



2013 Budget Measures That May Affect Your Business, Part 2

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Certain corporate tax measures from the federal government's 2013 Budget have been highlighted by the Canada Revenue Agency ("CRA") on its Web site in a Q&A format. Those specific measures are explained further in this article.

Hiring Credit for Small Business – Expansion and Extension

The hiring credit for small business ("HCSB") was introduced for the 2011 and 2012 tax years. It is being extended for a further one-year term expiring December 31, 2013. This temporary credit will provide up to \$1,000 against a small firm's increase of its 2013 employment insurance premiums over those paid in 2012.

The program is also being expanded for 2013. For 2011 and 2012, only those small businesses that paid employer premiums up to \$10,000 were eligible for the credit. In 2013, the cutoff in employer premiums is being raised to \$15,000 or less. The amount of the credit for those businesses will be the increase of the employer's premium paid in 2013 over those paid in 2012.

No application form is necessary. The credit is calculated automatically by the

CRA when the business files its 2013 T4 information return, and the amount of any credit will be automatically applied to the payroll account of any eligible employer.

Electronic Suppression of Sales Software Sanctions

The 2013 budget proposes to introduce new legislation that will introduce administrative monetary penalties and criminal offences to deter the use, possession, sale, and development of electronic suppression of sales software (ESS, or commonly known as "Zapper" software). ESS is software designed to hide sales to evade the payment of GST/HST and income tax.

New monetary penalties include the following:

- For use, possession, or acquisition of ESS software: \$5,000 on the first infraction, and \$50,000 on any subsequent infraction.
- For the manufacture, development, sale, possession for sale, offer for sale, or otherwise making available ESS software: \$10,000 on the first infraction, \$100,000 on any subsequent infraction.

New criminal offences include the following:

For use, possession, acquisition, manufacture, development, sale, possession for sale, offer for sale, or otherwise making available ESS software:

- on summary conviction, a fine of not less than \$10,000 and not more than \$500,000 or imprisonment for a term of not more than two years, or both; or
- on conviction by indictment, a fine of not less than \$50,000 and not more than \$1,000,000 or imprisonment for a term of not more than five years, or both.

These provisions are expected to take effect on the later of January 1, 2014 or when the new legislation receives royal assent.

Restricted Farm Losses

As a result of the Supreme Court of Canada case, *The Queen v. Craig* (2012 SCC 43), Revenue Canada proposes to change the rules respecting the deductibility of farm losses where farming is not a taxpayer's chief source of income. The budget also proposes to increase the maximum deduction that may be deducted from other income for restricted farm losses.

Where farming is not the taxpayer's main source of income, farm losses are generally allowed as a deduction against other income provided that the income produced from the other sources of income was subordinate to the income produced from farming. If the farming operation is still considered to be a viable business enterprise, and income produced from farming is less than an individual's other sources of income, restricted farm loss rules will apply to limit the amount of losses that can be applied against other income to a maximum limit of \$17,500. This is an increased limit up from \$8,750 which was in existence prior to March 20, 2013.

If there is a personal element to the farming operation (a hobby farm), or if it is not considered to be a viable business enterprise, no amount of losses will be allowed as a deduction from other income.

The proposed changes will still allow farming losses to be fully deductible in instances where a taxpayer's chief source of income is farming or where it is a combination of farming and other sources of income, and farming income makes up more than 50%.

Where the losses are deemed to be restricted farm losses, the new rules that will apply will allow a full deduction of the first \$2,500 plus 50% of the next \$30,000 to a maximum of \$32,500 of total losses.

This new measure applies to year-ends that end after March 20, 2013.

Scientific Research and Experimental Development (SR&ED) Incentive Program

The 2013 budget announced that the reporting requirements for the completion of form T661 – Scientific Research and Experimental Development (SR&ED) Expenditure Claim, are being enhanced so to require companies to provide prescribed information regarding tax preparers or consultants who assisted in the preparation of the SR&ED claim, or who have assisted the company with its SR&ED program. New provisions will introduce a penalty in respect of each SR&ED tax incentive claim if prescribed

information is incomplete, inaccurate, or missing.

New information that will be required is as follows:

- business number of each preparer;
- details of the billing arrangement;
- amount of fees paid; and
- whether the fees are contingent or not.

If no tax preparer (or an external consultant and such) assisted in the preparation of form T661, certification to that effect will be required.

The penalty that will be imposed is \$1,000 in respect of each claim which is found to be in contravention of the new rules.

These new rules are applicable on the later of January 1, 2014 or on the date of royal assent of the proposed provisions.

Foreign Income Verification Statements (Form T1135)

Individuals, corporations, and trusts that own, at any time during a year, a specified investment property with a total cost of \$100,000 or more, are required to complete and file a form T1135, Foreign Income Verification Statement, with their tax returns. The 2013 budget proposes to extend the reassessment period by 3 years in instances where such a requirement has not been met. The budget also proposes to enhance the form so as to collect more detailed information concerning various types of foreign property held.

You are required to report all Specified Foreign Property in accordance with

subsection 233.3(1) of the Income Tax Act (the Act), which includes:

- funds or intangible property (patents, copyrights, etc.) situated, deposited, or held outside Canada;
- tangible property situated outside of Canada;
- a share of the capital stock of a non-resident corporation held by the taxpayer or by an agent on behalf of the taxpayer;
- an interest in a non-resident trust that was acquired for consideration, other than an interest in a non-resident trust, that is a foreign affiliate for the purposes of section 233.4 of the Act;
- an interest in a partnership that holds a specified foreign property unless the partnership is required to file a T1135;
- an interest in, or right with respect to, an entity that is a non-resident;

- a property that is convertible into, exchangeable for, or confers a right to acquire a property that is specified foreign property;
- a debt owed by a non-resident, including government and corporate bonds, debentures, mortgages, and notes receivable;
- an interest in a foreign insurance policy; and
- precious metals, gold certificates, and futures contracts held outside Canada.

Specified foreign property does not include:

- a property used or held exclusively in carrying on an active business;
- a share of the capital stock or indebtedness of a foreign affiliate;
- an interest in a trust described in paragraph (a) or (b) of the definition of "exempt trust" in subsection 233.2(1) of the Act;
- a personal-use property as defined in section 54 of the Act; and
- an interest in, or a right to acquire, any of the above-noted excluded foreign property.

The new extended three-year assessment period will apply if:

- the taxpayer has failed to report income from a specified foreign property on their income tax return; and
- the Form T1135 was not filed on time by the taxpayer, or a specified foreign property was not identified, or was improperly identified, on the Form T1135.

The new assessment period will not apply in instances where:

- the correct income associated with each specified foreign property has been correctly reported; or
- the form T1135 has been completed accurately and filed on time.

Detailed information is now required for each specified foreign property, particularly:

- the name of the specific foreign institution or other entity holding funds outside of Canada;
- the specific country to which the property relates; and
- the income generated from the property.

At this time, form T1135 cannot be filed electronically and is required to be mailed separately to the Ottawa Technology Centre. Changes are underway that will allow the T1135 to be filed electronically at some point in the future.

Electronic Funds Transfers

Currently financial intermediaries are required to report electronic funds transfers of \$10,000 or more to the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). The budget proposes that starting in 2015 such transactions of \$10,000 or more must also be reported to the CRA.

The purpose of such reporting will be to aid the CRA in its administration of the *Income Tax Act*, *Excise Tax Act*, and the *Excise Act, 2001*.