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THE April 27, 2017 ONTARIO BUDGET

This issue of the Legal Business Report provides current information to the clients of Alpert Law Firm Professional Corporation on important tax changes outlined in the April 27, 2017 Ontario Budget. Although these proposals are likely to be implemented in their present form, these provisions are not yet law and the final legislation should be reviewed before initiating any transaction. It is important to note that this Legal Business Report only contains Budget highlights, and the 2017 Ontario Budget should be consulted for the full list of tax implications arising from the provincial Budget.

Alpert Law Firm Professional Corporation is experienced in providing legal services to its clients in corporate-commercial transactions, tax and estate planning matters, wealth preservation, tax dispute resolution, tax litigation and estate administration. Howard Alpert has been certified by the Law Society as a Specialist in Estates and Trusts Law, and also as a Specialist in Corporate and Commercial Law.

A. MEASURES AFFECTING BUSINESSES

1. Corporate Income Tax Rates

The 2017 Ontario Budget ("2017 Budget") proposes no changes to the corporate income tax rates, which are as follows for the 2017 taxation year:

	Federal	**Ontario**	**Combined Federal and Ontario**
General	15%	11.5%	26.5%
M&P	15%	10%	25%
Active Business Income (CCPCs)	10.5%	4.5%	15%
Investment income (CCPCs)	38.67%	11.5%	50.17%

2. Small Business Deduction Limit

In 2016, the federal government introduced rules to prevent the multiplication of the small business deduction through certain partnership and corporate structures. The 2017 Budget announces that the Ontario government will parallel the 2016 federal

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changes and reduce a company's Ontario small business deduction limit by the same amount the federal business limit is reduced under the applicable circumstances. For details on the federal measures implemented to close small business deduction loopholes, see Alpert Law Firm's 2016 Federal Budget Summary.

3. Employer Health Tax ("EHT") Avoidance

The EHT is a provincial-level tax that is levied on an employer's annual gross payroll cost. The first $450,000 of gross payroll cost of an associated group of employers is exempt from EHT. The 2017 Budget proposes to eliminate this exemption for any employer that is a designated member of a partnership, as defined in the federal *Income Tax Act*. Generally, a designated member of a partnership is a Canadian-controlled private corporation ("CCPC") where: (i) a shareholder of the CCPC, instead of the CCPC itself, is set up as a member of a partnership; and (ii) the partnership, in turn, pays the CCPC a fee for its services as an independent contractor. This structure allows the CCPC to circumvent the associated corporations rules and claim the full amount of the EHT exemption. The proposed measure is intended to parallel an amendment introduced in the 2016 Federal Budget to prevent the multiplication of the small business deduction. This change will be effective on a prescribed date no earlier than January 1, 2018, to provide the opportunity for feedback and consultation.

The Province will also review other structures that directly or indirectly avoid the EHT. The objective is to ensure that the EHT exemption is targeted at smaller employers only. Public input will be sought before any changes are made.

B. MEASURES AFFECTING INDIVIDUALS

1. Personal Income Tax Rates

The 2017 Budget proposes no changes to the personal income tax ("PIT") rates. The top combined federal and provincial PIT rates (i.e., the rates on income over $220,000) are as follows:

Personal Tax Rates	2017
Ordinary Income	53.53%
Capital Gains	26.76%
Eligible Canadian Dividends	39.34%
Non-eligible Canadian Dividends	45.30%

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2. Land Transfer Tax Changes

(a) General Rates

The Province of Ontario imposes a land transfer tax on certain conveyances of land in Ontario. This tax is generally payable by the transferee and is levied upon the value of consideration passing to the grantor or transferor pursuant to the conveyance.

Subsection 2(1) of the Land Transfer Tax Act of Ontario was amended effective January 1, 2017, changing the rates as follows: the rate is 0.5% for the amount of the purchase price up to $55,000, plus 1% of the amount between $55,000 and $250,000, plus 1.5% of the amount of the purchase price between $250,000 and $400,000, plus 2% of the amount of the purchase price over $400,000. For residential properties including at least one, but not more than two single family residences an additional tax bracket was added increasing the rate to 2.5% on the amount of the purchase price over $2,000,000.

(b) Non-Resident Speculation Tax ("NRST")

The Government of Ontario has introduced the NRST, which is a 15% tax imposed in addition to the general land transfer tax on purchases or acquisitions of interests in residential properties in the Greater Golden Horseshoe by non-residents. The tax applies to both registered transfers and unregistered dispositions of beneficial interest in the affected properties. The Greater Golden Horseshoe includes the following geographic areas: Brant, Dufferin, Durham, Haldimand, Halton, Hamilton, Kawartha Lakes, Niagara, Northumberland, Peel, Peterborough, Simcoe, Toronto, Waterloo, Wellington and York. The NRST is effective as of April 21, 2017. Binding purchase and sale agreements signed before April 21, 2017 are not subject to the tax.

The NRST applies to foreign entities and taxable trustees. Foreign entities consist of foreign nationals and foreign corporations. For the purposes of the NRST, a foreign national is an individual who is not a Canadian citizen or permanent resident of Canada. A foreign corporation is a corporation that is either (i) not incorporated in Canada; or (ii) incorporated in Canada but is controlled in whole or in part, directly or indirectly in any manner whatever, by a foreign entity. A taxable trustee is a trustee that is (i) a foreign entity holding title in trust for beneficiaries; or (ii) a Canadian citizen, permanent resident of Canada, or a Canadian corporation holding title in trust for foreign entity beneficiaries. If a transfer of property is made to more than one transferee, the NRST will apply to the full value of the property if any one of the transferees is a foreign entity or taxable trustee. In these scenarios, each transferee is jointly and severally liable for any NRST payable, even if they are residents of Canada. The NRST does not apply when a person purchases or acquires property as a trustee of a mutual fund trust, real estate investment trust or specified investment flow-through trust.

The NRST is imposed on transfers of land containing at least one and not more than six single family residences. Examples of single family residences include detached and semi-detached houses, townhouses, and condominium units. The NRST will not apply to other types of land such as multi-residential apartment buildings with more than six units, agricultural land or commercial land. If the land transferred includes both residential property and another type of property, the NRST applies only on the portion of the value of the consideration attributable to the residential property.

All transfers registered on or after April 21, 2017 must contain a statement expressly acknowledging that consideration has been given to the application of the NRST. Taxpayers reporting unregistered dispositions of land to the Ministry of Finance must also expressly acknowledge in a cover letter that consideration has been given to the application of the NRST and whether or not it is payable on the reported transaction.

EXEMPTIONS

Foreign nationals are exempt from the NRST if they are:

(i) Confirmed under the Ontario Immigrant Nominee Program (“nominee”) at the time of the purchase or acquisition and the property is used as the foreign national’s principal residence;

(ii) Conferred the status of “convention refugee” or “person in need of protection” (“refugee”) under the *Immigration and Refugee Protection Act* at the time of the purchase or acquisition; or

(iii) A spouse of a Canadian citizen, permanent resident of Canada, “nominee”, or “refugee”, and the foreign national jointly purchased the residential property with that spouse. However, the exemption does not apply if the foreign national and his/her spouse purchased the property with a foreign third party.

REBATES

Foreign nationals may receive a rebate of the NRST with interest if:

(i) They become a Canadian citizen or permanent resident of Canada within four years of the date of purchase or acquisition;

(ii) They are enrolled as a full-time student for at least two years in an Ontario post-secondary institution from the date of purchase or acquisition; or

(iii) They have legally worked full-time in Ontario for a continuous period of one year since the date of purchase or acquisition.

In order to be eligible for the rebates, the foreign national must exclusively hold the property, or hold the property exclusively with his/her spouse. The property also must have been used as the foreign national's principal residence for the duration of relevant period.

(c) Real Estate Speculators

The current assessing practice of the Ministry of Finance allows a real estate speculator to profit from rising house prices and avoid paying land transfer tax. This situation occurs when a speculator enters into an agreement of purchase and sale, but before the closing date, assigns the agreement to a third party at a profit in accordance with paragraph 3(1)(g) of the Act. On closing, the vendor conveys the land directly to the third party for the price specified in the agreement and the third party pays the speculator the amount agreed for the assignment.

In May 2006, the Ministry of Finance issued a guide titled "Land Transfer Tax and the Treatment of Unregistered Dispositions of a Beneficial Interest in Land". Pursuant to the Ministry's guide, the speculator's transaction is never "complete". As a result, a speculator is not required to pay any land transfer tax on the transaction. "Completion" of a transaction under paragraph 3(1)(g) of the Act occurs when the value of consideration in the agreement is satisfied. In most cases, this is when the purchaser obtains possession of the land, thereby crystallizing the liability for the value of consideration. The tax liability falls upon the third party at the time the conveyance is registered.

The Government of Ontario has announced its intention to crack down on assignment clauses and possibly tax the assignee for the total consideration paid to the seller and the speculator. The 2017 Ontario Budget states that additional disclosure requirements on the assignments of property transfer agreements will be introduced in order to ensure that the correct amount of tax is paid on these types of transactions. At the time the transfer is registered, purchasers must declare whether they entered the agreement by way of assignment or another similar arrangement. Any consideration for the assignment would then need to be included as part of the value of the consideration for the land used to calculate the land transfer tax amount. Details about these changes have not been unveiled and the stricter information requirements are not yet in effect. However, this is subject to change at any time and no actions should be taken without first consulting with your professional advisers.

(d) First Time Home Purchases

The Land Transfer Tax Act of Ontario provides that under certain conditions, first time purchasers of both newly constructed homes and re-sale homes may be eligible for a refund of all or part of the tax payable on their acquisitions. Commencing January 1, 2017 no land transfer tax would be payable by qualifying first-time purchasers on the first $368,000 of the value of the consideration for eligible homes. First-time purchasers of homes greater than $368,000 would receive a maximum refund of $4000.

Only an individual who is at least 18 years of age, has not owned an interest in a home anywhere in the world and whose spouse has not owned an interest in a home anywhere in the world while he or she was a spouse of the individual, qualify as first-time purchasers. The meaning of “spouse” is defined in section 29 of the *Family Law Act*. The home must be the purchaser’s principal residence and must be occupied within 9 months of the date of the conveyance. In addition, the purchaser cannot have previously received an Ontario Home Ownership Savings Plan (OHOSP)-based refund of land transfer tax. Beginning January 1, 2017 eligibility for the first-time homebuyers refund program is restricted to Canadian citizens and permanent residents of Canada. As a transitional measure, purchasers who entered into agreements of purchase and sale on or before November 14, 2016, would remain eligible for the refund regardless of citizenship or residency status. Purchasers who would otherwise be eligible for a refund, but who are not Canadian citizens or permanent residents of Canada when the transaction closes, have 18 months following registration to become eligible. Upon obtaining Canadian citizenship or permanent resident status, these purchasers may apply for the refund within the 18-month period following registration of the conveyance or the date the unregistered disposition occurs.

(e) Municipal Land Transfer Tax Act (“MLTT”)

The City of Toronto imposes an additional Municipal Land Transfer Tax Act over and above the provincial land transfer tax for all properties sold in the City of Toronto. The Municipal Land Transfer Tax Act, as amended effective February 15, 2017, follows an identical rate scheme as the Land Transfer Tax Act of Ontario. For all properties purchased in the City of Toronto the following rates apply: the rate is 0.5% for the amount of the purchase price up to $55,000, plus 1% of the amount between $55,000 and $250,000, plus 1.5% of the amount of the purchase price between $250,000 and $400,000, plus 2% of the amount of the purchase price over $400,000. For residential properties including at least one, but not more than two single family residences an additional tax bracket was added increasing the rate to 2.5% on the amount of the purchase price over $2,000,000.

The Municipal Land Transfer Tax Act provides an exemption for first-time home buyers in addition to the provincial rebate. Those who are eligible for the provincial rebate are also eligible for the Municipal Land Transfer Tax Act rebate. First-time buyers in Toronto for new and re-sale properties will receive a rebate of up to $4,475, which means all homes purchased for up to $400,000 will be exempt from the Municipal Land Transfer Tax Act. The value of the rebate is exempt at the time of registration. First-time buyers who purchase homes for over $400,000 in Toronto must pay the balance of the Municipal Land Transfer Tax Act above the $4,475 exemption. As of March 17, 2017, the eligibility requirements for the first time purchaser rebate are harmonized with those under the Land Transfer Tax Act of Ontario.

3. Paralleling Federal Measures

(a) Medical Expense Tax Credit

The 2017 Federal Budget proposed to clarify the application of the federal medical expense tax credit so that individuals who require medical intervention to conceive a child are eligible to claim the same expenses that would be eligible for individuals on account of medical infertility. The 2017 Budget proposes to apply the same changes to the Ontario medical expense tax credit, effective for 2017 and subsequent taxation years. Ontarians will benefit by being eligible to claim the credit in respect of fertility treatments that are not otherwise covered under OHIP.

(b) Consolidation of Caregiver Credits

The 2017 Federal Budget proposed to simplify the existing caregiver tax credits system by replacing the infirm dependant credit, the caregiver credit, and the family caregiver credit with a new consolidated Canada Caregiver Credit. To parallel the federal changes, the 2017 Budget proposes to replace the provincial caregiver credit and infirm dependent tax credit with a new Ontario Caregiver Tax Credit ("OCTC").

The OCTC will be a non-refundable tax credit of up to $4,794, computed at the rate of 5.05%. Similar to the new Canada Caregiver Credit, the OCTC will be available in respect of relatives who are infirm dependants, but is not available in respect of non-infirm seniors who reside with their adult children. Dependants will not be required to live with the caregiver to claim the credit. The OCTC will be reduced dollar-for-dollar by the dependant's net income over $16,401. Both the credit amount and the net income threshold will be indexed to inflation after 2017.

4. Ontario Seniors' Public Transit Tax Credit

The 2017 Budget proposes a new Ontario Seniors' Public Transit Tax Credit for all Ontarians aged 65 or older, available in respect of eligible public transit costs incurred as of July 1, 2017. The credit will be refundable at the rate of 15%. Eligible Ontario seniors can claim up to $3,000 in eligible public transit expenses and receive up to $450 each year.

5. Multijurisdictional Tax Filers

The 2017 Budget amends the way the provincial surtax and the Ontario Tax Reduction are calculated for Ontario residents who pay tax to another province, and for non-residents of Ontario who pay tax to Ontario. The purpose of the amendment is to achieve consistency between treatment for multijurisdictional filers and other filers, and to ensure the amount of surtax and reduction for these multijurisdictional filers properly reflect their total taxable income.

The 2017 Budget proposes that the surtax will be calculated based on the total amount of Ontario tax on taxable income. The total amount of tax payable, including the surtax, will then be prorated based on the percentage of income allocated to Ontario. Similarly, the Ontario Tax Reduction amounts will also be prorated based on the percentage of income allocated to Ontario. These changes will be effective for taxation years ending after December 31, 2016.

C. OTHER MEASURES

1. Granting Municipalities the Authority to Levy a Hotel Tax

The *City of Toronto Act, 2006* ("COTA") gives the City of Toronto authority to levy its own taxes, with the exception of its own hotel tax. The 2017 Budget proposes to amend the COTA to eliminate this exclusion, and to extend the authority to introduce a hotel tax to other single-tier and lower-tier municipalities as well. Under the extended authority, all municipalities that adopt the hotel tax and have an existing Destination Marketing Fee ("DMF") program in place would be required to share their hotel tax revenue with the appropriate not-for-profit tourism organization in an amount that matches the total revenue generated by the existing DMF program. The DMF is a fee levied by hotels and remitted to non-profit agencies for the exclusive purpose of promoting tourism. For municipalities that do not have a DMF program, at least 50% of their hotel tax revenue will be shared with a Regional Tourism Organization or a not-for-profit tourism organization.

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2. Tax System Review

In an effort to build on existing initiatives that include combating the underground economy and ensuring the ongoing integrity of the tax system, Ontario will conduct a policy, legislative and administrative review of all taxes, including taxes that are shared with the federal government. The purpose of this review is to identify and eliminate loopholes, further strengthen administration of existing tax laws and enhance partnerships with other government bodies, including the Canada Revenue Agency. A review of revenues from government business enterprises will also be undertaken. In addition, the 2017 Budget announced that the Province will work closely with the federal government in reviewing tax planning strategies involving private companies and their shareholders, to identify and address what it perceives to be "tax loopholes and sophisticated tax planning schemes". Further details on both the federal and Ontario reviews will be forthcoming.

3. Increasing Tobacco Taxes

The 2017 Budget proposes to increase tobacco tax rates by $10 per carton of 200 cigarettes over the next three years, in order to bring Ontario's tobacco tax rates closer to the national average. The new increases announced will replace the inflation-based tobacco tax increases proposed in the 2016 Ontario Budget. The first change, effective as of April 28, 2017, will increase tobacco tax rates from 15.475 cents to 16.475 cents per cigarette or gram of tobacco products other than cigars. In 2018 and 2019, taxes will be further increased by an additional 2 cents per cigarette or gram of tobacco each year. Wholesalers of tobacco products that do not collect tobacco tax are required to take an inventory of all tobacco products (except cigars) that they hold at the end of day on April 27, 2017, and remit the additional tax on the inventory.

4. Supporting Renewable Biodiesel in the Coloured Fuel Market

The 2017 Budget proposes changes to allow biodiesel, which is a renewable alternative to fossil fuel, to be more widely available as part of Ontario's tax-exempt coloured fuel program. Changes to the *Fuel Tax Act* have been proposed to add a new category of registered dyers that will be allowed to dye biodiesel that has not been blended, mixed or combined with any other type of grade of fuel. Coloured fuel purchased from registered dyers is tax-exempt under the *Fuel Tax* Act. The new category of registered dyers will also be exempt from the fuel transportation requirements currently imposed on all registered dyers, allowing more companies to offer coloured biodiesel products.

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