

2010 Federal Budget Release March 4, 2010

Today's budget is more complex than was generally expected by the popular press. This budget will result in more changes to tax planning and compliance than are obvious to the casual reader and are beyond the scope of this release. Many of the changes relate to taxpayers with complex circumstances.

Personal Tax Highlights

Benefits Entitlement – Shared Custody

- The Budget proposes to allow two eligible individuals to receive Canada Child Tax Benefit, Universal Child Tax Benefit and GST/HST amounts if the recipients are eligible under the existing shared eligibility policy of the Canada Revenue Agency (CRA).
- This will apply to benefits payable commencing July 2010.

Universal Child Care Benefit for Single Parents

- For 2010 and subsequent years, the Budget proposes to allow a single parent the option of including the aggregate Universal Child Care Benefit amount received in the income of a dependent in certain circumstances.

Medical Expense Tax Credit and GST/HST – Purely Cosmetic procedures

- For supplies made after March 4, 2010 the Budget clarifies that GST/HST applies to all surgical and non-surgical services, devices or other goods related to purely cosmetic procedures. These expenses will also be ineligible to be claimed under the Medical Expense Tax Credit.
- A cosmetic procedure will continue to be exempt from GST/HST, and will qualify as a Medical Expense for income tax purposes, if required for medical, reconstructive, or in certain other circumstances.

Rollover of RRSP Proceeds to an RDSP

- For deaths occurring on or after March 4, 2010 the Budget proposes to extend the existing rollover rules to allow a rollover of a deceased individual's RRSP proceeds to the RDSP of a financially dependent infirm child or grandchild.
- The RDSP recipient or legal representative will be required to make an election in prescribed form at the time of the RDSP contribution and file same with both CRA and Human Resources and Skills Development Canada.
- Where the death of an RRSP annuitant occurs after 2007 and before 2011, special transitional rules will effectively allow the proposed measure to apply as of January 1, 2008.

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Carry Forward of RDSP Grants and Bonds

- In recognition of the fact that families of children with disabilities may not be able to contribute regularly to their plans, Budget 2010 proposes to amend the Canada Disability Savings Act to allow a 10-year carry forward of CDSG and CDSB entitlements. The carry forward will be available starting in 2011.

Scholarship Exemption and Education Tax Credit

- Budget 2010 proposes to ensure that the scholarship exemption for post-secondary scholarships, fellowships and bursaries remains targeted to its original purpose for 2010 and subsequent years by limiting in general the exemption to the amount of tuition paid plus the costs of program-related materials.
- Modification of the Education Tax Credit availability will result in post-doctoral fellowships being taxable.

Provincial Payments into RESP's and RDSP's

- The Budget proposes to clarify that all payments made to a Registered Education Savings Plan or Registered Disability Savings Plan through a program, funded directly or indirectly, by a province or administered by a province will be treated the same way as federal grants and bonds and will not themselves attract or reduce federal grants and bonds.

U.S. Social Security Benefits

- Budget 2010 proposes to reduce the inclusion rate to 50% from 85% for Canadian residents who have been in receipt of U.S. Social Security benefits since before January 1, 1996 and for their spouses and common-law partners who are eligible to receive survivor benefits. This will apply to benefits received on or after January 1, 2010.

Interest on Overpaid taxes

- Unlike for corporations, interest rate calculations in respect of tax overpayments by individuals will not change.

Mineral Exploration Tax Credit

- Budget 2010 proposes to extend eligibility for one year to flow-through share agreements entered into on or before March 31, 2011. Accordingly, for example, funds raised with the tax credit during the first three months of 2011 can support eligible exploration until the end of 2012.

Stock Options

- Payments to employees to cash out their stock options will no longer be eligible for the stock option deduction, unless the employer elects to forgo deducting the payment for tax purposes.
- Payments by a non-arms' length employer to employees to cash out their stock options will not be eligible for the stock option deduction.
- Employees of public companies will no longer be able to defer tax on the first \$100,000 of value relating to employee stock options vesting in the year. There will be relief for employees who acquired shares under a stock option plan and elected to defer tax until the eventual disposition of the securities. Under circumstances where the shares have declined in value, the employee will be eligible for special elective treatment that will ensure that the tax liability on a deferred stock option benefit does not exceed the proceeds of disposition on the optioned securities, subject to various adjustments for other tax implications.

Business Tax Highlights

Capital Cost Allowance

- Class 43.2 that provides accelerated CCA at 50% will be expanded to include heat recovery equipment used in a broader range of applications and distribution equipment used in certain district energy systems. These measures will apply to eligible assets acquired on or after March 4, 2010.
- Budget 2010 proposes that satellite and cable set-top boxes that are acquired after March 4, 2010 and that have neither been used nor acquired for use before March 5, 2010 be eligible for a declining-balance-CCA rate of 40 per cent.

Interest on Overpaid Taxes

- Effective July 1, 2010, the interest rate payable to corporations will be set at the average yield of three-month Government of Canada Treasury Bills sold in the first month of the preceding quarter, rounded up to the nearest full percentage point (down from 2% over the T-Bill rate). This new rate calculation change will not apply to non-corporate taxpayers.

SIFT Conversions and Loss Trading

- Provisions intended to allow income trusts and partnerships to convert their structures into corporate form on a tax-deferred basis have allowed aggressive schemes designed to achieve tax loss trading that would not be allowed between two corporations. The budget proposes to impose restrictions for transactions undertaken after March 4, 2010 on the use of losses where units for a specified investment flow-through (SIFT) trust or partnership are exchanged for shares of a corporation.
- The Budget also proposes to amend the acquisition-of-control rules to ensure that they do not result in an unintended restriction of the subsequent use of losses where a SIFT trust is wound up and distributes the shares of a corporation it holds to a sole corporate beneficiary.

Reportable Transactions

- Beginning in 2011, certain transactions will be reportable; details of how, when, where and the definition of some terms have not as yet been defined. Unless the transaction is reported, the CRA may deny any and all tax benefits associated with a transaction, if any two of the following three circumstances are met:
 - i) fees to a tax advisor and/or a promoter are dependent on the success of the tax treatment of a transaction
 - ii) a tax advisor and/or a promoter requires “confidential protection” with respect to the transaction
 - iii) the taxpayer or their agent receives “contractual protection” with respect to the transaction.
- A transaction that is a tax shelter or a flow-through share arrangement will not be impacted by these proposals, but will be subject to the existing requirements for tax shelters and flow-through shares.
- Upon discovery of a reportable transaction that has not been reported when required, the CRA could deny the tax benefit arising from the transaction. If the taxpayer still wanted to claim the tax benefit, it would be required to file with the CRA any required information and to pay a penalty. The disclosure of a reportable transaction would have no bearing on whether the benefit is allowed under the law; rather it would simply assist the CRA in identifying the transaction.

Direct Selling Industry – Simplification of GST/HST

- Gifts to hosts by a network seller will no longer be subject to GST/HST.
- Where 80% or more of the direct sellers for a company earn commissions of \$30,000 or less per year, simplified rules may apply.

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Non-residents , including withholdings

- Payments to non-residents continue to be subject to tax withholdings by the payor.
- Some payments relating to the acquisition of shares in corporations which do not derive their value principally from real or immovable property in Canada will no longer be subject to withholding tax.
- Non-residents now may recover overpaid taxes where the non-resident files a tax return within two years of the taxes being assessed; the assessment in question is for taxes for which the payor of the income did not withhold the required amount of taxes and the non-resident was subsequently found liable for them.
- Corporate taxpayers with income from foreign jurisdictions will still benefit from foreign tax credits, however, some additional restrictions on what foreign legal structures will qualify the Canadian corporation for the tax credit have been introduced.
- The definition of foreign trusts which are deemed to be resident in Canada has been expanded as well as the time period CRA has to make reassessments relating to income from such trusts has been extended.

Paper Reduction Initiative

- With the permission of the taxpayer, CRA may issue electronic notices on CRA's secure online platforms, including "My Account" and "My Business Account", instead of mailing such documents as notices of assessment and reassessment.

Charitable Organizations and Foundations – fiscal periods ending on or after March 4, 2010

Disbursement Quota

- Charities will no longer be required to spend the total of amounts transferred from other charities plus 80% of prior year's tax receipted donations, subject to some restrictions.
- The capital accumulation of assets not used for charitable purposes will need to exceed \$100,000 rather than \$25,000 before minimum disbursement requirements are applicable unless permission is received from the CRA.
- There will be more flexibility for charities with respect to all donations including endowments, multi-year projects and gifts where the donor enjoys a reduction of tax otherwise payable on capital gains.
- A charity will be able to elect not to have a transfer to a related charity included in the transferor charity's calculation used to meet its disbursement quota.

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