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# Canadian Industries Call for Clarification of New Luxury Tax (1)

By James Munson2022-08-16T04:45:15000-04:00

- New tax targets luxury cars, boats and planes
- Exemption rule unclear, businesses say

Canada's auto, aircraft and boating industries say they face significant uncertainties over how the tax authorities will enforce a new levy on luxury goods, just weeks before it's set to take effect.

The Department of Finance released new details this month ahead of the Sept.1 tax implementation date, but that has failed to assuage concerns over how it will apply to some sales, particularly when it comes to the application of exemptions, industry representatives and lawyers said.

"I'm sure that there's going to be cases that are going to be tested," Anthony Norejko, president and CEO of the Canadian Business Aviation Association, said about potential legal challenges.

Tax authorities will begin enforcing the levy on cars and planes worth more than C$100,000 ($78, 000) and boats valued at C$250,000 at the start of next month. The legislation for the measure passed in June. First promised in a spring 2021 budget, the tax will be calculated as the lesser of 20% of the value above the price threshold or 10% of the full value of the item.

The affected sectors have asked Finance Minister Chrystia Freeland and her department to provide more documentation to clarify the scope of the tax, especially after officials confirmed on July 14 that it would apply to aircraft as well.

New guidance issued in recent weeks hasn't clarified areas of concern for industry, such as which commercial uses will be exempt despite crossing the price threshold. In addition to draft legislation Aug. 9, which outlined several aircraft exemptions, the Finance Department also published a special tax notice Aug. 4 covering road vehicle exemptions, and a regulatory order Aug. 3 fixing the enforcement date.

The finance department said in a statement Monday it has had regular and ongoing contact with affected groups and has responded directly to any questions raised during meetings.

The Canada Revenue Agency “has been working proactively with the automotive, aviation, and marine industries to ensure adequate understanding and proper implementation of the new taxation regime, and to reduce any potential uncertainty with regard to the interpretation of the legislation,” said Caroline Theriault, spokesperson for the department.

## Charter Businesses

A top concern for aircraft owners and manufacturers is how the legislation’s exemption for charter businesses will work, given the clash between the law and how charter flights actually work, Norejko said.

The rule exempts tax if the buyer plans to use a plane as a charter for which tickets are bought by the seat. However, the industry norm is to buy an entire plane so it’s unclear if charters are exempt, he said.

The law contains a business-use exemption, including for planes that may be chartered, Theriault said in her statement. However, the exemptions don’t apply on a flight-by-flight basis, she added.

In addition, getting an exemption requires getting an attestation by the buyer that a plane will be used for an exempted activity such as a commercial use 90% of the time. Proving that threshold will be met is bound to create conflicts between plane sellers and tax authorities, Norejko said.

“That is going to be a point of friction going forward,” he said.

Jim Ferrier, interim president and CEO of the Canadian Owners and Pilots Association, said individuals seeking to sell their planes likely don’t know if they must register for the tax and if their sales are taxable. The exemption process can be highly technical, he said, with one rule that deems a plane taxable if it has received upgrades 12 months prior to the sale.

“There’s much more risk on individual A or B not knowing they need to do this,” Ferrier said.

While draft legislation published Aug. 9 clarified that plane sales for exports were exempt, there’s nothing similar for automobiles or boats, Jamie Wilks, tax partner at McMillan LLP, said in a statement.

“Our concern remains about the registered vendor not being able to confirm the conditions for satisfying the export rebate until after the completion of the sale of the vehicle or boat,” which means a vendor will have to carry the risk they won’t receive a rebate on the tax, said Wilks, who has clients in the automotive and aviation sectors who will be affected.

Theriault said in her statement that there are provisions that would allow for no net tax payable in circumstances where automobiles or boats are exported in the same quarter in which their sale occurred.

In the boating sector, there’s a lack of awareness that the tax won’t apply to boats ordered from manufacturers before Dec. 31, 2021, effectively exempting sales of used boats, Sara Anghel, president of the National Marine Manufacturers Association of Canada, said in an interview. Owners will likely encounter more confusion once the tax comes into effect Sept. 1, she added.

“We’re going to see all of that uncertainty come out once it’s in place,” she said.

(Updates story with comments in paragraphs 11 and 18 from Caroline Theriault.)

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