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Tax Alert – Canada

Finance tables NWMM for tax measures and adjusts proposed filing deadline for Form T1134s

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 25 October 2018, federal Finance Minister Bill Morneau tabled a notice of ways and means motion (NWMM) that includes most of the draft legislative proposals released on 27 July 2018 relating to outstanding measures announced in the 2018 federal budget, a revised version of the 16 September 2016 income tax amendments concerning foreign spinoffs and the shareholder benefit rules, and some indirect tax measures. The NWMM also includes the following previously announced proposals:

- ▶ The 27 February 2018 revised version of the 8 September 2017 GST/HST legislative proposals concerning investment limited partnerships;
- ▶ The 27 June 2018 GST/HST legislative proposals concerning carbon emission allowances;
- ▶ The 14 September 2018 income tax legislative proposals regarding political activities of charities; and
- ▶ The proposed climate action incentive announced on 23 October 2018.

The NWMM takes into account comments received since the release of the above-mentioned legislative proposals. Most notably, the NWMM addresses concerns raised over the 2018 federal budget proposal to shorten the filing deadline for Form T1134, *Information Return Relating to Controlled and Not-Controlled Foreign Affiliates*, from 15 months to 6 months after the end of a taxpayer's taxation year. The NWMM revises the proposed filing deadline to 12 months for filings related to taxation years beginning in 2020 and to 10 months for filings related to taxation years beginning after 2020.

The NWMM does not include the 2018 federal budget measures concerning new income tax reporting requirements for trusts nor the GST/HST amendments concerning holding corporations, which were both part of the 27 July 2018 package of draft legislative proposals. It is expected that the measures dealing with the reporting requirements for trusts, which are to apply for taxation years ending after 30 December 2021, will be reviewed and introduced at a later date. As for the amendments to the GST/HST holding corporation rules, it is also expected that they will be released at a later date, which may be in conjunction with the measures that will stem from the separate consultation recently held on two other aspects of these rules. For more information on these proposals, see EY Tax Alert 2018 Issue No. 7, *Federal budget 2018-19: Equality + Growth - A Strong Middle Class*, EY Tax Alert 2018 Issue No. 31, *Finance releases draft legislation for 2018 budget and other measures for comment*, and EY Tax Alert 2018 Issue No. 32, *Finance releases draft amendments and proposals for ETA section 186 holding corporation rules*.

The following is a summary of the various measures included in the NWMM.

Business income and international tax measures

- ▶ **At-risk rules for tiered partnerships** – Amendments to ensure that the at-risk rules apply at each level of a tiered partnership structure. (Applicable to taxation years ending on or after 27 February 2018, including in respect of partnership losses incurred in a taxation year ending before 27 February 2018 that would otherwise have been carried forward to a taxation year ending on or after that date.)
- ▶ **Synthetic equity arrangements** – Amendments to the “no tax-indifferent investor” exception to the synthetic equity arrangement rules to ensure that the exception cannot be satisfied when a tax-indifferent investor obtains all or substantially all of the risk of loss and opportunity for gain or profit in respect of a Canadian share in any way. (Applicable to dividends that are paid, or become payable, on or after 27 February 2018.)
- ▶ **Securities lending arrangements** – Broadening of the securities lending arrangement (SLA) rules to target certain securities lending or repurchase arrangements designed to fail the requirements of the current SLA definition, although they are substantially similar to an SLA. Amendments to clarify the interaction of two rules governing the deductibility of dividend compensation payments made by a taxpayer under an SLA. (Applicable to dividend compensation payments that are made on or after 27 February 2018 or, for written securities lending or repurchase arrangements in place before this date, to dividend compensation payments that are made after September 2018.)
- ▶ **Stop-loss rule on share repurchase transactions** – Amendments to the dividend stop-loss rule pertaining to shares held as mark-to-market property, so that the tax loss otherwise realized on a share repurchase is generally decreased by the dividend deemed to be received on the repurchase (under subsection 84(3) of the *Income Tax Act*) when the dividend is eligible for the intercorporate dividend deduction. (Applicable in respect of share repurchases that occur on or after 27 February 2018.)
- ▶ **Cross-border surplus stripping using partnerships and trusts** – Amendments to the cross-border anti-surplus stripping rule, and the corresponding corporate immigration rule, to address situations where a partnership or trust is inserted into a corporate

reorganization for the purpose of achieving a tax benefit that is intended to be denied by the anti-surplus stripping rule. The amendments have been modified since their release on 27 July 2018 to incorporate, among other things, a consequential amendment to the definition of proceeds of disposition to ensure that any deemed dividend resulting from the application of these new anti-surplus stripping “look-through” rules (for partnerships and trusts) is excluded from the proceeds of disposition determination. (Applicable to transactions or events that occur on or after 27 February 2018.)

- ▶ **Foreign affiliates** – Amendments to the foreign affiliate rules, including the following:
 - ▶ **Controlled foreign affiliate status** – Amendments to deem a foreign affiliate of a taxpayer to be a controlled foreign affiliate (CFA) of the taxpayer if foreign accrual property income (FAPI) attributable to activities of the foreign affiliate accrues to the benefit of the taxpayer under a “tracking arrangement” without being taxed. Under a tracking arrangement, each taxpayer purportedly retains control over its contributed assets and any returns from those assets accrue to its benefit, but ownership of the nonresident entity is spread among many unrelated investors such that no single group can be said to control the affiliate. The amendments have been modified since their release on 27 July 2018 to take into account, among other things, a recommendation of the CBA/CPA Canada Joint Committee on Taxation to remove the requirement for a taxpayer to elect out of the new deemed CFA status rule by rather making its proposed alternative the default rule. Under the now-revised default rule, which should have less adverse tax effects to the taxpayer, the CFA status will be determined in relation to the tracked property and activities, rather than the affiliate as a whole. (Subject to an elective transitional rule, applicable to taxation years of a taxpayer’s foreign affiliate that begin on or after 27 February 2018.)
 - ▶ **Investment business** – Amendments to the investment business exception (that treats investment income of a foreign affiliate as active business income in certain circumstances and not FAPI) to address situations where a taxpayer engages in tracking arrangements with other taxpayers in order to meet the exception. (Applicable to taxation years of a taxpayer’s foreign affiliate that begin on or after 27 February 2018.)
 - ▶ **Trading or dealing in indebtedness** – Amendments to add a minimum capital requirement, as well as a requirement to conduct the foreign affiliate’s relevant business principally with arm’s length persons, to the regulated foreign financial institutions exception under the trading or dealing in indebtedness rules (similar to that under the investment business rules). (Applicable to taxation years of a taxpayer’s foreign affiliate that begin on or after 27 February 2018.)
- ▶ **T1134 information returns** – Revised amendment to shorten the filing deadline for information returns in respect of a taxpayer’s foreign affiliates (Form T1134, *Information Return Relating to Controlled and Not-Controlled Foreign Affiliates*). As proposed in the 2018 federal budget, the filing deadline was to be reduced from 15 months to six months after the end of a taxpayer’s taxation year (or fiscal period, if the reporting entity is a partnership). The proposed amendments included in the NWMM instead reduce the filing deadline to 12 months for filings related to taxation years (or fiscal periods) beginning in

2020 and to 10 months for filings related to taxation years (or fiscal periods) beginning after 2020.

- ▶ **Passive investment income and loss allocation** – Measures to allocate losses between a corporation's non-eligible refundable dividend tax on hand and eligible refundable dividend tax on hand accounts where the corporation is claiming the losses in order to partly reduce its Part IV taxes otherwise payable and those taxes would have otherwise been added to these accounts. (Applicable to taxation years beginning after 2018.)
- ▶ **Reassessment periods** – Amendments to extend the reassessment period in specified circumstances, including the following:
 - ▶ **Transactions with non-arm's-length nonresident persons** – Amendments to extend the reassessment period for a loss carried back to a prior taxation year from a subsequent taxation year by an additional three years, in circumstances where the subsequent taxation year has been reassessed (or a notification that no tax is payable has been issued for it) in respect of a transaction involving a nonresident non-arm's-length person and the loss available for carryback is reduced by the reassessment or the notification. (Applicable to taxation years in which a carried-back loss is claimed, if that loss is carried back from a taxation year that ends on or after 27 February 2018.)
 - ▶ **Requirements for information or compliance orders** – Introduction of a “stop-the-clock” rule to extend the reassessment period of a taxpayer by the period of time during which the taxpayer contests a requirement for information issued by the Canada Revenue Agency (CRA) (that does not involve foreign-based information) or compliance order issued by a court. (Applicable to challenges instituted by a taxpayer after royal assent of the enacting legislation.)
 - ▶ **Income in connection with foreign affiliates** – Amendments to extend the reassessment period for a taxpayer by three years in respect of income, loss or other amount in connection with a foreign affiliate of the taxpayer. (Applicable to taxation years of a taxpayer that begin on or after 27 February 2018.)
- ▶ **Foreign spinoffs and shareholder benefit rules** – Revised amendments to ensure that the shareholder benefit rules generally do not apply on the division under foreign law of a nonresident corporation (the original corporation) in circumstances where all or part of property and liabilities of the original corporation become property and liabilities of one or more new nonresident corporations and the shares of a new nonresident corporation are received (as part of the foreign spinoff) by shareholders of each class of shares of the original corporation on a pro-rata basis (applicable to divisions of nonresident corporations that occur after 23 October 2012). These amendments are a revised version of amendments originally announced on 16 September 2016. The revised measures also include consequential changes to the foreign affiliate surplus rules, which are generally applicable in respect of dispositions that occur after 23 October 2012. See EY Tax Alert 2016 Issue No. 41, *Finance releases draft income tax technical amendments*, for more information on the original 16 September 2016 measure.

Personal and other income tax measures

- ▶ **Canada Workers Benefit** – Amendments to make optional, in the calculation of the Canada Workers Benefit, the tax-exempt part of working income earned on a reserve or an allowance received as an emergency volunteer and to allow the CRA to determine an individual's eligibility for the Canada Workers Benefit even when not specifically claimed by the individual. (Applicable as of 1 January 2019.) Related to eligibility for the benefit, a new requirement is introduced for designated educational institutions in Canada to report to the CRA prescribed information regarding students' enrolment. (Applicable as of 1 January 2019.)
- ▶ **Contributions to enhanced portion of the Quebec Pension Plan (QPP)** – Amendments to specifically permit the deduction for employee contributions, and the "employee" share of contributions made by self-employed persons, to the enhanced portion of the QPP. (Applicable as of 1 January 2019.)
- ▶ **Canadian Forces taxable income deduction** – Extension of the federal income tax exemption of employment income earned by Canadian Forces personnel and police officers while serving on deployed international operational missions as determined by the Minister of National Defence or designate, so that it also applies when these taxpayers are serving on a deployed international operational mission as determined by the Minister of Public Safety and Emergency Preparedness or designate. (Applicable to the 2017 and subsequent taxation years). A similar extension is also made to the former exemption rules applicable for taxation years prior to 2017, generally in respect of missions initiated after September 2012.
- ▶ **Climate action incentive** – Following the announcement made on 23 October 2018, introduction of a new refundable tax credit for eligible individuals, referred to as the climate action incentive credit, which is deemed to be a rebate in respect of fuel charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act*. To be eligible for the credit, an eligible individual must file a tax return for the relevant taxation year and claim the credit on that return. (Applicable for 2018 and subsequent taxation years.)
- ▶ **Political activities of charities** – Various amendments to remove the limits on political activities for charities, so that they may pursue their charitable purposes by engaging in non-partisan political activities and in the development of public policy. As a result of the amendments, a charity's political activities will be permitted provided they are ancillary and incidental to the fulfillment of the charity's charitable purposes. These changes leave in place the common law requirement that a registered charity cannot be established or operated for a political purpose. The amendments have been modified since their release on 14 September 2018 to, among other things, define "charitable activities" to include public policy dialogue and development activities. (Generally applicable retroactive to 1 January 2008 or 29 June 2012 for entities that were registered charities or registered Canadian amateur athletic associations on 14 September 2018; otherwise, the amendments apply as of 14 September 2018.)
- ▶ **Canada child benefit** – Amendment to clarify that an individual should not fail to qualify as a parent, for purposes of the Canada child benefit, solely because of the receipt of a social

assistance payment made in respect of a child under a program of the Government of Canada or a government of a province or territory. (Applicable as of 1 January 2008.)

For more information on the 2018 federal budget income tax measures, refer to EY Tax Alert 2018 Issue No. 7, *Federal budget 2018-19: Equality + Growth - A Strong Middle Class*.

GST/HST and excise duty measures

The NWMM also includes a number of GST/HST and excise duty measures that were announced in the 2018 federal budget and/or included in the 27 July 2018 package of draft legislative proposals, including measures concerning:

- ▶ Investment limited partnerships (the amendments have been modified since their latest release on 27 February 2018, notably, among other things, in respect of the applicable transitional rules where an investment limited partnership is a selected listed financial institution throughout the reporting period of the partnership that includes 1 January 2019);
- ▶ The GST/HST rebate for printed books (although the accompanying 27 July 2018 draft amendments to the *New Harmonized Value-Added Tax System Regulations*, No. 2 are not included in the NWMM, they will likely be introduced at a later date);
- ▶ The requirements for information or compliance orders; and
- ▶ Diesel fuel excise tax refunds.

For more information on these measures, refer to EY Tax Alert 2018 Issue No. 7, *Federal budget 2018-19: Equality + Growth - A Strong Middle Class*, and EY Tax Alert 2018 Issue No. 31, *Finance releases draft legislation for 2018 budget and other measures for comment*.

The NWMM does not include amendments to the GST/HST holding corporation rules that were included in the 27 July 2018 package of draft legislative proposals. For more information on these outstanding proposals, refer to EY Tax Alert 2018 Issue No. 32, *Finance releases draft amendments and proposals for ETA section 186 holding corporation rules*.

In addition, the NWMM includes the measures from the 27 June 2018 legislative proposals concerning carbon emission allowances and 17 September 2018 proposed amendment to the *Excise Act, 2001* concerning the taxation of cannabis, as well as transitional exceptions to the limitation periods for assessments or reassessments in certain circumstances involving a trust governed by a registered education savings plan or the manager of such a trust. For more information on the measures related to carbon emission allowances, refer to EY Tax Alert 2018 Issue No. 27, *New GST/HST rules for carbon emission allowances*.

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