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Special Report: Canada Federal Budget 2019

This annual publication is produced by the Tax Group at Dentons Canada LLP together with Wolters Kluwer CCH. This edition contains editorial comments regarding the tax proposals announced in the 2019 Federal Budget.

Editorial Comment on Income Tax Budget Resolutions

That it is expedient to amend the Income Tax Act ("the Act") and other related legislation as follows:

Resolutions 1 to 5: Canada Training Credit

1 (1) The portion of subsection 117.1(1) of the Act before paragraph (a) is replaced by the following:

Annual adjustment

117.1 (1) The amount of $1,000 referred to in the formula in paragraph 8(1)(s), each of the amounts expressed in dollars in subparagraph 6(1)(b)(v.1), subsection 117(2), the description of B in subsection 118(1), subsection 118(2), paragraph (a) of the description of B in subsection 118(10), subsection 118.01(2), the descriptions of C and F in subsection 118.2(1) and subsections 118.3(1), 122.5(3) and 122.51(1) and (2), the amount of $400,000 referred to in the formula in paragraph 110.6(2)(a), the amounts of $1,355 and $2,335 referred to in the description of A, and the amounts of $12,820 and $17,025 referred to in the description of B, in the formula in subsection 122.7(2), the amount of $700 referred to in the description of C, and the amounts of $24,111 and $36,483 referred to in the description of D, in the formula in subsection 122.7(3), the amount of $10,000 referred to in the description of B in the formula in subsection 122.91(2), and each of the amounts expressed in dollars in Part I.2 in relation to tax payable under this Part or Part I.2 for a taxation year shall be adjusted so that the amount to be used under those provisions for the year is the total of

(2) Subsection (1) applies to the 2020 and subsequent taxation years, except that the adjustment provided for in subsection 117.1(1) of the Act, as amended by subsection (1), does not apply for the 2020 taxation year in respect of the amount of $10,000.

2 (1) The portion of subsection 118.5(1) of the Act before paragraph (a) is replaced by the following:

Tuition credit

118.5 (1) Subject to subsection (1.2), for the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

(2) Section 118.5 of the Act is amended by adding the following after subsection (1.1):

Canada training credit reduction

(1.2) The amount that may be deducted in a taxation year by an individual under subsection (1) is to be reduced by the amount determined by the formula

A × B

where

A is the appropriate percentage for the taxation year; and

B is the amount, if any, deemed to have been paid by the individual under subsection 122.91(1) in respect of the taxation year.

(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2019.

3 (1) The Act is amended by adding the following after section 122.9:

Subdivision a.5 — Canada Training Credit

Claimed amount

122.91 (1) An individual who is resident in Canada throughout a taxation year, files a return of income for the taxation year and makes a claim under this subsection is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount claimed by the individual that does not exceed the lesser of

(a) the training amount limit of the individual for the taxation year, and

(b) 50% of the amount that would be deductible under paragraph 118.5(1)(a) or (d) in computing the individual's tax payable under this Part for the taxation year if

(i) this Act were read without reference to subsection 118.5(1.2) and (2), and

(ii) the appropriate percentage for the taxation year were 100%.

Definition of training amount limit

(2) In this section, the ***training amount limit***, of an individual for a taxation year, is

(a) if the taxation year is after 2019 and the individual has attained the age of 26 years, and has not attained the age of 66 years, before the end of the taxation year, the lesser of

(i) the amount determined by the formula

A + B – C

where

A is the individual's training amount limit for the preceding taxation year,

B is

(A) $250, if

(I) the individual was resident in Canada throughout the preceding taxation year,

(II) the total of the following amounts is greater than or equal to $10,000:

1 the amount that would be the individual's *working income* (as defined in subsection 122.7(1)) for the preceding taxation year, if this Act were read without reference to paragraph 81(1)(a) and subsection 81(4),

2 the total of all amounts each of which is an amount payable to the individual under subsection 22(1), 23(1), 152.04(1) or 152.05(1) of the *Employment Insurance Act* in the preceding taxation year, and

3 the amount that would be included in the individual's income because of subparagraph 56(1)(a)(vii) in computing the individual's income for the preceding taxation year, if this Act were read without reference to paragraph 81(1)(a), and

(III) the individual's income for the preceding taxation year under this Part does not exceed the higher dollar amount referred to in paragraph 117(2)(c), as adjusted under this Act for the preceding taxation year, and

(B) nil, in any other case, and

C is the amount deemed to have been paid by the individual under subsection (1) in respect of the preceding taxation year, and

(ii) the amount determined by the formula

$5,000 – D

where

D is the total of all amounts deemed to have been paid by the individual under subsection (1) in respect of a preceding taxation year; and

(b) nil, in any other case.

Effect of bankruptcy

(3) For the purpose of this subdivision, if an individual becomes bankrupt in a particular calendar year,

(a) notwithstanding subsection 128(2), any reference to the taxation year of the individual (other than in this subsection) is deemed to be a reference to the particular calendar year; and

(b) the individual's working income and income under this Part for the taxation year ending on December 31 of the particular calendar year is deemed to include the individual's working income and the income under this Part for the taxation year that begins on January 1 of the particular calendar year.

Special rules in the event of death

(4) For the purposes of this section, if an individual dies in a calendar year,

(a) the individual is deemed to be resident in Canada from the time of death until the end of the year;

(b) the individual is deemed to be the same age at the end of the year as the individual would have been if the individual were alive at the end of the year; and

(c) any return of income filed by a legal representative of the individual is deemed to be a return of income filed by the individual.

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

4 (1) Paragraph 152(1)(b) of the Act is replaced by the following:

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

(2) Paragraph 152(4.2)(b) of the Act is replaced by the following:

(b) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(4), 122.9(2), 122.91(1), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

(2) Subsections (1) and (2) are deemed to have come into force on January 1, 2019.

5 (1) Subsection 163(2) of the Act is amended by adding the following after paragraph (c.5):

(c.6) the amount, if any, by which

(i) the total of all amounts each of which is an amount that would be deemed by subsection 122.91(1) to have been paid on account of the person's tax payable under this Part for the year if those amounts were calculated by reference to the information provided in the return

exceeds

(ii) the total of all amounts each of which is an amount that is deemed by subsection 122.91(1) to be a payment on account of the person's tax payable under this Part for the taxation year,

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

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Budget 2019 proposes a new refundable tax credit called the Canada Training Credit ("CTC"), which will be provided by proposed section 122.91 of the Income Tax Act. The CTC will provide a taxpayer resident in Canada with a refund of the lesser of 50% of their eligible tuition fees paid and a notional balance called a "training amount limit", which accumulates at a rate of $250 per year to a maximum of $5,000 in an individual's lifetime.

To be eligible for the $250 addition to the "training amount limit", proposed subsection 122.91(2) of the Income Tax Act provides the taxpayer must be resident in Canada throughout the preceding year, file an income tax return, be at least 25 years old and less than 65 years old at the end of the year, and have a working income, scholarship income, and / or Employment Insurance benefits for parental leave of greater than $10,000, and have income that does not exceed the top of the third tax bracket limit set out in paragraph 117(2)(c) of the Income Tax Act, which is currently $147,667.

Tuition fees that are eligible for the credit are the same tuition fees that are eligible for the tuition tax credit under paragraphs 118.5(1)(a) or (d). However, proposed subsection 118.5(1.2) provides the portion of tuition refunded under the CTC will not be eligible for the tuition tax credit. Note that tuition fees paid to a university outside Canada, while eligible for the tuition tax credit, are not eligible for the CTC.

The proposed amendments are deemed to come into force on January 1, 2019. Accordingly, the first notional training amount limit addition will be made in 2020, in respect of the 2019 year.

Resolution 6: Home Buyers' Plan

6 (1) The definition *excluded withdrawal* in subsection 146.01(1) of the Act is amended by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) a particular amount (other than an eligible amount) received while the individual was resident in Canada and in a calendar year if

(i) the particular amount would be a regular eligible amount if subsection (2.1) were read without reference to its subparagraph (a)(iii),

(ii) a payment (other than an excluded premium) equal to the particular amount is made by the individual under a retirement saving plan that is, at the end of the taxation year of the payment, a registered retirement savings plan under which the individual is the annuitant, and

(iii) the payment is made before the end of the second calendar year after the calendar year that includes the particular time referred to in subsection (2.1);

(2) Paragraph (h) of the definition *regular eligible amount* in subsection 146.01(1) of the Act is replaced by the following:

(h) the total of the amount and all other eligible amounts received by the individual in the calendar year that includes the particular time does not exceed $35,000, and

(3) Paragraph (g) of the definition *supplemental eligible amount* in subsection 146.01(1) of the Act is replaced by the following:

(g) the total of the amount and all other eligible amounts received by the individual in the calendar year that includes the particular time does not exceed $35,000, and

(4) Section 146.01 of the Act is amended by adding the following after subsection (2):

Marriage or common-law partnership

(2.1) Notwithstanding paragraph (2)(a.1), for the purposes of the definition *regular eligible amount*,

(a) an individual, and a spouse or common-law partner of the individual, are deemed not to have an owner-occupied home in a period ending before a particular time referred to in that definition if

(i) at the particular time, the individual

(A) is living separate and apart from the individual's spouse or common-law partner because of a breakdown of their marriage or common-law partnership,

(B) has been living separate and apart from the individual's spouse or common-law partner for a period of at least 90 days, and

(C) began living separate and apart from the individual's spouse or common-law partner in the calendar year that includes the particular time or any time in the four preceding calendar years,

(ii) in the absence of this subsection, the individual would not have a regular eligible amount because of the application of paragraph (f) of that definition in respect of a spouse or common-law partner other than the spouse or common-law partner referred to in clauses (i)(A) to (C), and

(iii) where the individual has an owner-occupied home at the particular time,

(A) the home is not the qualifying home referred to in that definition and the individual disposes of the home no later than the end of the second calendar year after the calendar year that includes the particular time, or

(B) the individual acquires the interest of the spouse or common-law partner in the home; and

(b) if an individual to whom paragraph (a) applies has an owner-occupied home at the particular time referred to in that paragraph and the individual acquires the interest of a spouse or common-law partner in the home, the individual is deemed for the purposes of paragraphs (c) and (d) of that definition to have acquired a qualifying home on the date that the individual acquired the interest.

(5) Subsections (1) and (4) apply in respect of amounts received after 2019.

(6) Subsections (2) and (3) apply to the 2019 and subsequent taxation years in respect of amounts received after Budget Day.

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Budget 2019 proposes to increase the withdrawal limit for the Home Buyers' Plan ("HBP") to $35,000 (from $25,000) for withdrawals made after March 19, 2019. Therefore, spouses or common-law partners can together withdraw up to $70,000 from their RRSPs, provided that they are first-time home buyers.

Budget 2019 proposes to extend eligibility for the HBP to certain taxpayers who are living separate and apart from their spouse or common-law partner because of a breakdown of the marriage or common-law partnership. Generally, even if the taxpayer would not otherwise be eligible for an HBP withdrawal because they are not a first-time home buyer, they will be eligible if they satisfy the conditions in proposed subsection 146.01(2.1) of the Income Tax Act. First, the individual and their spouse or common-law partner must be living separate and apart because of a breakdown in the marriage or common-law partnership for at least 90 days, and they began living separate and apart in the calendar year or any time in the four preceding calendar years. Second, if the individual has an owner-occupied home (as defined under subsection 146.01(1) of the Income Tax Act) with their previous spouse, either the home cannot be the qualifying home and the home is disposed of by the end of the second calendar year after the year of withdrawal (i.e., the individual sells the old home and acquires a new one), or the individual acquires the interest of their spouse or common-law partnership in the home.

As a result, this amendment will allow an individual to make an HBP withdrawal, regardless of the fact that they already own a home. It will also allow an individual to make an HBP withdrawal to maintain their current home ownership by using the funds to acquire the interest in the home of their spouse or common-law partner.

Resolution 7: Change in Use Rules for Multi-Unit Residential Properties

7 (1) Subsection 45(2) of the Act is replaced by the following:

Election where change of use

(2) For the purposes of this subdivision and section 13, if a taxpayer elects in respect of any property of the taxpayer in the taxpayer's return of income for a taxation year under this Part,

(a) if subparagraph (1)(a)(i) or paragraph 13(7)(b) would otherwise apply to the property for the taxation year, the taxpayer is deemed not to have begun to use the property for the purpose of gaining or producing income;

(b) if subparagraph (1)(c)(ii) or 13(7)(d)(i) would otherwise apply to the property for the taxation year, the taxpayer is deemed not to have increased the use regularly made of the property for the purpose of gaining or producing income relative to the use regularly made of the property for other purposes; and

(c) if the taxpayer rescinds the election in respect of the property in the taxpayer's return of income under this Part for a subsequent taxation year,

(i) if paragraph (a) applied to the taxpayer in the taxation year, the taxpayer is deemed to have begun to use the property for the purpose of gaining or producing income on the first day of the subsequent taxation year, and

(ii) if paragraph (b) applied to the taxpayer in the taxation year, the taxpayer is deemed to have increased the use regularly made of the property for the purpose of gaining or producing income on the first day of the subsequent taxation year by the amount that would have been the increase in the taxation year if the election had not been made.

(2) The portion of subsection 45(3) of the Act before paragraph (a) is replaced by the following:

Election concerning principal residence

(3) If at any time a property that was acquired by a taxpayer for the purpose of gaining or producing income, or that was acquired in part for that purpose, ceases in whole or in part to be used for that purpose and becomes, or becomes part of, the principal residence of the taxpayer, paragraphs (1)(a) and (c) shall not apply to deem the taxpayer to have disposed of the property at that time and to have reacquired it immediately thereafter if the taxpayer so elects by notifying the Minister in writing on or before the earlier of

(3) Subsections (1) and (2) apply in respect of changes in the use of property that occur on or after Budget Day.

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The change-in-use rules in subsection 45(1) provide a deemed disposition and reacquisition at fair market value when a taxpayer changes the use of an income-earning property to a personal use or vice versa. However, an election under subsection 45(2) out of the deemed disposition is available in respect of a property that is converted from a personal use to income-earning, and in respect of a rental property that is converted into the taxpayer's personal residence. Where either election is made in respect of a residence, the residence can qualify as the taxpayer's principal residence for up to four years while it is used for income-earning use purposes (e.g. renting out the property).

The election is not currently available for a change in use of part of a property. Budget 2019 amends the election provision in subsection 45(2) so that the election may be made in respect of partial changes in use. This is intended to accommodate a partial change in respect of multi-unit residential properties – for example, where the property is a rental property and the owner subsequently moves into one of the units.

Resolution 8: Permitting Additional Types of Annuities under Registered Plans

8 The Act is modified to give effect to the proposals relating to permitting additional types of annuities under registered plans described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

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Budget 2019 proposes to provide "qualified investment" status to the following additional types of annuities for certain registered plans, effective for 2020 and subsequent taxation years:

- advanced life deferred annuities will be permitted under a registered retirement savings plan (RRSP), registered retirement income fund (RRIF), deferred profit sharing plan (DPSP), pooled registered pension plan (PRPP) and defined contribution registered pension plan (RPP); and
- variable payment life annuities will be permitted under a PRPP and defined contribution RPP

Advanced Life Deferred Annuities (ALDA)

The tax rules generally require an annuity purchased with a registered plan to commence by the end of the year in which the annuitant attains 71 years of age. An ALDA will be a life annuity the commencement of which may be deferred until the end of the year in which the annuitant turns 85 and meets certain other prescribed conditions. A lifetime limit of 25% of the value of the plan (including payments for the ALDA) and $150,000 will apply.

Annuity payments to a surviving spouse or common-law partner will be taxable in the year of receipt. Lump-sum payments to a surviving spouse, common-law partner or dependent child or grandchild (provided that the child or grandchild is dependent by reason of physical or mental infirmity) will qualify for a tax-deferred transfer to an RRSP, RRIF or other eligible vehicle of the annuitant.

Variable Payment Life Annuity (VPLA)

Existing rules generally require retirement benefits from a PRPP or defined contribution RPP be provided to a member by means of a transfer of funds from the account to an RRSP or RRIF. Budget 2019 proposes that commencing in 2020 and subsequent years, PRPP and RPPs be able to provide a VPLA directly to members from the plan. A VPLA will provide payments that vary based on the investment performance of the underlying annuities fund and on the mortality experience of VPLA annuitants.

PRPP and defined contribution RPP administrators will be permitted to establish a separate annuities fund under the plan to receive transfers of amounts from members' accounts to provide for VPLAs. A minimum of 10 retired members will be required to participate in a VPLA. VPLAs will be required to comply with certain existing tax rules applicable to PRPPs and defined contribution RPPs, as well as additional requirements. On death, VLPAs will be subject to the existing tax treatment of annuities purchased with PRPP and defined contribution RPP savings.

Resolution 9: Registered Disability Savings Plan — Cessation of Eligibility for the Disability Tax Credit

9 The Act is modified to give effect to the proposals relating to the Registered Disability Savings Plan — cessation of eligibility for the disability tax credit measure described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

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Under the current regime, where a beneficiary of a registered disability savings plan ("RDSP") ceases to be eligible for the disability tax credit, the plan is required to close by the end of the year following the year throughout which the beneficiary was no longer eligible. Previous amendments provided an extension before closing the plan which required a medical practitioner's certification that states it is likely the beneficiary will become eligible again. Budget 2019 proposes to make amendments to the Income Tax Act to remove the time limitation on the period that an RDSP may remain open after a beneficiary becomes ineligible for the DTC. As well, a medical certification will no longer be required to attest to the annuitant's continuing disability in the future for the plan to remain open.

This measure will apply after 2020. An RDSP issuer will not, however, be required to close an RDSP on or after Budget Day and before 2021 solely because the RDSP beneficiary is no longer eligible for the DTC.

No specific amendments to the Income Tax Act were provided as part of Budget 2019.

Resolutions 10 and 11: Tax Measures for Kinship Care Providers

10 (1) Subsection 81(1) of the Act is amended by adding the following after paragraph (h):

Social assistance for informal care programs

(h.1) if the taxpayer is an individual (other than a trust), a social assistance payment ordinarily made on the basis of a means, needs or income test provided for under a program of the Government of Canada or the government of a province, to the extent that it is received directly or indirectly by the taxpayer for the benefit of a particular individual, if

(i) payments to recipients under the program are made for the care and upbringing, on a temporary basis, of another individual in need of protection,

(ii) the particular individual is a child of the taxpayer because of paragraph 252(1)(b) (or would be a child of the taxpayer because of that paragraph if the taxpayer did not receive payments under the program), and

(iii) no special allowance under the *Children's Special Allowances Act* is payable in respect of the particular individual for the period in respect of which the social assistance payment is made;

(2) Subsection (1) is deemed to have come into force on January 1, 2009.

11 (1) Section 122.7 of the Act is amended by adding the following after subsection (1.1):

Receipt of social assistance

(1.2) For the purposes of applying the definitions *eligible dependant* and *eligible individual* in subsection (1) for a taxation year, an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada or the government of a province for the benefit of the other individual, unless the amount is a special allowance under the *Children's Special Allowances Act* in respect of the other individual in the taxation year.

(2) Subsection (1) is deemed to have come into force on January 1, 2009.

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Budget 2019 proposes amendments to support kinship care providers by allowing them to receive a higher amount under the Canada Workers Benefit ("CWB"). These situations often involve a family providing temporary care to children in need of protection under a provincial program.

In order for a single parent to qualify for a higher amount (versus a single person with no dependent) under the CWB, they must of course be the parent of a child. For tax purposes, a parent includes an individual upon which a child is wholly dependent for support. This "wholly dependent" requirement may not be met where a kinship care provider receives financial support from the government. Therefore, Budget 2019 proposes that for the purposes of the CWB, an individual is considered a parent of a child in their care, regardless of any financial assistance received from the federal or a provincial government under a kinship care program.

Although government support payments to kinship providers are generally not taxable (since the payments are means-tested social assistance), such payments are included in income for the purposes of determining income tax benefits. Budget 2019 proposes to add paragraph 81(1)(h.1), which provides that social assistance payments ordinarily made on the basis of means, needs, or income under a government program is not included in income with respect to income tax benefits if:

a. the payments are for the care and upbringing on a temporary basis of an individual in need of protection;

b. the individual is a child; and

c. no amount is paid in respect to the child under the Children's Special Allowances Act.

Both of these measures apply retroactively to 2009 and subsequent years.

Resolutions 12 to 16: Donations of Cultural Property

12 (1) The portion of subparagraph 39(1)(a)(i.1) of the Act before clause (A) is replaced by the following:

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraph 29(3)(b) of the *Cultural Property Export and Import Act* if

(2) Subsection (1) is deemed to have come into force on Budget Day.

13 (1) Paragraph 110.1(1)(c) of the Act is replaced by the following:

Gifts to institutions

(c) the total of all amounts each of which is the eligible amount of a gift (other than a gift described in paragraph (d)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraph 29(3)(b) of the *Cultural Property Export and Import Act*, which gift was made by the corporation in the year or in any of the five preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object; and

(2) Subsection (1) is deemed to have come into force on Budget Day.

14 (1) Paragraph (a) of the definition *total cultural gifts* in subsection 118.1(1) of the Act is replaced by the following:

(a) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraph 29(3)(b) of the *Cultural Property Export and Import Act*,

(2) Subsection (1) is deemed to have come into force on Budget Day.

15 (1) Subsection 32(1) of the *Cultural Property Export and Import Act* is replaced by the following:

Request for determination of Review Board

32 (1) For the purposes of subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c), the definition *total cultural gifts* in subsection 118.1(1) and subsection 118.1(10) of the *Income Tax Act*, where a person disposes of or proposes to dispose of an object to an institution or a public authority designated under subsection (2), the person, institution or public authority may request, by notice in writing given to the Review Board, a determination by the Review Board as to whether the object meets the criteria set out in paragraph 29(3)(b) and a determination by the Review Board of the fair market value of the object.

(2) Subsection (1) is deemed to have come into force on Budget Day.

16 (1) Subsection 33(1) of the *Cultural Property Export and Import Act* is replaced by the following:

Income tax certificate

33 (1) Where the Review Board determines or redetermines the fair market value of an object in respect of which a request was made under section 32 and determines that the object meets the criteria set out in paragraph 29(3)(b), it shall, where the object has been irrevocably disposed of to a designated institution or public authority, issue to the person who made the disposition a certificate attesting to the fair market value and to the meeting of those criteria, in such form as the Minister of National Revenue may specify.

(2) Subsection (1) is deemed to have come into force on Budget Day.

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As a result of a recent court decision (presumably Heffel Gallery Limited v. Attorney General of Canada, 2018 FC 605), proposed amendments will be made to the Income Tax Act, as well as the Cultural Property Export and Import Act, to remove the requirement that in order to qualify for the cultural property donation credit, the property must be of "national importance".

Resolution 17: Medical Expense Tax Credit

17 (1) Paragraph 118.2(2)(u) of the Act is replaced by the following:

Cannabis for medical purposes

(u) on behalf of the patient who is the holder of a *medical document* (as defined in subsection 264(1) of the *Cannabis Regulations*) to support their use of cannabis for medical purposes, for the cost of cannabis, cannabis oil, cannabis plant seeds or cannabis products purchased for medical purposes from a holder of a *licence for sale* (as defined in subsection 264(1) of the *Cannabis Regulations*).

(2) Subsection (1) is deemed to have come into force on October 17, 2018.

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Cannabis and certain cannabis products that are legally sold on and after October 17, 2018 will become eligible for the medical expense tax credit provided that they are sold by a holder of a licence for sale as defined in subsection 264(1) of the Cannabis Regulations and the patient has a qualifying medical document as defined by subsection 264(1) of the Cannabis Regulations.

Other cannabis products will also become eligible for the medical expense tax credit if sold for medical purposes once they are legalized.

Resolution 18: Contributions to a Specified Multi-Employer Plan for Older Members

18 (1) Subsection 8510(7) of the *Income Tax Regulations* (the "Regulations") is amended by striking out "and" at the end of paragraph (a), by adding "and" at the end of paragraph (b) and by adding the following after that paragraph:

(c) no contributions are made

(i) to the plan with respect to a member at any time after the end of the calendar year in which the member attains 71 years of age, or

(ii) to a defined benefit provision of the plan with respect to a member during a period (other than a *qualifying period*, as defined in subsection 8503(16)) in which the member is in receipt of retirement benefits from a defined benefit provision of the plan.

(2) Subsection (1) applies in respect of contributions made pursuant to any collective bargaining agreement entered into after 2019, except that it does not apply in respect of contributions made on or before the date the agreement is entered into.

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Amendments are made to the Regulations to prohibit contributions to a Specified Multi-Employer Plan (SMEP) on behalf of a member after the year that the member turns 71 years of age. These changes will ensure that no plan contributions are made on behalf of older SMEP members in these situations where they cannot benefit.

This measure will apply in respect of SMEP contributions made pursuant to collective bargaining agreements (CBA) entered into after 2019, but not in respect of contributions made on before the date the CBA is entered into.

Resolutions 19 and 20: Pensionable Service Under an Individual Pension Plan

19 (1) Paragraph 147.3(3)(c) of the Act is replaced by the following:

(c) is transferred directly to another registered pension plan to be held in connection with a defined benefit provision of the other plan, unless the transfer is to an *individual pension plan* (as defined by regulation) and is in respect of benefits that are attributable to employment with a former employer that is not a participating employer (or its predecessor employer); and

(2) Subsection (1) is deemed to have come into force on Budget Day.

20 (1) The portion of subparagraph 8503(3)(a)(v) of the Regulations before clause (A) is replaced by the following:

(v) unless the provision is a provision of an individual pension plan, a period in respect of which

(2) The portion of subparagraph 8503(3)(a)(v.1) of the Regulations before clause (A) is replaced by the following:

(v.1) unless the provision is a provision of an individual pension plan, a portion — determined by reference to the proportion of property that has been transferred, as described in clause (B) — of a period in respect of which

(3) Subparagraph 8503(3)(a)(vi) of the Regulations is replaced by the following:

(vi) unless the provision is a provision of an individual pension plan, a period throughout which the member was employed in Canada by a former employer where the period was an eligibility period for the participation of the member in another registered pension plan, and

(4) Subsections (1) to (3) are deemed to have come into force on Budget Day. However, subsections (1) to (3) do not apply to a period that was *pensionable service* (as defined in subsection 8500(1) of the Regulations) in respect of a member under a defined benefit provision of an individual pension plan before Budget Day.

DENTONS CANADA LLP COMMENTARY

Where an individual terminates their membership in a defined benefit registered pension plan ("RPP"), the Act allows for a tax-deferred transfer of the full commuted value to another defined benefit RPP that is sponsored by another employer, or a portion of the commuted value to the individual's registered retirement savings plan. The government has identified tax planning where an employee establishes an individual pension plan ("IPP") which is sponsored by a CCPC that is controlled by the employee. The purpose of the IPP is to allow a full tax-deferred transfer of the employee's terminated pension benefits.

Budget 2019 proposes amendments that will prohibit a tax-deferred transfer pension entitlements from past years of employment from an employer-sponsored RPP to an IPP, unless the employer with respect to the IPP is the same employer that sponsors the RPP which the benefits are transferred from. A prohibited transfer to an IPP that does not qualify for the tax-deferred treatment due to this amendment will be taxable income to the employee.

This change applies to pensionable service credited under an IPP on or after March 19, 2019. However, the amendments to subparagraphs 8503(3)(a)(v) through (vi), which set out conditions with respect to defined benefit pension plans do not apply to a period that was pensionable service in respect of a member under a defined benefit provision of an IPP that ends before Budget day.

Resolution 21: Mutual Funds: Allocation to Redeemers Methodology

21 (1) Section 132 of the Act is amended by adding the following after subsection (5.2):

Allocation to redeemers

(5.3) If a trust that is a mutual fund trust throughout a taxation year paid or made payable, at any time in the taxation year, to a beneficiary an amount on a redemption by that beneficiary of a unit of the trust (in this subsection referred to as the "allocated amount"), and the beneficiary's proceeds from the disposition of that unit do not include the allocated amount, in computing its income for the taxation year no deduction may be made by the trust in respect of

(a) the portion of the allocated amount that would be, without reference to subsection 104(6), an amount paid out of the income (other than taxable capital gains) of the trust; and

(b) the portion of the allocated amount determined by the formula

$$A - 1/2 (B + C - D)$$

where

A is the portion of the allocated amount that would be, without reference to subsection 104(6), an amount paid out of the taxable capital gains of the trust,

B is the beneficiary's proceeds from the disposition of the unit on the redemption,

C is the allocated amount, and

D is the beneficiary's cost amount of that unit.

(2) Subsection (1) applies to taxation years that begin on or after Budget Day.

DENTONS CANADA LLP COMMENTARY

Mutual fund trusts are common investment fund vehicles, at least partly due to their conduit-type nature. Income and gains earned and realized by a mutual fund trust and allocated to its unitholders are generally taxed in the hands of the unitholders, not the trust.

Where a unitholder redeems its trust units, the mutual fund trust may be required to dispose of trust property to fund the redemption amount. The unitholder may realize a capital gain on the redemption of its units and the mutual fund trust may realize capital gains on the disposition of trust property. The Income Tax Act has a capital gain refund mechanism which is a formulaic approximation and does not always provide full relief of double taxation.

However, where the capital gains realized by the mutual fund trust on the disposition of its property exceed the capital gains that would otherwise be realized by the redeeming unitholder on the redemption of its trust units, the remaining unitholders may enjoy a tax deferral because the excess capital gain is not taxed in their hands (nor is it taxed in the hands of the redeeming unitholder or the mutual fund trust).

Budget 2019 proposes to add subsection 132(5.3) to the Income Tax Act, to limit the mutual fund trust's deduction for those capital gains allocated to a redeeming unitholder to the amount of the capital gains that the redeeming unitholder would otherwise realize on the redeemed trust units. Any excess capital gains must now be taxed either in the hands of the mutual fund trust or the remaining unitholders. This new provision may cause administrative issues for mutual fund trusts in respect of gathering the necessary information to comply with subsection 132(5.3).

The "allocation to redeemers methodology" was developed to more effectively match the capital gains realized by the mutual fund trust on its investments with the capital gains realized by the redeeming unitholders on their units. This methodology,

which is used by many mutual fund trusts, allows a mutual fund trust to allocate capital gains realized by it to a redeeming unitholder and claim a corresponding deduction. The allocated capital gains are included in computing the redeeming unitholder's income but its redemption proceeds are reduced by that amount.

Similar changes are proposed with respect to allocations of mutual fund trust income in respect of the redemption of trust units by unitholders that hold their trust units on income account. These changes seek to address certain character conversion transactions (i.e. convert ordinary income into capital gains for remaining unitholders).

These changes will apply to taxation years of mutual fund trusts that begin on or after March 19, 2019.

Resolution 22: Carrying on Business in a Tax-Free Savings Account

22 (1) Section 146.2 of the Act is amended by adding the following after subsection (6):

Carrying on a business

(6.1) If tax is payable under this Part for a taxation year because of subsection (6) by a trust that is governed by a TFSA that carries on one or more businesses at any time in the taxation year,

(a) the holder of the TFSA is jointly and severally, or solidarily, liable with the trust to pay each amount payable under this Act by the trust that is attributable to that business or those businesses; and

(b) the issuer's liability at any time for amounts payable under this Act in respect of that business or those businesses shall not exceed the total of the amount of property of the trust that the issuer is in possession or control of at that time in its capacity as legal representative of the trust and the total amount of all distributions of property from the trust on or after the date that the notice of assessment was sent in respect of the taxation year and before that time.

(2) Subsection (1) applies in respect of business activities in a TFSA for the 2019 and subsequent taxation years.

DENTONS CANADA LLP COMMENTARY

Where a tax-free savings account (TFSA) earns income from carrying on a business the TFSA is liable to pay tax under Part I of the Income Tax Act on such business income. Prior to 2019, the TFSA and the trustee of the TFSA were jointly and severally liable for all such taxes, effectively making the trustee of the TFSA liable for any taxes in excess of available TFSA property.

For 2019 and subsequent years, Budget 2019 proposes to add subsection 146.2(6.1) of the Income Tax Act to extend this joint and several liability to the holder of the TFSA and limit the trustee's liability to the amount of available TFSA property plus any distributions of TFSA property distributed after the applicable notice of assessment was sent. Effectively, the holder of a TFSA will now be liable for any applicable Part I taxes that cannot be recovered from available TFSA property and distributions of TFSA property made after the notice of assessment sent date.

Resolutions 23 to 39: Electronic Delivery of Requirements for Information

23 (1) The portion of subsection 231.2(1) of the Act before paragraph (a) is replaced by the following:

Requirement to provide documents or information

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice sent or served in accordance with subsection (1.1), require that any person provide, within such reasonable time as is stipulated in the notice,

(2) Section 231.2 of the Act is amended by adding the following after subsection (1):

Notice

(1.1) A notice referred to in subsection (1) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a bank, or credit union, that has provided written consent to receive notices under subsection (1) electronically.

(3) Subsections (1) and (2) come into force on January 1, 2020.

24 (1) Subsection 231.6(2) of the Act is replaced by the following:

Requirement to provide foreign-based information

(2) Notwithstanding any other provision of this Act, the Minister may, by notice sent or served in accordance with subsection (3.1), require that a person resident in Canada or a non-resident person carrying on business in Canada provide any foreign-based information or document.

(2) Section 231.6 of the Act is amended by adding the following after subsection (3):

Notice

(3.1) A notice referred to in subsection (2) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a bank, or credit union, that has provided written consent to receive notices under subsection (2) electronically.

(3) Subsection 231.6(4) of the English version of the Act is replaced by the following:

Review of foreign information requirement

(4) The person who is sent or served with a notice of a requirement under subsection (2) may, within 90 days after the notice is sent or served, apply to a judge for a review of the requirement.

(4) Subsection 231.6(6) of the English version of the Act is replaced by the following:

Idem

(6) For the purposes of paragraph (5)(c), the requirement to provide the information or document shall not be considered to be unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person who is sent or served with the notice of the requirement under subsection (2) if that person is related to the non-resident person.

(5) Subsection 231.6(8) of the Act is replaced by the following:

Consequence of failure

(8) If a person fails to comply substantially with a notice sent or served under subsection (2) and if the notice is not set aside by a judge pursuant to subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice.

(6) Subsections (1) to (5) come into force on January 1, 2020.

25 (1) Paragraph 231.8(a) of the Act is replaced by the following:

(a) where the taxpayer is sent or served with a notice of a requirement under subsection 231.2(1), the period of time between the day on which an application for judicial review in respect of the requirement is made and the day on which the application is finally disposed of; and

(2) Subsection (1) comes into force on January 1, 2020.

26 (1) Section 244 of the Act is amended by adding the following after subsection (6):

Proof of electronic delivery

(6.1) If, by this Act or a regulation, provision is made for sending a notice to a person electronically, an affidavit of an officer of the Canada Revenue Agency sworn before a commissioner or other person authorized to take affidavits, shall, in the absence of proof to the contrary, be received as evidence of the sending and of the notice if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) the notice was sent electronically to the person on a named day; and

(c) the officer identifies as exhibits attached to the affidavit copies of

(i) an electronic message confirming the notice has been sent to the person, and

(ii) the notice.

(2) Subsection (1) comes into force on January 1, 2020.

Related Amendments

27 (1) Subsection 99(1) of the *Excise Tax Act* is replaced by the following:

Provision of documents may be required

99 (1) Subject to section 102.1, the Minister may, for any purpose related to the administration or enforcement of this Act, or of a listed international agreement, by a notice served or sent in accordance with subsection (1.1), require that any person provide any book, record, writing or other document or any information or further information within any reasonable time that may be stipulated in the notice.

Notice

(1.1) A notice referred to in subsection (1) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a bank, or *credit union* (as defined in subsection 123(1)), that has provided written consent to receive notices under subsection (1) electronically.

(2) Subsection (1) comes into force on January 1, 2020.

28 (1) Subsection 102.1(1) of the *Excise Tax Act* is replaced by the following:

Unnamed persons

102.1 (1) The Minister shall not serve or send a notice under subsection 99(1) with respect to an unnamed person or a group of unnamed persons unless the Minister has been authorized to do so under subsection (2).

(2) The portion of subsection 102.1(2) of the *Excise Tax Act* before paragraph (a) is replaced by the following:

Authorization order

(2) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to serve or send a notice under subsection 99(1) with respect to an unnamed person or a group of unnamed persons if the judge is satisfied by information on oath that

(3) Paragraph 102.1(2)(b) of the *Excise Tax Act* is replaced by the following:

(b) the notice would be served or sent in order to verify compliance by the person or group with any duty or obligation of that person or of persons in that group under this Act.

(4) Subsections (1) to (3) come into force on January 1, 2020.

29 (1) Section 105 of the *Excise Tax Act* is amended by adding the following after subsection (2):

Proof of electronic delivery

(2.1) If, under this Act or a regulation made under this Act, provision is made for sending a notice to a person electronically, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) the notice was sent electronically to the person on a named day; and

(c) the officer identifies as exhibits attached to the affidavit copies of

(i) an electronic message confirming the notice has been sent to the person, and

(ii) the notice.

(2) Subsection (1) comes into force on January 1, 2020.

30 (1) The portion of subsection 289(1) of the *Excise Tax Act* before paragraph (a) is replaced by the following:

Requirement to provide documents or information

289 (1) Despite any other provision of this Part, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of a listed international agreement or this Part, including the collection of any amount payable or remittable under this Part by any person, by a notice served or sent in accordance with subsection (1.1), require that any person provide the Minister, within any reasonable time that is stipulated in the notice, with

(2) Section 289 of the *Excise Tax Act* is amended by adding the following after subsection (1):

Notice

(1.1) A notice referred to in subsection (1) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a bank, or credit union, that has provided written consent to receive notices under subsection (1) electronically.

(3) Subsections (1) and (2) come into force on January 1, 2020.

31 (1) Paragraph 289.2(a) of the *Excise Tax Act* is replaced by the following:

(a) if the person is served or sent a notice of a requirement under subsection 289(1), the period of time between the day on which an application for judicial review in respect of the requirement is made and the day on which the application is finally disposed of; and

(2) Subsection (1) comes into force on January 1, 2020.

32 (1) Subsection 292(2) of the *Excise Tax Act* is replaced by the following:

Requirement to provide foreign-based information

(2) Despite any other provision of this Part, the Minister may, by a notice served or sent in accordance with subsection (3.1), require a person resident in Canada or a non-resident person that carries on business in Canada to provide any foreign-based information or document.

(2) Section 292 of the *Excise Tax Act* is amended by adding the following after subsection (3):

Notice

(3.1) A notice referred to in subsection (2) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a bank, or credit union, that has provided written consent to receive notices under subsection (2) electronically.

(3) Subsection 292(4) of the English version of the *Excise Tax Act* is replaced by the following:

Review of foreign information requirement

(4) If a person is served or sent a notice of a requirement under subsection (2), the person may, within 90 days after the day on which the notice is served or sent, apply to a judge for a review of the requirement.

(4) Subsection 292(6) of the English version of the *Excise Tax Act* is replaced by the following:

Requirement not unreasonable

(6) For the purposes of subsection (5), a requirement to provide information or a document shall not be considered to be unreasonable because the information or document is under the control of or available to a non-resident person that is not controlled by the person on which the notice of the requirement under subsection (2) is served, or to which that notice is sent, if that person is related to the non-resident person.

(5) Subsection 292(8) of the English version of the *Excise Tax Act* is replaced by the following:

Consequence of failure

(8) If a person fails to comply substantially with a notice served or sent under subsection (2) and if the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Part shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice.

(6) Subsections (1) to (5) come into force on January 1, 2020.

33 (1) Section 335 of the *Excise Tax Act* is amended by adding the following after subsection (2):

Proof of electronic delivery

(2.1) If, under this Part or a regulation made under this Part, provision is made for sending a notice to a person electronically, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) the notice was sent electronically to the person on a named day; and

(c) the officer identifies as exhibits attached to the affidavit copies of

(i) an electronic message confirming the notice has been sent to the person, and

(ii) the notice.

(2) Subsection (1) comes into force on January 1, 2020.

34 (1) Subsection 38(1) of the *Air Travellers Security Charge Act* is replaced by the following:

Requirement to provide information

38 (1) Despite any other provision of this Act, the Minister may, by a notice served or sent in accordance with subsection (2.1), require a person that is resident in Canada or a person that is not resident in Canada but that carries on business in Canada to provide any information or record.

(2) Section 38 of the *Air Travellers Security Charge Act* is amended by adding the following after subsection (2):

Notice

(2.1) A notice referred to in subsection (1) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a bank, or *credit union* (as defined in subsection 123(1) of the *Excise Tax Act*), that has provided written consent to receive notices under subsection (1) electronically.

(3) Subsection 38(3) of the English version of the *Air Travellers Security Charge Act* is replaced by the following:

Review of information requirement

(3) If a person is served or sent a notice of a requirement under subsection (1), the person may, within 90 days after the day on which the notice is served or sent, apply to a judge for a review of the requirement.

(4) Subsection 38(5) of the *Air Travellers Security Charge Act* is replaced by the following:

Requirement not unreasonable

(5) For the purposes of subsection (4), a requirement to provide information or a record shall not be considered to be unreasonable solely because the information or record is under the control of or available to a person that is not resident in Canada, if that person is related, for the purposes of the *Income Tax Act*, to the person on which the notice of the requirement is served or to which that notice is sent.

(5) Subsection 38(7) of the English version of the *Air Travellers Security Charge Act* is replaced by the following:

Consequence of failure

(7) If a person fails to comply substantially with a notice served or sent under subsection (1) and the notice is not set aside under subsection (4), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on the motion of the Minister, prohibit the introduction by that person of any information or record described in that notice.

(6) Subsections (1) to (5) come into force on January 1, 2020.

35 (1) Section 83 of the *Air Travellers Security Charge Act* is amended by adding the following after subsection (2):

Proof of electronic delivery

(2.1) If, under this Act, provision is made for sending a notice to a person electronically, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) the notice was sent electronically to the person on a named day; and

(c) the officer identifies as exhibits attached to the affidavit copies of

(i) an electronic message confirming the notice has been sent to the person, and

(ii) the notice.

(2) Subsection (1) comes into force on January 1, 2020.

36 (1) The portion of subsection 208(1) of the *Excise Act, 2001* before paragraph (a) is replaced by the following:

Requirement to provide records or information

208 (1) Despite any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of a listed international agreement or of this Act, by a notice served or sent in accordance with subsection (1.1), require any person to provide the Minister, within any reasonable time that is stipulated in the notice, with

(2) Section 208 of the *Excise Act, 2001* is amended by adding the following after subsection (1):

Notice

(1.1) A notice referred to in subsection (1) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a *bank*, or *credit union*, as those terms are defined in subsection 123(1) of the *Excise Tax Act*, that has provided written consent to receive notices under subsection (1) electronically.

(3) Subsections (1) and (2) come into force on January 1, 2020.

37 (1) Paragraph 209.1(a) of the *Excise Act, 2001* is replaced by the following:

(a) if the person is served or sent a notice of a requirement under subsection 208(1), the period of time between the day on which an application for judicial review in respect of the requirement is made and the day on which the application is finally disposed of; and

(2) Subsection (1) comes into force on January 1, 2020.

38 (1) Subsection 210(2) of the *Excise Act, 2001* is replaced by the following:

Requirement to provide foreign-based information

(2) Despite any other provision of this Act, the Minister may, by a notice served or sent in accordance with subsection (3.1), require a person resident in Canada or a non-resident person that carries on business in Canada to provide any foreign-based information or record.

(2) Section 210 of the *Excise Act, 2001* is amended by adding the following after subsection (3):

Notice

(3.1) A notice referred to in subsection (2) may be

(a) served personally;

(b) sent by registered or certified mail; or

(c) sent electronically, in the case of a *bank*, or *credit union*, as those terms are defined in subsection 123(1) of the *Excise Tax Act*, that has provided written consent to receive notices under subsection (2) electronically.

(3) Subsection 210(4) of the English version of the *Excise Act, 2001* is replaced by the following:

Review of foreign information requirement

(4) If a person is served or sent a notice of a requirement under subsection (2), the person may, within 90 days after the day on which the notice is served or sent, apply to a judge for a review of the requirement.

(4) Subsection 210(6) of the English version of the *Excise Act, 2001* is replaced by the following:

Requirement not unreasonable

(6) For the purposes of subsection (5), a requirement to provide information or a record shall not be considered to be unreasonable because the information or record is under the control of or available to a non-resident person that is not controlled by the person on which the notice of the requirement is served, or to which that notice is sent, if that person is related to the non-resident person.

(5) Subsection 210(8) of the English version of the *Excise Act, 2001* is replaced by the following:

Consequence of failure

(8) If a person fails to comply substantially with a notice served or sent under subsection (2) and the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on the motion of the Minister, prohibit the introduction by that person of any foreign-based information or record described in that notice.

(6) Subsections (1) to (5) come into force on January 1, 2020.

39 (1) Section 301 of the *Excise Act, 2001* is amended by adding the following after subsection (2):

Proof of electronic delivery

(2.1) If, under this Act, provision is made for sending a notice to a person electronically, an affidavit of an officer of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

(a) the officer has knowledge of the facts in the particular case;

(b) the notice was sent electronically to the person on a named day; and

(c) the officer identifies as exhibits attached to the affidavit copies of

(i) an electronic message confirming the notice has been sent to the person, and

(ii) the notice.

(2) Subsection (1) comes into force on January 1, 2020.

DENTONS CANADA LLP COMMENTARY

Budget 2019 introduces proposals to allow the Canada Revenue Agency to send requirements for information (RFIs) in electronic format to banks and credit unions.

Presently, the CRA may issue RFIs to obligate a person to provide certain information or documents for the purposes of the administration and enforcement of various statutes, including the Income Tax Act (Canada), Excise Tax Act, the Excise Act, 2001, the Air Travellers Security Charge Act, and Part 1 of the Greenhouse Gas Pollution

Pricing Act, which is also administered by the CRA. Banks and credit unions are frequently issued RFIs in relation to requests for third-party financial information; such requests are normally made by registered mail, which can become costly and impractical for both the CRA and the banks and credit unions receiving the RFIs.

Under the proposed amendments, the CRA will be allowed to issue RFIs electronically, but only to a bank or credit union, and only if the bank or credit union provides written consent to the CRA to receive such RFI electronically. The proposals will affect the following RFI provisions:

- Sections 231.2 and 231.6 of the Income Tax Act;
- Sections 99, 289, 292 of the Excise Tax Act;
- Sections 208 and 210 of the Excise Act, 2001; and
- Section 38 of the Air Travellers Security Charge Act

The proposals are intended to be effective January 1, 2020, and only expand the means by which RFIs may be issued and do not affect the scope of the information that may be requested by the CRA.

Resolutions 40 to 63: Support for Canadian Journalism

Qualified Donee Status

40 (1) Subsection 149(1) of the Act is amended by adding the following after paragraph (g):

Registered journalism organizations

(h) a registered journalism organization;

(2) Subsection (1) comes into force on January 1, 2020.

41 (1) The definition *qualified donee* in subsection 149.1(1) of the Act is amended by adding the following after paragraph (b):

(b.1) a registered journalism organization,

(2) Subsection 149.1(1) of the Act is amended by adding the following in alphabetical order:

qualifying journalism organization means a corporation or trust that meets the following conditions:

(a) it is a qualified Canadian journalism organization,

(b) it is constituted and operated for purposes exclusively related to journalism,

(c) any business activities it carries on are related to its purposes,

(d) it has a board of directors or trustees, each of whom deals at arm's length with each other,

(e) it is not controlled, directly or indirectly in any manner whatever, by a person or by a group of persons that do not deal with each other at arm's length,

(f) it may not, in a taxation year, receive gifts from any one source that represent more than 20% of its total revenues (including donations) for the taxation year, other than a gift

(i) made by way of bequest,

(ii) made within 12 months after the time the organization is first registered, or

(iii) approved, on a case-by-case basis, by the Minister, and

(g) no part of its income is payable to, or otherwise available for the personal benefit of, any proprietor, member, shareholder, director, trustee, settlor or like individual; (*organisation journalistique admissible*)

(3) Subsection 149.1(4.3) of the Act is replaced by the following:

Revocation of a qualified donee

(4.3) The Minister may, in the manner described in section 168, revoke the registration of a qualified donee referred to in paragraph (a) or (b.1) of the definition *qualified donee* in subsection (1) for any reason described in subsection 168(1).

(4) Section 149.1 of the Act is amended by adding the following after subsection (14):

Information returns

(14.1) Every registered journalism organization shall, within six months from the end of each taxation year of the organization without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information including, for each donor whose total gifts to the organization in the year exceed $5,000, the name of the donor and the total amount donated.

(5) Paragraphs 149.1(15)(a) and (b) of the Act are replaced by the following:

(a) the information contained in a public information return referred to in subsection 149.1(14) or (14.1) shall be communicated or otherwise made available to the public by the Minister in such manner as the Minister deems appropriate;

(b) the Minister may make available to the public in any manner that the Minister considers appropriate, in respect of each registered, or previously registered, charity, Canadian amateur athletic association, registered journalism organization and qualified donee referred to in paragraph (a) of the definition *qualified donee* in subsection (1),

(i) its name, address and date of registration,

(ii) in the case of a registered, or previously registered, charity, Canadian amateur athletic association or registered journalism organization, its registration number, and

(iii) the effective date of any revocation, annulment or termination of registration; and

(6) Subsection 149.1(22) of the Act is replaced by the following:

Refusal to register

(22) The Minister may, by registered mail, give notice to a person that the application of the person for registration as a registered charity, registered Canadian amateur athletic association, registered journalism organization or qualified donee referred to in subparagraph (a)(i) or (iii) of the definition *qualified donee* in subsection (1) is refused.

(7) Subsections (1) to (6) come into force on January 1, 2020.

42 (1) Paragraph 168(1)(c) of the Act is replaced by the following:

(c) in the case of a registered charity, registered Canadian amateur athletic association or registered journalism organization, fails to file an information return as and when required under this Act or a regulation;

(2) Paragraph 168(1)(f) of the Act is replaced by the following:

(f) in the case of a registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the association or organization making a gift to another person, club, society, association or organization.

(3) Subsection 168(2) of the Act is replaced by the following:

Revocation of registration

(2) If the Minister gives notice under subsection 168(1) to a registered charity, to a registered Canadian amateur athletic association or to a registered journalism organization,

(a) if it has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and on that publication of a copy of the notice, the registration is revoked; and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*, and on that publication of a copy of the notice, the registration is revoked.

(4) Paragraph 168(4)(c) of the Act is replaced by the following:

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) and paragraph (b.1) of the definition *qualified donee* in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

(5) Subsections (1) to (4) come into force on January 1, 2020.

43 (1) Paragraph 172(3)(a.2) of the Act is replaced by the following:

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) and paragraph (b.1) of the definition *qualified donee* in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(2) Subsection (1) comes into force on January 1, 2020.

44 (1) Subsection 188.1(6) of the Act is replaced by the following:

Failure to file information returns

(6) Every registered charity, registered Canadian amateur athletic association and registered journalism organization that fails to file a return for a taxation year as and when required by subsection 149.1(14) or (14.1) is liable to a penalty equal to $500.

(2) Subsection 188.1(7) of the Act is replaced by the following:

Incorrect information

(7) Except where subsection (8) or (9) applies, every registered charity, registered Canadian amateur athletic association and registered journalism organization that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

(3) Subsection 188.1(8) of the Act is replaced by the following:

Increased penalty for subsequent assessment

(8) Except where subsection (9) applies, if the Minister has, less than five years before a particular time, assessed a penalty under subsection (7) or this subsection for a taxation year of a registered charity, registered Canadian amateur athletic association or registered journalism organization and, after that assessment and in a subsequent taxation year, it issues, at the particular time, a receipt for a gift otherwise than in accordance with this Act and the regulations, it is liable for the subsequent taxation year to a penalty equal to 10% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

(4) Subsection 188.1(9) of the Act is replaced by the following:

False information

(9) If at any time a person makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct (within the meaning assigned by subsection 163.2(1)), is a false statement (within the meaning assigned by subsection 163.2(1)) on a receipt issued by, on behalf of or in the name of another person for the purposes of subsection 110.1(2) or 118.1(2), the person (or, where the person is an officer, employee, official or agent of a registered charity, registered Canadian amateur athletic association or registered journalism organization, the charity, association or organization) is liable for their taxation year that includes that time to a penalty equal to 125% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

(5) Subsections (1) to (4) come into force on January 1, 2020.

45 (1) The portion of subsection 188.2(1) of the Act before paragraph (a) is replaced by the following:

Notice of suspension with assessment

188.2 (1) The Minister shall, with an assessment referred to in this subsection, give notice by registered mail to a registered charity, registered Canadian amateur athletic association or registered journalism organization that its authority to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended for one year from the day that is seven days after the day on which the notice is mailed, if the Minister has assessed the charity, association or organization for a taxation year for

(2) Subsection 188.2(2.1) of the Act is replaced by the following:

Suspension – failure to report

(2.1) If a registered charity, a registered Canadian amateur athletic association or a registered journalism organization fails to report information that is required to be included in a return filed under subsection 149.1(14) or (14.1), the Minister may give notice by registered mail to the charity, association or organization that its authority to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended from the day that is seven days after the day on which the notice is mailed until such time as the Minister notifies the charity, association or organization that the Minister has received the required information in prescribed form.

(3) Subsections (1) and (2) come into force on January 1, 2020.

46 (1) The portion of subsection 230(2) of the Act before paragraph (a) is replaced by the following:

Records and books

(2) Every qualified donee referred to in paragraphs (a) to (c) of the definition *qualified donee* in subsection 149.1(1) shall keep records and books of account — in the case of a qualified donee referred to in any of subparagraphs (a)(i) and (iii) and paragraphs (b), (b.1) and (c) of that definition, at an address in Canada recorded with the Minister or designated by the Minister — containing

(2) Subsection (1) comes into force on January 1, 2020.

47 (1) The portion of subsection 241(3.2) of the Act before paragraph (a) is replaced by the following:

Certain qualified donees

(3.2) An official may provide to any person the following taxpayer information relating to another person (in this subsection referred to as the "registrant") that was at any time a registered charity, registered Canadian amateur athletic association or registered journalism organization:

(2) Paragraph 241(3.2)(f) of the Act is replaced by the following:

(f) financial statements required to be filed with an information return referred to in subsection 149.1(14) or (14.1);

(3) Subsections (1) and (2) come into force on January 1, 2020.

48 (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

registered journalism organization means a *qualifying journalism organization* (as defined in subsection 149.1(1)) that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked; (*organisation journalistique enregistrée*)

(2) Subsection (1) comes into force on January 1, 2020.

49 (1) The portion of subsection 253.1(2) of the Act before paragraph (a) is replaced by the following:

Investments in limited partnerships

(2) For the purposes of section 149.1 and subsections 188.1(1) and (2), if a registered charity, a registered Canadian amateur athletic association or a registered journalism organization holds an interest as a member of a partnership, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business of the partnership if

(2) Subsection (1) comes into force on January 1, 2020.

50 (1) The definition *registered organization* in section 3500 of the Regulations is replaced by the following:

registered organization means a registered charity, a registered Canadian amateur athletic association, registered journalism organization or a registered national arts service organization. (*organisation enregistrée*)

(2) Subsection (1) comes into force on January 1, 2020.

51 (1) Paragraphs 5800(1)(d) and (e) of the Regulations are replaced by the following:

(d) in respect of

(i) any record of the minutes of meetings of the executive of a registered charity, registered Canadian amateur athletic association or registered journalism organization,

(ii) any record of the minutes of meetings of the members of a registered charity, registered Canadian amateur athletic association or registered journalism organization, and

(iii) all documents and by-laws governing a registered charity, registered Canadian amateur athletic association or registered journalism organization,

the period ending on the day that is two years after the date on which the registration of the registered charity, the registered Canadian amateur athletic association or the registered journalism organization under the Act is revoked;

(e) in respect of all records and books of account that are not described in paragraph (d) and that relate to a registered charity, registered Canadian amateur athletic association or registered journalism organization whose registration under the Act is revoked, and in respect of the vouchers and accounts necessary to verify the information in such records and books of account, the period ending on the day that is two years after the date on which the registration of the registered charity, the registered Canadian amateur athletic association or the registered journalism organization under the Act is revoked;

(2) Subsection (1) comes into force on January 1, 2020.

Refundable Labour Tax Credit

52 (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (j.95):

Journalism organizations

(j.96) for the purposes of section 125.6, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

53 (1) The Act is amended by adding the following after section 125.5:

Definitions

125.6 (1) The following definitions apply in this section.

assistance means an amount, other than an amount deemed under subsection (2) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to

(a) subparagraphs 12(1)(x)(v) to (viii), if the amount were received

(i) from a person or partnership described in subparagraph 12(1)(x)(ii), or

(ii) in circumstances where clause 12(1)(x)(i)(C) applies; and

(b) subparagraphs 12(1)(x)(v) to (vii), in any other case. (*montant d'aide*)

eligible newsroom employee, in respect of a qualified Canadian journalism organization in a taxation year, means an individual who

(a) is employed by the organization in the taxation year;

(b) works, on average, a minimum of 26 hours per week throughout the portion of the taxation year in which the individual is employed by the organization;

(c) at any time in the taxation year, has been, or is reasonably expected to be, employed by the organization for a minimum period of 40 consecutive weeks that includes that time;

(d) spends at least 75% of their time engaged in the production of news content, including by researching, collecting information, verifying facts, photographing, writing, editing, designing and otherwise preparing content; and

(e) meets any prescribed conditions. (*employé de salle de presse admissible*)

qualifying journalism organization, at any time, means a qualified Canadian journalism organization that meets the following conditions:

(a) it is primarily engaged in the production of original written news content;

(b) it does not carry on a *broadcasting undertaking* as defined in subsection 2(1) of the *Broadcasting Act*;

(c) it does not, in the taxation year in which the time occurs, receive an amount from the Aid to Publishers component of the Canada Periodical Fund; and

(d) if it is a corporation having share capital, it meets the conditions in subparagraph (e)(iii) of the definition *Canadian newspaper* in subsection 19(5). (*organisation journalistique admissible*)

qualifying labour expenditure, of a taxpayer for a taxation year in respect of an eligible newsroom employee, means the lesser of

(a) the amount determined by the formula

$55,000 × A/365

where

A is the lesser of 365 and the number of days in the taxation year, and

(b) the amount that is the salary or wages payable by the taxpayer to the eligible newsroom employee in respect of the portion of the taxation year throughout which the taxpayer is a qualified Canadian journalism organization. (*dépense de main-d'œuvre admissible*)

Tax credit

(2) A taxpayer that is a qualifying journalism organization at any time in a taxation year and that files a prescribed form containing prescribed information with its return of income for the year is deemed to have, on its balance-due day for the year, paid on account of its tax payable under this Part for the year an amount determined by the formula

0.25 × (A – B)

where

A is the total of all amounts each of which is a qualifying labour expenditure of the qualified Canadian journalism organization for the year in respect of an eligible newsroom employee; and

B is the total of all amounts each of which is an amount of assistance that the taxpayer has received, is entitled to receive or can reasonably be expected to receive, in respect of the year that has not been repaid before the end of the year pursuant to a legal obligation to do so (and that does not reduce the amount determined for A).

When assistance received

(3) For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (2) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

(2) Subsection (1) is deemed to have come into force on January 1, 2019. For greater certainty, it does not apply in respect of salary or wages that are in respect of a period before January 1, 2019.

54 (1) Paragraph 152(1)(b) of the Act is replaced by the following:

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

55 (1) Paragraph 157(3)(e) of the Act is replaced by the following:

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

56 (1) Paragraph 157(3.1)(c) of the Act is replaced by the following:

(c) 1/4 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the taxation year.

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

57 (1) Subsection 163(2) of the Act is amended by striking out "and" at the end of paragraph (f), by adding "and" at the end of paragraph (g) and by adding the following after paragraph (g):

(h) the amount, if any, by which

(i) the amount that would be deemed by subsection 125.6(2) to have been paid for the year by the person if that amount were calculated by reference to the information provided in the return filed for the year pursuant to that subsection

exceeds

(ii) the amount that is deemed by that subsection to be paid for the year by the person.

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

58 (1) Subparagraph 164(1)(a)(ii) of the Act is replaced by the following:

(ii) before sending the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)), an eligible production corporation (as defined in subsection 125.5(1)) or a qualified Canadian journalism organization and an amount is deemed under subsection 125.4(3), 125.5(3) or 125.6(2) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

59 (1) Paragraph 241(4)(d) of the Act is amended by adding the following after subparagraph (xvi):

(xvi.1) to a person employed or engaged in the service of an office or agency, of the Government of Canada or of a province, whose mandate includes the provision of assistance (as defined in subsection 125.6(1)) in respect of qualified Canadian journalism organizations, solely for the purpose of the administration or enforcement of the program under which the assistance is offered,

(xvi.2) to a body referred to in paragraph (b) of the definition *qualified Canadian journalism organization* in subsection 248(1), solely for the purpose of determining eligibility for designation under that paragraph,

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

60 (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

qualified Canadian journalism organization, at any time, means a corporation, partnership or trust that

(a) meets the following conditions:

(i) in the case of a corporation,

(A) it is incorporated under the laws of Canada or a province,

(B) the chairperson or other presiding officer, and at least 3/4 of the directors or other similar officers, are citizens of Canada, and

(C) it is resident in Canada,

(ii) in the case of a partnership,

(A) it is formed under the laws of a province, and

(B) individuals who are citizens of Canada or persons, or partnerships, described in any of subparagraphs (i) to (iii) hold interests in the partnership

(I) representing in value at least 75% of the total value of the partnership property, and

(II) that result in at least 75% of each income or loss of the partnership from any source being included in the determination of their incomes,

(iii) in the case of a trust,

(A) it is formed under the laws of a province,

(B) it is resident in Canada, and

(C) if interests as a beneficiary under the trust are held by one or more persons or partnerships, at least 75% of the fair market value of all interests as a beneficiary under the trust are held by

(I) individuals who are citizens of Canada, or

(II) persons or partnerships described in any of subparagraphs (i) to (iii),

(iv) it operates in Canada, including that its content is edited, designed and, except in the case of digital content, published in Canada,

(v) it is primarily engaged in the production of original news content which

(A) must be primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes, and

(B) must not be primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle or entertainment,

(vi) it regularly employs two or more journalists who deal at arm's length with the organization in the production of its content,

(vii) it is not significantly engaged in the production of content

(A) to promote the interests, or report on the activities, of an organization, an association or its members,

(B) for a government, Crown corporation or government agency, or

(C) to promote goods or services, and

(viii) it is not a Crown corporation, municipal corporation or government agency; and

(b) is designated at that time by a body prescribed for the purpose of this definition; (*organisation journalistique canadienne qualifiée*)

(2) Subsection (1) is deemed to have come into force on January 1, 2019.

Personal Income Tax Credit for Digital Subscriptions

61 (1) The Act is amended by adding the following after section 118.01:

Definitions

118.02 (1) The following definitions apply in this section.

digital news subscription, of an individual with a qualified Canadian journalism organization, means an agreement entered into between the individual and the qualified Canadian journalism organization, if

(a) the agreement entitles an individual to access content of the qualified Canadian journalism organization in digital form; and

(b) the qualified Canadian journalism organization is primarily engaged in the production of original written news content and is not engaged in a *broadcasting undertaking* as defined in subsection 2(1) of the *Broadcasting Act*. (*abonnement aux nouvelles numériques*)

qualifying subscription expense, for a taxation year, means the amount paid in the year for a digital news subscription of an individual with a qualified Canadian journalism organization and, for this purpose, if the digital news subscription provides access to content in non-digital form or content other than content of qualified Canadian journalism organizations, the amount considered to be paid for the digital news subscription shall not exceed

(a) the cost of a comparable digital news subscription with the qualified Canadian journalism organization that solely provides access to content of qualified Canadian journalism organizations in digital form; and

(b) if there is no such comparable digital news subscription, 1/2 of the amount actually paid. (*dépense pour abonnement admissible*)

Digital news subscription tax credit

(2) For the purpose of computing the tax payable under this Part by an individual for a taxation year that is before 2025, there may be deducted the amount determined by the formula

A × B

where

A is the appropriate percentage for the year; and

B is the lesser of

(a) $500, and

(b) the total of all amounts each of which is a qualifying subscription expense of the individual for the year.

Apportionment of credit

(3) If more than one individual is entitled to a deduction under this section for a taxation year in respect of a qualifying subscription expense, the total of all amounts so deductible shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals in respect of the qualifying subscription expense, if that individual were the only individual entitled to deduct an amount for the year under this section, and if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

(2) Subsection (1) applies to the 2020 and subsequent taxation years.

62 (1) Section 118.92 of the Act is replaced by the following:

Ordering of credits

118.92 In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsections 118(3) and (10) and sections 118.01, 118.02, 118.04, 118.041, 118.05, 118.06, 118.07, 118.3, 118.61, 118.5, 118.9, 118.8, 118.2, 118.1, 118.62 and 121.

(2) Subsection (1) comes into force on January 1, 2020.

63 Section 241 of the Act is amended by adding the following after subsection (3.3):

Information may be communicated

(3.4) The Minister may communicate or otherwise make available to the public, in any manner that the Minister considers appropriate, the following taxpayer information:

(a) the names of each organization with respect to which an individual can be entitled to a deduction under subsection 118.02(2); and

(b) the start and, if applicable, end of the period in which paragraph (a) applies in respect of any particular organization.

DENTONS CANADA LLP COMMENTARY

Budget 2019 proposes to provide additional incentives to specific Canadian journalism organizations, including providing for tax exempt status pursuant to new paragraph 149(1)(h), qualified donee status pursuant to new paragraph 149.1(1)(b.1) and providing for a refundable labour tax credit under new section 125.6 of the ITA. It also provides a tax credit to individuals who purchase certain digital subscriptions.

Refundable Labour Tax Credit

The refundable labour tax credit set out in section 125.6 of the ITA will be a 25% refundable tax credit on the aggregate "qualifying labour expenditures" of

a "qualifying journalism organization" ("**QJO**"), both of which are defined in subsection 125.6(1) of the ITA.

An organization's "qualifying labour expenditures" will be the aggregate salaries and wages (up to a maximum of $55,000 in salary or wages per eligible employee for a maximum credit of $13,750 per eligible employee) paid to eligible newsroom employees.

In calculating the credit, the amount of salary and wages eligible for the labour tax credit will be reduced by any government assistance received or reasonably expected to be received by the QJO before the end of the taxation year for which the credit is being claimed, unless that amount has been repaid pursuant to a legal obligation. If an eligible newsroom employee is not employed by the QJO for the full year, the maximum amount of his/her salary that can be claimed for the labour tax credit will be equal to $55,000 multiplied by the number of days in the year they were employed, divided by 365.

This credit will be available for salary and wages paid on or after January 1, 2019.

Only a corporation or a trust can be a QJO, pursuant to the definition of the term in subsection 125.6(1). In order to be a QJO, the corporation or trust must be a "qualified Canadian journalism organization" ("**QCJO**"), as defined in subsection 248(1), and satisfy additional requirements contained in the definition of QCJO in subsection 248(1).

An organization will be a QCJO if it is not a Crown corporation, municipal corporation or government agency, is a corporation, partnership or trust and meets all of the following criteria:

1. In the case of a corporation, it must be incorporated and resident in Canada and its chairperson or presiding officer and at least 75% of its board of directors must be Canadian citizens.
2. In the case of a partnership, it must be formed under the laws of a province or territory and interests in the partnership representing at least 75% of the total value of the partnership property and 75% of the income or loss for income tax purposes to be allocated each year by the partnership must be held by Canadian citizens or other partnerships, corporations or trusts that are QCJOs.
3. In the case of a trust, it must be formed and resident in Canada and at least 75% of the interest in the trust must be held by Canadian citizens or partnerships, corporations or other trusts that are QCJOs.
4. It must operate in Canada and have its content edited, designed and published in Canada, with digital publications excluded from the publication requirement.
5. It must be primarily engaged in the production of original news content that is of general interest and current events reporting and cannot be primarily focused on a particular topic or industry.
6. It must regularly employ at least two journalists in the production of its content who deal at arm's length with the organization.
7. It cannot significantly engage in the production of content:

a. to promote interests or report on the activities of an organization, association or its members;

b. for a government, Crown corporation or government agency; or

c. to promote goods or services.

8. It is designated as such organization by an administrative body to be created for this purpose.

If the QCJO is a corporation, it cannot be controlled by non-Canadian citizens, in the case of a public corporation, or for other corporations, at least 75% of the votes and value of the corporation must be held by citizens of Canada and public corporations who are not controlled by non-Canadian citizens.

In addition to being a QCJO, the additional requirements for an organization to be a QJO for the purposes of section 125.6 are for the organization to be primarily engaged in the production of original written news content, to not be carrying on a broadcasting undertaking (as defined in the Broadcasting Act), and to have not received an amount from the Aid to Publishers component of the Canada Periodical Fund in the particular taxation year it is claiming the labour tax credit.

An "eligible newsroom employee" is defined in subsection 125.6(1) of the ITA and is an employee of the QCJO who meets the following criteria:

1. Is employed by the QCJO in the taxation year.
2. Works on average a minimum of 26 hours/week for the QCJO for the portion of the year in which the individual is employed by the QCJO.
3. Has been or is reasonably expected to be employed by the QCJO for a minimum of 40 consecutive weeks that includes the period for which the credit is being claimed.
4. Spends at least 75% of their time engaged in the production of news content, including researching, collecting information, verifying facts, photographing, writing, editing, designing or otherwise preparing content.
5. Meets any prescribed conditions. No conditions have been prescribed at this time.

Tax Exempt and Qualified Donee Status

Certain organizations, including registered charities, are exempt from income tax under section 149 of the ITA and, if such organization also falls within the definition of "qualified donee" in subsection 149.1(1) of the ITA, donors to such organizations will be able to claim the donation tax credit with respect to donations made to such organization.

Budget 2019 proposes to add "registered journalism organization" ("RJO") as a new class of tax exempt organization under section 149 and new class of "qualified donee" under subsection 149.1(1) of the ITA.

For an organization to qualify as a RJO, it must meet the definition in subsection 248(1), which provides that it must be a "qualifying journalism organization", as defined in subsection 149.1(1), and has applied to be registered and that registration has been accepted and not been revoked.

It should be noted that sections 149.1 and 125.6 each has its own definition of "qualifying journalism organization". The definition of a QJO for the purposes of section 149.1 and the definition of a QJO for the purposes of section 125.6 have some minor overlap, but are generally quite different.

To be a "qualifying journalism organization" for the purposes of section 149.1, it must be a QCJO that is either a corporation or a trust, and the organization must also meet the following criteria:

1. It must be organized exclusively for journalism purposes.
2. All business activities must be related to its purposes.
3. All its directors or trustees must be at arm's length with one another.
4. It cannot be controlled, directly or indirectly, by a person or a group of person's who do not deal at arm's length with one another
5. It cannot pay or otherwise make available any of its income to or for the personal benefit of its members, shareholders, directors, settlors, trustees or similar individuals.
6. It cannot receive more than 20% of its annual income from gifts from any one source unless it is by way of bequest, within the first 12 months of operation or approved by the Minister of National Revenue.\

During the period in which an organization is an RJO, it will be subject to similar reporting and record keeping requirements as registered charities and Canadian amateur athletic associations, including the requirement to file annual information returns and reporting with respect to donations in excess of $5,000 and will face the same penalties as those entities for failing to comply with such requirements, including the potential for the revocation of their status as RJOs.

While RJOs will be tax-exempt entities, they may also be entitled to claim the refundable labour tax credit under section 125.6 if they employ "eligible newsroom employees", are "qualifying journalism organizations" for the purposes of section 125.6, and meet all the other criteria for that credit.

Provisions with respect to RJOs will come into force January 1, 2020.

Digital Subscription Tax Credit

Budget 2019 also introduces a temporary digital subscription tax credit for individual taxpayers who purchase eligible news subscriptions from a QCJO beginning in 2020. The amount of the tax credit will be equal to 15% of the lesser of $500 and the individual's 'qualifying subscription expense" for the year. As such, the maximum amount of the credit will be $75/year.

Subsection 118.02(1) defines "qualifying subscription expense" as an amount paid to a QCJO for a "digital news subscription", and if the QCJO provides access to content in a non-digital form or content other than content of QCJOs, the amount shall not exceed the cost of a comparable digital news subscription with the particular QCJO that is limited to content of QCJOs in digital form and, if there is no comparable subscription, 50% of the amount actually paid.

A subscription will qualify as a "digital news subscription" (defined in subsection 118.02(1) of the ITA) if it entitles the subscriber to access content of a QCJO in a digital format, the QCJO is primarily engaged in the production of original written news content, and the QCJO is not engaged in a broadcasting undertaking (as defined in the Broadcasting Act).

Per subsection 118.02(3), if more than one individual is entitled to claim the credit, the credit for the subscription will be prorated among those individuals as determined by them or the Minister of National Revenue, if the individuals cannot agree.

If an organization ceases to be a QCJO after an amount has been paid by an individual for a digital subscription, the amount paid would not cease to qualify for the tax credit so long as the amount was paid when the organization was a QCJO.

The digital subscription tax credit will be available beginning in the 2020 taxation year through the 2024 taxation year.

Resolutions 64 to 74: Business Investment in Zero-Emission Vehicles

64 (1) Subsection 13(7) of the Act is amended by striking out "and" at the end of paragraph (g), by adding "and" at the end of paragraph (h) and by adding the following after paragraph (h):

(i) if the cost to a taxpayer of a zero-emission passenger vehicle exceeds the prescribed amount,

(i) the capital cost to the taxpayer of the vehicle is deemed to be equal to the prescribed amount, and

(ii) for the purposes of paragraph (a) of the description of F in the definition *undepreciated capital cost* in subsection (21), the proceeds of disposition of the vehicle are deemed to be the amount determined by the formula

A × B/C

where

A is the amount that would, in the absence of this subparagraph, be the proceeds of disposition of the vehicle,

B is

(a) if the vehicle is disposed of to a person or partnership with which the taxpayer deals at arm's length, the capital cost to the taxpayer of the vehicle, and

(b) in any other case, the cost to the taxpayer of the vehicle, and

C is the cost to the taxpayer of the vehicle.

(2) Subsection (1) is deemed to have come into force on Budget Day.

65 (1) The portion of subsection 20(4) of the Act before paragraph (a) is replaced by the following:

Bad debts — dispositions of depreciable property

(4) If an amount that is owing to a taxpayer as or on account of the proceeds of disposition of depreciable property (other than a timber resource property, a passenger vehicle to which paragraph 13(7)(g) applies or a zero-emission passenger vehicle to which paragraph 13(7)(i) applies) of the taxpayer of a prescribed class is established by the taxpayer to have become a bad debt in a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(2) Section 20 of the Act is amended by adding the following after subsection (4.1):

Bad debts — zero-emission passenger vehicles

(4.11) If an amount that is owing to a taxpayer as or on account of the proceeds of disposition of a zero-emission passenger vehicle of the taxpayer to which paragraph 13(7)(i) applies is established by the taxpayer to have become a bad debt in a taxation year, there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount that would be determined by the formula in subparagraph 13(7)(i)(ii) in respect of the disposition if the amount determined for A in the formula were the amount owing to the taxpayer, and

(b) the amount determined by the formula

A – B

where

A is the capital cost to the taxpayer of the vehicle, and

B is the amount that would be determined by the formula in subparagraph 13(7)(i)(ii) in respect of the disposition if the amount determined for A in the formula were the total amount, if any, realized by the taxpayer on account of the proceeds of disposition.

(3) Subsections (1) and (2) are deemed to have come into force on Budget Day.

66 (1) The portion of section 67.2 of the Act before the formula is replaced by the following:

Interest on money borrowed for certain vehicles

67.2 For the purposes of this Act, if an amount is paid or payable for a period by a person in respect of interest on borrowed money used to acquire a passenger vehicle or zero-emission passenger vehicle, or on an amount paid or payable for the acquisition of such a vehicle, then in computing the person's income for a taxation year the amount of interest so paid or payable is deemed to be the lesser of the actual amount paid or payable and the amount determined by the formula

(2) Subsection (1) is deemed to have come into force on Budget Day.

67 (1) The Act is amended by adding the following after section 67.4:

More than one owner

67.41 If a person owns a zero-emission passenger vehicle jointly with one or more other persons, any reference in paragraph 13(7)(i) to the prescribed amount and in section 67.2 to the amount of $250 or such other amount as may be prescribed is to be read as a reference to that proportion of each of those amounts that the fair market value of the first-mentioned person's interest in the vehicle is of the fair market value of the interests in the vehicle of all those persons.

(2) Subsection (1) is deemed to have come into force on Budget Day.

68 (1) Subsection 85(1) of the Act is amended by adding the following after paragraph (e.4):

(e.5) if the property is depreciable property of a prescribed class of the taxpayer that is a zero-emission passenger vehicle to which paragraph 13(7)(i) applies and the taxpayer and the corporation do not deal at arm's length,

(i) the amount that the taxpayer and the corporation have agreed on in their election in respect of the vehicle is deemed to be an amount equal to the cost amount to the taxpayer of the vehicle immediately before the disposition, and

(ii) for the purposes of subsection 6(2), the cost to the corporation of the vehicle is deemed to be an amount equal to its fair market value immediately before the disposition;

(2) Subsection (1) is deemed to have come into force on Budget Day.

69 (1) The definition *passenger vehicle* in subsection 248(1) of the Act is replaced by the following:

passenger vehicle means an automobile

(a) acquired after June 17, 1987, other than an automobile that is acquired after that date pursuant to an obligation in writing entered into before June 18, 1987 or that is a zero-emission vehicle, or

(b) leased under a lease entered into, extended or renewed after June 17, 1987; (*voiture de tourisme*)

(2) Subsection 248(1) of the Act is amended by adding the following definitions in alphabetical order:

zero-emission passenger vehicle, of a taxpayer, means an automobile of the taxpayer that is included in Class 54 of Schedule II to the *Income Tax Regulations*; (*voiture de tourisme zéro émission*)

zero-emission vehicle, of a taxpayer, means a motor vehicle that

(a) is a plug-in hybrid with a battery capacity of at least 15 kWh or is fully

(i) electric, or

(ii) powered by hydrogen,

(b) is acquired, and becomes available for use, by the taxpayer on or after Budget Day and before 2028, and

(c) is not a vehicle

(i) that has been used, or acquired for use, for any purpose before it was acquired by the taxpayer, or

(ii) in respect of which

(A) the taxpayer has, at any time, made an election under subsection 1103(2j) of the *Income Tax Regulations*,

(B) assistance has been paid by the Government of Canada under a prescribed program, or

(C) an amount has been deducted under paragraph 20(1)(a) or subsection 20(16) by another person or partnership. (*véhicule zéro émission*)

(3) Subsections 248(17) and (17.1) of the Act are replaced by the following:

Application of subsection (16) to certain vehicles and aircraft

(17) If the input tax credit of a taxpayer under Part IX of the *Excise Tax Act* in respect of a passenger vehicle, zero-emission passenger vehicle or aircraft is determined with reference to subsection 202(4) of that Act, subparagraphs (16)(a)(i) to (iii) are to be read as they apply in respect of the vehicle or aircraft, as the case may be, as follows:

"(i) at the beginning of the first taxation year or fiscal period of the taxpayer commencing after the end of the taxation year or fiscal period, as the case may be, in which the goods and services tax in respect of such property was considered for the purposes of determining the input tax credit to be payable, if the tax was considered for the purposes of determining the input tax credit to have become payable in the reporting period, or

(ii) if no such tax was considered for the purposes of determining the input tax credit to have become payable in the reporting period, at the end of the reporting period; or".

Application of subsection (16.1) to certain vehicles and aircraft

(17.1) If the input tax refund of a taxpayer under *An Act respecting the Québec sales tax*, R.S.Q., c. T-0.1, in respect of a passenger vehicle, zero-emission passenger vehicle or aircraft is determined with reference to section 252 of that Act, subparagraphs (16.1)(a)(i) to (iii) are to be read as they apply in respect of the vehicle or aircraft, as the case may be, as follows:

"(i) at the beginning of the first taxation year or fiscal period of the taxpayer that begins after the end of the taxation year or fiscal period, as the case may be, in which the Quebec sales tax in respect of such property was considered for the purposes of determining the input tax refund to be payable, if the tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, or

(ii) if no such tax was considered for the purposes of determining the input tax refund to have become payable in the reporting period, at the end of the reporting period; or".

(4) Subsections (1) to (3) are deemed to have come into force on Budget Day.

70 (1) Paragraph 1100(1)(a) of the Regulations is amended by striking out "and" at the end of subparagraph (xxxviii) and by adding the following after subparagraph (xxxix):

(xl) of Class 54, 30 per cent, and

(xli) of Class 55, 40 per cent,

(2) Subsection 1100(2) of the Regulations is amended by incorporating the following into the formula contained in the Notice of Ways and Means Motion to amend the *Income Tax Act* and the *Income Tax Regulations* tabled in the House of Commons on November 21, 2018:

X(Y – Z)

where

X is

(a) if the class is Class 54

(i) 2 1/3, in respect of property that becomes available for use before 2024,

(ii) 1 1/2, in respect of property that becomes available for use in 2024 or 2025, and

(iii) 5/6, in respect of property that becomes available for use after 2025, and

(b) if the class is Class 55

(i) 1 1/2, in respect of property that becomes available for use before 2024,

(ii) 7/8, in respect of property that becomes available for use in 2024 or 2025, and

(iii) 3/8, in respect of property that becomes available for use after 2025;

Y is the total of all amounts each of which is an amount included, in respect of the class, under element A of the definition *undepreciated capital cost* in subsection 13(21) of the Act in respect of a property that became available for use by the taxpayer in the year; and

Z is the total of all amounts each of which is an amount included, in respect of the class, under element F of that definition in respect of property disposed of in the year.

71 (1) The portion of subsection 1102(14) of the Regulations before paragraph (a) is replaced by the following:

(14) Subject to subsections (14.11) to (14.13), for the purposes of this Part and Schedule II, if a property is acquired by a taxpayer

(2) Section 1102 of the Regulations is amended by adding the following after subsection (14.12):

(14.13) Subsection (14) does not apply to an acquisition of property by a taxpayer from a person in respect of which the property is a zero-emission vehicle included in Class 54 or 55.

(3) Section 1102 of the Regulations is amended by adding the following after subsection (25):

(26) For the purpose of clause (c)(ii)(B) of the definition *zero-emission vehicle* in subsection 248(1) of the Act, the federal purchase incentive described in the budget documents tabled by the Minister of Finance on Budget Day is a prescribed program.

(4) Subsections (1) to (3) are deemed to have come into force on Budget Day.

72 (1) Section 1103 of the Regulations is amended by adding the following after subsection (2i):

(2j) A taxpayer may, in its return of income filed with the Minister on or before its filing-due date for the taxation year in which a property is acquired, elect not to include the property in Class 54 or 55 in Schedule II, as the case may be.

(2) Subsection (1) is deemed to have come into force on Budget Day.

73 (1) Section 7307 of the Regulations is amended by adding the following after subsection (1):

(1.1) For the purposes of paragraph 13(7)(i) of the Act, the amount prescribed in respect of a zero-emission passenger vehicle of a taxpayer is the amount determined by the formula

A + B

where

A is $55,000; and

B is the sum that would have been payable in respect of federal and provincial sales taxes on the acquisition of the vehicle if it had been acquired by the taxpayer at a cost equal to A, before the application of the federal and provincial sales taxes.

(2) Subsection (1) is deemed to have come into force on Budget Day.

74 (1) Schedule II to the Regulations is amended by adding the following after Class 53:

CLASS 54

Property that is a zero-emission vehicle that is not included in Class 16 or 55.

CLASS 55

Property that is a zero-emission vehicle that would otherwise be included in Class 16.

(2) Subsection (1) is deemed to have come into force on Budget Day.

DENTONS CANADA LLP COMMENTARY

Through the 2018 Fall Economic Statement, the Government proposed to allow the full cost of machinery and equipment used in the manufacturing and processing of goods to be written off immediately for tax purposes, and introduced the Accelerated Investment Incentive. In addition, the Government announced that it will allow specified clean energy equipment to be eligible for an immediate write-off of the full cost.

Budget 2019 proposes to expand these measures to zero-emission vehicles by providing a temporary enhanced first-year capital cost allowance (CCA) rate of 100% for vehicles acquired on or after March 19, 2019, that become available for use before 2028, subject to phase-out for vehicles that become available for use after 2023 which will be contained in subsection 1100(2) of the Income Tax Regulations.

Budget 2019 proposes to add two new CCA classes: Class 54 for zero-emission vehicles that would otherwise be included in Class 10 or 10.1 and Class 55 for zero-emission vehicles that would otherwise be included in Class 16. Class 54 will be subject to a $55,000 limit in respect of each zero-emission passenger vehicle, which will be reviewed annually to ensure it remains appropriate. The existing short-taxation year rule requiring a prorating of the first year CCA amount will apply to the enhanced allowance for zero-emission vehicles. Any remaining balances in Class 54 or Class 55 after the enhanced first-year allowance will be entitled to CCA deduction on a declining-balance basis at a rate of 30% for Class 54 and 40% for Class 55.

Budget 2019 proposes to amend subsection 13(7) of the Income Tax Act by adding a special rule contained in new paragraph (i) to adjust proceeds of disposition to take into account the $55,000 limits set out for the new Class 54 and Class 55 to reduce the amount of recapture to take into account that CCA on amounts in excess of $55,000 was not permitted. An example of this rule is set out below:

Acquisition cost (before HST)	$60,000
First-Year CCA $55,000*100% =	$55,000
Undepreciated capital cost $55,000-$55,000 =	$0
Proceeds of disposition	$30,000
Part of proceeds of disposition to be deducted from the undepreciated capital cost	
$30,000*($55,000/$60,000) =	**$27,500**

Corresponding changes will be made elsewhere in the Income Tax Act to take into account these rules.

To be eligible for this first-year enhanced allowance a vehicle must fit within a new definition of "zero-emission vehicle" which will be added in subsection 248(1) of the Income Tax Act and that would otherwise be included in Class 10, 10.1 or 16. Zero-emission vehicle will be defined to mean a "motor vehicle" as defined in subsection 248(1) of the Income Tax Act, be fully electric, a plug-in hybrid with a battery capacity of at least 15 kWh, or fully powered by hydrogen, not have been used, or acquired for use, for any purpose before it is acquired by the taxpayer and not a vehicle for which assistance has been paid by the Government under a prescribed program (also announced in Budget 2019).

Proposed section 1103 will be added to the Income Tax Regulations to provide an election to forgo this enhanced treatment and instead include the vehicle under the rules as they existed prior to Budget 2019.

Corresponding amendments have been made for Goods and Services Tax / Harmonized Sales Tax purposes to provide the ability to recover input tax credits based on the proposed amendments under the Income Tax Act.

Resolution 75: Small Business Deduction — Farming and Fishing

75 (1) The definition *specified cooperative income* in subsection 125(7) of the Act is repealed.

(2) The portion of subparagraph (a)(i) of the definition *specified corporate income* in subsection 125(7) of the Act before clause (A) is replaced by the following:

(i) the total of all amounts each of which is income (other than specified farming or fishing income of the corporation for the year) from an active business of the corporation for the year from the provision of services or property to a private corporation (directly or indirectly, in any manner whatever) if

(3) Subsection 125(7) of the Act is amended by adding the following in alphabetical order:

specified farming or fishing income, of a particular corporation for a taxation year, means income of the particular corporation (other than an amount included in the particular corporation's income under subsection 135(7)), if

(a) the income is from the sale of the farming products or fishing catches of the particular corporation's farming or fishing business to another corporation, and

(b) the particular corporation deals at arm's length with the other corporation; (*revenu d'agriculture ou de pêche déterminé*)

(4) Subsections (1) to (3) apply to taxation years that begin after March 21, 2016. Any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that ends before Budget Day that would, in the absence of this subsection, be precluded because of subsections 152(4) to (5) of the Act is to be made to the extent necessary to take into account subsections (1) to (3).

DENTONS CANADA LLP COMMENTARY

Budget 2019 proposes to amend subsection 125(7) of the Income Tax Act to allow farmers and fishers to claim the small business deduction on an expanded amount of income for all sales to arm's length corporations. Previously, "specified corporate income" disqualified certain income of a CCPC's farming or fishing business where sales were made to a private corporation in which the CCPC or certain specified persons, holds a direct or indirect interest and then excluded farming or fishing cooperative corporations from that exclusion.

Budget 2019 proposes to eliminate the requirement that sales be to a farming or fishing cooperative corporation in order to be excluded from the "specified corporate income" disqualification by:

- repealing the definition of "specified cooperative income",
- replacing part of the definition of "specified corporate income" to exclude all "specified farming or fishing income" where only "specified cooperative income" was previously excluded, and
- adding a new definition of "specified farming or fishing income", which covers all qualifying income on sales to arm's length corporations.

Resolutions 76 to 78: Scientific Research and Experimental Development Program

76 (1) Paragraph 87(2)(j.6) of the Act is replaced by the following:

Continuing corporation

(j.6) for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11) and 127(10.2), section 139.1, subsection 152(4.3), the determination of D in the definition *undepreciated capital cost* in subsection 13(21) and the determination of L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Paragraph 87(2)(oo) of the Act is repealed.

(3) Subsections (1) and (2) apply to taxation years that end on or after Budget Day.

77 (1) Paragraph 88(1)(e.8) of the Act is repealed.

(2) Subsection (1) applies to taxation years that end on or after Budget Day.

78 (1) Subsection 127(10.2) of the Act is replaced by the following:

Expenditure limit

(10.2) For the purpose of subsection (10.1), a particular corporation's expenditure limit for a particular taxation year is the amount determined by the formula

$3 million × ($40 million – A)/$40 million

where

A is

(a) nil, if the following amount is less than or equal to $10 million:

(i) if the particular corporation is not associated with any other corporation in the particular taxation year, the amount that is its taxable capital employed in Canada (within the meaning assigned by section 181.2 or 181.3) for its immediately preceding taxation year, and

(ii) if the particular corporation is associated with one or more other corporations in the particular taxation year, the amount that is the total of all amounts, each of which is the taxable capital employed in Canada (within the meaning assigned by section 181.2 or 181.3) of the particular corporation for its, or of one of the other corporations for its, last taxation year that ended in the last calendar year that ended before the end of the particular taxation year, and

(b) in any other case, the lesser of $40 million and the amount by which the amount determined under subparagraph (a)(i) or (ii), as the case may be, exceeds $10 million.

(2) Subsection 127(10.6) of the Act is amended by adding "and" at the end of paragraph (a), by striking out "and" at the end of paragraph (b) and by repealing paragraph (c).

(3) Subsections (1) and (2) apply to taxation years that end on or after Budget Day.

DENTONS CANADA LLP COMMENTARY

Under the current Scientific Research & Experimental Development (SR&ED) program, qualifying expenditure deductions are fully deductible in the year they are incurred and eligible for an investment tax credit. This credit is larger and refundable for corporations that are Canadian-controlled private corporations (CCPCs) for the first $3 million in eligible expenditures. However, the amount eligible for the enhanced credit is reduced once a CCPC's taxable income for the previous year reaches $500,000 (before being eliminated at $800,000) and once a CCPC's taxable capital employed in Canada reaches $10 million (before being eliminated at $50 million).

Budget 2019 proposes to eliminate the taxable income reductions currently set out in 127(10.2) of the ITA. Under the new regime, CCPCs claiming SR&ED credits will only be subject to reductions in their enhanced SR&ED credits based on their

taxable capital employed in Canada. The purpose of this amendment is to provide a more predictable reduction in the enhanced SR&ED credit for CCPCs.

This amendment will apply to taxation years ending on or after March 19, 2019.

Resolution 79: Canadian-Belgian Co-productions — Canada Film or Video Production Tax Credit

79 (1) Subsection 1106(3) of the Regulations is amended by striking out "and" at the end of paragraph (d), by adding "and" at the end of paragraph (e) and by adding the following after paragraph (e):

(f) the Memorandum of Understanding between the Government of Canada and the Respective Governments of the Flemish, French and German-speaking Communities of the Kingdom of Belgium concerning Audiovisual Coproduction.

(2) Subsection (1) is deemed to have come into force on March 12, 2018.

DENTONS CANADA LLP COMMENTARY

The refundable Canadian film or video production tax credit ("CFVPTC") is a refundable credit that may be claimed by a qualified corporation in respect of an eligible Canadian film or video production. The credit is 25% of the corporation's "qualified labour expenditure" for the year, up to 60% of the total cost of the production; thus, the credit is limited to 15% of the cost of production, net of government assistance.

The credit can apply to "treaty co-productions", including certain joint projects of producers from Canada and another country (Regulation 1106(3)). Budget 2019 adds to the list of treaty co-productions any production made pursuant to the "The Memorandum of Understanding between the Government of Canada and the Respective Governments of the Flemish, French and German-speaking Communities of the Kingdom of Belgium concerning Audiovisual Coproduction". This will allow joint projects of producers from Canada and Belgium to qualify for the credit.

Resolution 80: Character Conversion Transactions

80 (1) Subparagraph (b)(i) of the definition *derivative forward agreement* in subsection 248(1) of the Act is replaced by the following:

(i) revenue, income or cashflow in respect of the property over the term of the agreement, changes in the fair market value of the property over the term of the agreement, or any similar criteria in respect of the property unless

(A) the property is

(I) a *Canadian security* (in this subparagraph as defined in subsection 39(6)), or

(II) an interest in a partnership the fair market value of which is derived, in whole or in part, from a Canadian security,

(B) the purchase agreement is an agreement to acquire property from

(I) a tax-indifferent investor, or

(II) a *financial institution* (as defined in subsection 142.2(1)), and

(C) it can reasonably be considered that one of the main purposes of the series of transactions or events, or any transaction or event in the series, of which the purchase agreement is part is for all or any portion of the capital gain on a disposition of a Canadian security referred to in clause (A) — as part of the same series of transactions or events — to be attributable to amounts paid or payable on the Canadian security by the issuer of the Canadian security during the term of the purchase agreement as

(I) interest,

(II) dividends, or

(III) income of a trust other than income paid out of the taxable capital gains of the trust,

(2) Subsection (1) is deemed to have come into force on Budget Day. However, it does not apply before 2020 in respect of

(a) an agreement that is entered into after the final settlement of another derivative forward agreement (in this paragraph referred to as the "prior agreement") if

(i) having regard to the source of the funds used to purchase the property to be sold under the agreement, it is reasonable to conclude that the agreement is a continuation of the prior agreement,

(ii) the terms of the agreement and the prior agreement are substantially similar,

(iii) the final settlement date under the agreement is before 2020,

(iv) subsection (1) does not apply to the prior agreement, and

(v) the notional amount of the agreement is at all times less than or equal to the amount determined by the formula

$$(A + B + C + D + E) - (F + G)$$

where

A is the notional amount of the agreement when it is entered into,

B is the total of all amounts each of which is an increase in the notional amount of the agreement, at or before that time, that is attributable to the underlying interest,

C is the amount of the taxpayer's cash on hand immediately before Budget Day that was committed, before Budget Day, to be invested under the agreement,

D is the total of all amounts each of which is an increase, at or before that time, in the notional amount of the agreement that is attributable to the final settlement of another derivative forward agreement if subsection (1) does not apply to the other agreement,

E is the lesser of

(A) either

(I) if the prior agreement was entered into before Budget Day, the amount, if any, by which the amount determined under subparagraph (i) of the description of F in paragraph (b) for the prior agreement immediately before it was finally settled exceeds the total determined under subparagraph (ii) of the description of F in paragraph (b) for the prior agreement immediately before it was finally settled, or

(II) in any other case, the amount, if any, by which the amount determined under this clause for the prior agreement immediately before it was finally settled exceeds the total determined under clause (B) for the prior agreement immediately before it was finally settled, and

(B) the total of all amounts each of which is an increase in the notional amount of the agreement before 2020 that is not otherwise described in this formula,

F is the total of all amounts each of which is a decrease in the notional amount of the agreement, at or before that time, that is attributable to the underlying interest, and

G is the total of all amounts each of which is the amount of a partial settlement of the agreement, at or before that time, to the extent that it is not reinvested in the agreement; or

(b) an agreement that is entered into before Budget Day, unless at any time on or after Budget Day, the notional amount of the agreement exceeds the amount determined by the formula

(A + B + C + D + E + F) – (G + H)

where

A is the notional amount of the agreement immediately before Budget Day,

B is the total of all amounts each of which is an increase in the notional amount of the agreement, on or after Budget Day and at or before that time, that is attributable to the underlying interest,

C is the amount of the taxpayer's cash on hand immediately before Budget Day that was committed, before Budget Day, to be invested under the agreement,

D is the amount, if any, of an increase, on or after Budget Day and at or before that time, in the notional amount of the agreement as a consequence of the exercise of an over-allotment option granted before Budget Day,

E is the total of all amounts each of which is an increase, on or after Budget Day and at or before that time, in the notional amount of the agreement that is attributable to the final settlement of another derivative forward agreement if subsection (1) does not apply to the other agreement,

F is the lesser of

(i) 5% of the notional amount of the agreement immediately before Budget Day, and

(ii) the total of all amounts each of which is an increase in the notional amount of the agreement on or after Budget Day and before 2020 that is not otherwise described in this formula,

G is the total of all amounts each of which is a decrease in the notional amount of the agreement, on or after Budget Day and at or before that time, that is attributable to the underlying interest, and

H is the total of all amounts each of which is the amount of a partial settlement of the agreement, on or after Budget Day and at or before that time, to the extent that it is not reinvested in the agreement.

(3) For the purposes of subsection (2), the notional amount of a derivative forward agreement at any time is the fair market value at that time of the property that would be acquired under the agreement if the agreement were finally settled at that time.

DENTONS CANADA LLP COMMENTARY

The 2013 Budget introduced the "character conversion transaction" rules, which apply to certain financial arrangements including "derivative forward agreements" designed to convert ordinary income into capital gains using derivative contracts. One exception to the character conversion rules applies where the value of the security at the time of purchase is based on revenue or income from or change in value of the security itself.

Since the original rules were announced an alternative character conversion transaction has been developed that uses this commercial transaction exception by

using mutual funds. Very generally, one mutual fund (Investor Fund) enters into a forward agreement to purchase units in another mutual fund (Reference Fund) at a future date. The Reference Fund holds a portfolio of investments that produces fully taxable income (as opposed to capital gains). The forward agreement will set the purchase price equal to the value of the Reference Fund at the future date. After the Investor Fund acquires the units of the Reference Fund, it redeems or sells them at a gain resulting in a capital gain. Since the gain is attributable to the economic performance of the units themselves, the transaction appears to fall within the exception. As such, the resulting is reported as a capital gain, even though it is largely or wholly attributable to ordinary income earned in the Reference Fund. Capital gains treatment is ensured by making the s. 39(4) election.

Budget 2019 proposes to replace part of the definition of derivative forward agreement in subsection 248(1) of the *Income Tax Act* to ensure the above transaction would be caught by the character conversion rules by providing that the commercial transaction exception does not apply to a purchase agreement to purchase a Canadian security (or an interest in a partnership whose value is derived in part or in whole from a Canadian security), if it can reasonably be considered that one of the main purposes of the series of transactions or events, of which the purchase agreement is part, is to realize a capital gain on the sale of the security that is attributable to amounts payable on the security by the issuer of the security as ordinary income and the purchase agreements made with a tax-indifferent investor or a financial institution.

This proposal applies to agreements entered into as of Budget Day with a grandfathering rule providing that it does not apply before 2020 to agreements entered into before Budget Day, or agreements that effectively continue or extend prior agreements, as long as certain notional growth guidelines are not exceeded.

Resolutions 81 and 82: Transfer Pricing Measures

Order of Application of the Transfer Pricing Rules

81 (1) Section 247 of the Act is amended by adding the following after subsection (1):

Order of applying provisions

(1.1) For the purpose of applying the provisions of this Act, the adjustments under Part XVI.1 shall be made before any other provision of the Act is applied.

(2) Subsection 247(8) of the Act is repealed.

(3) Subsections (1) and (2) apply to taxation years that begin on or after Budget Day.

Applicable Reassessment Period

82 (1) Clause 152(4)(b)(iii)(A) of the Act is replaced by the following:

(A) as a consequence of a *transaction* (as defined in subsection 247(1)) involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, or

(2) Subsection (1) applies to taxation years of a taxpayer in respect of which the *normal reassessment period* (as defined in subsection 152(3.1) of the Act) for the taxpayer ends on or after Budget Day.

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Part XVI.1 of the Income Tax Act (Canada) contains "transfer pricing" rules for cross-border transactions between non-arm's length persons. Where these rules apply, it may also be the case that other provisions of the Income Tax Act, such as Part I, apply. Budget 2019 proposes to clarify that Part XVI.1 applies in priority to other provisions of Income Tax Act, including Part I. This proposal will apply for all taxation years that begin on or after March 19, 2019.

Further, Budget 2019 proposes that the extended limitation period, which applies for transactions with non-arm's length non-resident persons (i.e. 3 years beyond the normal reassessment period) contained in clause 152(4)(b)(iii)(A) be expanded to apply to all "transactions" as defined subsection 247(1) of the Income Tax Act, which effectively expands it to apply to all transactions, arrangements or events.

The expanded application of the extended limitation period will apply in respect of taxation years of a taxpayer, which the normal reassessment period for the taxpayer ends on or after March 19, 2019.

Resolutions 83 to 86: Foreign Affiliate Dumping

83 (1) Subsection 17.1(2) of the Act is replaced by the following:

Acquisition of control

(2) If at any time a parent or group of parents referred to in section 212.3 acquires control of a CRIC and the CRIC was not controlled by a non-resident person, or a group of non-resident persons not dealing with each other at arm's length, immediately before that time, no amount is to be included under subsection (1) in computing the income of the CRIC in respect of a *pertinent loan or indebtedness* (as defined in subsection 212.3(11)) for the period that begins at that time and ends on the day that is 180 days after that time.

(2) Subsection (1) applies in respect of transactions or events that occur on or after Budget Day.

84 (1) The portion of paragraph 128.1(1)(c.3) of the Act before subparagraph (i) is replaced by the following:

(c.3) if the taxpayer is a corporation that was, immediately before the particular time, controlled by one non-resident person or, if no single non-resident person controlled the CRIC, a group of non-resident persons not dealing with each other at arm's length (in this section, that one non-resident person, or each member of the group of non-resident persons, as the case may be, is referred to as a "parent", and the group of non-resident persons, if any, is referred to as the "group of parents") and the taxpayer owned, immediately before the particular time, one or more shares of one or more non-resident corporations (each of which is in this paragraph referred to as a "subject affiliate") that, immediately after the particular time, were — or that became, as part of a transaction or event or series of transactions or events that includes the taxpayer having become resident in Canada — foreign affiliates of the taxpayer, then

(2) Subparagraph 128.1(1)(c.3)(ii) of the Act is replaced by the following:

(ii) for the purposes of Part XIII, the taxpayer is deemed, immediately after the particular time, to have paid to each parent, and each parent is deemed, immediately after the particular time, to have received from the taxpayer, a dividend in an amount determined by the formula

(A – B) × C/D

where

A is the amount determined under clause (B) of the description of A in subparagraph (i),

B is the amount determined under clause (A) of the description of A in subparagraph (i),

C is the fair market value, immediately after the particular time, of the shares of the capital stock of the taxpayer that are held, directly or indirectly, by the parent, and

D is total of all amounts each of which is the fair market value, immediately after the particular time, of the shares of the capital stock of the taxpayer that are held, directly or indirectly, by a parent.

(3) Subsections (1) and (2) apply in respect of transactions or events that occur on or after Budget Day.

85 (1) The portion of paragraph 212.3(1)(b) of the Act before clause (i)(A) is replaced by the following:

(b) the CRIC or an other Canadian corporation is immediately after the investment time, or becomes after the investment time and as part of a transaction or event or series of transactions or events that includes the making of the investment, controlled by one non-resident person or, if no single non-resident person controls the CRIC, by a group of non-resident persons not dealing with each other at arm's length (in this section, that one non-resident person, or each member of the group of non-resident persons, as the case may be, is referred to as a "parent", and the group of non-resident persons, if any, is referred to as the "group of parents"), and any of the following conditions is satisfied:

(i) if, at the investment time, a parent owned all shares of the capital stock of the CRIC and the other Canadian corporation, if applicable, that are owned — determined without reference to paragraph (25)(b) in the case of partnerships referred to in this subparagraph and as if all rights referred to in paragraph 251(5)(b), of the parent, each person that does not deal at arm's length with the parent and all of those partnerships, were immediate and absolute and the parent and each of the other persons and partnerships had exercised those rights at the investment time — by the parent, persons that are not dealing at arm's length with the parent and partnerships of which the parent or a non-resident person that is not dealing at arm's length with the parent is a member (other than a limited partner within the meaning assigned by subsection 96(2.4)), the parent would own shares of the capital stock of the CRIC or the other Canadian corporation that

(2) Paragraph 212.3(2)(a) of the Act is replaced by the following:

(a) for the purposes of this Part and subject to subsections (3) and (7), the CRIC is deemed to have paid to each parent, and each parent is deemed to have received from the CRIC, at the dividend time, a dividend in an amount determined by the formula

A × B/C

where

A is the total of all amounts each of which is the portion of the fair market value at the investment time of any property (not including shares of the capital stock of the CRIC) transferred, any obligation assumed or incurred, or any benefit otherwise conferred, by the CRIC, or of any property transferred to the CRIC which transfer results in the reduction of an amount owing to the CRIC, that can reasonably be considered to relate to the investment,

B is

(i) if there is one parent, one, and

(ii) if there is a group of parents, the fair market value at the dividend time of the shares of the capital stock of the CRIC that are held, directly or indirectly, by the parent, and

C is

(i) if there is one parent, one, and

(ii) if there is a group of parents, the total of all amounts each of which is the fair market value at the dividend time of the shares of the capital stock of the CRIC that are held, directly or indirectly, by a parent; and

(3) Subsection 212.3(3) of the Act is replaced by the following:

Dividend substitution election

(3) If a CRIC (or a CRIC and a corporation that is a qualifying substitute corporation in respect of the CRIC at the dividend time) and a parent (or a parent and another non-resident person that at the dividend time is related to the parent) jointly elect in writing under this subsection in respect of an investment, and the election is filed with the Minister on or before the filing-due date of the CRIC for its taxation year that includes the dividend time, then the dividend that would, in the absence of this subsection, be deemed under paragraph (2)(a) to have been paid by the CRIC to the parent and received by the parent from the CRIC is deemed to have instead been

(a) paid by the CRIC or the qualifying substitute corporation, as agreed on in the election; and

(b) paid to, and received by, the parent or the other non-resident person, as agreed on in the election.

(4) Subsection 212.3(4) of the Act is replaced by the following:

Definitions

(4) The following definitions apply in this section.

cross-border class, in respect of an investment, means a class of shares of the capital stock of a CRIC or qualifying substitute corporation if, immediately after the dividend time in respect of the investment,

(a) a parent, or a non-resident person that does not deal at arm's length with a parent, owns at least one share of the class; and

(b) no more than 30% of the issued and outstanding shares of the class are owned by one or more persons resident in Canada that do not deal at arm's length with a parent. (*catégorie transfrontalière*)

dividend time, in respect of an investment, means

(a) if the CRIC is controlled by a parent or group of parents at the investment time, the investment time; and

(b) in any other case, the earlier of

(i) the first time, after the investment time, at which the CRIC is controlled by a parent or group of parents, as the case may be, and

(ii) the day that is one year after the day that includes the investment time. (*moment du dividende*)

qualifying substitute corporation, at any time in respect of a CRIC, means a corporation resident in Canada

(a) that is, at that time, controlled by

(i) a parent,

(ii) a group of parents, or

(iii) a non-resident person that does not deal at arm's length with a parent;

(b) that has, at that time, an equity percentage (as defined in subsection 95(4)) in the CRIC; and

(c) shares of the capital stock of which are, at that time, owned by a parent or another non-resident person with which the parent does not, at that time, deal at arm's length. (*société de substitution admissible*)

(5) Subsection 212.3(5.1) of the Act is replaced by the following:

Sequential investments — paragraph (10)(f)

(5.1) In the case of an investment (in this subsection referred to as the "second investment") in a subject corporation by a CRIC described in paragraph (10)(f), the amount determined for A in paragraph (2)(a) in respect of the second investment is to be reduced by the amount determined for A in paragraph (2)(a) in respect of a prior investment (in this subsection referred to as the "first investment") in the subject corporation by another corporation resident in Canada if

(a) the first investment is an investment that is described in paragraph (10)(a) or (b) and to which paragraph (2)(a) applies;

(b) immediately after the investment time in respect of the first investment, the other corporation is not controlled by,

(i) if there is one parent in respect of the CRIC, the parent, and

(ii) if there is a group of parents in respect of the CRIC, the group of parents; and

(c) the other corporation becomes, after the time that is immediately after the investment time in respect of the first investment and as part of a transaction or event or series of transactions or events that includes the making of the first investment, controlled by the parent or group of parents, as the case may be, because of the second investment.

(6) The portion of paragraph 212.3(6)(a) of the Act before subparagraph (i) is replaced by the following:

(a) a particular corporation resident in Canada that does not deal at arm's length with a parent

(7) The portion of clause 212.3(6)(a)(ii)(B) of the act before subclause (I) is replaced by the following:

(B) the increase in paid-up capital in respect of the particular class can reasonably be considered to be connected to funding provided to the particular corporation or another corporation resident in Canada (other than the corporation that issued the particular class) by a parent or a non-resident person that does not deal at arm's length with a parent, unless

(8) The portion of subparagraph 212.3(7)(a)(i) of the Act before clause (A) is replaced by the following:

(i) the amount determined, without reference to this subsection, for A in paragraph (2)(a), is reduced by the lesser of

(9) The portion of paragraph 212.3(7)(b) of the Act before subparagraph (i) is replaced by the following:

(b) where the amount determined, without reference to this paragraph, for A in paragraph (2)(a) is equal to or greater than the total of all amounts each of which is an amount of paid-up capital immediately after the dividend time, determined without reference to this paragraph, of a cross-border class in respect of the investment, then

(10) Paragraphs 212.3(7)(c) and (d) of the Act are replaced by the following:

(c) where paragraph (b) does not apply and there is at least one cross-border class in respect of the investment,

(i) the amount determined, without reference to this paragraph, for A in paragraph (2)(a) is reduced to nil,

(ii) in computing, at any time after the dividend time, the paid-up capital in respect of a particular cross-border class in respect of the investment, there is to be deducted the amount, if any, that when added to the total of all amounts that are deducted under this paragraph in computing the paid-up capital of other cross-border classes, results in the greatest total reduction because of this paragraph, immediately after the dividend time, of the paid-up capital in respect of shares of cross-border classes that are owned by a parent or another non-resident person with which a parent does not, at the dividend time, deal at arm's length,

(iii) if the proportion of the shares of a particular class owned, in aggregate, by parents and non-resident persons that do not deal at arm's length with parents is equal to the proportion so owned of one or more other cross-border classes (in this subparagraph all those classes, together with the particular class, referred to as the "relevant classes"), then the proportion that the reduction under subparagraph (ii) to the paid-up capital in respect of the particular class is of the paid-up capital, determined immediately after the dividend time and without reference to this paragraph, in respect of that class is to be equal to the proportion that the total reduction under subparagraph (ii) to the paid-up capital in respect of all the relevant classes is of the total paid-up capital, determined immediately after the dividend time and without reference to this paragraph, of all the relevant classes, and

(iv) the total of all amounts each of which is an amount to be deducted under subparagraph (ii) in computing the paid-up capital of a cross-border class is to be equal to the amount by which the amount determined for A in paragraph (2)(a) is reduced under subparagraph (i); and

(d) if the amount determined for A in paragraph (2)(a) is reduced because of any of subparagraphs (a)(i), (b)(i) and (c)(i),

(i) the CRIC shall file with the Minister in prescribed manner a form containing prescribed information and the amounts of the paid-up capital, determined immediately after the dividend time and without reference to this subsection, of each class of shares that is described in paragraph (a) or that is a cross-border class in respect of the investment, the paid-up capital of the shares of each of those classes that are owned by a parent or another non-resident person that does not, at the dividend time, deal at arm's length with a parent, and the reduction under any of subparagraphs (a)(ii), (b)(ii) and (c)(ii) in respect of each of those classes, and

(ii) if the form is not filed on or before the CRIC's filing-due date for its taxation year that includes the dividend time, the CRIC is deemed to have paid to each parent, and each parent is deemed to have received from the CRIC, on the filing-due date, a dividend equal to the total of all amounts each of which is the amount of a reduction because of any of subparagraphs (a)(i), (b)(i) and (c)(i) in the amount the CRIC is deemed under paragraph (2)(a) to have paid to the parent.

(11) The portion of paragraph 212.3(11)(c) of the Act before subparagraph (i) is replaced by the following:

(c) the CRIC and each parent jointly elect in writing under this paragraph in respect of the amount owing and file the election with the Minister on or before the filing-due date of the CRIC

(12) Paragraphs 212.3(15)(a) and (b) of the Act are replaced by the following:

(a) a CRIC or a taxpayer to which paragraph 128.1(1)(c.3) applies (in this subsection referred to as the "specific corporation"), that would, in the absence of this subsection, be controlled at any time

(i) by more than one non-resident person, is deemed not to be controlled at that time by any such non-resident that controls at that time another non-resident person that controls at that time the specific corporation, unless the application of this paragraph would otherwise result in no non-resident person controlling the specific corporation, and

(ii) by a particular non-resident corporation is deemed not to be controlled at that time by the particular corporation if the particular corporation is controlled at that time by another corporation that is at that time

(A) resident in Canada, and

(B) not controlled by any non-resident person or group of non-resident persons not dealing with each other at arm's length; and

(b) a non-resident person is deemed not to be a member of a particular group of non-resident persons not dealing with each other at arm's length that controls the specific corporation if

(i) the non-resident person would, absent the application of this paragraph, be a member of the particular group, and

(ii) the non-resident person is a member of the particular group solely because it controls, or is a member of a group that controls, another member of the particular group.

(13) The portion of paragraph 212.3(16)(a) before subparagraph (i) is replaced by the following:

(a) the business activities carried on by the subject corporation and all other corporations (those other corporations in this subsection and subsection (17) referred to as the "subject subsidiary corporations") in which the subject corporation has, at the investment time, an equity percentage (as defined in subsection 95(4)) are at the investment time, and are expected to remain, on a collective basis, more closely connected to the business activities carried on in Canada by the CRIC, or by any corporation resident in Canada with which the CRIC does not, at the investment time, deal at arm's length, than to the business activities carried on by any non-resident person with which the CRIC, at the investment time, does not deal at arm's length, other than

(14) Paragraph 212.3(18)(a) of the Act is replaced by the following:

(a) the investment is described in paragraph (10)(a) or (d) and is an acquisition of shares of the capital stock, or a debt obligation, of the subject corporation

(i) from a corporation resident in Canada (in this paragraph referred to as the "disposing corporation") to which the CRIC is, immediately before the investment time, related (determined without reference to paragraph 251(5)(b)), and

(A) each shareholder of the disposing corporation immediately before the investment time is,

(I) if there is only one parent in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, related to the parent, and

2 at no time that is in the period during which the series of transactions or events that includes the making of the investment occurs and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, and

(II) if there is a group of parents in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, controlled by the group of parents, and

2 at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents, or

(B) the disposing corporation is,

(I) if there is only one parent in respect of the CRIC, at no time that is in the period and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, and

(II) if there is a group of parents in respect of the CRIC, at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents, or

(ii) on an amalgamation described in subsection 87(1) of two or more corporations (each of which is in this subparagraph referred to as a "predecessor corporation") to form the CRIC if all of the predecessor corporations are, immediately before the amalgamation, related to each other (determined without reference to paragraph 251(5)(b)) and

(A) either

(I) if there is only one parent in respect of the CRIC, none of the predecessor corporations are, at any time that is in the period during which the series of transactions or events that includes the making of the investment occurs and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, or

(II) if there is a group of parents in respect of the CRIC, all of the predecessor corporations are, at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents, or

(B) if the condition in clause (A) is not satisfied in respect of a predecessor corporation, each shareholder of that predecessor immediately before the investment time is,

(I) if there is only one parent in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, related to the parent, and

2 at no time that is in the period and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, and

(II) if there is a group of parents in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, controlled by the group of parents, and

2 at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents;

(15) The portion of paragraph 212.3(18)(c) of the Act before subparagraph (iii) is replaced by the following:

(c) the investment is an indirect acquisition referred to in paragraph (10)(f) that results from a direct acquisition of shares of the capital stock of another corporation resident in Canada

(i) from a corporation (in this paragraph referred to as the "disposing corporation") to which the CRIC is, immediately before the investment time, related (determined without reference to paragraph 251(5)(b)) and

(A) each shareholder of the disposing corporation immediately before the investment time is

(I) if there is only one parent in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that, immediately before the investment time, is related to the parent, and

2 at no time that is in the period during which the series of transactions or events that includes the making of the investment occurs and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, and

(II) if there is a group of parents in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, controlled by the group of parents, and

2 at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents, or

(B) the disposing corporation is,

(I) if there is only one parent in respect of the CRIC, at no time that is in the period and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, and

(II) if there is a group of parents in respect of the CRIC, at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents, or

(ii) on an amalgamation described in subsection 87(1) of two or more corporations (each of which is in this subparagraph referred to as a "predecessor corporation") to form the CRIC, or a corporation of which the CRIC is a shareholder, if all of the predecessor corporations are, immediately before the amalgamation, related to each other (determined without reference to paragraph 251(5)(b)) and

(A) either

(I) if there is only one parent in respect of the CRIC, none of the predecessor corporations are, at any time that is in the period during which the series of transactions or events that includes the making of the investment occurs and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, or

(II) if there is a group of parents in respect of the CRIC, all of the predecessor corporations are, at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents, or

(B) if the condition in clause (A) is not satisfied in respect of a predecessor corporation, each shareholder of that predecessor immediately before the investment time is

(I) if there is only one parent in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, related to the parent, and

2 at no time that is in the period and that is before the investment time, dealing at arm's length (determined without reference to paragraph 251(5)(b)) with the parent or a non-resident person that participates in the series and is, at any time that is in the period and that is before the investment time, related to the parent, and

(II) if there is a group of parents in respect of the CRIC,

1 either the CRIC or a corporation resident in Canada that is, immediately before the investment time, controlled by the group of parents, and

2 at all times that are in the period during which the series of transactions or events that includes the making of the investment occurs and that are before the investment time, controlled by the group of parents;

(16) Susection 212.3(21) is replaced by the following:

Persons deemed not to be related

(21) If it can reasonably be considered that one of the main purposes of one or more transactions or events is to cause two or more persons to be related to each other, or a person or group of persons to control another person, so that, in the absence of this subsection, subsection (2) would not apply because of subsection (18) to an investment in a subject corporation made by a CRIC, those persons are deemed not to be related to each other, or that person or group of persons is deemed not to control that other person, as the case may be, for the purposes of subsection (18).

(17) Section 212.3 of the Act is amended by adding the following after subsection (25):

(26) For the purposes of this section, subsection 17.1(1) (as it applies in respect of a *pertinent loan or indebtedness* as defined in subsection (11)), paragraph 128.1(1)(c.3) and subsection 219.1(2) — and for the purpose of paragraph 251(1)(a) as it applies for the purposes of those provisions — in determining, at any time, whether two persons are related to each other or whether any person is controlled by any other person or group of persons, it shall be assumed that

(a) each trust is a corporation having a capital stock of a single class of voting shares divided into 100 issued shares;

(b) each beneficiary under a trust owned at that time the number of issued shares of that class determined by the formula

A/B × 100

where

A is the fair market value at that time of the beneficiary's interest in the trust, and

B is the total fair market value at that time of all beneficiaries' interests under the trust; and

(c) if a beneficiary's share of the income or capital of a trust depends on the exercise by any person of, or the failure by any person to exercise, any discretionary power, the fair market value at any time of the beneficiary's interest under the trust is equal to the total fair market value at that time of all beneficiaries' interests under the trust.

(18) Subsections (1) to (17) apply in respect of transactions or events that occur on or after Budget Day.

86 (1) Paragraph 219.1(2)(b) of the Act is replaced by the following:

(b) the other corporation is controlled, at that time, by a non-resident person or a group of non-resident persons not dealing with each other at arm's length; and

(2) Subsection (1) applies in respect of transactions or events that occur on or after Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2019 proposes amendments to broaden the scope of the foreign affiliate dumping (FAD) rules contained in section 212.3, in order to capture Canadian resident corporations that are controlled by (i) non-resident individuals, (ii) non-resident trusts and (iii) groups of non-arm's length persons comprised of corporations, individuals and trusts.

Generally, the FAD rules are aimed at curtailing certain investments in foreign affiliates made by a corporation resident in Canada (a "**CRIC**") that is controlled by a non-resident corporation (referred to as a "**parent**"), in order to, inter alia, counteract transactions that are perceived to erode the Canadian tax base or extract corporate surplus free of withholding tax. Where the FAD rules apply, the CRIC may be deemed to have paid a dividend to the parent in an amount equal to the amount of the investment by the CRIC into the foreign affiliate, subject to certain exceptions and adjustments, and the paid-up capital of the shares of the CRIC that would otherwise have increased as a result of the investment may be reduced by an equivalent amount. Presently, the FAD rules generally only apply where a CRIC is controlled by a non-resident corporation.

The commentary to Budget 2019 indicates that the broadening of the FAD rules is intended to address similar policy concerns in situations where a CRIC is controlled by non-resident persons other than non-resident corporations, such as non-resident individuals, non-resident trusts and groups of non-arm's length persons comprised of corporations, individuals and trusts.

To effect these changes, Budget 2019 proposes to revise the term "parent" in existing paragraph 212.3(1)(b). In this term the current reference to "non-resident corporation" will be replaced with "one non-resident person", thereby including an individual or trust within the ambit of the amended FAD rules. In addition, paragraph 212.3(1)(b) is further amended to include control of a CRIC by a group of non-residents not dealing with each other at arm's length (referred to as a "group of parents"), further expanding the applicability of the FAD rules. Accordingly, many transactions taking place on or after Budget day involving non-resident shareholders of Canadian corporations may trigger the FAD rules.

In addition, the measures include an extended meaning of "related" in proposed subsection 212.3(26) that applies for the purpose of determining whether a non-resident trust (and its beneficiaries) does not deal at arm's length with another non-resident person. These rules are intended to ensure that a non-resident trust will be considered to be related to another non-resident person in circumstances similar to where a non-resident corporation would be so related. Specifically, proposed subsection 212.3(26) treats each trust as a corporation having a single class of voting shares composed of 100 issued shares, and each beneficiary of a trust as owning a number of shares equal to the beneficiary's pro rata fair market value interest under the trust. If the trust is a discretionary trust, however, each beneficiary's interest under the trust is deemed to be the total fair market value of all beneficiaries' interests under the trust.

Consequential amendments to the provisions in section 212.3 (FAD) are proposed in order to give effect to the proposed expanded term "parent" and introduction of the term "group of parents". For instance, the deemed dividend provision contained in paragraph 212.3(2)(a) is amended to provide that each parent of the CRIC is deemed to receive a dividend based on its pro rata share of the fair market value of the shares of the CRIC. Consequential amendments are also proposed for sections 17.1 (deemed interest), 128.1 (taxpayer immigration), and 219.1 (corporate emigration).

Resolutions 87 to 89: Cross-Border Share Lending Arrangements

87 (1) Subsection 212(2.1) of the Act is replaced by the following:

Exempt dividends

(2.1) Subsection (2) does not apply to an amount paid or credited, by a borrower, under a securities lending arrangement or a specified securities lending arrangement if

(a) the amount is deemed by subparagraph 260(8)(a)(ii) to be a dividend;

(b) the arrangement is a fully collateralized arrangement; and

(c) the security that is transferred or lent to the borrower under the securities lending arrangement is a share of a class of the capital stock of a non-resident corporation.

(2) Paragraph (d) of the definition *fully exempt interest* in subsection 212(3) of the Act is replaced by the following:

(d) an amount paid or payable or credited under a securities lending arrangement, or a specified securities lending arrangement, that is deemed by subparagraph 260(8)(a)(i) to be a payment made by a borrower to a lender of interest, if the arrangement is a fully collateralized arrangement, and

(i) the following conditions are met:

(A) the arrangement was entered into by the borrower in the course of carrying on a business outside Canada, and

(B) the security that is transferred or lent to the borrower under the arrangement is described in paragraph (b) of the definition qualified security in subsection 260(1) and issued by a non-resident issuer,

(ii) the security that is transferred or lent to the borrower under the arrangement is described in paragraph (c) of the definition *qualified security* in subsection 260(1), or

(iii) the security that is transferred or lent to the borrower under the arrangement is described in paragraph (a) or (b).

(3) Subsections (1) and (2) apply in respect of amounts paid or payable or credited on or after Budget Day.

88 (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

fully collateralized arrangement means a securities lending arrangement or a specified securities lending arrangement if, throughout the term of the arrangement, the borrower

(a) has provided the lender under the arrangement with money in an amount of, or securities described in paragraph (c) of the definition *qualified security* in subsection 260(1) that have a fair market value of, not less than 95% of the fair market value of the security that is transferred or lent under the arrangement, and

(b) is entitled to enjoy, directly or indirectly, the benefits of all or substantially all income derived from, and opportunity for gain in respect of, the money or securities provided; (*mécanisme entièrement garanti*)

specified securities lending arrangement has the meaning assigned by subsection 260(1); (*mécanisme de prêt de valeurs mobilières déterminé*)

(2) Subsection (1) is deemed to have come into force on Budget Day.

89 (1) Section 260 of the Act is amended by adding the following after subsection (1.1):

References — borrower and lender

(1.2) For the purposes of subsections (8), (8.1), (8.2), (8.3), (8.4) and (9.1) and 212(2.1) and (3), in respect of a specified securities lending arrangement,

(a) a reference to a borrower includes a transferee; and

(b) a reference to a lender includes a transferor.

(2) Subsection 260(8) of the Act is replaced by the following:

Non-resident withholding tax

(8) For the purpose of Part XIII, any amount paid or credited under a securities lending arrangement or a specified securities lending arrangement by or on behalf of the borrower to the lender

(a) as an SLA compensation payment in respect of a security that is not a qualified trust unit, is deemed

(i) to the extent of the amount of the interest paid in respect of the security, to be a payment made by the borrower to the lender of interest, and

(ii) to the extent of the amount of the dividend paid in respect of the security, to be a payment made by the borrower to the lender of a dividend payable on the security;

(b) as an SLA compensation payment in respect of a security that is a qualified trust unit, is deemed, to the extent of the amount of the underlying payment to which the SLA compensation payment relates, to be an amount paid by the trust and having the same character and composition as the underlying payment; and

(c) as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security is deemed to be a payment of interest made by the borrower to the lender.

(3) The portion of subsection 260(8.1) of the Act before paragraph (a) is replaced by the following:

Deemed fee for borrowed security

(8.1) For the purpose of paragraph (8)(c), if under a securities lending arrangement or a specified securities lending arrangement the borrower has at any time provided the lender with money, either as collateral or consideration for the security, and the borrower does not, under the arrangement, pay or credit a reasonable amount to the lender as, on account of, in lieu of payment of or in satisfaction of, a fee for the use of the security, the borrower is deemed to have, at the time that an identical or substantially identical security is or can reasonably be expected to be transferred or returned to the lender, paid to the lender under the arrangement an amount as a fee for the use of the security equal to the amount, if any, by which

(4) Subsection 260(8.2) of the Act is replaced by the following:

Effect for tax treaties — interest

(8.2) In applying subparagraph (8)(a)(i), if a securities lending arrangement or specified securities lending arrangement is a fully collateralized arrangement, any SLA compensation payment deemed to be a payment made by the borrower to the lender of interest is deemed for the purposes of any tax treaty to be payable on the security.

(5) Section 260 of the Act is amended by adding the following after subsection (8.2):

Effect for tax treaties — dividend

(8.3) In applying subparagraph (8)(a)(ii), if the security is a share of a class of the capital stock of a corporation resident in Canada (in this subsection referred to as the "Canadian share"), for the purposes of determining the rate of tax that Canada may impose on a dividend because of the dividend article of a tax treaty,

(a) any SLA compensation payment deemed to be a payment made by the borrower to the lender of a dividend is deemed to be paid by the issuer of the Canadian share and not by the borrower;

(b) the lender is deemed to be the beneficial owner of the Canadian share; and

(c) the shares of the capital stock of the issuer owned by the lender are deemed to give it less than 10% of the votes that could be cast at an annual meeting of the shareholders of the issuer and have less than 10% of the fair market value of all of the issued and outstanding shares of the capital stock of the issuer, if

(i) the securities lending arrangement or the specified securities lending arrangement is not a fully collateralized arrangement, and

(ii) the borrower and the lender are not dealing at arm's length.

Idem

(8.4) In applying subparagraph (8)(a)(ii), if the security is a share of a class of the capital stock of a non-resident corporation, for the purposes of determining the rate of tax that Canada may impose on a dividend because of the dividend article of a tax treaty, the shares of the capital stock of the borrower owned by the lender are deemed to give it less than 10% of the votes that could be cast at an annual meeting of the shareholders of the borrower, and the lender is deemed to hold less than 10% of the fair market value of all of the issued and outstanding shares of the capital stock of the borrower if

(a) the securities lending arrangement or the specified securities lending arrangement is not a fully collateralized arrangement; and

(b) the borrower and the lender are not dealing at arm's length.

(6) Subsection 260(9.1) of the Act is replaced by the following:

Non-arm's length compensation payment

(9.1) For the purpose of Part XIII, if the lender under a securities lending arrangement or a specified securities lending arrangement is not dealing at arm's length with either the borrower under the arrangement or the issuer of the security that is transferred or lent under the arrangement, or both, and subsection (8) deems an amount to be a payment of interest by a person to the lender, the lender is deemed, in respect of that payment, not to be dealing at arm's length with that person.

(7) Subsection (1) is deemed to have come into force on Budget Day.

(8) Subsections (2) to (6) apply in respect of amounts paid or credited as SLA compensation payments on or after Budget Day. However, subsections (2) to (6) do not apply in respect of amounts paid or credited as SLA compensation payments on or after Budget Day and before October 2019, if they are pursuant to a written arrangement entered into before Budget Day.

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Resolutions 87 through 89 address the taxation of cross-border securities lending arrangements ("SLAs"). Under such an SLA, a Canadian taxpayer borrows securities from a non-resident lender (typically for the purpose of making a short sale) and promises to return identical securities at a future time. If the Canadian borrower receives dividends or other amounts in respect of the securities, it must make corresponding "SLA compensation payments" to the lender.

Under current rules, if the SLA is "fully collateralized" (i.e. the borrower provides collateral to the lender of cash or government securities whose value is 95% or more of the value of the borrowed security and the borrower is entitled to enjoy the benefits of all or substantially all income derived from, and opportunity for gain in respect of, the cash or government securities), the SLA payment made to the lender is treated as a dividend. As such, it is subject to non-resident withholding tax of 25%, which is often reduced by treaty. On the other hand, if the SLA is not fully collateralized, the SLA payment is deemed to be interest paid to the lender. Interest paid to an arm's length lender (other than participating interest) is not subject to withholding tax.

Apparently, some taxpayers have attempted to avoid the withholding tax on dividends by either 1) not fully meeting the "fully collateralized" conditions, or 2) structuring security loans that fell outside of the SLA definition, so that they are not SLAs and not therefore subject to the SLA rules in any event.

Budget 2019 amends the withholding tax rules so that all SLA payments, to the extent that they are made in respect of dividends received on the borrowed securities, are deemed to be dividends, regardless of whether the SLA is fully collateralized. The amendment will also apply to such payments made under a "specified securities lending arrangement" ("specified SLA"), a concept that was introduced in the 2018 Budget to catch certain arrangements that are substantially similar to SLAs but do not meet all of the conditions of the SLA definition.

An exception is made for SLA payments made in respect of dividends paid on shares of a non-resident corporation where the SLA is a "fully collateralized arrangement". Such an arrangement is an SLA or specified SLA, under which the borrower provides collateral to the lender of cash or government securities whose value is 95% or more of the value of the borrowed security and the borrower is entitled to enjoy the benefits of all or substantially all of the income derived from, and opportunity for gain in respect of, the cash or government securities. This exception is broader than the previous exception, under which the SLA had to meet the same collateralization criteria, but the SLA also had to be entered into by the borrower in the course of carrying on a business outside of Canada.

New subsection 260(8.3) provides that for the purposes of any tax treaty, a SLA payment that is deemed to be a dividend paid to a non-resident (as discussed above)

is deemed to be a dividend paid by the issuer of the lent security to the lender. This rule ensures that the SLA payment will be treated in the same manner, under a treaty, as an actual dividend paid by the issuer to the lender. In this regard, some treaties have a preferential withholding rate where the non-resident owns 10% or more of the issuer (on a votes and value basis). Where the SLA is not fully collateralized and the borrower and lender do not deal at arm's length, the lender is deemed to own less than 10% of the issuer such that the preferential treaty rate will not apply. A similar rule applies under subsection 260(8.4) if the lent security is a share of a non-resident corporation.

Lastly, new subsection 260(9.1) provides that where the lender does not deal at arm's length with either the borrower or the issuer of the lent security, an SLA payment deemed to be interest paid to the lender is deemed to be paid by a non-arm's length person. Thus, the general arm's length exception to withholding on interest payments will not apply.

Editorial Comment on GST/HST and Excise Budget Resolutions

That it is expedient to amend the Excise Tax Act ("the Act") and other related legislation as follows:

Resolutions 1 to 5: GST/HST Health Measures

Human Ova and *In Vitro* Embryos

1 (1) Part I of Schedule VI to the *Excise Tax Act* is amended by adding the following after section 5:

6 A supply of an *ovum*, as defined in section 3 of the *Assisted Human Reproduction Act*.

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

2 (1) Schedule VII to the Act is amended by adding the following after section 12:

13 *In vitro embryos*, as defined in section 3 of the *Assisted Human Reproduction Act*.

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

3 (1) Part I of Schedule X to the Act is amended by adding the following after section 26:

27 *In vitro embryos*, as defined in section 3 of the *Assisted Human Reproduction Act*.

(2) Subsection (1) is deemed to have come into force on the day after Budget Day.

Foot Care Devices Supplied on the Order of a Podiatrist or Chiropodist

4 (1) Paragraphs (a) and (b) of the definition *specified professional* in section 1 of Part II of Schedule VI to the Act are replaced by the following:

(a) in respect of a supply included in any of sections 23, 24.1 and 35,

(i) a person that is entitled under the laws of a province to practise the profession of medicine, physiotherapy, occupational therapy, chiropody or podiatry, or

(ii) a registered nurse, and

(b) in respect of any other supply,

(i) a person that is entitled under the laws of a province to practise the profession of medicine, physiotherapy or occupational therapy, or

(ii) a registered nurse.

(2) Subsection (1) applies to any supply made after Budget Day.

Multidisciplinary Health Care Services

5 (1) Part II of Schedule V to the Act is amended by adding the following after section 7.3:

7.4 A supply of a service if all or substantially all of the consideration for the supply is reasonably attributable to two or more particular services, each of which meets the following conditions:

(a) the particular service is rendered in the course of making the supply; and

(b) a supply of the particular service would be a supply included in any of sections 5 to 7.3, if the particular service were supplied separately.

(2) Subsection (1) applies to any supply made after Budget Day.

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Zero-Rated Fertility Supplies

Budget 2019 proposes to zero rate certain biologicals, medical devices, and health care services, particularly:

- Human ova and in vitro embryos
- Supplies and imports of human ova
- Imports of human in vitro embryos

This measure applies to supplies and imports of human ova and imports of human in vitro embryos made after March 19, 2019.

Foot Care Devices Ordered by a Podiatrist or Chiropodist

Currently, certain foot care devices (e.g., orthopedic devices anti embolic stockings) are zero-rated when supplied on the written order of a physician, nurse, physiotherapist, or occupational therapist. However, while the services rendered by podiatrists and chiropodists are exempted under Schedule V of the Excise Tax Act. However, they are not among the list of practitioners on whose order certain medical devices can be sold on a zero-rated basis. Budget 2019 proposes to add licenced podiatrists and chiropodists to the list of practitioners on whose order supplies of foot care devices are zero-rated.

Multidisciplinary Health Care Services.

Health Care services rendered by physicians, occupational therapists, or physiotherapists are generally exempt when rendered separately. However, there is currently no provision under the GST/HST that explicitly relieves the service of a multidisciplinary health care team that combines members of the various practices.

Budget 2019 proposes to exempt from the GST/HST the supply of these multidisciplinary health services. The exemption will apply provided that all or substantially all – generally 90 per cent or more – of the service is rendered by such health professionals acting within the scope of their profession.

6 (1) The definition *passenger vehicle* in subsection 123(1) of the Act is replaced by the following:

passenger vehicle means a *passenger vehicle* or a *zero-emission passenger vehicle*, as those terms are defined in subsection 248(1) of the *Income Tax Act*; (*voiture de tourisme*)

(2) Subsection (1) is deemed to have come into force on Budget Day.

7 (1) The portion of the description of A in paragraph 201(b) of the French version of the Act before subparagraph (i) is replaced by the following:

A représente la taxe qui serait payable par lui relativement à la voiture s'il l'avait acquise à l'endroit ci-après au moment donné pour une contrepartie égale au montant qui serait, selon celui des alinéas 13(7)g) à i) de la *Loi de l'impôt sur le revenu* qui est applicable relativement à la voiture, réputé être, pour l'application de l'article 13 de cette loi, le coût en capital pour un contribuable d'une voiture de tourisme à laquelle l'alinéa en cause s'applique s'il n'était pas tenu compte de l'élément B des formules figurant à l'alinéa 7307(1)b) et au paragraphe 7307(1.1) du *Règlement de l'impôt sur le revenu* :

(2) The portion of the description of A in paragraph 201(b) of the English version of the Act after subparagraph (ii) is replaced by the following:

for consideration equal to the amount that would, under whichever of paragraphs 13(7)(g) to (i) of the *Income Tax Act* is applicable in respect of the vehicle, be deemed to be, for the purposes of section 13 of that Act, the capital cost to a taxpayer of a passenger vehicle in respect of which that paragraph applies if the formulae in paragraph 7307(1)(b) and subsection 7307(1.1) of the *Income Tax Regulations* were read without reference to the description of B,

(3) Subsections (1) and (2) apply to any passenger vehicle that is acquired, imported or brought into a participating province on or after Budget Day.

8 (1) Subsection 202(1) of the Act is replaced by the following:

Improvement to passenger vehicle

202 (1) If the consideration paid or payable by a registrant for an improvement to a passenger vehicle of the registrant increases the cost to the registrant of the vehicle to an amount that exceeds the amount that would, under whichever of paragraphs 13(7)(g) to (i) of the *Income Tax Act* is applicable in respect of the vehicle, be deemed to be, for the purposes of section 13 of that Act, the capital cost to a taxpayer of a passenger vehicle in respect of which that paragraph applies if the formulae in paragraph 7307(1)(b) and subsection 7307(1.1) of the *Income Tax Regulations* were read without reference to the description of B, the tax calculated on that excess shall not be included in determining an input tax credit of the registrant for any reporting period of the registrant.

(2) Subsection (1) applies to any improvement to a passenger vehicle that is acquired, imported or brought into a participating province on or after Budget Day.

9 (1) Subparagraph (b)(ii) of the definition *imported taxable supply* in section 217 of the Act is replaced by the following:

(ii) the recipient is not acquiring the property for consumption, use or supply exclusively in the course of its commercial activities or the property is a passenger vehicle that the recipient is acquiring for use in Canada as capital property in its commercial activities and that has a capital cost to the recipient exceeding the amount deemed under any of paragraphs 13(7)(g) to (i) of the *Income Tax Act* to be the capital cost of the vehicle to the recipient for the purposes of section 13 of that Act;

(2) Subparagraph (b.01)(ii) of the definition *imported taxable supply* in section 217 of the Act is replaced by the following:

(ii) the recipient is not acquiring the property for consumption, use or supply exclusively in the course of its commercial activities or the property is a passenger vehicle that the recipient is acquiring for use in Canada as capital property in its commercial activities and that has a capital cost to the recipient exceeding the amount deemed under any of paragraphs 13(7)(g) to (i) of the *Income Tax Act* to be the capital cost of the vehicle to the recipient for the purposes of section 13 of that Act;

(3) Subparagraph (b.1)(ii) of the definition *imported taxable supply* in section 217 of the Act is replaced by the following:

(ii) the recipient is not acquiring, as the recipient of the taxable supply, the property for consumption, use or supply exclusively in the course of its commercial activities or the property is a passenger vehicle that the recipient is acquiring for use in Canada as capital property in its commercial activities and that has a capital cost to the recipient exceeding the amount deemed under any of paragraphs 13(7)(g) to (i) of the *Income Tax Act* to be the capital cost of the vehicle to the recipient for the purposes of section 13 of that Act;

(4) Subsections (1) to (3) apply in respect of supplies made on or after Budget Day.

10 (1) The portion of subsection 235(1) of the French version of the Act before the formula is replaced by the following:

Taxe nette en cas de location de voiture de tourisme

235 (1) Lorsque la taxe relative aux fournitures d'une voiture de tourisme, effectuées aux termes d'un bail, devient payable par un inscrit, ou est payée par lui sans être devenue payable, au cours de son année d'imposition, et que le total de la contrepartie des fournitures qui serait déductible dans le calcul du revenu de l'inscrit pour l'année pour l'application de la *Loi de l'impôt sur le revenu* s'il était un contribuable aux termes de cette loi et s'il n'était pas tenu compte de l'article 67.3 de cette loi, excède le montant, relatif à cette contrepartie, qui serait déductible dans le calcul du revenu de l'inscrit pour l'année pour l'application de cette loi s'il était un contribuable aux termes de cette loi et s'il n'était pas tenu compte de l'élément B des formules figurant à l'alinéa 7307(1)b), au paragraphe 7307(1.1) et à l'alinéa 7307(3)b) du *Règlement de l'impôt sur le revenu*, le montant obtenu par la formule ci-après est ajouté dans le calcul de la taxe nette de l'inscrit pour la période de déclaration indiquée :

(2) Paragraph 235(1)(b) of the English version of the Act is replaced by the following:

(b) the amount in respect of that consideration that would be deductible in computing the registrant's income for the year for the purposes of the *Income Tax Act*, if the registrant were a taxpayer under that Act and the formulae in paragraph 7307(1)(b), subsection 7307(1.1) and paragraph 7307(3)(b) of the *Income Tax Regulations* were read without reference to the description of B,

(3) Subsections (1) and (2) are deemed to have come into force on Budget Day.

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Budget 2019 proposes many amendments making Zero-Emission vehicles more affordable as well as supporting Business Investment in such vehicles. Qualifying vehicles will include electric battery, plug-in hybrid (with a battery capacity of at least 15 kWh) or hydrogen fuel cell vehicles, including light-, medium- and heavy-duty vehicles.

Currently, Capital costs limit for Income Tax deductibility purposes is limited at $30,000 plus sales tax. This limit is increased to $55,000 for qualifying zero-emission vehicles. The $30,000 threshold is mirrored in the Excise Tax Act for purposes of claiming input tax credits ("ITCs"). Budget 2019 proposes equivilent amendment in order to increase to $55,000 the maximum value upon which ITCs may be claimed with respect to the purchase or leasing of qualifying zero-emission vehicles.

That it is expedient to amend the Excise Act, 2001 as follows:

Resolutions 1 to 6: Cannabis Taxation

1 (1) The description of B in the definition *dutiable amount* in section 2 of the *Excise Act, 2001* is replaced by the following:

B is the percentage set out in paragraph 2(a) of Schedule 7, and

(2) Paragraphs (a) and (b) of the definition *low-THC cannabis product* in section 2 of the Act are replaced by the following:

(a) consisting entirely of

(i) fresh cannabis,

(ii) dried cannabis, or

(iii) oil that contains anything referred to in item 1 or 3 of Schedule 1 to the *Cannabis Act* and that is in liquid form at a temperature of 22 ± 2°C; and

(b) any part of which does not have a maximum yield of more than 0.3% THC w/w, taking into account the potential to convert THCA into THC, as determined in accordance with the *Cannabis Act*. (*produit du cannabis à faible teneur en THC*)

(3) Section 2 of the Act is amended by adding the following in alphabetical order:

dried cannabis has the same meaning as in subsection 2(1) of the *Cannabis Act*. (*cannabis séché*)

fresh cannabis has the same meaning as in subsection 1(1) of the *Cannabis Regulations*. (*cannabis frais*)

THCA means delta-9-tetrahydrocannabinolic acid. (*ATHC*)

total THC of a cannabis product means the total quantity of THC, in milligrams, that the cannabis product could yield, taking into account the potential to convert THCA into THC, as determined in accordance with the *Cannabis Act*. (*THC total*)

(4) Subsections (1) to (3) come into force, or are deemed to have come into force, on May 1, 2019.

2 (1) Section 172 of the Act is replaced by the following:

Application of interest provisions

172 For greater certainty, if an amendment to this Act, or an amendment or enactment that relates to this Act, comes into force on, or applies as of, a particular day that is before the day on which the amendment or enactment is assented to or promulgated, the provisions of this Act and of the *Customs Act*, as the case may be, that relate to the calculation and payment of interest apply in respect of the amendment or enactment as though it had been assented to or promulgated on the particular day.

(2) Subsection (1) comes into force, or is deemed to have come into force, on May 1, 2019.

3 (1) Paragraph (b) of the description of A in section 233.1 of the Act is replaced by the following:

(b) the amount obtained by multiplying the fair market value, at the time the contravention occurred, of the cannabis products to which the contravention relates by the percentage set out in paragraph 4(a) of Schedule 7, as that paragraph read at that time;

(2) Subsection (1) comes into force, or is deemed to have come into force, on May 1, 2019.

4 (1) Paragraph (b) of the description of A in section 234.1 of the Act is replaced by the following:

(b) the amount obtained by multiplying the fair market value, at the time the contravention occurred, of the cannabis products to which the contravention relates by the percentage set out in paragraph 4(a) of Schedule 7, as that paragraph read at that time;

(2) Subsection (1) comes into force, or is deemed to have come into force, on May 1, 2019.

5 (1) Subparagraphs 238.1(2)(b)(i) and (ii) of the Act are replaced by the following:

(i) the dollar amount set out in subparagraph 1(a)(i) of Schedule 7,

(ii) if the stamp is in respect of a specified province, three times the dollar amount set out in subparagraph 1(a)(i) of Schedule 7, and

(2) Subsection (1) comes into force, or is deemed to have come into force, on May 1, 2019.

6 (1) Sections 1 to 4 of Schedule 7 to the Act are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.25 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.075 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.25 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.25 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0025 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 2.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 2.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 2.5%; and

(b) in any other case, 0%.

(2) Subsection (1) comes into force, or is deemed to have come into force, on May 1, 2019 except that for the purpose of determining the amount of duty imposed on or after that day under subsection 158.19(2) of the Act on any cannabis product that is packaged before that day, section 2 of Schedule 7 to the Act is to be read as it did on April 30, 2019.

DENTONS CANADA LLP COMMENTARY

Budget 2019 proposes that edible cannabis, cannabis extracts, including cannabis oils and cannabis topicals be subject to excise duties at a flat rate based on the quantity of total tetrahydrocannabinol (THC). This duty will be imposed at the time of packaging and become payable when it is delivered to a non-cannabis licensee.

The proposed THC-based rate would alleviate compliance issues that producers have encountered with respect to the tracking of the quantity of cannabis material contained in cannabis oils, and would allow producers and administrators to more easily calculate and verify excise duties for cannabis edibles, extracts, and topicals. This will be facilitated by requirements in the labelling regulations under the Cannabis Act that mandate the display of total THC content on cannabis products packaging.

The proposed changes will come into effect on May 1, 2019.

Draft Amendments to Various Regulations

Resolutions 1 to 2: Business Investment in Zero-Emission Vehicles

Streamlined Accounting (GST/HST) Regulations

1 (1) The portion of subsection 21.3(4) of the *Streamlined Accounting (GST/HST) Regulations* before paragraph (a) is replaced by the following:

(4) For the purposes of this Part, if any of paragraphs 13(7)(g) to (i) of the *Income Tax Act* deems an amount to be the capital cost to a registrant of a passenger vehicle for the purposes of section 13 of that Act, the amount, if any, by which

(2) The description of B in paragraph 21.3(4)(b) of the Regulations is replaced by the following:

B is the amount deemed by any of paragraphs 13(7)(g) to (i) of the *Income Tax Act* to be the capital cost to the registrant of the vehicle for the purposes of section 13 of that Act,

2 Section 1 is deemed to have come into force on Budget Day.

Resolutions 3 to 17: Cannabis Taxation

Draft Excise Duties on Cannabis Regulations

3 Subparagraph 2(b)(i) of the draft *Excise Duties on Cannabis Regulations*, as published by the Minister of Finance on September 17, 2018, is replaced by the following:

(i) that contains a known quantity or concentration of a chemical component of cannabis, such as cannabidiol, cannabidiolic acid, THCA or THC,

4 (1) Subparagraph 3(1)(a)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 1, and

(2) Paragraphs 3(1)(b) and (c) of the draft Regulations are replaced by the following:

(b) in the case of Quebec, the percentage set out in paragraph 2(a) of Schedule 2;

(c) in the case of Nova Scotia, the percentage set out in paragraph 2(a) of Schedule 3;

(3) Subparagraph 3(1)(d)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 4, and

(4) Paragraph 3(1)(e) of the draft Regulations is replaced by the following:

(e) in the case of British Columbia, the percentage set out in paragraph 2(a) of Schedule 5;

(5) Subparagraph 3(1)(f)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 6, and

(6) Subparagraph 3(1)(g)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 7, and

(7) Subparagraph 3(1)(h)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 8, and

(8) Subparagraph 3(1)(i)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 9, and

(9) Paragraphs 3(1)(j) and (k) of the draft Regulations are replaced by the following:

(j) in the case of Yukon, the percentage set out in paragraph 2(a) of Schedule 10;

(k) in the case of the Northwest Territories, the percentage set out in paragraph 2(a) of Schedule 11; and

(10) Subparagraph 3(1)(l)(i) of the draft Regulations is replaced by the following:

(i) the percentage set out in paragraph 2(a) of Schedule 12, and

5 Sections 1 to 4 of Schedule 1 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

6 Sections 1 to 4 of Schedule 2 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

7 Sections 1 to 4 of Schedule 3 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

8 Sections 1 to 4 of Schedule 4 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

9 Sections 1 to 4 of Schedule 5 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

10 Sections 1 to 4 of Schedule 6 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

11 Sections 1 to 4 of Schedule 7 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

12 Sections 1 to 4 of Schedule 8 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

13 Sections 1 to 4 of Schedule 9 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

14 Sections 1 to 4 of Schedule 10 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

15 Sections 1 to 4 of Schedule 11 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

16 Sections 1 to 4 of Schedule 12 to the draft Regulations are replaced by the following:

1 Any cannabis product produced in Canada or imported: the amount equal to

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, the total of

(i) $0.75 per gram of flowering material included in the cannabis product or used in the production of the cannabis product,

(ii) $0.225 per gram of non-flowering material included in the cannabis product or used in the production of the cannabis product,

(iii) $0.75 per viable seed included in the cannabis product or used in the production of the cannabis product, and

(iv) $0.75 per vegetative cannabis plant included in the cannabis product or used in the production of the cannabis product; and

(b) in any other case, $0.0075 per milligram of the total THC of the cannabis product.

2 Any cannabis product produced in Canada: the amount obtained by multiplying the dutiable amount for the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

3 Any imported cannabis product: the amount obtained by multiplying the value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

4 Any cannabis product taken for use or unaccounted for: the amount obtained by multiplying the fair market value of the cannabis product by

(a) in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, 7.5%; and

(b) in any other case, 0%.

17 Sections 3 to 16 come into force, or are deemed to have come into force, on May 1, 2019 except that in applying subsection 5(2) of the draft Regulations for the purpose of determining the amount of duty imposed on or after that day under subsection 158.2(1) of the *Excise Act, 2001* on any cannabis product that is packaged before that day, Schedules 1 to 12 of the draft Regulations are to be read as they did on April 30, 2019.

Other Measures

Employee Stock Options

Budget 2019 announces the government's intention to reform the current rules for the taxation of employee stock options. Under current rules, most employee stock option benefits receive tax-preferable treatment, in that they are only one-half taxable, similar to the taxation of capital gains. The government proposes to apply a $200,000 annual cap on employee stock option grants (based on the fair market value of the underlying shares) may receive tax-preferred treatment for employees of large, long-established, mature firms. Further details of this proposal will be released in the summer of 2019. Any changes would be on a going-forward basis and would not apply to options granted before the announcement of the legislative proposals.

Additional Financial Resources for the CRA

Budget 2019 proposes $65.8 million in funding over 5 years to update the CRA's IT systems, which includes replacing legacy systems. The Budget also proposes $50 million of funding over 5 years to create four new dedicated residential and commercial real estate audit teams in high-risk regions to ensure tax compliance.

Intergenerational Business Transfers

The government is currently consulting with business owners to develop new proposals to better accommodate intergenerational transfers of businesses.

Medical Expense Tax Credit and Fertility Costs

The government will review the tax treatment of fertility-related medical expenses for the medical expense tax credit, for fairness and consistency, and in light of work being undertaken by Health Canada.

Previously-Announced Measures

Budget 2019 confirms the Government's intention to proceed with the following previously announced tax measures:

- Income tax measures announced on November 21, 2018 in the Fall Economic Statement to
  - provide for the Accelerated Investment Incentive,
  - allow the full cost of machinery and equipment used in the manufacturing and processing of goods, and the full cost of specified clean energy equipment, to be written off immediately,
  - extend the 15-per-cent mineral exploration tax credit for an additional five years, and
  - ensure that business income of communal organizations retains its character when it is allocated to members of the communal organization for tax purposes;
- Regulatory proposals released on September 17, 2018 relating to the taxation of cannabis;

- Remaining legislative and regulatory proposals released on July 27, 2018 relating to the Goods and Services Tax/Harmonized Sales Tax;
- The measures referenced in Budget 2018 to support employees who must reimburse a salary overpayment to their employers due to a system, administrative or clerical error;
- The income tax measures announced in Budget 2018 to implement enhanced reporting requirements for certain trusts to provide additional information on an annual basis;
- The income tax measures announced in Budget 2018 to facilitate the conversion of Health and Welfare Trusts to Employee Life and Health Trusts;
- Measures confirmed in Budget 2016 relating to the Goods and Services Tax/ Harmonized Sales Tax joint venture election;
- The income tax measures announced in Budget 2016 expanding tax support for electric vehicle charging stations and electrical energy storage equipment; and
- The income tax measures announced in Budget 2016 on information reporting requirements for certain dispositions of an interest in a life insurance policy.

Budget 2019 also reaffirms the Government's commitment to move forward as required with technical amendments to improve the certainty of the tax system.

Table of Effective Dates—2019

Income Tax Act Measures		
Resolutions 1 to 5	**Canada Training Credit**	Applies to 2019 and subsequent years
Resolution 6	**Home Buyers' Plan**	Applies to 2019 and subsequent years in respect of amounts received after March 19, 2019 / applicable to withdrawals made after 2019
Resolution 7	**Changes in Use Rules for Multi-Unit Residential Properties**	Applies on or after March 19, 2019
Resolution 8	**Permitting Additional Types of Annuities under Registered Plans**	Applies to 2020 and subsequent taxation years
Resolution 9	**Registered Disability Savings Plan - Cessation of Eligibility for the Disability Tax Credit**	Applies to 2020 and subsequent taxation years
Resolutions 10 and 11	**Tax Measures for Kinship Care Providers**	Applies to 2009 and subsequent taxation years
Resolutions 12 to 16	**Donations of Cultural Property**	Effective on or after March 19, 2019
Resolution 17	**Medical Expense Tax Credit**	Effective October 17, 2018
Resolution 18	**Contributions to a Specified Multi-Employer Plan for Older Members**	Effective for contributions made after 2019 to collective bargaining agreements entered into after 2019.
Resolutions 19 and 20	**Pensionable Service Under an Individual Pension Plan**	Pensionable service credited under an IPP on or after March 19, 2019
Resolution 21	**Mutual Funds: Allocation to Redeemers Methodology**	Applies to taxation years that begin on or after March 19, 2019
Resolution 22	**Carrying on Business in a Tax-Free Savings Account**	Applies for 2019 and subsequent taxation years
Resolutions 23 to 39	**Electronic Delivery of Requirements for Information**	January 1, 2020
Resolutions 40 to 63	**Support for Canadian Journalism**	Resolutions 40-51 (Qualified Donee Status) come into force on January 1, 2020; Resolutions 52-60 (Refundable Labour Tax Credit) come into force on January 1, 2019; Resolutions 61-63 (Personal Income Tax Credit for Digital Subscriptions) apply to the 2020 and subsequent taxation years
Resolutions 64 to 74	**Business Investment in Zero-Emission Vehicles**	March 19, 2019
Resolution 75	**Small Business Deduction - Farming and Fishing**	Applies to taxation years that begin after March 21, 2016

Resolutions 76 to 78	**Scientific Research and Experimental Development Program**	Applies to taxation years ending on or after March 19, 2019
Resolution 79	**Canadian-Belgian Co-productions-Canada Film or Video Production Tax Credit**	March 12, 2018
Resolution 80	**Character Conversion Transactions**	Apply to transactions entered into on or after March 19, 2019, and after December 2019 it will apply to transactions that were entered into before March 19, 2019, including those transactions that extended or renewed the terms of the agreement on or after March 19, 2019.
Resolutions 81 and 82	**Transfer Pricing Measures**	Applies to taxation years that begin on or after March 19, 2019
Resolutions 83 to 86	**Foreign Affiliate Dumping**	Applies in respect of transactions or events that occur on or after March 19, 2019
Resolutions 87 to 89	**Cross-Border Share Lending Arrangements**	Applies on or after March 19, 2019, with grandfathering for payments made before October 2019 in respect of arrangements entered into before March 19, 2019

Excise Tax Act Measures		
Resolutions 1 to 5	**GST/HST Health Measures**	March 20, 2019
Resolutions 6 to 10	**Business Investment in Zero-Emission Vehicles**	March 19, 2019

Excise Act, 2001 Measures		
Resolutions 1 to 4	**Cannabis Taxation**	May 1, 2019

Draft Amendments to Various Regulations		
1-2	**Streamlined Accounting (GST/HST) Regulations – Business Investment in Zero-Emission Vehicles**	March 19, 2019
3-17	**Draft Excise Duties on Cannabis Regulations – Cannabis Taxation**	May 1, 2019

Department of Finance News Release

Budget 2019: Investing in the Middle Class to Grow Canada's Economy

March 19, 2019 - Ottawa, Ontario - Department of Finance Canada

Since 2015, hard-working Canadians have proven what has long been understood: a strong economy starts with a strong middle class.

Nearly four years ago, Canadians chose a plan to invest in the middle class and offer real help to people working hard to join it.

Investing in the middle class means investing in people—with more help for those who need it, and less for those who don't. It means building a better Canada—a stronger, more connected country—and it means better opportunities for people today, and the promise of a better future, even in a world of constant change.

The Government's investments in the middle class are paying off. Canada's economy is strong and growing, more Canadians are working, and families have more money to save or spend each month.

Building on this momentum, Finance Minister Bill Morneau today tabled Budget 2019—Investing in the Middle Class.

With Budget 2019, the Government is continuing to invest to grow the economy for the long term, in a fiscally responsible way—ensuring that Canada's federal debt-to-GDP ratio continues on a steady downward track.

In Budget 2019, the Government of Canada proposes to:

- **Make homeownership more affordable for first-time buyers** by implementing a First-Time Home Buyer Incentive, a shared equity mortgage program that would reduce the mortgage payments required to own a home; and by providing greater access to their Registered Retirement Savings Plan savings to buy a home.
- **Help workers gain new skills** with the creation of the new Canada Training Benefit, a benefit that will give workers money to help pay for training, provide income support during training, and, with the cooperation of the provinces and territories, offer job protection so that workers can take the time they need to keep their skills relevant and in-demand.
- **Prepare young Canadians for good jobs** by helping make education more affordable through lowered interest rates on Canada Student Loans, making the six-month grace period interest-free after a student loan borrower leaves school, and creating up to 84,000 new student work placements per year by 2023-24.
- **Help Canadians with the cost of prescription drugs** by taking steps towards a national pharmacare plan, starting with creating a new Canadian Drug Agency that could lower Canadians' drug costs by as much as $3 billion per year, developing a national formulary for prescription drugs, and a national strategy for high-cost drugs for rare diseases.

- **Support low-income Canadian seniors who choose to stay in the workforce** by enhancing the Guaranteed Income Supplement earnings exemption so that they can effectively keep more of their hard-earned income.
- **Support municipalities' local infrastructure priorities** by proposing a one-time top-up of $2.2 billion through the federal Gas Tax Fund that will double the Government's commitment to municipalities in 2018-19, and make sure communities have the funds they need to pay for crucial repairs and other important local projects.
- **Give all Canadians access to high-speed internet** so all Canadian homes and businesses have access to 50 Mbps high-speed internet no matter where they live—including people and businesses in rural, remote and northern communities.
- **Lower Canadians' energy costs** by partnering with the Federation of Canadian Municipalities to increase energy efficiency in residential, commercial and multi-use buildings, and by introducing a new incentive for buying electric battery or hydrogen fuel cell vehicles with a manufacturer's suggested retail price under $45,000.
- **Advance reconciliation with Indigenous Peoples** through new measures to help improve the quality of life for First Nations, Inuit, and Métis Peoples in Canada and advance self-determination with investments to improve water quality; preserve, revitalize, and promote Indigenous languages; improve the quality of education and health care for Indigenous children in a culturally relevant way; and promote Indigenous entrepreneurship and business.

With the new investments in Budget 2019, combined with lower taxes, more money in their pockets each month and more good jobs, there is good reason for middle class Canadians to feel more confident about what the future holds for themselves and their families.

Quote

"Nearly four years ago, Canadians chose a plan that invested in the things that matter most to them: good, well-paying jobs; more help for families with the high cost of living; strong, connected communities; and better opportunities for our children and grandchildren. These are Canadians' priorities, and they are ones our Government shares. Budget 2019 is the next step in our plan to invest in the middle class and build a strong economy that works for the middle class—and for all Canadians."

Bill Morneau, Minister of Finance

Quick Facts

- Over the past four years, the Government has focused on strengthening and growing the middle class, and offering real help to people working hard to join it, so that everyone has a real and fair chance at success.
- Under the Government's plan, hard-working Canadians have created over 900,000 new jobs, most of them full-time, driving the unemployment rate to its

lowest levels in more than 40 years. This includes especially strong employment gains by women.

- The Canada Child Benefit is helping families with the high cost of raising children by putting more money in the pockets of nine out of ten Canadian families, and helping to lift nearly 300,000 children out of poverty.
- More than nine million Canadians are benefitting from the Government's middle class tax cut, which gives them more money to save or spend on the things they need.
- An enhanced Canada Pension Plan, which will raise the maximum CPP retirement benefit by up to 50 per cent over time, is giving today's and future Canadian workers greater income security when they retire.
- Historic investments in infrastructure, including the National Housing Strategy which is helping more Canadians find a safe and affordable place to call home.

Related Documents

- Budget Plan
- Budget Speech
- Backgrounders
- Gender Book
- Youth Book
- Fiscal Monitor (Financial Results for January 2019)

Media may contact:

Pierre-Oliver Herbert
Acting Director of Communications
Office of the Minister of Finance
pierre-olivier.herbert@canada.ca
613-286-4285

Media Relations
Department of Finance Canada
fin.media-media.fin@canada.ca
613-369-4000

General Enquiries

Phone: 613-369-3710
Facsimile: 613-369-4065
TTY: 613-369-3230
E-mail: *fin.financepublic-financepublique.fin@canada.ca*

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