

Estate Planning

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Agenda

1. Review of common post-mortem tax plans
2. Recent changes in succession planning
3. “New” trust reporting rules
4. New UHT rules
5. New AMT rules



Post-Mortem Tax Planning

- Do nothing
- 164(6)
- Pipeline
- Pipeline/bump
- Hybrid
- A note on spousal rollover/spousal trust



Do Nothing

- 70(5) deemed disposition at death results in capital gain of ~\$7M (1/2 included in income)
- Tax bill of \$1.873M due April 30 (unless death occurred in Nov/Dec).
- Estate receives shares with a stepped up cost base of \$7M.

Mrs. A

100 common shares
ACB/PUC = \$1
FMV = \$7M

Investco

Portfolio
FMV = \$7M
ACB = \$3M

Do Nothing (continued)

- Shares revert to estate with stepped up ACB
- Investco disposed of portfolio, resulting in capital gain of \$4M.
- Permanent corporate taxes of \$390k paid to CRA
- Remaining cash of \$6.610M paid to the estate (\$2M as a capital dividend, remaining \$4.610 as an other than eligible dividend)
- Tax to the estate of ~\$2.2M

Estate of Mrs. A

100 common shares
ACB = \$7M
PUC = \$1
FMV = \$7M

Investco

Portfolio
FMV = \$7M
ACB = \$3M

Do Nothing (continued)

	Do Nothing
FMV of Investco	\$ 7,000,000
Tax on deceased's terminal return	1,873,549
Tax in Investco from liquidating portfolio	390,000
Tax to estate on deemed dividend	2,200,814
Total tax	\$ 4,464,363
Tax as a percentage of FMV of Invesco	63.78%

Estate of Mrs. A

100 common shares
 ACB = \$7M
 PUC = \$1
 FMV = \$7M

Investco

Portfolio
 FMV = \$7M
 ACB = \$3M

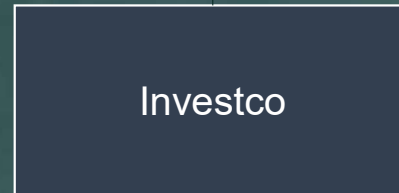
Do Nothing (continued)

1. Capital Gain of ~\$7M due to the deemed disposition on death

Estate of Mrs. A

ACB = \$1
FMV = \$7M

2. Taxable dividend of \$4.61M for the estate to extract the cash of the corporation



3. Capital Gain of \$4M to Liquidate Portfolio

ACB = \$3M
FMV = \$7M



Tax Issues of Owning a Private Corporation

Remedies

1. **Arm's length sale**
2. **164(6) carry back**
 - Legislated solution
 - Value of corporation extracted at dividend rates
 - Requires windup of corporation or redemption of estate shares within the first tax year of the estate
3. **Pipeline**
 - Tax practitioners' solution
 - Value of corporation extracted at capital gain rates
 - Strict conditions on withdrawal of cash from corporation
 - Bump may be available to eliminate third layer of corporate income tax
4. **Hybrid – 164(6) and Pipeline**



164(6) Loss Carry Back

- Share redemption
 - FMV of \$7M less PUC of \$1 = deemed dividend of 6,999,999

Estate of Mrs. A

100 common shares
ACB = \$7M
PUC = \$1
FMV = \$7M

Investco

Portfolio
FMV = \$7M
ACB = \$3M

164(6) Loss Carry Back (continued)

- Disposition of shares in estate

Proceeds of disposition	\$ 7,000,000
Less: deemed dividend	- 6,999,999
Adjusted proceeds of disposition	1
Adjusted cost base	- 7,000,000
Capital loss	-\$ 6,999,999

Estate of Mrs. A

100 common shares
ACB = \$7M
PUC = \$1
FMV = \$7M

Investco

Portfolio
FMV = \$7M
ACB = \$3M

164(6) Loss Carry Back (continued)

- Estate must be designated as a GRE
- Disposition (i.e. redemption of shares) must take place in the first taxation year of the GRE
- Watch out for stop-loss rules on capital dividends
- Give yourself time – administration can be lengthy.
- Coordination with other professionals (lawyer, advisor) is critical
- Ensure there is sufficient cash flow available
- Do not need to redeem 100% of shares in case a hybrid solution is being considered

Pipeline

FMV of Investco	164(6)	\$ 7,000,000
Tax on deceased's terminal return		1,873,549
Tax in Investco from liquidating portfolio		390,000
Tax to estate on deemed dividend	—	2,200,814
Total tax		\$ 2,263,549
Tax as a percentage of FMV of Invesco		32.34%

Estate of Mrs. A

100 common shares
 ACB = \$7M
 PUC = \$1
 FMV = \$7M

Investco

Portfolio
 FMV = \$7M
 ACB = \$3M

Pipeline (continued)

- No requirement to implement in first tax year of estate
 - Only option if missed 164(6) deadline
- CRA position is that “cash corporations” cannot use pipeline strategy
- Historically CRA positive rulings were provided for pipeline strategies but requests included structured repayments of the IOU (after a minimum of one year) and no amalgamation/windup of Investco into Newco within the same period.

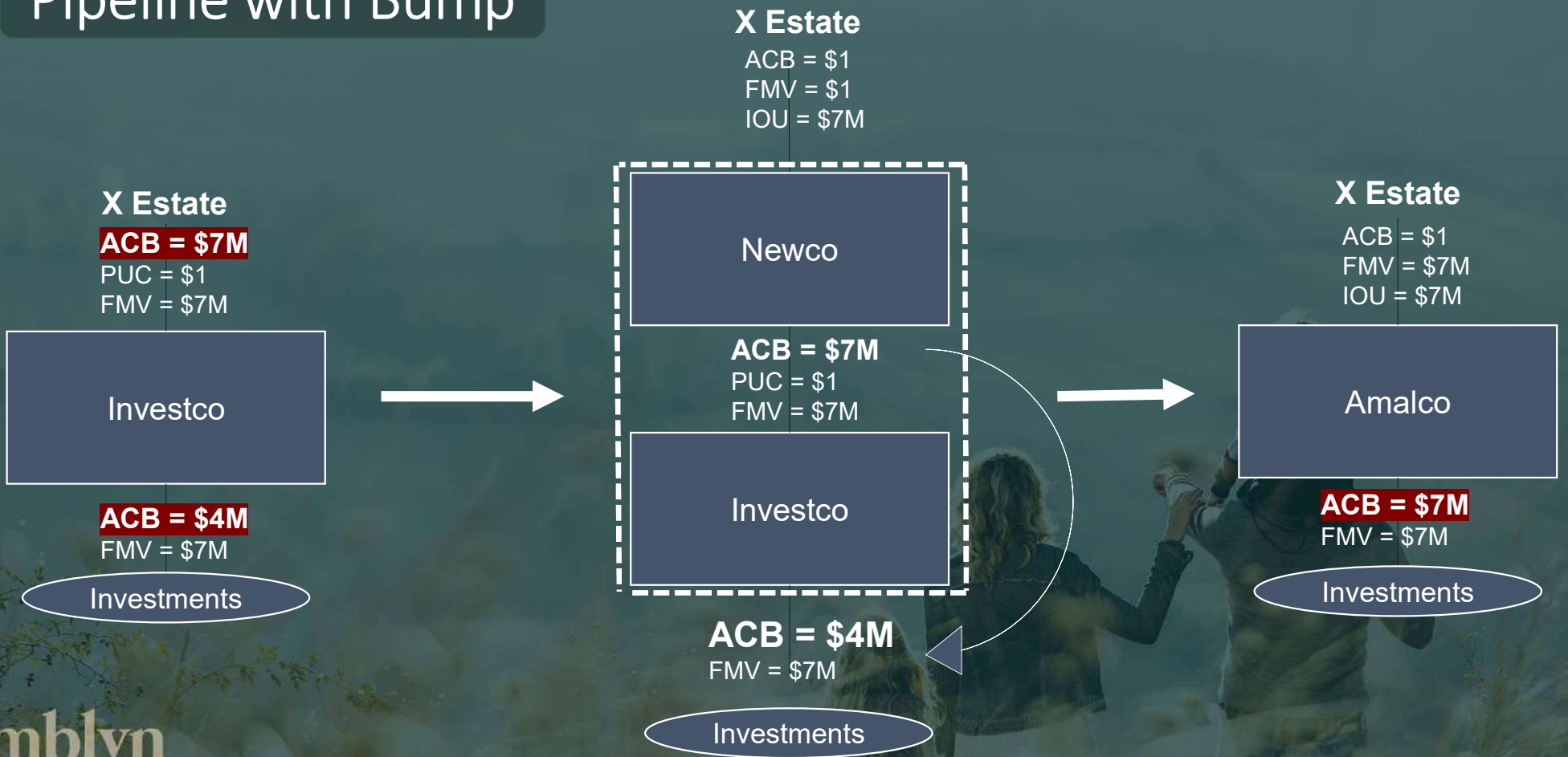


Pipeline (continued)

- Effectively a “surplus strip” transaction
- Impact of new GAAR effective January 1, 2024?
 - Surplus strip transactions were specifically included in backgrounder to new GAAR changes
 - "Economic Substance" test
 - Until CRA rulings or interpretations accepting pipelines under new GAAR are published proceed with caution
 - Consider requesting ruling but consider plan if CRA does not issue a positive



Pipeline with Bump



Pipeline with Bump

Can only “bump” non-depreciable capital property:

- Land
- Shares in corporations
- Partnership interests

	Pipeline/Bump
FMV of Investco	\$ 7,000,000
Tax on deceased's terminal return	1,873,549
Tax in Investco from liquidating portfolio	390,000
Tax to estate on deemed dividend	2,200,814
Total tax	\$ 1,873,549
Tax as a percentage of FMV of Invesco	26.76%

Comparison

	Do Nothing	164(6)	Pipeline	Pipeline/Bump
FMV of Investco	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000
Tax on deceased's terminal return	1,873,549	-	1,873,549	1,873,549
Tax in Investco from liquidating portfolio	390,000	390,000	390,000	-
Tax to estate on deemed dividend	2,200,814	2,200,814	-	-
Total tax	\$ 4,464,363	\$ 2,590,814	\$ 2,263,549	\$ 1,873,549
Tax as a percentage of FMV of Invesco	63.78%	37.01%	32.34%	26.76%

Other Factors to Consider

- Corporate attributes may make the 164(6) strategy more attractive than pipeline
 - Refundable dividend tax on hand (ERDTOH/NERDTOH)
 - Capital dividend account (CDA)
 - Eligible dividends from general rate income pool (GRIP)



Spousal Trusts

- Same concept as spousal rollover, except shares go to a trust for the benefit of the surviving spouse
- Not subject to the 21 year rule
- On death of beneficiary of the spousal trust, a deemed disposition in the trust occurs
- Deemed year end at end of the day of death
- Trust is not eligible to claim LCGE on shares that may qualify (110.6(12)) unless death of first spouse was pre-2017
- Subsection 160(1.4) makes the trust and the spouse beneficiary's estate liable for taxes arising due to deemed disposition



Spousal Trusts (continued)

- No 164(6) election available to spousal trusts (no GRE status)
- However, “regular” three year look back rule available (111(1)(b))
 - Will should be drafted to allow the trust to continue for a period post-death to facilitate this type of tax planning
 - Additional loss restriction rules could apply
- Pipeline and bump planning still available in the context of spousal trusts



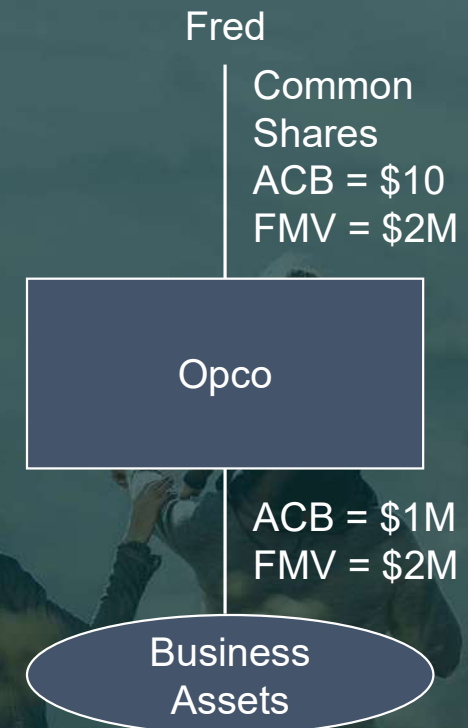
Business Succession Planning

- Options:
 1. Freeze
 2. Fair market value sale of shares
- Option 2 was historically problematic between related individuals due to 84.1



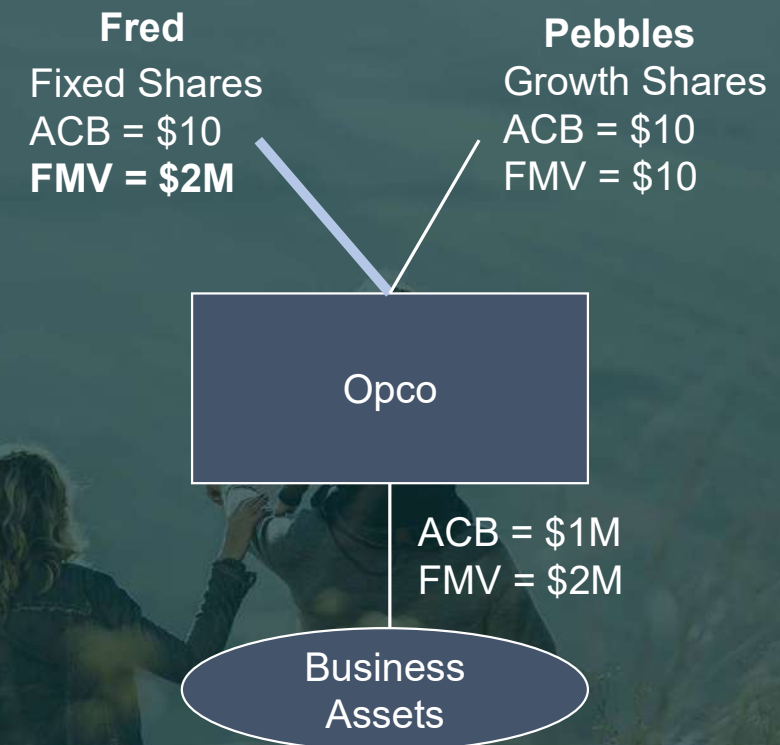
Intergenerational Business Transfers

- Fred owns all of the shares of Opco
- Fred has a child, Pebbles, who is active in the business
- Fred would like to retire and transition Opco to Pebbles in the most tax efficient manner possible
- The \$2M FMV of Opco is an important part of Fred's retirement plan



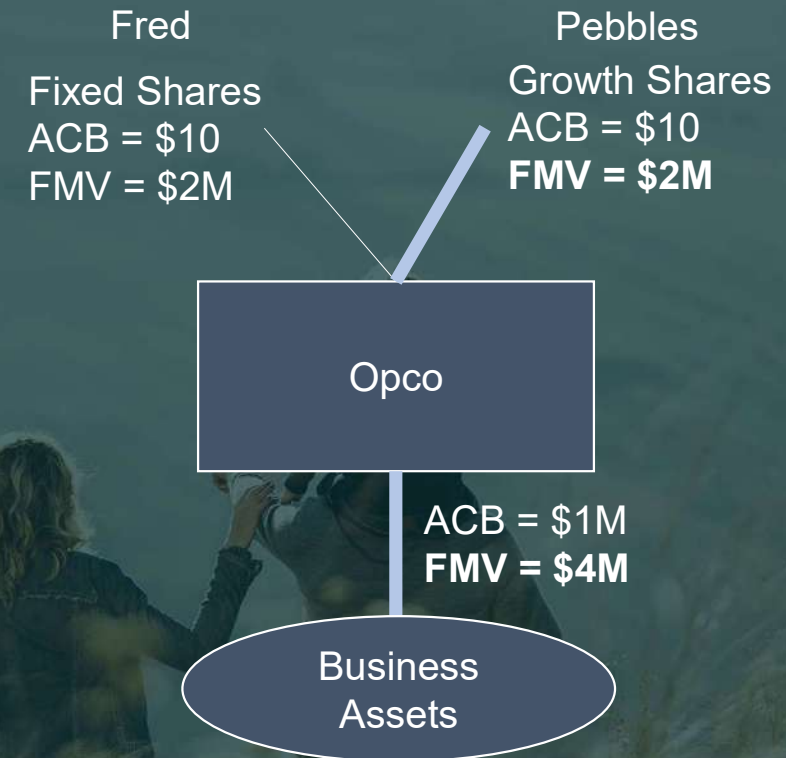
Estate Freeze – Example

- Fred will “freeze” his shares in Opco by exchanging his shares for fixed value preferred shares of Opco worth \$2M
- Once the freeze has been accomplished, Pebbles can subscribe for the growth common shares for a nominal amount



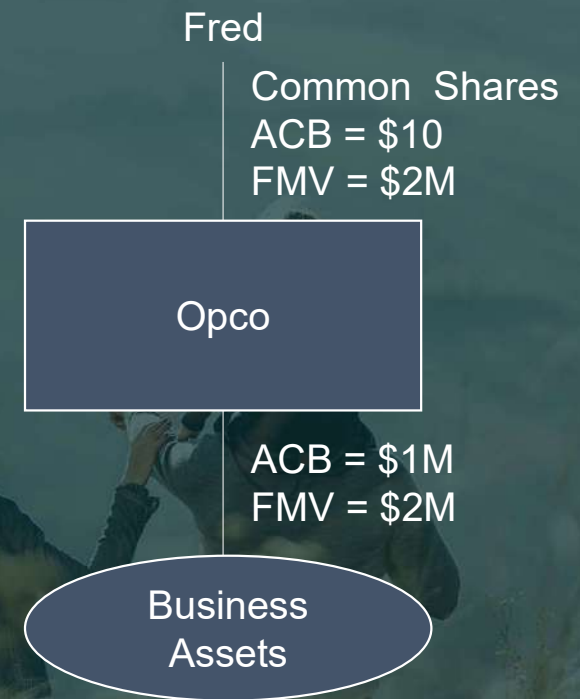
Estate Freeze – Example

- As the value of Opco grows, it will attribute to Pebbles' growth common shares
- The fixed preferred shares held by Fred can also be redeemed/cancelled over time to reduce the value held by Fred directly



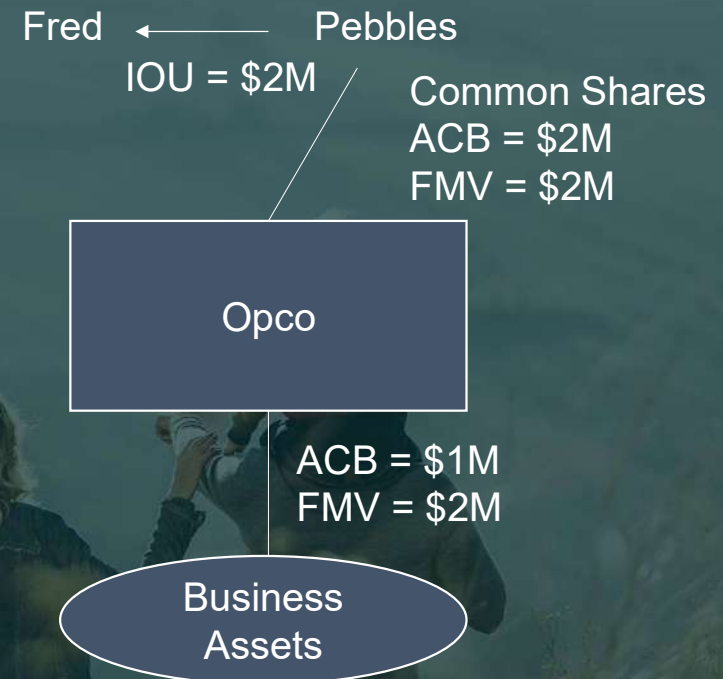
Fair Market Value Sale

- As an alternative, Fred could sell his shares to Pebbles for FMV of \$2M



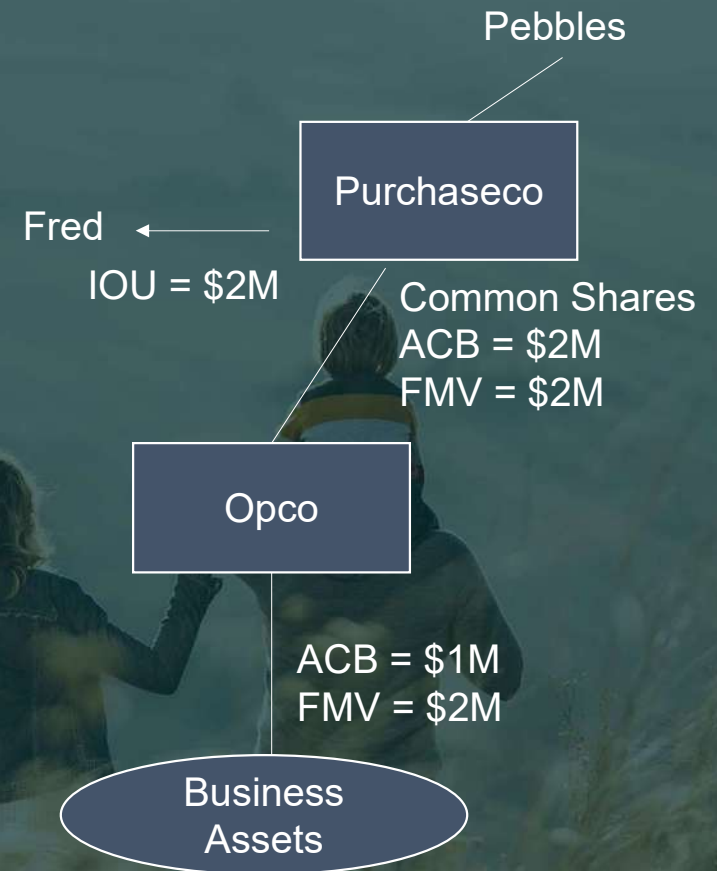
Fair Market Value Sale – Example

- Pebbles would acquire the shares from Fred and as consideration, would issue a promissory note for \$2M
- Fred could potentially utilize his capital gains exemption
- The issue is how does Pebbles fund the payment of the amount owing to Fred?



Fair Market Value Sale – Example

- What if Pebbles uses a Purchaseco?
- Dividends can generally pass from Opco to Purchaseco tax-free provided the corporations are “connected”
- Common practice for purchasers to use a corporation

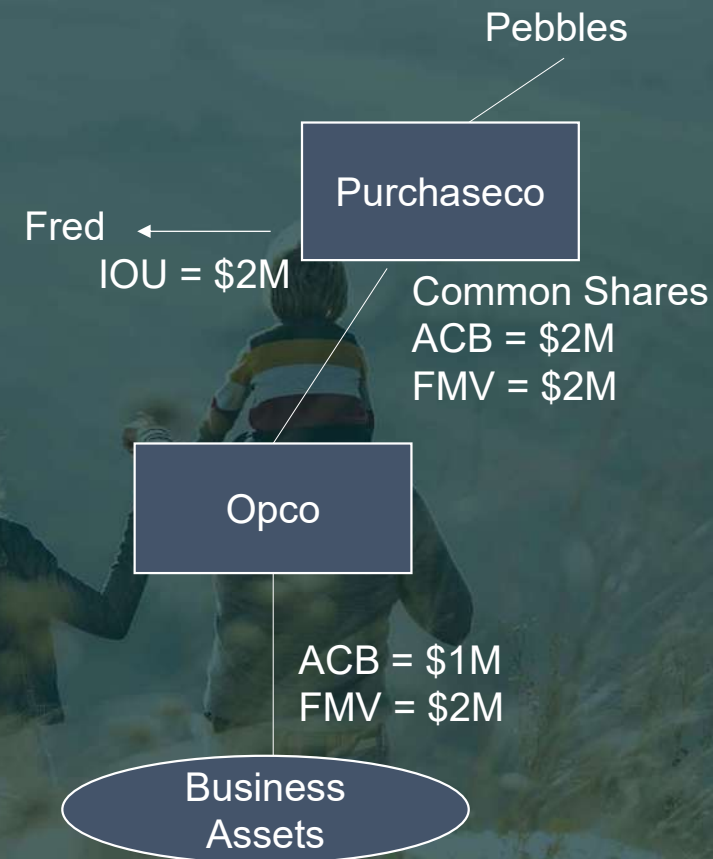


BUT, what about ITA 84.1?

Where after May 22, 1985 a taxpayer resident in Canada (other than a corporation) disposes of shares that are capital property of the taxpayer (in this section referred to as the “subject shares”) of any class of the capital stock of a corporation resident in Canada (in this section referred to as the “subject corporation”) to another corporation (in this section referred to as the “purchaser corporation”) with which the taxpayer does not deal at arm's length and, immediately after the disposition, the subject corporation would be connected...

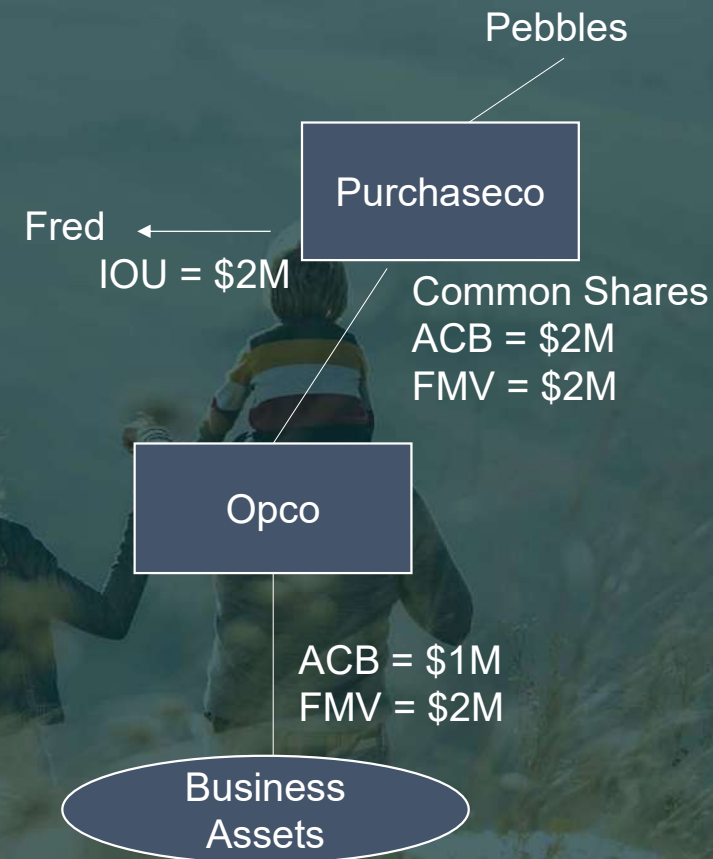
Fair Market Value Sale – Example

- Fred is resident of Canada
- Shares of Opco are capital property
- Opco is a resident of Canada
- Purchaser is a corporation
- Fred is related to Pebbles by blood and are deemed not to deal with each other at arm's length
- Purchaseco and Opco are connected
- 84.1 applies



Fair Market Value Sale – Example

- The result is that the proceeds received by Fred would be recharacterized from proceeds subject to capital gains treatment to taxable dividends
- Access to the capital gains exemption would be precluded
- Is this a fair result given there was a legitimate desire to transition the business from Fred to Pebbles?



Bill C-208 Changes to ITA 84.1

- Bill C-208 became law on June 29, 2021 and enacted amendments to ITA 84.1
- The changes were intended to facilitate intergenerational share transfers
- The idea was to ensure that only legitimate intergenerational transfers could benefit from avoiding the application of ITA 84.1



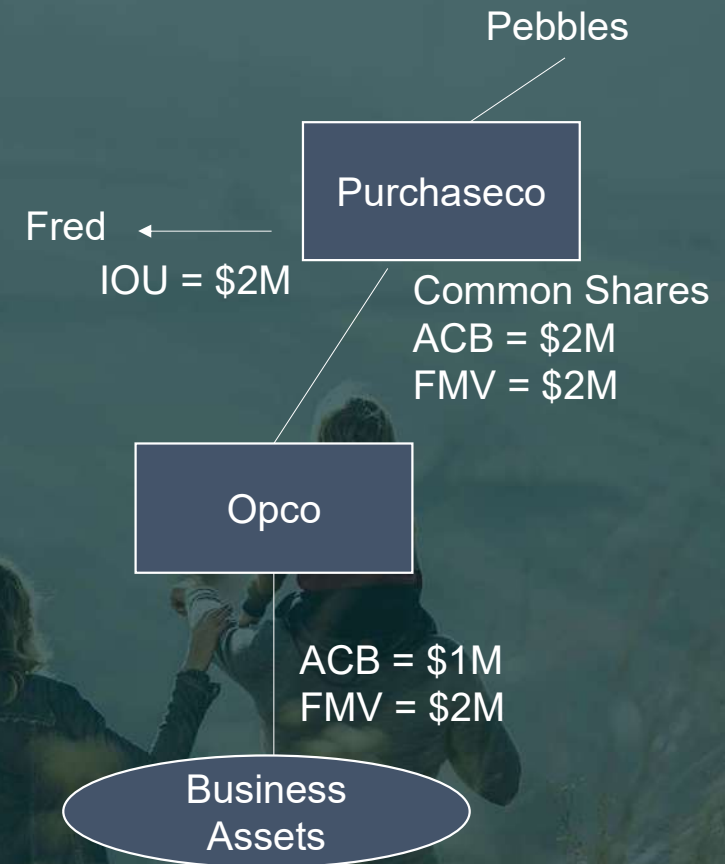
Bill C-208 Changes to ITA 84.1

- The following conditions must be met in order to facilitate intergenerational transfers:
 - The parent's shares being transferred are shares of a Qualified Small Business Corporation (QSBC)
 - Purchaseco must be controlled by either the child of the parent or their grandchild
 - Child or grandchild must be at least 18 years of age
 - Purchaseco cannot dispose of the shares within 60 months of acquiring them
 - Independent assessment of fair market value (valuation)
 - Affidavit signed by the taxpayer and a third party attesting to the sale



Fair Market Value Sale – Example

- Given the changes in Bill C-208 to ITA 84.1, the sale proceeds would be eligible for capital gains treatment and Fred could utilize his capital gains exemption
- Pebbles would also be able to utilize Purchaseco to ensure the payment of the amounts owing to Fred are as tax efficient as possible



2023 Budget Changes to ITA 84.1

- Rules are to be further amended to ensure that they apply only where a genuine intergenerational transfer takes place by imposing additional conditions
- Taxpayers can choose to rely on 1 of 2 transfer options:
 - 1) an immediate transfer (3 year test)
 - 2) a gradual transfer (5 – 10 year test)
- All parties would be required to jointly elect which method will apply and joint and several liability would apply
- Reassessment period extended 3 and 10 years respectively
- 10 year capital gains reserve available (instead of 5 years)
- Rules effective January 1, 2024 but still not enacted – expect retroactive effect once receiving royal assent

2023 Budget Changes to ITA 84.1

Immediate Transfer (3 year test)

- Similar terms to arm's length sale
- More stringent conditions:
 - Legal and factual control by the parent is transferred to the child/grandchild including an immediate transfer of a majority of the voting shares and common shares with a transfer of the remaining voting shares and common shares within 36 months
 - Management of the business is transferred to the child/grandchild within a reasonable timeframe (36 months would be safe for this purpose)
 - Child/grandchild retains legal control and remains actively involved in the business for 36 months or more following the sale

2023 Budget Changes to ITA 84.1

Gradual transfer (5 – 10 year test)

- Based on traditional estate freeze characteristics
- The conditions are easier to satisfy:
 - Only legal control by the parent is transferred to the child/grandchild including an immediate transfer of a majority of the voting shares and common shares with a transfer of the remaining voting shares and common shares within 36 months
 - Within 10 years the parents reduce their debt and equity interests to 30% of the value of their interest at the time of the initial sale
 - Management of the business is transferred to the child/grandchild within a reasonable timeframe (36 months would be safe for this purpose) however factual control can continue to reside with the parent
 - Child/grandchild retains legal control and remains actively involved in the business for the greater of 60 months following the sale or until the transfer is completed

Bill C-208 Changes to ITA 55(2)

- Historically 55(2) made it problematic to split up an active operating business owned by two siblings
- If there were two businesses within one corporation, the businesses could not be separated without any income tax consequences
- Amendments to ITA 55(5)(e)(i) now allow siblings to split up a corporation so long as the shares are QSBCS at the time of the split up as they are now deemed related
 - Note: siblings are not excepted from 84.1 and these rules are completed separate



Conclusion

- Important issue given generational shift
- Intergenerational transfers can be accomplished by estate freezes or fair market value sales
- ITA 84.1 provides a number of landmines to navigate in terms of facilitating a sale in a tax efficient manner with more complicated rules on the horizon



Employee ownership trusts

- Bill C-59 introduced legislation concerning the use of employee ownership trusts to purchase and hold shares of a business.
- Additional option for succession planning by private business owners who cannot find a family member or third party to take over the business.



Employee ownership trusts (continued)

Main conditions

- Canadian resident trust
- Only has two purposes:
 - Hold shares of a **qualifying business** for the benefit of employees
 - To make distributions to beneficiaries under a distribution formula (restricted)
- Substantially all of the FMV of the EOT's property must be shares of one or more qualifying businesses



Employee ownership trusts (continued)

Qualifying business (main conditions)

- Must be a CCPC
- EOT must acquire **control**
- Must deal at arm's length and not be affiliated with anyone that owned a majority interest in the business immediately prior to its acquisition by the EOT
- Vendors are prohibited from retaining any right, influence, or control over the business or EOT
- Asset test must be met immediately before disposition



Employee ownership trusts (continued)

Governance restrictions

- Previous majority owners can no longer retain control or influence over the business (40% directors test)
- At least one-third of trustees must be current employees
- At least 60% of all trustees must be persons that deal at arm's length with each person who sold shares to the EOT
- Trustees must have an equal vote
- More than 50% of current employee beneficiaries must approve transactions or events that result in EOT ceasing to control the business, as well as other reorganizational activities



Employee ownership trusts (continued)

Benefits

- 10-year capital gains reserve
- Exclusion from 21 year deemed disposition rule
- 15-year shareholder loan repayment period (equivalent deemed interest rule)
- Temporary capital gains exemption (fall economic statement)
 - First \$10M of capital gains realized on a sale exempt from tax. Incentive to be in place for 2024, 2025, 2026 tax years



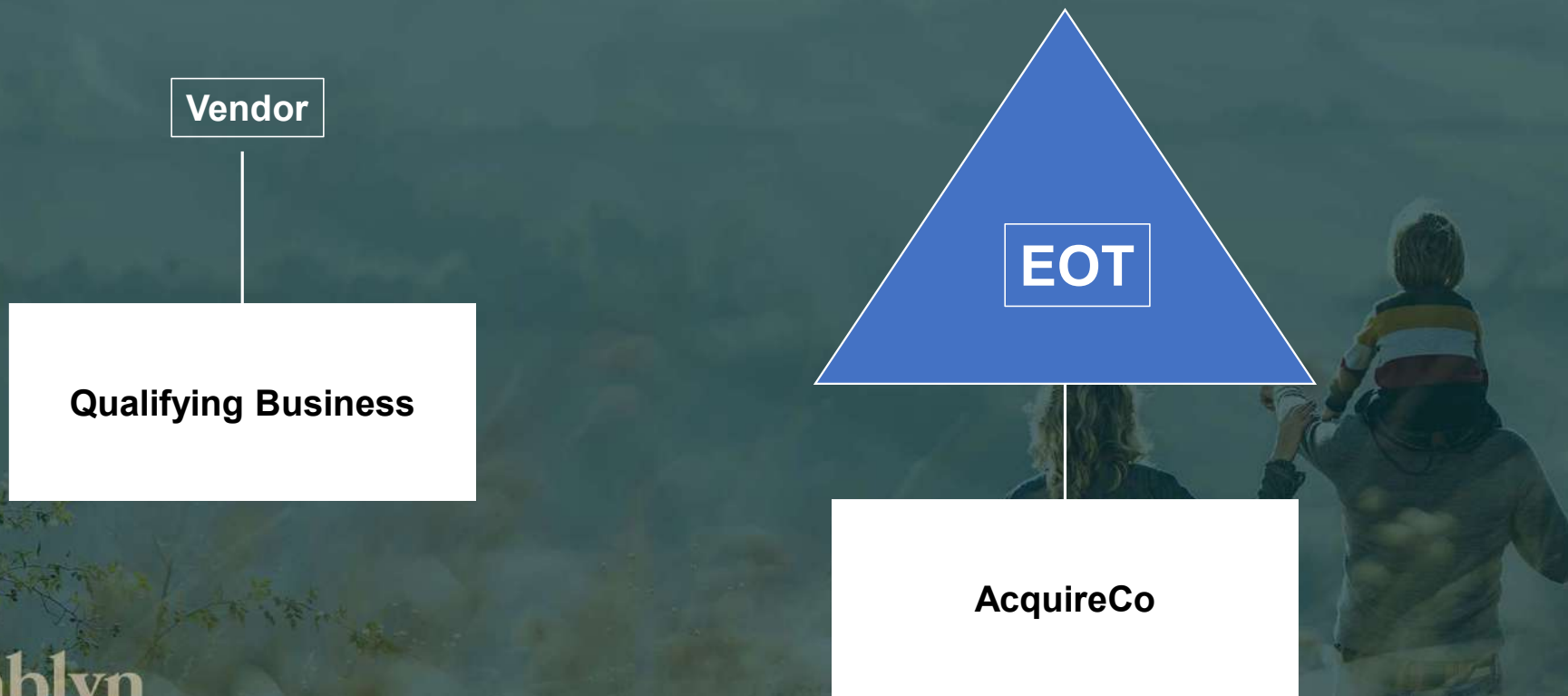
Employee ownership trusts (continued)

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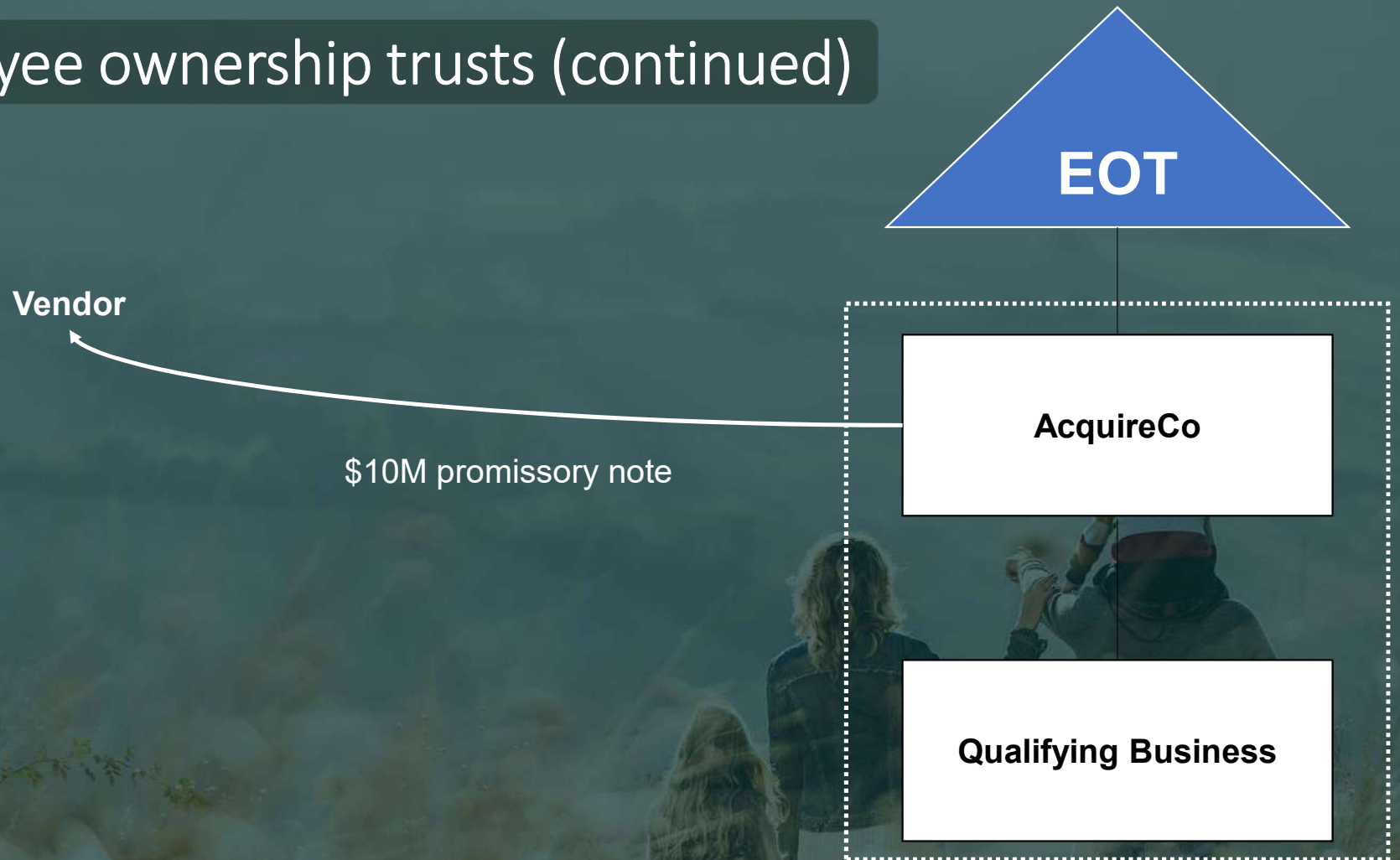
- Highly restrictive governance conditions
- Loss of control of business
- Likely long pay-out period
- Risk of non-payment if business doesn't perform after previous owner is gone
- Availability of financing



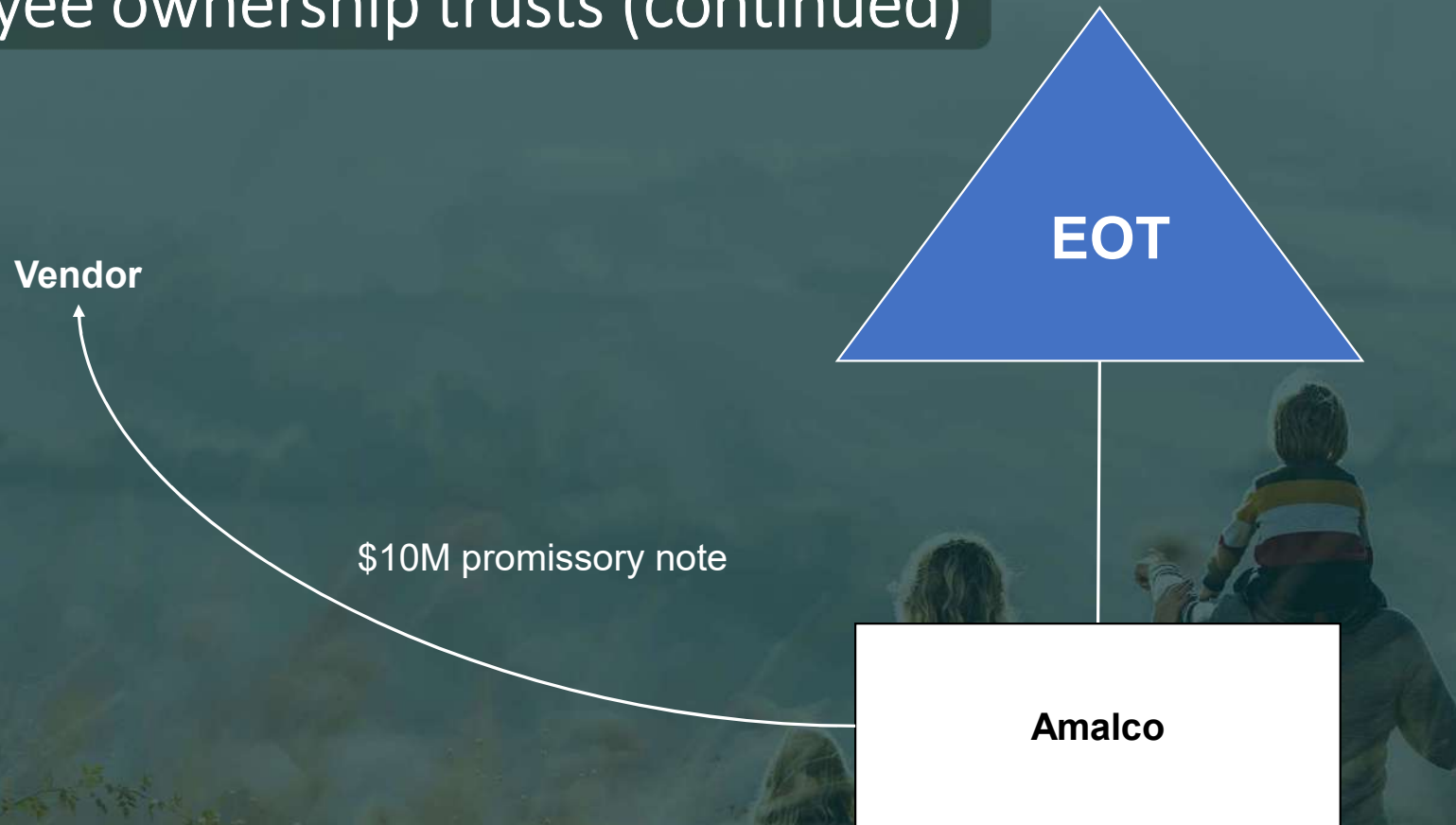
Employee ownership trusts (continued)



Employee ownership trusts (continued)



Employee ownership trusts (continued)



Underused housing tax (UHT)

- Effective January 1, 2022, affected residential property owners need to file annual UHT returns
- Policy rationale – governments attempt to address Canada's housing crisis
- Penalties for non-compliance are \$1,000 for individuals and \$2,000 for corporations.
- 1% annual tax on value of vacant or underused Canadian residential property held by non-Canadian owners, including corporations that are not publicly traded.
- Filing is required even if no tax payable.

Underused housing tax (UHT)

- “Excluded owners” are exempt from filing – entities below are now excluded for 2023 and going forward
 - Specified Canadian partnerships
 - Specified Canadian trusts
 - specified Canadian corporation

Underused housing tax (UHT)

- Exemptions based on ownership
 - On December 31
 - Specified Canadian partnerships
 - Specified Canadian trusts
 - specified Canadian corporation
 - Became an owner in the year, and they were never an owner in the previous nine years
 - Died in the year or prior year
 - Property is primary place of residence
 - Property not substantially complete
 - Seasonally inaccessible
 - Not suitable for year-round use
 - Etc.

Underused housing tax (UHT)

- Filing requirements
 - Filing is on a per property basis
 - BN-RU needed
 - Property tax assessment/roll number needed
 - Assessed value of property needed (unless no tax is payable)
 - Most recent sales price of property on or before Dec 31 (unless no tax is payable)
- Be wary of certificates of compliance under section 116 – automatic UHT compliance review by CRA triggered

“New” Trust Reporting Rules

- First announcement in 2018 Federal Budget with first application coming for 2021 taxation years
- Multiple delays until applicable for trusts with taxation years ending after December 30, 2023
- Captures majority of trusts that have a tax year-end in 2023 with limited exceptions
- Legislation in 2022 introduced to expand trust reporting rules to bare trust and agency arrangements
- Finally received royal assent on December 15, 2022
- First tax filings for under new trust reporting rules are due March 30, 2024 (extended to early April due to holiday weekend)

Changes in 2023

- All trusts required to file a tax return, unless certain exceptions are met
 - Includes bare trusts
- Additional information disclosure required for reportable entities of the trust on Schedule 15 of the T3



Common Exceptions

- a) Trust existed for less than 3 months
- b) Only holds certain assets that had aggregate FMV CAD\$50,000 or less throughout the entire year (cash, investments on designated stock exchange, unit of mutual fund trust)
 - CRA's interpretation that a collectible coin is not considered money
- c) Is a mutual fund trust
- d) Is a trust, of which all units are listed on a designated stock exchange
- e) Is a registered plan, such as RRSP, RRIF, TFSA, FHSA, RESP, RDSP, RPP, etc.
- f) Is a graduated rate estate ("GRE")
- g) Internal trusts in a registered charity
- h) There are additional uncommon exceptions (i.e. cemetery care trust)
 - Same exceptions apply for the additional information disclosure requirements

Schedule 15 – Information Required

- Reportable entities include settlors, trustees, beneficiaries, controlling person (protector)
 - Name
 - address,
 - date of birth (for individuals)
 - tax identification number
 - jurisdiction of residence for all reportable entities
- Settlor definition for the purposes of this definition expanded to include any individual who has loaned or transferred property (prescribed rate loans)
 - Why?

Part B – Identification of reportable entities

You have to fill out Part B in full for each reportable entity added or modified in the tax year.
If a reportable entity is more than one entity type, Part B must be completed in full for each entity type.

Add reportable entity Modify reportable entity

Reportable entity type (refer to the T3 Trust Guide for entity type definitions)

Trustee Settlor Beneficiary Controlling person

Entity classification

Natural person Corporation Trust Other

Entity name (if not a natural person)

First name

Last name

Date of birth (if natural person)

_____|_____|_____|_____|_____|_____|
Year Month Day

Tax identification type

SIN TTN ITN
 BN TN International

Country of residence

Canada
 United States
 Other

Tax Identification number

Address

Country

City

Province/Territory/State

Postal code / ZIP code

Did the entity cease to be a reportable entity in the current tax year?

If yes, the information in respect of the entity will not be carried forward to the next tax year.

Yes No

Penalties

- Late filing: \$25/day up to \$2,500
- Gross negligence: \$2,500 or 5% of the highest average FMV of the trust property in the year
- Penalty relief for bare trustees for 2023



Express Trust vs Bare Trust

- Express trusts meet the 3 certainties:
 1. Intention – intend to create trust
 2. Subject matter – property
 3. Objects – beneficiaries
 - Must include all income earned by trust property on T3 return – potential to distribute income to beneficiary
- Bare trusts are general agency relationships
 - Bare trusts only considered a “trust” for certain purposes of the ITA (limited)
 - Only need to complete Schedule 15 on T3 – income reported by beneficial owner of property directly

Examples

Spouse A adds Spouse B onto their bank account (exceeding \$50,000) to create a joint account

- Spouse A adds Spouse B onto the title of their home
- Presumption of advancement?
- Spousal rollover and attribution

Examples

An elderly couple add their adult child onto their joint bank/investment account or home. Addition of the adult child is solely for probate purposes.

- Likely a bare trustee relationship at a minimum
- Avoid doing this
- If no bare trustee relationship, then change in beneficial ownership and possible 1/3 disposition of property
- Does this even avoid probate since the child is holding account in trust for estate?

Examples

A parent opens a bank/investment for their minor child so that they can invest. The name of the bank account is parent in-trust for child.

- Child's money
- Likely bare trust
- Remove "ITF" as soon as child turns 18
- \$50,000 exception

Examples

Parents are required to co-sign a mortgage and are put on legal title of the residential home. Parents will not contribute financially to the purchase or property in anyway.

- Likely bare trust arrangement
- Parent would act as agent for child in respect of their share
- Sometimes formal agreement in place sometimes not

Examples

- Bare trustee corporations
- Now have T3 filing obligation in addition to T2 filing obligation

Alternative Minimum Tax (AMT)

- Applies to individuals and trusts
- Ensures a “minimum” amount of income tax is payable where an individual or trust has tax preferred income or deductions
- Taxpayers pay the higher of AMT and the regular federal tax otherwise calculated
- AMT calculated based on “adjusted taxable income” above a “basic exemption” amount
 - Exemption is not available to most trusts

Status of Budget Proposed Changes

- Draft legislation released August 4, 2023
- Consultation period closed September 8, 2023
- Expected to be effective January 1, 2024
- No update since consultation period closed
 - Any relief coming particularly for donations?



AMT – Budget Proposed Changes

- Basic exemption increasing from \$40,000 to \$173,000 (estimated and indexed annually)
- AMT rate increasing from 15% to 20.5%
- Adjusted taxable income changes:
 - Capital gains inclusion rate increasing from 80% to 100%
 - Capital gain inclusion rate increasing from 0% to 30% for **capital gains on donations of publicly listed securities** – tracking these dispositions (POD/FMV and ACB) and tax reporting (T1170) will be critical moving forward
 - Capital losses deduction rate decreasing from 80% to 50%
 - **Stock Option Deduction** inclusion rate increasing from 80% to 100%
 - Deduction for many expenses decreasing from 100% to 50% (certain employment expenses, moving expenses, child care expenses, **interest and carrying charges incurred to earn income from property**, limited partnership losses of other years and non-capital loss carryovers)
 - Eligible Non-refundable Tax Credits reduced by 50% (medical expenses, **donation credit**, etc.)

AMT – Budget Proposed Changes

• Taxpayers negatively impacted:

- Employees claiming large employment expenses
- Employees with stock option plans eligible for the stock option deduction
- Taxpayers realizing large capital gains
- Donation planning strategies
- Taxpayers (in particular trusts such as PRL trusts) with interest and carrying charges incurred to earn income from property

• Taxpayers positively impacted:

- Taxpayers with income between \$40,000-\$173,000, particularly those receiving eligible dividend income (owner-managers)
- Increased recovery of AMT carry forwards for individuals with income between \$40,000-\$173,000
- Individuals claiming their lifetime capital gain exemption with gains up to the exemption (multiplication of lifetime capital gain exemption via trusts)

Provincial AMT

- All provinces (except Quebec) assess AMT as a percentage of the federal AMT
 - Full provincial rates on the next slide
 - Quebec's AMT is calculated separately and has some differences from the federal calculation (for example Quebec AMT does not apply to dividends)
- Provincial AMT consequentially expected to follow federal changes



Provincial AMT Rates

Province	AMT Rate for 2022 Percentage of Federal AMT
ON	33.67% (additional surtax can apply)
BC	33.70%
AB	35.00%
YT	42.67%
NT & NU	45.00%
SK & MB	50.00%
NB	57.00%
PE & NS	57.50%
NL	58.00%
QC	Independent Calculation

AMT Carry Forward

- AMT paid may be carried forward for 7 years to offset regular federal tax payable
- If AMT can be fully recovered it would represent a prepayment of income tax
- All provinces (except Quebec) calculate provincial AMT carry forward as a percentage of the federal AMT carry forward and is not separately tracked
 - A “loss” to the AMT carry forward can occur where an individual pays AMT in a high rate province then moves to a lower rate province or a “gain” in the opposite scenario
 - The entire provincial AMT carry forward is “lost” if an individual pays AMT provincially outside Quebec and then moves to Quebec
 - Ontario Surtax portion of AMT is not included in carry forward calculation
- Given AMT carry forward balances might be more significant with the new rule changes, recovery of AMT will become more important
 - Consider planning to avoid AMT in cases where full recovery may not be available

Basic Example

- Taxpayer is resident in BC
 - Regular federal tax is calculated as \$15,000
 - Federal AMT is calculated as \$25,000
- Federal AMT is therefore \$10,000
- Provincial AMT is \$3,370 (33.70% of \$10,000)
- Total AMT = \$13,370
- Federal AMT carry forward = \$10,000
- Provincial AMT carry forward not separately tracked but will be recovered based on province of residency in years recovered



AMT – Example 1 Capital Gains

- Individual resident of AB
- \$400,000 Capital gain

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (50%/80%/100%)	\$200,000	\$320,000	\$400,000
AMT exemption	N/A	(\$40,000)	(\$173,000)
Adjusted taxable income	\$200,000	\$280,000	\$227,000
Federal Tax (graduated/15%/20.5%)	\$42,092	\$39,859	\$45,464
Federal AMT payable	N/A	\$Nil	\$3,372
Provincial tax/AMT	\$19,346	\$Nil	\$1,180
Total tax	\$61,438	N/A	\$65,990
Total difference			(\$4,552)

AMT – Example 2 LCGE

- Individual resident of AB
- \$1,000,000 Capital gain exempt by claiming lifetime capital gain exemption

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (0%/30%/30%)	\$Nil	\$300,000	\$300,000
AMT exemption	N/A	(\$40,000)	(\$173,000)
Adjusted taxable income	\$Nil	\$260,000	\$127,000
Federal Tax (graduated/15%/20.5%)	\$Nil	\$39,000	\$26,035
Federal AMT payable	N/A	\$39,000	\$26,035
Provincial tax/AMT	\$Nil	\$13,650	\$9,112
Total tax	\$Nil	\$52,650	\$35,147
Total difference			\$17,503

AMT – Example 3 Security Donations

- Individual resident of AB
- \$400,000 total capital gain, \$60,000 from the donation of publicly traded securities

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (see notes)	\$170,000	\$272,000	\$358,000
AMT exemption	N/A	(\$40,000)	(\$173,000)
Adjusted taxable income	\$170,000	\$232,000	\$185,000
Federal Tax (graduated/15%/20.5%)	\$15,925	\$15,192	\$28,121
Federal AMT payable	N/A	\$Nil	\$12,196
Provincial tax/AMT	\$2,776	\$Nil	\$4,269
Total tax	\$18,701	\$18,701	\$35,166
Total difference			(\$16,465)

AMT – Example 4 Stock Options

- Individual resident of AB
- \$400,000 stock option benefit eligible for 50% deduction

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (50%/80%/100%)	\$200,000	\$320,000	\$400,000
AMT exemption	N/A	(\$40,000)	(\$173,000)
Adjusted taxable income	\$200,000	\$280,000	\$227,000
Federal Tax (graduated/15%/20.5%)	\$42,000	\$39,767	\$45,418
Federal AMT payable	N/A	\$Nil	\$3,418
Provincial tax/AMT	\$19,346	\$Nil	\$1,196
Total tax	\$61,346	\$61,346	\$65,960
Total difference			(\$4,614)

AMT – Example 5 Investment Trusts

- Inter vivos trust resident of AB
- Beneficiary allocated **\$175,000 of trust income**
 - \$200,000 interest income minus \$25,000 interest expense

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (see notes)	\$Nil	\$Nil	\$12,500
AMT exemption	N/A	(\$Nil)	(\$Nil)
Adjusted taxable income	\$Nil	\$Nil	\$12,500
Federal Tax (33%/15%/20.5%)	\$Nil	\$Nil	\$2,563
Federal AMT payable	N/A	\$Nil	\$2,563
Provincial tax/AMT	\$Nil	\$Nil	\$897
Total tax	\$Nil	\$Nil	\$3,460
Total difference			(\$3,460)

AMT – Example 6 Investment Trusts

- Inter vivos trust resident of AB
- Beneficiary allocated **\$167,500 of trust income and \$7,500 retained**
 - \$200,000 interest income minus \$25,000 interest expense

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (see notes)	\$7,500	\$7,500	\$20,000
AMT exemption	N/A	(\$Nil)	(\$Nil)
Adjusted taxable income	\$7,500	\$7,500	\$20,000
Federal Tax (33%/15%/20.5%)	\$2,475	\$1,125	\$4,100
Federal AMT payable	N/A	\$Nil	\$1,625
Provincial tax/AMT	\$1,125	\$Nil	\$569
Total tax	\$3,600	\$3,600	\$5,794
Total difference			(\$2,194)

AMT – Example 7 Investment Trusts

- Inter vivos trust resident of AB
- Beneficiary allocated **\$155,000 of trust income and \$20,000 retained**
 - \$200,000 interest income minus \$25,000 interest expense

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (see notes)	\$20,000	\$20,000	\$32,500
AMT exemption	N/A	(\$Nil)	(\$Nil)
Adjusted taxable income	\$20,000	\$20,000	\$32,500
Federal Tax (33%/15%/20.5%)	\$6,600	\$3,000	\$6,663
Federal AMT payable	N/A	\$Nil	\$63
Provincial tax/AMT	\$3,000	\$Nil	\$22
Total tax	\$9,600	\$9,600	\$9,685
Total difference			(\$85)

AMT – Example 8 Investment Trusts

- Inter vivos trust resident of AB
- Beneficiary allocated **\$125,000 of trust income and \$50,000 retained**
 - \$200,000 interest income minus \$25,000 interest expense

Item (rates)	Regular Tax Calculation	2023 AMT Calculation	2024 AMT Calculation
Taxable income (see notes)	\$50,000	\$50,000	\$62,500
AMT exemption	N/A	(\$Nil)	(\$Nil)
Adjusted taxable income	\$50,000	\$50,000	\$62,500
Federal Tax (33%/15%/20.5%)	\$16,500	\$7,500	\$12,813
Federal AMT payable	N/A	\$Nil	\$Nil
Provincial tax/AMT	\$7,500	\$Nil	\$Nil
Total tax	\$24,000	\$24,000	\$24,000
Total difference			\$Nil

AMT – Example 5-8 Summary

- May be preferable to retain income in the trust if beneficiary effective tax rate is higher than trust effective tax rate
 - In AB the marginal tax rate increases from 30.5% to 36% at \$106,717 of income (2023)
- Highest income tax rate (48% in AB) will be applicable for income retained above AMT threshold as noted in example 8

Example	Income Retained	Incremental Income	Trust Tax	Incremental Tax	Effective Tax Rate
5	\$Nil	N/A	\$3,460	N/A	
6	\$7,500	\$7,500	\$5,794	\$2,334	31.12%
7	\$20,000	\$12,500	\$9,685	\$3,891	31.12%
8	\$50,000	\$30,000	\$24,000	\$14,315	47.72%

AMT Planning

- AMT analysis/estimates will be even more critical
- Consider use of capital gain reserves to minimize or defer AMT
 - Remain under \$173,000 annual threshold
- Corporations are not subject to AMT
 - Share transfers to a corporation prior to a sale – GAAR?
 - Consider corporate donations
- Structuring income or gifts over multiple tax years to stay under AMT exemption
- Match capital gains with capital losses
- Limit discretionary deductions in trusts – deed may need “phantom income” clause to distribute this income to the beneficiary
- No AMT applicable in the year of death – consider AMT when making large donations and perhaps waiting until death is optimal

AMT and Spousal Trusts

- Federal AMT capital gain rate = 20.5% (20.5% rate x 100% inclusion)
- Regular federal capital gain rate = 16.5% (33% x 50% inclusion)
- Do not retain capital gains in a trust where possible
- Trusts with no power to encroach on capital, such as certain spousal trusts, may pay more tax due to AMT changes
 - Will we see any relief?
 - Modify investments to avoid frequent capital gains? Subject to terms of trust deed
- For these trusts, may never be able to recover AMT so represents an increase in taxes

Questions



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