Editorial Comment on Income Tax Budget Resolutions

That it is expedient to amend the *Income Tax Act* (the "Act") and the *Income Tax Regulations* (the "Regulations") as follows:

Resolutions 1 to 4: Employee Ownership Trusts

1 (1) Section 15 of the Act is amended by adding the following after subsection (2.5):

When s. 15(2) not to apply — employee ownership trusts

(2.51) Subsection 15(2) does not apply to a loan made or a debt that arose in respect of a qualifying business transfer if

(a) immediately following the qualifying business transfer,

(i) the lender or creditor is a qualifying business, and

(ii) the borrower is the employee ownership trust that controls the qualifying business described in subparagraph (i),

(b) the sole purpose of the loan or the debt is to facilitate the qualifying business transfer, and

(c) at the time the loan was made or the debt incurred, bona fide arrangements were made for repayment of the loan or debt within 15 years of the qualifying business transfer.

(2) Subsection (1) applies in respect of transactions that occur on or after January 1, 2024.

2 (1) Subparagraph 40(1)(a)(iii) of the Act before clause (A) is replaced by the following:

(iii) subject to subsections 40(1.1) to (1.3), such amount as the taxpayer may claim

(2) Section 40 of the Act is amended by adding the following after subsection (1.2):

Reserve — dispositions to employee ownership trusts

(1.3) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer's gain from the disposition of a share of the capital stock of a qualifying business that subparagraph shall be read as if the references in that subparagraph to "1/5" and "4" were references to "1/10" and "9" respectively, if the shares of the qualifying business were disposed of by the taxpayer to an employee ownership trust pursuant to a qualifying business transfer.

(3) Subsections (1) and (2) apply in respect of transactions that occur on or after January 1, 2024.

3 (1) Paragraph (a.1) of the definition *trust* in subsection 108(1) of the Act is replaced by the following:

(a.1) a trust (other than a trust described in paragraph (a), (d) or (h), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

(2) The definition *trust* in subsection 108(1) of the Act is amended by striking out "or" at the end of paragraph (f), by adding "or" at the end of paragraph (g) and by adding the following after paragraph (g):

(h) an employee ownership trust.

(3) Subsections (1) and (2) apply in respect of transactions that occur on or after January 1, 2024.

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

employee ownership trust means an irrevocable trust that, at all relevant times, satisfies the following conditions:

(a) the trust is resident in Canada (determined without reference to subsection 94(3));

(b) the trust is exclusively for the benefit of all individuals each of whom

(i) is an employee of one or more qualifying businesses controlled by the trust (other than an employee who has not completed an applicable probationary period, which may not exceed 12 months),

(ii) does not own, directly or indirectly (other than through an interest in the trust), 10% or more of the fair market value of any class of shares of the capital stock of a qualifying business controlled, directly or indirectly, by the trust,

(iii) does not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, 50% or more of the fair market value of any class of shares of the capital stock of a qualifying business controlled, directly or indirectly, by the trust, and

(iv) immediately before the time of a qualifying business transfer to the trust, did not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, 50% or more of the fair market value of the shares of the capital stock and indebtedness of the qualifying business;

(c) the interest of each beneficiary of the trust is determined in the same manner, based solely on a reasonable application of any combination of the following criteria

(i) the total hours of employment service provided by the beneficiary to the qualifying business,

(ii) the total salary, wages and other remuneration paid or payable to the beneficiary by the qualifying business, and

(iii) the total period of employment service the beneficiary has provided to the qualifying business;

(d) the trust is prohibited from acting in the interest of one beneficiary (or group of beneficiaries) to the prejudice of another beneficiary (or group of beneficiaries);

(e) the trust is prohibited from distributing shares of the capital stock of a qualifying business to any beneficiary of the trust;

(f) each trustee of the trust

(i) is either a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee or an individual (other than a trust),

(ii) is elected to the position of trustee for a period not exceeding five years by the beneficiaries of the trust that have attained at least 18 years of age at the time of the vote, and

(iii) has an equal vote in the conduct of the affairs of the trust;

(g) not more than 40% of the trustees of the trust are any combination of:

(i) individuals who, immediately before the time that the trust acquired control of a qualifying business, owned, directly or indirectly, together with any person or partnership that is related to or affiliated with the individuals, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the qualifying business, and

(ii) corporations that more than 40% of the members of the board of directors are individuals referred to in subparagraph (i); and

(h) all or substantially all the fair market value of the property of the trust is attributable to shares of the capital stock of one or more qualifying businesses that the trust controls, directly or indirectly, and by which all beneficiaries of the trust are employed. (*fiducie collective des employés*)

qualifying business, at a particular time, means a corporation controlled by a trust

(a) that is a Canadian-controlled private corporation all or substantially all the fair market value of the assets of which at that time is attributable to assets (other than an interest in a partnership) that are used principally in an active business carried on primarily in Canada by the particular corporation or by a corporation that the particular corporation controls;

(b) not more than 40% of the directors of which consist of individuals that, immediately before the time that the trust acquired control of the corporation, owned, directly or indirectly, together with any person or partnership that is related to or affiliated with the director, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation; and

(c) that deals at arm's length and is not affiliated with any person or partnership that owned 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation immediately before the time the trust acquired control of the corporation. (*entreprise admissible*)

qualifying business transfer means a disposition by a taxpayer of shares of the capital stock of a corporation (in this definition referred to as the "subject corporation") to a trust, or to a Canadian-controlled private corporation (in this definition referred to as the "purchaser corporation") that is controlled and wholly-owned by a trust, if

(a) immediately before the disposition, all or substantially all the fair market value of the assets of the subject corporation is attributable to assets (other than an interest in a partnership) that are used principally in an active business (referred to in this definition as the "business") carried on primarily in Canada by the subject corporation or a corporation that is controlled and wholly-owned by the subject corporation;

(b) at the time of the disposition,

(i) the taxpayer deals at arm's length with the trust and any purchaser corporation,

(ii) the trust acquires control of the subject corporation, and

(iii) the trust is an employee ownership trust, the beneficiaries of which are employed in the business; and

(c) at all times after the disposition,

(i) the taxpayer deals at arm's length with the subject corporation, the trust and any purchaser corporation, and

(ii) the taxpayer does not retain any right or influence that, if exercised, would allow the taxpayer (whether alone or together with any person or partnership that is related to or affiliated with the taxpayer) to control, directly or indirectly in any manner whatever, the subject corporation, the trust, or any purchaser corporation. (*transfert admissible d'entreprise*)

(2) Subsection (1) comes into force on January 1, 2024.

Dentons Canada LLP Commentary

An Employee Ownership Trust ("EOT") is a trust which holds shares of a corporation for the benefit of the corporation's employees. It can be used to facilitate the purchase of a business by its employees, and also to provide a succession planning option for business owners.

Budget 2023 proposes new rules to facilitate the use of EOTs to acquire and hold shares of a business, effective January 1, 2024. The new rules define qualifying conditions for an EOT and facilitate the establishment of EOTs. Included are an extension of the capital gains reserve from five to ten years for qualifying sales to an EOT, an exception to the current shareholder loan rules to extend the repayment period from one to 15 years, and exempting EOTs from the 21-year deemed disposition rule that might otherwise apply to them.

A trust will be considered an EOT if it is a Canadian resident trust (excluding deemed resident trusts) and has only two purposes. First, it holds shares of qualifying businesses for the benefit of the employees/beneficiaries of the trust. Second, it makes distributions to employee/beneficiaries, where reasonable, under a distribution formula under which all beneficiaries must generally be treated in a similar manner, other than taking into account their length of service, remuneration, and hours worked.

An EOT will be required to hold a controlling interest in the shares of one or more "qualifying businesses" and all or substantially all (90%) of an EOT's assets must be shares of qualifying businesses. A qualifying business must meet certain conditions, including that all or substantially all (90%) of the fair market value of its assets are attributable to assets used in an active business carried on in Canada. An EOT will not be permitted to allocate shares of qualifying businesses to individual beneficiaries. In addition, a qualifying business must not carry on its business as a partner in a partnership.

The trustees, including corporations that serve as trustees, must be Canadian residents (excluding deemed residents). Beneficiaries of the trust must consist exclusively of “qualifying employees”, which includes all individuals employed by the qualifying business and any other qualifying businesses it controls, with the exclusion of employees who are significant economic interest holders, or those who have not completed a reasonable probationary period of up to 12 months. Individuals and their related persons who hold, or held prior to the sale to an EOT, a significant economic interest in a qualifying business of the EOT will also be excluded from being qualifying employees.

The EOT is a taxable trust and is therefore generally subject to the same rules as other personal trusts. Undistributed trust income will be taxed in the EOT at the top personal marginal tax rate, and trust income distributed from an EOT to its beneficiaries will not be subject to tax at the trust level, but rather at the beneficiary level. If the EOT distributes dividends it receives from the qualifying businesses it holds, those dividends will retain their character when received by the employee/ beneficiaries and will therefore be eligible for the dividend tax credit.

Under the new rules, a qualifying business transfer to an EOT occurs when a taxpayer disposes of shares of a qualifying business for no more than fair market value. The shares must be disposed of to either a trust that qualifies as an EOT immediately after the sale, or to a corporation wholly-owned by the EOT, and the EOT must own a controlling interest in the qualifying business immediately after the qualifying business transfer.

Resolution 5: Deduction for Tradespeople's Tool Expenses

5 (1) Subclause B(I) of the description of B in subparagraph 8(1)(r)(ii) of the Act is replaced by the following:

(I) the amount that is the total of <u>the first dollar amount referred to in paragraph (s)</u> and the amount determined for the taxation year for B in subsection 118(10), and

(2) The portion before the formula of paragraph 8(1)(s) of the Act is replaced by the following:

Deduction – tradesperson's tools

(s) if the taxpayer is employed as a tradesperson at any time in the taxation year, the lesser of $<u>1,000</u> and the amount determined by the formula

(3) Subsections (1) and (2) apply to the 2023 and subsequent taxation years.

Dentons Canada LLP Commentary

Effective for the 2023 tax year, Budget 2023 proposes to double the maximum employment deduction for tradespeople's and apprentice mechanics' tool expenses, from $500 to $1,000.

Resolution 6: Registered Education Savings Plans

6 (1) Paragraph (a) of the definition *education savings plan* in subsection 146.1(1) of the Act is amended by striking out "and" at the end of subparagraph (ii) and by adding the following after subparagraph (iii):

(iv) an individual (other than a trust), who is a legal parent of a beneficiary, and the individual's former spouse or common-law partner, who is also the legal parent of a beneficiary, and

(2) Subclause 146.1(2)(g.1)(ii)(A)(II) of the Act is replaced by the following:

(II) the total of the payment and all other educational assistance payments made under a registered education savings plan of the promoter to or for the individual in the 12-month period that ends at that time does not exceed $8,000 or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the individual, or

(3) Clause 146.1(2)(g.1)(ii)(B) of the Act is replaced by the following:

(B) the individual satisfies, at that time, the condition set out in clause (i)(B) and the total of the payment and all other educational assistance payments made under a registered education savings plan of the promoter to or for the individual in the 13-week period that ends at that time does not exceed $4,000 or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the individual;

(4) Subsections (1) to (3) are deemed to have come into force on March 28, 2023.

Dentons Canada LLP Commentary

RESP beneficiaries who are enrolled in an eligible post-secondary program can withdraw government grants and investment income from their plan as EAPs to help them with their post-secondary education-related expenses.

Effective March 28, 2023, the educational assistance payment (EAP) maximum withdrawal limits are increased from $5,000 to $8,000 for beneficiaries who are enrolled in full-time programs, and from $2,500 to $4,000 for beneficiaries who are enrolled in part-time programs. Full-time programs are at least three consecutive weeks' duration with at least ten hours per week of courses or work in the program, and part-time programs are at least three consecutive weeks' duration with at least 12 hours per month of courses in the program.

Effective March 28, 2023, divorced or separated parents may open joint RESPs for one or more of their children, or move an existing joint RESP to another promoter. Previously, only married spouses or common-law partners could do it.

Resolution 7: Retirement Compensation Arrangements

7 The Act is modified to give effect to the proposals relating to Retirement Compensation Arrangements as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Employers who do not pre-fund supplemental retirement benefits through contributions to a retirement compensation arrangement (“RCA”) trust can obtain a letter of credit (or a surety bond) issued by a financial institution to secure RCA benefits and settle retirement benefit obligations as they become due. However, the annual fee or premium charged by the issuer is subject to the 50% refundable tax which is practically unrecoverable.

To address the escalating refundable tax balances for employers, Budget 2023 proposes that fees or premiums paid for the purposes of securing or renewing a letter of credit (or a surety bond) for an RCA that is supplemental to a registered pension plan is not subject to the refundable tax. This change applies to fees or premiums paid on or after Budget Day.

Employers may also request for a refund of previously remitted refundable taxes in respect of fees or premiums paid for letters of credit (or surety bonds) by RCA trusts. The refund is based on the retirement benefits that are paid out of the employer’s corporate revenues to employees in respect of RCA benefits secured by letters of credit (or surety bonds). Employers are eligible for a refund of 50% of the retirement benefits paid, up to the amount of refundable tax previously paid. This change applies to retirement benefits paid after 2023.

Resolution 8: Registered Disability Savings Plan

8 (1) 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 2027, 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,

(2) The definition *qualifying family member* in subsection 146.4(1) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):

> **(c)** a brother or sister (determined without reference to subsection 252(2)) of the beneficiary.

Dentons Canada LLP Commentary

Budget 2023

RDSP Measures

Where the contractual competence of an individual (i.e. the RDSP beneficiary) who is 18 years of age or older is in doubt, the RDSP plan holder must be that individual's guardian or legal representative as recognized under provincial or territorial law. However, a consistent process for establishing a legal representative has still not been achieved across all provinces and territories. In response, temporary legislation, which was set to expire at the end of 2023, was enacted to allow a 'qualifying family member' (i.e. a parent, spouse or common-law partner of the individual) to open an RDSP and be the plan holder for the RDSP beneficiary where such beneficiary's contractual competency is in doubt and they do not have a legal representative.

Budget 2023 proposes to extend this 'qualifying family member' measure by three years, to December 31, 2026. A qualifying family member who becomes a plan holder before the end of 2026 could remain the plan holder after 2026.

To increase access to RDSPs, Budget 2023 also proposes to broaden the definition of 'qualifying family member' to include a brother or sister, of the RDSP beneficiary, who is 18 years of age or older. This proposed expansion of the existing 'qualifying family member' definition would apply as of royal assent of the enabling legislation and be in effect until December 31, 2026. A sibling who becomes a qualifying family member and plan holder before the end of 2026 could remain the plan holder after 2026.

Resolution 9: Taxpayer Information Sharing for the Canadian Dental Care Plan

9 Paragraph 241(4)(d) of the Act is amended by adding the following after subparagraph (xx):

(xx.1) to an official of

(A) the Department of Employment and Social Development or the Department of Health, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the *Department of Health Act* in respect of dental service for individuals, or

(B) the Department of Health solely for the purpose of the formulation or evaluation of policy for that plan;

Dentons Canada LLP Commentary

In order to deliver the Canadian Dental Care Plan, various government agencies will need access to 'taxpayer information', as defined in the *Income Tax Act*. Budget 2023 proposes to amend the *Income Tax Act to* provide authority for the CRA to share such information with an official of Employment and Social Development Canada or Health Canada solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan, and an official of Health Canada solely for the purpose of the evaluation or formulation of policy for that plan.

An equivalent measure will also be added to the *Excise Tax Act* and the *Excise Act, 2001*.

This will come into force on Royal Assent.

Resolution 10: Alternative Minimum Tax for High-Income Individuals

10 The Act is modified to give effect to the proposals relating to the Alternative Minimum Tax for High-Income Individuals as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 introduces changes to the calculation of AMT to better target the alternative minimum tax (“AMT”) to high-income individuals.

The new AMT rules increase the exemption amount from $40,000 to the start of the fourth federal tax bracket (an expected amount of $173,000 for the 2024 taxation year) and will index the exemption amount annually to inflation. Additionally, the AMT rate for individuals is increased from 15 percent to 20.5 percent, corresponding to the rates applicable to the first and second federal income tax brackets.

The new measures also increase the AMT capital gains inclusion rate to 100 percent, up from 80 percent prior to the Budget. Capital loss carry forwards and allowable business investment losses would apply at a 50 percent rate. Additionally, 100 percent of the benefit associated with employee stock options is to now be included in the AMT base.

Further, the Budget introduces an inclusion to the AMT base of 30 percent of the capital gains on donations of publicly listed securities. This inclusion also applies to the full benefit associated with employee stock options of publicly listed securities that have been donated.

Under the new AMT rules, the base is broadened by disallowing 50 percent of the following deductions:

- employment expenses, other than those to earn commission income;
- deductions for Canada Pension Plan, Quebec Pension Plan, and Provincial Parental Insurance Plan contributions;
- moving expenses;
- child care expenses;
- disability supports deduction;
- deduction for workers’ compensation payments;
- deduction for social assistance payments;
- deduction for Guaranteed Income Supplement and Allowance payments;
- Canadian armed forces personnel and police deduction;
- interest and carrying charges incurred to earn income from property;
- deduction for limited partnership losses of other years;
- non-capital loss carryovers; and
- Northern residents deductions.

Expenses connected with film property, rental property, resource property, and tax shelters that are limited under the current AMT regime would continue to be so limited in the future.

Additionally, 50 percent of non-refundable tax credits can be applied to reduce to AMT, as opposed to the full 100 percent reduction previously available. This change will not apply to the Special Foreign Tax Credit, which will still be allowed in full. Further, some of the non-refundable credits that were previously disallowed will continue be disallowed in full, such as the Political Contribution Tax Credit, the Labour Sponsored Venture Capital Corporations Credit, and the non-refundable portion of investment tax credits.

The current 30 percent of capital gains eligible for the lifetime capital gains exemption included in the AMT base, the carry forward period of seven years and the treatment of Canadian taxable dividends for AMT calculation purposes remain unchanged.

There are no proposed changes to the exemption provisions with respect to trusts. However, the government is reviewing whether additional types of trusts should be exempt from AMT.

The new AMT regime comes into force for taxation years that begin after 2023.

Resolutions 11 to 15: Intergenerational Business Transfers

11 (1) The portion of subparagraph 40(1)(a)(iii) of the Act before clause (A) is replaced by the following:

(iii) subject to subsections 40(1.1) and (1.2), such amount as the taxpayer may claim

(2) Section 40 of the Act is amended by adding the following after subsection (1.1):

Reserve — intergenerational business transfers

(1.2) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) on a disposition of shares of the capital stock of a corporation resident in Canada to another corporation, that subparagraph shall be read as if the references to “1/5” and “4” were references to “1/10” and “9” respectively, if the conditions in subsection 84.1(2.31) or (2.32) are satisfied in respect of the disposition.

(3) Subsections (1) and (2) come into force on January 1, 2024.

12 (1) Paragraph 84.1(2)(e) of the Act is replaced by the following:

(e) notwithstanding any other paragraph in this subsection, if this paragraph applies because of subsection (2.31) or (2.32) to a disposition of subject shares by a taxpayer to a purchaser corporation, the taxpayer and the purchaser corporation are deemed to deal with each other at arm’s length at the time of the disposition of the subject shares.

(2) Subsection 84.1(2.3) of the Act is replaced by the following:

Rules for subsections (2.31) and (2.32)

(2.3) For the purposes of subsections (2.31) and (2.32),

(a) a *child* of a taxpayer has the same meaning as in subsection 70(10) and also includes

(i) a niece or nephew of the taxpayer,

(ii) a niece or nephew of the taxpayer’s spouse or common-law partner,

(iii) a spouse or common-law partner of a niece or nephew referred to in subparagraph (i) or (ii), and

(iv) a child of a niece or nephew referred to in subparagraphs (i) or (ii);

(b) if a person or partnership’s share of the accumulating income or capital of a trust in respect of which the person or partnership has an interest as a beneficiary depends on the exercise by a person (referred to in this paragraph as a “trustee”) of, or the failure by any trustee to exercise, a discretionary power, that trustee is deemed to have fully exercised the power, or to have failed to exercise the power, as the case may be;

(c) if one or more children referred to in

(i) subparagraph (2.31)(f)(i) have disposed of, or caused the disposition of, all of the shares in the capital stock of the purchaser corporation, the subject corporation, or all relevant group entities (within the meaning of subparagraph (2.31)(c)(iii)) to an arm’s length person or group of persons, the conditions in paragraphs (2.31)(f) and (g) are deemed to be met as of the time of the disposition, provided that all equity interests in all relevant businesses (within the meaning of subparagraph (2.31)(c)(iii)) held, directly or indirectly, by the child or children are included in the disposition, or

(ii) subparagraph (2.32)(g)(i) have disposed of, or caused the disposition of, all of the shares in the capital stock of the purchaser corporation, the subject corporation, or all relevant group entities (within the meaning of subparagraph (2.32)(c)(iii)) to an arm’s length person or group of persons, the conditions in paragraphs (2.32)(g) and (h) are deemed to be met as of the time of the disposition, provided that all equity interests in all relevant businesses (within the meaning of subparagraph (2.32)(c)(iii)) held, directly or indirectly, by the child or children are included in the disposition; and

(d) if a child, or each of the children, referred to in

(i) subparagraph (2.31)(f)(ii) has died or has, after the disposition of the subject shares, suffered one or more severe and prolonged impairments in physical or mental functions, the conditions in paragraphs (2.31)(f) and (g) are deemed to be met as of the time of the death or mental or physical impairment, or

(ii) subparagraph (2.32)(g)(ii) has died or has, after the disposition of the subject shares, suffered one or more severe and prolonged impairments in physical or mental functions, the conditions in paragraphs (2.32)(g) and (h) are deemed to be met as of the time of the death or mental or physical impairment.

Immediate intergenerational business transfer

(2.31) Paragraph (2)(e) applies at the time of a disposition of subject shares by a taxpayer to a purchaser corporation if the following conditions are met:

(a) immediately before the disposition of the subject shares (referred to in this subsection as the "disposition time"), the taxpayer – either alone or together with a spouse or common-law partner of the taxpayer – controls the subject corporation, and no other person or group of persons controls, directly or indirectly in any manner whatever, the subject corporation;

(b) at the disposition time,

(i) the taxpayer is an individual (other than a trust),

(ii) the purchaser corporation is controlled by one or more children (within the meaning of paragraph (2.3)(a), referred to in this subsection as the "child" or "children") of the taxpayer, each of whom is 18 years of age or older, and

(iii) the subject shares are *qualified small business corporation shares* or *shares of the capital stock of a family farm or fishing corporation* as defined in subsection 110.6(1);

(c) at all times after the disposition time, the taxpayer does not – either alone or together with a spouse or common law partner of the taxpayer – control, directly or indirectly in any manner whatever,

(i) the subject corporation,

(ii) the purchaser corporation, or

(iii) any other person or partnership (referred to in this subsection as a "relevant group entity") that carries on, at the disposition time, an active business (referred to in this subsection as a "relevant business") that is relevant to the determination of whether the subject shares satisfy the condition in subparagraph (b)(iii);

(d) at all times after the disposition time, the taxpayer does not – either alone or together with a spouse or common law partner of the taxpayer – own, directly or indirectly,

(i) 50% or more of any class of shares, other than shares of a *specified class* as defined in subsection 256(1.1) (in this subsection referred to as "non-voting preferred shares"), of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) 50% or more of any class of equity interest (other than non-voting preferred shares) in any relevant group entity;

(e) within 36 months of the disposition time and at all times thereafter, the taxpayer and a spouse or common-law partner of the taxpayer does not own, directly or indirectly,

(i) any shares, other than non-voting preferred shares of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) any equity interest (other than non-voting preferred shares) in any relevant group entity;

(f) from the disposition time until 36 months after that time,

(i) the child or group of children, as the case may be, controls the subject corporation and the purchaser corporation,

(ii) the child, or at least one member of the group of children, as the case may be, is actively engaged on a regular, continuous and substantial basis (within the meaning of paragraph 120.4(1.1)(a)) in a relevant business of the subject corporation or a relevant group entity, and

(iii) each relevant business of the subject corporation and any relevant group entity is carried on as an active business;

(g) within 36 months of the disposition time or such greater period of time as is reasonable in the circumstances, the taxpayer and a spouse or common-law partner of the taxpayer takes reasonable steps to

(i) transfer management of each relevant business of the subject corporation and any relevant group entity to the child or children referred to in subparagraph (f)(ii), and

(ii) permanently cease to manage any relevant business of the subject corporation and any relevant group entity; and

(h) the taxpayer and the child, or the taxpayer and each member of the group of children, as the case may be,

(i) jointly elect, in prescribed form, for paragraph (2)(e) to apply in respect of the disposition of the subject shares, and

(ii) file the election with the Minister on or before the taxpayer's filing-due date for the taxation year that includes the disposition time.

Gradual intergenerational business transfer

(2.32) Paragraph (2)(e) applies to a disposition of subject shares by a taxpayer to a purchaser corporation if the following conditions are met:

(a) immediately before the disposition of the subject shares (referred to in this subsection as the “disposition time”), the taxpayer — either alone or together with a spouse or common-law partner of the taxpayer — controls the subject corporation, and no other person or group of persons controls, directly or indirectly in any manner whatever, the subject corporation;

(b) at the disposition time,

(i) the taxpayer is an individual (other than a trust),

(ii) the purchaser corporation is controlled by one or more children (within the meaning of paragraph (2.3)(a), and referred to in this subsection as the “child” or “children”) of the taxpayer, each of whom is 18 years of age or older, and

(iii) the subject shares are *qualified small business corporation shares* or *shares of the capital stock of a family farm or fishing corporation* as defined in subsection 110.6(1);

(c) at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common law partner of the taxpayer — control

(i) the subject corporation,

(ii) the purchaser corporation, or

(iii) any other person or partnership (referred to in this subsection as a “relevant group entity”) that carries on, at the disposition time, an active business (referred to in this subsection as a “relevant business”) that is relevant to the determination of whether the subject shares satisfy the condition in subparagraph (b)(iii);

(d) at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common law partner of the taxpayer — own, directly or indirectly,

(i) 50% or more of any class of shares, other than shares of a *specified class* as defined in subsection 256(1.1) (in this subsection referred to as “non-voting preferred shares”), of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) 50% or more of any class of equity interest (other than non-voting preferred shares) in any relevant group entity;

(e) within 36 months of the disposition time and at all times thereafter, the taxpayer and a spouse or common-law partner of the taxpayer does not own, directly or indirectly,

(i) any shares, other than non-voting preferred shares of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) any equity interest (other than non-voting preferred shares) in any relevant group entity;

(f) within 10 years after the disposition time (referred to in this subsection as the “final sale time”) and at all times after, the taxpayer and a spouse or common-law partner of the taxpayer does not own, directly or indirectly,

(i) in the case of a disposition of subject shares that are, at the disposition time, *shares of the capital stock of a family farm or fishing corporation* as defined in subsection 110.6(1), interests (including any debt or equity interest) in any of the subject corporation, the purchaser corporation, and any relevant group entity with a fair market value that exceeds 50% of the fair market value of all the interests that were owned, directly or indirectly, by the taxpayer and a spouse or common-law partner of the taxpayer immediately before the disposition time, or

(ii) in the case of a disposition of subject shares that are, at the disposition time, *qualified small business corporation shares* as defined in subsection 110.6(1) (other than subject shares described in subparagraph (i)), interests (including any debt or equity interest) in any of the subject corporation, the purchaser corporation, and any relevant group entity with a fair market value that exceeds 30% of the fair market value of all the interests that were owned, directly or indirectly, by the taxpayer and a spouse or common-law partner of the taxpayer immediately before the disposition time;

(g) subject to subsection (2.3), from the disposition time until the later of 60 months after the disposition time and the final sale time,

(i) the child or group of children, as the case may be, controls the subject corporation and the purchaser corporation,

(ii) the child, or at least one member of the group of children, as the case may be, is actively engaged on a regular, continuous and substantial basis (within the meaning of paragraph 120.4(1.1)(a)) in a relevant business of the subject corporation or a relevant group entity, and

(iii) any relevant business of the subject corporation and any relevant group entity is carried on as an active business;

(h) subject to subsection (2.3), within 60 months of the disposition time or such greater period of time as is reasonable in the circumstances, the taxpayer and a spouse or common-law partner of the taxpayer takes reasonable steps to

(i) transfer management of any relevant business of the subject corporation and any relevant group entity to the child or children referred to in subparagraph (g)(ii), and

(ii) permanently cease to manage any relevant business of the subject corporation and any relevant group entity; and

(i) the taxpayer and the child, or the taxpayer and each member of the group of children, as the case may be,

(i) jointly elect, in prescribed form, for paragraph (2)(e) to apply in respect of the disposition of the subject shares, and

(ii) file the election with the Minister on or before the taxpayer's filing-due date for the taxation year that includes the disposition time.

(3) Subsections (1) and (2) apply to dispositions of shares that occur on or after January 1, 2024.

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

Continuing corporation

(j.6) for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11), 84.1(2.31) and (2.32), and 127(10.2), section 139.1, subsection 152(4.3), the determination of D in the definition *undepreciated capital cost* in subsection 13(21) and the determination of L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) comes into force on January 1, 2024.

14 (1) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.7):

(b.8) the assessment, reassessment or additional assessment is made before the day that is

(i) three years after the end of the normal reassessment period for the taxpayer in respect of the year and made in respect of a disposition, in the year, of shares of the capital stock of a corporation resident in Canada in respect of which the taxpayer filed an election under paragraph 84.1(2.31)(h), or

(ii) ten years after the end of the normal reassessment period for the taxpayer in respect of the year and made in respect of a disposition, in the year, of shares of the capital stock of a corporation resident in Canada in respect of which the taxpayer filed an election under paragraph 84.1(2.32)(i);

(2) Subsection (1) comes into force on January 1, 2024.

15 (1) Section 160 of the Act is amended by adding the following after subsection (1.4):

Joint liability – intergenerational business transfer

(1.5) If a taxpayer and one or more other taxpayers have jointly elected under

(a) paragraph 84.1(2.31)(h) in respect of a disposition of shares of the capital stock of a corporation resident in Canada, they are jointly and severally, or solidarily, liable for the tax payable by the taxpayer under this Part to the extent that the tax payable by the taxpayer is greater than it would have been if the disposition had satisfied the conditions of subsection 84.1(2.31); or

(b) paragraph 84.1(2.32)(i) in respect of a disposition of shares of the capital stock of a corporation resident in Canada, they are jointly and severally, or solidarily, liable for the tax payable by the taxpayer under this Part to the extent that the tax payable by the taxpayer is greater than it would have been if the disposition had satisfied the conditions of subsection 84.1(2.32).

(2) Subsection (1) comes into force on January 1, 2024.

Dentons Canada LLP Commentary

Following the introduction of new rules for intergenerational transfers of corporate shareholdings under Bill C-208 in 2021, Budget 2023 further amends section 84.1 and related sections. These new provisions will take effect on January 1, 2024.

Parliament had previously stated its concern that section 84.1 (as amended by Bill C-208) could be subject to abuse outside of its intended scope of genuine intergenerational transfers. Budget 2023 amends the legislation to provide for specific scenarios where intergenerational transfers will be permitted: "immediate transfers" (generally meaning arm's length sale terms) and "gradual transfers" (a wasting estate freeze over time). To accomplish this, s. 84.1(2)*(e)* is replaced with a more concise provision, while the conditions of application were legislated under amended s. 84.1(2.3) and new s. 84(2.31) and (2.32). If s 84.1(2)*(e)* is applicable, the taxpayer ("Parent") and the purchaser are deemed to deal at arm's length, preventing the application of s. 84.1.

Subsection 84.1(2.3) is amended to provide definitions and general conditions of application. The definition of a child is expanded to include nieces, nephews, their spouses, and their children, and there is a look-through provision for trusts that deems trustees to have exercised discretionary powers in favour of each discretionary beneficiary. The original 60-month holding period test introduced by Bill C-208 is replaced with provisions that allow the child to sell all of their equity interests in all relevant businesses to an arm's length party at any time. Additionally, there are provisions contemplating the death or disability of a child who controls the purchaser that may have otherwise caused the child to fail the ongoing activity tests, described below.

Both exceptions for immediate and gradual transfers require the Parent to control the subject corporation immediately before the disposition. At the time of the disposition, the Parent must be an individual, the purchaser must be a corporation controlled by one or more children of the Parent who are 18 years or older, and the subject shares must be qualified small business corporation shares or shares of the capital stock of a family farm or fishing corporation.

Immediate intergenerational transfers are legislated under s. 84.1(2.31). At all times after the disposition, the Parent must not directly or indirectly control the subject corporation, the purchaser corporation, or any person or partnership carrying on an active business that is relevant to determining whether the shares sold are qualified small business corporation shares or shares of the capital stock of a family farm or fishing corporation. After the sale, the Parent cannot own a majority of the voting shares in the subject corporation or the purchaser corporation and must transfer the balance of the common shares to the purchaser within 36 months. A child must retain legal control of the purchaser for a 36-month period, and at least one child must remain actively involved in the business for at least 36 months. In addition, Parents must transfer management of the business to their child within 36 months, or such longer period as may be reasonable.

Gradual intergenerational transfers are legislated under s. 84.1(2.32). At all times after the disposition, the Parent must not have legal control of the subject corporation, purchaser corporation, or any person or partnership carrying on an active business that is relevant to determining whether the shares are qualified small business corporation shares or shares of the capital stock of a family farm or fishing corporation.

In addition, the Parent must not own a majority of the common shares of the subject corporation immediately after the sale and must transfer the balance within 36 months. To give effect to the “wasting freeze” concept, within 10 years of the initial sale the Parent must reduce the economic value of their ownership (equity or debt) in the subject corporation, purchaser corporation, and other relevant entities to a fraction of the value at the initial time of sale. For farm and fishing corporations, this percentage is 50 percent of the value of the original interest at the time of sale owned by the Parent and the Parent’s spouse/common law partner. For qualified small business corporation shares, the Parent must reduce the economic value of their ownership to 30 percent of the value of the original interest owned by the Parent and their spouse. In addition, a child must retain legal control for the greater of 60 months or until the transfer is complete, and at least one child must remain actively involved in the business for the greater of 60 months or until the transfer is complete. In addition, Parents must transfer management of the business to their child within 60 months, or such longer period as may be reasonable.

Joint elections are required under both s. 84.1(2.31) and (2.32).

Consequential amendments to s. 87 ensure that an amalgamated corporation will continue to be considered to be the same corporation for purposes of the above tests.

As the new tests are met over a period of years, amendments to s. 152(4) extend the ordinary reassessment period by an additional 3 years (immediate transfers) or 10 years (gradual transfers). As well, new s. 160(1.5) provides for joint and several liability where the conditions of s. 84.1(2.31) or (2.32) are not in fact satisfied, to the extent of any increased tax liability as a result.

Finally, the duration of the capital gains reserve for sales that qualify under the new provisions for intergenerational transfers is increased to 10 years under s. 40(1.2). This will allow for an instalment sale to occur over a longer period, as may be typical for intergenerational transfers.

Resolution 16: Investment Tax Credit for Clean Hydrogen

16 The Act is modified to give effect to the proposals relating to the Investment Tax Credit for Clean Hydrogen as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 proposes to introduce the Clean Hydrogen Investment Tax Credit (CH Tax Credit) as previously announced by the government in the 2022 Fall Economic Statement.

Eligible Projects

Only projects that produce all, or substantially all, hydrogen through their production process would be eligible for the CH Tax Credit (determined without reference to any produced CO_2 that is captured and stored or used, or excess electricity that may be sold to the electricity grid). The CH Tax Credit would be available in respect of the cost of purchasing and installing eligible equipment for projects that produce hydrogen (i) from electrolysis or (ii) from natural gas, so long as emissions are abated using carbon capture, utilization, and storage (CCUS).

Credit Rates

The CH Tax Credit would be refundable and can be claimed in the year the eligible equipment becomes available for use, at the following rates:

Assessed carbon intensity (CI) of hydrogen produced (kg of CO_2e per kg of hydrogen)	Year eligible equipment becomes available for use	
	Before 2034	In 2034
CI of less than 0.75 kg	40%	20%
CI greater than or equal to 0.75 kg, but less than 2 kg	25%	12.5%
CI greater than or equal to 2 kg, but less than 4 kg	15%	7.5%

The CH Tax Credit would be fully phased out for property that becomes available for use after 2034.

Measuring Carbon Intensity

Projects would need to assess the CI of the hydrogen that will be produced based on the design of the project using the government's Fuel Life Cycle Assessment (LCA) Model that is maintained by Environment and Climate Change Canada. This CI assessment would need to be submitted to the government for verification, and once verified, the expected CI of the produced hydrogen would be used to determine the credit rate of the CH Tax Credit.

Eligible Equipment

Equipment required to produce hydrogen from electrolysis would be eligible if all or substantially all of the use of that equipment is to produce hydrogen through electrolysis of water.

Equipment (other than equipment described in Class 57 or 58) required to produce hydrogen from natural gas with emissions abated using CCUS would be eligible for the CH Tax Credit.

The following types of equipment would also be eligible for the CH Tax Credit:

- Oxygen production equipment used for hydrogen production, so long as the resulting CO_2 is captured by a CCUS process.
- Equipment that produces heat and/or power from natural gas or hydrogen.
- Dual use power or heat production equipment to the extent that the energy balance is expected to be primarily used (i.e., more than 50 per cent) to support the CCUS process or hydrogen production, pro-rated based on the expected energy balance supporting the hydrogen production process and provided the CO_2 emissions from the equipment is captured and stored or used for the equipment.

Equipment that is eligible for the CH Tax Credit would need to be made available for use in Canada.

Other expenses that may be related to a hydrogen production project, including feasibility studies, front-end engineering design studies, and operating expenses, would not be eligible for the CH Tax Credit.

Clean Ammonia

Property that is required to convert clean hydrogen (i.e., meets a CI of less than 4 kg of CO_2e per kg of hydrogen) to clean ammonia would also be eligible for the CH Tax Credit, at the lowest credit rate of 15 per cent.

Labour Requirements

The CH Tax Credit is subject to the labour requirements relating to various investment tax credits.

Verification and Compliance

Hydrogen production projects would need to have completed a front-end engineering design study to apply for the CH Tax Credit. Projects would then undergo an initial project CI assessment based on the design of the project to determine the expected CI of the hydrogen produced. Projects would be verified based on the modelling of the project using the Fuel LCA Model and the ability of the project design to achieve the modelled outcomes. The CI determined under the initial project assessment would be used to establish the credit rate.

Once operating, the CI of the hydrogen produced would need to be verified by an independent third-party to demonstrate that, over a given period of time, the carbon intensity of the hydrogen produced by a project falls into the same tier at which the project was assessed. Otherwise, the CH Tax Credit would be subject to recovery. In addition, the CH Tax Credit would be fully recovered if a project that produces hydrogen from natural gas does so without operating its CCUS equipment (so that emissions fail to be captured).

Interactions with Other Federal Tax Credits

Businesses would be able to claim only one of the CH Tax Credit, the Investment Tax Credit for CCUS, the Investment Tax Credit for Clean Technologies, the Investment Tax Credit for Clean Electricity or the Investment Tax Credit for Clean Technology Manufacturing, if a particular property is eligible for more than one of these tax credits. However, multiple tax credits could be available for the same project, if the project includes different types of eligible property.

Businesses would be able to fully benefit from both the CH Tax Credit and the Atlantic Investment Tax Credit. Accordingly, the CH Tax Credit would not reduce the cost of the property that is used to determine the amount of the Atlantic Investment Tax Credit.

Coming into Force

This measure would apply to property that is acquired and that becomes available for use on or after Budget Day.

Resolution 17: Clean Technology Investment Tax Credit — Geothermal Energy

17 The Act is modified to give effect to the proposals relating to the Clean Technology Investment Tax Credit — Geothermal Energy as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 includes two changes to the Clean Technology Investment Tax Credit ("CT Tax Credit") proposed in the 2022 Fall Economic Statement.

Geothermal Energy

Budget 2023 proposes to expand eligibility of the CT Tax Credit, which is a 30% refundable credit, to include geothermal energy systems that are eligible for Class 43.1 of Schedule II of the *Income Tax Regulations*. The CT Tax Credit would be applicable to eligible property acquired and available for use on or after Budget Day where the equipment has not been used for any purpose before its acquisition.

Eligible property would include equipment used primarily for the purpose of generating electrical energy and/or heat energy solely from geothermal energy that is described in subparagraph *(d)*(vii) of Class 43.1. This includes, but is not limited to, piping, pumps, heat exchangers, steam separators, and electrical generating equipment.

Equipment used for geothermal energy projects that will co-produce oil, gas or other fossil fuels would not be eligible for the credit.

Phase-Out

Budget 2023 also proposes to modify the phase-out schedule of the CT Tax Credit announced in the 2022 Fall Economic Statement. Rather than starting the phase-out in 2032, the credit rate would remain at 30% for property that becomes available for use in 2032 and 2033 and would be reduced to 15% in 2034. The credit would be unavailable after 2034.

Resolution 18: Labour Requirements Related to Certain Investment Tax Credits

18 The Act is modified to give effect to the proposals relating to the Labour Requirements Related to Certain Investment Tax Credits as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

The 2022 Fall Economic Statement announced the government's intention to attach prevailing wage and apprenticeship requirements (collectively, the labour requirements) to the proposed CH Tax Credit and CT Tax Credit. Budget 2023 proposes to have these requirements apply to the proposed Clean Electricity Investment Tax Credit (which is intended to be available as of Budget Day 2024). If the labour requirements are not met, the rate at which the respective investment tax credit is available is reduced by 10% points, to a minimum of zero.

The government also intends to apply the labour requirements to the Investment Tax Credit for Carbon Capture, Utilization, and Storage.

Application

The labour requirements would apply in respect of workers engaged in project elements that are subsidized by the respective investment tax credit, whether they are engaged directly by the business or indirectly by a contractor or subcontractor. The labour requirements would apply to workers whose duties are primarily manual or physical in nature (e.g., labourers and tradespeople). The labour requirements would not apply to workers whose duties are primarily administrative, clerical, supervisory, or executive.

Prevailing Wage Requirement

To meet the prevailing wage requirement, a business would need to ensure that all covered workers are compensated at a level that meets or exceeds the relevant wage, plus the substantially similar monetary value of benefits and pension contributions (converted into an hourly wage format), as specified in an "eligible collective agreement". A business could meet the prevailing wage requirement either by paying workers in accordance with an eligible collective agreement, or by paying workers at or above the equivalent prevailing wage, in either case through different combinations of wages, pension contributions and benefits.

For a particular worker, the relevant eligible collective agreement, with certain occupational tasks and a location described therein (e.g., province or territory), would be that which most closely aligns with the worker's tasks and location. Within an eligible agreement, the relevant wage, pension contributions and benefits would be those for which the experience level, type of work (e.g., industrial, commercial) and region most closely align with the experience level of the worker, type of work and region in which such work is performed.

Apprenticeship Requirement

To meet the apprenticeship requirement, a business would need to ensure that for a given taxation year, not less than 10% of the total labour hours performed by covered workers engaged in subsidized project elements be performed by registered apprentices. Covered workers are those whose duties correspond to those performed by a journeyperson in a Red Seal trade.

This would be subject to the restriction that at no point could there be more apprentices working than are allowed under applicable labour laws or a collective agreement that applies to the work being performed.

Exemptions

Under the CT Tax Credit, exemptions from the labour requirements would apply in respect of acquisitions of zero-emission vehicles and acquisitions and installations of low-carbon heat equipment.

Corrections and Penalties

Non-compliance with these measures could result in businesses being liable to pay corrective remuneration to workers (including interest) and liable to pay penalties to the Receiver General.

Coming into Force

The requirements would apply to work that is performed on or after October 1, 2023.

Resolution 19: Investment Tax Credit for Clean Technology Manufacturing

19 The Act is modified to give effect to the proposals relating to the Investment Tax Credit for Clean Technology Manufacturing as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 proposes to introduce a refundable investment tax credit for clean technology manufacturing and processing (the Clean Tech Manufacturing Tax Credit), and critical mineral extraction and processing, equal to 30% of the capital cost of eligible property associated with eligible activities.

Eligible Property

Investments by corporations in certain depreciable property that is used all or substantially all for eligible activities would qualify for the Clean Tech Manufacturing Tax Credit. Eligible property would generally include machinery and equipment, including certain industrial vehicles, used in manufacturing, processing, or critical mineral extraction, as well as related control systems. A portion of the Clean Tech Manufacturing Tax Credit is subject to recovery if the eligible property is subject to a change in use or sold within a certain period of time.

Eligible Activities

Eligible activities related to clean technology manufacturing and processing would include:

- manufacturing of certain renewable energy equipment (solar, wind, water, or geothermal);
- manufacturing of nuclear energy equipment;
- processing or recycling of nuclear fuels and heavy water;
- manufacturing of nuclear fuel rods;
- manufacturing of electrical energy storage equipment used to provide grid-scale storage or other ancillary services;
- manufacturing of equipment for air- and ground-source heat pump systems;
- manufacturing of zero-emission vehicles, including conversions of on-road vehicles;
- manufacturing of batteries, fuel cells, recharging systems, and hydrogen refuelling stations for zero-emission vehicles;
- manufacturing of equipment used to produce hydrogen from electrolysis; and
- manufacturing or processing of upstream components, sub-assemblies, and materials provided that the output would be purpose-built or designed exclusively to be integral to other eligible clean technology manufacturing and processing activities, such as anode and cathode materials used for electric vehicle batteries.

In addition, eligible activities would also include the extraction and certain processing activities related to lithium, cobalt, nickel, graphite, copper, and rare earth elements.

Interaction with Other Federal Support

Businesses would be able to claim only one of the Clean Tech Manufacturing Tax Credit, the CT Tax Credit, the Clean Electricity Investment Tax Credit, or the CH Tax Credit, if a particular property is eligible for more than one of these tax credits.

Businesses would be able to fully benefit from both the Clean Tech Manufacturing Tax Credit and the Atlantic Investment Tax Credit. Accordingly, the Clean Tech Manufacturing Tax Credit would not reduce the cost of the property that is used to determine the amount of the Atlantic Investment Tax Credit.

The Clean Tech Manufacturing Tax Credit would not be available for property used in the production of battery cells or modules if such production benefits from direct support through a Special Contribution Agreement with the Government of Canada.

Application and Phase-Out

The Clean Tech Manufacturing Tax Credit would apply to property that is acquired and becomes available for use on or after January 1, 2024. It will be gradually phased out starting with property that becomes available for use in 2032 as follows:

	Year property is acquired and becomes available for use			
	2024 to 2031	2032	2033	2034
Clean Tech Manufacturing Tax Credit rate	30%	20%	10%	5%

The Clean Tech Manufacturing Tax Credit would no longer be in effect for property that becomes available for use after 2034.

Resolution 20: Zero-Emission Technology Manufacturers

20 The Act is modified to give effect to the proposals relating to the Zero-Emission Technology Manufacturers as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 proposes two changes to the temporary measures introduced by Budget 2021 which provided for reduced corporate income tax rates on qualifying zero-emission technology income. Budget 2023 proposes to expand eligible activities to:

- manufacturing of nuclear energy equipment;
- processing or recycling of nuclear fuels and heavy water; and
- manufacturing of nuclear fuel rods.

This expansion of eligible activities would apply for taxation years beginning after 2023.

Budget 2023 also proposes to extend the availability of these reduced rates by three years, such that the planned phase-out would start in taxation years that begin in 2032 and would be fully phased out for taxation years that begin after 2034.

Resolutions 21-23: Investment Tax Credit for Carbon Capture, Utilization, and Storage

21 (1) The Act is amended by adding the following after section 211.91:

PART XII.7

Carbon Capture, Utilization and Storage

CCUS knowledge sharing

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

annual operations knowledge sharing report means the annual operations knowledge sharing report containing the information described by the *Minister of Natural Resources* in the "*CCUS-ITC – Technical Guidance Document*" as published by the *Minister of Natural Resources* and amended from time to time, in the form annexed to the CCUS-ITC – Technical Guidance Document. (*rapport annuel sur l'échange de connaissances d'exploitation*)

construction and completion knowledge sharing report means the construction and completion knowledge sharing report containing the information described by the *Minister of Natural Resources* in the "*CCUS-ITC – Technical Guidance Document*" as published by the *Minister of Natural Resources* and amended from time to time, in the form annexed to the CCUS-ITC – Technical Guidance Document. (*rapport sur l'échange de connaissances de la construction et la réalisation*)

first day of commercial operations means the day on which captured carbon dioxide is first delivered to a carbon transportation, carbon storage, or carbon use system for the purpose of storage or use. (*premier jour des activités commerciales*)

knowledge sharing CCUS project means a qualified CCUS project that

(a) is expected to incur qualified CCUS expenditures of $250 million or more over the life of the project based on the most recent project evaluation issued by the *Minister of Natural Resources* for the project; or

(b) has incurred $250 million or more of qualified CCUS expenditures before the first day of commercial operations of a CCUS project. (*projet CUSC requérant l'échange de connaissances*)

knowledge sharing taxpayer means a taxpayer that deducted a CCUS tax credit from its tax otherwise payable under Part I for a taxation year ending before the first day of commercial operations of a knowledge sharing CCUS project. (*contribuable échangeant des connaissances*)

reporting-due day means

(a) in respect of the construction and completion knowledge sharing report, the last day of the sixth month beginning after the first day of commercial operations; and

(b) in respect of an annual operations knowledge sharing report,

(i) if the report is the first such report, and

(A) if the first day of commercial operations is before October 1 in a calendar year, June 30 of the following calendar year, or

(B) if the first day of commercial operations is after September 30 in a calendar year, June 30 of the second calendar year after the calendar year which includes the first day of commercial operations; and

(ii) if the report is not the first report, each June 30 of the first four calendar years immediately following the calendar year which includes the June 30 referred to in subparagraph (i). (*date d'échéance de la déclaration*)

reporting period means,

(a) in respect of the construction and completion knowledge sharing report, the period that begins on the first day an expenditure for a qualified CCUS project is incurred and ends on the first day of commercial operations of the knowledge sharing CCUS project; and

(b) in respect of an annual operations knowledge sharing report, each period that begins on the first day of commercial operations and ends on the last day of the calendar year ending immediately before the reporting-due day for the annual operations knowledge sharing report. (*période de déclaration*)

Knowledge sharing report

(2) A knowledge sharing taxpayer in respect of each reporting period shall submit the annual operations knowledge sharing report and construction and completion knowledge sharing report to the *Minister of Natural Resources* on or before the reporting-due day for the report.

Report disclosure

(3) The Department of Natural Resources shall publish on a website, maintained by the Government of Canada, each knowledge sharing report referred to in subsection (2) as soon as practicable after a taxpayer has submitted the report.

Penalty

(4) Every knowledge sharing taxpayer that fails to provide the report required under subsection (2) in respect of a reporting period is liable to a penalty in the amount of $2 million payable the day after the reporting-due day.

Provisions applicable

(5) Sections 152, 158 and 159, subsection 161(11), sections 165 to 167 and Division J of Part I apply to this section, with any modifications that the circumstances require.

CCUS climate risk disclosure

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

exempt corporation at any time, means a corporation that does not have an ownership interest, whether directly or indirectly, in a qualified CCUS project that has incurred expenditures, or is expected to incur expenditures (based on the most recent project evaluation issued by the *Minister of Natural Resources* for the project), of $20 million or more. (*société exonérée*)

reporting-due day means the day that is nine months after the day on which the reporting taxation year ends. (*date d'échéance de la déclaration*)

reporting taxation year means,

(a) the first taxation year in which a taxpayer, in respect of a qualified CCUS project, deducted a CCUS tax credit from its tax otherwise payable under Part I; and

(b) each taxation year that

(i) begins after a taxation year referred to in paragraph (a), and

(ii) ends before the twenty-first calendar year after the end of the taxation year which includes the first day of commercial operations (as defined in subsection 211.92(1)) of the qualified CCUS project. (*année d'imposition de la déclaration*)

Climate risk disclosure report

(2) A corporation (other than an exempt corporation) that has deducted a CCUS tax credit shall, on or before the reporting-due day for each reporting taxation year, make available to the public, in the manner prescribed by the *Income Tax Regulations*, a climate risk disclosure report for the year containing the information prescribed by the *Income Tax Regulations*.

Penalty

(3) Every corporation that fails to satisfy subsection (2) in respect of a reporting taxation year is liable to a penalty in the amount that is the lesser of,

(a) 4% of the total of all amounts, each of which is a CCUS tax credit deducted by the corporation in respect of each taxation year that ended before the reporting-due day for the reporting taxation year; and

(b) $1 million.

Provisions applicable

(4) Sections 152, 158 and 159, subsection 161(11), sections 165 to 167 and Division J of Part I apply to this section, with any modifications that the circumstances require.

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

22 (1) The Regulations are amended by adding the following after section 8200.3:

Prescribed information — Climate risk disclosure report

8200.4 (1) For the purposes of subsection 211.93(2) of the *Income Tax Act*, prescribed information in a corporation's climate risk disclosure report means information that

(a) describes the climate-related risks and opportunities for the corporation based on the following thematic areas:

(i) the corporation's governance in respect of climate-related risks and opportunities,

(ii) the actual and potential impacts of climate-related risks and opportunities on the corporation's businesses, strategy, and financial planning where such information is material,

(iii) the processes used by the corporation to identify, assess, and manage climate related risks, and

(iv) the metrics and targets used by the corporation to assess and manage relevant climate-related risks and opportunities; and

(b) explains how the corporation's governance, strategies, policies and practices contribute to achieving Canada's

(i) commitments under the Paris Agreement made on December 12, 2015, and

(ii) goal of net-zero emissions by 2050.

(2) For the purposes of subsection 211.93(2) of the *Income Tax Act*, a climate risk disclosure report is deemed to have been made public in a prescribed manner if the report includes the date it was published and is made publicly available by, or on behalf of, the corporation on its internet website for a period of at least three years after the reporting-due day.

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

23 The Act is modified to give effect to the other proposals relating to the Investment Tax Credit for Carbon Capture, Utilization, and Storage as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 proposes certain additional details in respect of the Carbon Capture Utilization and Storage ("CCUS") Tax Credit originally announced in Budget 2022 and available to businesses that incur eligible expenditures on or after January 1, 2022 and before 2041. Additional legislative proposals will be released in the coming months.

The details contained in Budget 2023 provide clarity on the following points:

- certain dual use equipment that is used for CCUS as well as another process, will be eligible for the tax credit,
- British Columbia has been added as an eligible jurisdiction,
- when a qualified third party can validate the use of concrete for storing CO_2 rather than solely relying on the government to approve it,
- businesses would be able to claim only one of the CCUS Tax Credit, the Investment Tax Credit for Clean Technology, the Investment Tax Credit for Clean Electricity, or the Investment Tax Credit for Clean Hydrogen, if a particular property is eligible for more than one of these tax credits,
- CCUS Tax Credits related to eligible refurbishment costs (Refurbishment ITCs) incurred once the project is operating would be calculated based on the average of the expected eligible use ratio for the five-year period (the period) in which they are incurred, and each subsequent period (i.e., the periods over which they contribute to the useful life of the project). These periods would be the same as those used to calculate the CCUS Tax Credit during construction. Total eligible refurbishment costs over the first 20 years of the project would be limited to a maximum of ten per cent of the total pre-operational costs that were eligible for the CCUS Tax Credit. Projects would not be eligible for Refurbishment ITCs on costs incurred after the end of the 20-year period.
- Refurbishment ITCs would be recovered if the portion of CO_2 going to ineligible uses in a period is more than five percentage points higher than the weighted average set out in the project plan for that period. In such case, the Refurbishment ITCs would be recovered in generally the same

manner as credits claimed during the construction phase of the project, with some adjustments to reflect a shortened recovery period since refurbishment costs are incurred once the project is operating and during the 20-year recovery period.

Finally, draft legislation was provided for the reporting measures originally announced in Budget 2022 together with sample reports. Corporations will be required to produce an annual climate risk disclosure report, in this respect, Budget 2023 proposes to add section 211.92 to the *Income Tax Act*. Proposed subsection 211.92(2) provides that a "knowledge sharing taxpayer" shall submit the "annual operations knowledge sharing report" and "construction and completion knowledge sharing report" on or before the "reporting-due day" for the report. Proposed subsection 211.92(1) provides new definitions used above.

- Knowledge sharing taxpayer means a taxpayer that deducted a CCUS tax credit for a taxation year ending before the first day of commercial operations of a knowledge sharing CCUS project
- Knowledge sharing CCUS project means a qualified CCUS project that is expected to incur qualified CCUS expenditures of $250 million or more over the life of the project based on the most recent projection evaluation issued by the Minister of Natural Resources; or has incurred $250 million or more of qualified CCUS expenditures before the day of commercial operations of a CCUS project.
- Annual operations knowledge sharing report means that report containing the information described by the Minister of Natural Resources in the "CCUS-ITC – Technical Guidance Document" amended from time to time in the form annexed thereto
- Construction and completion knowledge sharing report means that report containing the information described by the Minister of Natural Resources in the "CCUS-ITC – Technical Guidance Document" amended from time to time in the form annexed thereto
- Reporting-due day means in respect of the construction and completion knowledge sharing report, the last day of the sixth month beginning after the first day of commercial operations and in respect of annual operations knowledge sharing report, if the report is the first such report, and if the first day of commercial operations is before October 1 in a calendar year, June 30 of the following calendar year, otherwise June 30 of the second calendar year after the calendar year and if the report is not the first report, each June 30 of the first four calendar years immediately following the calendar year which the first report was filed
- First day of commercial operations means the day on which captured carbon dioxide is first delivered to a carbon transportation, storage or use system for the purpose of storage or use

Proposed subsection 211.92(3) provides that the knowledge sharing reports will be published on a website and proposed subsection 211.92(4) provides a penalty for failure to provide the report in the amount of $2 million payable on the day after the reporting-due day. Finally proposed subsection 211.92(5) provides that sections 152, 158, 159, subsection 161(11) and sections 165-167 and Division J of Part I of the *Income Tax Act* all apply to section 211.92, with any necessary modifications.

Similarly for CCUS climate risk disclosure proposed section 211.93 provides a corporation (other than an exempt corporation) that has deducted a CCUS tax credit shall, on or before the reporting-due day for each reporting taxation year, make available to the public, in the manner prescribed by the *Income Tax Regulations*, a climate risk disclosure report for the year containing the information prescribed by the *Income Tax Regulations*. Failure to produce the report will result in a penalty under proposed subsection 211.93(3) in the amount that is the lesser of 4% of the total of the CCUS tax credits deducted by the corporation in respect of each taxation year that ended before the reporting due day for the reporting taxation year and $1 million. Proposed subsection 211.93(4) includes the application of sections 152, 158, 159, subsection 161(11) and sections 165-167 and Division J of Part I of the *Income Tax Act* to section 211.93, with any necessary modifications.

For the purposes of section proposed 211.93, proposed subsection 211.93(1) provides the following new definitions

- exempt corporation, means a corporation that does not have an ownership interest, whether directly or indirectly, in a qualified CCUS project that has incurred expenditures, or is expected to incur expenditures (based on the most recent project evaluation issued by the Minister of Natural Resources for the project), of $20 million or more,
- reporting-due day means the day that is nine months after the day on which the reporting taxation year ends,
- reporting taxation year means (a) the first taxation year in which a taxpayer, in respect of a qualified CCUS project, deducted a CCUS tax credit from its tax otherwise payable under Part I; and (b) each taxation year that (i) begins after a taxation year referred to in paragraph (a), and (ii) ends before the twenty-first calendar year after the end of the taxation year which includes the first day of commercial operations (as defined in subsection 211.92(1)) of the qualified CCUS project.

Budget 2023 also proposes to add regulations that would be in force starting from January 1, 2022, providing prescribed information for the climate risk disclosure report. Proposed regulation 8200.4(1) provides for the purposes of subsection 211.93(2) of the *Income Tax Act*, prescribed information in a corporation's climate risk disclosure report means information that:

(a) describes the climate-related risks and opportunities for the corporation based on the following thematic areas:

(i) the corporation's governance in respect of climate-related risks and opportunities,

(ii) the actual and potential impacts of climate-related risks and opportunities on the corporation's businesses, strategy, and financial planning where such information is material,

(iii) the processes used by the corporation to identify, assess, and manage climate-related risks, and

(iv) the metrics and targets used by the corporation to assess and manage relevant climate-related risks and opportunities; and

(b) explains how the corporation’s governance, strategies, policies and practices contribute to achieving Canada’s

(i) commitments under the Paris Agreement made on December 12, 2015, and

(ii) goal of net-zero emissions by 2050.

Proposed regulation 8200.4 (2) provides for the purposes of subsection 211.93(2) of the *Income Tax Act*, a climate risk disclosure report is deemed to have been made public in a prescribed manner if the report includes the date it was published and is made publicly available by, or on behalf of, the corporation on its internet website for a period of at least three years after the reporting-due day.

Resolution 24: Flow-Through Shares and Critical Mineral Exploration Tax Credit – Lithium from Brines

24 The Act is modified to give effect to the proposals relating to the Flow-Through Shares and Critical Mineral Exploration Tax Credit – Lithium from Brines as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 proposes to amend the Tax Act to include lithium from brines as a mineral resource for the purposes of allowing principal-business corporations to issue flow through shares and for investors to claim the Critical Mineral Exploration Tax Credit in respect of eligible expenses related to lithium from brines.

Eligible expenses related to lithium from brines made after Budget Day would qualify as Canadian exploration expenses and Canadian development expenses. The expansion of the eligibility for the CMETC to lithium from brines would apply to flow-through share agreements entered into after Budget Day and before April 2027.

Resolution 25: Tax on Repurchases of Equity

25 (1) The Act is amended by adding the following after section 183.2:

PART II.2

Tax on Repurchases of Equity

Definitions

183.3 (1) The following definition apply in this Part.

covered entity for a taxation year, means an entity that is a corporation, trust or partnership if at any time in the taxation year

(a) equity of the entity is listed on a designated stock exchange; and

(b) the entity is

(i) a corporation resident in Canada (other than a mutual fund corporation),

(ii) a mutual fund trust that

(A) is a *real estate investment trust* (as defined in subsection 122.1(1)),

(B) is a SIFT trust, or

(C) would be a SIFT trust if each reference to “subject entity” in paragraph (a) of the definition *non-portfolio property* in subsection 122.1(1) was read as “partnership, trust or corporation”, paragraph (b) of that definition was read without references to the word “Canadian” and paragraph (c) of that definition was read without reference to the words “in Canada”, or

(iii) a partnership that

(A) is a SIFT partnership, or

(B) would be a SIFT partnership if each reference to “subject entity” in paragraph (a) of the definition *non-portfolio property* in subsection 122.1(1) was read as “partnership, trust or corporation”, paragraph (b) of that definition was read without references to the word “Canadian” and paragraph (c) of that definition was read without reference to the words “in Canada”. (*entité visée*)

equity of an entity, means, if the entity is

(a) a corporation, a share of the capital stock of the corporation;

(b) a trust, an income or capital interest in the trust; and

(c) a partnership, an interest as a member of the partnership. (*capitaux propres*)

reorganization or acquisition transaction means

(a) an issuance of equity by a covered entity unless

(i) cash is the only consideration paid to the entity in exchange for the issuance, or

(ii) the issuance is made to an employee of the covered entity (or an entity related to the covered entity) in the course of the employee’s employment; and

(b) a redemption, acquisition or cancellation of equity by a covered entity in the course of

(i) an exchange of equity by a holder if no consideration other than equity (that does not include any substantive debt) of the covered entity is received by the holder for the equity,

(ii) a winding-up of the covered entity during which all or substantially all of the property owned by the covered entity is distributed to the equity holders of the covered entity,

(iii) an amalgamation of the covered entity with one or more other predecessor corporations to which subsection 87(1) applies if each person or partnership who, immediately before the amalgamation, owns equity of the covered entity, receives no consideration for the disposition of their equity on the amalgamation, other than equity (that does not include any substantive debt) of the *new corporation* referred to in subsection 87(1), or

(iv) a reorganization of the covered entity’s business to which paragraph 55(3)(a) or (b) applies. (*opération de réorganisation ou d’acquisition*)

specified affiliate at any time, of a covered entity, means a corporation, trust or partnership (in this definition referred to as an "affiliate") if at that time, the covered entity

(a) controls, directly or indirectly, the affiliate, or

(b) owns, directly or indirectly, more than 50% of the fair market value of the equity of the affiliate. (*société affiliée déterminée*)

substantive debt of an entity means equity that, pursuant to its terms

(a) is not convertible or exchangeable (other than for equity that if issued would be substantive debt of the same entity);

(b) is non-voting;

(c) the annual rate of the dividend or other distribution payable on the equity, if any, is expressed as a fixed percentage of an amount equal to the fair market value of the consideration for which the equity was issued; and

(d) the amount that any holder of the equity is entitled to receive on the redemption, cancellation or acquisition of the equity by the entity or by a person or partnership with whom the entity does not deal at arm's length or is affiliated with cannot exceed the total of an amount equal to the fair market value of the consideration for which the equity was issued and the amount of any unpaid distributions or dividends thereon. (*dette substantielle*)

Tax payable

(2) Every person or partnership that is a covered entity for a taxation year shall pay a tax for the taxation year equal to the amount determined by the formula

$$0.02 \times (A - B)$$

where

A is the total fair market value of equity (other than substantive debt) of the covered entity that is redeemed, acquired or cancelled (other than by a reorganization or acquisition transaction) in the taxation year by the covered entity (except equity acquired from a specified affiliate that was previously deemed to have been acquired by the covered entity under subsection (5)); and

B is the total fair market value of equity (other than substantive debt) of the covered entity that is issued (other than in the course of a reorganization or acquisition transaction) in the taxation year.

Tax payable — anti-avoidance

(3) Equity that is redeemed, acquired or cancelled or that is issued by a covered entity as part of a *transaction* (as defined in subsection 245(1)), or series of transactions, shall be included in variable A or excluded from variable B of subsection (2) (as applicable) if it is reasonable to consider that the primary purpose of the transaction or series is to cause a decrease in the amount under variable A of subsection (2) or an increase in the amount under variable B of subsection (2).

De minimis rule

(4) Despite subsection (2), if the amount determined for variable A in subsection (2) for a taxation year is less than $1,000,000 (prorated based on the number of days in the taxation year if the taxation year is less than 365 days), no tax is payable under this Part for the taxation year.

Similar transactions

(5) For the purposes of subsection (2), if a specified affiliate of a covered entity acquires equity of the covered entity, the equity is deemed to be acquired by the covered entity unless

(a) the specified affiliate is a registered securities dealer that

(i) acquires the equity in the capacity of an agent in the ordinary course of business, and

(ii) disposes of the equity to customers within a reasonable period of time that is consistent with the holding of equity in the ordinary course of business; or

(b) the specified affiliate is a trust established for the benefit of employees and former employees of the covered entity that satisfies the following conditions

(i) the trust is an employee benefit plan, and

(ii) the terms of the trust provide that any equity of the covered entity acquired or held by the trust cannot be transferred to, or otherwise be available for the benefit of, the covered entity or to any specified affiliate of the covered entity.

Similar transactions — anti-avoidance

(6) If it is reasonable to consider that one of the main purposes of a *transaction* (as defined in subsection 245(1)), or series of transactions, is to cause a person or partnership to acquire equity of a covered entity to avoid the tax otherwise payable under this Part, the person or partnership shall be deemed to be a specified affiliate of the covered entity from the time that the transaction or series commenced until immediately after the time the transaction or series ends.

Return

183.4 (1) Every covered entity that redeems, acquires or cancels equity of the entity in a taxation year, shall

(a) if the entity is a corporation, on or before the day it is required to file its return of income under Part I for the year, file with the Minister a return for the year under this Part in prescribed form;

(b) if the entity is a trust, the trustee of the trust shall, within 90 days from the end of the taxation year, file with the Minister a return for the year under this Part in prescribed form; and

(c) if the entity is a partnership, a member of the partnership that has authority to act for the partnership shall file with the Minister a return for the year under this Part in prescribed form on or before the earlier of

(i) the day that is five months after the end of the taxation year, and

(ii) March 31 in the calendar year immediately following the calendar year in which the taxation year ended.

Provisions applicable to Part

(2) Subsections 150(2) and (3), sections 152, 158 and 159, subsections 160.1(1) and 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(2) Subsection (1) applies to transactions that occur after 2023.

Dentons Canada LLP Commentary

In the 2022 Fall Economist Statement, the Government of Canada announced its intention to introduce a tax on share repurchases by public corporations. Budget 2023 provided the following details regarding the proposed measure that would apply in respect of repurchases and issuances of equity that occur on or after January 1, 2024.

This measure would apply to Canadian-resident public corporations who shares are listed on a designated stock exchange, excluding mutual fund corporations.

This measure would also apply to the following entities (as they are defined in the *Income Tax Act*) if they have units listed on a designated stock exchange:

- real estate investment trusts;
- specified investment flow-through (SIFT) trusts; and
- SIFT partnerships.

This measure would also apply to publicly traded entities that would be SIFT trusts or SIFT partnerships if their assets were located in Canada.

The tax would be equal to two per cent of the net value of the entity's repurchase of equity (which includes shares of the corporation or units of the trust or partnership). This would be determined based on the fair market value of the equity repurchased, less the fair market value of the equity issued from treasury. This "netting rule" would be applied on an annual basis based on the entity's taxation year.

The following will not be included in computing the amount of equity repurchased:

- debt-like preferred shares and units with a fixed dividend and redemption entitlement; and
- equity that is repurchased as part of certain corporate reorganizations, including certain amalgamations, liquidations, share-for-share exchanges and reorganizations to which paragraphs 55(3)(a) or (b) of the *Income Tax Act* apply.

The measure will not apply to an entity that repurchased less than $1 million of equity during a taxation year (prorated for short taxation years) as determined on a gross basis.

The acquisition of equity by certain affiliates of an entity would be deemed to be a repurchase of equity by the entity itself. There would be exceptions to this rule, including acquisitions by registered securities dealers and acquisitions intended to facilitate certain equity-based compensations agreements.

The proposed measure includes an anti-avoidance rule that subjects an entity to the tax when a person or partnership enters into a transaction where one of the main purposes of a transaction is to avoid this tax.

Entities that are subject to this tax would have to file a return in a prescribed form with the Minister.

Resolutions 26 to 28: General Anti-Avoidance Rule

26 (1) Paragraph 152(4)(b) of the Act is amended by striking out "or" at the end of subparagraph (vi), by adding "or" at the end of subparagraph (vii) and by adding the following after subparagraph (vii):

(viii) is made to give effect to the application of section 245 in respect of a transaction, unless the transaction was disclosed by the taxpayer to the Minister in accordance with section 237.3;

(2) Paragraph 152(4.01)(b) of the Act is amended by striking out "or" at the end of subparagraph (ix), by adding "or" at the end of subparagraph (x) and by adding the following after subparagraph (x):

(xi) the transaction referred to in subparagraph (4)(b)(viii);

27 Section 237.3 of the Act is amended by adding the following after subsection (12):

Optional disclosure — GAAR

(12.1) If subsection (2) does not apply to a taxpayer in respect of a transaction, the taxpayer may file an information return in prescribed form and containing prescribed information in respect of the transaction within the time limits set out in subsection (5), determined as if the transaction were a reportable transaction in respect of the taxpayer.

28 (1) Section 245 of the Act is amended by adding the following before subsection (1):

Preamble

(0.1) This section of the Act contains the general anti-avoidance rule, which

(a) applies to deny the tax benefit of avoidance transactions that result directly or indirectly either in a misuse of provisions of the Act (or any of the enactments listed in subparagraphs (4)(a)(ii) to (v)) or an abuse having regard to those provisions read as a whole, while allowing taxpayers to obtain tax benefits contemplated by the relevant provisions;

(b) strikes a balance between

(i) taxpayers' need for certainty in planning their affairs, and

(ii) the government of Canada's responsibility to protect the tax base and the fairness of the tax system; and

(c) can apply regardless of whether a tax strategy is foreseen.

(2) Subsection 245(3) of the Act is replaced by the following:

Avoidance transaction

(3) A transaction is an avoidance transaction if

(a) the transaction

(i) but for this section, would result, directly or indirectly, in a tax benefit, or

(ii) is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit; and

(b) it may reasonably be considered that one of the main purposes for undertaking or arranging the transaction was to obtain the tax benefit.

(3) Section 245 of the Act is amended by adding the following after subsection (4):

Economic substance

(4.1) If an avoidance transaction is significantly lacking in economic substance, that tends to indicate that the transaction results in a misuse under paragraph (4)(a) or an abuse under paragraph (4)(b) and for these purposes, factors that tend – depending on the particular circumstances – to establish that a transaction or series of transactions is significantly lacking in economic substance include

(a) all or substantially all of the opportunity for gain or profit and risk of loss of the taxpayer – taken together with those of all non-arm's length taxpayers – remains unchanged, including because of

(i) a circular flow of funds,

(ii) offsetting financial positions, or

(iii) the timing between steps in the series;

(b) it is reasonable to conclude that, at the time the transaction was entered into, the expected value of the tax benefit exceeded the expected non-tax economic return (which excludes both the tax benefit and any tax advantages connected to another jurisdiction); and

(c) it is reasonable to conclude that the entire, or almost entire, purpose for undertaking or arranging the transaction or series was to obtain the tax benefit.

(4) Section 245 of the Act is amended by adding the following after subsection (5):

Penalty

(5.1) If subsection (2) applies to a person in respect of a transaction, the person is liable to a penalty for the taxation year to which the transacction relates, equal to 25% of the amount of the tax benefit that would, but for that subsection, result directly or indirectly from the transaction or series of transaction that includes the transaction, unless the transaction was disclosed to the Minister under subsection 237.3(2) or (12.1).

Penalty – tax attributes

(5.2) For the purposes of subsection (5.1), the amount of a tax benefit described in paragraph (c) of the definition *tax benefit* in subsection (1) is deemed to be nil.

Dentons Canada LLP Commentary

Budget 2023 proposes a significant overhaul to the general anti-avoidance rule (the "GAAR") in s. 245 of the Act. The proposed measures follow on Finance's August 2022, consultation paper on the GAAR, *Modernizing and Strengthening the General Anti-Avoidance Rule* (the "Consultation Paper"), in which Finance expressed the following concerns:

1. A "tax benefit" had not been found to exist in every appropriate case or decision;
2. The GAAR was seen to fail at preventing abusive tax avoidance in situations where a tax benefit was obtained in the context of a transaction with a primarily non-tax purpose;
3. There was a perceived difficulty in ascertaining the object, spirit and purpose of a provision of the Act, or the existence and relevance of a general scheme in the Act read as a whole, in order to determine whether abusive tax avoidance has occurred;
4. There was an absence of the economic substance of transaction as a consideration in the GAAR analysis; and
5. There was a lack of a sufficient deterrence on abusive tax planning.

Finance invited comments and responses to its Consultation Paper during a consultation period that ran from August 9, 2022 to September 30, 2022.

To respond to the issues raised in the Consultation Paper, Budget 2023 proposes to amend the GAAR by:

1. Introducing a preamble;
2. Changing the avoidance transaction standard;
3. Introducing an economic substance rule;
4. Introducing a penalty; and
5. Extending the reassessment period in certain circumstances.

(1) Introduction of Preamble

The proposed preamble under s. 245(0.1) introduces interpretive language that attempts to clarify the GAAR in three ways:

1. the GAAR will deny the tax benefit of avoidance transactions that result directly or indirectly either in a misuse of provisions of the Act or an abuse having regard to those provisions read as a whole, while allowing taxpayers to obtain tax benefits contemplated by the relevant provisions;
2. the GAAR strikes a balance between (i) taxpayers' need for certainty in planning their affairs, and(ii) the government of Canada's responsibility to protect the tax base and the fairness of the tax system; and
3. the GAAR can apply regardless of whether a tax strategy is foreseen.

(2) Changing the avoidance transaction standard

Currently, an "avoidance transaction" as defined in s. 245(3) generally means a transaction that results directly or indirectly in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

The Consultation Paper raised the concern that some GAAR cases were inappropriately decided in the taxpayer's favour on the basis that the transactions at issue were not primarily tax-driven. Budget 2023 addresses this concern by amending the definition of "avoidance transaction" so that it applies where it may reasonably be considered that "one of the main purposes" for undertaking the transaction was to obtain the tax benefit. Accordingly, an avoidance transaction may be found to exist as long as tax was one of the main purposes for entering into the transactions.

(3) Introducing an economic substance rule

As identified in the Consultation Paper, the GAAR provisions do not currently contemplate economic substance as a consideration in the analysis, and the jurisprudence from the Supreme Court of Canada, including the decision in *Alta Energy* (2021 SCC 49), has established a very limited role for economic substance.

In response, Budget 2023 introduces new s. 245(4.1), which provides that if an avoidance transaction is "significantly lacking in economic substance" then it will tend to indicate that the transaction results in a misuse or abuse.

In this regard, the new provision sets out factors that tend to establish that a transaction is significantly lacking in economic substance, which include:

(a) all or substantially all of the opportunity for gain or profit and risk of loss of the taxpayer – taken together with those of all non-arm's length parties – remains unchanged, including because of,

(i) a circular flow of funds,

(ii) offsetting financial positions, or

(iii) the timing between steps in the series;

(b) it is reasonable to conclude that, at the time the transaction was entered into, the expected value of the tax benefit exceeded the expected non-tax economic return (which excludes both the tax benefit and any tax advantages connected to another jurisdiction); and

(c) it is reasonable to conclude that the entire purpose for undertaking or arranging the transaction or series was to obtain the tax benefit.

(4) Introduction of a Penalty

As noted in the Consultation Paper, one of the concerns with the GAAR was the lack of a sufficient deterrence effect. In response, Budget 2023 proposes to introduce a 25 percent penalty in proposed s. 245(5.1) on the amount of the tax benefit obtained. The penalty will not apply in cases where the tax benefit involves a tax attribute that has not yet been realized to reduce tax.

Further, the penalty could be avoided if the transaction is disclosed to the CRA, either voluntarily or as part of the proposed mandatory disclosure rules. It is difficult to imagine a scenario in which a taxpayer would voluntarily disclose information that is not required under the mandatory disclosure rules.

(5) Extending the reassessment period in certain circumstances.

Lastly, under new s. 152(4)(b)(viii), Budget 2023 proposes to extend the normal reassessment period of GAAR by three years, unless the transaction has been disclosed to the CRA.

Conclusion

The GAAR measures proposed in Budget 2023 will have a profound impact on taxpayers across the country and the manner in which tax planning is carried on.

Finance has invited comments on the proposed GAAR measures. Interest parties are invited to send written representations to the Department of Finance Canada, Tax Policy Branch at GAAR-RGAE@fin.gc.ca by May 31, 2023.

Following this period of consultation, the government intends to publish revised legislative proposals and announce the application date of the amendments.

It is noteworthy that Budget 2023 does not provide an effective date for these proposals.

Resolution 29: Dividend Received Deduction by Financial Institutions

29 (1) Section 112 of the Act is amended by adding the following after subsection (2):

Mark-to-market property

(2.01) No deduction may be made under subsection (1) or (2) or 138(6) in computing the taxable income of a corporation for a taxation year in respect of a dividend received on a share if

(a) the corporation is a financial institution at any time in the year; and

(b) the share

(i) is a mark-to-market property of the corporation for the year, or

(ii) would be a mark-to-market property of the corporation for the year if the share was held at any time in the year by the corporation.

Tracking property

(2.02) For the purpose of paragraph (2.01)(b), a share (other than a share of a financial institution) that is a tracking property of a corporation at any time in a taxation year is deemed to be mark-to-market property of the corporation for the year.

(2) Paragraph 112(6)(c) of the Act is replaced by the following:

(c) *financial institution*, *mark-to-market property*, and *tracking property* have the meanings assigned by subsection 142.2(1).

(3) Subsections (1) and (2) apply in respect of dividends received after 2023.

Dentons Canada LLP Commentary

Budget 2023 proposes to deny the intercorporate dividend deduction under s. 112(1) of the Act in cases where a dividend is,

(1) received by a corporation that is a financial institution ("FI") at any time in the year; and

(2) received on a share that is a mark-to-market property of the FI or would be a mark-to-market property of the FI if the share was held at any time in the year by the FI.

Finance takes the view that the treatment behind the s. 112(1) intercorporate dividend deduction conflicts with the policy behind the rules related to mark-to-market properties. In general, gains on the disposition of mark-to-market property are included in ordinary income, not capital gains, and unrealized gains are included in computing income annually. Shares are generally mark-to-market property when a FI has less than 10 percent of the votes or value of the corporation that issued the shares. However, intercorporate dividends received by FIs currently remain eligible for the deduction and are therefore excluded from income. The new rules are aimed at aligning the treatment of dividends and gains on mark-to-market properties.

Since a dividend paid on a mark-to-market share should theoretically reduce the fair market value of the share, the dividend inclusion arising as a result of the new rules should offset any increased gain or any loss suffered on the disposition of the share.

Resolution 30: Income Tax and GST/HST Treatment of Credit Unions

30 The Act is modified to give effect to the proposals relating to the Income Tax and GST/HST Treatment of Credit Unions as described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Dentons Canada LLP Commentary

Budget 2023 proposes to amend the definition of "credit union" for the purposes of both the Act and the *Excise Tax Act* to remove certain revenue source requirements for credit unions.

Under the current definition in subsection 137(6) of the Act (incorporated by reference in 123(1) of the *Excise Tax Act*), a credit union will qualify as a "credit union" for the purposes of the Act and the *Excise Tax Act* only if "all or substantially all" (typically interpreted as not less than 90%) of the credit union's income is derived from certain sources, even where the credit union's governing legislation permits it to earn income through other sources. Budget 2023 recognizes that most credit unions operate as full-service financial institutions with a wide range of financial products and services and that their status as "credit unions" for the purposes of the Act and the *Excise Tax Act* could unintentionally be jeopardized by the revenue source requirements in the current definition of "credit union".

Budget 2023 proposes to amend the definition of "credit union" in subsection 137(6) of the Act to remove the revenue source test in that definition and further amending the definition to accommodate the manner in which modern day credit unions operate. No draft legislation with respect to this amendment was tabled as part of Budget 2023.

The amendment to the definition of "credit union" in subsection 137(6) of the Act would be apply in respect of taxation years of a credit union ending after 2016.

Editorial Comment on GST/HST and Excise Budget Resolutions

That it is expedient to amend the *Excise Tax Act* as follows:

Resolution 1: GST/HST Treatment of Payment Card Clearing Services

1 (1) The definition *financial service* in subsection 123(1) of the *Excise Tax Act* is amended by adding the following after paragraph (r.5):

(r.6) a service (other than a prescribed service) that is supplied by a *payment card network operator* in respect of a *payment card network* (as those terms are defined in section 3 of the *Payment Card Networks Act*) and that is

(i) a service in respect of the authorization of a transaction in respect of money, an account, a credit card voucher, a charge card voucher or a financial instrument,

(ii) a clearing or settlement service in respect of money, an account, a credit card voucher, a charge card voucher or a financial instrument, or

(iii) a service provided in conjunction with a service referred to in subparagraph (i) or (ii),

(2) Subsection (1) applies to a service rendered under an agreement for a supply if

(a) any consideration for the supply becomes due after Budget Day or is paid after that day without having become due; or

(b) all of the consideration for the supply became due or was paid on or before Budget Day, except that, for the purposes of Part IX of the Act, other than Division IV of that Part, subsection (1) does not apply in respect of the service if

(i) the supplier did not, on or before Budget Day, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply, and

(ii) the supplier did not, on or before Budget Day, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of any other supply that is made under the agreement and that includes the provision of a service referred to in paragraph (r.6) of the definition *financial service* in subsection 123(1) of the Act, as amended by subsection (1).

(3) Despite section 298 of the Act, the Minister of National Revenue may assess, reassess or make an additional assessment of any amount payable or remittable by a person in respect of a supply of a service referred to in paragraph (r.6) of the definition *financial service* in subsection 123(1) of the Act, as amended by subsection (1), at any time on or before the later of the day that is one year after the day on which the legislation enacting subsection (1) receives royal assent and the last day of the period otherwise allowed under that section for making the assessment, reassessment or additional assessment.

Dentons Canada LLP Commentary

Under the GST/HST regime, financial services are generally exempt, meaning no tax is collected and no Input-tax credits are available.

Payment card network operators maintain clearing systems in respect of payment cards (credit, debit, and charge cards) and render payment card clearing services (e.g., payment processing and messaging services) to system participants (e.g., a payment card issuer such as a bank). It has always been widely understood that the services of payment card network operators are excluded from the GST/HST definition of “financial service”. However, a recent court decision found that the GST/HST does not apply to supplies of these services.

Budget 2023 proposes to amend the GST/HST definition of “financial service” to clarify that payment card clearing services rendered by a payment card network operator are excluded from the definition to ensure that such services generally continue to be subject to the GST/HST.

This measure would apply to a service rendered under an agreement for a supply if any consideration for the supply becomes due, or is paid without becoming due, after March 28, 2023.

This measure would also apply to a service rendered under an agreement for a supply if all of the consideration for the supply became due, or was paid, on or before Budget Day, except in certain situations, generally being where the following two conditions were both met:

(1) the supplier did not, on or before Budget Day, charge, collect, or remit any amount as or on account of tax in respect of the supply; and

(2) the supplier did not, on or before Budget Day, charge, collect, or remit any amount as or on account of tax in respect of any other supply that is made under the agreement and that includes the provision of a payment card clearing service.

Notice of Ways and Means Motion to amend the Excise Act, 2001

That it is expedient to amend the *Excise Act, 2001* as follows:

Resolutions 1 and 2: Alcohol Excise Duty

1 (1) Section 123.1 of the *Excise Act, 2001* is amended by adding the following after subsection (2):

Adjustment — 2023

(2.1) In respect of the inflationary adjusted year that is 2023, the description of B in paragraph (2)(a) is deemed to be equal to 1.02.

(2) Subsection (1) comes into force or is deemed to have come into force on April 1, 2023.

2 (1) Section 135.1 of the Act is amended by adding the following after subsection (2):

Adjustment — 2023

(2.1) In respect of the inflationary adjusted year that is 2023, the description of B in paragraph (2)(a) is deemed to be equal to 1.02.

(2) Subsection (1) comes into force or is deemed to have come into force on April 1, 2023.

Dentons Canada LLP Commentary

Under the *Excise Act* and the *Excise Act, 2001*, alcohol excise duties are automatically indexed to total Consumer Price Index (CPI) inflation at the beginning of each fiscal year (i.e., on April 1st).

Budget 2023 proposes to temporarily cap the inflation adjustment for excise duties on beer, spirits, and wine at two per cent, for one year only, as of April 1, 2023. The excise duty rates on all alcoholic beverage products as of April 1, 2023, are presented in the table below. The proposed measure would come into force on April 1, 2023.

Proposed Alcohol Excise Duty Rates as of April 1, 2023

	Rates 2022-23	Rates 2023-24 (no cap) (no cap)	Rates 2023-24 (2% adjust)
Spirits	$13.042	$13.864	$13.303
Wine	$0.688	$0.731	$0.702
Beer	$34.820	$37.014	$35.516

Resolutions 3 to 5: Cannabis Taxation — Quarterly Duty Remittances

3 (1) Subsection 159(1.01) of the Act is replaced by the following:

Fiscal months — vaping product licensee

(1.01) For the purposes of this Act, the fiscal months of a vaping product licensee are calendar months.

(2) Subsection (1) comes into force or is deemed to have come into force on April 1, 2023.

4 (1) Subsection 159.1(1) of the Act is replaced by the following:

Reporting period — general

159.1 (1) Subject to this section, the reporting period of a person is a fiscal month.

Reporting period — cannabis licensee

(1.1) The reporting period of a cannabis licensee is a calendar quarter, being a period of three months beginning on the first day of January, April, July or October.

(2) Subsection (1) comes into force or is deemed to have come into force on April 1, 2023.

5 (1) Section 159.2 of the Act is repealed.

(2) Subsection (1) comes into force or is deemed to have come into force on April 1, 2023.

Dentons Canada LLP Commentary

Budget 2022 brought forward a measure that allowed certain smaller licensed cannabis producers to remit excise duties on a quarterly basis. Budget 2023 proposes to allow all licensed cannabis producers to remit excise duties on a quarterly rather than monthly basis, starting from the quarter beginning on April 1, 2023.

Notice of Ways and Means Motion to amend the Excise Act

That it is expedient to amend the *Excise Act* as follows:

Resolution 1: Alcohol Excise Duty

1 (1) Section 170.2 of the *Excise Act* is amended by adding the following after subsection (2):

Adjustment — 2023

(2.1) In respect of the inflationary adjusted year that is 2023, the description of B in paragraph (2)(a) is deemed to be equal to 1.02.

(2) Subsection (1) comes into force or is deemed to have come into force on April 1, 2023.

Dentons Canada LLP Commentary

Under the *Excise Act* and the *Excise Act, 2001*, alcohol excise duties are automatically indexed to total Consumer Price Index (CPI) inflation at the beginning of each fiscal year (i.e., on April 1st).

Budget 2023 proposes to temporarily cap the inflation adjustment for excise duties on beer, spirits, and wine at two per cent, for one year only, as of April 1, 2023. The excise duty rates on all alcoholic beverage products as of April 1, 2023, are presented in the table below. The proposed measure would come into force on April 1, 2023.

Proposed Alcohol Excise Duty Rates as of April 1, 2023

	Rates 2022-23	Rates 2023-24 (no cap)	Rates 2023-24 (2% adjust)
Spirits	$13.042	$13.864	$13.303
Wine	$0.688	$0.731	$0.702
Beer	$34.820	$37.014	$35.516

Notice of Ways and Means Motion to amend the Air Travellers Security Charge Act

That it is expedient to amend the *Air Travellers Security Charge Act* as follows:

Resolution 1: Air Travellers Security Charge

1 (1) The portion of paragraph 12(1)(a) of the *Air Travellers Security Charge Act* before subparagraph (i) is replaced by the following:

(a) $9.46 for each chargeable emplanement included in the service, to a maximum of $18.92, if

(2) The portion of paragraph 12(1)(b) of the Act before subparagraph (i) is replaced by the following:

(b) $9.94 for each chargeable emplanement included in the service, to a maximum of $19.87, if

(3) The portion of paragraph 12(1)(c) of the Act before subparagraph (i) is replaced by the following:

(c) $16.08 for each chargeable emplanement included in the service, to a maximum of $32.16, if

(4) The portion of paragraph 12(1)(d) of the Act before subparagraph (i) is replaced by the following:

(d) $16.89 for each chargeable emplanement included in the service, to a maximum of $33.77, if

(5) Paragraph 12(1)(e) of the Act is replaced by the following:

(e) $34.42, if the service includes transportation to a destination outside the continental zone.

(6) The portion of paragraph 12(2)(a) of the Act before subparagraph (i) is replaced by the following:

(a) $16.08 for each chargeable emplanement by an individual on an aircraft used to transport the individual to a destination outside Canada but within the continental zone, to a maximum of $32.16, if

(7) The portion of paragraph 12(2)(b) of the Act before subparagraph (i) is replaced by the following:

(b) $16.89 for each chargeable emplanement by an individual on an aircraft used to transport the individual to a destination outside Canada but within the continental zone, to a maximum of $33.77, if

(8) Paragraph 12(2)(c) of the Act is replaced by the following:

(c) $34.42, if the service includes transportation to a destination outside the continental zone.

(9) Subsections (1) to (8) apply in respect of an air transportation service that includes a chargeable emplanement after April 2023 unless,

(a) if any consideration is paid or payable in respect of the service, all of the consideration is paid before May 2023; or

(b) if no consideration is paid or payable in respect of the service, a ticket is issued before May 2023.

Dentons Canada LLP Commentary

The Air Travellers Security Charge ("ATSC") is generally paid by passengers when they purchase airline tickets and funds the air travel security system, including the Canadian Air Transport Security Authority ("CATSA"). Budget 2023 proposes to provide $1.8 billion over five years to maintain and increase CATSA's level of service, improve screening wait times, and strengthen security measures at airports. To support this funding, Budget 2023 proposes to increase ATSC rates by 32.85%. The proposed new rates will apply to air transportation services that include a chargeable emplanement on or after May 1, 2024, for which any payment is made on or after that date.

Proposed ATSC Rates ($)

	Current	May 2024 and Ongoing
Domestic (one-way)	7.48	9.94
Domestic (round trip)	14.96	19.87
Transborder	12.71	16.89
Other international	25.91	34.42

Note: The above rates include the GST or the federal portion of the HST, where applicable.

Investment Tax Credit for Clean Electricity

Budget 2023 proposes to introduce a 15% refundable investment tax credit for eligible investments in:

- non-emitting electricity generating systems;
- abated natural gas-fired electricity generation;
- stationary electricity storage systems that do not use fossil fuels in operation, such as batteries, pumped hydroelectric storage and compressed air storage; and
- equipment for the transmission of electricity between provinces and territories.

The Clean Electricity Investment Tax Credit will be available for both new projects and the refurbishment of existing facilities. The Credit will be available as of Budget Day 2024 for projects that did not begin construction before Budget Day 2023. The Credit will not be available after 2034.

Of note, not only can the Clean Electricity Investment Tax Credit be claimed by taxable entities, but also by non-taxable entities such as Crown corporations, publicly owned utilities, pension funds, and corporations owned by Indigenous communities.

While the Clean Electricity Investment Tax Credit may be claimed in addition to the Atlantic Investment Tax Credit, it will not generally be claimed in conjunction with other investment tax credits.

The Clean Electricity Investment Tax Credit will be subject to similar labour requirements as the other investment tax credits detailed in Budget 2023.

Other Measures and Previously Announced Measures

Grocery Rebate

Budget 2023 proposes to introduce an increase to the maximum Goods and Services Tax Credit ("GSTC") amount for January 2023 that would be known as the Grocery Rebate. Eligible individuals would receive an additional GSTC amount equivalent to twice the amount received for January. The Grocery Rebate would be paid as soon as possible following the passage of legislation, through the GSTC system. The maximum amount under the Grocery Rebate would be:

- $153 per adult;
- $81 per child; and
- $81 for the single supplement.

To legislate this change, the maximum GSTC amount for January 2023 would be replaced with an amount that is triple the maximum for that month under the current rules. For this January 2023 replacement payment only, the phase-in and phase-out rates would be tripled to 6% from 2% and to 15% from 5%, respectively. This ensures that the Grocery Rebate would be fully phased in and phased out at the same income levels as under the current GSTC rules for the 2022-2023 benefit year.

International Tax Reform

Existing tax laws, including those found in double tax treaties, were developed on the premise of businesses that maintained a "brick and mortar" physical presence in a jurisdiction. Recognizing that modern digital businesses can be operated from anywhere without the need of a physical presence, potentially leading to the avoidance of taxation in a jurisdiction, Canada and 137 other members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting developed a two-pillar plan to address this concern, which was agreed to in October 2021.

Through the two-pillar approach, Canada committed to tax multinational enterprises ("MNEs") that otherwise have no physical presence in Canada yet operate extensively or have a substantial user base in Canada. Canada reaffirmed its commitment to international tax reform in Budget 2022 and the 2022 Fall Economic Statement.

Pillar One (Reallocation of Taxing Rights)

Pillar One expands taxing rights of jurisdictions beyond existing principles of physical presence. This is accomplished by imposing tax on the basis of a broader test of connection and a formula allocation of residual profits to ensure that the largest MNEs pay taxes in the jurisdictions where their users and customers are located.

Budget 2023 reaffirms Canada's commitment to work with its global partners toward completing multilateral negotiations so that the convention to implement Pillar One can be signed by mid-2023, with a view to it entering into force in 2024.

Canada has previously released draft legislative proposals for a Digital Services Tax ("DST"). The DST will be imposed as of January 1, 2024, but only if Pillar One has not come into force by that date. The federal government's assumption is that the imposition of the DST will not be necessary.

Pillar Two (Global Minimum Tax)

Pillar Two is designed to ensure that large MNEs with annual revenues of €750 million or more pay a minimum tax of 15 percent on the profits in each jurisdiction in which they operate.

In general, Pillar Two is implemented by introducing two "top-up" tax rules: a primary taxing rule known as the "Income Inclusion Rule" ("IIR") and a secondary rule known as the "Undertaxed Payments Rule" ("UTPR").

In general terms, if the jurisdiction in which the ultimate parent entity of a MNE is located has implemented the IIR, that jurisdiction will impose a top-up tax on the ultimate parent entity. The IIR will apply on income from the operations of the MNE in any jurisdiction where its effective tax rate is less than 15 percent.

In cases where the IIR has not been implemented in a parent jurisdiction of a MNE, a top-up tax under the UTPR could apply in jurisdictions in which the MNE operates, with the top-up tax being allocated among those jurisdictions on a formula-basis.

Budget 2023 confirms Canada's intention to introduce legislation implementing the IIR and a domestic minimum top-up tax applicable to Canadian entities of MNEs, with effect for fiscal years of MNEs that begin on or after December 31, 2023. Canada also intends to implement the UTPR with effect for fiscal years of MNEs that begin on or after December 31, 2024.

The government has indicated that it will release draft legislative proposals for the IIR and domestic minimum top-up tax for public consultation in the coming months, with draft legislative proposals for the UTPR to follow at a later time.

Notably, Budget 2023 also announces the federal government's intention to share with provinces and territories a portion of the revenues generated from its the international tax reform efforts.

Tariff Support for Developing Countries

Canada extends non-reciprocal tariff preference programs to developing countries to support their export-led economic development. Two of these programs, the General Preferential Tariff ("GPT") and Least Developed Country Tariff ("LDCT"), expire on December 31, 2024.

Budget 2023 proposes to renew, until the end of 2034, and update these programs under the Customs Tariff. Updates would include creating a GPT+ program, in alignment with Canada's progressive trade agenda, as well as expanding benefits for certain import categories, and simplifying administrative requirements for Canadian importers. These changes are estimated to decrease federal tariff revenues by $130 million over six years, starting in 2022-23.

Automatic Tax Filing

The free and simple automatic tax filing service called "File My Return" allows eligible Canadians to auto-file their tax return over the phone after answering a series of short questions. This service was used by some 53,000 Canadians in 2022 (out of approximately 700,000 eligible individuals) and will be expanded to reach more than 2 million Canadians by 2025. The government will report on the progress of this initiative in 2024. The government also announced that, starting in 2024, there will be a new automatic filing service to help vulnerable Canadians who currently do not receive certain tax benefits because they do not file their tax returns. The CRA will also consult with certain community organizations and present a plan in 2024 to expand this service even further.

Gottfriedson Band Class Settlement Agreement

On January 18, 2023, the federal government signed an agreement to compensate 325 bands that opted into the Gottfriedson Band Class litigation to address the harms perpetrated by the residential school system. As part of the settlement, which has been approved by the Federal Court, the federal government will provide $2.8 billion to establish a trust to support healing, wellness, education, heritage, language, and commemoration activities. The government has announced that the trust will not be taxed on its income or gains.

Review of the Scientific Research and Experimental Development Tax Incentive Program

The federal government announced its intention to review the Scientific Research and Experimental Development ("SR&ED") program to ensure that the program continues to meet the government's objectives. Budget 2023 announced that in the coming months the Department of Finance will continue to engage stakeholders on the next steps.

Previously Announced Measures

Budget 2023 confirmed the government's intention to proceed with the following previously announced tax measures. The Budget papers indicate that the measures have been modified to account for consultations and deliberations since their initial release.

(1) Legislative proposals released on November 3, 2022 with respect to Excessive Interest and Financing Expenses Limitations ("EIFEL") and Reporting Rules for Digital Platform Operators. The EIFEL rules are expected

to apply to taxation years that begin on or after October 1, 2023. Basically, they limit the deduction of EIFEL to 30% of earnings before interest, taxes, depreciation and amortization (sometimes called "tax EBITDA"), with an optional restriction rule that applies to a group of related corporations. The reporting rules for digital platforms are expected to apply as of January 1, 2024.

(2) Tax measures announced in the Fall Economic Statement on November 3, 2022:

- The "Automatic Advance" for the Canada Workers Benefit ("CWB"). The CWB is a refundable tax credit intended to assist low and middle income workers. The automatic advance payment amendment accelerates the implementation of the credit and is expected to begin in July 2023.
- The Investment Tax Credit for Clean Technologies. This is a credit of 30% of the cost of eligible equipment used to generate electricity from solar, wind and water energy. This credit is expected to apply to equipment acquired and available for use after the Budget 2023 date (March 28, 2023).
- Extension of the Residential Property Flipping Rule to Assignment Sales. The "flipping rule" generally applies to sales within 12 months of acquisition of residential property and deems any gain to be fully included in income rather than one-half taxed as a capital gain (with some exceptions). The extended rule is expected to apply to sales or assignments after 2022.

(3) Legislative proposals released on August 9, 2022, including the following measures:

- Borrowing by Defined Benefit Pension Plans (a new limit on borrowing by such plans, expected to apply to borrowings after April 6, 2022).
- Reporting Requirements for Registered Retirement Savings Plans ("RRSPs") and Registered Retirement Income Funds ("RRIFs") (tightening up some of the reporting requirements for issuers of these plans, expected to apply to 2023 and subsequent years);
- Fixing Contribution Errors in Defined Contribution Pension Plans, to be effective as of January 1, 2021;
- The Investment Tax Credit for Carbon Capture, Utilization and Storage. The credit will apply to expenses incurred after 2021 and will be reduced and phased out by 2040;
- Hedging and Short Selling by Canadian Financial Institutions – a restriction for certain hedging and short selling transactions, expected to apply to amounts payable after April 6, 2022;
- A new rule applying to a so-called substantive Canadian-Controlled Private Corporation ("CCPC"), amending the refundable tax on investment income earned by certain CCPCs, to be applicable to taxation years beginning after April 6, 2022;
- Mandatory Disclosure Rules for certain tax avoidance transactions, to be applicable to taxation years that begin after 2022;

- The Electronic Filing and Certification of Tax and Information Returns – requiring certain returns to be filed electronically;
- Canadian Forces Members and Veterans Amounts – the tax-free receipt of certain amounts received by members and veterans, effective as of January 1, 2018;
- Technical amendments to the *Income Tax Act* and *Income Tax Regulations* proposed in the Department of Finance August 9 release; and
- Remaining legislative and regulatory proposals relating to the GST/HST, excise levies and other taxes and charges announced in the August 9th release.

(4) Legislative proposals released on April 29, 2022 with respect to hybrid mismatch arrangements. In general terms, hybrid mismatch arrangements involve cross-border transactions that are structured to take advantage of differences in the tax laws of different countries to produce "mismatches" in tax outcomes that may result in tax avoidance. For example, the rules may restrict the deduction of an amount paid by a Canadian corporation to a non-resident corporation that is not taxable on that amount in their home jurisdiction.

(5) Legislative proposals released on February 4, 2022 with respect to the GST/HST treatment of Cryptoasset Mining – new rules respecting the application of GST and HST to mining activities in respect of "cryptoassets" and to any remuneration received as a consequence of performing a mining activity.

(6) Legislative proposals tabled in a Notice of Ways and Means Motion on December 14, 2021 to introduce the *Digital Services Tax Act*. This Act is proposing a tax of 3% on revenues derived by residents and non-residents of Canada from certain digital services they provide, with some exceptions for taxpayers with Canadian digital services revenue of less than $20,000,000. The tax is proposed to apply for revenue earned after 2021.

(7) The transfer pricing consultation announced in Budget 2021. The consultations are expected to result in changes to the transfer pricing rules applicable to related multi-national enterprises that provides goods or services to each other.

(8) The income tax measure announced on December 20, 2019 to extend the maturation period of amateur athletes trusts maturing in 2019 by one year, from eight years to nine years.

(9) Measures confirmed in Budget 2016 relating to the GST/HST joint venture election (a joint venture where participants are jointly electing to be responsible to account for GST/HST for the joint venture).

Additionally, the Budget 2023 papers state that the government remains committed "to move forward as required with other technical amendments to improve the certainty and integrity of the tax system." No further details were provided on this point.

Budget 2023 Table of Effective Dates

Notice of Ways and Means Motion to amend the *Income Tax Act* and the *Income Tax Regulations*		
Resolutions 1-4	**Employee Ownership Trusts**	January 1, 2024
Resolution 5	**Deduction for Tradespeople's Tool Expenses**	2023 and subsequent taxation years
Resolution 6	**Registered Education Savings Plans**	March 28, 2023
Resolution 7	**Retirement Compensation Arrangements**	March 28, 2023; January 1, 2024
Resolution 8	**Registered Disability Savings Plan**	Royal Assent
Resolution 9	**Taxpayer Information Sharing for the Canadian Dental Care Plan**	Royal Assent
Resolution 10	**Alternative Minimum Tax for High-Income Individuals**	Taxation years that begin after 2023
Resolutions 11-15	**Intergenerational Business Transfers**	January 1, 2024
Resolution 16	**Investment Tax Credit for Clean Hydrogen**	March 28, 2023
Resolution 17	**Clean Technology Investment Tax Credit — Geothermal Energy**	March 28, 2023
Resolution 18	**Labour Requirements Related to Certain Investment Tax Credits**	October 1, 2023
Resolution 19	**Investment Tax Credit for Clean Technology Manufacturing**	January 1, 2024
Resolution 20	**Zero-Emission Technology Manufacturers**	Taxation years that begin after 2023
Resolutions 21-23	**Investment Tax Credit for Carbon Capture, Utilization, and Storage**	January 1, 2022

Resolution 24	**Flow-Through Shares and Critical Mineral Exploration Tax Credit – Lithium from Brines**	March 29, 2023
Resolution 25	**Tax on Repurchases of Equity**	January 1, 2024
Resolutions 26-28	**General Anti-Avoidance Rule**	Royal Assent
Resolution 29	**Dividend Received Deduction by Financial Institutions**	January 1, 2024
Resolution 30	**Income Tax and GST/HST Treatment of Credit Unions**	Taxation years ending after 2016

Notice of Ways and Means Motion to amend the *Excise Tax Act*		
Resolution 1	**GST/HST Treatment of Payment Card Clearing Services**	Various dates

Notice of Ways and Means Motion to amend the *Excise Act, 2001*		
Resolutions 1-2	**Alcohol Excise Duty**	April 1, 2023
Resolutions 1-5	**Cannabis Taxation — Quarterly Duty Remittances**	April 1, 2023

Notice of Ways and Means Motion to amend the *Excise Act*		
Resolution 1	**Alcohol Excise Duty**	April 1, 2023

Notice of Ways and Means Motion to amend the *Air Travellers Security Charge Act*		
Resolution 1	**Air Travellers Security Charge**	Various dates

Department of Finance News Release

Government of Canada releases Budget 2023

March 28, 2023 - Ottawa, Ontario - Department of Finance Canada

Today, the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, released Budget 2023—A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future.

Canada has made a remarkable recovery from the COVID recession. Canada's economic growth was the strongest in the G7 over the last year, and today, 830,000 more Canadians are employed than before the pandemic. Inflation in Canada has fallen for eight months in a row, our unemployment rate is near its record low, and, supported by a Canada-wide system of affordable early learning and child care, the labour force participation rate for women aged 25 to 54 reached a record high of 85.7 per cent in February.

Budget 2023 builds on this important progress.

Through the new Grocery Rebate, Budget 2023 delivers targeted inflation relief for 11 million Canadians and families who need it most, with up to an extra $467 for eligible couples with children; an extra $234 for single Canadians without children; and an extra $225 for seniors, on average. The government also takes action to crack down on hidden junk fees and predatory lending, lower credit card transaction fees for small businesses, and help Canadians keep more money in their pockets.

To strengthen Canada's universal public health care system, Budget 2023 delivers $198.3 billion to reduce backlogs, expand access to family health services, and ensure provinces and territories can provide the high quality and timely health care Canadians expect and deserve. In Budget 2023, the government also introduces a new Canadian Dental Care Plan, to benefit up to nine million Canadians and ensure that no Canadian has to choose between taking care of their health and paying the bills at the end of the month.

Budget 2023 makes transformative investments to build Canada's clean economy, fight climate change, and create new opportunities for Canadian businesses and Canadian workers. This includes significant measures that will deliver cleaner and more affordable energy, support investment in our communities and the creation of good-paying jobs, and ensure that Canadian workers are able to produce and provide the goods and resources that Canadians and our allies need.

With a responsible fiscal plan that will see Canada maintain the lowest deficit and the lowest net debt-to-GDP ratio in the G7, Budget 2023 will help to build a Canada that is more secure, more sustainable, and more affordable for people from coast to coast to coast.

Quotes

"I have never been more optimistic about the future of our country than I am today. Budget 2023 will deliver new, targeted inflation relief for the Canadians who need it most; stronger public health care, including dental care for millions of Canadians; and significant investments to build Canada's clean economy. At a challenging time in a challenging world, there is no better place to be than Canada."

The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance

Media may contact:

Adrienne Vaupshas	Media Relations
Press Secretary	Department of Finance Canada
Office of the Deputy Prime Minister and Minister of Finance	*mediare@fin.gc.ca*
Adrienne.Vaupshas@fin.gc.ca	613-369-4000

General Enquiries

Phone: 1-833-712-2292

TTY: 613-369-3230

E-mail: *financepublic-financepublique@fin.gc.ca*