

Draft select luxury items tax legislation released

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In this Update:

- Draft legislation for the proposed select luxury items tax (Luxury Tax) was released on March 11, 2022
- The Luxury Tax is expected to apply from September 1, 2022 onward to certain aircraft, vehicles, and vessels
- The Luxury Tax will be the lesser of (1) 10% of the total sales price, and (2) 20% of the amount by which the sales price exceeds \$100,000 (for vehicles and aircraft) or \$250,000 (for vessels)
- Detailed carve-outs are available, with different rules applying to aircraft, vehicles, and vessels

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On March 11, 2022, the federal government released [draft legislation](#) to implement a select luxury items tax (Luxury Tax). The Luxury Tax was originally proposed in the [2021 Federal Budget](#). As explained in Budget 2021, the Luxury Tax is only intended to apply to certain aircraft, vehicles, and vessels based on their price and use. Budget 2021 originally proposed a starting date of January 1, 2022 for the Luxury Tax. The draft legislation has, unsurprisingly, pushed that start date to September 1, 2022.

Comments from the public on the Luxury Tax are due by April 11, 2022.

Application of the Luxury Tax

The Luxury Tax is set out in a standalone statute (SLITA). It will generally apply to "subject items" sold and/or delivered, or imported, on or after September 1, 2022. Subject items are the following:

- [Subject aircraft](#): aeroplanes, gliders, and helicopters (as defined in the *Canadian Aviation Regulations*) manufactured after 2018 that have space for 0-39 passengers (whether or not such seating is actually installed). Aircraft intended for military or cargo transport purposes are excluded.
- [Subject vehicles](#): generally, four-wheeled motor vehicles manufactured after 2018 that are primarily intended to transport up to 10 people on streets and highways. Certain vehicles,

including ambulances, hearses, emergency response and police vehicles, and some motor homes, are excluded.

- Subject vessels: boats, ships, or crafts with any form of propulsion, as long as they solely or partly navigate in, on, through, or immediately above water that are intended for leisure, recreation, or sport activities, are manufactured after 2018, and have sleeping space for 0-100 non-crew passengers. Certain vessels, including floating homes, fishing boats, and ferries, are excluded.

An important exemption for subject aircraft and some subject vessels generally excludes those that are used at least 90% of the time (based on total duration of time used) for certain qualifying purposes, which are designed to encompass purposes other than leisure, recreation, sport, or other enjoyment of the owner or their guests. For aircraft, such qualifying purposes include operating as a commercial flight selling seats to passengers who deal at arm's length with the owner or operator, most other business purposes if there is a reasonable expectation of profit (marking a welcome change from the initial proposal in Budget 2021), emergency response (e.g. search and rescue, medical, and fire fighting), travel to specified remote communities, and flight training. The exemption does not include subject vehicles, and further does not include subject vessels with sleeping facilities. It is worth noting that there are rules providing for self-assessment applying to change in use should one cease to qualify for such exemptions.

Vendors who make a "qualifying sale" or "qualifying importation", generally meaning the sale or import of a subject item potentially subject to the Luxury Tax that has not previously been registered with the federal or provincial government, must register with the government. Effectively, this means dealers of luxury aircraft, vehicles, and vessels are required to register and file quarterly returns. Sales between registered vendors are not subject to the Luxury Tax. There is no minimum sales threshold below which it is not necessary to register.

Specific rules set out the circumstances in which various persons must pay the Luxury Tax. On the sale of a subject item, the Luxury Tax is generally imposed on the vendor except in certain specific circumstances. For example, when a car dealership (a registered vendor) sells a subject item to a customer (a non-registered person), when the dealership delivers the subject item to the customer, the dealership would be required to pay the Luxury Tax on that subject item. On the lease of a subject item, the Luxury Tax is generally imposed on the lessor. However, if the subject item being leased is a subject vehicle, the tax generally only applies at the time the vehicle is leased if the lessor is a registered vendor (otherwise tax would generally already have been paid on the purchase of the vehicle by the lessor). On importation of a subject item, the tax must be paid by the person liable to pay duty under the *Customs Act*; however, no tax on importation is payable by a registered vendor of the subject item.

Where the vendor is a governmental entity or agent (federal or provincial), an Indigenous governing body, or foreign diplomats already exempt from GST, the purchaser is responsible for paying any Luxury Tax owing.

Computation of the Luxury Tax

The Luxury Tax is applicable where the sales price exceeds \$100,000 in the case of subject aircraft and subject vehicles, and \$250,000 in the case of subject vessels. It is computed as the lesser of (1) 10% of the total "taxable amount" of a subject item, and (2) 20% of the amount by which the taxable amount of a subject item exceeds \$100,000 (for vehicles and aircraft) or \$250,000 (for vessels). The threshold for the application of the Luxury Tax is therefore \$100,000 for vehicles and aircraft, and \$250,000 for vessels.

Where subject items are sold, the taxable amount is generally the consideration (including certain taxes), plus the consideration for "improvements" provided by the vendor or a non-arm's length person. Where subject items are imported, the taxable amount is generally the value determined under the *Customs Act*, plus certain other duties and taxes. The Luxury Tax does not apply on top of HST/GST; rather, HST/GST will apply on the Luxury Tax.

If the taxable amount is above the relevant threshold, there may also be tax on the value of "improvements" to the subject item, meaning installing or affixing tangible personal property onto a subject item, or performing a physical service that modifies the subject item. Repairs, cleaning, and maintenance, including replacing damaged, defective, or non-functioning tangible property already part of the subject item, are excluded. For vehicles only, adding a child safety seating or restrain system, trailers or campers, or modifications for passengers using wheelchairs or drivers with disabilities, are also excluded. The tax on improvements generally applies if more than \$5,000 is paid for improvements within the "improvement period" (generally one year after the sale or day that the tax becomes payable, or until the subject item is sold to an arm's-length third party). In the case of a sale, the tax on improvements is payable by the purchaser.

A rebate is available for some subject items that are subsequently exported.

Administration of the Luxury Tax

The SLITA includes numerous references to regulations, suggesting the government may rely significantly on regulations to modify the scope and application of the tax. For example, the definitions of all three subject items both include and exclude prescribed items, meaning the government can pass regulations to both expand and restrict which aircraft, vehicles, and vessels are subject to the Luxury Tax.

The SLITA includes rules for assessments, objections, appeals, audit, collection, enforcement, penalties, offences, and all other aspects for the administration of the SLITA. It also contains an anti-avoidance provision similar to the general anti-avoidance rule of the *Income Tax Act* (Canada). A separate anti-avoidance provision applies to certain transactions between non-arm's length persons. This provision does not require that there be a misuse or abuse of the SLITA to apply.