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COVID-19:

Planning Opportunities in an Economic Downturn

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Agenda

1. Freeze / Refreeze Planning
2. Loss Utilization Strategies
3. Allowable Business Investment Losses
4. Tax Efficient Distributions
5. Quick Hits – Corporate Cash Flow Planning
6. Quick Hits – Opportunities for Shareholders

Freeze / Refreeze Planning

Economic downturn may cause devaluation of businesses, stock markets, and real estate

This presents significant opportunities to "lock in" low values and reduce taxes on death or assist in succession planning the business to the next generation

Freeze / Refreeze Planning

What is an estate freeze?

- Planning technique to lock in the current value (and tax liability) of capital property for one person.
- Value of future growth attributes to another person (i.e. family trust, children, etc.).
- Provides taxation, estate planning, and business advantages.
- Can allow current owners to continue control of the asset while future growth attributes to another person.

Estate Freeze Planning – Existing Corporation

Mr. Jones has an operating company ("Opco") that was worth $5M a month ago

Taxes on death would be between $1.33M (gains) and $2.39M (dividends)

It's now worth $3.5M

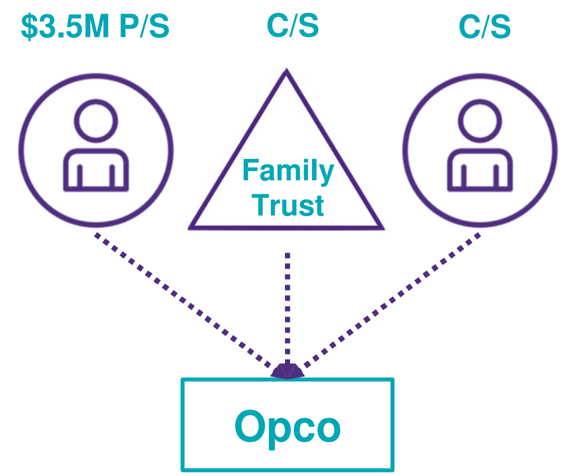
Taxes on death would be between $936K and $1.67M

Opco

How do we lock in the estate tax deferral of approx. $400K to $700K?

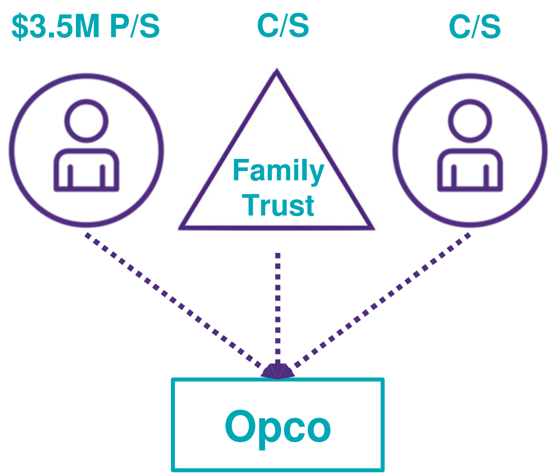
Estate Freeze Planning – Existing Corporation

- Mr. Jones “freezes” his value by exchanging his common shares for fixed-value preferred shares
  - Section 51, 85, 86
- Children, trust, or other selected taxpayers subscribe for new common shares for a nominal amount



Estate Freeze Planning – Existing Corporation

- Potential parties to freeze in favour of:
  - Trust
  - Spouse
  - Children
- Key considerations
  - Control issues
  - Flexibility
  - Multiplication of capital gains exemption
  - Family matters

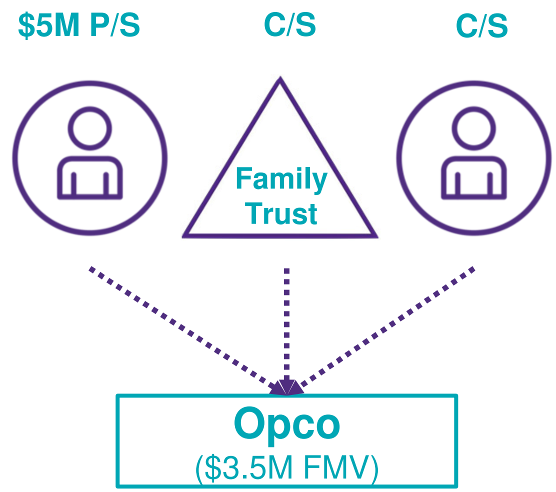


Refreeze Planning

What if Mr. Jones had previously done a freeze at $5M, and Opco is now worth just $3.5M?

Mr. Jones can "Refreeze"

- Exchange his $5M preferred shares for $3.5M preferred shares
- Although the "old" preferred shares had a face value of $5M, they are currently only worth $3.5M
- See Technical Interpretation 2010-0362321C6 for further guidance



Refreeze Planning – Benefits of a Refreeze

- The freeze shares held are currently “underwater” meaning that they’re not worth their face value.
- A lower value to the freeze shares may be desirable for estate planning / succession planning purposes.
- Subsequent to an estate freeze, the recovery of value will now attribute to common shareholders.

Estate Freeze Planning – New Corporation

What if Mr. Jones held his investments in a non-registered personal account?

Transfer the investments to new company in exchange for a note and/or preferred shares; have children or a trust subscribe for common shares.

If accrued gains on investments, would likely want to make use of subsection 85(1) transfer to avoid triggering gains.

Estate Freeze Planning – New Corporation

Mr. Jones has portfolio investments (cost of $3M) that were worth $5M a month ago.

Taxes on disposition or death would be approx. $535k.

It's now worth $3.5M

Taxes on disposition or death would be approx. $134k.

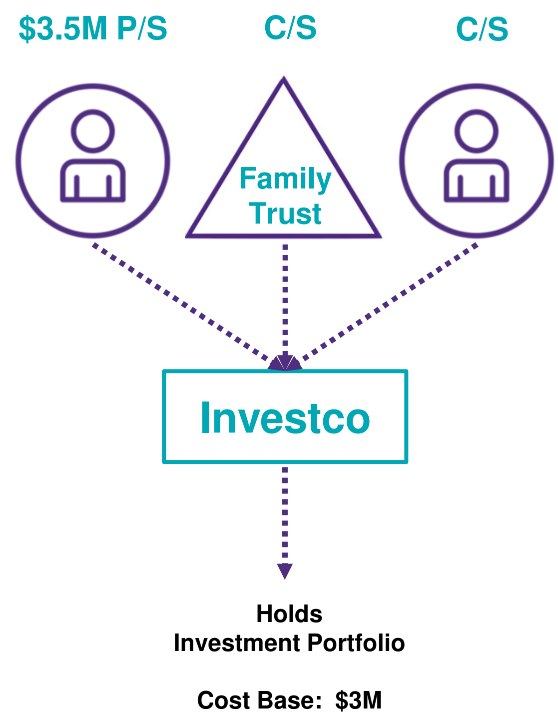
Investment Portfolio

Cost Base: $3M

How do we lock in the tax deferral of approx. $401k?

Estate Freeze Planning – New Corporation

- Mr. Jones transfers his investment portfolio to a new corporation (“Investco”) on tax deferred basis.
- Mr. Jones receives fixed-value preferred shares as consideration.
- Children, trust, or other selected taxpayers subscribe for new common shares for a nominal amount.



Freeze / Refreeze Planning – Tips & Traps

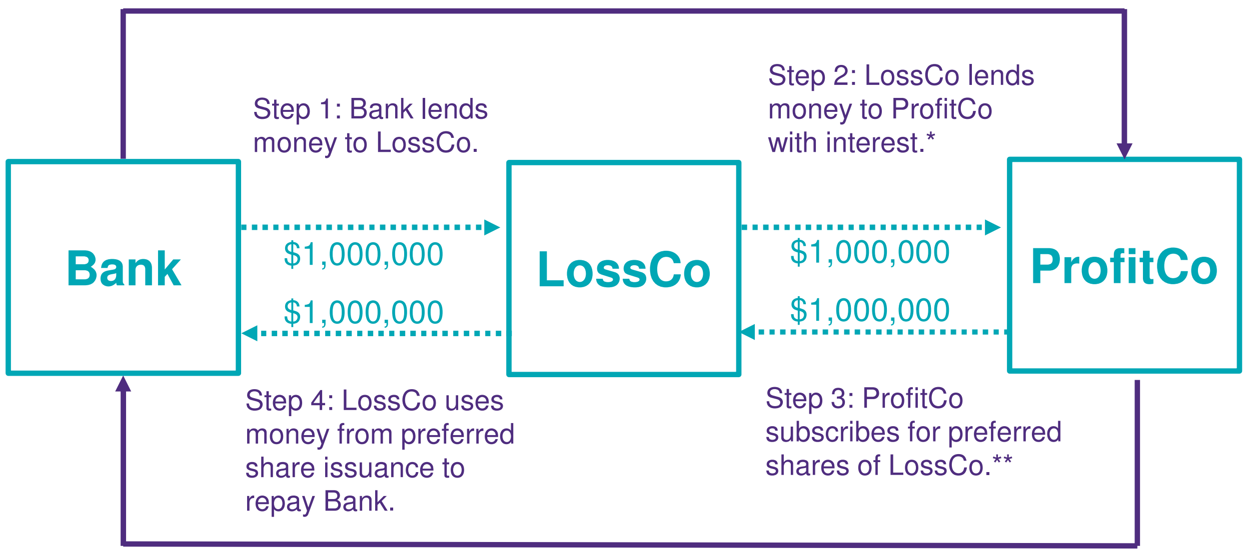
Items for consideration:

- Getting the value right: ensure no benefit conveyed
- Ensure price adjustment clause attached to shares
- Section 51/85/86 versus stock dividend
- Corporate attribution (section 74.4)
- Association rules – especially when introducing minors and/or a family trust, but also if adult beneficiaries have their own companies
- Family law issues
- US persons and other non-resident issues
- Shareholder issues / shareholder agreements

Loss Utilization Strategies

- CRA will generally approve of loss transfer transactions within affiliated groups
- Management fees (and similar fees) must be reasonable
- Other techniques:
  - Roll assets and sell back at fair market value
  - Transfer assets and lease / rent / royalties back
  - Amalgamation or wind-up
  - Preferred share / debt loop

Loss Utilization Strategies - Preferred Share / Debt Loop

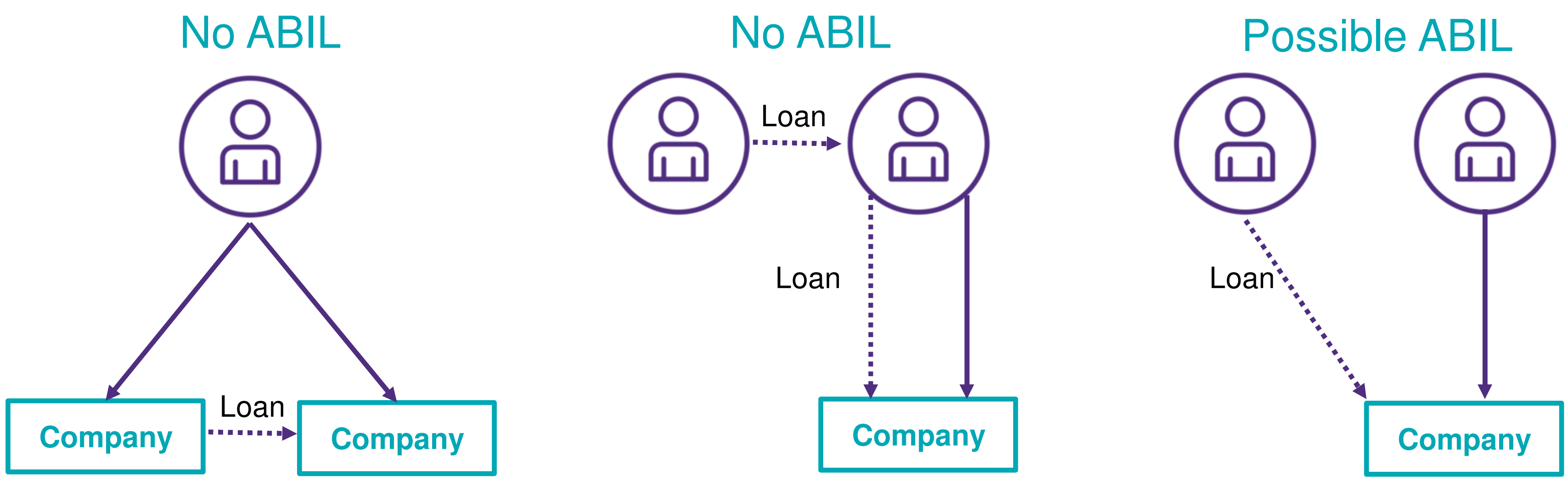


* Purpose is for ProfitCo to invest in preferred shares of LossCo

** Preferred shares have a fixed dividend entitlement exceeding interest on loan from LossCo

Allowable Business Investment Loss ("ABIL")

What to look for: Money has been lent/invested by an individual to a corporation and repayment is doubtful.



Allowable Business Investment Loss ("ABIL")

- A form of capital loss
- Allowable portion (50%) can be deducted against regular income, not just capital gains.
- Key considerations:
  - Was the corporation a small business corporation?
  - Have the shares/debt been disposed of, or has a valid 50(1) election been made?

Tax Efficient Distributions

- The top marginal tax rates in Ontario are as follows:

Income Type	Rate
Salary / Other Income	53.53%
Dividends (non-eligible)	47.74%
Dividends (eligible)	39.34%
Capital gain (corporate flow-through)	28.97%
Capital gain (personal)	26.76%

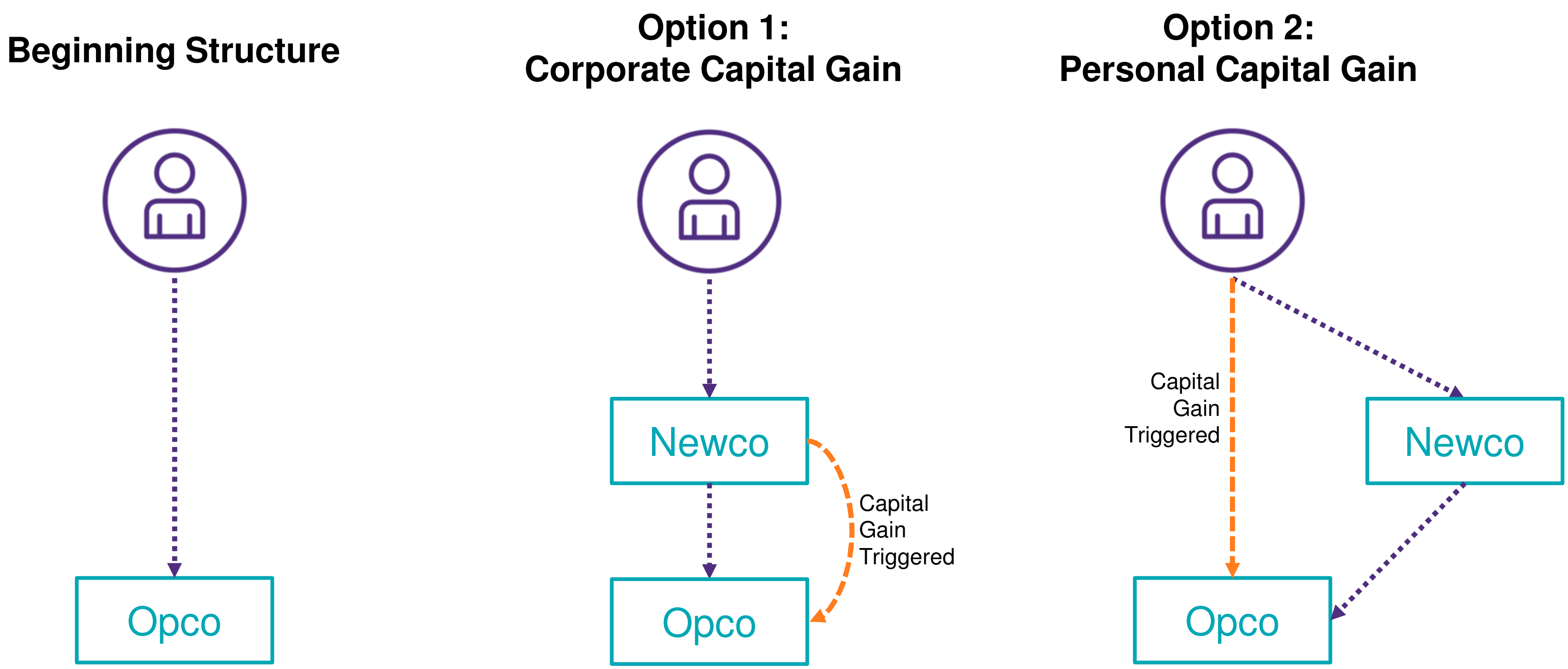
- Observation: Capital gains rates are much lower than other types of income.

Tax Efficient Distributions

Opportunity:

- An alternative remuneration measure to extract cash from a corporation at capital gains rates as opposed to salary or dividends.
- Can create tax savings of up to 20.98%.

Tax Efficient Distributions - Illustration



Tax Efficient Distributions - Illustration

	Ineligible Dividend	Eligible Dividend	Corporate Capital Gain	Personal Capital Gain
After-tax earnings	1,000,000	1,000,000	1,000,000	1,000,000
Tax otherwise payable	(477,400)	(393,400)	(289,654)	(267,600)
After-tax cash	522,600	606,000	710,347	732,400
Effective Rate	**47.74%**	**39.34%**	**28.97%**	**26.76%**
Tax savings vs. eligible dividend			**103,747**	**125,800**
Tax savings vs. ineligible dividend			**187,747**	**209,800**

Quick Hits – Corporate Cash Flow Planning

Trigger	Strategy
Inventory that has declined in value	• Consider a subsection 10(1) write down to fair market value ("FMV") to create a tax deduction to reduce current year corporate income tax or carryback loss to a previous year.
Investment portfolio with accrued losses	• Sell stock to realize capital losses to offset capital gains and/or carryback up to 3 years. • Beware of superficial loss rules for reinvestment and prior year dividend refunds paid.
Non-capital loss carryforwards	• Company with non-capital losses sells capital property and creates a CDA for extraction to replace taxable renumeration.
Current corporate installments paid in excess of required amount or income expected to be lower in current year	Options available: • Apply current instalments back to most recent year-end (if not yet filed) to trigger refund. • Apply to transfer the instalments to HST/GST or payroll account. • Request refund.
Refund expected on filing	• If a refund is expected, file the return ASAP to receive the refund sooner.
Uncollectible accounts receivable	• Trigger specifically identifiable uncollectible accounts to decrease corporate income or increase non-capital losses for utilization or carryback. Consider allowance vs bad debt.

Quick Hits – Opportunities for Shareholders

Trigger	Strategy
Shareholders have value in their company in excess of lifetime capital gains exemption	• Consider an estate freeze to minimize estate tax.
Shareholder of a private corporation only has one will	• Utilize dual wills to avoid probate (check provincial legislation).
Preferred shares that have value	• Consider a structure that will allow for share redemptions (or capital gains) as opposed to salary in order to minimize estate taxes on death (exhausting an estate freeze).
Lower income shareholder, spouse, or adult children involved in structure and tax on split income (“TOSI”) applies to limit income splitting	• If the corporation is a qualified small business corporation (“QSBC”), on capital gains realized by shareholder spouse or adult children, TOSI does not apply. • Can also work with a family trust with spouse and adult children beneficiaries. • Note: in this plan the capital gains exemption is NOT claimed.
Multiple shareholders of a private corporation	• Implement shareholders’ agreement and planning thereon (life insurance, stop loss rules, review of wills, etc.).

Questions?