



# Canada Clarifies and Expands Proposal for Equity Buyback Tax

Written By Jared Mackey, John Piasta and Spencer Brown

In November 2022, we wrote about the federal government's proposal in the 2022 Fall Economic Statement to tax share buybacks by public corporations in our blog, *Canada Proposes New Tax On Share Buybacks*. At the time, few details were available on the proposed tax.

The 2023 Canadian Federal Budget, released March 28, 2023, provides particulars on the proposed new two percent tax on share buybacks and expands the proposal to apply to repurchases of equity by certain trusts and partnerships. The proposed tax, which would be implemented through new sections 183.3 and 183.4 of the *Income Tax Act*, would apply to any "covered entity", which generally includes an entity whose equity is listed on a designated stock exchange and that is:

1. a Canadian-resident corporation (other than a mutual fund corporation);
2. a real estate investment trust;
3. a "specified investment flow-through trust" (including a trust that is not, but would be a "specified investment flow-through trust" in specified circumstances); or
4. a "specified investment flow-through partnership" (including a partnership that is not, but would be, a "specified investment flow-through partnership" in specified circumstances).

Under the proposals, the two percent tax applicable to a covered entity is based on the net value of the entity's repurchased equity (being the fair market value of the repurchased equity in the taxation year less the fair market value of any equity issued in the taxation year). Covered entities that redeem, acquire or cancel equity in any year will be required to file a return in prescribed form.

For purposes of calculating a covered entity's repurchased equity, certain equity of the covered entity that is acquired by "specified affiliates" of the covered entity will be deemed to be acquired by the covered entity itself. Acquisitions intended to facilitate certain equity-based compensation arrangements and acquisitions made by registered securities dealers in the ordinary course of business would be excepted from this deeming rule. Anti-avoidance measures have also been proposed to address certain transactions that avoid the buyback tax.

Notably, the proposals will capture equity repurchased under normal course issuer bids and substantial issuer bids. Targeted exemptions are proposed for the issuance and cancellation of debt-like preferred shares and units (*i.e.*, shares and units with a fixed dividend and redemption entitlement), as well as the issuance and cancellation of shares or units in certain corporate reorganizations and acquisitions, including certain amalgamations, liquidations, share-for-share exchanges and butterfly transactions. The proposal



also includes a *de minimis* exception, whereby an entity that repurchases less than \$1 million of equity during its taxation year would not be subject to the tax.

If enacted, the proposed tax will apply to buybacks that occur on or after January 1, 2024. Covered entities should consider how the proposed tax will affect ongoing or proposed normal-course issuer bids, substantial issuer bids, and other equity buybacks. We will follow these developments and are available to discuss how the proposed tax may affect your business. If you have any questions, please reach out to a member of the Bennett Jones Tax group or Capital Markets group.

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