WeirFoulds LLP

Capital Gains Inclusion Rate Increase Proposal ~~Dead~~ Deferred

January 31, 2025

By Ryan Morris, Michael Ding

The Canadian federal government announced today that they will delay the implementation of the previously proposed increase to the capital gains inclusion rate ("**Proposal**") until January 1, 2026. The Proposal, introduced in Budget 2024 and initially set to take effect on June 25, 2024, would raise the taxable portion of capital gains from one-half (50%) to two-thirds (66.67%) for individuals realizing annual capital gains exceeding $250,000 and for all capital gains realized by corporations and most trusts.

Notably, the announcement confirms that there is no change to the proposed implementation date for the increase in the lifetime capital gains exemption and the introduction of the Canadian Entrepreneurs' Incentive.

The deferral is a welcome development as taxpayers will no longer have to choose between filing and paying higher amounts of tax on the basis of the Proposal and filing and paying lower amounts of tax on the basis of current legislation (and risking interest charges if the Proposal was enacted with retroactive effect). While the Canada Revenue Agency ("**CRA**") previously indicated that it would administer the *Income Tax Act* (Canada) as if the Proposal was enacted with retroactive effect, the CRA cannot force taxpayers to file based on proposed legislation and its own *Audit Manual* states that auditors cannot impose proposed amendments until they have been enacted into law.

The deferral will also be welcomed by fund managers and others who would likely have felt compelled to issue tax slips to investors based on the Proposal, to the chagrin of many investors. However, it is unfortunate that the announcement was not made immediately after the prorogation of Parliament as many taxpayers and their accountants will have already started preparing tax slips.

While couched as a "deferral", there are significant doubts as to whether the Proposal will ever be enacted. Frontrunners of the Liberal Party of Canada leadership race have either announced that they would not go forward with the Proposal or that they would review it. The leader of the Conservative Party of Canada – who maintains a healthy lead in the polls – has publicly stated that he would scrap the Proposal. We suspect that most taxpayers will operate on the premise that the Proposal is dead.

For more information or inquiries:

Ryan Morris

Toronto
416.947.5001

Email:
rmorris@weirfoulds.com

Ryan Morris is a tax partner and Chair of the firm's Tax Group. His legal practice focuses on various areas of domestic and international taxation, including advising on mergers and acquisitions, structured investment products, financings, estate plans, employment tax issues and a broad range of corporate tax matters. Ryan also represents clients with voluntary disclosures, audits and appeals, and he has been lead counsel at every level of court, including the Supreme Court of Canada.

Michael Ding

Toronto
416.619.2096

Email:
mding@weirfoulds.com

Michael Ding is an Associate in the Tax Group at WeirFoulds LLP with a practice that focuses on various areas of domestic and international taxation planning, advice, and dispute resolution.

WeirFoulds LLP

www.weirfoulds.com

Toronto Office
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office
1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035