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APRIL 19, 2021 FEDERAL BUDGET

This issue of the Legal Business Report provides current information to the clients of Alpert Law Firm on the April 19, 2021 Federal Budget. Although these proposals are likely to be implemented in their present form, these provisions are not yet law and the final legislation should be reviewed before initiating any transaction. It is important to note that this Legal Business Report only contains Budget highlights, and the 2021 Federal Budget should be consulted for the full list of tax implications that arise.

Alpert Law Firm is experienced in providing legal services to its clients in corporate-commercial transactions, tax and estate planning matters, wealth preservation, tax dispute resolution, tax litigation and estate administration. Howard Alpert has been certified by the Law Society as a Specialist in Corporate and Commercial Law, and also as a Specialist in Estates and Trusts Law.

A. MEASURES AFFECTING BUSINESSES

1. Corporate Income Tax Rates

The April 19, 2021 Federal Budget (the “2021 Budget”) proposes no changes to the federal corporate income tax rates. The enacted federal corporate income tax rates are as follows:

	Federal	Ontario	Combined Federal and Ontario
General	15%	11.5%	26.5%
M&P	15%	10%	25%
Active Business Income (CCPCs)	9%	3.2%	12.2%
Investment income (CCPCs)	38.67%	11.5%	50.17%

2. Emergency Business Supports

(i) Extension of the Canada Emergency Wage Subsidy (CEWS) Program

a. *Gradual Rate Reduction*

The 2021 Budget proposes to extend the CEWS program for an additional four qualifying periods: (i) Period 17 - June 6 to July 3, 2021; (ii) Period 18 - July 4 to July

31, 2021; (iii) Period 19 - August 1 to August 28. 2021; and (iv) Period 20 - August 29 to September 25, 2021.

Currently, the CEWS program is available for eligible employers that have experienced any amount of revenue decline. The 2021 Budget proposes that beginning July 4, 2021, the CEWS program will only be available for eligible employers that experience revenue decline of greater than 10%. In addition, the maximum weekly base subsidy amount per employee will gradually reduce over the four periods as follows: (i) $847; (ii) $677; (iii) $452; and (iv) $226.

b. <u>CEWS for Furloughed Employees</u>

The 2021 Budget proposes to extend the CEWS program for furloughed employees (i.e., employees on leave with pay) for an additional three qualifying periods: (i) Period 17 - June 6 to July 3, 2021; (ii) Period 18 - July 4 to July 31, 2021; and (iii) Period 19 - August 1 to August 28. 2021. Employers can continue to claim their portion of contributions to the Canada Pension Plan, Employment Insurance, the Quebec Pension Plan and the Quebec Parental Insurance Plan in respect of furloughed employees until August 28, 2021. The weekly subsidy amount in respect of a furloughed employee will be the lesser of: (i) the amount of eligible remuneration paid for the week; and (ii) the greater of (a) $500; and (b) 55% of pre-crisis remuneration, up to a maximum of $595.

c. *<u>Requirement to Repay CEWS for Publicly Listed Corporations</u>*

The 2021 Budget proposes that publicly listed corporations must repay CEWS amounts received in respect of the new qualifying periods beginning on June 6, 2021 if its aggregate compensation for specified executives during the 2021 calendar year exceeds its aggregate compensation for specified executives during the 2019 calendar year. Specified executives are defined as the corporation's Named Executive Officers whose compensation is required to be disclosed under Canadian securities laws (generally, the C-Suite, including the chief executive officer and chief financial officer).

The repayment amount is equal to the lesser of: (i) the total CEWS amounts received in respect of active employees for qualifying periods that begin on or after June 6, 2021; and (ii) the amount by which the corporation's aggregate 2021 specified executive compensation exceeds its aggregate 2019 specified executive compensation.

(ii) Extension of the Canada Emergency Rent Subsidy (CERS) and Lockdown Support Programs

Similar to the CEWS program, the 2021 Budget proposes to extend the CERS program for four additional qualifying periods: (i) Period 17 - June 6 to July 3, 2021; (ii)

Period 18 - July 4 to July 31, 2021; (iii) Period 19 - August 1 to August 28. 2021; and (iv) Period 20 - August 29 to September 25, 2021. The 2021 Budget proposes that beginning July 4, 2021, the CERS program will only be available for eligible employers that experience revenue decline of greater than 10%. In addition, the maximum rent subsidy rate will gradually reduce over the four periods as follows: (i) 65%; (ii) 60%; (iii) 40%; and (iv) 20%.

The Lockdown Support subsidy is a component of the CERS available to organizations that qualify for CERS and have been required to cease or significantly limit their business activities as a result of a public health order. The 2021 Budget proposes to extend the Lockdown Support program for Periods 17 to 20, and to maintain the current 25% subsidy rate.

(iii) The Canada Recovery Hiring Program (CRHP)

The 2021 Budget introduces the new CRHP, which is intended to facilitate hiring back laid-off employees and hiring new employees. The CRHP provides a subsidy to eligible employers of up to 50% of the incremental remuneration paid to eligible employees during qualifying periods from June 6, 2021 to November 20, 2021, as compared to baseline remuneration paid during the period from March 14 to April 10, 2021. In both the qualifying period and the baseline period, eligible remuneration for each eligible employee will be subject to a maximum of $1,129 per week. The CRHP is an alternative to the CEWS, and eligible employers will be permitted to claim the higher of the CEWS and the CEWS.

A for-profit corporation will only be eligible for the CRHP if it is a Canadian controlled private corporation (CCPC). Other eligible employers include individuals, registered charities, non-profit organisations (NPOs), and certain partnerships.

Similar to the CEWS, the CRHP will only be available for eligible employers that experience revenue decline of greater than 10% and the maximum subsidy rate will gradually reduce over time: (i) 50% for the period from June 6, 2021 to August 28, 2021; (ii) 40% for the period from August 29, 2021 to September 25, 2021; (iii) 30% for the period from September 26, 2021 to October 23, 2021; and (iv) 20% for the period from October 24, 2021 to November 20, 2021.

3. <u>Immediate Expensing of Certain Depreciable Properties</u>

The 2021 Budget proposes to provide temporary immediate expensing of certain eligible property that is acquired by a CCPC after April 18, 2021 and becomes available for use before January 1, 2024. The immediate expensing is only available in the taxation year in which the property becomes available for use. Immediate expensing is limited to a maximum of $1.5 million per taxation year, prorated for short taxation years under 365 days and shared between associated members of a CCPC group.

Eligible property includes capital property subject to the capital cost allowance (CCA) rules other than property included in CCA Classes for long lived assets – i.e., Classes 1 to 6, 14.1, 17, 47, 49 and 51. Any excess over the $1.5 million limit will be subject to the usual CCA rules, and there will be no carry-forwards of unused portions of the limit.

Property that has been used or was acquired for use before it was acquired by the taxpayer will only be eligible for immediate expensing if: (i) neither the taxpayer nor a non-arm's length person previously owned the property; and (ii) the property has not been transferred to the taxpayer on a tax-deferred rollover basis.

4. Mandatory Disclosure Rules

(i) Reportable Transactions

Section 237.3 of the *ITA* currently requires reporting of certain avoidance transactions to the CRA if they bear at minimum two of three defined hallmarks: (i) the promoter or tax advisor of the transaction is entitled to contingent fees; (ii) the promoter or tax advisor requires "confidential protection", which is any arrangement that prohibits the taxpayer from disclosing the details of the transaction; and (iii) the taxpayer, the promoter or tax advisor obtains "contractual protection" in respect of the transaction, which is any form of protection against failure of the transaction or that pays for any expense that may be incurred during a dispute about the tax benefit. Under current rules, the reporting is required to be made on or before June 30 of the calendar year following the calendar year in which the transaction occurred.

The 2021 Budget proposes the following amendments to the reportable transaction rules, applicable to transactions entered into on or after January 1, 2022:

(i) Only one of three defined hallmarks needs to be present for a transaction to be reportable;

(ii) The definition of "avoidance transaction" will be broadened such that any transaction will be considered an avoidance transaction if it can reasonably be concluded that one of the main purposes of entering into the transaction is to obtain a tax benefit;

(iii) The deadline to report a transaction is accelerated such that a taxpayer who enters into a reportable transaction is required to report the transaction to the CRA within 45 days of the earlier of the day on which (a) the taxpayer becomes contractually obligated to enter into the transaction; and (b) the taxpayer enters into the transaction; and

(iv) In addition to the taxpayer who entered into the reportable transaction, promoters or advisors or certain non-arm's length persons who are entitled to receive a fee with respect to the transaction will also be required to report such transactions to the CRA within the 45-day deadline. There may be an exception available for advisors, to the extent that solicitor-client privilege applies; and

(v) Penalties for failure to report are proposed for both taxpayers and promoters or advisors.

(ii) Notifiable Transactions

The 2021 Budget proposes to introduce a regime under which the CRA, with the concurrence of the Minister of Finance, may designate certain transactions (or series of transactions) as "notifiable transactions". Such transactions would general include transactions that CRA has found to be abusive or otherwise of interest. Examples of notifiable transactions are expected to be released later this year.

Similar to the reportable transactions regime set out above, a taxpayer who enters into a notifiable transaction is required to report the transaction to the CRA within 45 days of the earlier of the day on which (i) the taxpayer becomes contractually obligated to enter into the transaction; and (ii) the taxpayer enters into the transaction. Promoters or advisors or certain non-arm's length persons who are entitled to receive a fee with respect to the transaction will also be required to report such transactions to the CRA within the 45-day deadline, unless solicitor-client privilege applies. Penalties for failure to report are proposed for both taxpayers and promoters or advisors.

(iii) Uncertain Tax Treatments

The 2021 Budget further proposes to introduce a regime under which specified corporations would be required to report uncertain tax treatments to the CRA. The proposed regime applies to corporations which meet the following conditions: (i) the corporation is required to file a Canadian tax return for the taxation year; (ii) the corporation has at least $50 million in assets at the end of its taxation year; (iii) the corporation, or a related corporation, has audited financial statements prepared; and (iv) uncertain tax treatment is reflected in those audited financial statements.

A corporation which meets the above-mentioned conditions must report uncertain tax treatments to the CRA when the corporation's tax return is due. The proposed

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penalty for failure to disclose an uncertain tax treatment is $2,000 per week, up to a maximum penalty of $100,000.

Finally, the 2021 Budget proposes that the normal reassessment period will not commence in respect of a transaction with a mandatory reporting requirement (i.e. reportable transactions notifiable transactions, or uncertain tax treatments) until disclosure is complied with.

5. **Avoidance of Tax Debts**

Section 160 of the *ITA* contains an anti-avoidance of tax debts rule which applies to transfers between non-arm's length parties for inadequate consideration. If the transferor has a tax debt for the taxation year in which the property was transferred or any preceding taxation year, the transferor and the transferee are jointly and severally liable to pay the transferor's tax debt (up to the amount by which the fair market value of the property at the time of the transfer exceeds the fair market value of any consideration given). The 2021 Budget comments that taxpayers frequently engage in aggressive tax planning that attempt to circumvent section 160 of the *ITA*, including: (i) arranging for a tax debt to crystallize after the end of the taxation year in which the property is transferred; (ii) arranging for the parties to deal at arm's length's at the time of the property transfer; or (iii) stripping out net asset value of the transferred property.

The 2021 Budget proposes the following measures to combat attempts to circumvent section 160 of the *ITA*:

(i) Deeming a tax debt to arise at an earlier time, if the transferor ought to have known that a tax debt would have arisen after the end of the taxation year in which the property is transferred, and the purpose of the transfer was to avoid that future tax debt;

(ii) Deeming a transferor and transferee (otherwise dealing at arm's length) to not be dealing at arm's length, if it is reasonable to conclude that the parties avoided non-arm's length status through a transaction or series of transactions; and

(iii) Requiring taxpayers to adopt a method of valuation for transferred property that considers the value of the property at various points in time throughout a series of transactions.

The 2021 Budget also introduces a new penalty for planners and promoters of tax debt avoidance schemes, equal to the lesser of (i) of 50% of the tax that was attempted to be avoided; and (ii) $100,000 plus the planner's or promoter's compensation for the scheme.

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Similar amendments have been proposed for section 325 of the *Excise Tax Act*. The proposed measures apply in respect of transfers of property that occur on or after April 19, 2021.

6. **CCA for Clean Energy Equipment**

The current CCA regime provides an accelerated CCA rate for Class 43.1 and Class 43.2 property, which generally includes certain clean energy generation and energy conservation equipment.

The 2021 Budget proposes to expand Classes 43.1 and 43.2 to include the following: (i) pumped hydroelectric storage equipment; (ii) electricity generation equipment that uses physical barriers or dam-like structures to harness the kinetic energy of flowing water or wave or tidal energy; (iii) active solar heating systems, ground source heat pump systems, and geothermal energy systems used to heat water for swimming pools; (iv) equipment used to produce solid and liquid fuels from specified waste material or carbon dioxide; (v) a broader range of equipment used for the production of hydrogen by electrolysis of water; and (vi) equipment used to dispense hydrogen for use in hydrogen-powered automotive equipment and vehicles. The expansion of Classes 43.1 and 43.2 will apply in respect of property that is acquired and becomes available for use on or after April 19, 2021.

The 2021 Budget also proposes to remove the following property from Classes 43.1 and 43.2: (i) fossil-fuelled cogeneration systems; (ii) fossil-fuelled enhanced combined cycle systems; (iii) specified waste-fuelled electrical generation systems that exceed a heat rate threshold of 11,000 BTU per kilowatt-hour; (iv) specified waste-fuelled heat production equipment if on an annual basis, more than one-quarter of the total fuel energy input is from fossil fuels; and (v) producer gas generating equipment if on an annual basis more than one-quarter of the total fuel energy input is from fossil fuels. The removal of property from Classes 43.1 and 43.2 will apply in respect of property that becomes available for use after 2024.

7. **Audit Authorities Scope of Authority**

In a recent Court of Appeal decision, *Canada v. Cameco Corporation*, 2019 FCA 67, the Federal Court of Appeal limited the extent to which CRA officials can require a taxpayer to answer questions orally.

In response, the 2021 Budget proposes amendments to section 231.1 of the *ITA* and comparable provisions in other federal taxing statutes to grant CRA officials the authority to require persons to answer all proper questions and provide all reasonable assistance for any purpose related to the administration or enforcement of the relevant tax act. Under the amended provisions, CRA officials will have authority to require

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taxpayers to respond to questions orally or in writing or in any form specified. These proposed amendments will come into force upon Royal Assent.

8. **Digital Services Tax**

The 2021 Budget proposes a 3% digital services tax (DST) for large businesses effective January 1, 2022, which will apply to revenue generated from digital services including online marketplaces, online advertising, social media platforms, and sale or licensing of online user data.

Large businesses that will be subject to the DST are entities that have: (i) global revenue from all sources of $750 million or more in the previous calendar year; and (ii) in-scope revenue associated with Canadian users of more than $20 million in the particular calendar year.

9. **Rate Reduction for Zero-Emission Technology Manufacturers**

The 2021 Budget proposes to temporarily reduce corporate income tax rates on income earned by eligible corporations from zero-emission technology manufacturing and processing activities. Eligible income will be taxed at a rate of 4.5% (instead of 9%) for CCPCs, and at a rate of 7.5% (instead of 15%) for other corporations. To qualify for the rate reduction, at least 10% of the taxpayer's gross revenues from all active business carried on in Canada must be generated from eligible zero-emission technology manufacturing and processing activities.

This measure applies to taxation years beginning after 2021. The rate reduction will gradually be phased out starting in taxation years beginning after 2028 and will be fully phased out in taxation years beginning after 2031.

10. **Corporate Beneficial Ownership Registry**

The 2021 Budget proposes a $2.1 million budget for the purpose of implementing a corporate beneficial ownership registry by 2025.

B. MEASURES AFFECTING INDIVIDUALS

1. **Personal Income Tax Rates**

The 2021 Budget proposes no changes to the federal personal income tax rates. The combined federal/provincial top marginal personal income tax rates (i.e. the rates on income over $220,000) for an Ontario resident is as follows:

Personal Tax Rates	2021
Ordinary Income	53.53%
Capital Gains	26.76%
Eligible Dividends	39.34%
Non-eligible Dividends	47.74%

2. **Canada Workers Benefit (CWB)**

The CWB is a refundable tax credit for working individuals and families earning low incomes. Effective for 2021 and subsequent taxation years, the 2021 Budget proposes to enhance the CWB by increasing the phase-out thresholds from $13,194 to $22,944 for single individuals without dependants, and from $17,522 to $26,177 for families.

To further boost workforce participation, the 2021 Budget also proposes a “secondary earner exemption”, which allows the lower income earner in a spousal relationship to exclude up to $14,000 of income in calculating CWB entitlement.

3. **Disability Tax Credit (DTC)**

Under current rules, an individual must have a certificate confirming that they have a severe and prolonged impairment in physical or mental functions necessary for everyday life in order to be eligible for the DTC. The 2021 Budget proposes to expand the definition of “mental functions necessary for everyday life” to include: (i) memory; (ii) attention; (iii) concentration; (iv) judgement; (v) perception of reality; (vi) problem-solving; (vii) goal-setting; (viii) regulation of behaviour and emotions; (ix) verbal and non-verbal comprehension; and (x) adaptive functioning.

4. **Postdoctoral Fellowship Income**

For the purposes of determining an individual’s contribution limit for a registered retirement savings plan (RRSP), the Budget proposes to include postdoctoral fellowship income as “earned income”, applicable for the 2021 and subsequent taxation years.

5. **Tax Treatment of COVID-19 Benefit Amounts**

The 2021 Budget proposes to amend the *ITA* to provide the option for individual taxpayers to claim a deduction in respect of a COVID-19 benefit repayment in the year the benefit was received (by requesting an adjustment to the return for the earlier year) rather than in the year repayment is made. This proposed measure applies to amounts repaid before 2023 in connection with the following benefits: (i) Canada Emergency Response Benefits (CERB); (ii) Canada Emergency Student Benefits; (iii) Canada

Recovery Benefits; (iv) Canada Recovery Sickness Benefits; and (v) Canada Recovery Caregiving Benefits.

The 2021 Budget also proposes to amend the *ITA* to include COVID-19 benefits in the calculation of taxable income for individuals who reside in Canada but are considered non-resident persons for income tax purposes.

6. Electronic Delivery of CRA Correspondence and Information Returns

The 2021 Budget proposes to amend the *ITA* and other federal taxing statutes to: (i) enable the CRA to deliver notices of assessment and certain other notices and information returns to taxpayers electronically without prior taxpayer authorisation; (ii) require most corporations and GST/HST registrants (excluding charities and some select financial institutions) to file returns electronically; and (iii) eliminate the requirement that signatures be in writing on certain prescribed forms.

7. Taxes Applicable to Registered Investments

Registered plans holding investments that are not “qualified investments” are liable to pay a tax under Part X.2 of the *ITA*, equal to 1% of the fair market value of the non-qualified investment at the time it was acquired, for each month that the registered plan holds the investment. In some cases, the effect of the tax can be disproportionate because the tax applies without regard to the proportion of the shares or units of the registered investment held by investors who are themselves subject to the qualified investment rules.

The 2021 Budget proposes to prorate the amount of Part X.2 tax assessed based on the proportion of shares or units of a registered investment held by investors who are themselves subject to qualified investment rules. This proposed measure applies to months after 2022.

C. INTERNATIONAL TAX MEASURES

1. Interest Deductibility Limits

The 2021 Budget raises concerns that interest expenses paid by Canadian taxpayers may erode the Canadian tax base inappropriately where: (i) the interest is receivable by a non-arm’s length party resident in a foreign low-tax jurisdiction; (ii) the debt was used to acquire an asset generating non-taxable income; or (iii) the Canadian taxpayer bears a disproportionate portion of third-party debt of a consolidated group.

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The 2021 Budget proposes to address these concerns by limiting the deductibility of interest expense to no more than a fixed ratio of the corporation's "tax EBITDA", which is the corporation's taxable income before taking into account interest expense, interest income, income tax, and deductions for depreciation and amortization. The ratio is proposed to be fixed at 40% for taxation years beginning during January 1, 2023 (i.e. the transition year), and at 30% for taxation years beginning on or after January 1, 2024.

Exemptions will be available for: (i) CCPCs that, together with any associated corporations, have taxable capital employed in Canada of less than $15 million; and (ii) groups of corporations and trusts whose aggregate net interest expense among Canadian members is less than $250,000.

A taxpayer that is part of a group will generally be able to transfer excess interest deductibility capacity to other Canadian group members. In addition, interest denied under the new rules can be carried forward up to 20 years or carried back up to 3 years.

D. MEASURES AFFECTING SALES AND EXCISE TAX

1. Tax on Select Luxury Goods

Effective January 1, 2022, the 2021 Budget proposes a tax on certain personal use luxury goods, including luxury cars (retail sale price >$100,000), aircrafts (>$100,000) and boats (>$250,000), with some exemptions available. The tax will be calculated at the lesser of either: (i) 20% of the value above $100,000 for cars and aircrafts, and $250,000 for boats; or (ii) 10% of the vehicle's full value.

2. Input Tax Credit (ITC) Information Requirements

Businesses are required to obtain and retain certain information to support ITC claims, with more information required when the amount paid or payable in respect of a supply equals or exceeds thresholds of $30 or $150. Effective April 20, 2021, the 2021 Budget proposes to increase current ITC information thresholds from $30 to $100, and from $150 to $500.

The 2021 Budget also proposes that billing agents (i.e., agents who collect consideration and tax on behalf of an underlying vendor but do not otherwise cause or facilitate a supply) should be treated as intermediaries, such that they may provide supporting information on behalf of the underlying vendor for the purposes of the ITC information requirements.

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3. GST New Housing Rebate Conditions

The GST New Housing Rebate (NHR) entitles homebuyers to recover 36% of the GST (or the federal component of the HST) paid on the purchase of a new home priced up to $350,000, with a maximum rebate of $6,300. The GST NHR is phased out for new homes priced between $350,000 and $450,000.

Under current rules, multiple purchasers of a new home must each be acquiring the home for use as their primary place of residence or the primary place of residence of a related person to qualify for the GST NHR. The 2021 Budget proposes to loosen the requirement so that the rebate may be available wherever any one of the purchasers acquires the home for use as their primary place of residence or the primary place of residence of a related person. These changes apply to supplies of homes made under agreements of purchase and sale entered into on or after April 19, 2021.

4. Avoidance and Evasion

The 2021 Budget proposes a $304.1 million budget over five years for the funding and extension of anti-avoidance programs including: (i) increasing GST/HST audits of large businesses with the highest risk of non-compliance; (ii) improving refund ability to compliant businesses while enhancing the current risk-assessment process to prevent fraudulent/unwarranted refund claims at the outset; and (iii) in respect of trusts, enhancing the capacity to identify tax evasion mechanisms.

E. Other Measures

1. Tax on Unproductive Use of Canadian Housing by Foreign Non-resident Owners

Effective January 1, 2022, the 2021 Budget proposes an annual 1% tax on residential properties owned by non-Canadian resident persons that are determined to be vacant or underused. The Budget further proposes that beginning 2023, non-Canadian residents will be required to file annual information returns on their current use of the property with respect to each residential home, or otherwise be subject to a penalty.

This issue of the Legal Business Report is designed to provide information of a general nature only and is not intended to provide professional legal advice. The information contained in this Legal Business Report should not be acted upon without further consultation with professional advisers.

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Please contact Howard Alpert directly at (416) 923-0809 if you require assistance with tax and estate planning matters, tax dispute resolution, tax litigation, corporate-commercial transactions or estate administration.

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