federal grants and bonds;
- It will be clarified that a post-secondary program that consists principally of research will be eligible for the Education Tax Credit, and the scholarship exemption, only if it leads to a college or CEGEP diploma, or a bachelor, masters or doctoral degree (or an equivalent degree); post-doctoral fellowships will be taxable. Budget 2010 also proposes that an amount will be eligible for the scholarship exemption only to the extent that it can reasonably be considered to be received in connection with enrolment in an eligible educational program for the duration of the period of study related to the scholarship;
- Budget 2010 proposes to allow two eligible individuals to receive Canada Child Tax Benefit and Universal Child Care Benefit amounts in a particular month, and two eligible individuals to receive GST/HST credit amounts in respect of a particular quarter, in respect of a child if the recipients would be eligible to receive amounts under the CRA's existing shared eligibility policy;
- Budget 2010 proposes to allow a single parent the option of including the aggregate Universal Child Care Benefit amount received, in respect of all of his or her children, in the parent's income or in the income of the dependant for whom an Eligible Dependant Credit is claimed;
- Expenses incurred for purely cosmetic procedures (including related services and other expenses such as travel) will be made ineligible for purposes of the Medical Expense Tax Credit;
- The 50% inclusion rate for Canadian residents who have been in receipt of U.S. Social Security benefits since before January 1, 1996 and for their spouses and common-law partners who are eligible to receive survivor benefits will be reinstated; and

- The Act will be amended to allow for the electronic issuance of those notices that can currently be sent by ordinary mail

Charities

Budget 2010 proposes to eliminate all disbursement quota requirements for registered charities except those related to the requirement to annually disburse a minimum amount of investments and other assets not used directly in a charity's operations. The Budget also proposes to modify the capital accumulation rule and to strengthen anti-avoidance rules for charities.

GST Measures

Budget 2010 proposes to simplify the GST/HST system as it applies to the direct selling industry and to clarify that GST/HST applies to all purely cosmetic procedures (such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening), to devices or other goods used or provided with cosmetic procedures, and to services related to cosmetic procedures.

Tariff Measures

The Budget proposes to eliminate remaining tariffs on imported machinery and equipment