Wolters Kluwer

大成 DENTONS

dentons.com

Special Report: Canada Federal Budget 2018

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 2018 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 4: Canada Workers Benefit

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), 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 2019 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 2019 taxation year in respect of the amounts of $1,355, $2,335, $12,820, $17,025, $700, $24,111, and $36,483.

2 (1) The descriptions of A and B in subsection 122.7(2) of the Act are replaced by the following:

A is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, the lesser of $1,355 and 26% of the amount, if any, by which the individual's working income for the taxation year exceeds $3,000, or

(b) if the individual had an eligible spouse or an eligible dependant, for the taxation year, the lesser of $2,335 and 26% of the amount, if any, by which the total of the working incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds $3,000; and

B is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 12% of the amount, if any, by which the adjusted net income of the individual for the taxation year exceeds $12,820, or

(b) if the individual had an eligible spouse or an eligible dependant, for the taxation year, 12% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds $17,025.

(2) The descriptions of C and D in subsection 122.7(3) of the Act are replaced by the following:

C is the lesser of $700 and 26% of the amount, if any, by which the individual's working income for the taxation year exceeds $1,150; and

D is

(a) if the individual had neither an eligible spouse nor an eligible dependant, for the taxation year, 12% of the amount, if any, by which the individual's adjusted net income for the taxation year exceeds $24,111,

(b) if the individual had an eligible spouse for the taxation year who was not entitled to deduct an amount under subsection 118.3(1) for the taxation year, or had an eligible dependant for the taxation year, 12% of the amount, if any, by which the total of the adjusted net incomes of the individual and, if applicable, of the eligible spouse, for the taxation year, exceeds $36,483, or

(c) if the individual had an eligible spouse for the taxation year who was entitled to deduct an amount under subsection 118.3(1) for the taxation year, 6% of the amount, if any, by which the total of the adjusted net incomes of the individual and of the eligible spouse, for the taxation year, exceeds $36,483.

(3) Subsections (1) and (2) come into force on January 1, 2019.

3 Sections 67 and 69 of the *Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act* are repealed and are deemed to have never come into force.

4 The Act is further modified to give effect to the proposals relating to improving access to the Canada Workers Benefit described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Low-income individuals earning employment or business income during a year may claim a refundable tax credit called the Working Income Tax Benefit ("WITB"). The WITB is made up of two components: a basic amount available to any taxpayer and a supplement that is available only to a taxpayer who is eligible to claim the disability tax credit.

Budget 2018 proposes to rename the credit to the Canada Workers Benefit and enhance the credit by increasing the credit rate from 25% to 26%, and decreasing the phase-out rate (when income exceeds a threshold) from 14% to 12%. As a result, the maximum annual benefit will increase to $1,355 for single taxpayers (up from $1,192), and to $2,335 for families and single parents (up from $2,165).

Budget 2018 also proposes to enhance the disability supplement. The maximum supplement is increased to $700, and the income levels where the phase-out begins are also increased. The phase-out rates with respect to the supplement are also decreasing.

This enhancement will apply to 2019 and later years, and the amounts will continue to be indexed after 2019.

Budget 2018 also proposes to allow the CRA to determine if an individual is eligible for the Canada Workers Benefit where he or she did not apply for the benefit on his or her tax return. Currently, an eligible taxpayer must complete Schedule 6 to apply for the credit. This change will also apply to 2019 and later years.

To assist with administering the Canada Workers Benefit, the Budget proposes to require designated educational institutions to report prescribed student information to the CRA. This information will also be used to administer the Lifelong Learning Plan and scholarship income exemption, for example.

Resolution 5: Medical Expense Tax Credit — Eligible Expenditures

5 (1) The portion of paragraph 118.2(2)(l) of the Act before subparagraph (ii) is replaced by the following:

(l) on behalf of the patient who is blind or profoundly deaf or has severe autism, severe diabetes, severe epilepsy, severe mental impairment or a severe and prolonged impairment that markedly restricts the use of the patient's arms or legs,

(i) for an animal that is

(A) specially trained to

(I) in the case of severe mental impairment, perform specific tasks (excluding, for greater certainty, the provision of emotional support) that assist the patient in coping with the impairment, and

(II) in all other cases, assist the patient in coping with the impairment, and

(B) provided by a person or organization one of whose main purposes is such training of animals,

(2) Subsection (1) applies in respect of expenses incurred after 2017.

DENTONS CANADA LLP COMMENTARY

Currently an individual may claim a medical tax credit of 15% of eligible expenses less an amount equal to the lesser of 3% of net income and $2,302 (for 2018). Budget 2018 proposes to allow as an expense, the cost of an animal trained to perform certain tasks for an individual who faces certain impairments to assist them in coping with their impairment along with certain other related expenses.

These measures will apply to qualifying expenses incurred after December 31, 2017.

Resolution 6: Registered Disability Savings Plan — Qualifying Plan Holders

6 Clause (a)(ii)(B.1) of the definition *disability savings plan* in subsection 146.4(1) of the Act is replaced by the following:

> **(B.1)** if the arrangement is entered into before 2024, a qualifying family member in relation to the beneficiary who, at the time the arrangement is entered into, is a qualifying person in relation to the beneficiary,

DENTONS CANADA LLP COMMENTARY

Budget 2018 proposes to extend the temporary measure which allows a qualifying family member to be the plan holder of an individual's registered disability savings plan where the adult individual does not have an appointed legal representative to the end of 2023. Currently this measure was set to expire at the end of 2018.

This measure will allow provinces extended time to streamline their process surrounding the appointment of a trusted person to manage the resources of a person who lacks that contractual capacity.

Resolution 7: Deductibility of Employee Contributions to the Enhanced Portion of the Quebec Pension Plan

7 (1) Clause 60(e)(ii)(A) of the Act is replaced by the following:

> **(A)** the total of all amounts each of which is an amount payable by the taxpayer in respect of self-employed earnings for the year as a contribution under subsection 10(1.1) or (1.2) of the *Canada Pension Plan* or as a like contribution under a *provincial pension plan*, as defined in section 3 of that Act, and

(2) Subparagraph 60(e.1)(i) of the Act is replaced by the following:

> **(i)** the total of all amounts each of which is an amount payable by the taxpayer for the year as an employee's contribution under subsection 8(1.1) or (1.2) of the *Canada Pension Plan* or as a like contribution under a *provincial pension plan*, as defined in section 3 of that Act, and

(3) Subsections (1) and (2) come into force on January 1, 2019.

DENTONS CANADA LLP COMMENTARY

In response to the federal government's expansion of the Canada Pension Plan, the government of Quebec announced that the Quebec Pension Plan will be enhanced in a similar manner. Although the base QPP contributions are eligible for a tax credit pursuant to section 118.7 of the ITA, Budget 2018 announced that the employee share of the enhanced QPP contribution will be deductible from income effective for 2019 and subsequent years.

This measure will apply to 2019 and subsequent taxation years.

Resolutions 8 to 10: Child Benefits

Status Indians

8 (1) Paragraph (e) of the definition *eligible individual* in section 122.6 of the Act is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of subparagraph (iv) and by adding the following after subparagraph (iv):

(v) is an Indian within the meaning of the *Indian Act*,

(2) Subsection (1) is deemed to have come into force on January 1, 2005.

9 Section 28 of the *Budget Implementation Act, 2016, No. 1* is repealed and is deemed to have never come into force.

Provincial/Territorial Data Access

10 (1) Paragraph 241(4)(j.1) of the Act is replaced by the following:

(j.1) provide taxpayer information to an official or a designated person solely for the purpose of permitting the making of an adjustment to a social assistance payment made on the basis of a means, needs or income test if the purpose of the adjustment is to take into account

(i) the amount determined in respect of a person for C in subsection 122.61(1), as it read before July 2018, in respect of a *base taxation year* (as defined in section 122.6) before 2017, or

(ii) an amount determined in respect of a person under subsection 122.61(1) or (1.1) in respect of a *base taxation year* (as defined in section 122.6) after 2014;

(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2018.

DENTONS CANADA LLP COMMENTARY

The Canada Child Benefit introduced in 2016 replaced the previous child benefit system, which consisted of the Canada Child Tax Benefit, the National Child Benefit supplement and the Universal Child Care Benefit. The Canada Child Benefit, as announced in Budget 2016, was applicable to foreign born status Indians, who were neither Canadian citizens nor permanent residents of Canada, where all other eligibility requirements are met. Budget 2018 proposes to extend the benefits of the previous programs to such individuals for the period from 2005 to June 30, 2016.

In addition, Budget 2018 proposes to permit the sharing of certain information with the provinces after June 2018 to ensure that provinces continue to have access to the information required to calculate, for example, adjustments to social assistance payments.

Resolutions 11 to 15: Charities — Miscellaneous Technical Issues

Municipalities as Eligible Donees

11 (1) Subsection 188(1.3) of the Act is replaced by the following:

Eligible donee

(1.3) In this Part, an eligible donee in respect of a particular charity is

(a) a registered charity

(i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,

(ii) that is not the subject of a suspension under subsection 188.2(1),

(iii) that has no unpaid liabilities under this Act or under the *Excise Tax Act*,

(iv) that has filed all information returns required by subsection 149.1(14), and

(v) that is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

(b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

(2) Subsection (1) applies in respect of transfers of property made on or after Budget Day.

12 (1) The portion of subsection 189(6.3) of the Act before paragraph (a) is replaced by the following:

Reduction of liability for penalties

(6.3) If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(2) Subsection (1) applies in respect of transfers of property made on or after Budget Day.

Universities Outside Canada

13 (1) Subparagraph (a)(iv) of the definition *qualified donee* in subsection 149.1(1) of the Act is replaced by the following:

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(2) Subsection (1) comes into force on Budget Day, except that if a university has applied for registration prior to Budget Day and is registered by the Minister on or after Budget Day, subsection (1) applies in respect of the university as of the day it applied for registration.

14 (1) Section 3503 of the *Income Tax Regulations* is repealed.

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

15 (1) Schedule VIII to the *Income Tax Regulations* is repealed.

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

DENTONS CANADA LLP COMMENTARY

Budget 2018 proposes a number of technical rules that pertain to the administration of registered charities.

Municipalities as Conditional Eligible Donees

A charity can voluntarily revoke its registered status by request to the Charities

Directorate or can have its charitable status revoked if it is not following its registration requirements. Subsections 188(1) and 188(1.1) of the ITA apply a revocation tax to a charity in which the Minister has issued a notice of intention to revoke its charitable status. The revocation tax causes a deemed year end for the charity to occur at the time that the notice of intent to revoke is issued and imposes a tax which is generally equal to the fair market value of the assets of the charity at its deemed year end.

The revocation tax can be reduced by a transfer within the winding-up period of the revoked charity to an eligible donee, as defined in subsection 188(1.3) of the ITA. The reduction is equal to the fair market value of the assets transferred to the eligible donee less the value of consideration received in exchange for the assets. Prior to Budget 2018, eligible donees were other registered charities, having more than 50% of their directors and/or trustees operating at arm's length with all the directors and/or trustees of the revoked charity and who met other specified tax compliance criteria.

Budget 2018 identifies that, in certain cases, a particular revoked charity may be unable to locate an eligible donee that is willing or able to assume ownership of its assets. For instance, where a charity operates in a rural area and owns assets that are of importance to the community, the most appropriate transferee of the property may be the local municipality which is not considered to be an eligible donee under the current rules. Consequently, Budget 2018 proposes that the definition of eligible donee under subsection 188(1.3) of the ITA be expanded to include a municipality in Canada if approved by the Minister, such that transfers of assets to a municipality on or after Budget Day may reduce the revocation tax incurred by a particular revoked charity.

The Government commentary suggests that approval will only be given when a suitable recipient of the property in the charitable section cannot be found. The proposed legislation does not describe the form in which Ministerial approval is to be obtained. Charities looking to file a voluntary revocation application would be prudent to seek preliminary approval for a transfer of assets to a municipality in advance of or in conjunction with their revocation application.

Universities Outside Canada

Budget 2018 proposes to remove the requirement that universities outside Canada be prescribed by the *Income Tax Regulations* as a university, the student body of which ordinarily includes students from Canada, in order to be characterized as a qualified donee under subsection 149.1(1) the ITA. The purpose of this amendment is to streamline the registration process for universities outside of Canada and eliminate a process that was effectively redundant.

Universities outside Canada will continue to be subject to the ITA provisions that require the university to be registered with the Minister pursuant to paragraph (a) of the definition of "qualified donee" and to meet certain receipting and record-keeping conditions once registered.

Resolution 16: Mineral Exploration Tax Credit for Flow-Through Share Investors

16 (1) Paragraph (a) of the definition *flow-through mining expenditure* in subsection 127(9) of the Act is replaced by the following:

> **(a)** that is a Canadian exploration expense incurred by a corporation after March 2018 and before 2020 (including, for greater certainty, an expense that is deemed by subsection 66(12.66) to be incurred before 2020) in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (a) or (d) of the definition *mineral resource* in subsection 248(1),

(2) Paragraphs (c) and (d) of the definition *flow-through mining expenditure* in subsection 127(9) of the Act are replaced by the following:

> **(c)** an amount in respect of which is renounced in accordance with subsection 66(12.6) by the corporation to the taxpayer (or a partnership of which the taxpayer is a member) under an agreement described in that subsection and made after March 2018 and before April 2019, and
>
> **(d)** that is not an expense that was renounced under subsection 66(12.6) to the corporation (or a partnership of which the corporation is a member), unless that renunciation was under an agreement described in that subsection and made after March 2018 and before April 2019; (*dépense minière déterminée*)

(3) Subsections (1) and (2) apply in respect of expenses renounced under a flow-through share agreement entered into after March 2018.

DENTONS CANADA LLP COMMENTARY

Flow-through shares allow resource companies to “flow through” tax expenses associated with their Canadian exploration activities to investors, who can deduct the expenses in calculating their own taxable income. The mineral exploration tax credit provides an additional income tax benefit for individuals who invest in mining flow-through shares by augmenting the tax benefits associated with the flowed-through deductions equal to 15 per cent of specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors.

Budget 2018 proposes to extend the availability of the mineral exploration tax credit for flow-through investors, applicable to flow-through share agreements entered into on or before March 31, 2019.

Under the “look-back” rule, funds raised in one calendar year with the benefit of the credit can be spent on eligible exploration up to the end of the following calendar year. Therefore, for example, funds raised with the credit during the first three months of 2019 can support eligible exploration until the end of 2020.

Resolution 17: Reporting Requirements for Trusts

17 The Act is modified to give effect to the proposals relating to reporting requirements for trusts described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

In Budget 2017, the Government pledged to examine methods to enhance trust reporting requirements in order to improve the collection of information pertaining to the beneficial ownership of trust property. This would address a perceived information gap whereby, trusts are generally only required to file a T3 return of income: where there is tax payable by the trust, where distributions of income or capital have been made to one or more beneficiaries which exceed a *de minimis* threshold; where amounts have been paid to a beneficiary for upkeep or maintenance for property maintained for the beneficiary's use; or where the trust holds property that is subject to subsection 75(2) of the ITA. Further, even if tax is payable by the trust and a T3 return is filed, there is no current requirement to report the identity of all the beneficiaries of the trust.

Although no draft legislation was available at the time of publication, Budget 2018 proposes a method to enhance the collection of beneficial ownership information of a trust by requiring that express trusts and non-resident trusts provide additional information on an annual basis applicable to returns required to be filed for the 2021 and subsequent taxation years. Budget 2018 provides that an express trust is a trust created with the settlor's express intent, usually made in writing.

The proposal suggests the creation of a new obligation for trusts to file an annual T3 return where an obligation may not currently exist. Additional disclosure requirements linked to the return will include the disclosure of the identities of all beneficiaries, trustees, settlor and parties, such as a protector, who may control the allocation and distribution of income or capital from the trust. Budget 2018 also proposes to provide additional funding to support the development of an electronic platform for processing T3 returns.

Currently, the T3 form requires the full trust deed to be attached to the first return filed by a trust and this document may already contain some of the new information requirements. However, many deeds may only describe beneficiaries in broad classes rather than discreetly identifying each beneficiary of the trust. In addition, these proposals will increase administrative costs for trusts for which the current rules would not be penalized for failing to file a T3 due to either having no income for the year or no allocation to beneficiaries. The proposal will also increase compliance costs for trusts with a large contingent of beneficiaries, who may not normally receive annual distributions from the trust.

Budget 2018 proposes numerous exceptions to the new trust reporting obligations, and excludes operation of the new requirements to the following trust arrangements: constructive or resulting trusts; mutual fund trusts, segregated funds and master trusts; trusts governed by registered plans; lawyer's trust funds; graduated rate estates and qualified disability trusts; trusts that are characterized as non-profit organizations or registered charities; and trusts that have been in existence for less than three months or that hold less than $50,000 in assets throughout the taxation year, if the assets are limited to deposits, governments debt obligations and listed securities.

Budget 2018 proposes new penalties to support the additional reporting requirements which will apply in respect to returns required to be filed for 2021 and subsequent tax years. The penalty will be incurred for failing to file a T3 return where required or the newly mandated additional information schedules. The penalty will be equal to $25 a day that the filing is overdue, with a minimum penalty of $100 and maximum penalty of $2,500. Gross negligence penalties will also apply if the failure to file the return was made knowingly, or due to gross negligence. The additional gross negligence penalty will be equal to five per cent of the fair market value of the trust property held in the relevant tax year with a minimum penalty of $2,500.

These proposed new reporting requirements will apply to returns required to be filed for the 2021 and subsequent taxation years.

Resolutions 18 to 20: Passive Investment Income

18 (1) Subsection 125(5.1) of the Act is replaced by the following:

Business limit reduction

(5.1) Notwithstanding subsections (2), (3), (4) and (5), a Canadian-controlled private corporation's business limit for a particular taxation year ending in a calendar year is the amount, if any, by which its business limit otherwise determined for the particular taxation year exceeds the greater of

(a) the amount determined by the formula

$$A \times B/\$11,250$$

where

A is the amount that would, but for this subsection, be the corporation's business limit for the particular year, and

B is the amount determined by the formula

$$0.225\% \times (C - \$10 \text{ million})$$

where

C is

(i) if, in both the particular taxation year and the preceding taxation year, the corporation is not associated with any corporation, the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation for the preceding taxation year,

(ii) if, in the particular taxation year, the corporation is not associated with any corporation but was associated with one or more corporations in the preceding taxation year, the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation for the particular taxation year, or

(iii) if, in the particular taxation year, the corporation is associated with one or more particular corporations, the total of all amounts each of which is the taxable capital employed in Canada (within the meaning assigned by subsection 181.2(1) or 181.3(1) or section 181.4, as the case may be) of the corporation or of any of the particular corporations for its last taxation year that ended in the preceding calendar year, and

(b) the amount determined by the formula

$$D/\$500,000 \times 5(E - \$50,000)$$

where

D is the amount determined for A in paragraph (a), and

E is the total of all amounts each of which is the adjusted aggregate investment income of the corporation or of any corporation with which it is associated at any time in the particular taxation year for each of their taxation years that ended in the preceding calendar year.

(2) Section 125 of the Act is amended by adding the following after subsection (5.1):

Anti-avoidance

(5.2) A particular corporation and another corporation are deemed to be associated with each other at a particular time for the purposes of paragraph (5.1)(b) if

(a) the particular corporation lends or transfers property at any time, either directly or indirectly, by means of a trust or by any other means whatever, to the other corporation;

(b) the other corporation is, at the particular time, related to the particular corporation but is not associated with it; and

(c) it may reasonably be considered that one of the reasons the loan or transfer was made was to reduce the amount determined for E in paragraph (5.1)(b) in respect of the particular corporation for a taxation year.

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

active asset, of a particular corporation at any time, means property that is

(a) used at that time principally in an active business carried on primarily in Canada by the particular corporation or by a Canadian-controlled private corporation that is related to the particular corporation,

(b) a share of the capital stock of another corporation if, at that time,

(i) the other corporation is connected with the particular corporation (within the meaning assigned by subsection 186(4) on the assumption that the other corporation is at that time a "payer corporation" within the meaning of that subsection), and

(ii) the share would be a *qualified small business corporation share* (as defined in subsection 110.6(1)) if

(A) the references in that definition to an “individual” were references to the particular corporation, and

(B) that definition were read without reference to “the individual’s spouse or common law partner”, or

(c) an interest in a partnership, if

(i) at that time, the fair market value of the particular corporation’s interest in the partnership is equal to or greater than 10% of the total fair market value of all interests in the partnership,

(ii) throughout the 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to property described in this paragraph or in paragraph (a) or (b), and

(iii) at that time, all or substantially all of the fair market value of the property of the partnership is attributable to property described in this paragraph or in paragraph (a) or (b); (*bien actif*)

adjusted aggregate investment income, of a corporation (other than a corporation that is deemed not to be a private corporation by subsection 136(1) or 137(7) or section 141.1) for a taxation year, means the amount that would be the *aggregate investment income* (as defined in subsection 129(4)) of the corporation for the year, if

(a) subparagraph (a)(i) of that definition read: “the eligible portion of the corporation’s taxable capital gains (other than taxable capital gains from the disposition of property that is, at the time of disposition, an active asset of the corporation) for the year”,

(b) subparagraph (a)(ii) of that definition read: “the eligible portion of its allowable capital losses (other than allowable capital losses from the disposition of property that is, at the time of disposition, an active asset of the corporation) for the year, and”,

(c) paragraph (a) of that definition were read without reference to its subparagraph (iii),

(d) subparagraph (b)(iii) of that definition read: “a dividend from a corporation connected with it (within the meaning assigned by subsection 186(4) on the assumption that the corporation is at that time a “payer corporation” within the meaning of that subsection), and”,

(e) paragraph (a) of the definition *income* or *loss* in subsection 129(4) read: “includes

(i) the income or loss from a specified investment business carried on by it, and

(ii) amounts in respect of a life insurance policy that are included in computing the corporation’s income for the year, to the extent that the amounts would not otherwise be included in the computation of the corporation’s aggregate investment income, but”, and

(f) no amount were deducted under subsection 91(4) by the corporation in computing its income for the year; (*revenu de placement total ajusté*)

(4) Subsections (1) to (3) apply to taxation years that begin after 2018. However, subsections (1) to (3) also apply to a taxation year of a corporation that begins before 2019 and ends after 2018 if

(a) the corporation’s preceding taxation year was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) one of the reasons for the transaction, event or series was to defer the application of any of subsections (1) to (3) or subsections 19(1) to (4) to the corporation.

19 (1) Paragraph 129(1)(a) of the Act is replaced by the following:

(a) may, on sending the notice of assessment for the year, refund without application an amount (in this Act referred to as its “dividend refund” for the year) in respect of taxable dividends paid by the corporation on shares of its capital stock in the year, and at a time when it was a private corporation, equal to the total of

(i) in respect of eligible dividends, an amount equal to the lesser of

(A) 38 1/3% of the total of all eligible dividends paid by it in the year, and

(B) its eligible refundable dividend tax on hand at the end of the year, and

(ii) in respect of taxable dividends (other than eligible dividends), an amount equal to the total of

(A) the lesser of

(I) 38 1/3% of the total of all taxable dividends (other than eligible dividends) paid by it in the year, and

(II) its non-eligible refundable dividend tax on hand at the end of the year, and

(B) either

(I) if the amount determined under subclause (A)(I) exceeds the amount determined under subclause (A)(II), the lesser of

1 the amount of the excess, and

2 the amount by which the corporation's eligible refundable dividend tax on hand at the end of the year exceeds the amount, if any, determined under subparagraph (i) for the year, or

(II) in any other case, nil; and

(2) Subsection 129(3) of the Act is repealed.

(3) Subsection 129(4) of the Act is amended by adding the following in alphabetical order:

eligible refundable dividend tax on hand, of a particular corporation at the end of a taxation year, means the amount, if any, by which the total of

(a) the total of the taxes payable under Part IV by the particular corporation for the year in respect of

(i) eligible dividends received by the particular corporation in the year from corporations other than corporations with which the particular corporation is connected (in this paragraph, within the meaning assigned by subsection 186(4) on the assumption that the other corporation is at that time a "payer corporation" within the meaning of that subsection), and

(ii) taxable dividends received by the particular corporation in the year from corporations that are connected with the particular corporation to the extent that such dividends caused a dividend refund to those corporations from their eligible refundable dividend tax on hand, and

(b) where the particular corporation was a private corporation at the end of its preceding taxation year, the particular corporation's eligible refundable dividend tax on hand at the end of that preceding year

exceeds

(c) the total of all amounts each of which is the portion, if any, of the particular corporation's dividend refund from its eligible refundable dividend tax on hand determined, for its preceding taxation year, under

(i) subparagraph (1)(a)(i), or

(ii) clause (1)(a)(ii)(B). (*impôt en main remboursable au titre de dividendes déterminés*)

non-eligible refundable dividend tax on hand, of a corporation at the end of a taxation year, means the amount, if any, by which the total of

(a) if the corporation was a Canadian-controlled private corporation throughout the year, the least of

(i) the amount determined by the formula

$$A - B$$

where

A is 30 2/3% of the corporation's aggregate investment income for the year, and

B is the amount, if any, by which

(I) the amount deducted under subsection 126(1) from the tax for the year otherwise payable by it under this Part

exceeds

(II) 8% of its foreign investment income for the year,

(ii) 30 2/3% of the amount, if any, by which the corporation's taxable income for the year exceeds the total of

(A) the least of the amounts determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the year,

(B) 100/(38 2/3) of the total of amounts deducted under subsection 126(1) from its tax for the year otherwise payable under this Part, and

(C) the amount determined by multiplying the total of amounts deducted under subsection 126(2) from its tax for the year otherwise payable under this Part, by the relevant factor for the year, and

(iii) the corporation's tax for the year payable under this Part,

(b) the total of the taxes payable under Part IV by the corporation for the year less the amount determined under paragraph (a) of the definition *eligible refundable dividend tax on hand* in respect of the corporation for the year, and

(c) if the corporation was a private corporation at the end of its preceding taxation year, the corporation's non-eligible refundable dividend tax on hand at the end of that preceding year

exceeds

(d) the portion, if any, of the corporation's dividend refund from its non-eligible refundable dividend tax on hand determined, for its preceding taxation year, under clause (1)(a)(ii)(A). (*impôt en main remboursable au titre de dividendes non-déterminés*)

(4) Section 129 of the Act is amended by adding the following after subsection (4):

2019 transitional RDTOH

(5) The following rules apply to a corporation's first taxation year in respect of which the definition *eligible refundable dividend tax on hand* in subsection (4) applies:

(a) if the corporation is a Canadian-controlled private corporation throughout the taxation year,

(i) for the purpose of applying paragraph (b) of the definition *eligible refundable dividend tax on hand* for the taxation year, the corporation's eligible refundable dividend tax on hand at the end of its preceding taxation year is deemed to be the amount, if any, that is the lesser of

(A) the amount determined by the formula

$$A - B$$

where

A is the corporation's refundable dividend tax on hand at the end of its preceding taxation year, and

B is the corporation's dividend refund for its preceding taxation year, and

(B) the amount determined by the formula

$$(C - D) \times E$$

where

C is the corporation's general rate income pool at the end of its preceding taxation year,

D is the amount, if any, by which

(i) the total of all amounts each of which is an eligible dividend paid by the corporation in its preceding taxation year

exceeds

(ii) the total of all amounts each of which is an excessive eligible dividend designation made by the corporation in its preceding taxation year, and

E is 38 1/3%, and

(ii) for the purpose of applying paragraph (c) of the definition *non-eligible refundable dividend tax on hand* for the taxation year, the corporation's non-eligible refundable dividend tax on hand at the end of its preceding taxation year is deemed to be the amount determined by the formula

$$A - B$$

where

A is the amount determined under clause (a)(i)(A) in respect of the corporation at the end of the year, and

B is the amount determined under clause (a)(i)(B) in respect of the corporation at the end of the year; and

(b) if the corporation is not a Canadian-controlled private corporation throughout the taxation year, for the purpose of applying paragraph (b) of the definition *eligible refundable dividend tax on hand* for the taxation year, the corporation's eligible refundable dividend tax on hand at the end of its preceding taxation year is deemed to be the amount that would be determined for clause (a)(i)(A) if the corporation were a Canadian-controlled private corporation throughout the taxation year.

(5) Subsections (1) to (4) apply to taxation years that begin after 2018. However, subsections (1) to (4) also apply to a taxation year of a corporation that begins before 2019 and ends after 2018 if

(a) the corporation's taxation year prior to that taxation year was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) one of the reasons for the transaction, event or series was to defer the application of any of subsections (1) to (4) or subsections 18(1) to (3) to the corporation.

20 The Act is further modified to give effect to the proposals relating to Passive Investment Income described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

As previously announced by the Department of Finance on July 18, 2017 and December 13, 2017, the 2018 Budget includes legislative amendments with respect to the taxation of investment income in private corporations (the "passive income proposals"). On December 13, 2017, the Department of Finance indicated that the proposed passive income proposals would be simplified pursuant to consultations following the July 18, 2017 release and would only apply to corporations earning in excess of $50,000 of investment income per year.

The amendments proposed in Budget 2018 are two-fold – first, the availability of the small business deduction to Canadian-controlled private corporations ("CCPCs") will be reduced to the extent that a CCPC earns investment income in excess of $50,000, with the small business deduction becoming nil once the CCPC earns $150,000 of investment income. Second, the refundable dividend tax on hand ("RDTOH") regime will be amended to create two classes of RDTOH – Eligible RDTOH and non-eligible RDTOH which, as discussed below, will impact the ability to obtain a refund of the refundable tax depending on the type of dividend being paid by the corporation.

In conjunction with the amendments to investment income, the federal government will be proceeding with its proposal to reduce the tax rate on active business income earned by CCPCs from 10.5% to 10% in 2018 and 9% in 2019.

Resolution 18

Generally, CCPCs receive preferential tax treatment on the first $500,000 of qualifying active business income (the "business limit"). To the extent that a CCPC is associated with other corporations, the business limit may be reduced. Further, the business limit will be reduced to the extent that the CCPC has (in conjunction with all corporations with whom it is associated) taxable capital employed in Canada in excess of $10 million (the "taxable capital reduction").

Budget 2018 proposes to amend subsection 125(5.1) of the ITA to add an additional reduction calculation when determining a CCPC's business limit, contained in new paragraph (b) of the subsection, which will reduce the business limit of a CCPC to the extent that it earns "adjusted aggregate investment income" in excess of $50,000 (the "investment income reduction").

The 2018 Budget has added the definitions of "active asset" and "adjusted aggregate investment income" to subsection 125(7) for the purposes of calculating the investment income reduction.

An asset of a CCPC will be an "active asset" if:

(i) it is an asset that was used in an active business carried on primarily in Canada by the CCPC or a related CCPC (an "active business property");

(ii) it is a share of a corporation with which the CCPC is connected (for the purposes of Part IV of the ITA) and would meet the definition of a qualified small business corporation share in subsection 110.6(1) if it were held by an individual shareholder (an "active share"); or

(iii) the asset is an interest in a partnership where the fair market value of the interest held by the CCPC is at least 10% of the fair market value of all of the partnership interests, throughout the 24 months prior to the disposition date more than 50% of the fair market value of the partnership's property (either directly, or through another partnership) was attributable to active business property or active shares, and on the disposition date all or substantially all of the fair market value of the partnership's property (either directly or through another partnership) was attributable to active business property or active shares.

"Adjusted aggregate investment income" will use the definition of "aggregate investment income" in subsection 129(4) as a starting point, but will modify this definition to exclude any capital gains or losses realized on the disposition of active assets, net capital losses carried over from another year and any amount in respect of foreign taxes paid on foreign accrual property income ("FAPI"), and will include dividends from non-connected corporations (i.e. portfolio dividends), income from a specified investment business and income from savings in a life insurance policy that is not an exempt policy and is not otherwise included in "aggregate investment income".

The investment income reduction will be calculated on a straight-line basis and will be equal to five times the amount by which the CCPC's adjusted aggregate investment income exceeds $50,000, multiplied its business limit for the year (calculated without reference to the capital taxable reduction or the investment income reduction) divided by $500,000.

For example, if a CCPC has a business limit of $500,000 in a particular year and earns $125,000 of adjusted aggregate investment income in that year, its investment income reduction for the year will be $375,000 (giving it an adjusted business limit of $125,000 for the year). If a CCPC earned $150,000 or more of adjusted aggregate investment income in a year, its adjusted business limit for the year would be nil.

The Budget also includes an anti-avoidance provision in new subsection 125(5.2) of the ITA that would apply in circumstances where a related corporation (which is not associated with the particular CCPC) lends or transfers property, either directly or indirectly, including via a trust, to the CCPC and it can reasonably be considered that one of the reasons for the loan or transfer was to reduce the CCPC's adjusted aggregate investment income. If these circumstances occur, the two corporations are deemed to be associated.

The reduction to a CCPC's business limit will be the greater of the taxable capital reduction and the investment income reduction (i.e. it will not be a cumulative reduction).

These proposals will generally apply to taxation years that begin after 2018. However, if a corporation's preceding taxation year is shorter than it otherwise would have been due to a transaction, event or series of transactions or events and one of the reasons for undertaking the particular transaction, event or series was to defer the application of these provisions or the RDTOH provisions, then these provisions will apply to a taxation year of a corporation that begins before 2019 and ends after 2018.

Resolution 19

In addition to reducing a CCPC's business limit, the 2018 Budget will also change the refundable dividend tax on hand ("RDTOH") regime.

Under the current RDTOH regime, every time a corporation has an RDTOH balance and pays a taxable dividend to its shareholders, it receives a refund equal to the lesser of 38.33% of the taxable dividend and its RDTOH balance. The RDTOH refund is the same, regardless of the identity of the shareholder or whether the dividends declared are eligible or ineligible dividends.

Budget 2018 proposes to replacing paragraph 129(1)(a), repealing subsection 129(3) and by adding certain new definitions to subsection 129(4) of the ITA. Under the proposed regime, a corporation's RDTOH account will be split to create two classes of RDTOH – Eligible RDTOH and Non-eligible RDTOH (each defined in subsection 129(4) of the ITA). A corporation's Eligible RDTOH account will consist of the Part IV tax paid on eligible portfolio dividends received by a corporation. A corporation will be able to receive a refund from its Eligible RDTOH account if it pays a taxable dividend (regardless of whether such dividend is eligible or ineligible).

A corporation's Non-eligible RDTOH account will consist of all refundable taxes paid under Part I and Part IV tax paid on non-eligible portfolio dividends. A corporation will only be able to obtain a dividend refund from its Non-eligible RDTOH account to the extent that it pays non-eligible dividends.

To the extent that a corporation (the "dividend recipient") is required to pay Part IV tax because it received a dividend from a connected corporation (the "payer corporation") which received a dividend refund in connection with the declaration of the dividend, then the Part IV tax paid by the dividend recipient will be added to the same RDTOH account from which the payer corporation received an RDTOH refund.

The legislative proposals also contain ordering provisions in new paragraph 129(1)(a) of the ITA with respect to the payment of non-eligible dividends by a corporation. Similar to the requirement that a corporation must pay out its LRIP balance before it can declare eligible dividends, a corporation that pays non-eligible dividends must receive a refund of all of its Non-eligible RDTOH before it can claim a refund of its Eligible RDTOH. However, there is no requirement that a corporation with both an Eligible RDTOH and a Non-eligible RDTOH balance, as well as a GRIP balance, receive a refund of all of its Non-eligible RDTOH before it can pay eligible dividends (and receive a refund of its Eligible RDTOH).

Budget 2018 also provides proposed transitional provisions in new subsection 129(5) of the ITA which deal with the allocation of current RDTOH balances between Eligible RDTOH and Non-eligible RDTOH accounts. For CCPCs, their Eligible RDTOH account for their first taxation year beginning after 2018 will be equal to the lesser of their RDTOH balance at the end of their preceding taxation year less any dividend refund the corporation received for that year and 38.33% of their GRIP balance at the end of the preceding taxation year less any eligible dividends paid by the corporation in that year or excessive eligible dividend designations made by the corporation in that year. The remainder of their RDTOH balance, if any, will be allocated to their Non-eligible RDTOH account. For all other corporations, their Eligible RDTOH account for their first taxation year beginning after 2018 will be equal to their RDTOH balance at the end of the preceding taxation year.

These proposals will generally apply to taxation years that begin after 2018. However, if a corporation's preceding taxation year is shorter than it otherwise would have been due to a transaction, event or series of transactions or events and one of the reasons for undertaking the particular transaction, event or series was to defer the application of these provisions or the business limit reduction provisions, then these provisions will apply to a taxation year of a corporation that begins before 2019 and ends after 2018.

Resolution 21: Tax Support for Clean Energy

21 The portion of Class 43.2 in Schedule II to the *Income Tax Regulations* before paragraph (a) is replaced by the following:

Property that is acquired after February 22, 2005 and before 2025 (other than property that was included, before it was acquired, in another class in this Schedule by any taxpayer) and that is property that would otherwise be included in Class 43.1

DENTONS CANADA LLP COMMENTARY

Classes 43.1 and 43.2 allow taxpayers to claim accelerated CCA (30% and 50%, respectively) with respect to investments in specified clean energy generation equipment and conservation equipment. These classes, which can be found in Schedule II of the Income Tax Regulations, have been subject to many changes over the years and thus include a wide range of assets. Class 43.2, which generally includes equipment that would otherwise be included in Class 43.1, was introduced in 2005 to further accelerate CCA deductions with respect to clean energy equipment, but it was scheduled to expire after 2019.

Budget 2018 proposes to extend eligibility for CCA Class 43.2 by five years, so it will be open to equipment acquired before 2025.

Budget 2018 also reconfirmed the government's intention to expand Classes 43.1 and 43.2 to include electric vehicle charging stations and electrical energy storage equipment—this measure was originally announced in Budget 2016.

Resolutions 22 and 23: Artificial Losses Using Equity-Based Financial Arrangements

22 (1) Paragraph 112(2.31)(b) of the Act is replaced by the following:

(b) the taxpayer establishes that, throughout the particular period, no tax-indifferent investor or group of tax-indifferent investors, each member of which is affiliated with every other member, has all or substantially all of the risk of loss and opportunity for gain or profit in respect of the share.

(2) Subparagraph 112(2.32)(a)(ii) of the Act is replaced by the following:

(ii) all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period referred to in subsection (2.31) has not been eliminated and cannot reasonably be expected by it to be eliminated;

(3) Clause 112(2.32)(b)(iii)(B) of the Act is replaced by the following:

(B) all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period referred to in subsection (2.31) has not been eliminated and cannot reasonably be expected by it to be eliminated;

(4) Clause 112(2.32)(c)(iii)(B) of the Act is replaced by the following:

(B) all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share during the particular period referred to in subsection (2.31) has not been eliminated and cannot reasonably be expected by it to be eliminated;

(5) Subsection 112(2.33) of the Act is replaced by the following:

End of particular period

(2.33) If, at a time during a particular period referred to in subsection (2.31), a counterparty, specified counterparty, affiliated counterparty or affiliated specified counterparty reasonably expects to become a tax-indifferent investor or — if it has provided a representation described by subparagraph (2.32)(a)(ii) or clause (2.32)(b)(iii)(B) or (c)(iii)(B) in respect of a share — that all or substantially all of its risk of loss and opportunity for gain or profit in respect of the share will be eliminated, the particular period for which it has provided a representation in respect of the share is deemed to end at that time.

(6) Subsections (1) to (5) apply in respect of dividends that are paid or become payable on or after Budget Day.

23 (1) The definition *SLA compensation payment* in subsection 260(1) of the Act is replaced by the following:

SLA compensation payment means an amount paid pursuant to a securities lending arrangement, or a specified securities lending arrangement, as compensation for an underlying payment; (*paiement compensatoire (MPVM)*)

(2) Subsection 260(1) of the Act is amended by adding the following in alphabetical order:

specified securities lending arrangement means an arrangement, other than a securities lending arrangement, under which

(a) a person transfers or lends at any particular time a particular share described in paragraph (a) of the definition *qualified security* to another person,

(b) it may reasonably be expected, at the particular time, that the other person will transfer or return after the particular time to the person a share that is identical to the particular share so transferred or lent, and

(c) the person's risk of loss or opportunity for gain or profit with respect to the particular share is not changed in any material respect; (*mécanisme de prêt de valeurs mobilières déterminé*)

(3) The portion of subsection 260(5) of the Act before paragraph (a) is replaced by the following:

Where subsection (5.1) applies

(5) Subsection (5.1) applies to a taxpayer for a taxation year in respect of a particular amount (other than an amount received as proceeds of disposition or an amount received by a person under an arrangement where it may reasonably be considered that one of the main reasons for the person entering into the arrangement was to enable the person to receive an SLA compensation payment pursuant to a securities lending arrangement, or a dealer compensation payment, that would be deductible in computing the taxable income, or not included in computing the income, for any taxation year of the person) received by the taxpayer in the taxation year

(4) Paragraph 260(6)(a) of the Act is replaced by the following:

(a) if the taxpayer is a registered securities dealer and the particular amount is deemed by subsection (5.1) to have been received as a taxable dividend, no more than 2/3 of the particular amount (unless, for greater certainty, the particular amount is an amount for which a deduction in computing income may be claimed under subsection (6.1) by the taxpayer); or

(5) The portion of subsection 260(6.1) of the Act before paragraph (a) is replaced by the following:

Deductible amount

(6.1) There may be deducted in computing a corporation's income under Part I from a business or property for a taxation year an amount equal to the lesser of

(6) Subsections (1) to (5) apply in respect of amounts paid or payable, or received or receivable, as compensation for dividends on or after Budget Day. However, subsections (1) to (5) do not apply in respect of amounts paid or payable, or received or receivable, as compensation for dividends on or after Budget Day and before October 2018, if they are pursuant to a written arrangement entered into before Budget Day.

DENTONS CANADA LLP COMMENTARY

In Budget 2018, the Government suggests that certain taxpayers are engaging in abusive arrangements intended to circumvent the expanded dividend rental rules in order to realize an artificial tax loss through the use of equity-based financial arrangements. Accordingly, Budget 2018 proposes specific amendments to certain aspects of the synthetic equity arrangement rules and the securities lending arrangement rules.

Synthetic Equity Arrangements

Budget 2018 proposes an amendment to subsections 112(2.31) and (2.32) to clarify that the no tax-indifferent investor exception to the synthetic equity arrangement rules cannot be met where a tax-indifferent investor obtains all or substantially all of the risk of loss and opportunity for gain or profit in respect of the Canadian shares, in *any way*, including where the investor has *not* entered a synthetic equity arrangement or a specified synthetic equity arrangement in respect of the share. This proposal will undoubtedly tighten access to the "no tax-indifferent investor" exception.

Securities Lending Arrangements

The Government indicates in Budget 2018 that certain taxpayers are entering into security lending and repurchase arrangements designed to replicate the effect of a synthetic equity arrangement without being subject to the dividend rental arrangement rules.

Budget 2018 proposes to amend the definition of "securities lending arrangement" in order to broaden it to include taxpayers who enter into a security lending and repurchase arrangement designed to replicate the effect of a synthetic equity arrangement. This will cause the dividend compensation payments in securities lending and repurchase arrangements to no longer be deductible.

Budget 2018 also proposes to clarify the interaction of two rules that govern the deductibility of dividend compensation payments under a securities lending arrangement. The proposed amendment clarifies the priority of the rule that when a securities lending arrangement is a dividend rental arrangement, a taxpayer, whether or not a registered securities dealer, can fully deduct any dividend compensation payment over the rule that states that a registered securities dealer is permitted to deduct up to two-thirds of a dividend compensation payment when the dividend compensation payment is under a securities lending arrangement.

The proposed amendments to the securities lending arrangement rules will apply to dividend compensation payments that are made on or after Budget Day unless the securities lending or repurchase arrangement was in place before Budget Day, in which case the amendments will apply to dividend compensation payments that are made after September 2018.

Resolutions 24 and 25: Stop-Loss Rule on Share Repurchase Transactions

24 (1) The description of B in subsection 112(5.2) of the Act is replaced by the following:

B is

(a) if the taxpayer received a dividend under subsection 84(3) in respect of the share, the total determined under subparagraph (b)(ii), and

(b) in any other case, the lesser of

(i) the loss, if any, from the disposition of the share that would be determined before the application of this subsection if the cost of the share to any taxpayer were determined without reference to

(A) paragraphs 87(2)(e.2) and (e.4), 88(1)(c), 138(11.5)(e) and 142.5(2)(b),

(B) subsection 85(1), where the provisions of that subsection are required by paragraph 138(11.5)(e) to be applied, and

(C) paragraph 142.6(1)(d), and

(ii) the total of all amounts each of which is

(A) where the taxpayer is a corporation, a taxable dividend received by the taxpayer on the share, to the extent of the amount that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(B) where the taxpayer is a partnership, a taxable dividend received by the taxpayer on the share, to the extent of the amount that was deductible under this section or subsection 115(1) or 138(6) in computing the taxable income or taxable income earned in Canada for any taxation year of members of the partnership,

(C) where the taxpayer is a trust, an amount designated under subsection 104(19) in respect of a taxable dividend on the share, or

(D) a dividend (other than a taxable dividend) received by the taxpayer on the share,

(2) The portion of subsection 112(5.21) of the Act before paragraph (a) is replaced by the following:

Subsection (5.2) — excluded dividends

(5.21) A dividend, other than a dividend received under subsection 84(3), shall not be included in the total determined under subparagraph (b)(ii) of the description of B in subsection (5.2) unless

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

25 (1) Section 142.5 of the Act is amended by adding the following after subsection (3):

Proceeds — mark-to-market property

(4) For greater certainty, if a taxpayer is a financial institution in a taxation year and disposes of a share that is mark-to-market property of the taxpayer for the year, the taxpayer's proceeds from the disposition do not include any amount that would otherwise be proceeds from the disposition to the extent that the amount is deemed by subsection 84(2) or (3) to be a dividend received except to the extent the dividend is deemed by subparagraph 88(2)(b)(ii) not to be a dividend.

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

DENTONS CANADA LLP COMMENTARY

Budget 2018 proposes to amend the provisions of the ITA pertaining to the dividend stop-loss rules related to shares held as mark-to-market property. The proposals announced in Budget 2018 extend the measures originally announced in Budget 2011 and are intended to confirm the manner in which the Department of Finance expects the existing dividend stop-loss rules to apply.

The dividend stop-loss rule in the ITA was expanded pursuant to Budget 2011 to apply in all circumstances where a share was held as mark-to-market property and a taxpayer was deemed to have received a dividend on a share repurchase. However, the formula under which the allowable loss is calculated was not amended and only denied the portion of the loss realized on a share repurchase equal to the excess of the original cost of the shares over their paid-up capital (PUC). The portion of the tax loss equal to the mark-to-market income previously realized on the shares was allowed on the premise that a Canadian financial institution already paid tax on that income.

However, if the repurchased shares were fully hedged, which the Department of Finance provides is typically the case, any previously realized income would have been fully offset by the hedge. As a result, a Canadian financial institution may be able to realize an artificial tax loss on the share repurchase.

Budget 2011 amended the stop-loss rule such that it can apply to any loss that arises on a disposition of a share that occurs on a repurchase or redemption of the share. In such case, the recipient financial institution receives a deemed dividend under subsection 84(3) of the ITA equal to the repurchase (or redemption) amount in excess of the PUC of the shares. The amount of the deemed dividend is excluded from the proceeds of disposition of the shares, which can lead to a corresponding capital loss where those proceeds (net of the exclusion) are less than the cost of the shares. That loss may then be reduced by the stop-loss rule in subsection 112(5.2) of the ITA.

In general terms, the applicable formula increases the proceeds of disposition on the disposition of the share (thereby decreasing any loss) by the lesser of two amounts described in item "B" in the formula in subsection 112(5.2) of the ITA. The first amount is the loss otherwise determined (with certain adjustments), and the second amount generally includes tax-free dividends previously received by the financial institution.

However, in calculating the first amount in item B described above – the loss otherwise determined on the disposition of the share – the cost of the share does not include mark-to-market income previously included under section 142.5 of the ITA that is otherwise added to the financial institution's cost of the share. Accordingly, the stop-loss rule as currently drafted does not apply to the loss on the share to the extent that the institution's tax cost of the share (which includes previous mark-to-market income) exceeds the original cost of the share (which does not include the previous mark-to-market income). In other words, the loss reflecting the difference between the tax cost and the original cost will not be denied under the current stop-loss rule. Furthermore, where the share is hedged, although the cost of the share is increased the income or loss realized is offset on the hedge, and therefore no tax would have been paid.

Resolution 24 amends subsection 112(5.2) as it applies to the repurchase or redemption of a share. In such cases, the proceeds of disposition are increased (and the loss reduced) by the second amount in B in the formula described above – the tax-free dividends previously received – without regard to the loss otherwise determined. As a result, it can reduce the entire loss on the disposition of the share, including any loss reflecting the difference between the tax cost and the original cost of the share.

Resolution 24 applies to dispositions on or after Budget Day.

Resolution 25 provides that, for greater certainty, a financial institution's proceeds of disposition on a disposition of a share do not include deemed dividends under subsection 84(2) or 84(3) on the share. Although such a rule currently exists in the definition of "proceeds of disposition" in section 54, that definition applies for the purposes of the capital gain and loss provisions and not necessarily to a share that is a mark-to-market property.

Resolution 26: At-Risk Rules for Tiered Partnerships

26 (1) Section 96 of the Act is amended by adding the following after subsection (2):

Tiered partnerships

(2.01) For the purposes of this section, a taxpayer includes a partnership.

(2) Subsection 96(2.1) of the Act is amended by striking out "and" at the end of paragraph (d) and by replacing paragraph (e) with the following:

(e) if the taxpayer is not a partnership, be deemed to be the taxpayer's limited partnership loss in respect of the partnership for the year, and

(f) if the taxpayer is a partnership, reduce the taxpayer's share of any loss of the partnership for a fiscal period of the partnership ending in the taxation year of the taxpayer from a business (other than a farming business) or from property.

(3) Section 96 of the Act is amended by adding the following after subsection (2.1):

Tiered partnerships — adjustments

(2.11) The following rules apply to taxation years of a taxpayer that end on or after Budget Day:

(a) for the purpose of applying section 111, the taxpayer's non-capital loss, or limited partnership loss in respect of a partnership, for a preceding taxation year shall be determined as if subsection (2.01) and paragraph (2.1)(f) applied in respect of taxation years that end before Budget Day; and

(b) in computing the adjusted cost base to the taxpayer of the taxpayer's interest in a partnership on or after Budget Day, there shall be added an amount equal to the portion of the amount of any reduction because of paragraph (a) in a non-capital loss of the taxpayer that can reasonably be considered to relate to the amount of a loss deducted under subparagraph 53(2)(c)(i) in computing the adjusted cost base of that interest.

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

DENTONS CANADA LLP COMMENTARY

The at-risk rules are generally intended to restrict the deductibility of losses allocated to a limited partner in excess of their "at-risk amount". Such losses become "limited partnership losses", which are generally eligible for an indefinite carry-forward and can be deducted in a future taxation year if the limited partner's at-risk amount is increased.

When a limited partner disposes of a limited partnership interest, any undeducted limited partnership losses of the limited partner serve to reduce the adjusted cost base of the partnership interest, which would result in a lower capital gain or a higher capital loss on disposition.

The Department of Finance notes that the "long-standing understanding" has been that the at-risk rules apply to restrict the deductibility of limited partnership losses where a limited partner in a limited partnership is itself a partnership (a "tiered partnership" structure). However, in the recent decision of the Federal Court of Appeal in The Queen v. Green et al., 2017 FCA 107, the application of the at-risk rules was constrained.

In very general terms, the Court in Green confirmed that losses maintained their character from lower tier partnership to the top-tier partnership such that the income could be allocated to the partners of the top-tier partnership (subject to their at-risk amounts), even where the top-tier partnership had no at-risk amount in respect of the lower-tier partnership. Budget 2018 proposes to amend the ITA to ensure the CRA's policy underlying the at-risk rules be maintained and prevent situations from arising where limited partnership losses becoming deductible in a tiered partnership in situations where they would have otherwise been restricted.

Resolution 26 proposes to clarify that the at-risk rules apply to a partnership that is itself a limited partner of another partnership. In particular, subsection 96(2.1) of the ITA is amended so that where a partnership is a limited partner of a limited partnership, it is treated as a taxpayer for the purposes of the rules. Further proposed changes will provide that the top-tier partnership's ability to carry-forward the loss will not be indefinite and such losses will be reflected in the adjusted cost base of the partnership's interest in the lower tier partnership. In addition, new subsection 96(2.11) generally provides that the new rules will apply to losses that arose prior to Budget Day as if they had been in force at that time.

Resolution 26 will apply in respect of taxation years that end on or after Budget Day.

Resolution 27: Health and Welfare Trusts

27 The Act is modified to give effect to the proposals relating to Health and Welfare Trusts described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Section 144.1 of the Act deals with the taxation of employee life and health trusts (ELH trusts). The provision was added in 2010, generally to codify the CRA administrative position regarding the tax treatment of health and welfare trusts. Where certain conditions are met, an employer can deduct contributions made to an ELH trust or health and welfare trust set up for the benefit of its employees. Absent section 144.1 and the CRA administrative positions, it would be unclear as to whether such contributions would be deductible.

In the 2018 Budget documents, the Department of Finance notes that although section 144.1 generally parallels the CRA administrative positions, it also deals with certain issues (such as the treatment of surplus income and pre-funding of benefits) that are not dealt with in the administrative positions. Accordingly, "in order to provide more certainty for taxpayers and greater consistency in the tax treatment of such arrangements", resolution 27 proposes that only the section 144.1 rules will apply and that the CRA administrative positions will no longer apply after the year 2020 and will not apply to health and welfare trusts established after Budget Day. The Department of Finance has indicated that it intends to tax health and welfare trusts still in existence after 2020 would in the same manner as ordinary trusts after that time.

The government proposes to draft transitional provisions dealing with the continuation or winding-up of health and welfare trusts. The transitional issues will include

- whether a health and welfare trust can continue as an ELH trust without the creation of a new trust;
- whether, and under what conditions, a rollover of assets to a new trust will be permitted; and
- the tax implications for a health and welfare trust that does not satisfy the conditions to become an ELH trust, or where the trustees of a health and welfare trust choose not to convert.

The Department of Finance will first conduct a consultation process and it invites concerned parties to submit written comments by June 29, 2018.

Resolutions 28 to 30: Cross-Border Surplus Stripping using Partnerships and Trusts

28 The Act is modified to give effect to the proposals relating to Cross-Border Surplus Stripping using Partnerships and Trusts described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day, including by the amendments in sections 29 and 30.

29 (1) Subparagraph (a)(ii) of the definition *equity amount* in subsection 18(5) of the Act is replaced by the following:

(ii) the average of all amounts each of which is the corporation's contributed surplus (other than any portion of that contributed surplus that arose at a time when the corporation was non-resident, or that arose in connection with a disposition to which subsection 212.1(1.1) applies or an *investment*, as defined in subsection 212.3(10), to which subsection 212.3(2) applies) at the beginning of a calendar month that ends in the year, to the extent that it was contributed by a specified non-resident shareholder of the corporation, and

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

30 (1) Paragraphs 84(1)(c.1) and (c.2) of the Act are replaced by the following:

(c.1) if the corporation is an insurance corporation, any action by which it converts contributed surplus related to its insurance business (other than any portion of that contributed surplus that arose at a time when it was non-resident, or that arose in connection with a disposition to which subsection 212.1(1.1) applies or an *investment*, as defined in subsection 212.3(10), to which subsection 212.3(2) applies) into paid-up capital in respect of the shares of its capital stock,

(c.2) if the corporation is a bank, any action by which it converts any of its contributed surplus that arose on the issuance of shares of its capital stock (other than any portion of that contributed surplus that arose at a time when it was non-resident, or that arose in connection with a disposition to which subsection 212.1(1.1) applies or an *investment*, as defined in subsection 212.3(10), to which subsection 212.3(2) applies) into paid-up capital in respect of shares of its capital stock, or

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

(c.3) if the corporation is neither an insurance corporation nor a bank, any action by which it converts into paid-up capital in respect of a class of shares of its capital stock any of its contributed surplus that arose after March 31, 1977 (other than any portion of that contributed surplus that arose at a time when it was non-resident, or that arose in connection with a disposition to which subsection 212.1(1.1) applies or an *investment*, as defined in subsection 212.3(10), to which subsection 212.3(2) applies)

(i) on the issuance of shares of that class or shares of another class for which the shares of that class were substituted (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87 or subsection 192(4.1) or 194(4.1) applied),

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

DENTONS CANADA LLP COMMENTARY

Section 212.1 of the ITA is an anti-avoidance rule which seeks to avoid the creation of paid-up capital (which can be extracted from a corporation on a tax free basis) by a non-resident taxpayer where the extraction of value from a corporation would otherwise have resulted in a taxable dividend. That section applies where a non-resident disposes of shares of a corporation resident in Canada to another corporation with whom the non-resident does not deal at arm's length, in exchange for shares or other consideration. In those circumstances, the rule operates to either deem a dividend to be paid to the non-resident or to reduce the paid-up capital of the consideration shares.

Because the rule only applies to the disposition of shares of a corporation resident in Canada, plans have materialized whereby a non-resident of Canada will transfer shares of a corporation resident in Canada to a partnership in exchange for an interest in the partnership. The interest in the partnership is then transferred to a corporation resident in Canada in exchange for shares and/or other consideration. The end result is that paid-up capital of the shares of the new corporation is created and section 212.1 does not apply. The Department of Finance noted that it was also concerned with similar transactions utilizing trusts.

Budget 2018 proposes to implement a "look through" rule pursuant to which the assets, liabilities and transactions of a partnership or trust will be allocated to members or beneficiaries (as they case may be) relative to the fair market value of their interests. Limited legislative amendments were released with respect to these changes and, as such, it remains to be seen how such "look through" proposals will be implemented.

The "look through" proposals will be applicable to transactions occurring on or after Budget Day. The Department of Finance has also indicated that, to the extent that such transactions were entered into before Budget Day, the CRA may seek to apply the general anti-avoidance rule.

In addition to surplus stripping by non-residents, the Department of Finance noted that it was concerned with respect to surplus stripping on corporate immigration. In response to such concerns, it has proposed amendments to subsections 18(5) and 84(1) to exclude any "contributed surplus" arising during a period in which a corporation was a non-resident of Canada or connected with a disposition to which subsection 212(1.1) applied. Additional amendments may also be tabled in conjunction with the "look through" proposals.

The amendments to subsections 18(5) and 84(1) are applicable to transactions or events occurring on or before Budget Day.

Resolution 31: Foreign Affiliates

31 The Act is modified to give effect to the proposals relating to Foreign Affiliates described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2018 proposes to introduce new measures affecting the foreign affiliate rules. The new measures are aimed at tax arrangements that avoid certain of the foreign accrual property income (FAPI) rules, and also strengthen the CRA's ability to audit and assess taxpayers who have foreign affiliates. The proposed measures will apply to taxation years that begin on or after Budget Day. However, no draft legislation pertaining to the proposed measures discussed below has been made available at the time that Budget 2018 was announced.

Investment Business

New measures are introduced to broaden the definition of an "investment business" under the foreign affiliate rules in response to certain tax arrangements whereby taxpayers could use tracking arrangements with pooled assets to avoid a business from being considered to be an investment business.

For FAPI purposes, a business of a controlled foreign affiliate of a Canadian resident taxpayer that is an "investment business" is excluded from the definition of "active business", and thus income from an investment business is generally considered FAPI. An "investment business" is, generally, defined to mean a business the principal purpose of which is to derive income from property (including interest, dividends, rents, royalties or any similar returns or substitutes for such interest, dividends, rents, royalties or returns). However, a business of a foreign affiliate will not be an investment business where, inter alia, the affiliate employs more than five full-time employees in the active conduct of the business (the "six employee test").

Budget 2018 proposes to introduce amendments to the definition of an investment business in response to certain tax planning arrangements that enabled a business of a foreign affiliate to meet the six employee test. In such arrangements, multiple taxpayers pool investment assets together in a non-resident corporation including through the establishment of separate cells. The returns or benefits that accrue to each taxpayer are computed by reference to the assets contributed by such taxpayer, and each taxpayer is able to retain control over such assets (these arrangements are known as "tracking arrangements").

The proposed amendments target such tracking arrangements by deeming each specific investment activity that accrues to the benefit of a specific taxpayer to be a separate business carried on by the affiliate. Since the investment business definition applies on a business-by-business basis, under the proposed amendments each separate business of the affiliate will need to satisfy each relevant condition in the investment business definition (including the six employee test), to ensure that the particular affiliate's income is not included in FAPI.

Controlled Foreign Affiliate Status

The FAPI rules only apply to a controlled foreign affiliate of a Canadian taxpayer. Finance is concerned that taxpayers have been using the tracking arrangements described above to avoid controlled foreign affiliate status. In such tracking arrangements, the group of taxpayers may be sufficiently large such that no single taxpayer or group of taxpayers has a controlling interest in the affiliate. Further, under such tracking arrangements, any returns or benefits accruing to a specific taxpayer are computed by reference to the assets contributed by such taxpayer.

In response, Budget 2018 proposes to deem a foreign affiliate to be a controlled foreign affiliate where a tracking arrangement provides that the income of the foreign affiliate accrues to the benefit of a particular taxpayer in accordance with the terms of the tracking arrangement.

Trading or Dealing in Indebtedness

Budget 2018 proposes to introduce a minimum capital requirement to the foreign affiliate rules related to trading or dealing in indebtedness. These new rules are intended to ensure consistency with the investment business rules, which contain a similar minimum capital requirement for a foreign affiliate to qualify for the exception as a regulated foreign financial institution.

Reassessments

Budget 2018 proposes to extend the reassessment period of a taxpayer by three years in respect of income arising in connection with a foreign affiliate of the taxpayer.

At present, a three-year extended reassessment period exists in respect of assessments made in relation to transactions between taxpayers and non-residents who do not deal at arm's length. However, this extended three-year reassessment period does not apply in all cases involving foreign affiliates. The expansion of the three-year extended reassessment period to income from a foreign affiliate is being introduced to ensure that the CRA has sufficient time to properly conduct audits involving foreign affiliates, which are frequently complex and time-consuming.

Reporting Requirements

Budget 2018 proposes to shorten the deadline for the filing of an information return in respect of a taxpayer's foreign affiliates, from within 15 months after the end of the taxpayer's year to 6 months. The amendment is intended to align the deadline for the filing of an information return with the deadline for the filing of a taxpayer's income tax return.

Resolutions 32 to 34: Reassessment Period – Requirements for Information and Compliance Orders

32 The portion of section 231 of the Act before the definition *authorized person* is replaced by the following:

231 In sections 231.1 to 231.8,

33 The portion of subsection 231.6(7) of the Act before paragraph (a) is replaced by the following:

Time period not to count

(7) The period of time between the day on which an application for review of a requirement is made pursuant to subsection (4) and the day on which the application is finally disposed of shall not be counted in the computation of

34 The Act is amended by adding the following after section 231.7:

Time period not to count

231.8 The following periods of time shall not be counted in the computation of the period of time within which an assessment may be made for a taxation year of a taxpayer under subsection 152(4):

(a) where the taxpayer is served 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

(b) where an application under subsection 231.7(1) is commenced by the Minister to order the taxpayer to provide any access, assistance, information or document, the period of time between the day on which the taxpayer files a notice of appearance, or otherwise opposes the application, and the day on which the application is finally disposed of.

DENTONS CANADA LLP COMMENTARY

Pursuant to section 231.2 of the ITA, the CRA is empowered to require a taxpayer to provide any information or documentation related to the administration and enforcement of the ITA. In order to require the provision of such information, the CRA must serve notice to a taxpayer to provide the requested information within a reasonable period of time.

A taxpayer taking issue with such notice may challenge the CRA's decision by way of judicial review to the Federal Court. Furthermore, should a taxpayer not comply with the notice to provide information issued under section 231.2 of the ITA, the CRA may apply to a judge for a compliance order pursuant to subsection 231.7(1) of the ITA.

The CRA's ability to reassess a taxpayer is constrained by the "normal reassessment period" defined in subsection 152(3.1) of the ITA. That period is generally within three or four years of the CRA's initial assessment of the subject taxation year. Whether initiated by the taxpayer or the CRA, judicial consideration of the requirement to provide information may consume significant periods of time during which the CRA is unable to substantively consider the information sought.

Budget 2018 implements a "stop the clock" rule in subsection 231.8 of the ITA pursuant to which the normal reassessment period of a taxpayer is extended. The extension is calculated based on the period which begins at the point at which the taxpayer commences an application for judicial review or the CRA applies for a compliance order pursuant to subsection 231.7(1) of the ITA. The period ends at the time of the final disposition of the application.

This amendment brings the rules relating to domestic requirements for information in line with a similar "stop the clock" rule in subsection 231.6(7) of the ITA relating to the review by a court of a requirement to provide foreign-based information. The wording of that rule was amended to align with the new "stop the clock rule".

Resolution 35: Reassessment Period – Non-Resident Non-Arm's Length Persons

35 (1) Subparagraph 152(4)(b)(iii) of the French version of the Act is replaced by the following:

(iii) est établie par suite de la conclusion d'une opération impliquant le contribuable et une personne non résidente avec laquelle il avait un lien de dépendance,

(2) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.3):

(b.4) the assessment, reassessment or additional assessment is made before the day that is six years after the end of the normal reassessment period for the taxpayer in respect of the year if

(i) a reassessment of tax for the year was required under subsection (6), or would have been so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to in that subsection, in order to take into account a deduction claimed under section 111 in respect of a loss for a subsequent taxation year,

(ii) an assessment, reassessment or additional assessment of tax for the subsequent taxation year referred to in subparagraph (i) was made after the normal reassessment period in respect of the subsequent taxation year as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, and

(iii) the assessment, reassessment or additional assessment referred to in subparagraph (ii) reduced the amount of the loss for the subsequent taxation year;

(3) The portion of subsection 152(4.01) of the Act before paragraph (a) is replaced by the following:

Extended period assessment

(4.01) Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a), (b), (b.1), (b.3), (b.4) or (c) applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(4) Subsection 152(4.01) of the Act is amended by striking out "and" at the end of paragraph (b), by adding "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) if paragraph (4)(b.4) applies to the assessment, reassessment or additional assessment, the reduction under subparagraph (4)(b.4)(iii).

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

(6) Subsections (2) to (4) apply in respect of a taxation year if a reassessment of tax for the year was required under subsection 152(6) of the Act, or would have been so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to in that subsection, in order to take into account a deduction claimed under section 111 of the Act in respect of a loss for a subsequent taxation year that ends on or after Budget Day.

DENTONS CANADA LLP COMMENTARY

The CRA is normally not entitled to reassess a taxpayer beyond the "normal reassessment period" defined in subsection 152(3.1) of the ITA (generally, three or four years after the CRA's initial assessment of the subject taxation year). That said, where the reassessment issued related to a transaction between the taxpayer and a non-resident person with whom the taxpayer does not deal at arm's length, the normal reassessment period is extended by a further three years.

Reassessments involving transactions with a non-resident who does not deal at arm's length with a taxpayer may necessitate consequential adjustments to tax years preceding the year in which the transactions occurred. For example, a taxpayer may realize a loss in a given year as a result of a transaction with a non-resident person, and may carry that loss back to a prior year. A reassessment of that prior year by the CRA would be statute barred. This is incongruous with the general loss carryback regime, which generally provides that where a taxation year in which a loss is claimed may be reassessed, the normal reassessment period applicable to any year to which a portion of the loss was carried back is extended by three years.

Budget 2018 proposes to add new paragraph 152(4)(*b*.4) to the ITA permitting the CRA to reassess a prior taxation year of a taxpayer for a further three years for a total of six additional years to the extent that the adjustment relates to a loss carryback, where:

1. The reassessment is the consequence of a transaction between a taxpayer and a non-resident person who does not deal at arm's length with the taxpayer;
2. The reassessment reduces the taxpayer's loss for the taxation year from which the loss is carried back; and
3. All or any portion of the loss was actually carried back to the prior taxation year.

The new rule applies to taxation years where a carried back loss is claimed, provided that the loss is carried back from a taxation year ending on or after Budget Day.

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 and Investment Limited Partnerships

1 (1) Subsection 123(1) of the *Excise Tax Act* is amended by adding the following in alphabetical order:

investment limited partnership means a limited partnership, the primary purpose of which is to invest funds in property consisting primarily of financial instruments, if

(a) the limited partnership is, or forms part of an arrangement or structure that is, represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund, venture capital fund or other similar collective investment vehicle, or

(b) the total value of all interests in the limited partnership held by listed financial institutions is 50% or more of the total value of all interests in the limited partnership; (*société en commandite de placement*)

(2) Subsection (1) is deemed to have come into force on September 8, 2017.

2 (1) Section 132 of the Act is amended by adding the following after subsection (5):

Residence of investment limited partnerships

(6) For the purposes of this Part but subject to subsection (2), an investment limited partnership is deemed to not be resident in Canada at any time if, at that time, the total value of all interests in the partnership held by non-resident members of the partnership (other than prescribed members) is 95% or more of the total value of all interests in the partnership.

(2) Subsection (1) is deemed to have come into force on September 8, 2017.

3 (1) Subsection 149(5) of the Act is amended by striking out "and" at the end of paragraph (f) and by adding the following after paragraph (f):

(f.1) an investment limited partnership; and

(2) Subsection (1) applies in respect of

(a) any taxation year of a person that begins after 2018; and

(b) the taxation years of a person that begin in 2018 if the person elects to have subsection (1) apply in respect of those taxation years.

(3) An election under paragraph (2)(b) is to

(a) be made in prescribed form containing prescribed information; and

(b) be filed with the Minister of National Revenue in prescribed manner on or before the day that is 60 days after the day on which the legislation enacting this section receives royal assent or any later day that the Minister of National Revenue may allow.

(4) If a person makes an election under paragraph (2)(b), the references in subsection 244.1(4) of the Act, as enacted by subsection 4(1), to "2018" and "2019" are to be read as "2017" and "2018", respectively, in applying that subsection 244.1(4) in respect of the person.

4 (1) Section 244.1 of the Act is amended by adding the following after subsection (3):

Fiscal year — investment limited partnership

(4) If a particular fiscal year of an investment limited partnership begins in 2018 and includes January 1, 2019 and the investment limited partnership would be a selected listed financial institution throughout a reporting period in the particular fiscal year if the particular fiscal year began on January 1, 2019 and ended on December 31, 2019, the following rules apply:

(a) the particular fiscal year ends on December 31, 2018;

(b) subject to subsection (2), the fiscal years of the investment limited partnership are calendar years as of January 1, 2019;

(c) any election made by the investment limited partnership under section 244 ceases to have effect as of January 1, 2019; and

(d) if the first taxation year of the investment limited partnership that begins after 2018 does not begin on January 1, 2019, for the purposes of subsection 225.2(1) the investment limited partnership is deemed to be a financial institution for the period beginning on January 1, 2019 and ending on the day preceding the first day of that taxation year.

(2) Subsection (1) is deemed to have come into force on September 8, 2017.

5 (1) Paragraph 272.1(3)(b) of the Act is replaced by the following:

(b) in the case of management or administrative services that are rendered by a general partner of an investment limited partnership to the investment limited partnership under an agreement for the particular supply of those services,

(i) if subsection 136.1(2) applies in respect of the particular supply, for each separate supply of those services that is deemed under paragraph 136.1(2)(a) to be made by the general partner for a billing period (within the meaning of that subsection), the separate supply is deemed, despite paragraph 136.1(2)(c), to be made for consideration that becomes due on the last day of the billing period equal to the fair market value of the services rendered under the agreement by the general partner to the investment limited partnership during the billing period, determined as if the general partner were not a member of the investment limited partnership and were dealing at arm's length with the investment limited partnership, and

(ii) in any other case,

(A) the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a separate supply of those services for each reporting period of the general partner during which those services are, or are to be, rendered under the agreement, and

(B) each separate supply of those services that is deemed to be made under clause (A) for a reporting period of the general partner is deemed to be made on the first day of the reporting period for consideration that becomes due on the last day of the reporting period equal to the fair market value of the services rendered under the agreement by the general partner to the investment limited partnership during the reporting period, determined as if the general partner were not a member of the investment limited partnership and were dealing at arm's length with the investment limited partnership; and

(c) in any other case, the supply is deemed to have been made for consideration that becomes due at the time the supply is made equal to the fair market value at that time of the property or service acquired by the partnership determined as if the person were not a member of the partnership and were dealing at arm's length with the partnership.

(2) Section 272.1 of the Act is amended by adding the following after subsection (7):

Investment limited partnership — supply by general partner

(8) For the purposes of this Part, if a general partner of an investment limited partnership renders a management or administrative service to the investment limited partnership,

(a) the rendering of the service is deemed not to be done by the general partner as a member of the investment limited partnership; and

(b) the supply by the general partner to the investment limited partnership that includes the service is deemed to have been made otherwise than in the course of the investment limited partnership's activities.

(3) For the purposes of subsections (4) to (6) and Part IX of the Act, if management or administrative services are rendered by a general partner of an investment limited partnership to the investment limited partnership under a particular agreement entered into before September 8, 2017 and if some or all of those services are rendered on or after that day, the following rules apply:

(a) in respect of the management or administrative services that are rendered on or after September 8, 2017 (referred to in this paragraph as the "subsequent services"),

(i) the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a particular supply of the subsequent services and the particular supply is deemed to have been made on September 8, 2017,

(ii) the subsequent services are deemed to have been rendered under an agreement for the particular supply and not under the particular agreement and the agreement for the particular supply is deemed to have been entered into on September 8, 2017,

(iii) any amount that is charged, collected or remitted at any time as or on account of tax under Part IX of the Act in respect of an amount of consideration that is reasonably attributable to the rendering of the subsequent services is deemed to be an amount of tax that is collected at that time in respect of the particular supply, and

(iv) if the total of all amounts of tax that are payable under Part IX of the Act in respect of the particular supply is in excess of the total of the amounts that are deemed under subparagraph (iii) to be amounts collected before Budget Day in respect of that supply, that excess is deemed, despite subsection 272.1(3) of the Act, as amended by subsection (1), to have become payable on Budget Day and the general partner is deemed to have collected that excess on that day; and

(b) in respect of the management or administrative services, if any, that are rendered before September 8, 2017 (referred to in this paragraph as the "prior services"),

(i) the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a supply of the prior services (referred to in this paragraph as the "earlier supply") and the earlier supply is deemed to have been made on the day on which the particular agreement is entered into,

(ii) the prior services are deemed to have been rendered under an agreement for the earlier supply and not under the particular agreement and the agreement for the earlier supply is deemed to have been entered into on the day on which the particular agreement is entered into, and

(iii) any amount that is charged, collected or remitted at any time as or on account of tax under Part IX of the Act in respect of an amount of consideration that is reasonably attributable to the rendering of the prior services under the particular agreement is deemed to be an amount of tax that is collected at that time in respect of the earlier supply.

(4) Subsection (1) applies in respect of management or administrative services that are supplied after September 7, 2017.

(5) Subsection (2) is deemed to have come into force on September 8, 2017 but also applies in respect of management or administrative services that are rendered under an agreement entered into before that day if an amount was, before that day, charged, collected or remitted as or on account of tax under Part IX of the Act in respect of those services or in respect of any supply made under the agreement.

(6) For the purposes of Part IX of the Act, if subsection 272.1(8) of the Act, as enacted by subsection (2), applies in respect of management or administrative services that are rendered before September 8, 2017 by a general partner of an investment limited partnership to the investment limited partnership under an agreement entered into before that day, the following rules apply:

(a) subsection 272.1(3) of the Act, as amended by subsection (1), does not apply in respect of the supply of the management or administrative services made by the general partner to the investment limited partnership;

(b) any amount that the investment limited partnership pays or credits to the general partner after September 7, 2017 that is reasonably attributable to the management or administrative services is deemed to be consideration for the supply of those services by the general partner to the investment limited partnership that becomes due at the time the amount is paid or credited; and

(c) if an amount was charged, collected or remitted as or on account of tax in respect of a particular amount — being an amount that the investment limited partnership paid or credited to the general partner before September 8, 2017 and that is reasonably attributable to the management or administrative services — the particular amount is deemed to be consideration for a taxable supply of those services that becomes due at the time the amount is paid or credited.

DENTONS CANADA LLP COMMENTARY

The government released proposals regarding investment limited partnerships on September 8, 2017. In Budget 2018, the government confirmed its intention to move forward with these measures, with a couple of timing-related changes:

- GST/HST will only apply to management and administrative services rendered by a general partner on or after September 8, 2017. Services rendered by a general partner before that date will not be subject to GST/HST unless the general partner actually charged GST/HST in respect of those services.

  - o GST/HST will be generally payable on the fair market value of such services, in the period when services are actually rendered

- A new definition is introduced in subsection 123(1) for "investment limited partnership". Generally speaking, an investment limited partnership is a limited partnership whose primary purpose is to invest funds in property that is primarily financial instruments. Investment limited partnerships are generally deemed not resident in Canada if 95% or more of partnership interests are held by non-resident members.
- It is proposed that investment limited partnerships will be eligible to elect to advance the application of special HST rules.

A number of transitional rules for investment limited partnerships are also proposed, in the Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations. Changes are also proposed to other Regulations to include mention of investment limited partnerships.

That it is expedient to amend the Excise Act, 2001 ("the Act") and other related legislation as follows:

Resolutions 1 to 21: Tobacco Taxation

Excise Act, 2001

1 (1) Subsections 43.1(1) and (2) of the *Excise Act, 2001* are replaced by the following:

Definition of *inflationary adjusted year*

43.1 (1) In this section, ***inflationary adjusted year*** means 2019 and every year after that year.

Annual adjustments

(2) Each rate of duty set out in sections 1 to 4 of Schedule 1 and paragraph (a) of Schedule 2 in respect of a tobacco product is to be adjusted on April 1 of an inflationary adjusted year so that the rate is equal to the greater of

(a) the rate determined by the formula

$$A \times B$$

where

A is the rate of duty applicable to the tobacco product on March 31 of the inflationary adjusted year, and

B is the amount, rounded to the nearest one-thousandth, or, if the amount is equidistant from two consecutive one-thousandths, rounded to the higher one-thousandth, determined by the formula

$$C/D$$

where

C is the Consumer Price Index for the 12-month period ending on September 30 of the particular year preceding the inflationary adjusted year, and

D is the Consumer Price Index for the 12-month period ending on September 30 of the year preceding the particular year; and

(b) the rate of duty referred to in the description of A in paragraph (a).

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

2 (1) The definition *adjustment day* in section 58.1 of the Act is amended by striking out "or" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(a.1) the day after Budget Day; or

(b) in the case of an inflationary adjusted year, April 1 of that year. (*date d'ajustement*)

(2) The portion of the definition *taxed cigarettes* in section 58.1 of the Act before paragraph (a) is replaced by the following:

taxed cigarettes of a person means cigarettes in respect of which duty has been imposed under section 42 or 53 at the rate applicable on the day before an adjustment day, and that, at the beginning of the adjustment day,

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

3 (1) Subsection 58.2(2) of the Act is replaced by the following:

Imposition of tax — 2018 increase

(1.1) Subject to section 58.3, every person shall pay to Her Majesty a tax on all taxed cigarettes of the person held at the beginning of the day after Budget Day at the rate of $0.011468 per cigarette.

Imposition of tax — inflationary adjusted years

(2) Subject to section 58.3, every person shall pay to Her Majesty a tax on all taxed cigarettes of the person held at the beginning of April 1 of an inflationary adjusted year at a rate per cigarette equal to

(a) in the case of cigarettes in respect of which duty has been imposed under section 42, the amount determined by the formula

$$(A - B)/5$$

where

A is the rate of duty applicable under section 1 of Schedule 1 for each five cigarettes on April 1 of the inflationary adjusted year, and

B is the rate of duty applicable under section 1 of Schedule 1 for each five cigarettes on March 31 of the inflationary adjusted year; and

(b) in the case of cigarettes in respect of which duty has been imposed under section 53, the amount determined by the formula

$$C - D$$

where

C is the rate of duty applicable under paragraph 1(a) of Schedule 3 per cigarette on April 1 of the inflationary adjusted year, and

D is the rate of duty applicable under paragraph 1(a) of Schedule 3 per cigarette on March 31 of the inflationary adjusted year.

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

4 (1) Subsection 58.5(1) of the Act is amended by striking out "or" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(a.1) in the case of the tax imposed under subsection 58.2(1.1), the last day of the month that is two months after the month that includes Budget Day; or

(b) in the case of the tax imposed under subsection 58.2(2) in respect of an inflationary adjusted year, May 31 of the inflationary adjusted year.

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

5 (1) Subsection 58.6(1) of the Act is amended by striking out "or" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(a.1) in the case of the tax imposed under subsection 58.2(1.1), the last day of the month that is two months after the month that includes Budget Day; or

(b) in the case of the tax imposed under subsection 58.2(2) in respect of an inflationary adjusted year, May 31 of the inflationary adjusted year.

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

6 (1) Subparagraphs 216(2)(a)(i) to (iv) of the Act are replaced by the following:

(i) $0.24 multiplied by the number of cigarettes to which the offence relates,

(ii) $0.24 multiplied by the number of tobacco sticks to which the offence relates,

(iii) $0.30 multiplied by the number of grams of manufactured tobacco other than cigarettes or tobacco sticks to which the offence relates, and

(iv) $0.47 multiplied by the number of cigars to which the offence relates, and

(2) Subparagraphs 216(3)(a)(i) to (iv) of the Act are replaced by the following:

(i) $0.36 multiplied by the number of cigarettes to which the offence relates,

(ii) $0.36 multiplied by the number of tobacco sticks to which the offence relates,

(iii) $0.45 multiplied by the number of grams of manufactured tobacco other than cigarettes or tobacco sticks to which the offence relates, and

(iv) $0.93 multiplied by the number of cigars to which the offence relates, and

7 Paragraphs 240(a) to (c) of the Act are replaced by the following:

(a) $0.43 per cigarette that was removed in contravention of that subsection,

(b) $0.43 per tobacco stick that was removed in contravention of that subsection, and

(c) $537.48 per kilogram of manufactured tobacco, other than cigarettes and tobacco sticks, that was removed in contravention of that subsection.

8 (1) Paragraph 1(a) of Schedule 1 to the Act is replaced by the following:

(a) $0.59634; or

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

9 (1) Paragraph 2(a) of Schedule 1 to the Act is replaced by the following:

(a) $0.11927; or

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

10 (1) Paragraph 3(a) of Schedule 1 to the Act is replaced by the following:

(a) $7.45425; or

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

11 (1) Paragraph 4(a) of Schedule 1 to the Act is replaced by the following:

(a) $25.95832; or

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

12 (1) Subparagraph (a)(i) of Schedule 2 to the Act is replaced by the following:

(i) $0.09331, or

(2) Paragraph (b) of Schedule 2 to the Act is replaced by the following:

(b) the amount obtained by multiplying the sale price, in the case of cigars manufactured in Canada, or the duty-paid value, in the case of imported cigars, by 88%.

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

Economic Action Plan 2014 Act, No. 1

13 Subsection 76(5) of the *Economic Action Plan 2014 Act, No. 1* is replaced by the following:

(5) Subsections (2) and (4) come into force on April 1, 2019.

14 Subsection 78(3) of the Act is replaced by the following:

(3) Subsection (2) comes into force on April 1, 2019.

15 Subsection 79(4) of the Act is replaced by the following:

(4) Subsection (2) comes into force on April 1, 2019.

16 Subsection 80(4) of the Act is replaced by the following:

(4) Subsection (2) comes into force on April 1, 2019.

17 Subsection 81(4) of the Act is replaced by the following:

(4) Subsection (2) comes into force on April 1, 2019.

Economic Action Plan 2014 Act, No. 2

18 Subsection 100(4) of the *Economic Action Plan 2014 Act, No. 2* is replaced by the following:

(4) Subsection (2) comes into force on the day after Budget Day.

19 Subsection 101(2) of the Act is replaced by the following:

(2) Subsection (1) comes into force on the day after Budget Day.

Budget Implementation Act, 2017, No. 1

20 Subsections 45(3) and (5) of the *Budget Implementation Act, 2017, No. 1* are repealed.

Application

21 For the purposes of applying the provisions of the *Customs Act* that provide for the payment of, or the liability to pay, interest in respect of any amount, the amount is to be determined and interest is to

be computed on it as though paragraphs 1(a), 2(a), 3(a), 4(a) of Schedule 1 to the *Excise Act, 2001*, as enacted by sections 8 to 11, and subparagraph (a)(i) and paragraph (b) of Schedule 2 to the *Excise Act, 2001*, as enacted by section 12, had been assented to on the day after Budget Day.

DENTONS CANADA LLP COMMENTARY

The government noted that tobacco-related illnesses continue to be a significant health risk for Canadians, and that tobacco taxation can be an effective deterrent.

In Budget 2018, two adjustments are proposed regarding tobacco taxation under the Excise Act, 2001. The duty will be increased on various types of tobacco, and inflationary adjustments for excise duty will occur more frequently than in the past.

The rate changes are as follows:

- The excise duty will be increased by an additional $1 per carton of 200 cigarettes;
- Rates will be correspondingly increased on tobacco sticks and manufactured tobacco; and

Duty rates will now be adjusted for inflation every year, instead of every five years, commencing April 1, 2019.

Resolution 22: Cannabis Taxation

22 The *Excise Act, 2001* and related legislative texts are modified to give effect to the proposals relating to the excise duty framework for cannabis products as described in the release by the Minister of Finance on November 10, 2017 and subsequently in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

DENTONS CANADA LLP COMMENTARY

Budget 2018 proposes a new excise duty framework for cannabis products. The proposals are largely based on the draft "Legislative and Regulatory Proposals and Explanatory Notes relating to the taxation of Cannabis" released on November 10, 2017, but with a few changes. The most notable change is to the federal rates and the proposed allocation of duty revenue between federal and provincial/territorial governments.

The *Excise Act, 2001* ("EA") currently applies excise duties on tobacco, wine and spirits. It will be amended to apply to all cannabis products available for legal purchase including fresh and dried cannabis, cannabis oils as well as seeds or seedlings for home cultivation.

Revenue from this excise duty is proposed to be shared with provinces and territories: Budget 2018 proposes that provinces and territories would receive 75% of the revenue while the federal government would retain 25%. The initial proposal contemplated a 50%-50% split.

The excise duty is proposed to be the higher of a flat rate imposed on the quantity of cannabis in a final product, or a percentage of the products' sale price sold by a federal licensee.

The following table shows the new proposed applicable rates, including both the federal only rate and combined federal/provincial rate.

Excise Duty Rates for Cannabis Products

Cannabis Plant Product	Federal Rates *Higher of the Two Rates Apply*		Additional Rates in Respect of a Province/Territory *Higher of the Two Rates Apply*	
	Federal Flat Rate	Federal Ad Valorem Rate	PT Additional Flat Rate	PT Ad Valorem Additional Rate
Flower	$0.25 / gram	2.5 per cent of the dutiable amount of a cannabis product packaged by a cannabis licensee to a purchaser.	$0.75 / gram	7.5 per cent of the dutiable amount of a cannabis product packaged by a cannabis licensee to a purchaser.
Trim	$0.075 / gram		$0.225 / gram	
Seed	$0.25 / seed		$0.75 / seed	
Seedling	$0.25 / seedling		$0.75 / seedling	

The excise duty will generally apply to any cannabis product that contains Tetrahydrocannabinol (THC). Pharmaceutical products derived from cannabis are generally exempt.

Excise Stamping requirements

As is the case for tobacco products, all cannabis products that will be removed from the premises of a federal licensee to enter into the Canadian market will be required to be packaged in a container intended for sale at the retail level and will be required to have an excise stamp. With respect to stamping within a coordinated taxation framework between federal, provincial, and territorial governments with potentially different duty rates:

- cannabis licensee (i.e., the manufacturer who packages a product for final retail sale) would have to apply an excise stamp with specified colours indicating the intended provincial or territorial market, and
- Diversion of products intended for consumption in a particular province would be subject to penalties

GST/HST will also be applied to sales of cannabis products (including seeds and seedlings) in accordance with the broad-base application of GST/HST in general.

Budget 2018 states that the basic groceries framework in the Excise Tax Act (Part III of Schedule VI) will be amended to ensure that cannabis products do not fall within this Part, and remain subject to GST/HST. Similarly, Part IV of Schedule VI (agricultural products) will be amended to ensure that sales of cannabis products will not be subject to relieving rules under that Part.

The excise duty framework are intended to come into effect when cannabis for non-medical purposes becomes available for retail sale.

Other Measures

Tax Information Sharing

The Budget documents propose to amend rules that facilitate the sharing of information between Canada and its international partners under its various international tax treaties and other agreements. The proposals are not set out in Budget resolutions, but are summarized below.

Canada is a party to 93 tax treaties, 23 Tax Information Exchange Agreements and the Convention on *Mutual Administrative Assistance in Tax Matters* (collectively, "International Tax Instruments"). Collectively, International Tax Instruments facilitate tax compliance and enforcement by providing for the sharing of tax-related information for civil and criminal tax law purposes, subject to certain confidentiality provisions. Responsibility for administering Canada's obligations under thoe instruments rests with the CRA.

Mutual Legal Assistance for Tax Offences

The *Mutual Legal Assistance in Criminal Matters Act* ("MLACMA"), administered by the Department of Justice, provides broad tools for the sharing of information for criminal law purposes. Those tools include the ability to obtain court orders to gather and send information. Budget 2018 proposes to make those tools available to the CRA (working with the Department of Justice) for the purposes of sharing criminal tax information under International Tax Instruments. Consequential or related amendments to the ITA and the ETA are contemplated. However, no draft legislation has been proposed at this time.

Sharing Tax Information for Serious Non-Tax Offences

Many of Canada's international mutual legal assistance partners are able to share tax information in response to a request for mutual legal assistance in relation to a serious non-tax offence. However, Canada's domestic legal regime surrounding mutual legal assistance currently does not permit Canada to reciprocate by providing tax information pursuant to these mutual legal assistance agreements. The current legislative information sharing regime also does not permit the Attorney General to obtain a court order for or Canadian police officers to obtain taxpayer information under the ETA for the investigation and prosecution of serious non-tax offences, even though disclosure in analogous circumstances is permissible under the ITA.

Budget 2018 proposes to enable the sharing of tax information with Canada's mutual legal assistance partners in respect of offences in section 462.48 of the *Criminal Code* such as terrorism, organized crime, money laundering, criminal proceeds or designated substance offences. It further proposes to permit disclosure of taxpayer information under the ETA to Canadian police officers where such disclosure is currently permitted under the ITA.

Amendments to the MLACMA, the *Criminal Code*, the ITA and the ETA are contemplated to give effect to the proposed information sharing arrangements.

Other Income Tax Measures

Other measures not contained in the Budget resolutions but identified as measures that will be enacted include:

- Measures confirmed in Budget 2016 relating to the Goods and Services Tax/Harmonized Sales Tax joint venture election;
- Income tax measures announced in Budget 2016 expanding tax support for electrical vehicle charging stations and electrical energy storage equipment;
- The income tax measure announced in Budget 2016 on informationreporting requirements for certain dispositions of an interest in a life insurance policy;
- Technical income tax legislative amendments released on September 16, 2016, relating to a division of a corporation under foreign laws, and to the requirements to qualify as a prescribed share;
- The income tax measure announced in Budget 2017 to support the establishment of a tax-exempt Memorial Grant for First Responders (the Community Heroes benefit);
- The income tax measure announced on May 18, 2017 for additional tax relief for Canadian armed forces personnel and police officers;
- Remaining legislative and regulatory proposals released on September 8, 2017 relating to the Goods and Services Tax/Harmonized Sales Tax;
- The income tax measure announced on October 16, 2017 to lower the small business tax rate from 10.5 per cent to 10 per cent, effective January 1, 2018, and to 9 per cent, effective January 1, 2019, which was included in a Notice of Ways and Means Motion tabled on October 24, 2017 along with related amendments to the gross-up amount and dividend tax credit for taxable dividends;
- The income tax measure announced on October 24, 2017 in the Fall Economic Statement to provide for the indexing of the Canada Child Benefit amounts as of July 1, 2018 instead of July 1, 2020; and
- Income tax measures on December 13, 2017 to address income sprinkling.

Other Excise Tax Measures

Under the holding corporation rule, a parent corporation may be entitled to claim input tax credits to recover GST/HST paid in respect of expenses that relate to another corporation. In general, the rule applies where:

1. A parent corporation incurs expenses;
2. The expenses can reasonably be regarded as being in relation to the shares or indebtedness of a commercial operating corporation (a corporation all or substantially all of the property of which is for consumption, use or supply in commercial activities); and
3. The parent corporation is related to the commercial operating corporation.

Where the rule applies, the expenses are deemed to have been incurred in relation to the commercial activities of the parent corporation such that input tax credits on the expenses may be claimed.

Budget 2018 flags the government's intention to engage in consultation with respect to the holding corporation rule. Specifically, under consideration are the limitation of the rule to corporations, and the requisite degree of relationship between the parent corporation and the commercial operating corporation. The government also intends to clarify which expenses of the parent corporation qualify for input tax credits.

Consultation documents and draft legislative proposals were not released in Budget 2018 but are intended to be released for comment in the near future.

Table of Effective Dates—2018

Income Tax		
Resolutions 1-4	**Canada Workers Benefit**	Effective January 1, 2019
Resolution 5	**Medical Expense Tax Credit – Eligible Expenditures**	Effective January 1, 2018
Resolution 6	**Registered Disability Savings Plan – Qualifying Plan Holders**	Effective upon Royal Assent
Resolution 7	**Deductibility of Employee Contributions to the Enhanced Portion of the Quebec Pension Plan**	Effective January 1, 2019
Resolutions 8 – 10	**Child Benefits**	Various dates
Resolutions 11 – 15	**Charities – Miscellaneous Technical Issues**	Effective February 27, 2018
Resolution 16	**Mineral Exploration Tax Credit for Flow-Through Share Investors**	Effective March 1, 2018
Resolution 17	**Reporting Requirements for Trusts**	Effective January 1, 2021
Resolutions 18 – 20	**Passive Investment Income**	Effective January 1, 2019
Resolution 21	**Tax Support for Clean Energy**	Effective upon Royal Assent
Resolutions 22 – 23	**Artificial Losses Using Equity-Based Financial Arrangements**	Effective February 27, 2018
Resolutions 24 – 25	**Stop-Loss Rule on Share Repurchase Transactions**	Effective February 27, 2018
Resolution 26	**At-Risk Rules for Tiered Partnerships**	Effective February 27, 2018
Resolution 27	**Health and Welfare Trusts**	Effective January 1, 2021
Resolutions 28 – 30	**Cross-Border Surplus Stripping using Partnerships and Trusts**	Effective February 27, 2018
Resolution 31	**Foreign Affiliates**	Effective February 27, 2018
Resolutions 32 – 34	**Reassessment Period – Requirements for Information and Compliance Orders**	Effective upon Royal Assent
Resolution 35	**Reassessment Period – Non-Resident Non-Arm's Length Persons**	Effective February 27, 2018

GST/HST Measures		
Resolutions 1 – 2	**GST/HST and Investment Limited Partnerships**	Effective September 8, 2017
Resolution 3	**GST/HST and Investment Limited Partnerships**	Effective taxation years beginning after 2018 and taxation years that begin in 2018 if the person elects
Resolution 4	**GST/HST and Investment Limited Partnerships**	Effective September 8, 2017

Resolution 5(1)	**GST/HST and Investment Limited Partnerships**	Services supplied after September 7, 2017
Resolution 5(2)	**GST/HST and Investment Limited Partnerships**	Effective September 8, 2017, but also applies to services rendered under a prior agreement if an amount was charged, collected, or remitted on account of tax under Part IX prior to September 8, 2017

Excise Measures		
Resolutions 1 – 5	**Tobacco Taxation**	Effective February 28, 2018
Resolutions 6 – 7	**Tobacco Taxation**	Effective upon Royal Assent
Resolutions 8 – 12	**Tobacco Taxation**	Effective February 28, 2018
Resolutions 13 – 17	**Economic Action Plan 2014 Act No. 1**	Effective upon Royal Assent
Resolutions 18 – 19	**Economic Action Plan 2014 Act No. 2**	Effective upon Royal Assent
Resolution 20	**Budget Implementation Act, 2017, No. 1**	Effective upon Royal Assent
Resolution 21	**Application**	Effective upon Royal Assent
Resolution 22	**Cannabis Taxation**	Effective upon Royal Assent

Department of Finance News Release

Budget 2018: Equality and Growth for a Strong Middle Class

February 27, 2018 – Ottawa, Ontario – Department of Finance Canada

Making sure every Canadian has a real and fair chance at success is not just the right thing to do, it is the smart thing to do. Canada's future prosperity depends on it.

To face the challenges of today and tomorrow, the Government of Canada will need the hard work and creativity of all Canadians. In return, it needs to ensure the benefits of a growing economy are felt by more and more people—with good, well-paying jobs for the middle class and everyone working hard to join it.

Over the last two years, Canada's economic growth has been fuelled by a stronger middle class. Canadians' hard work, combined with the Government's historic investments in people and in communities, helped to create more good jobs—while more support for those who need it most has meant more money for people to save, invest, and spend in their communities.

To build on this progress, Finance Minister Bill Morneau today tabled Budget 2018—Equality + Growth: A Strong Middle Class—which supports the Government's people-centred approach. Guided by a new Gender Results Framework, Budget 2018 proposes measures to ensure that every Canadian has a real and fair chance at success.

Through Budget 2018, the Government is taking the next steps towards building an equal, competitive, sustainable, and fair Canada—where science, curiosity, and innovation spur economic growth. Budget 2018 also renews the Government's commitment to building a new relationship together with Indigenous Peoples, based on recognition of rights, respect, cooperation, and partnership. Furthermore, it remains focused on Canada's future and the things that truly matter to Canadians, with investments that protect our environment, support a sustainable low-carbon economy, and promote equality and prosperity for those who need it most at home and around the world.

Canada's strong fiscal fundamentals—anchored by a low and consistently declining debt-to-GDP (gross domestic product) ratio—mean that the Government has the confidence to make the investments that will strengthen and grow the middle class, and lay a more solid foundation for our children's future.

Budget 2018 further builds on historic investments included in previous federal budgets and proposes to:

- Put more money in the pockets of those who need it the most, by improving access to the Canada Child Benefit and introducing the Canada Workers Benefit, a stronger and more accessible benefit that will replace the Working Income Tax Benefit.
- Make significant progress towards equality of opportunity, by taking leadership to address the gender wage gap, supporting equal parenting, tackling gender-based violence and sexual harassment, and introducing a new entrepreneurship strategy for women.

- Support the next generation of researchers, by providing historic funding to increase opportunities for young researchers and provide them the equipment they need, while strengthening support for entrepreneurs to innovate, scale up, and reach global markets.
- Advance reconciliation with Indigenous Peoples, by helping to close the gap between the quality of life of Indigenous and non-Indigenous people, providing greater support to keep First Nations children safe and supported within their communities, accelerating progress on clean drinking water, housing, and employment, and supporting recognition of rights and self determination.
- Protect the environment for future generations, by making historic investments to preserve our natural heritage, ensuring a price is put on carbon pollution across Canada, and extending support for clean energy projects.
- Uphold Canada's shared values and support the health and wellness of Canadians, by partnering with provinces and territories to address the opioid crisis, taking action to advance national pharmacare, and bolstering support for Canada's official languages.

By building on the Government's plan to invest in the middle class, Budget 2018 takes significant steps to ensure everyone has the opportunity to fully contribute to the economy, leading to economic growth that works for all Canadians.

QUOTE

> "With this budget, built by and for all Canadians, we are tackling the challenge of equality head-on—asking tough questions, and beginning to provide solutions. We will continue to double down on our plan to invest in the middle class and everyone working hard to join it. It's a plan that puts people first, builds on the hard work of Canadians, and keeps us squarely focused on the future—so that our children have better opportunities to follow their dreams, find good jobs, and give back to their community."
>
> —*Bill Morneau, Minister of Finance*

Media may contact:

Chloé Luciani-Girouard
Press Secretary
Office of the Minister of Finance
chloe.luciani-girouard@canada.ca
613-462-5469

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*

dentons.com