

2022 Tax news – In case you missed it

Our December 12 news item “In case you missed it” highlights some of the key news items made in the second half of 2022. For your convenience, this document provides a compilation of the original news items highlighted in that posting. Please see our July 19, 2022 “In case you missed it” posting for a summary of key tax news in the first half of the year.

November 16, 2022

Canada Emergency Business Account (CEBA) – Eligibility notices and tax treatment of repayments

It has come to our attention that some businesses have received notices stating they don’t qualify for the CEBA loan. Impacted businesses will have no portion of the CEBA loan forgiven and must repay the full amount of the loan by the end of 2023. It appears that these notices represent final determinations, and no appeals process is in place. We spoke to other business stakeholder groups and were told that they have expressed concern to the federal government on the fairness of not having the ability to correct the original application or appeal the determination (along other concerns).

A legal requirement to repay the forgivable portion of the CEBA loan will require impacted business and their advisors to consider the resulting tax implications. As you may recall from our January 2021 blog post [2020 Round Up: Income tax impacts of key COVID-19 support programs](#), pursuant to paragraph 12(1)(x) of the Income Tax Act, impacted businesses should have already included in income the part of the loan that was potentially forgivable in the year the loan was received. Alternatively, under subsection 12(2.2), an election could have been made that would have offset the forgivable portion against certain non-deferrable operating expenses. Where an impacted business no longer qualifies for forgiveness of a portion of the CEBA loan, a deduction can be claimed in the taxation year in which the forgivable portion is repaid. Therefore, the prior year tax return that contains the income inclusion for the forgivable portion of the CEBA loan should not be amended.

If the CEBA loan is repaid over more than one taxation year, the Canada Revenue Agency (CRA) confirms in technical interpretation 2020-0862931C6 that it will be necessary to determine to what extent the forgivable portion was repaid as part of each repayment. According to the CRA, reference should be made to the loan agreement to determine if it is the intent of the parties that repayments are first applied to reduce the forgivable portion. If so, an impacted business could claim a deduction under paragraph 20(1)(hh) with respect to the amount repaid in the taxation year in which the reimbursement is made, up to the amount included in its income previously under paragraph 12(1)(x) or where an expense was reduced. However, if the intent of the parties is unclear, then the CRA states that deduction under paragraph 20(1)(hh) should be prorated based on the amount of the partial repayment.

We will continue to keep you informed of any important developments.

November 15, 2022

Updated CRA taxable benefit guidance on social events, gifts and awards

The CRA has recently updated its webpages, [Gifts, awards, and long-service awards](#) and [Social events and hospitality functions](#), which include a number of new or revised CRA administrative policies that address the following scenarios:

- Employer provided in-person (or hybrid) social events for employees
- Employer provided virtual social events for employees
- Gift cards provided by an employer to employees and, in particular, situations where these cards will not be considered “near cash” gifts

For further information, please see the CRA webpages.

November 11, 2022

Tax-Free First Home Savings Account (FHSA) Changes

As part of [Bill C-32 \(Fall Economic Statement Implementation Act, 2022\)](#), proposed legislation to implement the new FHSA program was included and there were several revisions from the [previous draft legislation](#) released on August 9, 2022. Notable changes include:

- A taxpayer can now access both the FHSA and Home Buyers’ Plan (HBP) in respect of the same qualifying home.
- If a deceased taxpayer who is the last holder does not close their FHSA before its “cessation date” (when the plan is no longer an FHSA), a deemed income inclusion will arise and will be taxable to the plan beneficiaries (or the estate if there are no named beneficiaries). The cessation date is generally the end of the year following the year of death.
- The definition of a “qualifying individual” is revised such that it no longer includes an individual who has a beneficial interest in a qualifying home, and it adds a test relating to ownership by a spouse or common-law partner (spouse).
- In cases where a surviving spouse becomes the successor holder of an FHSA and the deceased holder had excess contributions immediately before their death, the survivor is deemed to have contributed to the FHSA thereby reducing the spouse’s FHSA contribution or potentially putting them into an overcontribution position.
- The revised legislation also includes additional changes so that the overall framework for FHSAs is better aligned with other registered plans by adding a deduction denial for FHSA fees and interest on money borrowed to make a contribution, and rules for the taxation of FHSAs that carry on business.

As a result of these changes, it should be noted that the [August 9, 2022 backgrounder](#) is no longer fully accurate. Further details on these changes are available in the [draft legislation and explanatory notes](#) released by the Department of Finance Canada.

Finally, look out for our upcoming blog that will cover the basics of FHSA as well as answer common questions that may arise.

November 7, 2022

Proposed trust reporting rules postponed for one year under Bill C-32

On November 4, 2022, [Bill C-32](#) (Fall Economic Statement Implementation Act, 2022) was tabled in the House of Commons. This bill implements some of the tax proposals from the 2022 Fall Economic Statement, along with several previously announced tax changes. In one major change, the coming into force date for the trust reporting rules has been postponed by one year. These rules will now apply to trust taxation years that end after December 30, 2023. Otherwise, it appears that the legislation for the trust reporting rules is unchanged.

We are in the process of reviewing the [legislation](#) and will provide more information as it becomes available.

November 4, 2022

Federal government releases Fall Economic Statement

On November 3, the Deputy Prime Minister and Minister of Finance released the [federal government's 2022 Fall Economic Statement \(FES\)](#) which contained several new tax announcements along with an update on previously announced tax measures. We have provided a summary of the key changes/updates below along with links to the relevant sections of the FES, accompanying news release and draft legislation where further details are available.

Personal tax changes:

- [Extension of the Residential Property Flipping Rule to assignment sales](#) – The original rule introduced in Budget 2022 will be extended to apply to profits arising from dispositions of residential property via an assignment sale if the rights to purchase a property were assigned after having been owned for less than 12 months (subject to various life event exceptions).
- [Automatic advance for the Canada Workers Benefit \(CWB\)](#) – The government will automatically provide individuals who received the CWB last year an entitlement for the current year through quarterly advance payments based on their prior year tax return if it was filed and assessed prior to November 1, 2022. The payments start in July 2023.
- [Alternative Minimum Tax \(AMT\)](#) – The FES reiterates that the government will examine a new minimum tax regime as outlined in Budget 2022. More details will be released in Budget 2023.

Business tax changes:

- [Investment Tax Credit for Clean Technologies](#) – The FES proposes to introduce a refundable Clean Technology Investment Tax Credit of up to 30 per cent of the capital cost of eligible equipment. To incentivize companies to create good jobs, those that adhere to certain labour conditions will be eligible for the full 30 per cent credit, while those that do not will only be eligible for a credit of 20 per cent. Specific details will be announced in Budget 2023.
- **Income reporting by digital platform operators** – [Draft legislation](#) was released for [public comment](#) to incorporate the OECD Model Rules for income reporting by digital platforms into the Income Tax Act and is proposed to come into force on January 1, 2024. The consultation period will end on January 6, 2023.
- [Tax on stock buybacks](#) – The FES introduces a 2 per cent corporate-level tax on the net value of share buybacks by public corporations in Canada. This new tax is proposed to come into force on January 1, 2024, and more details will be released in Budget 2023.

Updates on previously announced tax measures:

- [Excessive Interest and Financing Expenses Limitation](#) – [Revised draft legislation](#) was released and is subject to a consultation period that ends on January 6, 2023. It is now proposed that these rules will apply to taxation years beginning on or after October 1, 2023.
- [Mandatory reporting rules](#) – In order to fully assess the feedback received on the mandatory reporting rules consultation, the effective date of the Reportable Transaction and Notifiable Transaction proposals will be delayed until the date the implementation bill receives Royal Assent. The Uncertain Tax Treatment proposals will apply to taxation years beginning after 2022 as previously announced.
- [Scientific Research and Experimental Development \(SR&ED\) tax program](#) – A review of the SR&ED program, including consideration of a patent box regime, was announced in the 2022 Federal Budget. The government indicated that further details would follow in the 2023 Budget.
- [OECD Pillar 1 and Pillar 2 initiatives](#) – The government confirmed that the OECD’s intention is to complete multilateral negotiations so that the treaty to implement Pillar 1 can be signed in the first half of 2023, with a view to it entering into force in 2024. On Pillar 2, an update to the timeline was not provided although the Government reaffirmed its commitment to the initiative.
- [Investment Tax Credit for Clean Hydrogen](#) – The government announced its intention to move forward with this tax credit, which was announced in the 2022 Federal Budget, including an upcoming consultation.
- [Other outstanding tax proposals](#) – The government also confirmed its intention to move forward with a lengthy list of previously announced measures.

October 26, 2022

New questions and answers on Form T1134

We received a number of questions regarding the revised version of form T1134, which we passed along to the CRA. The CRA has responded to all our queries and plans to update its [T1134 Q&A page](#) as soon as the French translation has been completed. The CRA has asked us to share the English responses with our members as it recognizes the October 31 filing due date for many reporting entities is fast approaching. We will post an update when these [responses](#) are on the CRA's website in both languages.

October 19, 2022

New T2054 capital dividend account election form – follow up

As a follow up to our September 12, 2022 news item, “Questions on the new Form T2054 – Election for a Capital Dividend Under Subsection 83(2)”, the Canada Revenue Agency (CRA) has responded to our question on whether taxpayers can continue to use the previous version of the T2054 until tax software developers have incorporated the new T2054 into their products.

The CRA has confirmed that the old T2054 can be used on an interim basis until the tax software is updated and, in particular, the CRA will accept the filing of the old form as a valid capital dividend election. However, the CRA also stated that it may contact taxpayers for additional information (i.e., any new information that would be reported on the new form) and this may slow down processing. The CRA has indicated that using the most current version of the T2054 will ensure that the CRA has the information required, reduce the need for client contact, and improve processing time. We have communicated the need to better coordinate the release of forms such as the T2054 so that new forms can be incorporated into tax preparation software before a new form is required to be filed to the CRA.

Questions around the process to file the form electronically remain outstanding. We will continue to keep you updated on relevant developments around this issue.

October 13, 2022

Further details released on the Canada Emergency Benefit Account (CEBA) repayment extension

The [CEBA website](#) has been updated to reiterate that the December 31, 2022 forgiveness repayment deadline will be extended to December 31, 2023 for eligible CEBA loan holders in good standing. If CEBA participants are in good standing and qualify for the new extended term, they will be contacted by their financial institution with details regarding the new repayment date. The website also provides more guidance on repayment and forgiveness terms in the FAQ section.

October 7, 2022

New process for EFILE authorization requests for My Business Account access.

Due to increased concerns with identify theft, [Confirm my Representative](#) was introduced by the Canada Revenue Agency (CRA) as a new two-factor authorization process for confirming the representative and preventing client information from being given to unauthorized representatives. This new verification process was implemented last year for taxpayers to verify authorization requests submitted through Represent a Client.

The CRA [has recently announced](#) that beginning in October 2022, they will be rolling out the Confirm my Representative process to apply to authorization requests for business clients submitted through the Business Consent Service in certified tax software (EFILE).

While we understand this is a significant change to authorization requests that will likely require process changes for Efilers, we also understand the CRA's need to increase security to mitigate risks of fraud and identity theft. We explored a number of different alternatives for the CRA to positively verify authorization requests with the taxpayers, and understand they have considered them. However, we were informed that the two-step process of Confirm my Representative is the method that best meets their security objectives at this time.

That said, we have asked CRA to provide guidance on how the new Confirm my Representative process will work with the following two groups of taxpayers:

- **Non-resident businesses** – Non-resident businesses do not have access to My Business Account and so it is unclear based on the announcement how Confirm my Representative would work in this case. CRA indicated to us that non-resident businesses would be exempt from this new process. In these cases, CRA may follow up with a phone call to the non-resident business owner to verify the authorization request.
- **Taxpayers who cannot access My Business Account** – There are taxpayers who just cannot use My Business account, such as those with disabilities, and so guidance is required as to how these taxpayers will be expected to verify authorizations requests. CRA indicated they are working on an accessible solution for such individuals.

We will keep you updated as we gather more information.

October 6, 2022

Update on mandatory reporting proposals

As discussed in prior news items and [tax blog](#), the federal government has announced proposals that will require additional reporting for “reportable transactions” and “notifiable transactions.” [Revised legislation](#) for these rules was announced on August 9, 2022 (see our August 22, 2022 update below). Several concerns with these rules remain, in particular, on the reportable transaction proposals. Members of the Joint Committee on Taxation of the Canadian

Bar Association and CPA Canada recently met with officials from the Department of Finance Canada, and the key issues raised during the online meeting included:

REPORTABLE TRANSACTIONS

Application of the contractual protection hallmark remains broad – As the revised definition of “avoidance transaction” remains broad, the fact that the contractual protection hallmark also has broad application appears to mean that a filing requirement will arise in many commercial situations. For example, where a business is sold, and tax planning steps of any kind are undertaken prior to the sale, a reporting requirement appears to arise where pre-acquisition taxes are protected under an indemnity, insurance or some other commercial protection. Similar concerns may arise where tax planning advice is provided under engagement letter terms that include limitation of liability clauses.

Uncertainty around the fee hallmark remain – Concern remains on the broad definition of the fee hallmark, as that rule still refers to a fee that is to any extent based on the amount of a tax benefit or the number of taxpayers that participated in a transaction. Fees charged for transaction-based services can be based on several different factors and may be at least minimally related to the value of the tax benefit or the number of taxpayers.

Uncertainty on the application of paragraph 237.3(2)(c) for advisor reporting – Many are having difficulty reaching a conclusion on how the requirement to report for advisors operates. It appears that the fee may have to meet the fee hallmark conditions or be in respect of contractual protection to create a reporting requirement for the advisor, but this should be confirmed by the Department of Finance Canada.

NOTIFIABLE TRANSACTIONS

Exception for employees/partners – The revised legislation includes a new exception for employees or partners of a firm, which is appreciated, but the operation of the exception is raising concerns as it will apply only if the firm reports. For partners and perhaps employees especially, this requirement causes concerns. For example, the employee/partner may not be able to confirm whether the firm filed, or they may not know that the work they performed was used as part of a notifiable transaction. Also, it is not clear whether the exception applies to former employees.

Exception for non-tax advisors – The revised legislation also includes a new exception for secondary or ancillary financial services in subsection 237.4(6). While this is helpful, it only applies in respect of banks, insurance companies and credit unions. There are many other types of secondary, non-tax advisors that should also be exempted.

We will continue to keep you updated on relevant developments on this new regime.

September 12, 2022

Questions on the new Form T2054 – Election for a Capital Dividend Under Subsection 83(2)

The CRA recently posted a new version of Form T2054 – Election for a Capital Dividend Under Subsection 83(2) (“T2054”) [to its website](#). In the T2054 instructions, it indicates that the form can be filed electronically and provides a link for further information, however, the link provided in the PDF version does not appear to be working and the link provided in the fillable PDF version does not provide any further information on how the T2054 can be electronically filed.

All this has raised some concerns on what the CRA’s expectations are on the new form. We have passed along the following questions and comments to the CRA:

- As most tax preparers use tax software (such as a T2 preparation program) to prepare the form, and updating tax preparation program by the software providers will take time, can the previous version of the T2054 continue to be used until the tax software developers have incorporated the new T2054 into their products?
- Can the CRA provide more information on how electronic filing will work? If a copy of the PDF T2054 can be transmitted electronically, can a digital signature be used on the form?
- If the expectation is that the new T2054 should be completed outside of tax preparation programs, we highlighted to CRA that logistical issues will arise for many tax preparers, and it could also result in an increase in errors

We will continue to monitor this issue and provide you with any relevant updates.

August 22, 2022

Update on electronic notices of assessments

As we have previously reported, the government announced in the 2021 federal budget, followed by draft legislation released on February 4, 2022, that it would be providing the CRA with the ability to send certain Notices of Assessments (“NOAs”) electronically without the taxpayer having to authorize the CRA to do so (“NOA proposal”). See our [February Tax Blog](#) and our September 21, 2021, news item “Budget 2021 electronic notices of assessment proposal”, for further background.

Subsection 150.1(4.1) was the main provision dealing with the NOA proposal in the [February 4, 2022, draft legislation](#). It provided the CRA with the ability to send NOAs electronically to the individual, or to the filer of the individual’s tax return, without the taxpayer having to authorize the CRA to do so. This would have been effective beginning January 1, 2023.

The [draft legislation released by Finance Canada on August 9, 2022](#), includes significant changes to subsection 150.1(4.1). From our initial read of the latest version, it appears that the

provision is no longer addressing the Budget 2021 NOA proposal but, instead, is allowing the Minister of National Revenue to provide an NOA electronically to an individual who filed their personal income tax return electronically and has authorized that notices or other communications may be made available in this manner. In particular, references to providing the NOA to the filer have been removed. We have asked the CRA and Finance Canada for more details on the government's plans and we will provide an update as new information becomes available.

Revised Legislation – Mandatory Disclosure Rules

On February 4, 2022, Finance Canada released proposed mandatory disclosure rules, which would require more detailed reporting of certain transactions. These proposals were organized in three components that would:

- Expand the current rules for reportable transactions
- Introduce a new requirement to report notifiable transactions
- Add a new requirement for specified corporations to report uncertain tax treatments (UTT)

The Joint Committee on Taxation of the Canadian Bar Association and CPA Canada (the "Joint Committee"), made submissions in response to the government's consultation on the February 4, 2022, mandatory disclosure rules. In addition, CPA Canada made a submission on the uncertain tax treatments proposals. For a detailed summary of these submissions, please see our [May 2022 tax blog](#).

Included in Finance Canada's August 9, 2022, release of revised and new legislation were revisions to the mandatory disclosure rules. Some notable revisions include:

- Deferral of the application date of the reportable transaction, notifiable transaction and UTT rules by one year – generally, the reportable transaction and notifiable transaction rules will apply to transactions entered into after 2022 and the UTT rules will apply to taxation years beginning after 2022.
- Narrowing and clarifying the confidential and contractual protection hallmarks of the reportable transaction rules so that bona fide commercial transactions are not impacted. The Joint Committee has raised concerns as to whether these changes will work effectively.
- Lengthening the re-assessment period for reportable transactions, notifiable transactions and UTTs to four years from three years for taxpayers that are mutual fund trusts or corporations that are not Canadian-controlled private corporations to align with subsection 152(3.1). Under the original draft, a three-year period would apply to all taxpayers based on the date the required information return was filed. The assessment period is not limited where a return is not filed.
- Alleviating multiple reporting obligations by deeming each employee of an employer to have filed an information return with respect to a notifiable transaction where the

employer has filed the required return. Similarly, for partnerships, partners will be deemed to have filed the return where the partnership has filed. Employees and partners will also not be subject to any related late filing penalties provided proposed subsection 237.4(5) applies. Note that it appears that a similar rule was not included for reportable transactions despite the elimination of subsection 237.3(4).

- Clarification that reporting obligations will not apply to banks, insurance companies, and credit unions providing secondary or ancillary financial services. However, this exemption does not apply where the financial institution knows that the relevant transaction is a notifiable transaction. Again, a similar rule does not appear to apply for reportable transactions.
- Clarification that persons who offer clerical or secretarial services with respect to the planning are not required to file information returns (this exception is available for both notifiable transactions and reportable transactions).
- Removal of the definition of “solicitor-client privilege” used in the reportable transaction rules (as such, the meaning developed under applicable Canadian case law should be used).

While some of the issues and concerns raised in the Joint Committee submission have been addressed, others have not. We will be reviewing the rules in greater detail over the coming weeks and will continue to communicate any new or ongoing issues to the government