

Tax memo

Canadian tax updates



Comprehensive income tax package released: Long-awaited foreign affiliate amendments included

Foreign affiliate amendments released on October 24, 2012, consolidate and revise previous proposals.

October 24, 2012

On October 24, 2012, Canada's Department of Finance (Finance) released a Notice of Ways and Means Motion (NWMM). This "comprehensive package of technical income tax legislation" implements a variety of outstanding technical tax amendments, including legislative proposals relating to the taxation of Canadian multinational corporations with foreign affiliates. In many ways the NWMM is the culmination of legislative developments that started almost ten years ago.

History

On December 20, 2002, Finance released almost 40 amendments to the Canadian foreign affiliate and foreign accrual property income regime. Unfortunately, the legislative package that followed on February 27, 2004, to address the anomalies and issues in the 2002 proposals only created even more anomalies and issues.

The 2004 draft rules were overhauled and replaced with a third set of draft proposals released on December 18, 2009, some of which were refined by draft legislation issued on August 27, 2010. The fifth release – on August 19, 2011¹, modified certain areas of the 2004 draft legislation that had not been addressed in the 2010 proposals and introduced new proposals (such as the upstream loan rules).

The October 24, 2012, NWMM consolidates and amends many of these foreign affiliate proposals introduced in the last few years. Given that these proposals have been released as a NWMM, final foreign affiliate legislation can now be expected sometime in 2012 or 2013, which would provide taxpayers and their advisers some stability in this area for the first time in a decade.

Summary of measures

The more significant amendments in the NWMM include technical amendments relating to:

- the taxation of Canadian multinational corporations with foreign affiliates, in accordance with proposals released on December 18, 2009, and August 19, 2011;

1. The August 19, 2011, package of legislative proposals is discussed in our *Tax memo* "Long-awaited foreign affiliate amendments released" at www.pwc.com/ca/taxmemo.

- 2010 federal budget proposals (released for comment on May 7, 2010, and August 27, 2010) with respect to:
 - the taxation of non-resident trusts and their beneficiaries, and of Canadian taxpayers who hold interests in offshore investment fund property;
 - specified leasing property;
 - conversions of specified investment flow-through trusts and partnerships into corporations;
 - foreign tax credit generators; and
 - a regime for information reporting of tax avoidance transactions;
- various measures that were released on July 16, 2010, November 5, 2010, and October 31, 2011;
- the Apprenticeship Completion Grant (announced on January 27, 2009);
- the Atlantic investment tax credit (released on May 3, 2010);
- Employment Insurance for the self-employed (released on August 27, 2010);
- real estate investment trusts (released on December 16, 2010);
- the deductibility of contingent amounts, withholding tax applicable to certain interest payments made to non-residents, and certain life insurance corporation reserves (released on March 16, 2011);
- labour-sponsored venture capital corporations;
- the allocation, among provinces and territories, of the taxable income of airline corporations; and
- the *Excise Tax Act*, including Goods and Services Tax and the Harmonized Sales Tax (GST/HST) relief on the administrative service of collecting and distributing the levy on blank media imposed under the *Copyright Act*, announced on October 31, 2011.

For more help

Please contact your local PwC adviser or the individuals listed below.

PwC contacts

Vancouver	William Holms	604 806 7052	william.holms@ca.pwc.com
	Lincoln Schreiner	604 806 7713	lincoln.schreiner@ca.pwc.com
	Michael Shields	604 806 7802	michael.shields@ca.pwc.com
Calgary	Jason Durkin	403 509 7598	jason.d.durkin@ca.pwc.com
	Dale S. Meister	403 509 7584	dale.s.meister@ca.pwc.com
Greater Toronto Area	Ken Buttenham	416 869 2600	ken.butttenham@ca.pwc.com
	Arlene Cohen	416 815 5299	arlene.cohen@ca.pwc.com
	Steve Dunk	416 365 8239	steve.dunk@ca.pwc.com
	Dan Fontaine	905 949 7313	dan.g.fontaine@ca.pwc.com
	Melanie Huynh	416 869 2941	melanie.huynh@ca.pwc.com
	Eric Lockwood	416 365 8180	eric.lockwood@ca.pwc.com
	Mike Maikawa	416 365 2719	mike.maikawa@ca.pwc.com
	Jamie Mitchell	416 814 5755	jamie.c.mitchell@ca.pwc.com
	Nick Pantaleo ¹	416 365 2701	nick.pantaleo@ca.pwc.com
Montreal	Kara Ann Selby	416 869 2372	kara.ann.selby@ca.pwc.com
	Pierre Bourgeois	514 205 5139	pierre.bourgeois@ca.pwc.com
Wilson and Partners LLP A law firm affiliated with PwC		Elizabeth J. Johnson ¹	416 869 2414 elizabeth.j.johnson@ca.pwc.com

1. Member of PwC's Canadian National Tax Services (see www.pwc.com/ca/cnts).