

Budget 2010: information reporting of tax avoidance transactions

A number of significant changes to the *Income Tax Act* (Canada) (the “Tax Act”) were proposed in last week’s federal Budget. Among the items of interest to Canadian taxpayers was an announcement that the Government would commence public consultations regarding a proposal to introduce new rules requiring taxpayers to report certain “tax avoidance” transactions to the tax authorities.

The Tax Act already imposes information reporting requirements for tax shelters. The Government proposes to broaden the category of reportable transactions to reduce the number of “tax avoidance” transactions that may otherwise go unnoticed by the Canada Revenue Agency (the “CRA”). The Government’s plan to demand additional information from certain taxpayers draws upon reporting regimes that have been enacted or proposed in the United Kingdom, United States and Québec to combat so-called aggressive tax planning.

The Budget indicates that it is intended that the reporting of a transaction under the proposed regime would have no bearing on the substantive determination of whether a tax benefit is allowable under the law. Instead, the stated aim of the proposals is to enhance the CRA’s audit ability by identifying transactions for further review.

Under the Budget proposals, any “avoidance transaction”, as defined in the Tax Act, would have to be reported if it involves any two of the following three “hallmarks”:

- a. a promoter or tax advisor is entitled to fees that are calculated with reference to the amount or attainment of the tax benefit or the number of persons participating in the transaction (or the number of persons who were provided with certain tax-oriented advice in connection with the transaction);
- b. a promoter or tax advisor requires clients to enter into a confidentiality agreement or otherwise requires “confidential protection” in respect of the transaction; and
- c. the taxpayer or the person who entered into the transaction for the benefit of the taxpayer obtains “contractual protection” in respect of the transaction.

Under the proposals, the CRA could deny the tax benefit of any reportable transaction that was not brought to the CRA's attention by the required deadline. Should a taxpayer nonetheless wish to claim the tax benefit at issue, required information would have to be filed with the CRA along with the remittance of a penalty. Unlike the proposed information reporting obligations announced in Québec, the federal proposals do not currently appear to include penalties in respect of promoters or tax advisors.

The Government indicated that it intends to release details of the proposed reporting regime at the earliest opportunity and will announce a consultation process with stakeholders at that time. The proposals, with necessary modifications arising from the consultation process, will apply to transactions entered into after 2010, as well as those that are part of a series of transactions completed after 2010.

Until further details are available, taxpayers planning to enter into a series of transactions that will not be completed until after 2010 should be aware of the proposed information reporting regime and plan accordingly. In particular, taxpayers will be well-advised to closely consider the implications of any set of transactions that presents two or more of the "hallmarks" described above.

For more information, contact any of the lawyers listed below:

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[a cautionary note](#)

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