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Tax and Family Business Succession Planning – A Checklist

The following is a list of tax-related issues that should be considered in the formulation of a family business succession plan. Some of the issues raised are discussed in more detail in the endnotes. For a more detailed discussion of virtually all of these issues, see *Tax and Family Business Succession Planning*, 2nd edition (CCH Canadian Limited), by the author and Ms. Samantha Prasad.

Estate Freezes

- Review the advantages of an estate freeze. Note: the principal advantage is the deferral of "death tax" on future appreciation of the family business to the death of the next generation, e.g., by holding "growth shares" of a family business corporation.

- Consider advantages/disadvantages of basic types of freezes: internal freezes (reconfiguration of shares of an existing corporation), holding company freezes, freeze of unincorporated assets.

- Consider various estate freeze structures, e.g., partial freeze, gel (where future appreciation can be diverted back to freezor), reverse freeze (inter-corporate transfer of assets to frozen "Newco").

- Should income-splitting structures be implemented as part of the freeze?

- Consider whether a family trust should be used for a freeze, or shares should be held directly by family members.

- If a family trust is to be used, consider the choice of trustees, as well as trust provisions (e.g., the extent of indemnities to trustees, clauses prohibiting illegitimate children, special and residual beneficiaries, etc.).

- Consider other uses of trusts (e.g., income-splitting, asset protection, etc.).

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- Review impact of estate freeze on associated corporation status.[1]
- Consider other technical tax issues arising from the implementation of a freeze, e.g., conferral of benefit, kiddie tax, the attribution and reversionary trust rules, etc.
- Review family law considerations.
- Are U.S. residents/citizens involved? If so, U.S. tax/estate tax implications should be considered.[2]

Capital Gains Exemption

- Review the availability of capital gains exemption. If it is not available, can the corporation be purified so as to qualify (this involves the removal of non-qualifying assets from the corporation)?
- Consider the multiplication of the capital gains exemption, e.g., through a freeze into a family trust. This often involves purification structures to ensure that the corporation will continually qualify for the capital gains exemption.[3]
- Consider whether the capital gains exemption should be crystallized (i.e., by purposely triggering a capital gain sheltered by the exemption to bump the cost base of the corporation's shares).

Income Splitting

- Review advantages of income-splitting structures for a family business, e.g., with low-tax-bracket adult children/spouse, etc. Note: lower corporate tax rates on business income may favour the retention of profits at the corporate level rather than being "bonused out". If so, taking full advantage of low-bracket family members as shareholders may become increasingly important.[4]
- Consider carefully the various tax traps to income splitting especially where family members become shareholders, including the personal and corporate attribution rules, "kiddie tax", rules relating to conferral of benefit, the general anti-avoidance rule, etc.
- Should/can family members be put on company payroll?

Life Insurance

- Is life insurance necessary, e.g., to fund death tax or a buy-sell?
- Have the tax advantages of corporate-owned life insurance been reviewed?
- Has the role of life insurance in post-mortem estate planning been considered?
- For existing corporate-owned life insurance structures, has grandfathered status been considered and reviewed? Note: This pertains to pre-April 27, 1995 insurance or shareholders' agreements. If grandfathering applies, post-mortem tax planning using an insurance-generated capital dividend account may be greatly enhanced.
- Consider whether a buy-sell should be structured as a survivor buy-out or the redemption of decedent's interest, including who gets the tax benefit of the life-insurance-generated capital dividend account.
- Has the possible deductibility of insurance premiums been considered, as well as levered insurance structures?
- Have alternative funding arrangements (other than life insurance) been considered?

Asset Protection Strategies

- Have corporate asset protection strategies been considered, including dividends to holding companies which are lent back on a secured basis?
- Where corporate creditors are in issue, has consideration been given to maximizing distributions to individual shareholders that can be made on a tax-effective basis, e.g., through the payment of capital dividends, reduction of stated capital, or ordinary dividends which generate a dividend refund?
- Consider asset transfers in favour of spouse or other family members (one example being a freeze in favour of a discretionary family trust).
- Consider "spin-outs" of assets from corporations which may have creditor issues.
- Consider segregating real estate, e.g., in a Holdco.

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- Consider the use of a bare trustee corporation, e.g., to hold title to real estate.
- Explore asset protection for retirement plans and life insurance.
- Are more "exotic" asset protection structures advisable, e.g., offshore asset protection trusts?

Wills, Will Substitutes and Probate Planning

- Have wills been updated (especially if there has been a change in personal circumstances, such as a marriage or divorce)?
- Consider special factors in wills pertaining to business owner-managers (e.g., are there shareholders' agreements in which designations must be made in the will; does the shareholders' agreement restrict the manner in which a will can be drafted; consider associated corporation issues).
- Consider special life insurance and retirement plan designations, e.g., to provide asset protection, reduction of probate fees.
- Consider spousal rights under family law and other legislation (e.g., in Ontario a spouse can opt for an equalization of net family property in lieu of taking under the will).
- Consider also the rights of dependents under provincial dependant's relief laws.
- Consider the choice of executors, including tax consequences, such as associated corporation status.[5] Note: in some cases a change of executors in an estate could have adverse tax consequences.[6]
- Where possible, take advantage of the ability to defer death taxes where the spouse is beneficiary.
- Should a spouse trust be used (e.g., could the surviving spouse leave assets to undesired beneficiaries; does the spouse require business/investment assistance from trustees)?[7]
- Is maximum advantage taken of low-bracket beneficiaries?
- Have multiple testamentary trusts been considered in order to gain income-splitting advantages in the estate?
- Consider testamentary tax planning strategies involving charitable donations.
- Consider probate issues and strategies to reduce probate fees, especially in high-fee jurisdictions (e.g., multiple wills in Ontario, alter ego or joint partner trusts in British Columbia). Note: Beware of joint tenancy arrangements.[8]
- Consider whether there are advantages of using an alter ego or joint partner trust. (Besides probate reduction, considerations may include marital and creditor protection features, dependants' relief protection, confidentiality, etc.)
- If an alter ego or joint partner trust is to be used, consider special tax and other issues.[9]
- Has consideration been given to whether special post-mortem estate planning procedures will be necessary? Should there be specific provisions and directions in the will?

Other Succession Planning Strategies

- If a family trust is in place, consider whether a letter of wishes/revised letter of wishes should be prepared.
- Should a family constitution-type shareholders' agreement be entered into? (This could address matters such as governance by family members, liquidity, distributions, management issues, participation of family members in the business, special majorities for sale of the business, etc.).
- Consider disability provisions for a family shareholders' agreement, including issues relating to advanced age of the founding shareholder.
- Consider the tax consequences of a family shareholders' agreement, e.g., the result of buy-sell/call/put rights, in terms of change of control, association, etc.[10]
- Consider the 10-year capital gains reserve for qualifying inter-generational share transfers.

Alterations to Estate Plans

- Do changing circumstances require the alteration or variation of an estate freeze? If so, consider methodology, e.g., thaws (i.e., unwinding an estate freeze), refreezes (modifying an estate freeze), refreeze at lower value, etc. Note: marriage may be a triggering event, e.g., the marriage of a beneficiary or remarriage of the freezor. Family law rights should be carefully considered.
- If a family trust is in place, consider the tax consequences of a change of trustees, particularly if the trust controls a corporation.[11]
- If an estate freeze or other family trust structure is in place, is the 21st anniversary of the family trust approaching? If so, a distribution of appreciated assets should be seriously considered.
- If an "asymmetrical" distribution is to be made – i.e., favouring some beneficiaries over others – consider taking steps to minimize the possibility of legal actions against the trustees and others, including revisions to the letter of wishes, trustees' minutes (documenting that they considered only relevant issues), indemnities to trustees, resignations of "outside" trustees, etc. Note: trustees' actions can be challenged notwithstanding the fact that a discretionary trust is used.

- Consider the tax consequences of a distribution to a non-resident beneficiary.
- If there is to be a distribution from a family trust, consider the implementation of a protective shareholders' agreement, e.g., prior to distribution. (Consider also the inter-position of a holding company, with "thin-voting" shares held by parent(s).)
- If there are differing assets within a freeze or other structure a spinout reorganization (e.g., where some assets are spun out to a "Newco") may be desirable as the family business matures, e.g., if the freezor wishes children to take over part or all of the family enterprise.
- If a shareholder has passed away, has there been a deemed sale of shares or other personally-held assets at fair market value? (Typically, this occurs on the death of the surviving spouse.) If so, consideration should be given to post-mortem estate planning strategies. Note: It is important to address this well within the first year after death.

– David Louis, J.D., C.A., Minden Gross, Toronto, a member of MERITAS law firms worldwide. With to thank James Wong, Director of Succession at BMO Harris Private Banking, who suggested this checklist.

Notes:

[1] Pursuant to paragraph 256(1.2)(*f*), each beneficiary of a discretionary trust is deemed to own all of the shares held by the trust. Paragraph 256(1.2)(*c*) establishes a control test based on greater than 50% of the fair market of all shares, or 50% of the fair market value of common shares only. Subsection 256(1.3) deems shares to be owned by a child under 18 to be owned by a parent unless the child manages the business on an independent basis.

[2] A typical Canadian estate freeze structure can give rise to serious adverse U.S. gift and income tax consequences. For gift tax purposes, a preferred interest is valued at nil unless it earns a cumulative return. Retractable preferred shares will typically be treated as non-qualified preferred stock (i.e., boot), which can cause the estate freeze reorganization to be taxable under U.S. rules.

[3] For discussion of purification methodology, see Michael Goldberg, "The Capital Gains Exemption: Keeping it Pure", *Tax Notes*, No. 541, February 2008.

[4] A number of anti-avoidance provisions must be considered, including the attribution rules. Perhaps the most problematic of these rules are the corporate attribution rules in section 74.4. Since this provision is potentially triggered when an individual transfers or loans property to a corporation, estate freezes potentially trigger the corporate attribution rules, since a share reorganization (e.g., where common shares are changed into freeze shares) is usually considered to be such a transfer. (See, in particular, subsection 84(9).)

[5] The CRA's position, based on *MNR v. Consolidated Holding Company Limited*, 72 DTC 6007 (SCC), is that, in the absence of evidence to the contrary, there is a presumption that all of the trustees of a trust constitute a group that controls the corporation. Query, however, whether the CRA would take this position if some of the trustees were related, e.g., where two of the trustees were siblings, with a third "outside" trustee. In addition, for the purposes of the association rules, the look-through rules in subsection 256(1.2) must be considered. Finally, subsection 256(1.4) and paragraph 251(5)(*b*) should also be considered. These provisions speak to associated corporation and CCPC status (respectively) where a person has a right (whether absolute or contingent) to shares. Although there is an exception in respect of rights that are contingent on death, once the shares pass to the estate, this contingency may no longer exist. See also Technical Interpretation No. 9235395, which involved a situation where shares in question were specifically bequeathed to a particular beneficiary. Query whether a non-specific bequest would make a difference.

[6] At the time of writing, the CRA's policy is that an acquisition of control will not occur if an executor is replaced as a result of that person's death or inability to fulfill his or her functions. See paragraph 10 if Interpretation Bulletin IT-302R3..

[7] One of the requirements of a spouse trust is that no other person can receive or obtain the use of capital during the spouse's lifetime. Doc. No. 9627345 and paragraph 16 of IT-305R4 indicate that a loan to a non-spouse on commercial terms (e.g., with commercial interest rates) would not taint a spouse trust. Doc. No. 2003-0019235 indicates that where the trust permits funds to be loaned (or other forms of assistance to be provided) to anyone other than the spouse for inadequate consideration, this would disqualify the trust, whether or not such a loan was actually made. Doc. No. 2006-0185551C6 indicates that a rollover to a spouse trust would not be available if the trustee is required to pay life insurance premiums.

[8] In *Pecore* (2007 SCC 17), the Supreme Court indicated that the presumption of resulting trust (i.e., the presumption that there is no gift intended), rather than the presumption of advancement (i.e., the presumption that there is a gift intended), applies to gratuitous transfers to an adult child, while the presumption of advancement applies to a transfer to a minor. Further, if a gift is intended, it can be a gift *inter vivos* of the property at the time the joint tenancy is created (i.e., the transfer of beneficial ownership), or a gift only of the right of survivorship. A number of potential adverse tax consequences can arise from the creation of a joint tenancy, including the loss of the ability to "estate split", and so on.

[9] A good example relates to charitable donations. Although subsection 118.1(5) deems gifts made by an individual by will to have been made in the year of the individual's death, this rule does not apply to an alter ego or joint partner trust. The ability to use a charitable tax credit against the deemed realization on death appears to be available only if the gift is made in the taxation year of the trust in which death occurs. Further, depending on the drafting of the trust, issues may arise as to whether the transfer to the charity is voluntary or is a distribution in satisfaction of the charity's capital interest in the trust, governed by subsection 107(2), rather than treated as a charitable donation.

[10] Some of the issues include acquisition of *de jure* control, if a unanimous shareholders' agreement is used, *de facto* control, and the application of paragraph 251(5)(*b*) and subsection 256(1.4). As the various exceptions in proposed section 56.4 depend on a disposition to an arm's length person, the use of a restrictive covenant in a family business succession planning shareholders' agreement appears to be problematic.

[11] See Doc. No. 2004-0087761E5. As noted earlier, the CRA's position is that, in the absence of evidence to the contrary, there is a presumption that all of the trustees of a trust can constitute a group that controls the corporation. Consequently, the replacement of a trustee potentially constitutes an acquisition of control as a new group may control the corporation.

Rectification – An Update

Introduction

Since the decision in *Juliar*,[1] applications for rectification are more pervasive and are commonly considered where commercial transactions produce unexpected tax consequences. However, the dividing line between what might, if challenged, be characterized as unacceptable retroactive tax planning, as opposed to transactions that qualify for rectification, has never been easy to identify.

Recent court decisions illustrate some examples of factual circumstances in which the courts either allowed or disallowed the rectification of transactions to achieve the desired tax results. These decisions further illustrate the

importance of proving the common intentions of all parties to a transaction to achieve the tax objectives, at the time the transactions were executed. They also support the argument that overlooking certain tax consequences will not allow for rectification after the fact, even if the parties testify that they would have structured transactions differently had they appreciated the consequences at the outset.

Recent Case Law

QL Hotel Service Limited v. Ontario (Minister of Finance)[2]

Most recently, in *QL Hotel Service Limited v. Ontario (Minister of Finance)*, the appellant, QL Hotel Service Limited ("QL"), was newly incorporated. It entered into a written contract with another corporation, 1006134 Ontario Limited ("1006"), to purchase certain assets in exchange for shares of QL.[3] The assets consisted of intangibles (goodwill) and tangible personal property. Prior to the execution of the asset purchase agreement, QL had not issued any shares.

The agreement was structured so that 1006 would receive 1 common share for the goodwill and 1 million common shares for the tangible personal property. The evidence was that the transaction was planned to take advantage of an exemption in subsection 13(3) of Regulation 1013 to the Ontario *Retail Sales Tax Act*,[4] so that no sales tax liability would result from the transaction. The tax advisor who testified on behalf of QL indicated that he was aware of the exemption and that he planned the transaction to allow the parties to take advantage of it and that the same methodology was used by QL in a subsequent transaction that did not attract a review by the Ontario Minister of Finance.

The exemption in the Regulation provided that no taxes were payable by a corporation on its purchase of tangible personal property from a person who wholly owns, either directly or through another wholly owned corporation, the purchasing corporation.

However, QL was assessed for retail sales tax on the transaction, with the Minister of Finance taking the position that it was insufficient that 1006 became the sole shareholder of QL as a consequence of the transaction. Since QL had no issued and outstanding shares prior to its purchase of the assets, it was not wholly owned by 1006 within the meaning of subsection 13(3) of Regulation 1013.

The Court's decision was ultimately decided on the basis that the sequence of events in respect of the transaction was that QL first issued 1 common share to 1006 in consideration for the transfer of the intangible asset. Therefore, at the time of the transfer of the tangible personal property, QL was 100% owned by 1006, and, thus, the exemption was applicable.

However, in case the decision was found to be incorrect, the Court chose to grant an order for rectification, allowing the resolution of the directors of QL that issued 1 common share for the goodwill and 1 million common shares for the tangible personal property, to be split into two separate resolutions – the first issuing 1 common share for the goodwill and the second issuing 1 million common shares for the tangible assets.

On the rectification issue, the Court reviewed a decision of the Ontario Court of Appeal, which held that to succeed on a plea for rectification, the parties must satisfy the Court that they were in complete agreement as to the terms of a contract but wrote them down incorrectly, in which case the Court will make an inquiry to determine whether the written agreement clearly recorded those intentions.[5]

It could not be suggested that the intentions of the parties in *QL Hotel Service Limited* were not written down correctly, as the parties believed that on the acquisition as structured, QL would be entitled to the exemption from tax. However, the Court accepted that it was the intention of the parties to permit QL to avail itself of the exemption and that the resolution could have easily been divided into the suggested two separate resolutions.

The Court suggested that QL's circumstances were comparable to those in the *Juliar* decision, where it noted that the Court had rectified a written agreement to make it conform to the proven real intention of the parties.

Binder and Binder v. Saffron Rouge et al.[6]

A few months earlier, the same Court had declined to issue a rectification order in *Binder and Binder v. Saffron Rouge et al.* In this case, the applicants sought an order rectifying documents executed in connection with the issuance of Class B preferred shares of their private company, Saffron Rouge Inc. ("Saffron"), so that the number of shares acquired by Trishul Advisory Group LLC ("Trishul") and Howard Minigh (collectively, the "Investors") would be adjusted.

The Investors were both U.S. residents and had committed to invest in Saffron in 2005, in return for Class B preferred shares. The number of such shares to be issued to the Investors was set with reference to a price per share that was consistent with a $225,000 valuation of the company.

The applicants were then advised that Saffron would lose its status as a Canadian-controlled private corporation ("CCPC") if the financing proceeded on this basis. They approached the Investors indicating that they could not proceed on the basis of the $225,000 value. However, the Investors were unwilling to agree to a change and the transaction was completed. The applicants later realized that the loss of the company's CCPC status would impact on their ability to claim the capital gains exemption, but the evidence was that they did not know this at the time of agreeing to the valuation in 2005. Furthermore, they stated that they would not have completed the 2005 financing if they knew that it would have resulted in their losing their ability to claim the capital gains exemption.

Subsequently, in 2007, the shareholders of Saffron were approached with offers to acquire all the shares of

the company for $2 million. The applicants then asked the Investors to reconsider their 2005 valuation. The Investors ultimately agreed to do this, and agreed to corporate resolutions reflecting the fact that the shares issued to them were based upon incorrect valuations and rectifying Saffron's corporate records to reflect the issuance of a smaller number of shares, based upon a $500,000 valuation. They apparently gave no consideration for this concession. However, the evidence was that when they had been approached about the valuation issue in 2005, they had agreed to talk about the issue at a future time when the company was profitable.

The Court reviewed the governing principles of the *Juliar* decision, as follows:

(a) The Court has discretion to rectify where it is satisfied that the document does not carry out the intention of the parties.

(b) Parties are entitled to enter into any transaction which is legal, and, in particular, are entitled to arrange their affairs to avoid payment of tax if they legitimately can.

(c) If a mistake is made in a document legitimately designed to avoid the payment of tax, there is no reason why it should not be corrected. It would not be a correct exercise of discretion in such circumstances to refuse rectification merely because the Crown would thereby be deprived of an accidental and unexpected windfall.

(d) Rectification need not be refused because the sole purpose of seeking it is to enable the parties to obtain a legitimate fiscal advantage which it was their common intention to obtain at the time of the execution of the document.

The Court, however, would not agree to the rectification in this case, holding that the case did not meet the test for rectification set out in *Juliar*. This was because there was no continuing intention of the parties in 2005 to enter into the transactions in a manner that would have preserved the applicants' capital gains exemption, nor was there an agreement at the time to adjust the aggregate number of shares if subsequent events cast doubt upon the 2005 valuation, which was negotiated at arm's length. Finally, this was not a case where there was a mistake in the way in which the transaction entered into was expressed in the documents.

Re Aboriginal Diamonds Group Ltd.[7]

In a petition brought by the Aboriginal Diamonds Group Ltd. ("ADG"), WWW International Diamond Consultants ("WWW"), and Diamonds International Canada (DICAN) Ltd. ("DICAN"), rectification was also denied.

The facts were that DICAN had been incorporated by WWW and ADG for the purpose of bidding on a tender from the Department of Indian Affairs and Northern Development ("DIAND") for diamond valuations. WWW was incorporated in the United Kingdom.

Prior to the tender being issued, the parties executed a Shareholder and Management Agreement (the "Shareholder Agreement"), dated July 1, 1998, which, among other things, provided that WWW had the exclusive right to provide all services, including diamond valuation services, under the DIAND contract if DICAN was the successful tenderer. DICAN was then awarded the tender in August 1998.

The parties learned shortly thereafter that in the event that WWW performed services in Canada under the contract, DICAN would have to make withholdings pursuant to section 105 of the Regulations to the *Income Tax Act*. (DICAN was the party that was to be paid by DIAND, and would itself pay for the services performed by WWW.)

Some time thereafter, the parties executed a Shareholder and Management Amendment Agreement (the "Amendment Agreement"), deleting the clauses in the Shareholder Agreement that gave WWW the exclusive right to perform all services. The petitioners argued that this was consistent with the fact that some of the services that the Shareholder Agreement suggested would be performed by WWW were, in fact, performed by subcontractors in Canada.

The Amendment Agreement was dated effective July 1, 1998. The parties advanced the petition for rectification to obtain the Court's approval of the retroactive application of the Amendment Agreement.

The petition was made after the Canada Revenue Agency (the "CRA") had already assessed DICAN for its 1998 to 2005 taxation years, pursuant to this Regulation. The assessment was on the basis of the CRA's review of the Shareholder Agreement, which caused it to assume that WWW had in fact been providing services in Canada in all the years assessed.

Although one might have thought that the merits of the assessment would ultimately turn on who in fact performed the services in issue, the parties nevertheless brought the petition for a rectification order, believing that there was a danger that the assessment would stand solely on the basis of the CRA's assumption that the services were all performed in Canada by WWW.

The Court, however, was unwilling to grant the rectification order, again on the basis of the principles in *Juliar* and other rectification cases, holding that the Shareholder Agreement was not designed to "avoid" the payment of tax, but to govern the rights and obligations of the parties, *vis-à-vis* each other. Furthermore, the Court noted that in the absence of evidence of common tax intentions, it could not infer that there was an intention to structure the agreement in a tax-efficient manner in the absence of any evidence of such an intention.

Conclusion

The above cases underline the importance of preserving evidence of the intention of parties to achieve certain specific tax objectives when undertaking commercial transactions, so as to enable a court to find a basis for rectification, if necessary. One can surmise that if the specific planning steps do not in the end achieve the desired

tax results, rectification may apply to allow for a modification of one or more of the steps undertaken.

However, where other commercial and even tax objectives motivate the reasons for entering into transaction in a specific manner, rectification may not allow for a correction for results that were not specifically addressed by the parties. The cases suggest that it is sometimes difficult to recognize where rectification might or might not apply, particularly when taxpayers have not considered all possible tax consequences of entering into transactions as structured.

– Dan Misutka, Associate in the Tax Department with the Calgary Office of Fraser Milner Casgrain LLP

Notes:

[1] *Juliar et al. v. Attorney General of Canada et al.*, 99 DTC 5742 (Ont. S.C.); aff'd 2000 DTC 6589 (Ont. C.A.); leave to appeal denied [2000] S.C.C.A. no. 621.

[2] 2008 PTC-ON-6, [2008] O.J. No. 1365 (Ont. S.C.).

[3] At the time, QL was 1162735 Ontario Limited, having changed its name subsequent to the transaction.

[4] R.S.O. 1990, c. R.31.

[5] The Court quoted from the decision of *H.F. Clarke Ltd. v. Thermidaire Corp.*, [1973] 2 O.R. 57 (C.A.); reversed on other grounds at [1976] 1 S.C.R. 319.

[6] 2008 DTC 6112.

[7] [2007] N.W.T.J. No. 41 (S.C.).

Qualified Small Business Corporation Shares – Acquisition of Control

Unless a corporation elects out of the provision, subsection 256(9) deems control of a corporation to occur at the commencement of the day that control is acquired. Subsection 256(9) applies "for the purposes of this Act" and would, therefore apply "to both the person acquiring control of the corporation and the person relinquishing control".

In a situation the CRA was asked to comment on:

- Mr. A, a Canadian resident, owns all the shares of the capital stock of Opco.
- Opco is a "Canadian controlled private corporation" (hereinafter "CCPC"), as defined under subsection 125(7), and the shares of Opco are "qualified small business corporation shares" (hereinafter "QSBC shares"), as defined under subsection 110.6(1), of Mr. A.
- During a particular year, Mr. A and Pubco, a "public corporation" as defined under subsection 89(1), enter into a purchase and sale agreement in respect of all the outstanding shares of the capital stock of Opco closing on the last day of the particular year. As a result of the said purchase and sale agreement, Pubco has a right described under subparagraph 251(5)(*b*)(i).
- Opco does not elect not to have subsection 256(9) apply.

It is the CRA's view that subsection 256(9) would apply to deny the capital gains exemption under subsection 110.6(2.1) on the disposition of the Opco shares by Mr. A. The CRA indicated that the matter would be brought to the attention of the Department of Finance.

Document No. 2006-0214781E5, February 22, 2008

Explanatory Notes for Bill C-50 Tax Provisions Released

On April 23, 2008, the Department of Finance posted the Explanatory Notes for the tax provisions contained in Bill C-50, *Budget Implementation Act, 2008*. Bill C-50 was tabled in the House of Commons on March 14, 2008. Subscribers to the CANADA INCOME TAX GUIDE (print, CD, or online) will have received CCH SPECIAL REPORT No. 035H, which contains the Explanatory Notes released April 23, 2008, as well as the Department of Finance News Release No. 2008-028, dated March 14, 2008, and the full text of the Notice of Ways and Means Motion for Bill C-50 provisions. Additional copies of the SPECIAL REPORT may be ordered by calling the CCH Customer Satisfaction Hotline at (416) 224-2248. Outside the Greater Toronto Area, call toll free at 1-800-268-4522. The Explanatory Notes have been added to the *Income Tax Act* on CCH Online, with links from the Bill C-50 proposed amendments to which they relate.

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