



2021 Federal Budget

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Jamie Golombek

Managing Director, Tax and Estate Planning, CIBC Private Wealth Management

The 2021 federal budget ("Budget 2021") included a number of tax measures that will impact Canadian taxpayers. Rather than summarize every tax measure included in the Budget document, this report, which was prepared from within the virtual Budget lock-up, will focus on some of the tax measures that are of most interest to individuals and business owners.

Personal tax measures

Additional weeks of COVID benefits

When the Canada Emergency Response Benefit (CERB) ended last year, it was replaced with a trio of new temporary benefits: the Canada Recovery Benefit (CRB), the Canada Recovery Caregiving Benefit (CRCB), and the Canada Recovery Sickness Benefit (CRSB). In March 2021, about 3.5 million Canadians received income support through the recovery benefits and Employment Insurance (EI).

In February 2021, the government increased the number of weeks available under the CRB and the CRCB by 12 weeks to a total of 38 weeks, and the number of weeks of EI regular benefits available by 24 weeks up to a maximum of 50 weeks. It also doubled the number of weeks available under the CRSB to four weeks from two weeks.

In Budget 2021, the government proposed to provide up to 12 additional weeks of CRB, to a maximum of 50 weeks, the first four of which will be paid at \$500 per week, and the remaining eight weeks will be paid at a lower amount of \$300 per week for recipients who have claimed the full 42 weeks at \$500. All new CRB claimants after July 17, 2021 would also receive the \$300 per week benefit, which will be available until September 25, 2021.

Budget 2021 also proposed to extend the CRCB by an additional four weeks, to a maximum of 42 weeks, at \$500 per week, in the event that caregiving options, particularly for those supporting children, are not available.

Tax treatment of COVID benefit repayments

In late 2020, the Canada Revenue Agency (CRA) sent out 441,000 "educational letters" warning individuals that they may not be eligible for the CERB. The letters were sent out to individuals for whom the CRA said it was "unable to confirm ... employment and/or self-employment income of at least \$5,000 in 2019, or in the 12 months prior to the date of their application."

Individuals who needed to repay the CERB were encouraged to return it in 2020 (vs. in 2021) since the CERB amounts are taxable and would be reported on the T4A tax information slip for inclusion in income in the year they were received.

The government previously indicated that if the CERB wasn't returned until 2021, CERB recipients would have been required to pay tax on the full CERB amount received in 2020, and then they could claim a deduction for this amount on their 2021 tax return. While for many, this is simply a cash flow or timing difference, for others,

who may not have enough income in 2021 to benefit from the deduction, this could have resulted in effectively paying tax on CERB funds they ultimately had to return.

This potentially harsh tax treatment was confirmed by the Federal Court of Appeal in a 2007 decision dealing with the repayment of government benefits which concluded that the deduction applies only in the year the amount is repaid, not to retroactively cancel the original income inclusion. In 2009, the CRA also confirmed in a technical interpretation that the deduction could not be carried forward to a later year.

Fortunately, the government realized that this harsh treatment would be unfair to many Canadians. As a result, Budget 2021 proposed changes to the tax rules to allow individuals the option of claiming a deduction for repaid COVID benefits in computing their income for the year in which the benefit amount was received, rather than the year in which the repayment was actually made. This option is available for benefit amounts repaid at any time before 2023. For these purposes, COVID benefits would include: the CERB, EI emergency response benefits, Canada Emergency Student Benefits, the CRB, CRSB and the CRCB.

Note that individuals can only deduct benefit amounts once they have been repaid. If a recipient has made a repayment, but has already filed their return for the year in which the benefit was received, they can request an adjustment to the return for that year.

Enhancing the Canada Workers Benefit

The Canada Workers Benefit (CWB) is a refundable tax credit that supplements the earnings of low- and modest-income employees. Under the current rules, the CWB grows by 26 cents for every dollar of “working income” (generally employment and business income) in excess of \$3,000, up to a maximum entitlement of \$1,395 for single individuals (without dependants), or \$2,403 for families (couples and single parents). The benefit is then reduced by 12% of net income in excess of \$13,194 for single individuals without dependants, or \$17,522 for families.

Starting this year, Budget 2021 proposed to expand the CWB by increasing the phase-in rate from 26% to 27% and raise the income level at which the benefit starts being reduced to \$22,944 for single individuals (without dependants) and to \$26,177 for families. It will also increase the phase-out rate to 15% from 12%.

In addition, Budget 2021 proposed to introduce a “secondary earner exemption” to the CWB for individuals with an eligible spouse or common-law partner. This would effectively allow the spouse or common-law partner with the lower working income to exclude up to \$14,000 of that income for the purpose of the CWB phase-out.

Increasing OAS for Canadians ages 75 and over

Budget 2021 proposed a one-time payment of \$500 in August 2021 to Old Age Security (OAS) pensioners who will be age 75 or over as of June 2022. It also proposed to increase regular OAS payments for pensioners ages 75 and over by 10% on an ongoing basis as of July 2022. This would increase the benefits for approximately 3.3 million seniors, providing additional benefits of \$766 to full pensioners in the first year, and will be indexed to inflation going forward.

Relief for students

Student loan interest

The 2019 federal budget made the six-month grace period after leaving studies interest free. And, in 2020, the government imposed a six-month moratorium on all student loan repayments, and suspended interest from accruing on student loans for a one-year period in 2021-22. Budget 2021 extends the waiver of interest accrual on Canada Student Loans and Canada Apprentice Loans until March 31, 2023.

Student loan repayment assistance

The government provides repayment assistance to student loan borrowers with low incomes, so these individuals do not need to make payments on their student loans. Currently, support is available to those earning \$25,000 per year or less. Budget 2021 proposed to increase the threshold for repayment assistance to \$40,000 (for borrowers living alone.)

In addition, the cap on monthly student loan payments will be reduced to 10% of household income from 20%.

Postdoctoral fellowship income

Under the tax rules, postdoctoral fellows are generally not considered to be students; therefore, postdoctoral fellowship income generally does not qualify for the scholarship exemption from income tax and is taxable. Yet, under the current rules, this income is not considered to be “earned income” for the purpose of determining an individual’s contribution limit for a Registered Retirement Savings Plan (RRSP).

Budget 2021 proposed to expand the definition of “earned income” to include postdoctoral fellowship income received in the 2021 and subsequent taxation years. This measure would also apply retroactively to post-doctoral fellowship income received in the 2011 to 2020 taxation years, if the taxpayer submits a request in writing to the CRA to have their RRSP room adjusted for the relevant years.

Improving access to the Disability Tax Credit

The Disability Tax Credit (DTC) is a non-refundable tax credit that is intended to recognize the impact of various non-itemizable disability-related costs. For 2021, the value of the federal credit is \$1,299. Provincial and territorial credits are also available. To be eligible for the DTC, an individual must have a certificate confirming that they have a severe and prolonged impairment in physical or mental functions. Individuals who are eligible for the DTC may also access support measures including the Registered Disability Savings Plan and the Child Disability Benefit.

Earlier this month, the CRA’s Disability Advisory Committee released its second report, which contained a variety of recommendations towards improving the eligibility criteria for the DTC in areas such as mental functions and life-sustaining therapy. Budget 2021 proposed to update the list of mental functions of everyday life that is used for assessment for the DTC.

Under current rules, mental functions necessary for everyday life include: memory, problem-solving, goal-setting and judgement (taken together), and adaptive functioning. Budget 2021 proposed to expand this list to include attention, concentration, memory, judgement, perception of reality, problem-solving, goal-setting, regulation of behaviour and emotions, verbal and non-verbal comprehension and adaptive functioning.

In addition, Budget 2021 proposed to recognize more activities in determining time spent on life-sustaining therapy, and to reduce the minimum required frequency of therapy to qualify for the DTC.

New luxury tax on cars, boats and planes

Budget 2021 proposed to introduce a new luxury tax on the sales of luxury cars and personal aircraft with a retail sales price over \$100,000, and boats, with a price over \$250,000 purchased on or after January 1, 2022. The tax will be calculated at the lesser of 20% of the value above the threshold (\$100,000 for cars and planes, \$250,000 for boats) or 10% of the full value of the luxury car, boat, or personal aircraft.

The luxury tax will apply to all new passenger vehicles typically suitable for personal use, including: coupes, sedans, station wagons, sports cars, passenger vans and minivans equipped to accommodate less than 10 passengers, SUVs, and passenger pick-up trucks. The tax will not apply to motorcycles and certain off-road vehicles, such as all-terrain vehicles and snowmobiles, racing cars and motor homes (for example, recreational vehicles or RVs), construction vehicles or farm vehicles.

The tax will apply to new boats such as yachts, recreational motorboats and sailboats, typically suitable for personal use. Smaller personal watercraft (for example, water scooters) would be excluded from the tax. Floating homes, commercial fishing vessels, ferries, and cruise ships would also fall outside the scope of the tax.

The luxury tax would apply to all new aircraft typically suitable for personal use, including airplanes, helicopters and gliders. Large aircraft typically used in commercial activities, as well as smaller aircraft used in certain commercial and public sector activities would also be excluded.

Upon purchase or lease of the car, boat or plane, the seller or lessor would be responsible for remitting the full amount of the federal tax owing, regardless of whether the good was purchased outright, financed, or leased over a period of time.

The GST/HST would apply to the final sale price, inclusive of the proposed tax.

Tax on unproductive use of Canadian housing by foreign owners

Budget 2021 announced the government's intention to implement a national, annual one percent tax on the value of Canadian residential real estate that is owned by non-residents and is considered to be vacant or "underused," effective January 1, 2022.

Beginning in 2023, all owners of residential property in Canada (other than Canadian citizens or permanent residents), will be required to file an annual declaration for the prior calendar year with the CRA for each Canadian residential property they own. The requirement to file this declaration will apply whether or not the owner is subject to this new tax. In the declaration, the owner would be required to report information such as the property address, the property value and the owner's interest in the property. The owner may be eligible to claim in their declaration an exemption from the new tax if the property is leased to one or more qualified tenants for a minimum period (not yet specified) in a calendar year. If the exemption does not apply, the owner would be required to calculate the amount of tax owing and report and remit it to the CRA by the filing due date.

The failure to file a declaration with respect to a property for a calendar year as and when required could result in the loss of any available exemptions in respect of the property for the calendar year. Penalties and interest would also be applicable and the assessment period would be unlimited.

The government indicated that in the coming months, it will be releasing a consultation paper to provide stakeholders with an opportunity to comment on the parameters of the proposed tax. These parameters would include: the definition of residential property, the value on which the tax would apply, how the tax would apply where a property is owned by multiple individuals, potential exemptions and compliance and enforcement mechanisms.

Charities and foundations

Registered charities are required to spend a minimum amount, known as the "disbursement quota," each year on their charitable programs or on gifts to qualified donees. This helps ensure that a portion of charitable donations are being spent on charitable activities each year.

The government noted that while most charities meet or exceed their disbursement quotas, a gap of at least \$1 billion in charitable expenditures exists today. The government also noted the tremendous growth in the investment assets of foundations in recent years, remarking that in 2019, charitable foundations held over \$85 billion in long-term investments.

While no new changes were announced in today's budget, the government proposed launching public consultations with charities over the months ahead with the view to potentially increasing the disbursement quota, beginning in 2022.

Business owners

Extending the Canada Emergency Wage Subsidy

The Canada Emergency Wage Subsidy (CEWS) provides eligible employers who have faced revenue declines with a subsidy for wages paid to eligible employees. To date, the CEWS has helped more than 5.3 million Canadians keep their jobs and provided more than \$73 billion in support to the Canadian economy. The CEWS is currently set to expire in June 2021. Budget 2021 proposed to extend the CEWS until September 25, 2021 and to gradually decrease the subsidy rate, beginning July 4, 2021.

Canada Recovery Hiring Program

The government is proposing to introduce the new Canada Recovery Hiring Program (CRHP), to provide an alternative support for businesses affected by the pandemic to help them hire more workers as the economy reopens. The hiring program would be in place from June until November 2021, allowing employers to shift from the CEWS to this new support.

Eligible employers will be provided a subsidy of up to 50% of incremental remuneration paid. The 50% rate will eventually decline to a 20% rate. To qualify, employers will be required to have experienced certain revenue declines. Eligible employees for the purposes of the CRHP excludes employees who are on leave with pay.

Public corporations

Budget 2021 proposed to require that any publicly listed corporation receiving the CEWS and found to be paying its top executives more in 2021 than in 2019 will need to repay the equivalent in CEWS amounts received for any qualifying period starting after June 5, 2021 until the end of the CEWS program.

Extending the Canada Emergency Rent Subsidy

The Canada Emergency Rent Subsidy (CERS), including the Lockdown Support, has helped more than 154,000 organizations with rent, mortgage, and other expenses. The CERS provides eligible organizations with direct and easy-to-access rent support. Importantly, it is available directly to tenants. Lockdown Support provides organizations eligible for the CERS with additional support if they are subject to a lockdown or must significantly restrict their activities under a public health order.

The program was set to expire in June 2021, but Budget 2021 proposed to extend the CERS, including the Lockdown Support, until September 25, 2021 and proposes to gradually decrease the base subsidy rate, beginning July 4, 2021. The current 25% rate for the Lockdown Support, however, will remain in effect until September 25, 2021.

Extending the Canada Emergency Business Account (CEBA)

The Canada Emergency Business Account (CEBA) has provided interest-free, partially forgivable loans to more than 850,000 Canadian small businesses. In December 2020, the government increased the value of the loan from \$40,000 to \$60,000 to help small businesses bridge to recovery. If a business repays their loans by December 31, 2022, up to a third of the value of their loans (meaning up to \$20,000) will be forgiven. The government recently extended the application deadline for CEBA to June 30, 2021.

A small number of businesses have faced challenges accessing the program, including Indigenous and rural businesses. Budget 2021 proposed to also extend the application deadline for similar support under the Regional Relief and Recovery Fund and the Indigenous Business Initiative until June 30, 2021.

CRA administration

Combatting tax collection avoidance

According to the government, a small number of high-net-worth taxpayers are engaging in “complex transactions intended to avoid the collection of their tax debts.” This is accomplished by transferring their assets to a non-arm’s length person, such as a corporation controlled by that person, in a way that leaves them without the assets necessary to pay their tax debts while circumventing existing tax rules intended to prevent this type of scheme.

Budget 2021 introduced new anti-avoidance rules to address this type of planning, as well as a penalty for anyone who should “devise and promote such schemes.” These measures will apply to transfers of property on or after April 19, 2021. Budget 2021 estimated that the new measures being introduced to combat tax evasion and aggressive tax avoidance will recover \$810 million in federal revenues over five years, with additional benefits to be realized by provinces and territories, whose tax revenues will also increase as a result.

Modernizing CRA services

The government introduced a number of measures to improve the administration of the tax system. For example, one of the frustrations often experienced by taxpayers is the delays in trying to adjust a personal tax return, which can take many months for the CRA to process. To this end, Budget 2021 proposed to provide nearly \$42 million over three years, to the CRA to reduce processing time for T1 adjustments by making online self-service more user-friendly and improve automated processing of T1 adjustments.

Collections

Budget 2021 provides the CRA with \$230 million over five years, starting in 2021-22, for the CRA to improve its ability to collect outstanding taxes. This measure is estimated in leading to the collection of an additional \$5 billion in outstanding taxes over five years.

CRA goes digital

Budget 2021 proposed to provide the CRA with the ability to send Notices of Assessment (NOA) electronically without the taxpayer having to authorize the CRA to do so for individuals who file their income tax return electronically and those who employ the services of a tax preparer that files their income tax return electronically. Taxpayers who continue to file their income tax returns with the CRA in paper format can continue to receive a paper NOA from the CRA.

Budget 2021 also proposed to eliminate the requirement that signatures be in writing on certain prescribed forms: the T183, Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return, the T183CORP, Information Return for Corporations Filing Electronically; and the T2200, Declaration of Conditions of Employment.

CRA audits

The CRA has the authority to audit taxpayers and to ensure compliance with the tax rules. In 2019, the Federal Court of Appeal upheld a decision¹ of the Federal Court that found that the CRA does not have the authority to compel the employees of the corporation requested by the CRA to attend interviews and answer oral questions under a general audit and inspection rule of the Income Tax Act. The decision also called into question the extent to which CRA officials can require that questions be answered orally.

Budget 2021 proposed to amend the Income Tax Act “to ensure that the CRA has the authority it needs to conduct audits and undertake other compliance activities.” The amendments would confirm that CRA officials have the authority to require persons “to answer all proper questions, and to provide all reasonable assistance, for any purpose related to the administration or enforcement” of the tax laws.

Jamie Golombek, CPA, CA, CFP, CLU, TEP is the Managing Director, Tax & Estate Planning with CIBC Private Wealth Management in Toronto.

jamie.golombek@cibc.com

¹ Canada (National Revenue) v. Cameco Corporation (2019 FCA 67).

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