

Canadian budget offers section 116 relief for non-resident investors

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Great news for non-resident investors, including, in particular, non-resident investors in private equity funds. The Canadian Federal Government has proposed a substantial change in its most recent budget (dated March 4, 2010) to the definition of “taxable Canadian property” (TCP) to exclude the shares of a corporation, interests in a partnership and interests in a trust that do not derive and have not derived at any particular time in the 60-month period that ends at the time of measurement (i.e., the time of disposition), directly or indirectly, their value principally from one or more of (i) real or immovable property situated in Canada, (ii) Canadian resource property, or (iii) timber resource property. As a consequence, this measure should eliminate section 116 compliance obligations (subject to a prospective purchaser's satisfaction that the subject property is not TCP), reduce the need for tax reporting and exempt a host of non-resident persons who would otherwise be taxable in Canada on the disposition of shares of Canadian corporations and other interests who do not currently qualify for exemptive relief under an existing Canadian income tax treaty or convention.

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More detail concerning the Federal Government's budget is available in the Stikeman Elliott commentary that can be downloaded at www.stikeman.com