Tax Notes

October 2011
Number 585

CCH
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NEW TAX PROPOSALS: SUMMER OVERLOAD

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When I want to know when major pieces of tax legislation are coming out, all I have to do is check my vacation schedule. Sure enough, on August 16 and 19, the government released over 400 pages of legislation and notes pertaining to part of the spring budget and long awaited revisions to the foreign affiliate rules.

RRSPs

As many readers will be aware, the federal Budget superimposed two new penalties, imported from the TFSA regime, that would apply to RRSPs:

1. **The "Advantage Tax"**. Subject to certain transitional rules, this tax[1] is designed to "expropriate" RRSP advantages, in the form of a 100% tax on benefits. "Advantage" is defined as a grab bag of transactions that seek to exploit the tax attributes of RRSPs (e.g., by shifting returns from a taxable investment to an RRSP).

Briefly, *some* of the transactions that will attract the Advantage Tax include a benefit that is an *increase* in the value of property held by an RRSP if it is reasonable to consider that the increase is attributable to:

- a transaction that would not have occurred in an open market in which parties deal at arm's length, if one of the main purposes of the transaction is to benefit from the RRSP exemption;
- payments that are tied to services or investments outside of the RRSP; or
- "swap transactions" — that is, transfers of property between the RRSP and the annuitant or a non-arm's length person.

Also subject to the Advantage Tax is income, including capital gains, from a prohibited investment (see below for further discussion). In this case, rather than expropriating the income, special rules may apply to impose a 42.9% tax to income or gains from a prohibited investment held on March 23, 2011[2] — but only until the end of 2016.

2. **Tax on prohibited/non-qualified investments.** The new provisions supplant the former income inclusion for non-qualifying investments,[3] so, instead, the annuitant will be subject to tax[4] of 50% of the fair market value of a non-qualifying or prohibited investment.[5] The tax will generally be refunded[6] if the investment is disposed of from the RRSP by the end of the year following the year in which the tax applied,[7] unless the annuitant knew or ought to have known that the investment was a prohibited investment when it was acquired.[8]

A non-qualified investment is an investment that is not included in the laundry list of qualified investments, which changes from time to time (real estate is one example). A prohibited investment generally includes debt of the RRSP annuitant, as well as investments in entities in which the annuitant or a non-arm's length person has a "significant interest" (generally 10% or more),[9] or with which the annuitant does not deal at arm's length.[10] (Note: A so-called "insured mortgage"[11] is exempt from the definition of "prohibited investment".[12])

The 50% tax on prohibited investments will not apply to prohibited investments that were held by the RRSP on March 22, 2011. However, income and capital gains on such investments after that date will nonetheless attract the Advantage Tax.

An important subset of prohibited investments pertain to significant interests in corporate equity. If an annuitant has shares or debt of a corporation in which he or she has a significant interest (generally 10% or more of the shares of any class),[13] the shares or debt of the corporation in question[14] will be a prohibited investment in an RRSP. In fact, there have been a few accounting-firm releases on this issue. As I said, investments that would otherwise be prohibited will be grandfathered from the tax on prohibited investments if held on March 22, 2011 (this is a change from the original Budget proposals). However, for such investments, a second penalty (the Advantage Tax) applies to income or capital gains to the extent that these are earned or accrued after March 22, 2011. In plain words, "the clock is ticking" on this element of the investment. So the Advantage Tax could apply to appreciation of the corporation's shares, dividends, or interest earned by the RRSP. As I said, the Advantage Tax is normally based on 100% of the income or capital gains, but is potentially subject to special rules in respect of prohibited investments held on March 23, 2011.

Transitional rules also apply to "swaps" with an RRSP (e.g., if you buy an investment from your RRSP, and so on). Swap transactions undertaken before July 2011 would not be subject to the Advantage Tax.[15] Furthermore, swap transactions undertaken to remove an investment that would otherwise trigger the Advantage Tax will be permitted until the end of 2012.[16] It also appears that a swap transaction does not include the transfer of a prohibited investment from an RRSP in order to obtain a refund of the tax on prohibited investments,[17] so there does not appear to be a time limit for this type of transaction.

One thing that you should keep in mind is that the new penalties do not completely replace the old ones: a number of pre-existing penalties survive. One example is that income from non-qualified investments will generally be taxable under subsection 146(10.1).[18] Also, the rules relating to overcontributions[19] are unchanged.

If you want to know more about these proposals, there are updated sections in CCH's *Canada Income Tax Guide* and *Wealth Management Guide*. (See ¶25,385 and ¶151, respectively.)

In researching these updates, I found a potentially troublesome change. For investments acquired after March 22, 2011, the "charging section" for a qualified RRSP investment is changed from subsection 4900(12) to (14). However, the latter provision is subject to Regulation 5001, which creates prohibited investment status if qualified investment status depends "solely" on Regulation 4900(14). In this case, if the corporation ceases to qualify as a "specified small business corporation",[20] the investment will become a prohibited investment. What this seems to mean is that constant monitoring of the investment status will be required. Practically speaking, this change may often jeopardize the viability of investments in private company shares by an RRSP. Hopefully, this issue will be clarified shortly.

Foreign Affiliates

The second piece of draft legislation constitutes a major overhaul of the foreign affiliate rules.

Traditionally, these rules have been most relevant to public multi-national corporations and have spawned a cadre of international tax specialists. Having said this, many private-company advisers will have clients that have expanded outside of Canada into the United States or elsewhere (hereinafter referred to as "offshore").

Generally, these rules will make it more difficult to repatriate offshore profits by "streaming" tax-free exempt surplus dividends to Canadian corporate shareholders of a foreign affiliate. Although this should continue to be possible with offshore operating profits, a new surplus account — "hybrid surplus" — applies to dispositions of certain types of excluded property, which may include the sale of qualifying foreign affiliate shares (where the underlying assets are "devoted" to active business) or partnership interests. (Until the end of next year, the rules apply only to relevant dispositions between related parties.) By virtue of the hybrid surplus rules, a sale would generate 50% exempt surplus

(which in isolation can be repatriated tax-free) and 50% taxable surplus (which typically cannot). The problem is that the hybrid surplus account "bundles" these together so that they must be distributed on a *pro rata* basis. Formerly, to the extent that such a sale could generate exempt surplus, that portion could be streamed to Canada. The idea is to impose tax similar to a Canadian capital gain to the extent that the funds are remitted to Canada.[21]

Another provision that will make the repatriation of cash and other foreign assets more difficult is the new "upstream loan" proposal. It may be operative, for example, if a foreign sub repatriates profits to its Canadian parent as indebtedness to the sub — i.e., the sub simply "loans it up". The upstream loan rules work in a fairly similar manner to the shareholder loan rules in subsection 15(2). The general rule is that, to avoid an income inclusion, the loan must be repaid within two years after it is made,[22] and there is a series of loans and repayments override which knocks out this exception.

For indebtedness incurred before the Budget, the two year clock starts running at the date of the Budget. In other words, if corporations are indebted to their foreign affiliates such that the upstream loan rules potentially apply, they will have until March 22, 2013 to fix the problem.[23] If the funds were lent up because of a deficiency in surplus to "cover" the amount, this could prove to be problematic.

In many cases, particularly for "smaller" clients, offshore profits could often be moved to (or from) Canada simply by an intercompany advance account, perhaps "cleared off" periodically through a reversal to an exempt surplus dividend. These accounts must now be reviewed to ensure that they do not trigger the upstream loan rules; otherwise, the borrower could be subject to serious penalties.[24]

The foregoing are just a couple of foreign affiliate provisions that may be of interest to readers. A list of the major revisions can be found at the beginning of the explanatory notes to the legislation released on August 19, which is on the Department of Finance's website (www.fin.gc.ca/drleg-apl/fa-sea-0811n-eng.asp). But I would like to clarify one change that was not explicit in the summary: proposed subsection 90(2) provides that an amount received in the form of a *pro rata* distribution on a class of shares is generally deemed to be a dividend and thus subject to the foreign affiliate surplus regime. (Exceptions apply to distributions made either in the course of a liquidation and dissolution, or on a redemption, acquisition or cancellation of the share.) For example, a reduction of stated capital will be treated as a dividend. However, Regulation 5901(2) allows the recipient to bypass the normal surplus accounts by treating the dividend to be a return to cost base.[25]

Notes:

[1] Under section 207.05.

[2] If the annuitant elects before July of 2012, the special rules apply to income earned (or gains accrued) after March 22, 2011, if the income is earned (or gains are realized) before 2017. Under these rules, the income (or gains) will be subject to the 42.9% tax rate if they are paid from the RRSP within 90 days after the end of the year.

[3] See subsections 146(10) and (6). Also supplanted is the 1% per month tax, in section 207.1, for investments that "become" non-qualified.

[4] Under section 207.04.

[5] This applies either if the RRSP acquires a non-qualifying or prohibited investment, or the investment "becomes" non-qualified or prohibited.

[6] Pursuant to subsection 207.04(4).

[7] Or by such later time as the CRA considers reasonable.

[8] See subsection 207.04(4). For both taxes (i.e., the Advantage Tax and the 50% tax on prohibited or non-qualified investments), the CRA will have the authority to waive or cancel all or part of the tax if the CRA considers it just and equitable to do so.

[9] Of the shares of any class in the case of a corporation.

[10] Per subsection 207.01(1) (as would be amended by the 2011 federal Budget), a "prohibited investment" at any time means property (other than prescribed property) that is at that time: (a) a debt of the controlling individual of the registered plan; (b) a share of the capital stock of, an interest in, or a debt of either (i) a corporation, partnership, or trust in which controlling individual has a significant interest (as defined in subsection 207.01(4)), or (ii) a person or partnership that does not deal at arm's length with the controlling individual or with a person or partnership described in subparagraph (i); (c) an interest (or, for civil law, a right) in, or a right to acquire, a share, interest, or debt described in paragraph (a) or (b); or (d) prescribed property (see Regulation 5001, discussed later in the article).

[11] I.e., pursuant to Regulation 4900(1)(*j*.1).

[12] See Regulation 5000.

[13] In the case of a corporation, a "significant interest" (per subsection 207.01(4)) refers to a corporation in which the individual is a "specified shareholder" per subsection 248(1), e.g., such that shares held by a non-arm's length person count towards the 10% threshold, and the individual would also be a significant shareholder in corporations related to the corporation in question.

[14] Or a person or partnership that does not deal at arm's length with the annuitant or the corporation in question.

[15] See paragraph 53(6)(*b*) of the August 16 draft legislation.

[16] See paragraph 53(6)(*a*) of the August 16 draft legislation.

[17] I.e., under subsection 207.04(4).

[18] See, however, subparagraph (*b*)(iv) of the "advantage" definition in subsection 207.01(1).

[19] I.e., under section 204.1.

[20] The difference between a "small business corporation" and a "specified small business corporation" seems to be that, rather than requiring CCPC status, per the "small business corporation" definition, the corporation must be a Canadian corporation that is not directly or indirectly controlled by one or more non-residents.

[21] To me, these proposals seem to be at least somewhat inconsistent with certain recommendations made in 2009 by the Advisory Panel on Canada's System of International Taxation.

[22] Note that this differs from subsection 15(2), in that the latter limitation period is based on two years from the *end of the taxation year of the lender in which the loan was made*.

[23] There are certain exceptions in subsection 90(6) to (8); however, for many small business client situations, it is more a matter of "lucking in" to these provisions, than purposely planning into them.

[24] There is an exception for loans to other controlled foreign affiliates; however, in this case CFA status will be governed by section 17, which is a more restricted definition.

[25] As a dividend out of pre-acquisition surplus.

PARTNERSHIP ANTI-DEFERRAL RULES — THE CLOCK IS TICKING

David Louis, tax partner with Minden Gross

On August 16, the Department of Finance released detailed draft legislation relating to the partnership anti-deferral rules, as originally announced in the 2011 federal Budget. These proposals — which apply to corporate partners with significant interests in downstream partnerships — are designed to eliminate the deferral of corporate tax resultant from partnership fiscal periods that end after the year end of the partner, with transitional relief available for qualifying taxpayers. While the proposals relating to single-tier partnerships are reminiscent of the pre-existing rules for professional partnerships and the like, tiered partnerships are considerably more complicated, and may require both an "alignment" of fiscal periods of the partnerships themselves (i.e., so that all of the partnerships have the same fiscal period), and a stub-period determination of additional income at the partner level.

On June 6, the CRA announced that taxpayers who enter into joint venture arrangements will no longer be eligible to compute income as if the joint venture had a separate year end, and that transitional relief similar to the partnership anti-deferral proposals would be available. As it is our understanding that the joint venture rules would be applicable to joint venturers with year ends after the date of announcement, we are hopeful that further information will be forthcoming shortly.

The clock is ticking on compliance with these proposals. Filing deadlines have already occurred and will continue in coming months. The single-tier partnership rules apply for partners' taxation years ending after March 22, 2011. Year-end alignment elections may be a golden opportunity to simplify financial reporting for partnership structures. But they must be filed by the earliest tax filing deadline for the first tax year ending after March 22, 2011 for any corporation that is a member of a partnership, including partnerships in a multi-tier partnership structure.[1] (In a multi-tier partnership, stub period accruals by partners are required in the first taxation year in which the fiscal period is aligned under a multi-tier alignment agreement.)

Notes:

[1] See proposed subparagraph 249(10)(*a*)(ii).

DRAFT INCOME TAX LEGISLATION CURRENTLY OUTSTANDING

The House of Commons returned from the summer break on September 19, 2011 and the Senate on September 27, 2011. There is a great deal of draft income tax legislation that is currently outstanding and it will be interesting to see what progress is made on the backlog once Parliament resumes sitting.

A summary of income tax legislative proposals that have been released and are still in draft form is listed below in reverse order by date of release.

- August 19, 2011 — Draft legislation regarding foreign affiliates, including reorganization, distribution and surplus rules — replaces the remaining provisions from the foreign affiliate proposals that were released on February 27, 2004 (CCH Special Report 060H);
- August 16, 2011 — Draft legislation to implement the 2011 Budget proposals (CCH Special Report 059H);
- March 16, 2011 — Draft legislation in response to three recent court decisions;
- December 16, 2010 — Draft income tax legislation to amend the provisions relating to the tax treatment of real estate investment trusts;

- December 7, 2010 — Draft legislation to amend the *Income Tax Act*, consequential to changes to the *Saskatchewan Pension Plan*;
- November 5, 2010 — Draft legislation for technical amendments to the *Income Tax Act* including those relating to partnerships, pensions, labour-sponsored venture capital corporations, and the lifetime capital gains exemption (CCH Special Report 056H);
- August 27, 2010 — Draft legislation to implement most of the remaining 2010 federal Budget proposals as well as certain previously released proposals. Proposals contained in the August 27, 2010 release that were not picked up in Bill C-47 (S.C. 2010, c. 25) include the legislation relating to foreign affiliates (updated from the release of December 18, 2009), non-resident trusts, foreign investment entities, reporting of tax avoidance transactions, foreign tax credit generators, and loss trading re SIFT conversions (CCH Special Report 054H);
- July 16, 2010 — Draft legislation and explanatory notes to implement most of the technical and bijuralism amendments that were in Parts 2 and 3 of former Bill C-10, which ceased to exist when Parliament was dissolved on September 7, 2008 (CCH Special Report 052H);
- March 4, 2010 — 2010 Budget Resolutions 15 to 17, "Scholarship Exemption and Education Tax Credit" (CCH Special Report 048H);
- November 9, 2006 — The amendments from former Bill C-10 Part 2 relating to the Canadian Video Production Tax Credit were not included in the July 16, 2010 draft legislation, but the Department of Finance announced that they would be reintroduced at a later date (CCH Special Report 021H); and
- October 31, 2003 — Draft legislation concerning the deductibility of interest and other expenses related to a source (CCH Special Report 006H).

PRESCRIBED INTEREST RATES — FOURTH QUARTER OF 2011

The prescribed interest rates for the fourth quarter of 2011 were released by the Canada Revenue Agency on September 9, 2011. They are unchanged from the third quarter of 2011 and are noted below.

- 1% to calculate a deemed interest taxable benefit on subsidized employee and shareholder loans;
- 1% on refunds of income tax overpayments paid to corporate taxpayers;
- 3% on refunds of income tax overpayments paid to non-corporate taxpayes; and
- 5% on payments of overdue income taxes, insufficient income tax instalments, unremitted employee source deductions, CPP contributions or EI premiums, and unpaid penalties.

These rates will be in effect from October 1, 2011 to December 31, 2011.

A listing of the prescribed interest rates for each quarter, dating back to 1994, is reproduced in Volume 1 at ¶300, and under "Quick Links" in the *Canadian Tax Reporter* on DVD and online.

EMPLOYEE BENEFITS TO BE VALUED AT FAIR MARKET VALUE

Spence v. The Queen, 2011 DTC 5111 (Federal Court of Appeal)

In this case, the Federal Court of Appeal determined the value of an employee benefit based on the fair market value of the benefit as opposed to the employer's cost of providing the benefit. The Court allowed the Minister's appeal from the decision of the Tax Court of Canada (2010 DTC 1312, discussed in *Tax Topics* No. 2020), which had valued the benefit based on the employer's cost. The Tax Court might have reached the opposite conclusion but felt bound to follow an earlier decision of the Tax Court on very similar facts.

Two appeals were consolidated before the Federal Court of Appeal. The taxpayers were both teachers at a Montessori school in London, Ontario. The school granted a 50% discount on tuition fees for employees' children to attend the school, and the taxpayers' children attended the school on this basis. The school calculated and reported the employee benefits as the difference between the discounted tuition paid by the taxpayers and the actual overhead cost per student space available incurred by the school. The Minister reassessed, increasing the amount of the employee benefit to the difference between the discounted amount paid by the taxpayers and the tuition charged to non-employees.

As noted above, at the Tax Court, Favreau J. would have valued the employee benefit at fair market value and dismissed the appeals, but felt bound to follow an earlier Tax Court case with very similar facts, *Detchon*, 96 DTC 2032 (TCC). In *Detchon*, Rip J. (as he then was) had valued the benefit of a private school permitting teachers' children to attend the school free of charge based on the average cost per student to the school. While a judge is not bound by the legal principle of *stare decisis* to follow a decision of another member of the same court, a court will typically try to follow such a decision in the absence of a strong reason not to. Favreau J. concluded that no such strong reason to not follow *Detchon* had been identified and that the issue of the appropriate valuation method must be left for a higher court to decide. This case provided the Federal Court of Appeal with that opportunity.

Létourneau J.A., writing for the Federal Court of Appeal, noted that the decision in *Schroter*, 2010 DTC 5062 (FCA), did not appear to have been before the Tax Court. In *Schroter*, the Federal Court of Appeal concluded that the value of a free parking pass provided to an employee was equal to its fair market value, i.e., the amount that a member of the public would pay for the pass. Létourneau J.A. held that this case was governed by the decision in *Schroter*, such that the value of the benefits received by the taxpayers is the amount that they would have had to pay to send their children to their employers' school had they not been teachers at the school, minus the amount they paid for tuition. He also agreed with Professor Kim Brooks that the cost to the employer for granting a benefit to an employee is irrelevant because it is the employee's income in issue.

Létourneau J.A. also found that the principle of horizontal equity supported the conclusion that the value of an employee benefit should be based on the fair market value of the benefit and not the employer's cost of providing the benefit. He compared a non-teacher parent with an income of $50,000 who would pay $10,000 tuition with a teacher with an income of $45,000 who would pay discounted tuition of $5,000. The non-teacher parent would have spent $10,000 and be left with an income of $40,000, but would have taxable income of $50,000. If the value of the employee benefit was determined based on fair market value, the teacher would have spent $5,000 and be left with income of $40,000, but would also have taxable income of $50,000. On the other hand, if the value of the employee benefit was determined based on the employer's cost of providing the benefit, and assuming that the school's overhead cost was $7,000 per student, the teacher's taxable income would be just $47,000. In Létourneau J.A.'s view, this would be unfair because the teacher would be in the same position as the non-teacher parent in terms of income after paying tuition for the education his or her child received, but would be taxed on income of $3,000 less.

In summary, the Federal Court of Appeal has now firmly established that the value of an employee benefit must be based on the fair market value of the benefit, i.e., what a member of the public would pay to receive the same benefit. This decision should clarify the law on this point, as some lower court decisions (and CRA administrative positions) suggested that other methods could be used.

— *Jeffrey Love*

RECENT CASES

Taxpayer not entitled to deduct support payments made directly to adult daughter

Under a written agreement, which was later approved by the Quebec Superior Court, the taxpayer paid directly to his adult daughter support payments during 2008 to enable her to pursue her university studies. Neither the taxpayer nor his former common-law spouse had custody. The Minister disallowed the taxpayer's deduction of the support payments. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. Support payments made directly to a child of the payor are only deductible under the deeming provisions in s. 60.1(1) of the *Income Tax Act* if the conditions in that subsection are met. In this case, s. 60.1(1) was inapplicable, because the taxpayer's former common-law spouse did not have custody. The taxpayer was therefore not entitled to the deduction claimed. The Minister's assessment was affirmed accordingly.

Larouche

2011 DTC 1243

Deemed dividend properly added to taxpayer's income

In a non-arm's length transaction, the taxpayer, a family trust, disposed of 433 Class B shares of G Inc. (the "433 Shares") to a numbered corporation, 4041763, at a price of $6,010 per share. The corporation, 4041763, then sold the 433 Shares in an arm's length transaction to Keolis Canada Inc. ("Keolis") at a price of $6,550 per share, and 4041763 paid KPMG and two law firms professional fees of $233,786. This $233,786 represented the difference between the consideration paid by 4041763 to the taxpayer for the 433 Shares and the consideration paid to 4041763 by Keolis for the same shares. In reassessing the taxpayer for 2002 beyond the normal reassessment period under a waiver signed by the taxpayer, the Minister assumed that the fair market value of the 433 Shares was $6,550 per share (as opposed to $6,010). Applying the D factor in the formula in s. 84.1(1)(*b*) of the *Income Tax Act* and using a value of $6,550 per share, the Minister therefore included in the taxpayer's income a deemed dividend of $291,099. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The taxpayer received a total consideration of $6,550 per share on its sale of the 433 Shares, made up of the actual amount it received from 40431763, and the fees, which the latter agreed to pay to KPMG and the law firms for the work they did in advising the taxpayer on its disposition of the shares. The Minister's reassessment was affirmed accordingly.

Fiducie Famille Gauthier

2011 DTC 1244

Taxpayer eligible for tuition tax credit for online university courses

The taxpayer's spouse was enrolled at the University of Phoenix for a series of online courses leading to a degree. As soon as one course was finished, another was started. No one course was 13 weeks or more in duration, but in total they were. The taxpayer claimed a tuition tax credit transferred from her spouse. The Minister disallowed the credit, and the taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was allowed. The Court found that the word "course" included the plural. Therefore, tuition fees paid by an individual will qualify for a credit if the fees are paid for a course or for courses that lead to a degree and the course or the courses are at least 13 consecutive weeks in duration.

Abdalla

2011 DTC 1247

Reverse freeze was a tax avoidance transaction subject to the general anti-avoidance rule

In 2002, the corporate taxpayer, through its owners and advisors, implemented a "reverse freeze" involving a sophisticated series of transactions. The series consisted of five transactions: the incorporation of a new company, Rcongold; the subscription for shares of Rcongold by the taxpayer; the declaration of a stock dividend by Rcongold; the creation of the Peter Cohen Trust ("PCT"); and the sale by the taxpayer of shares of Rcongold to the PCT. The Minister disallowed the deduction of a capital loss of nearly $8 million the taxpayer claimed in that year. The Minister's position was that the taxpayer had received a tax benefit that resulted from a series of avoidance transactions within the meaning of the general anti-avoidance rule. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The Court found that the taxpayer had received a tax benefit. Without the transactions forming part of the reverse freeze, the taxpayer would have had to pay tax on a capital gain of $7,799,545. Instead, a capital loss of $7,999,935 was created and made available to the taxpayer to apply against its capital gain. The tax benefit arose from the offsetting of the capital gain against the capital loss and the reduction to nil of the tax that would otherwise have been payable on that gain. The Court also found that the only purpose of the series of transactions was tax avoidance. It was reasonable to conclude that the value/shift, the creation of the PCT, and the disposition of the common shares to the PCT were not undertaken or arranged primarily for genuine purposes other than to obtain a tax benefit, and that the primary purpose of the entire series of transactions was to obtain the tax benefit. Consequently, the series was an avoidance transaction. Finally, the Court found that the transactions

amounted to abusive tax avoidance, because they defeated the underlying rationale of the capital loss provisions of the *Income Tax Act*. Through the manipulation of the fiscal "amount" of the Rcongold common shares, the taxpayer created artificially devalued property that was transferred to a person within the same economic unit to create an artificial capital loss without incurring any real economic loss. The transactions undertaken by the taxpayer, however, clearly circumvented the application of specific anti-avoidance rules, which were, in this case, the stop-loss provisions.

Triad Gestco Ltd.

2011 DTC 1254

Notice: *Readers are urged to consult their professional advisors prior to acting on the basis of material in this newsletter.*

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Published monthly by CCH Canadian Limited. For subscription information, contact your CCH Account Manager or call 1-800-268-4522 or (416) 224-2248 (Toronto).

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