May 14, 2024

Miodrag Jovanovic
Assistant Deputy Minister, Tax Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa, Ontario K1A 0G5
Via email: Miodrag.Jovanovic@fin.gc.ca

Dear Mr. Jovanovic:

Re: Budget 2024 Proposals on Capital Gains Inclusion Rate

We are writing to provide our views and recommendations on the Budget 2024 proposals to increase the inclusion rate for capital gains from one half to two thirds for all taxpayers, with an annual exemption of $250,000 for individuals other than trusts (the "capital gains proposals").

The Conference for Advanced Life Underwriting (CALU) is a national professional membership association of leaders in the life insurance and financial advisory industry. Along with our partner organization, Advocis, we speak for thousands of insurance and financial advisors in every part of Canada and, in turn, the interests of millions of Canadians.

CALU's Concerns

CALU recognizes the federal government's need to address the interests of all Canadians in the design of fiscal and tax policy. Ensuring tax equity and fairness between taxpayers is also paramount in a self-assessing tax system. However, we do not believe that the capital gains proposals outlined in Budget 2024 achieve those objectives for the following reasons:

1. Taxpayers will be required to dispose of capital property with appreciated gains (such as family cottages, shares in a private business and/or business-related capital assets) before June 25, 2024 (the "implementation date") to take advantage of the 50 percent inclusion rate. For capital assets other than publicly traded securities, **this timeline is unnecessarily short and/or may result in significant professional fees and depressed asset sale values.** It is also problematic that taxpayers and their advisors have not seen the draft legislation impacting their financial decisions and well being.
2. The increased capital gains inclusion rate on gains accruing on capital property owned before the implementation date will effectively result in retroactive taxation. These increased taxes could in turn **reduce needed funds for retirement purposes, particularly for middle-income individuals nearing retirement age.**
3. These changes add complexity in the proper integration of the taxation of capital gains realized in a corporation and could create a **tax penalty for shareholders of private corporations**.
4. The lifetime capital gains exemption (as well as new capital gains proposals relating to Employee Ownership Trusts and the Canadian Entrepreneur Incentive) will in many cases **provide little benefit to many small business owners**. This is because the ultimate disposal of a business may involve the sale of assets rather than shares to a prospective purchaser, or the owner winding down the business and selling its assets to

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fund the owner's retirement.[1] These business owners, many who are of relatively modest means, will therefore bear the full brunt of the increased capital gains inclusion rate for gains realized in their corporation.

5. The **impact of the capital gain proposals will be magnified in the year of death of an individual** due to rules which generally deem a taxpayer to have disposed all capital property at their fair market value (FMV) immediately before death.[2] This may result in a deceased taxpayer realizing capital gains in excess of $250,000 with such gains taxed at a higher marginal tax rate than was otherwise applicable while the individual was alive. This will **reduce the funds available to beneficiaries** of the estate.
6. Similarly, **alter ego, joint partner and spouse trusts** (which are often used as a will substitute by older individuals) also have a deemed disposition of capital property at FMV on the death of the settlor (or a spouse/surviving spouse). Such trusts must pay the tax on any capital gains arising from this deemed disposition but **will not benefit from the $250,000 exemption available to individual taxpayers**.
7. Over time the **impact of inflation** on the value of capital assets will **significantly erode the benefits of the $250,000 exemption** available to individual taxpayers.

Given these concerns, we recommend that the federal government not proceed with the capital gains proposals outlined in Budget 2024. Should the federal government decide to proceed, CALU recommends the following legislative measures.

CALU's Recommendations

1. Implementation Date

- **Defer the implementation date to correspond to the date of Royal Assent** of the supporting legislation.
- **Recognize the validity of binding agreements of purchase and sale** (for example, in relation to the sale of real estate or shares of a business) **that are in place on or before the implementation date**, provided that the sale transaction is concluded before the end of 2024.
- **Provide a "deemed disposition option"** to allow all taxpayers to dispose of any of their appreciated capital property at a value between its adjusted cost base (ACB) and FMV, as at the implementation date. Such gain would be included in the taxpayer's income for the 2024 tax year and qualify for the 50 percent inclusion rate. The elected amount would then become the cost base of that capital property for purposes of determining the taxpayer's capital gains on the actual disposition of the property.

2. Integration of Taxes on Capital Gains between Shareholders and Private Corporation

- The tax rules should ensure that the integrated tax rate on the disposition of capital property within a private corporation, and distributed as a dividend to a shareholder, be similar to the amount of tax payable had the shareholder realized that capital gain directly.

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[1] It is estimated that approximately 70 percent of businesses in the good-producing sector and 80 percent of businesses in the services-producing sector do not survive for up to 20 years after start-up. See https://ised-isde.canada.ca/site/sme-research-statistics/en/key-small-business-statistics/key-small-business-statistics-2023 (section 1.4).
[2] Subsection 70(5) of the Income Tax Act.

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3. **Deemed Dispositions of Capital Property on Death**

- **The exemption to qualify for the 50 percent inclusion rate in the year of death of an individual should be increased to $500,000**. In the alternative, the deceased's unused exemption for the two taxation years immediately prior to death should be added to the $250,000 exemption for purposes of determining the inclusion rate on capital gains realized by the taxpayer in the year of death.
- For **life interest trusts**, permit the estate of the deceased beneficiary (whose death triggers a deemed disposition for the trust) to share all or a portion of their $250,000 exemption in the year of death with the life interest trust.

4. **Accounting for Inflation**

- The $250,000 exemption should be **increased by annual changes in Consumer Price Index**, similar to increases to TFSA contribution limits, with such increases taking place in $25,000 increments.

Summary

CALU supports federal government initiatives to make the tax system fairer and more equitable, which in turn will assist with the funding of new public priorities. However, we do not believe the Budget 2024 capital gains proposals in their current form adequately fulfill this mandate. We therefore recommend that the federal government not proceed as planned.

Should this not be possible, we recommend that the capital gains proposals be modified as recommended above. **We emphasize the need for the federal government to expeditiously share the legislative details of these proposals to provide taxpayers with certainty regarding the tax treatment of capital gains accruing before the implementation date.**

Thank you for considering our views and we would welcome the opportunity to discuss them further or answer any questions you may have.

Sincerely yours,

Jeff Wilson

Jeff Wilson
Chair, CALU Board of Directors

Guy Legault

Guy Legault
President & CEO

cc.
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