

CIBC MELLON

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FINANCE CANADA  
RELEASES DRAFT  
LEGISLATIVE  
PROPOSALS FOR 2023  
BUDGET AND OTHER  
MEASURES



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Simon Lee is Vice President, Tax at CIBC Mellon. Simon is responsible for CIBC Mellon's tax advisory, including planning and analysis, and sharing insights and considerations to the organization on tax legislation. He has over 20 years of experience in the taxation of financial services.

On August 4, 2023, the Department of Finance (Finance Canada) released several draft legislative proposal packages and accompanying explanatory notes. According to Finance Canada, these proposals and explanatory notes advance key budget priorities including previous announced income tax measures from the 2023 federal budget (Budget

2023), certain previously announced measures, and other tax technical amendments. These packages will remain open for public comment until September 8, 2023.

Below are some highlights of two income tax measures that may be relevant for CIBC Mellon clients.

### **Retirement Compensation Arrangements**

Budget 2023 proposes to amend the Income Tax Act to provide that fees or premiums paid for the purposes of securing or renewing a letter of credit (LC) or a surety bond for a Retirement Compensation Arrangement (RCA) that is supplemental to a registered pension plan, will not be subject to the refundable tax. It also proposes to allow employers to request a refund of previously remitted refundable taxes in respect of fees or premiums paid for LC (or surety bonds) by RCA trusts, based on the retirement benefits that are paid out of the employer's corporate revenues to employees that had RCA benefits secured by LC (or surety bonds).

The draft legislative proposals would expand the scope of the measure in Budget 2023 to apply to any RCA that is a "specified arrangement and that meets one of the following conditions:

- It provides benefits that are supplemental to the benefits provided under a registered pension plan, a registered retirement savings plan, a deferred profit sharing plan, a pooled registered pension plan, or any combination of these plans, or
- It meets all, or substantially all, of the criteria to be registered as a registered pension plan (except for, most notably, the maximum benefit limits prescribed in the Income Tax Regulations).

Finance Canada would consider a “specific arrangement” to refer to an RCA that has a primary purpose of providing annual or more frequent retirement benefit payments. If the fees are paid under a specified arrangement, they would be classified by Finance Canada as excluded contributions, which the draft legislative proposals exempt from the application of 50% refundable tax on contributions to RCAs.

The provision pertaining to the non-inclusion of “excluded contributions” in refundable tax would be applicable to the fees that have been paid on or after March 28, 2023.

The draft legislative proposals would provide relief for employers that paid refundable tax pertaining to excluded contributions made prior to March 28, 2023, and would also create a mechanism for obtaining a refund of such contributions generally at a rate of 50% of the retirement benefits paid after 2023 by an eligible employer.

For this purpose, Finance Canada would deem an employer who paid an excluded contribution under a “specified arrangement” before March 28, 2023 to be an eligible employer. If the eligible employer makes a refund election for a particular year and certain other specified conditions are met, the employer (or RCA custodian) would be able to obtain a refund of up to 50% of all retirement benefits the employer paid in the year for the benefit of RCA beneficiaries whose retirement benefits were secured under a “specified arrangement” with a LC or surety bond.

According to Finance Canada, the refund amount claimed in a year would not be permitted to exceed the “specified refundable tax” balance of the specified arrangement at the end of the taxation year. The “specified refundable tax” would be equal to the positive difference between:

- The total amount of refundable tax that was paid solely with respect to LC fees incurred prior to March 28, 2023 for the purposes of securing future retirement benefit payments under an RCA, and,
- The total amount of all refunds payable for each preceding year.

## Alternative Minimum Tax

Under the current legislation, an individual and certain types of trust are required to pay either the Alternative Minimum Tax (AMT) or the ordinary income tax, whichever is higher. The AMT has a flat 15% tax rate with a standard of \$40,000 exemption.

The draft legislative proposals would implement various changes to AMT including the AMT rate will be increased from 15% to 20.5%. The basic exemption amount would be increased from the current exemption of \$40,000 to correspond to the lower threshold amount of the fourth federal income tax bracket, indexed annually to inflation. It is expected to be approximately \$173,000 CAD in 2024.

Changes to the AMT base would include:

- Increasing the AMT capital gains (and capital loss) inclusion rate from 80% to 100% and decreasing it from 80% to 50% for allowable business investment losses,
- Limiting the deduction of non-capital loss and capital loss carryforwards to 50% of the amount that may otherwise be deducted.

For more information, please see [Finance Canada's website](#).

If you have further questions, please reach out to your relationship manager.

## If You Have Further Questions

Please note that Finance Canada's notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe, nor legal, regulatory, tax or compliance advice in any way. CIBC Mellon encourages our clients to review the draft legislation and consult with their legal, regulatory, tax and compliance advisors for advice or guidance with respect to how the draft legislation may impact their organizations.

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