

BUDGET 2018: REASSESSMENT PERIODS AND INFORMATION SHARING EXPANDED

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Budget 2018 proposes to amend the *Income Tax Act* (Canada) (the “**Tax Act**”) to afford the Canada Revenue Agency (the “**CRA**”) more time to reassess certain taxpayers and more latitude to share information with foreign authorities.

Extending Reassessment Periods

Budget 2018 proposes to expand the “stop-the-clock” rule in the Tax Act that suspends the reassessment period in respect of certain taxpayers. Currently, the rule provides that the reassessment period in respect of a taxation year is, in effect, paused during any period in which the taxpayer is contesting a requirement for foreign-based information issued by the CRA.

Budget 2018 proposes to extend the scope of the rule to further suspend the applicable reassessment period where a taxpayer is contesting (1) general requirements for information issued by the CRA, and (2) CRA-issued compliance orders (which the CRA typically issues, pursuant to section 231.7 of the Tax Act, where a taxpayer has not complied with a previously-issued requirement for information).

Under the proposed amendments, the new “stop-the-clock” rule will provide that the suspension of the reassessment period will cease upon the resolution of the taxpayer’s challenges of the requirements or orders in question, including any appeals.

If enacted, the expanded “stop-the-clock” rule would apply in respect of any challenges instituted after the proposed amendments receive Royal Assent.

Budget 2018 also proposes to extend the period during which the CRA may reassess a taxpayer in certain, defined circumstances. Specifically, Budget 2018 proposes to extend, by an additional three years, the reassessment period in respect of a particular taxation year (the “**Earlier Year**”) where a taxpayer (i) incurs a loss in a taxation year and carries the loss back to the Earlier Year, and (ii) the CRA subsequently reassesses the taxation year in which the loss purportedly arose and the loss was attributable to a transaction between the taxpayer and a non-resident person with whom the taxpayer did not deal at arm’s length.

By way of an example, assume that a taxpayer reports a loss in 2018, carries that loss back to its 2015 taxation year, and claims a resulting refund in respect of its 2015 taxation year. Under the existing provisions of the Tax Act, the CRA would generally have six years (in the case of a Canadian-controlled private corporation) to reassess the taxpayer if the adjustments related to transactions between the taxpayer and a non-resident with which the taxpayer did not deal at arm's length. However, the CRA would only have three years to reassess the taxpayer's 2015 taxation year to reverse the loss carryback. The proposed amendments will grant the CRA a corresponding six years to reassess the earlier 2015 taxation year.

This proposal will apply in respect of taxation years in which a carried back loss is claimed, where the carryback is from a taxation year that ends on or after February 27, 2018.

Expanded Information Sharing

The Government of Canada currently shares a significant amount of information with its international partners pursuant to various bilateral tax treaties, Tax Information Exchange Agreements ("**TIEAs**"), and the *Convention on Mutual Administrative Assistance in Tax Matters* (the "**Convention**"). Pursuant to these international agreements, Canada shares tax-related information in the civil and criminal tax law contexts.

In addition, Canada gathers and shares criminal law-related information from and with its international partners using procedures authorized by the *Mutual Legal Assistance in Criminal Matters Act* (Canada) (the "**MLA Act**"), which provides the Attorney General of Canada (the "**AG**") with various powers and legal tools.

Budget 2018 proposes to grant the AG the ability to use such powers and tools in the criminal tax law context.

Furthermore, the MLA Act currently allows the AG to obtain "gathering and sending orders" for certain information in the non-tax context. However, the AG is not currently permitted to similarly gather and share tax information through that process. Budget 2018 proposes to allow such information to be obtained from, and shared with, Canada's international partners in respect of acts that, if committed in Canada, would constitute terrorism, organized crime, money laundering, or criminal proceeds or designated substance offences.

Finally, although the AG may apply for a court order to allow a police officer to obtain taxpayer information under the Tax Act for certain purposes, there is no such authority in respect of information under Part IX of the *Excise Tax Act* (Canada) or the *Excise Act, 2001* (Canada). Accordingly, Budget 2018 proposes to bridge this gap by allowing information to be disclosed under the latter statutes in circumstances where such information would be disclosed under the Tax Act.

The foregoing proposals will come into effect when the applicable enacting legislation receives Royal Assent.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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