The 2014 Federal Budget – The top five tax matters to watch for

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On January 27, 2014, the Department of Finance of the Government of Canada announced that the 2014 Federal Budget would be released on February 11, 2014. Budgets of late have typically been released in March. No doubt, the Department must have been very busy getting ready for February 11. While the rest of Canada will be cheering for our athletes in the Sochi Olympics, tax geeks like us will be "cheering" or "booing" at the release of the Budget.

The release of the Federal Budget is like a Las Vegas buffet… too much to consume in one sitting, some good, some bad and some just plain bizarre! Accordingly, here are our top five tax matters to watch for on February 11:

1. Foreign Account Tax Compliance Act ("FATCA") and the intergovernmental agreement between Canada and the US

As predicted in our 2014 Tax Predictions blog, our firm believes that the Department of Finance will use the 2014 Federal Budget to announce the status of the intergovernmental agreement that it has been negotiating with the US to administer the US's FATCA law. FATCA is scheduled to come into force July 1, 2014 and time is running out for Canada to get ready. As mentioned, we expect the Department of Finance to make an announcement on February 11, 2014 regarding the status of such agreement and the pending implementation of legislation that will need to be introduced to Parliament shortly thereafter.

2. A continued focus on international tax avoidance and evasion

There has been no shortage of focus on this area in the last 12 months and we expect Canada will continue to introduce tax measures that make it tougher for bad characters to evade tax. We believe that Canada will also introduce measures to make tax avoidance more transparent in the upcoming Budget. Such measures could include, for example, additional reporting about non-arm's length transactions (currently done on prescribed form T106 pursuant to section 233.1 of the Income Tax Act), additional disclosures regarding beneficial interests in or transfers to / from non-resident trusts (currently done on prescribed forms T1141 and T1142 pursuant to sections 233.2 and 233.6 of the Income Tax Act), additional reporting regarding foreign affiliates (currently done on prescribed form T1134 and Schedule 25 of the T2 corporate income tax return) and other reportings. In light of the OECD's focus on base erosion and profit shifting, might we also see legislative proposals to try and deal with some of the concerns of the OECD? Perhaps. We'll see.

3. Charitable donations

The area of charitable donations has been the subject of significant abuse in the last decade or so. There has been no shortage of charitable tax shelters that attempt to use government tax dollars to help finance the "donor's gift". The bottom line is that most of these tax shelters are scams and we have written prolifically about our dislike of charitable tax shelters. Notwithstanding, promoters and their "donors" continue to clutter the CRA and the Courts with appeals of their reassessments. The 2013 Federal Budget introduced measures to make it more difficult for "donors" to appeal their reassessments by requiring such persons to pay 50 percent of the disputed amount in advance of their appeal moving forward. Charitable tax shelters continue to be marketed heavily. Will more legislative proposals be tabled to effectively kill charitable shelters? We'll see.

The 2013 Federal Budget also introduced a First-Time Donor's Super Charitable Credit for certain first time donors. This credit has been criticized for being too narrow for most Canadians to take advantage of. Could we see an expansion of this program or perhaps the introduction of a stretch credit that has long been pushed for by the charitable community? Again, we'll see but it would not surprise us if the Government continues to tinker with charitable tax credits.

4. Changes to the taxation of testamentary trusts

The 2013 Federal Budget announced that the Government was studying the taxation treatment of testamentary trusts and specifically whether such trusts should be subject to graduated tax rates. The announcement was accompanied by a consultation paper prepared by the Department of Finance and invited interested parties to submit their comments on the consultation paper. Our firm commented on the consultation paper and participated significantly in the submission by The Joint Committee on Taxation of The Canadian Bar Association and Chartered Professional Accountants of Canada's submission to the Department of Finance. We expect that the Department of Finance will provide an update or perhaps even introduce legislative proposals regarding this matter.

5. Continued tinkering of personal tax credits

Over the last 10 years or so, there has been no shortage of new personal tax credits. Remember the children's fitness, children's art, transit pass and home renovation (during the 2009 financial meltdown) credits? Will we see some additional personal credits introduced? Let's hope not. While the social policy intent may be admirable, it is highly debatable whether or not the tax system is the right method to achieve such objectives and whether the introduction of such personal credits are worth it in the end considering all of the administration necessary to recover such credits.

Our firm will have a representative in Ottawa on February 11, 2014 during the media and tax practitioner lock-up (like other firms). We look forward to providing you a post-meal update after the dishes have been cleared and Alka-Seltzer consumed!