

## Fall Economic Statement 2022

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The Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, tabled the [Fall Economic Statement 2022](#) on November 3, 2022. The Statement includes an announcement of the government's intention to introduce a new share buyback tax and additional details on certain investment tax credits proposed in [Budget 2022](#). The Statement also provides general economic and fiscal information and projections, as well as brief updates on some previously announced tax measures and international tax reform.

Of note, the Department of Finance concurrently issued a [press release](#) announcing revised draft legislation on the excessive interest and financing expenses limitation (EIFEL) rules first released on February 4, 2022. An Osler Update will be circulated separately reviewing the amended draft legislation. The press release also provides updates on the mandatory disclosure rules and new rules regarding income reporting by digital platforms. The following includes a brief summary of the tax measures introduced or addressed in the Statement.

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### Share buyback tax

A new 2% corporate-level tax on the net value of all types of share buybacks by a public corporation is proposed to be introduced effective as of January 1, 2024. Further details are expected to be provided in Budget 2023. The new tax is expected to generate \$2.1 billion over five years, while simultaneously encouraging corporations to reinvest profits into their employees and business instead of returning value to shareholders.

The Statement indicates that the share buyback tax is to be similar to a 1% stock buyback tax introduced by the United States in August 2022 through the *Inflation Reduction Act*. Notably, the U.S. tax reduces the base amount of buybacks subject to the tax by the value of any shares that are issued by the corporation during the same taxation year, including shares issued on the exercise of stock options.

The Statement includes few details on the Canadian share buyback tax, including the meaning of “net value”. If it follows the lead of the U.S., the tax will likely be directed at circumstances where there is net reduction in share capital and will apply to the difference between the value of shares repurchased and the value of shares issued.

### Tax credits for investments in clean technologies and clean hydrogen production

The Statement provides details for the new Clean Technology Investment Tax Credit and reaffirms a previously announced credit for clean hydrogen production. Both measures were first announced in Budget 2022. The Statement provides additional details on the scope of these credits and announces the start of a consultation process to solicit feedback from stakeholders on aspects of these two measures.

### Clean technology investment tax credit

This investment tax credit will be a refundable credit available for a percentage of the capital cost of qualifying equipment, such as certain electricity generation systems (including solar photovoltaic, small modular nuclear reactors, concentrated solar, wind and water); non-fossil fuel-based stationary electricity storage systems; low-carbon heat equipment; and industrial

zero-emission vehicles (plus related charging or refueling equipment).

The 30% credit rate will only be available if certain labour conditions — which have not yet been developed but are expected to include wages and apprenticeship opportunities — are met. If these requirements are not met, the credit will be at the lower rate of 20%.

Taxpayers will be able to access the full amount of both the Clean Technology Investment Tax Credit and the Atlantic Investment Tax Credit on capital expenditures for eligible property.

The Department of Finance will consult with a broad group of stakeholders on how to implement the labour conditions and for input on any other technologies (e.g., large-scale nuclear and large-scale hydroelectric) that should be made eligible for this credit, with the results of the consultation to be announced in Budget 2023.

This Clean Technology Investment Tax Credit is proposed to be available in respect of the capital cost of property acquired and that becomes available for use on or after Budget Day 2023 to 2031, and phased out from 2032 to 2035 based on when the property becomes available for use. The credit is only available for new property that has not been used for any purpose before its acquisition.

## Clean hydrogen investment tax credit

The Statement reaffirms the commitment made in Budget 2022 to establish an investment tax credit to support investments in clean hydrogen projects.

The credit will be refundable and based on the life cycle carbon intensity of hydrogen. The Statement notes that, in line with the U.S. proposal announced in the *Inflation Reduction Act*, the credit will be provided when emissions from the production of clean hydrogen are 4.0kg of CO<sub>2</sub>e or less per kg of hydrogen, while the highest level of support would be provided where emissions are 0.45kg of CO<sub>2</sub>e or less per kg of hydrogen. As with the Clean Technology Investment Tax Credit, the level of support will also be dependent on satisfying certain labour protection requirements.

The credit rate will be at least 40% if the project satisfies the lowest carbon intensity tier and the labour protection requirements. For those that do not satisfy the labour protection requirements, the credit rate will be reduced by 10%.

A consultation process will be launched in the coming weeks to seek input on the parameters of this credit, including the appropriate carbon intensity-based system and the level of support needed for different production pathways in Canada.

The credit will be available for eligible investments made from Budget Day 2023 to 2030, after which it will be phased out.

## Remaining competitive

The Statement notes that both of the new investment tax credits are in response to the U.S. *Inflation Reduction Act*, which introduced similar measures, so as to allow Canada to remain competitive. In that regard, Canada appears to acknowledge that existing and proposed incentives to support clean energy are not competitive with what the U.S. has offered under the *Inflation Reduction Act*.

Canada will need to do even more to secure our competitive advantage and continue creating opportunities for Canadian workers. This challenge has become even more pressing with the United States' recent passage of the *Inflation Reduction Act (IRA)*.

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But while the IRA will undoubtedly accelerate the ongoing transition to a net-zero North American economy, it also offers enormous financial supports to firms that locate their production in the United States—from electric vehicle battery production, to hydrogen, to biofuels, and beyond. Without new measures to keep pace with the IRA, Canada risks being left behind.

Given the government's desire to remain competitive for capital to support the growth of the Canadian clean energy sector, we expect that stakeholders will have a meaningful opportunity to define the scope, design and value of these two credits through the consultation process.

## International tax reform update

The government further confirmed its commitment to implement Pillar One and Pillar Two, which were approved by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting on October 8, 2021. The government previously confirmed its commitment in Budget 2022.

With respect to Pillar One, the government states that "significant progress" has been made in developing the technical rules and expresses the hope that the Pillar One rules would be agreed to and adopted in the first half of 2023 so that participating countries would be able to implement them with effective dates starting in 2024. This continued attention to the timing of Pillar One adoption suggests the government is closely monitoring the Pillar One process so as to avoid having to rely on its unilateral digital services tax that was announced on December 14, 2021. Notwithstanding the government's optimism on Pillar One, its timely implementation is doubtful without further support in the United States and elsewhere.

With respect to Pillar Two, the government reiterated its plans to implement Pillar Two but did not announce whether it will delay the implementation of Pillar Two rules by one year, from 2023 to 2024, in line with announcements made by many other countries.

## Revised EIFEL legislation

In a press release issued at the same time as the Statement, the Department of Finance provided several updates in respect of the draft EIFEL legislation released on February 4, 2022. First, it released amendments to the draft legislation and explanatory notes based on submissions responding to the original draft. Second, the EIFEL rules are now proposed to apply in respect of taxation years beginning on or after October 1, 2023, rather than January 1, 2023, as initially proposed. Finally, a new public consultation period for the revised draft legislation will run until January 6, 2023.

Further details of the amendments to the draft legislation will follow in a separate Osler Update.

## Mandatory disclosure rules update

The Department of Finance press release notes that the effective date for the mandatory disclosure rules will be delayed for reportable and notifiable transactions to the date the implementing bill receives Royal Assent. This delay is explained to be required in order to review submissions in respect of the revised draft legislation for the mandatory disclosure rules released on August 9, 2022. The revised draft legislation had proposed an effective date of January 1, 2023, for reportable and notifiable transactions. The effective date for the rules regarding reportable uncertain tax treatments remains taxation years beginning after 2022 (other than penalties, which will also be effective on Royal Assent).

## Income reporting by digital platforms

The Organisation for Economic Co-operation and Development (OECD) released *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* on July 3, 2020. Concurrent with the release of the Statement, the Department of Finance released draft legislation to implement these model rules domestically. A public consultation period for the draft legislation will run until January 6, 2023.

## New minimum tax regime on high-income Canadians

The Statement briefly notes that the government remains committed to considering a new minimum tax regime on high-income Canadians and states that further details will be provided in Budget 2023.

## Confirmation of intention to proceed

The Statement reaffirms the federal government's intention to proceed with numerous previously announced tax measures, including

- legislative proposals released on August 9, 2022, including with respect to the following measures:
  - borrowing by defined benefit pension plans
  - fixing contribution errors in defined contribution pension plans
  - the Canada Recovery Dividend and the additional tax on banks and life insurers
  - the investment tax credit for carbon capture, utilization and storage
  - the critical mineral exploration tax credit
  - eliminating flow-through shares for oil, gas and coal activities
  - International Financial Reporting Standards (IFRS 17)
  - hedging and short selling by Canadian financial institutions
  - the application of the General Anti-Avoidance Rule to tax attributes
  - substantive Canadian-controlled private corporations
  - interest coupon stripping
  - enhanced reporting requirements for trusts
  - mandatory disclosure rules
  - the avoidance of tax debts

- the electronic filing and certification of tax and information returns
- other technical amendments to the *Income Tax Act* and *Income Tax Regulations*  
proposed in the August 9 release
- legislative proposals released on April 29, 2022 with respect to hybrid mismatch arrangements
- tax measures and consultations announced in Budget 2022 for which legislative proposals have not yet been released
- legislative proposals released on February 4, 2022, including with respect to the following measures:
  - allocation to redeemers methodology for mutual fund trusts
  - taxes applicable to registered investments
  - audit authorities
  - interest deductibility limits
  - crypto asset mining
- legislative proposals tabled in a Notice of Ways and Means Motion on December 14, 2021, to introduce the *Digital Services Tax Act*
- the transfer pricing consultation announced in Budget 2021
- the anti-avoidance rules consultation announced on November 30, 2020, in the Fall Economic Statement and updated in a consultation paper released on August 9, 2022
- measures confirmed in Budget 2016 relating to the Goods and Services Tax/Harmonized Sales Tax joint venture election

If you have any questions or require additional analysis on the Fall Economic Statement 2022, please contact any member of our National Tax Department.