

## Budget 2010: other notable tax measures

### taxation of corporate groups - consolidated reporting on the horizon?

Consolidated tax reporting for corporate groups (i.e., corporations with common direct or indirect ownership) is not permitted in Canada. As a result, losses incurred by a corporation within a corporate group cannot generally be offset against the profits or gains of one or more other corporations within the group. While loss utilization planning within a corporate group is often permitted, without consolidated reporting or a formal system for transferring losses within the group, such loss utilization plans can be costly to structure and implement.

In Budget 2010, the Government announced that it is going to review the taxation of corporate groups, including the virtues of consolidated reporting or a formal system of transferring losses within a corporate group. The Government indicated that stakeholder views will be sought prior to the introduction of any changes.

### decrease of interest rate on overpaid taxes for corporations

The Government pays interest in respect of overpayments of most taxes and other levies. The applicable interest rate for a quarter is equal to the average yield of three-month Government of Canada Treasury Bills sold in the first month of the preceding quarter, rounded up to the nearest percentage point, plus 2 percentage points. The rate applicable to taxpayers in respect of overdue taxes is equal to the same rounded average yield, plus 4 percentage points.

A 2009 Auditor General's report noted that the Canada Revenue Agency was effectively paying interest in respect of tax overpayments at a higher rate than its own cost of borrowing. In response to this report, Budget 2010 proposes, effective July 1, 2010, to decrease the interest rate payable to corporations in respect of tax overpayments by 2 percentage points. This new rate for corporations will apply in respect of most taxes and other levies, including income tax, GST/HST, employment insurance premiums, Canada Pension Plan contributions, and most excise tax and duty.

Accordingly, Budget 2010 increases the difference between interest payable by the Minister on tax overpayments and interest payable by corporate taxpayers on overdue taxes. The interest rate calculations in respect of non-corporate taxpayers will not change.

## extension of the super flow-through share program

In Budget 2010, the Conservative government has once again extended the “super flow-through” share program for an additional year. The super flow-through share program was initially introduced in October 2000 in response to a severe downturn in mineral exploration in Canada. The program had expired at the end of 2005 and was re-introduced in the 2006 Budget in respect of flow-through shares issued pursuant to agreements made after May 1, 2006 and on or before March 31, 2007. The program was extended for additional one-year periods in the 2007, 2008 and 2009 Budgets.

Canada’s flow-through share and super flow-through share programs are tax incentives that are used to promote the exploration and development of mineral resources in Canada. Under the flow-through share program, a company may renounce, or “flow-through” to investors, tax expenses associated with the company’s Canadian exploration activities. Investors can generally deduct these renounced expenses when calculating their own taxable income.

The super flow-through share program enhances the benefit to investors of owning flow-through shares. Under the terms of the super flow-through share program, an investor may claim a 15% tax credit in respect of certain grassroots exploration expenses incurred by the issuer of the share. The tax credit may be applied to reduce the federal taxes otherwise payable by the investor. Grassroots mining expenditures include expenses incurred in conducting certain mining exploration activities for the purpose of determining the existence, location, extent or quality of a mineral resource.

Budget 2010 proposes to extend the super flow-through share program to apply in respect of flow-through share agreements entered into on or before March 31, 2011. Under a “look-back” rule, funds raised under the terms of the program in 2011 may be spent on eligible exploration expenses in 2011 or 2012.

## shut down of foreign tax credit generators

Budget 2010 announced proposed amendments aimed at denying the benefits potentially associated with so-called “foreign tax credit generator” schemes. These schemes, which the Government suggests is the economic equivalent of a Canadian taxpayer making a simple loan to a foreign special purpose vehicle (“FSPV”), are structured so that the Canadian taxpayer can claim foreign tax credits or deductions on foreign taxes in its Canadian income tax returns even though an offsetting reduction in respect of the foreign taxes is generated within the relevant foreign group.

The Government indicates in Budget 2010 that it believes that these schemes can be successfully challenged under existing laws. Nevertheless, for greater assurance, Budget 2010 proposes measures that will deny claims for foreign tax credits and deductions in circumstances in which the income tax law of the jurisdiction levying the foreign income tax, or another relevant jurisdiction, considers the Canadian taxpayer to have a lesser direct or indirect interest in the FSPV than the Canadian taxpayer is considered to have for Canadian income tax purposes. This measure is intended to put the Canadian taxpayer in the same tax position as if it had made a simple loan to the FSPV.

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

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#### [a cautionary note](#)

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted. © McMillan LLP 2010.