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LEVI & LEVI

CPA CHARTERED PROFESSIONAL ACCOUNTANTS

TAX & BUSINESS

Federal Budget 2017

The Minister of Finance, Bill Morneau, today tabled the Government of Canada's Federal Budget—*Building the Middle Class*—in the House of Commons. The budget is expected to show a deficit of $28.5 billion in 2017-18, gradually declining to a deficit of $24.4 billion by 2018-19.

The following is a summary of the tax highlights.

Factual Control

The Income Tax Act recognizes two forms of control of a corporation: de jure (legal) control and de facto (factual) control. The concept of factual control is broader than legal control and is generally used to ensure that certain corporate tax preferences are not accessed inappropriately. For example, the factual control test is used for the purpose of determining whether two or more Canadian controlled private corporations are "associated corporations". Associated corporations must be considered together in determining whether certain thresholds are met, such as the $500,000 small business deduction limit and the limit on qualifying expenditures relating to the refundable 35-per-cent scientific research and experimental development tax credit. A person may have factual control of a corporation even though the person does not have legal control of the corporation. Legal control of a corporation generally

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Disability Tax Credit

The disability tax credit is a 15-per-cent non-refundable tax credit that recognizes the impact of non-itemizable disability-related costs on an individual's ability to pay tax. For 2017, the credit amount is $8,113, which provides a federal tax reduction of up to $1,217.

To be eligible for the disability tax credit, an individual must have a severe and prolonged impairment in physical or mental functions.

Budget 2017 proposes to add nurse practitioners to the list of medical practitioners that could certify eligibility for the disability tax credit. A nurse practitioner would be permitted to certify for all types of impairments that are within the scope of their practice.

This measure will apply to disability tax credit certifications made on or after Budget Day.

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Factual Control (cont'd)

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entails the right to elect the majority of the board of directors of the corporation. Factual control of a corporation exists where a person has "directly or indirectly in any manner whatever" influence that, if exercised, would result in control "in fact" of the corporation. In each situation, consideration of all the relevant factors is required in determining whether there is factual control of a corporation. A significant body of case law has developed concerning which factors may be useful in determining whether factual control exists. A recent court decision held that, in order for a factor to be considered in determining whether factual control exists, it must include "a legally enforceable right and ability to effect a change to the board of directors or its powers, or to exercise influence over the shareholder or shareholders who have that right and ability". This requirement limits the scope of factors that may be taken into consideration in determining whether factual control of a corporation exists. It is not intended from a policy perspective that the factual control test be dependent on the existence of such a legally enforceable right, or that factors that do not include such a right ought to be disregarded.

To ensure taxpayers do not inappropriately access certain tax preferences, Budget 2017 proposes that the Income Tax Act be amended to clarify that, in determining whether factual control of a corporation exists, factors may be considered that are not limited to the requirement set out above. This measure will apply in respect of taxation years that begin on or after Budget Day.

Additional Deduction for Gifts of Medicine

A donation made by a corporation to a registered charity is deductible in computing the corporation's taxable income within certain limits. Corporations that donate medicine from their inventory to an eligible charity can claim an additional deduction equal to the lesser of the cost of the donated medicine and 50 per cent of the amount by which the fair market value of the donated medicine exceeds its cost. An eligible charity is a registered charity that meets the conditions prescribed by regulation.

Budget 2017 proposes to eliminate the additional deduction for gifts of medicine. This measure does not affect the general income tax treatment of donations made by corporations to registered charities, including donations of medicine. This measure will apply to gifts of medicine made on or after Budget Day.

Investment Tax Credit for Child Care Space

The investment tax credit for child care spaces provides a 25-per-cent non-refundable tax credit on costs incurred to build or expand child care spaces in licensed child care facilities. These facilities must be for the benefit of children of the taxpayer's employees and must be ancillary to the taxpayer's business. The maximum value of the credit is $10,000 per space created. Unused amounts can be carried back three years and forward 20 years. Budget 2017 proposes to eliminate the investment tax credit for child care spaces. This measure will apply in respect of expenditures incurred on or after Budget Day. To provide transitional relief, the credit will be available in respect of eligible expenditures incurred before 2020 pursuant to a written agreement entered into before Budget Day.

Billed-Basis Accounting

Taxpayers are generally required to include the value of work in progress in computing their income for tax purposes. However, taxpayers in certain designated professions (i.e., accountants, dentists, lawyers, medical doctors, veterinarians and chiropractors) may elect to exclude the value of work in progress in computing their income. This election effectively allows income to be recognized when the work is billed (billed-basis accounting). Billed-basis accounting enables taxpayers to defer tax by permitting the costs associated with work in progress to be expensed without the matching inclusion of the associated revenues.

Budget 2017 proposes to eliminate the ability for designated professionals to elect to use billed-basis accounting. This measure will apply to taxation years that begin on or after Budget Day.

To mitigate the effect on taxpayers, a transitional period will be provided to phase in the inclusion of work in progress into income. For the first taxation year that begins on or after Budget Day, 50 per cent of the lesser of the cost and the fair market value of work in progress will be taken into account for the purposes of determining the value of inventory held by the business under the Income Tax Act. For the second, and each successive, taxation year that begins on or after Budget Day, the full amount of the lesser of the cost and the fair market value of work in progress will be taken into account for the purposes of valuing inventory.

Electronic Distribution of T4 Slips

In order to reduce compliance costs and increase efficiencies for employers, as well as increase convenience for many employees, Budget 2017 proposes to allow employers to distribute T4 (Statement of Remuneration Paid) information slips electronically to current active employees without having to obtain express consent from those employees in advance.

An employer will be required to have sufficient privacy safeguards in place before electronic T4s can be sent without express consent, in order to ensure that employee information remains confidential. These safeguards will be specified by the Minister of National Revenue and will include provisions requiring employers to provide paper T4s to employees who do not have confidential access to view or print their T4s (e.g., employees on leave and former employees). In addition, employers will be required to issue paper copies to employees who request them. This measure will apply in respect of T4s issued for the 2017 and subsequent taxation years.

Medical Expense Tax Credit — Eligible Expenditures

The medical expense tax credit is a 15-per-cent non-refundable tax credit that recognizes the effect of above-average medical or disability-related expenses on an individual's ability to pay tax.

For 2017, the medical expense tax credit is available for qualifying medical expenses in excess of the lesser of $2,268 and three per cent of the individual's net income. To recognize that some individuals may need to incur costs related to the use of reproductive technologies, even where such treatment is not medically indicated because of a medical infertility condition, Budget 2017 proposes to clarify the application of the medical expense tax credit so that individuals who require medical intervention in order to conceive a child are eligible to claim the same expenses that would generally be eligible for individuals on account of medical infertility.

This measure will apply to the 2017 and subsequent taxation years. A taxpayer will be entitled to elect in a year for this measure to apply for any of the immediately preceding ten taxation years in their return of income in respect of the year.

Public Transit Tax Credit

The public transit tax credit provides a 15-per-cent non-refundable tax credit in respect of the cost of eligible public transit passes, which include annual and monthly passes, as well as weekly passes and electronic fare cards used on an ongoing basis. Budget 2017 proposes that the public transit tax credit be eliminated, effective as of July 1, 2017. Specifically, the cost of public transit passes and electronic fare cards attributable to public transit use that occurs after June 2017 will no longer be eligible for the credit.

Home Relocation Loans Deduction

Where a person receives a loan because of their employment, and the interest rate on the loan is below a prescribed rate, that person is deemed to have received a taxable benefit. The amount of the taxable benefit is determined by reference to the difference between these two rates. Budget 2017 proposes to eliminate the deduction in respect of eligible home relocation loans. This measure will apply to benefits arising in the 2018 and subsequent taxation years.

Tuition Tax Credit

The tuition tax credit is a 15-per-cent non-refundable tax credit in respect of eligible fees for tuition and licensing examinations paid by an individual enrolled at an eligible educational institution.

Budget 2017 proposes to extend the eligibility criteria for the tuition tax credit to fees for an individual's tuition paid to a university, college or other post-secondary institution in Canada for occupational skills courses that are not at the postsecondary level.

To provide consistency with the rules for certified educational institutions, the tuition tax credit would be available in these circumstances only if the course is taken for the purpose of providing the individual with skills (or improving the individual's skills) in an occupation and the individual has attained the age of 16 before the end of the year. This measure will apply in respect of eligible tuition fees for courses taken after 2016.

Budget 2017 also proposes to extend eligibility as a "qualifying student" to individuals in the specific circumstances described above, who otherwise meet the conditions to be a "qualifying student". Whether or not an individual is a "qualifying student" is relevant for the tax exemption for scholarship and bursary income. This measure will apply to the 2017 and subsequent taxation years.

Mineral Exploration Tax Credit for Flow-Through Shares Investors

Flow-through shares allow resource companies to renounce or "flow through" tax expenses associated with their Canadian exploration activities to investors, who can deduct the expenses in calculating their own taxable income. The mineral exploration tax credit provides an additional income tax benefit for individuals who invest in mining flow-through shares, which augments the tax benefits associated with the deductions that are flowed through. This credit is equal to 15 per cent of specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors. Like flow-through shares, the credit facilitates the raising of equity to fund exploration by enabling companies to issue shares at a premium.

The Government proposes to extend eligibility for the mineral exploration tax credit for an additional year, to flow-through share agreements entered into on or before March 31, 2018. Under the existing "look-back" rule, funds raised in one calendar year with the benefit of the credit can be spent on eligible exploration up to the end of the following calendar year. Therefore, for example, funds raised with the credit during the first three months of 2018 can support eligible exploration until the end of 2019.

Canada Caregiver Credit

Tax relief for caregivers is provided in the income tax system through a number of non-refundable tax credits. These credits provide recognition of the impact of the non-discretionary, out-of-pocket expenses that caregivers incur on their ability to pay tax.

Budget 2017 proposes to simplify the existing system of tax measures for caregivers by replacing the existing caregiver credit, infirm dependant credit and family caregiver tax credit with a new Canada Caregiver Credit. This new credit will be better targeted to support those who need it the most and extend tax relief to some caregivers who may not currently qualify due to the income level of their dependant. It will provide tax assistance to caregivers for dependants who have an infirmity and are dependent on the caregiver for support by reason of that infirmity.

Budget 2017 proposes that the new Canada Caregiver Credit amount will be:

- $6,883 in respect of infirm dependants who are parents/grandparents, brothers/sisters, aunts/uncles, nieces/nephews, adult children of the claimant or of the claimant's spouse or common law partner.
- $2,150 in respect of
  - An infirm dependent spouse or common-law partner in respect of whom the individual claims the spouse or common-law partner amount,
  - An infirm dependant for whom the individual claims an eligible dependant credit, or
  - An infirm child who is under the age of 18 years at the end of the tax year.

The Canada Caregiver Credit will be reduced dollar-for-dollar by the dependant's net income above $16,163 (in 2017). The dependant will not be required to live with the caregiver in order for the caregiver to claim the new credit. The Canada Caregiver Credit will no longer be available in respect of non-infirm seniors who reside with their adult children.

Tobacco Taxation

A surtax of 10.5 per cent applies on profits arising from the manufacture of tobacco or tobacco products (subject to certain exemptions) in Canada. In addition, a federal excise duty applies to all tobacco products sold in the Canadian market.

Budget 2017 proposes to eliminate the tobacco manufacturers' surtax. In order to maintain the intended tax burden of the manufacturers' surtax on tobacco products, Budget 2017 also proposes to adjust tobacco excise duty rates. The excise duty rate on cigarettes will increase from $0.52575 to $0.53900 for each five cigarettes or fraction thereof (i.e., from $21.03 to $21.56 per 200 cigarettes).

Budget 2017 also proposes that inventories of cigarettes held by manufacturers, importers, wholesalers and retailers at the end of Budget Day be subject to a tax of $0.00265 per cigarette (subject to certain exemptions). Manufacturers, importers,

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Wills & Living Wills

Do you have a current will?

Advice should be sought on how the family wealth should be dealt with in an unfortunate circumstance. Proper planning can minimize the tax burden on death.

Equally as important is the Living Will or Mandate of an individual who may become incapacitated without notice or warning. To minimize the strain on your family at a difficult time, a Living Will can prove to be an invaluable solution.

Do you have children who are US citizens or residents?

Proper planning can reduce or avoid US Estate Taxes.

Tabacco Taxation (cont'd)

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wholesalers and retailers should refer to the cigarette inventory tax mechanism in the Excise Act, 2001 and Canada Revenue Agency publications for more information.

Taxpayers will have until May 31, 2017 to file returns and pay the inventory tax. The excise duty rates for other tobacco products will also be adjusted accordingly.

Budget 2017 proposes a corresponding increase in the excise duty rate on tobacco sticks from $0.10515 to $0.10780 per stick (i.e., from $21.03 to $21.56 per 200 tobacco sticks), and on manufactured tobacco (e.g., chewing tobacco or finecut tobacco for use in roll-your-own cigarettes) from $6.57188 to $6.73750 per 50 grams or fraction thereof (i.e., from approximately $26.29 to $26.95 per 200 grams). The excise duty rate on cigars is proposed to increase from $22.88559 to $23.46235 per 1,000 cigars, and the additional duty on cigars from the greater of $0.08226 per cigar and 82 per cent of the sale price or duty-paid value to the greater of $0.08434 per cigar and 84 per cent of the sale price or duty-paid value.

These measures will be effective as of the day after Budget Day. A corporation with a taxation year that includes Budget Day and ends after Budget Day will be required to prorate the surtax on its Canadian tobacco manufacturing profits based on the number of days in the taxation year that are on or before Budget Day.

Alcohol Taxation

The Excise Act and the Excise Act, 2001 impose excise duties on alcohol products, namely beer, spirits and wine. The duties are generally imposed at the time of production or packaging on a fixed-amount-per-unit basis, and are generally payable by manufacturers or excise warehouse licensees when the products enter into the duty-paid market. In the case of imported alcohol products, the duties may be payable under the Customs Tariff at the time of importation by the importer. The alcohol excise duty rates were effectively last adjusted in the mid-1980s.

Budget 2017 proposes that excise duty rates on alcohol products be increased by 2 per cent effective the day after Budget Day, in respect of duty that becomes payable after that date. No special inventory tax will apply to alcohol products on which duty has been paid. In order to maintain their effectiveness, it is also proposed that the rates be automatically adjusted by the Consumer Price Index on April 1 of every year, starting in 2018.

Timing of Recognition of Gains & Losses on Derivatives

Derivatives are sophisticated financial instruments whose value is derived from the value of an underlying interest. Aside from the mark-to-market property regime applicable to financial institutions, there are no specific rules in the Income Tax Act that govern the timing of the recognition of gains and losses on derivatives held on income account. Budget 2017 proposes two measures that clarify the scheme of the Income Tax Act in this regard.

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Timing of Recognition of Gains & Losses on Derivatives (cont'd)

Elective Use of the Mark-to-Market Method

To provide a clear framework for exercising the choice of using the mark-to-market method and to ensure that this choice does not lead to avoidance opportunities, Budget 2017 proposes to introduce an elective mark-to-market regime for derivatives held on income account. Specifically, an election will allow taxpayers to mark to market all of their eligible derivatives. Once made, the election will remain effective for all subsequent years unless revoked with the consent of the Minister of National Revenue.

Once an election is made by a taxpayer, the taxpayer will be required to annually include in computing its income the increase or decrease in value of its eligible derivatives. Furthermore, the recognition of any accrued gain or loss on an eligible derivative (that was previously subject to tax on a realization basis) at the beginning of the first election year will be deferred until the derivative is disposed of. This election will be available for taxation years that begin on or after Budget Day.

Straddle Transactions

In its simplest form, a straddle is a transaction in which a taxpayer concurrently enters into two or more positions – often derivative positions – that are expected to generate equal and offsetting gains and losses. Shortly before its taxation year-end, the taxpayer disposes of the position with the accrued loss (the losing leg) and realizes the loss. Shortly after the beginning of the following taxation year, the taxpayer disposes of the offsetting position with the accrued gain (the winning leg) and realizes the gain. The taxpayer claims a deduction in respect of the realized loss against other income in the initial taxation year and defers the recognition of the offsetting gain until the following taxation year. Moreover, the taxpayer could attempt to indefinitely defer the recognition of the gain on the winning leg by entering into successive straddle transactions.

Budget 2017 proposes to introduce a specific anti-avoidance rule that targets straddle transactions. In particular, a stop-loss rule will effectively defer the realization of any loss on the disposition of a position to the extent of any unrealized gain on an offsetting position. A gain in respect of an offsetting position would generally be unrealized where the offsetting position has not been disposed of and is not subject to mark-to-market taxation. For the purposes of the stop-loss rule, a position will generally be defined as including any interest in actively traded personal properties (e.g., commodities), as well as derivatives and certain debt obligations. An offsetting position with respect to a position held by a taxpayer will generally be a position that has the effect of eliminating all or substantially all of the taxpayer's risk of loss and opportunity for gain or profit in respect of the position. The stop-loss rule will be subject to a number of exceptions. In particular, it will generally not apply to a position if:

- it is held by a financial institution, as defined for the purposes of the mark-to-market property rules, or by a mutual fund trust or mutual fund corporation;
- it is part of certain types of hedging transactions entered into in the ordinary course of the taxpayer's business;
- the taxpayer continues to hold the offsetting position throughout a specified period that begins on the date of disposition of the position; or
- it is part of a transaction or a series of transactions none of the main purposes of which is to defer or avoid tax.

This measure will apply to any loss realized on a position entered into on or after Budget Day.

LEVI & LEVI

is a firm of Chartered Professional Accountants that traces its origin in Montreal to 1970. We pride ourselves on being more than just an accounting firm. We offer an effective blend of personalized service, experience and technological leadership, coupled with steadfast commitment to consistently deliver excellence. The members of our firm possess unique talents, expertise and experience, giving our client access to a knowledge base of considerable breadth and depth.

Taxi and Ride Sharing Services

All taxi operators are required to register for the GST/HST and charge tax on their fares. Commercial ride-sharing services facilitated by web applications provide passenger transportation services that are similar to taxi services. However, such ride-sharing services may not be subject to the same GST/HST rules that apply to taxi services since they may not meet the GST/HST definition of a taxi business.

To ensure that the GST/HST applies consistently to taxi services and ride-sharing services, Budget 2017 proposes to amend the definition of a taxi business to require providers of ride-sharing services to register for the GST/HST and charge tax on their fares in the same manner as taxi operators. I

n this regard, it is proposed that the GST/HST definition of a taxi business be amended to include persons engaged in a business of transporting passengers for fares by motor vehicle within a municipality and its environs where the transportation is arranged for or coordinated through an electronic platform or system, such as a mobile application or website. These changes will only apply to transportation that is supplied in the course of a commercial activity. These changes will not apply to a school transportation service for elementary or secondary students or a sightseeing service. The amendment will be effective as of July 1, 2017.

Alert Dates

March 31, 2017	Deadline for filing 2017 Non-Resident Tax Withholding (NR4) & Statement of Trust Income Allocations & Designations (T3).
May 1, 2017	Deadline for filing personal income tax returns other than those permitted to file by June 15.
June 15, 2017	Second instalment due for individuals required to make income tax instalments. Filing date for individuals reporting business income including professional income and their spouses.
September 15, 2017	Third instalment due for individuals required to make income tax instalments.
December 15, 2017	Fourth instalment due for individuals required to make income tax instalments.

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