TOMPKINSights

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Tax Legislation tabled – Some highlights

By: Florence Marino B.A., LL.B., TEP
Vice President, Tax & Estate Planning

Deputy Prime Minister and Minister of Finance Freeland delivered the Fall Economic Statement (FES) on November 21, 2023. On November 28 a Notice of Ways and Means Motion was tabled to introduce the Fall Economic Statement (FES) Implementation Act. Bill C-59, containing these measures received first reading on November 30.

We've been following many of the measures in Bill C-59. Here is our take on some of the measures as they relate to insurance and estate planning.

Softening the General Anti-Avoidance Rule (GAAR) – More Fuzzy but Still Pretty Chilly

The main change introduced by Bill C-59 from the August 4 draft of the new GAAR was to revert back to the prior wording of the draft legislation that was released with the 2023 Federal Budget relating to the economic substance test. Rather than factors listed falling under the definition of lack of economic substance giving rise to a presumption of misuse or abuse, they now merely "tend to indicate" a misuse or abuse. We really don't know what's worse – knowing you have an uphill battle or thinking you might! For our prior take see: **(A new GAAR – Pretty chilly right now – Tompkins Insurance).**

Limiting the dividend received deduction for financial institutions (FIs) – Talk about a Sledgehammer

This measure was originally announced in the 2023 Federal Budget and faced stiff opposition from life insurers, the CLHIA and CALU. It seems that the intent of this measure was to prevent once and for all certain tax arbitrage schemes such as dividend rental arrangements and synthetic equity arrangements undertaken by FI's but which prior measures have seemed ineffective to prevent. The Department of Finance appears to be continuing on course to implement this measure. The only difference in Bill C-59 from the description in the 2023 Federal Budget is the exception provided for dividends on "taxable preferred shares". The measure will result in dividends received by FI's on shares from Canadian corporations being taxed as business income instead of allowing a deduction for the receipt of the dividend, preserving integration.

The speed with which CALU sent a letter to the Department of Finance (on November 30) reiterating its concern regarding the impact on policyholders, shows the strong opposition to this measure. After the 2023 Federal Budget, the CLHIA made a submission requesting that the measure not apply to life insurers. In general, insurers hold Canadian equities to support long term liabilities resulting from permanent life insurance policies. In particular, equities are held by insurers to support obligations that are expected to occur beyond 20 to 30 years for which there is no deep or liquid bond market.

This measure would amount to a new tax that never existed before and which would materially impact the returns, benefits and costs to new and existing policyholders. Here is a prior article for history: **As a matter of tax - May 2023 | Manulife Advisors.**

We are hopeful that the Department of Finance will put away the sledgehammer and the final legislation will be narrowed.

Intergenerational business transfers – The Party's Over but that's Probably the Right Answer
A new regime allowing for intergenerational business transfers to occur on the same tax footing as a third-party sale will come into effect January 1, 2024. The main framework to qualify for this new regime is unchanged in Bill C-59 from prior draft legislative proposals. However, there is some fine tuning of the last draft from August 4, 2023.

The August draft included a "you can only use it once" rule. This rule is not removed by Bill C-59 but it is limited to apply after 2023. This will allow taxpayers who had partially transferred shares of a business under the existing rules prior to 2024, to also use the new intergenerational transfer rules once after 2023.

In addition, Bill C-59 removes the requirement that the vendor control the corporation immediately before the sale. This is also beneficial for those who had used the existing regime but who did not transfer all of their shares. Greater flexibility and not penalizing those who took advantage of the prior rules is a welcome change.

The party's over. It certainly is more difficult to fit within the new regime than the existing rules from June 2021 to the end of this year, but the new rules try to strike a balance and promote "genuine" intergenerational transfers.

As noted previously **(What does life insurance have to do with proposed intergenerational business transfers? – Lots – Tompkins Insurance)** life insurance can assist in the business succession context whether to cover the debt outstanding to the vendor, deferred tax liabilities or estate equalization goals.

Also in Bill C-59

The following items (which may be the subject of future articles) are also included in Bill C-59: Rules enabling the sale of a qualifying business to an Employee Ownership Trust (EOT); substantive CCPC anti-avoidance rules; “EIFEL” rules limiting interest and financial expenses. Noticeably absent are the proposed Alternative Minimum Tax rules.

To be continued!

FOOTNOTE:

Should you wish to discuss this or any other TOMPKINSights article, please contact **florence@tompkinsinsurance.com**