

On **March 4, 2010** the Honourable **Jim Flaherty**, Minister of Finance, presented his **fifth Budget** to the House of Commons.

The **Government's fiscal positions** include deficits in the years 2009/2010 (\$53.8 billion), 2010/2011 (\$49.2 billion), 2011/2012 (\$27.6 billion), and 2012/2013 (\$17.5 billion).

The Federal Government notes that it will:

- save approximately \$6.8 billion by **restricting the operating costs** of the public service including a freeze on salaries of MPs and Senators for the next three fiscal years;
- close certain **tax loopholes** such as those who receive certain stock options;
- freeze **Employment Insurance premiums** at \$1.73 per \$100 in insurable earnings to the end of 2010;
- consult on proposals to report **aggressive tax planning schemes**;
- subject to further discussion, consider a system of **loss transfers** between corporate groups;
- permit rollovers from a deceased person's RRSP to a **Registered Disability Savings Plan**;
- provide a single parent with the option of including the **Universal Child Care Benefit** in the income of certain dependants;
- provide \$44 million over two years for the development of **elite athletes**; and
- prevent certain **cosmetic expenditures** incurred after March 5, 2010 from being eligible for the medical expense tax credit.

There were **no new corporate tax rate changes**. However, the Government's intention to eventually have a top combined federal-provincial corporate income tax rate of **25%** remains.

Although the **opposition parties** were **not in favour** of the Budget, the **Liberals** did indicate that they would not force an election on this issue.

	Actual		Projection (in billions of \$)		
	2008-09	2009-10	2010-11	2011-12	2012-13
Budgetary revenues	233.1	213.9	231.3	249.0	266.5
Program expenses	207.9	237.8	249.2	241.3	245.1
Public debt charges	31.0	29.9	31.3	35.3	38.9
Total expenses	238.9	267.7	280.5	276.6	284.0
Balance	(5.8)	(53.8)	(49.2)	(27.6)	(17.5)
Federal debt	463.7	517.5	566.7	594.3	611.8

TAX HIGHLIGHTS

- A. Personal Income Tax
- B. Business Income Tax
- C. International Tax
- D. Sales Tax
- E. Other Tax
- F. Custom Tariffs
- G. Previously Announced Measures

A. Personal Income Tax

1. Medical Expense Tax Credit Purely Cosmetic Procedures

Budget 2010 proposes that expenses incurred for purely cosmetic procedures (including related services and other expenses such as travel) be ineligible to be claimed under the Medical Expense Tax Credit. This generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

A cosmetic procedure, including those identified above, will continue to qualify for the Medical Expense Tax Credit if it is required for medical or reconstructive purposes, such as surgery to ameliorate a deformity arising from, or directly related to, a congenital abnor-

malty, a personal injury resulting from an accident or trauma, or a disfiguring disease.

This measure will apply to expenses incurred after March 4, 2010.

2. Rollover of RRSP Proceeds to a Registered Disability Savings Plan (RDSP)

Budget 2010 proposes to extend the existing RRSP rollover rules to allow a rollover of a deceased individual's RRSP proceeds to the RDSP of a financially dependent infirm child or grandchild.

The amount of RRSP proceeds rolled over into an RDSP will not be permitted to exceed the beneficiary's available RDSP contribution room. The lifetime contribution limit for RDSPs is \$200,000.

These measures will be effective for deaths occurring on or after March 4, 2010.

Transitional Rules

Where the death of an RRSP annuitant occurs after 2007 and before 2011, special transitional rules will allow a contribution to be made to the RDSP of a financially dependent infirm child or grandchild of the annuitant that would provide a result that is generally equivalent to the proposed measures.

RDSP contributions benefiting from the proposed rollover measure cannot be made before July 2011.

3. Provincial Payments into RESPs and RDSPs

Budget 2010 proposes to clarify that all payments made to a Registered Education Savings Plan or a Registered Disability Savings Plan through a program funded, directly or indirectly, by a province or administered by a province will be treated the same way as federal grants and bonds and will therefore not themselves attract or reduce federal grants and bonds.

4. Scholarship Exemption and Education Tax Credits

Budget 2010 proposes to clarify that a post-secondary program that consists principally of research will be eligible for the Education Tax Credit, and the scholarship exemption, only if it leads to a college or CEGEP diploma, or a bachelor, masters or doctoral degree (or an equivalent degree). Accordingly, post-doctoral fellowships will be taxable.

Occupational training programs certified by the Minister of Human Resources and Skills Development will continue to qualify for the Education Tax Credit.

Budget 2010 also proposes that an amount will be eligible for the scholarship exemption only to the extent it can reasonably be considered to be received in connection with enrolment in an eligible educational program for the duration of the period of study related to the scholarship.

Special rules will apply to scholarships for part-time programs.

The measures will apply to the 2010 and subsequent taxation years.

5. Eco-ENERGY Retrofit Program

Even though the Home Renovation Tax Credit Program expired on January 31, 2010, the Government is allocating another \$80 million to the eco-ENERGY Retrofit Program.

B. Business Income Tax

1. Accelerated Capital Cost Allowance for Clean Energy Generation

Budget 2010 proposes to expand Class 43.2 to include: (a) heat recovery equipment used in a broader range of applications; and (b) distribution equipment used in district energy systems that rely primarily on ground source heat pumps, active solar systems or heat recovery equipment.

Budget 2010 also proposes to broaden Class 43.1 and Class 43.2 to include specified distribution equipment that is part of a district energy system used by the taxpayer to provide district heating or cooling through the use of thermal energy provided primarily by a ground source heat pump system, an active solar system, heat recovery equipment, or a combination of these energy sources, provided the generation equipment is included in Class 43.1 or Class 43.2, as the case may be.

These measures will apply to eligible assets acquired on or after March 4, 2010 that have not been used or acquired for use before that date.

Budget 2010 also proposes that the definition "principal-business corporation" be amended to clarify that flow-through share eligibility extends to corporations the principal business of which is one, or any combination, of:

- producing fuel

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- generating energy
- or distributing energy

2. Interest on Overpaid Taxes

Budget 2010 proposes that, effective July 1, 2010, the interest rate payable by the Minister of National Revenue to corporations will be set at 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.

C. International Tax

Section 116 and Taxable Canadian Property

Budget 2010 proposes that the definition of taxable Canadian property in the *Income Tax Act* be amended to exclude shares of corporations, and certain other interests, that do not derive their value principally from real or immovable property situated in Canada, Canadian resource property, or timber resource property (subject to the 60 month rule). This measure will eliminate section 116 compliance obligations for these types of properties.

D. Sales Tax

1. GST/HST and Purely Cosmetic Procedures

Budget 2010 proposes to clarify that GST/HST applies to all purely cosmetic procedures, to devices or other goods used or provided with cosmetic procedures, and to services related to cosmetic procedures. Taxable procedures would generally include surgical and non-surgical procedures aimed at enhancing one's appearance such as liposuction, hair replacement procedures,

botulinum toxin injections, and teeth whitening.

A cosmetic procedure will continue to be exempt if it is required for medical or reconstructive purposes, such as surgery to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. As well, cosmetic procedures paid for by a provincial health insurance plan will continue to be exempt.

This applies to supplies made after March 4, 2010 and to supplies made before that time if GST/HST had been charged.

2. Simplification of the GST/HST for the Direct Selling Industry

The direct selling industry distributes goods to final consumers through a large number of contractors and sales representatives, rather than through retail establishments.

Budget 2010 confirms the Government's intention to implement the Budget 2009 proposals for simplification of the GST/HST for the direct selling industry and proposes certain enhancements with clarifications to the previously announced measure.

Budget 2010 proposes that these enhancements apply in respect of fiscal years of a network seller that begin after 2009, matching the timing of the Budget 2009 proposals.

E. Other Tax

1. Specified Leasing Property

Rules

Budget 2010 proposes to extend the application of the Specified Leasing Property rules to otherwise exempt property that is the subject of a lease to a government or other tax-exempt entity, or to a non-resident. However, such a lease will continue to be exempt if the total value of the property that is the subject of the lease is less than \$1 million. In this regard, an anti-avoidance rule will apply if it may reasonably be considered that one of the purposes of dividing property (or a class of property) among separate leases is to meet the \$1 million exception.

These measures will apply to leases entered into after 4:00 p.m. Eastern Standard Time March 4, 2010.

2. Information Reporting of Tax Avoidance Transactions – Public Consultation

Budget 2010 announces a public consultation on proposals to require the reporting of certain tax avoidance transactions.

A regime under which a tax "avoidance transaction" that features at least two of three "hallmarks" would be a "reportable transaction" that must be reported to the Canada Revenue Agency. The proposed hallmarks would reflect certain circumstances that commonly exist when taxpayers enter into tax avoidance transactions, such as contingent remuneration, confidentiality protection and contractual protection.

These proposals, as modified to take into account the consultations, would apply to avoidance transactions entered into after 2010, as well as those that are part of a series of transactions com-

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pleted after 2010.

3. Online Notices

Budget 2010 proposes that the *Income Tax Act*, *Excise Tax Act*, *Excise Act, 2001*, *Air Travellers Security Charge Act*, *Canada Pension Plan* and *Employment Insurance Act* be amended to allow for the electronic issuance of those notices that can currently be sent by ordinary mail, if authorized by a taxpayer. However, notices that are specifically required to be served personally or by registered or certified mail will not be eligible to be transmitted electronically.

The necessary legislative amendments will be effective as of the date of Royal Assent of the implementing legislation. However, the application of these measures will commence at such time as will be announced by the Minister of National Revenue.

4. Tax Evasion and the Proceeds of Crime and Money Laundering Regime

Budget 2010 proposes to rationalize the rules concerning the application of the proceeds of crime and money laundering regime, and provide further support for international efforts to counter criminal and terrorist activities, by repealing the exclusion for indictable tax offences under the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act*, and the *Budget*

Implementation Act, 2000 from the definition of "designated offence" under the *Criminal Code*, such that the Crown will be able to prosecute these tax offences using that regime, regardless of whether prosecuted under the *Criminal Code* fraud provisions or the tax statutes. Budget 2010 also proposes consequential amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* consistent with the proposal above with respect to the *Criminal Code*.

5. Taxation of Corporate Groups

The Government will explore whether new rules for the taxation of corporate groups - such as the introduction of a formal system of loss transfers or consolidated reporting - could improve the functioning of the tax system. Stakeholder views will be sought prior to the introduction of any changes.

F. Customs Tariffs

Tariff Reductions on Manufacturing Inputs and Machinery and Equipment

Budget 2010 proposes to eliminate the remaining tariffs on manufacturing inputs and machinery and equipment. The Department of Finance consulted extensively with stakeholders in preparing this measure, including through the pub-

lication of a notice in the *Canada Gazette* on September 19, 2009.

The tariff reductions will be applicable to goods imported on or after March 5, 2010.

G. Previously Announced Measures

Budget 2010 confirms the Government's intention to proceed with previously-announced tax measures, as modified to take into account consultations and deliberations since their release, including:

- Improvements to the application of the GST/HST to the financial services sector released on September 23, 2009;
- Modifications to the rules governing Tax-Free Savings Accounts, announced on October 16, 2009;
- Technical legislative proposals addressing recent court decisions on the GST/HST and financial services, announced on December 14, 2009;
- Measures released in draft form on December 18, 2009 relating to the income taxation of shareholders of foreign affiliates, as well as the remaining measures released in a previous draft relating to foreign affiliates.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

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