WRITTEN SUBMISSION

To: Standing Senate Committee on National Finance

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Topic: Bill C-97, Budget Implementation Act, 2019, No.1

Date: Wednesday, May 29, 2019

Background

Bill C-97 from cover to cover is 392 pages of both tax and non-tax measures. Since my expertise is related to tax legislation, I have kept my commentary and presentations on this restricted to this area. I have also attempted to put in this brief, informal layman explanations of the technical issues I have discovered to communicate my message better. As I was given short notice for this appearance, I am more than happy to submit a more formal technical briefing if requested by this Committee. I have outlined some of the concerns with the wording of the proposed measures in my attached informal commentaries.

Executive Summaries

1) Canada Training Credit
   a. oral speaking notes - Appendix A
   b. The introduction of a pool-based cumulative credit will cause more complexity in our already complex income tax system.
   c. Many people that would have some of the greatest need for the Credit do not qualify in its current form.
   d. Pool-based cumulative credits for expenses can mislead the public into thinking that by waiting longer, they are saving up for an opportunity while making it less affordable in the future than today.

2) Qualified Canadian Journalism Organizations
   a. Informal written submission – Appendix B
   b. Refers to Canadian Citizens rather than Residents
   c. Minister of Immigration has sole discretion to grant Citizenship
   d. Current foreign journalists can qualify
   e. Needs only to operate in Canada, but not required to be primarily in Canada
   f. Credit is refundable, meaning no actual profit needs to be in Canada
Good Evening Committee members.

I thank you for the invitation and opportunity to appear before this Committee to discuss Bill C-97 and the Canada Training Credit. My name is Cory Litzenberger. I am a Chartered Professional Accountant, a Certified Financial Planner, a Chartered Manager, and the President & Founder of CGL Strategic Business & Tax Advisors in Red Deer, Alberta. For almost two decades, I have been serving the Canadian tax profession through past service with the Canada Revenue Agency, professional committees, and in public practice.

I have several concerns with Bill C-97 and the Canada Training Credit in its current form - not the least of which, is the increasing complexity in our tax system this creates.

I am sure it is not every day a professional speaks to you saying they want to be able to lower their fees.

With the ever-increasing complexity in our system, I have seen many incorrect filings by non-professionals and lay-persons. This complexity is causing strain on our tax system. It increases the costs of compliance by Canadians and the cost of enforcement by the Crown.

With all of that said, the $250 Credit won’t be available to Canadians until they file their 2020 income tax return in April of 2021.\(^1\)

If a person were born in 1995 or later, they wouldn’t qualify yet.\(^2\)
If a person were born in 1954 or earlier, they would never be eligible.\(^3\)

The maximum benefit anyone can receive is $5,000 in a lifetime (which will take 20 years to get), and this benefit can only be used to a maximum of 50% of eligible tuition costs.\(^4\)

According to a September 5, 2018 publication of “The Daily” by Statistics Canada, the average Canadian undergraduate currently pays $6,838 in tuition per year.\(^5\)

Consider someone who is currently 25 years of age, making $27,000 a year, who assumes they will have access to $1,000 of the Credit after four years, in 2023.

If this person leaves work for two semesters in January of 2023, they would only make $9,000 of income and not qualify for the $250 Credit that year. This is because it is less than the required $10,000 threshold. Therefore, this person would only have access to a $750 total Credit.
This Credit received reduces the amount this individual can claim for tuition credits as well, which changes the future tax benefit by 15% ($112.50). The result is that the actual net cash benefit is $637.50 to this individual.

Further, the same Statistics Canada report says that tuition is increasing at 3.3% per year.

As a result, by this individual waiting four years so they could get $637.50 their annual tuition has likely increased by $948.

This Credit provides false hope to Canadians into thinking they are receiving $1,000 by waiting four years, when in fact, they are getting less than the amount of inflation.

Now, if the individual is a parent that decides to stay home with their young children until they are in school as an economical form of child care, and then they proceed to go back to school so they can re-enter the work force, they will not qualify for support because they did not earn more than the income threshold while they raised their children.

Further, if the individual is someone that was laid off early in the year, collecting regular EI benefits, and wants to further their education so they can make themselves more employable, they too will not qualify for that year’s Credit because regular EI Benefits do not qualify for the threshold.

Lastly, if the individual is a small business corporation owner that pays themselves dividends, they would not qualify. Usually, for cash flow reasons in a downturn, small business owners pay themselves dividends instead of a salary to avoid the nearly $5,500 in annual CPP contributions.

This jeopardizes their future retirement savings just so they can stay in business. However, even if they are low income making $10,000 a year, they still will not qualify for the Credit to perhaps gain assistance in choosing an alternative career path.

In Summary,

Those that do qualify won’t see anything until April 2021; the actual net amount of what they will see is less than the amount of inflation.

- Students under the age of 25 will see nothing;
- People over the age of 25 that have less than $10,000 of earned income will see nothing;
- Seniors will see nothing;
- Struggling small business owners looking to make a career change may see nothing;
- Parents looking to further their education and re-enter the workforce will see nothing; and
- People who have been laid off early in the year and unable to find work will see nothing.
This provision adds a lot of complexity to an already complex tax system and increases the administrative costs for both the Crown and Canadians, for no real benefit to those that need it most.

I thank you for your time and look forward to responding to any questions on this matter.

1 Proposed Income Tax Act Paragraph 122.91(2)(a)
2 idem
3 idem
4 Proposed Income Tax Act Paragraph 122.91(1)(b)
https://www150.statcan.gc.ca/n1/daily-quotidien/180905/dq180905b-eng.htm
Appendix B

Definition of Qualified Canadian Journalism Organization (QCJO)

An informal commentary on the technical issues

Except for some scarce provisions, the Income Tax Act speaks of two major groups of taxpayers: Residents and Non-Residents.1

However, in the case of the proposed legislation around the definition of “qualified Canadian journalism organization,” they purposely left out the word “residents” and instead used the word “citizens.”

Corporate QCJO

To qualify for the refundable tax credits, a QCJO corporation needs to have greater than 75% of the corporation’s directors as Canadian citizens. Again, they are not required to be a Canadian resident for tax purposes. As a result, directors that are Canadian citizens can be living and paying tax in Cypress, the Caymans, or Luxembourg, and they will not be Canadian taxpayers, but eligible for the QCJO status.

Further, it doesn’t have to be a corporation as it can be a trust or a partnership as well, and this is where is the most concern.

Partnership QCJO

The proposed definition of “qualified Canadian journalism organization” (QCJO) says that the partnership needs to have 75% of the partnership property held by citizens of Canada or persons, or partnerships described in the definition. 2

The result is a circular calculation of the definition because another QCJO partnership can own a QCJO partnership.

Put another way; two Canadian citizens decide to form a partnership under the laws of any province in Canada, let’s say Alberta for example.

Paragraph 1(g) of the Partnership Act of Alberta defines “partnership” as “the relationship that subsists between persons carrying on a business in common with a view to profit;” 3

The legislation does not require any of the partners to be resident in Alberta, so as long as the partnership undertakes commercial activities in Alberta, the partnership could form in Alberta. The definition in Paragraph 1(f) defines “governing jurisdiction” concerning a partnership as “the jurisdiction the law of which governs the interpretation of the partnership agreement, by operation
of law or through a provision in the partnership agreement or another document created by the partnership.”

So, now you’ve created your partnership in Alberta with your 100% Canadian citizens, let’s call it “Partnership A.” You then hire your two arm's-length journalists to help meet the QCJO test.

Then that partnership becomes 76% equity owners in another partnership, “Partnership B”, that hires two arm’s-length journalists so it can be a QCJO; Which in turn becomes 76% equity owners in another partnership, “Partnership C”, etc, until you have 26 stacked partnerships ending with "Partnership Z".

Remember, that the definition is circular, so a partnership meets the test, it is a QCJO, and if a QCJO partnership owns another partnership, it can be a QCJO, and so on.

So let's go back to our 26 stacked partnerships. “Partnership Z” (and all of the partnerships) are actual journalism organizations that are:

248(1) "qualified Canadian Journalism Organization"

... (v) primarily engaged in the production of original news content which
(A) must be primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes, and
(B) must not be primarily focused on a particular topic such as industry-specific news, sports, recreation, arts, lifestyle, or entertainment

...and they each hire two arm’s-length journalists.

As a result, Partnership Z can have 24% owned by non-Canadian citizens and 76% owned by a partnership that meets the test in subparagraph (ii) - that circular definition we mentioned earlier.

Because “Partnership Z” meets the definition, then the 76% partner, “Partnership Y” will also meet the definition because it is “primarily” engaged (greater than 50%) in the QCJO activities because of its interest in “Partnership Z,” and so on. However, it too must hire two "arm’s-length" journalists to be considered a QCJO.

So again, Partnership Y is 24% owned by non-Canadian citizens and 76% owned by a partnership that meets subparagraph (ii) and hires two arm’s-length journalists.

By the time we get to the top, we have 26 QJCOs with a combined total of 52 arm’s-length journalist employees, and we have 25 non-Canadian investors (not 26 because I decided to make Partnership “A” 100% Canadian citizens).
The actual flow through equity interest that the original partners in Partnership A have in Partnership Z is only 0.1048%.

The original 100% owners of Partnership A, on a look-through basis, would only own roughly 1/10th of 1% interest in Partnership Z, but it would still be a QCJO.

The result happens because this rule does not state anywhere that it requires a prorated look-through. Instead, it says a partnership can meet the test where a partnership is owned by a partnership meeting the test.

Further, if you notice where it said earlier “primarily focused on matters of general interest and reports of current events” you will see the absence of the word Canada or Canadian in that phrase. As a result, reporting on current events happening in Saudi Arabia would qualify.

The proposed definition does say it “includes coverage of democratic institutions and processes,” but it does not mean it is a requirement, just that it "includes" it.

This wording is similar to saying "dairy includes cheese"; but not all dairy needs to be cheese.

Remember when I said early on that the individuals had to be Canadian citizens?

Did you know that the Minister of Immigration, Refugees, and Citizenship can grant citizenship to anyone “to reward services of an exceptional value to Canada.”

That’s it. That’s the test.

Subsection 5(4) of the Citizenship Act states:

5(4) Despite any other provision of this Act, the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada. [emphasis added]

If you recall, that instead of “resident,” the rules for a QCJO only require Canadian “citizens” and I said this was rare in the Income Tax Act.

As a result, the Canadian citizens don’t have to live or pay taxes in Canada, and if you read subsection 5(4) of the Citizenship Act, they don’t need to be a citizen yet.

So here is an extreme, but utterly legal scenario under this tabled legislation:

Step 1 - The Minister of Immigration, Refugees, and Citizenship grants citizenship to two foreign individuals with friendly ties to the government under Subsection 5(4) of the Citizenship Act.
Step 2 – These two individuals form “Partnership A” which is now 100% Canadian-citizen owned and controlled thanks to the Minister of Immigration, Refugees, and Citizenship;

Step 3 - They line up 25 non-resident, non-Canadian investors of varying wealth;

Step 4 - They set up 25 more partnerships stacked as I described earlier;

Step 5 - They hire 52 “arm’s length” journalists;

Step 6 - Half of their reporting is on “current events” in 26 different countries (different - because it all needs to be “original" news content);

Step 7 - The other 49.9% of information is not required to be original, or even factual. Remember, there is no prorated look-through rule in the current wording of the provision. Once you meet the test under the subparagraph, then the circular sequence can begin.

Step 8 - Every single one of the 26 partnerships is a “qualified Canadian journalism organization.”

The result is now 26 news outlets are reporting on 26 different regions of current events, but also reporting 26 times the fake news and propaganda than any one of those current event regions, and you’re helping pay for it with a refundable tax credit.

Now, of course, they all need to be approved by a “prescribed body for the purpose of this definition” who is also picked by the government, and that is a discussion for another day. I am also curious as to why, instead of Budget Day, the law is retroactively in effect as of January 1, 2019.

In Conclusion

This new proposed definition of “qualified Canadian journalism organization” is extremely concerning and these glaring deficiencies need to be addressed. If we were to require the employees and the ownership, to be Canadian residents, rather than citizens, for tax purposes, we would close much of the revenue leakage that the current drafting of the legislation proposes.

Without closing this wording, we could end up with an increase in misleading reports written; subsidized by taxpayers, and controlled by non-resident individuals, thus resulting in tax leakage to the Crown.

1 Income Tax Act, Subsection 2(1)
2 Proposed Income Tax Act Paragraph 248(1) “qualified Canadian journalism organization”
3 Partnership Act, Alberta Queen’s Printer, current as of December 11, 2018 http://www.qp.alberta.ca/documents/Acts/P03.pdf
4 idem
5 Subsection 5(4) of the Citizenship Act