

BUDGET 2010 – ALMOST NOTHING TO SPEAK OF...

March 4, 2010

Finance Minister Jim Flaherty brought down his fifth Federal Budget on March 4, 2010. Tax measures were few and far between. There was literally almost nothing to speak of. A brief summary is provided of measures of any note to insurance and investment advisors.

Personal Tax Measures

Rollover of RRSP Proceeds to an RDSP

Budget 2010 proposes to extend the existing RRSP rollover rules to allow a rollover of a deceased individual's RRSP proceeds to the RDSP (Registered Disability Savings Plan) of a financially dependent infirm child or grandchild.

The amount of RRSP proceeds rolled over into an RDSP will not be permitted to exceed the beneficiary's available RDSP contribution room.

The RDSP beneficiary or his or her legal representative will be required to make an election in prescribed form to transfer the RRSP proceeds to the RDSP on a rollover basis. The election would be made at the time of the RDSP contribution and filed with both the Canada Revenue Agency (CRA) and Human Resources and Skills Development Canada by the RDSP issuer.

These measures will be effective for deaths occurring on or after March 4, 2010.

Provincial Payments into RESPs and RDSPs

Budget 2010 proposes to clarify that all payments made to an RESP or an RDSP through a program funded, directly or indirectly, by a province or administered by a province will be treated the same way as federal grants and bonds and will therefore not themselves attract or reduce federal grants and bonds.

In the case of programs that are administered by a province, this measure will apply to payments made after 2006. In the case of programs that are not administered by a province, this measure will apply to payments made after 2008.

U.S. Social Security Benefits

Canadian residents who receive U.S. Social Security benefits after January 1, 2010 will have to include 50 per cent in income (formerly 85 per cent).

Measures Relating to Charities

The current disbursement quota requires that a registered charity expend an amount equal to 80 per cent of the amount for which charitable receipts were issued in the preceding year. In addition, the charitable organization must disburse 3.5 per cent of the fair market value of assets each year if the assets are not directly employed in charitable activities.

The 2010 Budget proposes to repeal these charitable expenditure rules by eliminating the 80 per cent disbursement quota requirement. The 3.5 per cent disbursement requirement will remain with some exclusions applying to the calculation.

With these measures the enduring property rules will also be repealed. As a result, charitable gifts of life insurance will no longer require the use of the 10-year direction.

Foreign Investment Entities and Non-Resident Trusts

The government has substantially revised the proposed rules applicable to foreign investment entities and non-resident trusts. The previous proposals were to be effective for taxation years after 2006 but died on the order paper in December 2008 when Parliament was prorogued. The revised proposals will be subject to further public consultation.

The prior proposals imposed a mark-to-market tax regime on certain foreign issued life insurance policies held by Canadian residents. It does not appear that this rule is included in the current proposals.

Aggressive Tax Planning

The government intends to release proposals for consultation which would require taxpayers to report aggressive tax planning transactions to the CRA. The proposed reporting regime would apply where a "tax avoidance transaction" features two of the following three "hallmarks":

- Remuneration to the promoter or tax advisor in respect of the transaction is contingent on: obtaining a tax benefit, the amount of a tax benefit or the number of taxpayers who participate;
- The promoter or tax advisor requires "confidential protection" about the transaction;
- The taxpayer who enters the transaction obtains "contractual protection" regarding the transaction.

Upon discovery of a transaction that should have been flagged by a taxpayer, the CRA could deny the tax benefit resulting from the transaction. If the taxpayer still wants to claim the tax benefit, the taxpayer would be required to file information and pay a penalty tax.

This is along the same lines but not as far as the Quebec government has gone with its aggressive tax planning measures introduced in 2009. While this pre-emptive self-identification is not necessarily an admission of abusive tax avoidance, it sure will assist the CRA in identifying those transactions it might want to argue GAAR (general anti-avoidance rules) applies to.

Conclusion

It is apparent that the focus of this budget is on limiting spending. No new taxes and no big ticket tax breaks.