



# Federal Budget 2010

On March 4, 2010, the Honourable Jim Flaherty presented the Federal government's 2010 budget. The budget focused on measures to reduce Federal deficits and included the government's promise to return to balanced budgets. At the same time, the government confirmed its commitment to delivering \$19 billion dollars in new stimulus spending in 2010 and 2011. As rumoured, the budget was very thin on any new significant tax measures. We have provided some of the tax highlights below:

## Personal Tax Measures

### Employee Stock Options

The 2010 Federal budget proposes to eliminate the deferral of the taxable employment benefit that can arise when publically traded companies issue stock options to their employees that are subsequently exercised. Previously, when employee stock options of a publically traded company were exercised, an individual realized a taxable employment income benefit if the exercise price of the option was less than the fair market value of the share acquired. Under certain conditions, this employment benefit was entitled to a tax deferral until such time as the shares themselves were sold. This deferral became problematic for some individuals during the "dot com" era, when employees had significant deferred income tax liabilities, yet the associated shares were virtually worthless. New measures proposed in the budget will repeal the deferral opportunity effective for any options exercised after March 4, 2010, and any employment benefit realized will be taxable

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when the option is exercised. The budget will not eliminate the similar deferral on taxable employment benefits realized on the exercise of private company shares.

Tax relief will be available for individuals that currently hold optioned shares for publically traded companies that have a fair market value which is less the tax liability on the deferred employment benefit.

The budget also proposes to allow individuals to claim the 50% stock option benefit deduction only when the shares of the employer are actually acquired and not when the employee disposes of the option(s) for cash. This effectively eliminates the benefits under a “stock option plan with cash-out rights”.

## Other

- Canadian residents who have received U.S. Social Security benefits since before January 1, 1996 (and surviving spouses), will be subject to a 50% income inclusion (previously 85%);
- After March 4, 2010, expenses incurred for purely cosmetic medical procedures that are aimed solely at improving one’s appearance, such as liposuction, hair replacement and teeth whitening, are no longer eligible for the medical expense credit. The budget also confirms that these medical procedures are subject to GST/HST and to earlier supplies where the supplier collected and remitted GST/HST in respect of the supply;
- The budget proposes to clarify that post-education research programs leading to diplomas, or bachelor, masters or doctoral degrees will be eligible for the Education Tax Credit and that scholarships, fellowships and bursaries under these programs will not be taxable. Post-doctoral fellowships will continue to be taxable;
- Commencing July, 2011, the budget proposes to allow half of the entitlement to the Child Tax Benefit, Universal Child Care Benefit and the child component of the GST/HST credit to be shared between parents who live separately and the child lives more or less equally with both parents;
- Single parents will now have the option of including the aggregate Universal Child Care Benefit amount received in the income of an eligible dependant or child for whom the Universal Child Care Benefit is paid;

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- For deaths that occur after March 4, 2010, the budget proposes to allow a rollover of a deceased's RRSP to the Registered Disability Savings Plan of a financially dependent infirm child or grandchild.

## Corporate Tax Measures

### Interest on Overpaid Taxes

Currently, the Government pays interest on overpayments of most taxes at a rate of 2% above than the average yield of three-month Government of Canada Treasury Bills sold in the first month of the preceding quarter.

The 2010 budget proposes to remove the additional 2% paid to corporations on overpayments of income tax, GST/HST, Employment Insurance premiums, and Canada Pension Plan contributions. The interest rate calculations for non-corporate taxpayers will not change.

### Proposed Group Taxation

The Federal government plans to explore measures that may change how companies within corporate groups are taxed. For example, ideas such as creating a formal system for loss transfers within a corporate group or consolidated reporting may be addressed.

## Other Tax Measures

### Tax Avoidance Transaction Regime

The budget proposes to introduce a "tax avoidance transaction" regime (similar to Quebec's rules) whereby transactions that meet certain criteria must be reported to the Canada Revenue Agency. The proposals would apply to transactions entered into after 2010 or those that are part of a "series of transactions" completed after 2010.

### Charities Disbursement Quota Reform

The 2010 Budget proposes to reform the disbursement quota calculation for charities by repealing the charitable expenditure rule, modifying the capital accumulation rule and strengthening related anti-avoidance rules for charities.

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The disbursement quota formula has been replaced with a revised formula based on the accumulation of property not used for charitable or administrative purposes.

The capital accumulation rule exemption, previously for charities with \$25,000 or less in assets not used in charitable programs or administration, will now apply for charities with \$100,000 or less. The exemption threshold remains at \$25,000 for charitable foundations.

## Other

- The 2010 budget proposes to exclude from the definition of “taxable Canadian property” shares of corporations that do not derive their value principally from real or immovable property situated in Canada. This will eliminate the necessity to apply for a Section 116 clearance certificate in circumstances involving non-resident vendors selling shares of corporations which do not own real estate and will also eliminate the obligation by a purchaser to withhold a portion of the sales proceeds in respect of these types of transactions;
- Amendments are proposed that will permit the Canada Revenue Agency to issue certain communications (including Notice of Assessments) electronically;
- Effective March 4, 2010, non-resident taxpayers who have had overpayments withheld by a payor or a purchaser as a result of an assessment will be entitled to a refund of the overpayments as long as the non-resident files a tax return no more than two years after the date of an assessment;
- The budget promises to simplify the previously proposed rules regarding Foreign Investment Entities (“FIEs”) and Non-Resident Trusts (“NRTs”) applicable for taxation years ending after March 4, 2010. A taxpayer who in prior years filed under the previously proposed FIEs rules will be entitled to have those years reassessed or may be entitled to a deduction in the current year for any excess income reported.

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