

The Joint Committee on Taxation of
The Canadian Bar Association
and

Chartered Professional Accountants of Canada

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September 15, 2025

Trevor McGowan
Associate Assistant Deputy Minister
Tax Policy Branch
Department of Finance Canada
90 Elgin Street, Ottawa, ON K1A 0G5

Email: Trevor.McGowan@fin.gc.ca

Dear Mr. McGowan:

Subject: August 15, 2025 Legislative Proposals

This submission sets out comments of the Joint Committee on Taxation of the Canadian Bar Association and Chartered Professional Accountants of Canada ("Joint Committee") regarding the proposed tax legislation announced on August 15, 2025.

Members of the Joint Committee executive group and others in the tax community participated in the discussion concerning this submission and contributed to its preparation, including:

- Byron Scott Beswick – KPMG LLP
- David Bunn – Deloitte
- Ryan Minor – CPA Canada
- Anu Nijhawan – Bennett Jones LLP
- Jeffrey Shafer – Blake, Cassels & Graydon LLP
- Carrie Smit – Goodmans LLP

We would be pleased to discuss this submission with you in further detail at your convenience.

Yours truly,



Byron Beswick
Chair, Taxation Committee
Chartered Professional Accountants of Canada



Anu Nijhawan
Chair, Taxation Section
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SUMMARY OF ISSUES IDENTIFIED

FES and Other Proposals

1. Reporting by Non-profit Organizations

The draft legislation proposes to require certain non-profit organizations to file a short-form information return. Proposed subsection 149(13) would require, for fiscal periods that begin on or after January 1, 2026, every person exempt from income tax under paragraphs 149(1)(e) or (l) on all or part of its taxable income to file an information return in prescribed form within six months after the end of each fiscal year of the person unless the person is already required to file an information return under subsection 149(12) [T1044].

This proposed legislation is overbroad, requiring even very small non-profit organizations to file information returns. For example, minor hockey teams that earn no investment income would be required to file an information return (unless they are already required to file the existing non-profit information return). It is doubtful that such filings would provide meaningful information, yet the compliance burden would be significant and costly. Moreover, there is a high likelihood of widespread non-compliance, as many small organizations are unlikely to become aware of this new filing obligation.

Recommendation: Include a *de minimis* test so that small non-profit organizations are not required to file an annual information return.

2. Substantive CCPC

The definition of “capital dividend account” – typographical error

The draft legislation proposes to amend the definition of “capital dividend account” in subsection 89(1). New subparagraph (h)(ii) of the definition proposes to add to the capital dividend account balance certain amounts for a Canadian-controlled private corporation (CCPC) or substantive CCPC that has deducted an amount under paragraph 113(1)(b) or (c) in respect of a dividend received from a foreign affiliate. Where an election has been made under subsection 93.4(3), the draft legislation adds to the capital dividend account the amount determined under paragraph 93.4(3)(b) less the amount determined under clause 113(1)(c)(i)(A) in respect of the low RTF amount.

It appears that the reference to subsection 93.4(3)(b) should instead be a reference to paragraph 93.4(3)(c). The draft Explanatory Notes also refer to paragraph 93.4(3)(c) on page 114:

an election was made under subsection 93.4(3), to the extent that the amount was determined under paragraph 93.4(3)(c) less the amount determined under clause 113(1)(c)(i)(A) in respect of the dividend (i.e. the after-tax amount of the taxable surplus that was subject to sufficient foreign tax, as determined based on the RTF of 1.9, plus the after-tax amount of withholding tax-sheltered amounts).

3. Excessive Interest and Financing Expense Limitation (EIFEL) Rules

“Exempt Interest Financing Expenses”

The draft legislation proposes to amend section 18.2 to add an exemption from the EIFEL rules for certain interest incurred in respect of purpose-built residential rentals. This is a welcome exclusion but there are certain aspects of the proposed rule that appear to raise unnecessary complexity and do not appear to be consistent with the policy the Department of Finance is proposing to address with the change.

Use of Borrowing

Subparagraph (b)(ii) of the definition of “exempt interest and financing expenses” refers to the amount that is reasonably attributable to the portion of the borrowing that is used directly by the borrower for the purpose of (A) acquiring a property that is a purpose-built residential rental, (B) building a purpose-built residential rental, or (C) converting a property of the borrower into a purpose-built residential rental. As currently proposed, the definition may exclude the portion of a borrowing that is used to acquire land on which a purpose-built residential rental building is located or costs of acquisition incurred to acquire the purpose-built residential rental. It is reasonable that interest attributable to property necessary for the acquisition, building or conversion of a purpose-built residential rental be exempted in the same manner as interest attributable to borrowing necessary for the purpose-built residential rental itself. Further, in circumstances where such an acquisition of land or costs of acquisition are relevant, the proposed amendment would unnecessarily complicate transactions by requiring parties to trace the use of borrowed funds to the cost of the purpose-built rental itself and to ensure that the cost of land or other incidental costs related to the acquisition of the property are financed through equity contributions. In addition, it is unclear if construction period “soft-costs” described in subsection 18(3) would be included in “exempt interest and financing expenses”, which does not appear to be intended.

Recommendation: Subparagraph (b)(ii) of the definition of “exempt interest and financing expenses” should include the portion of the borrowing that is used by the borrower for the purpose of (A) acquiring a property that is a purpose-built residential rental or land that can reasonably be considered to be necessary for the use and enjoyment of the property, (B) building a purpose-built residential rental, (C) converting a property of the borrower into a purpose-built residential rental, or (D) paying an outlay or expense incurred by the borrower that is included in computing the cost to the borrower of the purpose-built rental or land that can reasonably be considered to be necessary for the use and enjoyment of the property.

Regulated energy utility business and the subsection 18.2(20) deeming rule

An election under subsection 18.2(20) causes the income of a Canadian regulated energy utility business (REUB) to be forever excluded from adjusted taxable income (ATI). This result could be problematic for some REUBs. Should the interest expense fail to qualify as exempt IFE (for any number of reasons), the taxpayer would be penalized because the interest expense would be IFE while none of the REUB income would be included in ATI. Unless the interest expense could qualify as exempt IFE, this problem would persist indefinitely.

Recommendation: The legislation should be revised to allow an election under subsection 18.2(20) to be revoked.

Technical Amendments

4. Amendments to accommodate DMTT Regimes

The Technical Amendment package proposes several amendments to accommodate foreign jurisdictions that have implemented a domestic minimum top-up tax (DMTT) including:

- inclusion of DMTT that relates to foreign accrual property income in the definition “foreign accrual tax” [proposed subsections 91(4.01), (4.02) and (4.03)];
- inclusion of DMTT for purposes of claiming the foreign tax credit in respect of business income tax or non-business income tax [proposed subsections 126(4.14), (4.7), paragraph 126(7)(j), new definitions in subsection 126(7)]; and
- amendments to the calculation of surplus accounts to take into account DMTT [Regulation 5907].

We note that these amendments are effective as of the “Announcement Date” rather than retroactively to the earliest date on which a DMTT regime could apply. Some taxpayers have already paid amounts under certain DMTT regimes prior to the Announcement Date. There is no apparent policy reason for having an effective date on the Announcement Date.

Recommendation: We recommend that the effective date be December 31, 2023.

5. Excess Interest and Financing Expense Limitation (EIFEL)

Changes to the definition of “adjusted taxable income”

The draft technical legislation proposes to amend the description of D in the definition of “adjusted taxable income” (ATI) in subsection 18.2(1) as follows:

3 (1) Paragraph (b) in the description of D in the definition *adjusted taxable income* in subsection 18.2(1) of the Act is replaced by the following:

(b) in any other case, the taxpayer's taxable income for the year (determined without regard to subsection (2), paragraphs 12(1)(1.2) and 111(1)(a.1) and clause 95(2)(f.11)(ii)(D) and as if the definition *taxable income* in subsection 248(1) were read without reference to “except that in no case may a taxpayer's taxable income be less than nil”), and

This amendment would allow the definition of “taxable income” in the description of “D” to be negative which may occur where there is a non-capital loss for the year or where a non-capital loss has been carried forward. However, we understand that variable “E” in that definition also results in a reduction to ATI where there is a non-capital loss for the year. While variable “E” does not include losses carried forward, both new variable “D” and variable “E” include the actual non-capital loss for the year.

Recommendation: Paragraph (a) of Variable E should be deleted to prevent duplication.

6. Subsections 85.1(4) and 87(8.3)

Subsections 85.1(4) and 87(8.3) outline the circumstances in which the rollover treatment that would otherwise be available under subsection 85.1(3) or subsection 87(8), as the case may be, is denied. Generally speaking, it is proposed that subsections 85.1(4) and 87(8.3) be modified to apply to a disposition of a share of a foreign affiliate (that would otherwise qualify under subsection 85.1(3) or subsection 87(8), as the case may be) that is part of a transaction or event or a series of transactions or events that includes a disposition of a property (a “relevant disposition”), other than a share of the capital

stock of a corporation resident in Canada, to certain types of acquirers. In particular, it is proposed that a rollover be denied in circumstances where there is a relevant disposition to an acquirer that is a non-arm's length non-resident, except if the non-resident person is a "section 17 controlled foreign affiliate" at the time of the transaction or event or throughout the series, as the case may be.

While we recognize that there are certain policy concerns which the proposed amendments seek to address, we believe that some aspects of these proposed changes are overly broad and potentially capture various types of transactions that do not give rise to the policy concerns that we believe the Department of Finance is attempting to address with these proposed changes. In this regard, below are some non-exhaustive examples that attempt to illustrate the potentially far-reaching effects of these proposed changes, as currently drafted.

Scope of the "relevant disposition" concept

Example 1: Disposition of property by a Canadian taxpayer

- Canco wholly owns CFA1 and CFA2. Canco contributes the shares of CFA1 to CFA2 solely in exchange for additional shares thereof, and at some point thereafter Canco disposes of all the shares (or even only a portion thereof) of CFA2 to an arm's length person (that is not a foreign affiliate) in a fully taxable transaction.
 - Consistent with our prior submission regarding the August 9, 2022 proposed changes to subsection 85.1(4), if the contribution of the shares of CFA1 to CFA2 is considered to be part of a "series" that includes Canco's disposition of the shares of CFA2 it appears that the contribution would not be tax deferred under subsection 85.1(3) notwithstanding that the subsequent disposition of the shares of CFA2 is fully taxable without any opportunity for deferral. Not only does such a result appear to be inconsistent with the application of other tax deferral rules in the Act to an initial transaction that occurs before a subsequent one (e.g., Canco contributes, under subsection 85(1), the shares of CFA1, or another property, to a new Canadian subsidiary, and at some point thereafter Canco disposes of all or a portion of the shares of the new Canadian subsidiary to an arm's length person in a fully taxable transaction), but it also could potentially give rise to inappropriate results. For example, this might be the case where a taxpayer may wish to package assets into a top-tier foreign affiliate in connection with an M&A transaction where foreign affiliates would be extracted from the Canadian corporate group (consistent with the policy objectives of the foreign affiliate dumping rules), or a transaction where the taxpayer may wish to package assets into a new non-Canadian subsidiary that would be spun-off to shareholders.

Example 2: Disposition of a partnership interest

- Canco, and its wholly owned Canadian subsidiary, own 99% and 1%, respectively, of a partnership ("Cdn LP"). CFA1 is wholly owned by Cdn LP, either directly or indirectly through a wholly-owned Canadian subsidiary ("Cansub"). For commercial and/or foreign tax reasons and as part of an overall group restructuring, the owner of the shares of CFA1 (i.e., Cdn LP or Cansub, as the case may be) contributes those shares to another existing (or new) wholly owned CFA thereof ("CFA Parent") and shortly thereafter Canco and/or its wholly owned subsidiary partially disposes of its interest (nominal or otherwise) in Cdn LP to an arm's length person (that is not a foreign affiliate).
 - If the contribution of the shares of CFA1 to CFA Parent is considered part of a "series" that includes a disposition of an interest in Cdn LP, it appears that subsection 85.1(3)

would not (assuming that all other conditions are met) apply to the contribution because (i) the fair market value of the disposed partnership interest in Cdn LP is derived from the shares of CFA1 (even if those shares only represents a fraction of that value); (ii) the “property carveout” in proposed subparagraph 85.1(4)(a)(i) only applies to a disposition of a share of the capital stock of a corporation resident in Canada; and (iii) the acquirer is not a person described in proposed subclause 85.1(4)(a)(ii)(A)(I).

- Similar issues potentially arise if Cdn LP was instead a partnership or trust that was owned by persons that deal at arm’s length with each other.

Example 3: Definition of “property”

- Canco Subsidiary is a wholly owned subsidiary of Canco Parent. Canco Parent initially capitalized Canco Subsidiary primary with debt (the “Note”), and Canco Subsidiary used the proceeds to capitalize CFA1 with equity. At some point thereafter, Canco Subsidiary forms CFA2 and contributes the shares of CFA1 to CFA2 solely in exchange for additional shares thereof, and later still Canco disposes of the Note to an arm’s length person (that is not a foreign affiliate) in a fully taxable transaction. At the time of the disposition, Canco Subsidiary had no assets aside from the shares of CFA2.
 - If the contribution of the shares of CFA1 to CFA2 is considered part of a “series” that includes the disposition of the Note, it appears that subsection 85.1(3) might not (assuming that all other conditions are met) apply to the contribution because (i) the fair market value of the Note is arguably derived, directly or indirectly, from the shares of CFA1 (particularly in these circumstances given that Canco Subsidiary’s only property is the shares of CFA2); (ii) the “property carveout” in proposed subparagraph 85.1(4)(a)(i) only applies to a disposition of a share of the capital stock of a corporation resident in Canada; and (iii) the acquirer is not a person described in proposed subclause 85.1(4)(a)(ii)(A)(I). Although the facts used in this example might appear to be overly contrived or simplistic, we believe that they help clearly demonstrate the potential breadth of proposed clause 85.1(4)(a)(i)(C) (and proposed subparagraph 87(8.3)(b)(iii)).

Example 4: Breadth of “substituted property” in proposed clause 85.1(4)(a)(i)(B)

- Canco wholly owns CFA1 and CFA2. Canco contributes the shares of CFA1 to CFA2 in exchange for additional shares of CFA2 and cash not exceeding Canco’s adjusted cost base in the CFA1 shares. Following the transfer, Canco distributes all or a portion of the cash received from CFA2 to NRCo (a non-resident corporation with whom Canco does not deal at arm’s length).
 - If the cash received by Canco is property that is substituted for the CFA1 shares, and the distribution of the cash is part of a series that includes the disposition of the CFA1 shares to CFA2, it appears that subsection 85.1(3) might not (assuming the other conditions are met) apply to the contribution because (i) the cash is property that was substituted for the CFA1 shares transferred by Canco; and (ii) the cash is transferred to NRCo who is a person described in s. 85.1(4)(a)(ii)(B).

Recommendation: The “property carveout” in proposed subparagraph 85.1(4)(a)(i) (and proposed paragraph 87(8.3)(b)) should be expanded to include a disposition of (i) property and (ii) certain types of other non-corporate interests (e.g., indebtedness, an interest in certain partnerships and trusts, etc.,) by a Canadian taxpayer. An exception should also be included in proposed clause 85.1(4)(a)(i)(B) for non-share consideration described in paragraph 85.1(3)(a), so that the transfer of such non-share

consideration (or property that derives its value from such non-share consideration) would not affect the application of s. 85.1(3).

Scope of the “section 17 controlled foreign affiliate” carveout in proposed clause 85.1(4)(a)(ii)(B) and proposed subparagraph 87(8.3)(c)(ii)

Example 1: Post-acquisition restructuring

- Canco wholly owns CFA1 and CFA2, each of which is a resident of the US. CFA2 was recently acquired by Canco from an arm’s length person. As part of a series of post-acquisition transactions that are undertaken to integrate and simplify Canco’s post-acquisition group structure, Canco contributes the shares of CFA1 to CFA2 solely in exchange for additional shares thereof. Amongst other things, such a contribution allows CFA2 and CFA1 to elect to file a consolidated US federal income tax return.
 - If the contribution of the shares of CFA1 by Canco to CFA2 is considered part of a “series” that includes Canco’s acquisition of the shares of CFA2, it appears that subsection 85.1(3) would not (assuming that all other conditions are met) apply to the contribution as it appears that the condition in:
 - subclause 85.1(4)(a)(ii)(A)(i) might not be met because CFA2 is potentially considered to be dealing at arm’s length with Canco prior to the acquisition of CFA2 by Canco (or, alternatively, Canco is dealing at arm’s length with CFA2 “immediately before” the beginning of the series, which would seem to be the time immediately before Canco agrees to purchase the shares of CFA2) but CFA2 is not a foreign affiliate of Canco (in which it has a qualifying interest) throughout the period of time that encompasses the “series”; and/or
 - clause 85.1(4)(a)(ii)(B) would be met because CFA2 is, after it becomes a wholly owned subsidiary of Canco, a non-resident person that does not deal at arm’s length with Canco (and the “section 17 controlled foreign affiliate” carveout in clause 85.1(4)(a)(ii)(B) would not apply because that test is not met throughout the period that encompasses the “series” as CFA2 is not a controlled foreign affiliate of Canco prior to the acquisition of CFA2).

Example 2: Subsection 85.1(3) and foreign affiliate mergers

- Canco wholly owns CFA1 which in turn wholly owns CFA2 and CFA3. Canco contributes the shares of CFA1 to another existing (or new) wholly owned CFA (“CFA Parent”), and sometime thereafter for commercial and/or foreign tax reasons CFA1 merges with CFA2 and/or CFA3 to form “CFA MergeCo”.
 - If the contribution of the shares of CFA1 to CFA Parent is considered part of a “series” that includes the merger, it is not clear if subsection 85.1(3) would apply (assuming that all other conditions are met) to the contribution. Although it might be possible that the shares of CFA1 are not considered to be disposed of “to an acquirer” (e.g., CFA MergeCo, depending upon the legal mechanics of the merger), such an interpretation might not be clear given the context of subsection 84(9) and the scheme of the Act being such that a foreign merger results in a “new” foreign affiliate. If the shares of CFA1 are considered to be disposed of to CFA MergeCo for purposes of proposed subsection 85.1(4), it appears that the condition in proposed clause 85.1(4)(a)(ii)(B) would be met because the scheme of the Act suggests that CFA MergeCo is considered for Canadian tax purposes to be a

“new” foreign affiliate (that is not dealing at arm’s length with Canco), and in the absence of a specific continuity rule it seems that CFA MergeCo cannot be considered to be a “section 17 controlled foreign affiliate” of Canco for the portion of the series that is prior to the merger.

Example 3: Successive foreign mergers

- Canco wholly owns CFA1, CFA1 wholly owns CFA2, and CFA2 wholly owns CFA3. For commercial reasons, CFA1 merges with CFA2 to form “CFA MergeCo 1” and shortly thereafter CFA MergeCo 1 merges with CFA3 to form “CFA MergeCo 2”
 - If the merger of CFA1 and CFA2 is considered to be part of a “series” that includes the merger of CFA MergeCo 1 and CFA3 to form CFA MergeCo 2, it is not clear if subsection 87(8) would apply (assuming that all other conditions are met) to the disposition of Canco’s shares of CFA 1. Although it might be possible that the shares of CFA MergeCo 1 are not considered to be disposed of “to an acquirer” (e.g., CFA MergeCo 2, depending upon the legal mechanics of the merger), such an interpretation might not be clear given the context of subsection 84(9) and the scheme of the Act being such that a foreign merger results in a “new” foreign affiliate. If the shares of CFA MergeCo 1 are considered to be disposed of to CFA MergeCo 2, it appears that the condition in proposed subparagraph 87(8.3)(c)(ii) would be met because the scheme of the Act suggests that CFA MergeCo 2 is considered for Canadian tax purposes to be a “new” foreign affiliate (that is not dealing at arm’s length with Canco), and in the absence of a specific continuity rule it seems that CFA MergeCo 2 cannot be considered to be a “section 17 controlled foreign affiliate” of Canco for the portion of the series that is prior to the merger of CFA MergeCo 1 and CFA3.

Recommendation: The “section 17 controlled foreign affiliate” carveout should be (i) modified to clearly contemplate foreign mergers involving foreign affiliates (using a specific continuity rule, an example in the explanatory notes or otherwise); and (ii) expanded to include other transactions that do not give rise to the policy concerns that the Department of Finance is seeking to address (which might be accomplished, for example, by changing the time for determining “section 17 controlled foreign affiliate” status to only be at the time of the relevant disposition).