

THE MARCH 28, 2018 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 March 28, 2018 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 2018 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

1. The 2018 Ontario Budget ("2018 Budget") proposes no changes to the Federal General and Manufacturing and Processing (M&P) corporate tax rates, which remain as follows for the 2018-2019 taxation years:

	Federal	Ontario	Combined Federal and Ontario
General	15%	11.5%	26.5%
M&P	15%	10%	25%

2. The Federal small business income tax rate ("SBI Tax Rate") will be reduced from its current 10.5% to 10% on January 1, 2018 and 9% on January 1, 2019. This rate applies only to the first \$500,000 of active business income earned by a Canadian-controlled private corporations ("CCPC") per year. The Ontario government has previously stated that it will be reducing the small business income tax rate to 3.5%. The reduction in the SBI Tax Rate will be prorated for any non-calendar taxation years straddling the 2018 and 2019 calendar years. The combined SBI Tax Rate applicable to Ontario CCPCs for the 2018-2019 taxation years is as follows:

	Taxation Year Ending	Federal	Ontario	Combined Rate
Small Business Income Tax Rate (CCPCs)	Dec 31, 2018	10%	3.5%	13.5%
	Dec 31, 2019	9%	3.5%	12.5%

2. Small Business Deduction (SBD) Limit

The annual business limit relating to the small business income (“SBI”) tax rate for a Canadian controlled private corporation (“CCPC”) and its associated corporations is currently \$500,000 pursuant to subsection 125(2) of the *Income Tax Act* (“ITA”). The 2018 Federal Budget will reduce the \$500,000 annual business limit on a straight line basis of \$5 for every \$1 of adjusted aggregate investment income (“AII”) between \$50,000 and \$150,000.

For example, a CCPC with \$100,000 of annual AII would have its annual business limit reduced by \$250,000 from \$500,000 and assuming there are no other reductions, the CCPC would have \$250,000 of earnings eligible for the SBI tax rate. The SBI tax rate will be unavailable to a CCPC if its annual AII exceeds \$150,000.

The Ontario Budget will parallel the 2018 Federal Budget, which discontinues the SBD limit for CCPCs that earn between \$50,000 and \$150,000 in passive investment income in a taxation year. This change will be effective for taxation years beginning after 2018.

3. Ontario Innovation Tax Credit

The Ontario Innovation Tax Credit is a 8% refundable tax credit for small and medium-sized businesses on eligible Research and Development expenditures. The 2018 Ontario Budget proposes to increase the refundable rate for companies who qualify for the credit, depending on the company’s ratio of R&D expenditures to gross revenues. The ratios and corresponding tax credit percentages are as follows:

- 10% or less – the corporations will remain eligible for the 8% credit rate

- Between 10% and 20% - the rate increases from 8% to 12% on a straight-line basis as the company's ratio of R&D expenditures to gross revenues increases from 10% to 20%
- 20% and above – the company will be eligible for a 12% credit rate

The change applies to eligible R&D expenditures incurred after March 27, 2018. The enhanced rates are prorated for taxation years straddling March 28, 2018.

4. Ontario Research and Development Tax Credit

The Ontario Research and Development Tax Credit is a 3.5% non-refundable tax credit on eligible R&D expenditures. The 2018 Ontario Budget proposes to increase this rate to 5.5% for companies that qualify for the ORDTC and incur expenditures over \$1,000,000 in a taxation year. The \$1,000,000 threshold will be pro-rated for short taxation years. The 5.5% enhanced tax credit will not be available for businesses where eligible R&D expenditures in the current taxation year are less than 90% of eligible R&D expenditures in the prior taxation year. The enhanced credit will be prorated for taxation years straddling March 28, 2018.

5. Employer Health Tax (EHT)

The Employer Health Tax (EHT) exemption relieves certain Ontario employers from having to pay the EHT. The exception is available to employers who would not qualify for small business relief through the Federal Small Business Deduction (SBD). Ontario proposes to follow the eligibility criteria for the Federal SBD for the EHT exemption; consequently, the exemption will only be available for individuals, charities, not-for-profit organizations, private trusts and partnerships, and CCPCs. In addition, the Ontario Budget proposes to incorporate Federal anti-avoidance rules related to the multiplication of the SBD into the Employer Health Tax Act. If enacted, the proposed changes will be effective as of January 1, 2019. The government will seek public comment on the proposed anti-avoidance changes before introducing legislation.

6. Ontario Interactive Digital Media Tax Credit (OIDMTC)

The Ontario Budget proposes to extend eligibility for the Ontario Interactive Digital Media Tax Credit to film and television websites purchased or licensed by a broadcaster and embedded in the broadcaster's website. This change will only apply to websites that host content related to film, television, or internet productions that have not received either a certificate of eligibility or letter of ineligibility before November 1, 2017.

7. Closing Tax Loopholes

The 2018 Federal Budget continues the Government's objective of shutting down transactions that allow a taxpayer to receive dividends on Canadian shares where the risk of loss or opportunity to profit on shares accrues to someone else. As a result, the Federal Budget proposes to expand the existing rules for synthetic equity arrangements and securities lending arrangements to prevent taxpayers from realizing artificial tax losses through the use of equity-based financial arrangements.

The 2018 Federal Budget also proposes an amendment to broaden the definition of "securities lending arrangements" in the *Income Tax Act* to ensure that taxpayers that enter into arrangements that are substantially similar to those that fall within that definition are subject to several provisions normally applicable to "securities lending arrangements."

The Federal Budget also proposes to amend the rules which apply to the deductibility of dividend compensation payments made under a securities lending arrangement by allowing a taxpayer that is a registered securities dealer to deduct up to two-thirds of any dividend compensation payment. The proposed amendments will apply to dividend compensation payments that are made on or after February 27, 2018, unless the securities lending or repurchase arrangement was in place before February 27, 2018, in which case the arrangements will apply to dividend compensation payments that are made after September 2018.

The 2018 Ontario Budget will parallel the Federal Budget measures described above.

B. MEASURES AFFECTING INDIVIDUALS

1. Personal Income Tax Rates

Ontario currently has five personal income tax rates plus two surtaxes calculated separately. The Ontario Budget proposes to replace these surtaxes and rates with seven personal income tax rates applied directly to taxable income. The following tables indicate the current and proposed income tax rates and brackets for 2018:

Current Ontario Personal Income Tax Rates and Brackets for 2018	
Rates (including impact of surtax)	Brackets
5.05%	Up to \$42,960
9.15-14.27%	42,960 – 85,923
17.41%	85,923 – 150,000
18.97%	150,000 – 220,000
20.53%	Over 220,000

Proposed Ontario Personal Income Tax Rates and Brackets for 2018	
Rates (surtax eliminated)	Brackets
5.05%	Up to \$42,960
9.15%	42,960 – 71,500
11.00%	71,500 – 82,000
13.50%	82,000 – 92,000
17.50%	92,000 – 150,000
19.00%	150,000 – 220,000
20.53%	Over 220,000

The proposed changes to personal income tax rates and brackets and the elimination of the surtax will not affect the top marginal income tax rates. Effective January 1, 2018 these rates will remain as follows:

Personal Combined Federal/Provincial Top Marginal Rates for 2018	
Ordinary Income	53.53%
Capital Gains	26.76%
Eligible Canadian Dividends	39.34%
Non-eligible Canadian Dividends	46.84%

2. Charitable Donation Tax Credit

The Ontario Budget proposes to increase the charitable donations tax credit rate that applies for eligible donations over \$200, from 11.16% to 17.5%. A rate of 5.05% will continue to apply for donations under \$200. This change will be effective for the 2018 taxation year.

3. Income Sprinkling

Income sprinkling enables a family to reduce its cumulative tax burden, as income which would have otherwise been taxed at a high marginal rate is instead taxed at a lower marginal rate. On December 13, 2017 the Ministry of Finance released a set of proposals aimed at reducing or eliminating the ability of incorporated taxpayers to engage in income sprinkling by expanding the TOSI Rules under Section 120.4 of the Act (“Proposals”). The final versions of these amendments have been confirmed with the 2018 Federal Budget.

Ontario will parallel the Federal proposals to limit income sprinkling using private corporations, which will be effective for 2018 and future taxation years, so that Ontario personal tax at the top rate of 20.53% will apply to “split income” of an adult family members.

C. LAND TRANSFER TAX MEASURES

The Ontario Budget intends to make new regulations that will allow land transfer tax arising from certain unregistered dispositions of a beneficial interest in land through certain types of partnerships and trusts to be payable 30 days after the end of the calendar quarter which the disposition occurred, instead of within 30 days of the disposition. Moreover, the Ministry of Finance plans to post guidance on the minimum information and documents that an authorized representative of a partnership or trust should provide when submitting a consolidated quarterly filing

D. PROPERTY TAX MEASURES

1. Non-Profit Child Care Services in Schools

To ensure that non-profit child care services do not alter the tax-exempt status of community properties, the *Assessment Act* will be amended to provide a tax exemption to non-profit child care facilities that lease space in otherwise tax-exempt properties.

2. Railway Right-of-Way Property Taxation

The Ontario Budget will give municipalities the option to increase property tax rates per acre on high-tonnage rail lines based on a new adjusted tax rate schedule. Details of the tax rate schedule will be communicated to municipalities and the rail industry in the spring.

3. Property Value Assessments

The Ontario Budget intends to make it easier for property owners to comply with the MPAC's requests for information, and ensure that property owners who comply with the requests are not prejudiced during the valuation and appeal process. The Ontario Budget wishes to achieve this by: reviewing the format of the MPAC's requests and introducing amendments in the fall of 2018 that provide a framework for addressing non-compliance.

4. Education Property Taxes

Ontario mirrors any municipal property tax decisions related to vacancy programs for the education property taxes, which has resulted in different treatments of education property taxes across the province. Consequently, beginning in 2019, the Ontario Budget will align the education property tax portion of the vacancy programs with changes made by municipalities. This is intended to ensure greater consistency across the province.

5. Cultural Spaces in Toronto

The Ontario Budget will provide the City of Toronto the authority to design and administer a new program which will provide property tax reductions of up to 50% to qualifying facilities that offer affordable spaces for the arts and culture sector.

D. OTHER TAX MEASURES

1. Free Prescription Drugs for Everyone Over 65

The Ontario Budget will make prescriptions completely free for everyone 65 and older.

2. Free Childcare

The Ontario Budget will introduce free pre-school child care for children aged two-and-a-half until they are eligible for kindergarten.

3. New Ontario Drug and Dental Program

The Ontario Budget will introduce the new Ontario Drug and Dental Program, which reimburses 80 percent of eligible prescription drug and dental expenses per year, up to a maximum of \$400 for a single person, \$600 for a couple, and \$700 for a family

of four with two children. This measure will be limited to those who do not have workplace health benefits or are not covered by OHIP+ or other government programs.

4. **Seniors Healthy Home Program**

The Ontario Budget will provide a benefit of up to \$750 annually for eligible households led by seniors 75 and over to assist them in living independently.

5. **Free Tuition**

The Ontario Budget will make tuition free for those earning up to \$90,000, and students from families who earn up to \$175,000 are eligible for financial aid.

6. **Minimum Wage Increase**

The Ontario Budget will increase the minimum wage to \$15 per hour, effective January 1, 2019.

7. **Underground Economy**

The Ontario Budget intends to require prescribed businesses to update their electronic cash register systems to meet legal requirements that will stop the ability to manipulate sales transaction information.

8. **Cannabis Taxation**

The Ontario Budget intends to enter into an agreement with the Federal Government in which Ontario will receive 75% of the federal excise duty collected on cannabis intended for sale in the province.

9. **Tobacco Taxation**

Ontario's tobacco tax will increase from 16.475 cents to 18.475 cents per cigarette and per gram of tobacco products other than cigars. This measure will be effective starting March 29, 2018.

This issue of the Legal Business Report is designed to provide information of a general nature only and is not intended to provide professional legal advice. The information contained in this Legal Business Report should not be acted upon without further consultation with professional advisers.

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