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Legal update

Highlights of Quebec Budget of November 20, 2012

November 2012
Taxation

On November 20, 2012, Nicolas Marceau, Quebec Minister of Finance, tabled his government's first budget. This legal update summarizes the principal measures proposed. Note that most of these measures must be enacted by the National Assembly before coming into force.

A. Measures pertaining to individuals

As announced by the Minister of Finance on October 10, 2012, the Budget proposes to add a fourth personal income tax bracket for high-income individuals and to introduce a new progressive health contribution.

Additional income tax for high-income individuals

As of the 2013 taxation year, a fourth personal income tax bracket will be introduced. This new bracket, which will comprise incomes over $100,000, will be subject to a tax rate of 25.75%. Thus, the maximum combined marginal income tax rate will rise from 48.22% to 49.97% in 2013.

Varying the health contribution on the basis of income

As of 2013, the health contribution payable by individuals will be based on their earned income and will be progressive. Briefly, an individual earning less than $18,000 will be exempt from payment of the health contribution, while individuals earning $150,000 or more will have to pay the maximum contribution of $1,000.

B. Measures pertaining to business

Temporary increase from 17.5% to 27.5% in the rate of the refundable tax credit for R&D salary in relation to biopharmaceutical activities

The government proposes to temporarily increase the refundable tax credit for R&D salary in relation to biopharmaceutical activities for five years. The tax legislation will be amended so that an eligible biopharmaceutical corporation that until now received a refundable tax credit for R&D salary equal to 17.5% of its eligible R&D expenses will in future receive the credit at a rate of 27.5% for its expenses incurred after November 20, 2012 and before January 1, 2018.

Eligible biopharmaceutical corporation

To qualify as an eligible biopharmaceutical corporation, a corporation must obtain an initial certificate from Investissement Québec. To obtain an initial certificate, a corporation will have to demonstrate that the activities it carries out or will carry out in the course of its business correspond to one or more of the following activities related to human health:

- integrated innovative pharmaceutics (patented products) that consist in making and commercializing drugs as well as carrying out activities relating to drugs consisting in basic research, product development, clinical research or chemical synthesis;

- pharmaceutical manufacturing of generics that consists in making and commercializing generic versions of prescription or over-the-counter drugs whose patents have expired;

- pharmaceutical manufacturing under contract that consists in making drugs for innovative pharmaceutical companies, generic product companies or large buyers;

- biotechnology that consists of the following four categories:

    - therapeutic products that stem from research and development of drugs essentially targeting the small molecule market rather than biological products. It also involves developing drug delivery methods in the organism and the development of cellular therapies;

    - diagnostic products that stem from the development, manufacturing and commercialization of such products;

    - biological processes that involve the production of drugs or vaccines. It also involves the production of pharmaceutical proteins using the culture of genetically modified cells or the development of genetically modified organisms for the production of drugs. Lastly, it involves the extraction of active drug ingredients from natural sources;

    - pharmaceutical research that involves the use of genetic data to define targets for the action of drugs. It also involves the supply of genomic research products and services;

- contract research that consists in providing services aimed at developing new drugs, such as bioequivalence studies, preclinical and clinical tests and management of studies.

A corporation that holds a valid initial certificate will also have to obtain an eligibility certificate for each taxation year for which it wishes to claim the increased rate of the refundable tax credit for R&D salary.

To obtain an eligibility certificate, a corporation will have to show that the activities indicated on its initial certificate accounted for at least 75% of the activities it carried out throughout the year covered by such certificate. In this regard, the organization will consider the duties carried out by all the employees of the corporation as well as the activities carried out on its behalf during such year.

Application date

An eligible biopharmaceutical corporation that obtains an eligibility certificate for a taxation year will receive an enhanced refundable tax credit for R&D salary in respect of its eligible R&D expenditures incurred after November 20, 2012, provided the expenditures are incurred and the work is carried out before January 1, 2018.

Other measures affecting the biopharmaceutical industry

Funding of $125 million will also be put in place for research partnership projects with pharmaceutical companies. Proposals will be sought to identify eligible projects, but projects will have to attract funding from at least one private partner. The details of this measure will be announced at a later date by the Minister for Industrial Policy and the

Banque de développement économique du Québec and by the Minister of Higher Education, Research, Science and Technology.

The government also announced the elimination of the so-called 15-year rule, which authorizes reimbursement of an innovative drug by Quebec's public prescription drug insurance plan for a period of 15 years, even if an equivalent and less expensive generic drug is available.

Implementation of a new tax holiday for large investment projects – the THI

To encourage businesses to invest in large investment projects in Quebec, the Budget proposes to introduce a new 10-year tax holiday, the THI.

Briefly, the tax holiday for a major investment project that was introduced in 2000 is replaced with a new tax holiday that is applicable to businesses with large investment projects of $300 million or more in the following strategic sectors: manufacturing, including mineral and wood processing, value-added distribution centres, and data processing and hosting.

Such businesses will have a 10-year tax holiday from corporate income tax and from the contribution to the Health Services Fund (HSF) with respect to their investment projects.

The value of the tax holiday may not exceed 15% of total eligible investment expenditures for the large investment project.

Terms and conditions for obtaining the tax holiday

To receive the THI, a corporation or a partnership will have to obtain an initial certificate as well as annual certificates issued by the Minister of Finance and the Economy. The initial certificate application must be submitted to the Minister of Finance and the Economy before November 21, 2015. This initial certificate must be applied for before the large investment project begins to be carried out.

Large investment project

For purposes of the tax holiday, a project may qualify as a large investment project if:

(i) The project concerns activities described in the North American Industry Classification System (NAICS) under the following codes: 31-33 Manufacturing; 41 Wholesale Trade; 4931 Warehousing and Storage; and 518 Data Processing, Hosting and Related Services;

(ii) The total investment expenditures attributable to the carrying out of the large investment project in Quebec must reach $300 million no later than the end of the 48-month period that starts on the date the initial certificate relating to such project is issued;

(iii) The total of the investment expenditures attributable to the carrying out of the large investment project includes all the capital expenditures incurred, since the beginning of the carrying out of the project, to obtain goods and services with a view to the establishment, in Quebec, of the business or the portion of the business under which the activities arising from the large investment project will be carried out, or with a view to increasing or modernizing the production of such a business or portion of a business in Quebec. However, the investment expenditures attributable to the carrying out of the project will not include expenditures relating to the purchase or use of land or those relating to the acquisition of a business already being carried on in Quebec.

Income tax holiday

A business may receive a holiday relating to the tax on income from eligible activities relating to a large investment project it carries out, consisting of a deduction in calculating its taxable income.

This holiday will be granted for the investment project as though the eligible activities relating to such project constituted the carrying on of a separate business by a separate person.

Holiday from employer contributions to the HSF

A business other than a tax-exempt corporation that carries out a large investment project may receive a holiday regarding its employer contributions to the HSF for its holiday period. The contribution holiday will apply regarding the wages paid by the business for a pay period included in its holiday period to an employee in relation to the portion of the employee's time spent on eligible activities of the business. However, the wages paid by the business to its employees whose duties consist in building, expanding or modernizing the site where the large investment project will be carried out will not give rise to the holiday.

Length of the tax holiday

The holiday period will be 10 years beginning on whichever of the following dates occurs last: the date the separate business relating to the investment project begins to be carried on or the date when the $300 million threshold is achieved. However, the holiday period cannot start after the day following the end of the 48-month period that begins on the date the initial certificate relating to the project is issued.

Improvements to the investment tax credit for investments relating to manufacturing and processing equipment

The Budget proposes two amendments to the tax legislation concerning the tax credit for investments relating to manufacturing and processing equipment:

(i) The definition of "qualified property" will be amended to allow an additional period of 2 years for the acquisition of property qualifying for the tax credit for investments, other than property used mainly in the course of ore smelting, refining or hydrometallurgy activities, other than ore from a gold or silver mine, extracted from a mineral resource. Accordingly, property may qualify as qualified property for the purposes of the investment tax credit if it is acquired before January 1, 2018;

(ii) The rate of the tax credit for qualified property for use mainly in the eastern part of the Bas-Saint-Laurent administrative region or in an intermediate zone will be increased by 5% for eligible expenses incurred regarding qualified property acquired after November 20, 2012.

Creation of the Banque de développement économique du Québec

The government has announced the creation of the Banque de développement économique du Québec. This new institution will be charged with offering financial support to for-profit businesses, cooperatives, social economy businesses and foreign businesses looking to set up operations in Quebec. The Banque will manage the regionalized development fund, which will have an annual budget of at least $500 million for development in all regions.

Increase in the Contributions of Financial Institutions

The Budget provides for an increase in the rates applicable to the components of the temporary contribution for financial institutions as follows.

For the period from January 1, 2013 to March 31, 2019, the temporary contribution rates will be:

		Until December 31, 2012	As of January 1, 2013
In respect of amounts paid as wages	For a bank, loan corporation, trust corporation or corporation trading in securities	1.9%	2.8%
	For a savings and credit union	1.3%	2.2%
	For any other person	0.5%	0.9%
In respect of insurance premiums and insurance funds		0.2%	0.3%

Standardization of taxation of refundable tax credits

The Budget proposes to modify the tax legislation so that the following refundable tax credits will in future be included as an amount of government assistance in computing the income of a taxpayer who carries on a business:

- the refundable tax credit for scientific research and experimental development;
- the refundable tax credit for credit for university research and for research carried on by a public research centre or a research consortium;
- the refundable tax credit for fees and dues paid to a research consortium;
- the refundable tax credit for private partnership pre-competitive research;
- the refundable tax credit for on-the-job training periods;
- the refundable tax credit for design;
- the refundable tax credit for the construction or conversion of vessels.

C. Measures pertaining to natural resources

The government has committed itself to reviewing the mining duties regime, currently based on mining profit, in order to increase the revenues it generates. To assist it in its reflection, the government will consult the industry as well as the stakeholders concerned by this issue. It will examine recent changes made to mining duties regimes in other jurisdictions. The Minister of Natural Resources will announce in the coming weeks the details of the consultation process that she intends to conduct.

The government has also announced the creation of the Secrétariat au développement nordique which will be mandated with coordinating government efforts across the board in order to meet the needs of northern communities and thereby ensure coherent conditions for the development of Northern Quebec.

D. Measures pertaining to trusts

To enable Revenu Québec to obtain a more complete picture of trusts with activities or rental immovable properties in Quebec and to validate their compliance with the tax laws, the tax legislation will be amended to add three situations where a trust liable for Quebec tax is required to file a tax return and to require a trust that resides in Canada outside Quebec and that owns a rental immovable property in Quebec to file an information return.

Addition of situations where a trust is required to file a tax return

The tax legislation will be amended so that a trust, other than an excluded trust, that is liable for Quebec tax for a taxation year is required to file a tax return for such taxation year if it satisfies one of the following conditions:

- it deducts in calculating its income for the taxation year an amount allocated to a beneficiary regardless of the place of residence of the beneficiary;
- in the case of a trust that is resident in Quebec on the last day of the taxation year, it owns, at any time in such taxation year, property the total of whose cost amounts exceeds $250,000;
- in the case of a trust that is not resident in Quebec on the last day of the taxation year, it owns, at any time in such taxation year, property that it uses in carrying on a business in Quebec the total of whose cost amounts exceeds $250,000.

The expression “excluded trust” means, for a taxation year, a trust that, throughout the year, is one of the following trusts:

- an estate;
- a testamentary trust that is resident in Quebec on the last day of its taxation year and for which the total of the cost amounts of its property is, throughout its taxation year, less than $1 million;
- a testamentary trust that is not resident in Quebec on the last day of its taxation year and for which the total of the cost amounts of its property located in Quebec is, throughout its taxation year, less than $1 million;
- a unit trust;
- a segregated fund trust of an insurer;
- a mutual fund trust;
- a specified investment flow-through trust;
- a tax-exempt trust.

These amendments to the tax legislation will apply to a trust for its taxation years starting after November 20, 2012.

Addition of an obligation on a trust to file an information return

The tax legislation will be amended so that a trust, other than an excluded trust, that, during a taxation year, is resident in Canada, but outside Quebec, and that, at any time in the taxation year, owns an immovable property located in Quebec (a specified immovable property) or is a member of a partnership that owns a specified immovable property, will be required to file an information return with Revenu Québec for such taxation year. In this context, the expression "specified immovable property" means an immovable property located in Quebec that is used mainly for the purposes of earning or producing gross revenue that constitutes rent.

E. Various other measures

The Budget contains various other measures to increase government revenues, including increases in the tax on tobacco products and the tax on alcoholic beverages.

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