Federal government prorogues Parliament – Tax implications

With the announcement by Justin Trudeau earlier this week to resign as Prime Minister, the Federal government will prorogue Parliament until March 24, 2025. The prorogation of Parliament results in the termination of this session, which brings to an end all proceedings before Parliament. Legislative bills which have not received Royal Assent before prorogation are terminated and must be reintroduced (or potentially reinstated) in the new session of Parliament in order to proceed. This publication outlines the impact of the prorogation of Parliament on several key tax proposals affecting individuals and Canadian private companies that have not yet been formally enacted.

Capital gains inclusion rates

Notably, the draft legislative proposals included in the Notice of Ways and Means Motion ("NWMM") tabled on September 23, 2024, relating to the increased capital gains inclusion rate (including changes relating to the employee stock option deduction) and the increase in the lifetime capital gains exemption to $1.25M, have not yet received Royal Assent due to the recent delays in Parliament.

As originally announced in the 2024 Federal Budget, these proposals increase the capital gains inclusion rate for corporations and trusts to 2/3 (from 1/2) and for individuals to 2/3 (from 1/2) on the portion of capital gains realized in the year that exceed $250,000, for dispositions on or after June 25, 2024. For further details of these proposals, please ask your BMO Private Wealth professional for a copy of our publication *Capital Gains Tax Update: What You Need to Know Now*.

Draft legislation for the proposed capital gain changes and related backgrounders were released on June 10, 2024. Updated draft legislation was released on August 12, 2024, to clarify certain aspects of the proposed rules, which was tabled as a NWMM on September 23, 2024, following the resumption of Parliament this fall.

Despite the prorogation, with regards to how taxpayers should file their 2024 tax returns, the Canada Revenue Agency ("CRA") previously announced in November 2024 that it will administer the proposed legislation with the higher capital gains inclusion rates based on the NWMM. Specifically, the CRA provided the following guidance:

> "Although these proposed changes are subject to parliamentary approval, consistent with standard practice, the Canada Revenue Agency is administering the changes to the capital gains inclusion rate effective June 25, 2024, based on the proposals included in the NWMM tabled September 23, 2024.
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> For all taxpayers, the new inclusion rate will apply to capital gains realized on or after June 25, 2024. Impacted forms for individuals, trusts and corporations are expected to be on Canada.ca as of January 31, 2025. Arrears interest and penalty relief, if applicable, will be provided for those corporations and trusts impacted by these changes that have a filing due date on or before March 3, 2025."

This position was confirmed by the Department of Finance following the prorogation announcement this week, adding that the CRA will cease administering the policy if Parliament resumes and the government signals it will no longer proceed with the proposed changes to the taxation of capital gains.

Given the further delays caused by prorogation, the uncertainty surrounding the capital gains legislation is likely to continue for some time, and the 2024 tax filing season will soon be underway (as it is already for many corporations and trusts with off-calendar year ends). Taxpayers who follow the CRA's guidance and file on the basis of the draft legislation using the higher 2/3 capital gains inclusion rates for capital gains realized on or after June 25, 2024 (for capital gains >$250,000 for individuals, or for all capital gains realized by corporations or trusts), should seek a refund of the higher tax calculated if the capital gains proposals are ultimately not enacted. Conversely, taxpayers who file based on the current legislation (50% inclusion rate) could be assessed additional tax (and potential interest and penalties) should the legislation be enacted as proposed, to the extent the higher 2/3 inclusion rate would otherwise apply. Please consult with your personal tax advisor to determine the best course of action regarding your particular situation, in light of any further updates before filing.

Other outstanding tax legislation

Legislative and regulatory proposals released on August 12, 2024, implementing most of the remaining unenacted tax measures from the 2024 Federal Budget, other previously announced tax measures and various tax technical amendments also remain outstanding. This would include the Canadian Entrepreneurs' Incentive ("CEI"), which would reduce the tax rate on capital gains on the disposition of qualifying shares to one-half of the prevailing inclusion rate on a lifetime maximum of up to $2M in eligible capital gains. For more information, please ask your BMO Private Wealth professional for a copy of our *2024 Federal Budget Summary*.

In addition, the income tax proposals from the recent 2024 Fall Economic Statement, including an expansion of the existing capital gains rollover of small business shares, reform and enhancement of the Scientific Research and Experimental Development ("SR&ED") tax incentive program, and an extension of the Accelerated Investment Incentive and Immediate Expensing Measures (enhancing capital cost allowance ("CCA") tax deductions for depreciable property), are similarly in limbo, with no draft legislation yet released.

Charitable donations

To mitigate the impacts of the recent Canada Post mail stoppage, the Federal government announced on December 30, 2024 that it intends to amend the Income Tax Act to extend the deadline for making donations eligible for tax support in the 2024 tax year, until February 28, 2025 (from December 31, 2024). As no legislation has yet been introduced, the full details of this proposal are unknown and the prorogation announcement has created further uncertainty regarding its implementation, assuming the new Parliament will proceed with it. It is therefore hoped that the CRA will soon provide guidance as to how they will administratively deal with this proposal during the upcoming personal tax season.

Stay tuned

Given the uncertainty, it is possible that these tax proposals may not ultimately be enacted into law as described (or at all). Accordingly, please consult with your personal tax advisor for direction in your particular situation as we await further developments in the coming weeks.

For more information, please speak with your BMO Private Wealth professional.

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