



CESTNICK

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TAX MATTERS

## Delaying the capital gains changes should simplify implementation for taxpayers

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By now you're no doubt aware that the government has announced increased taxes on capital gains in certain situations. Specifically, the portion of capital gains that are taxable – called the inclusion rate – is set to increase effective June 25, 2024, from 50 per cent to two-thirds. I won't get into the details of the rule changes today (see [my article](#) from April 17 for these).

### The Background

The federal budget tabled on April 16 proposed these changes and the government noted that “additional design details will be released in the coming months.” Interestingly, Finance Minister Chrystia Freeland [this week](#) excluded the capital-gains changes from a motion tabled in Parliament to implement budget measures.

The reality is that the budget measure is complex, and it's clear the government hasn't thought enough about the impact of the change. Delaying a motion to implement this change will allow more time to arrive at design details that make sense.

Now, this government has already dropped the ball on the implementation of two recent tax changes. The first was the Underused Housing Tax (UHT), which has placed an unnecessary administrative burden on Canadians with very little tax revenue to show for it. The second was the bare trust debacle where the government required Canadians to file tax returns for “bare trusts” that became so problematic that the government announced – literally days before the deadline – that they wouldn't require filings for 2023 after all. This, after millions was spent by Canadians to comply with the filing requirements for 2023.

The last thing this government should do is implement yet another wide-reaching tax change without giving adequate thought to the details. To that end, I want to share a few thoughts on those details.

### The suggestion

Millions of Canadians will want to avoid getting stung by the higher inclusion rate that kicks in on June 25. Specifically, many folks are looking to trigger, or

realize, some of their capital gains before June 25, which will typically involve disposing of certain assets before that date. In other cases it may involve very complex – and expensive – legal reorganizations to cause the capital gains to be realized.

Michael Goldberg and the tax lawyers from the firm Aird & Berlis has suggested to me the elegant idea that taxpayers should be allowed to file an election to recognize all or any part of unrealized capital gains on their assets. In other words, a person would not have to sell or otherwise dispose of an asset to realize the capital gain – they could simply elect to declare the gain as of June 24.

This election would be filed with a person's tax return for the tax year that includes June 24, 2024 (the last date you can realize a capital gain under the current rules). If you make this election, you'll realize a capital gain on June 24, 2024, on which you'll have to pay tax (which the government should appreciate).

### **The benefits**

There are many benefits to an election to realize capital gains:

- An election is simple, and our tax law is already set up to allow elections like this (paragraph 111(4)(e) of our tax law, for example). It was also done back in 1994, in a more complex manner, when the \$100,000 capital-gains exemption was eliminated. At that time, taxpayers could elect to trigger capital gains accrued up to Feb. 22, 1994.

- An election will help taxpayers who don't understand what the changes mean for them. It will give them more time. If, for example, you're an individual and can make an election to trigger a capital gain, this election would not happen until you file your tax return for 2024; the deadline would be April 30, 2025. So, you'd have until then to think about whether you want to trigger a capital gain or not. In the absence of an election, you'd have to actually dispose of the asset with the capital gain before June 25, 2024, or complete a reorganization of some type by that date.
- An election provides equal access to the ability to realize capital gains at the current inclusion rate for all affected taxpayers, not just those who have immediate access to and can afford accountants and lawyers to plan and execute a reorganization before June 25.
- Those who are in the middle of transactions can avoid renegotiating closing dates and revising agreements that are already in place to take advantage of the current rules.
- It will allow taxpayers to realize capital gains without having to enter into transactions or reorganizations that could cost many thousands of dollars in legal and accounting fees. And these types of transactions can take much longer than the 10 weeks provided leading up to June 25.
- Many taxpayers will have to find a way to pay the taxes they trigger when taking advantage of the current inclusion rate. Cash-flow planning can be tricky because it

may involve borrowing money. Allowing a simple election provides more time to plan for these tax payments and to decide whether one can afford to trigger capital gains this year.

What's important here? The government needs to announce, as soon as possible, that an election will be available. This will avoid another debacle like that seen with bare trusts after Canadians spent millions on unnecessary accounting and legal fees.

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