

2019 BRITISH COLUMBIA TAX CONFERENCE & LIVE WEBCAST

TOPIC OUTLINE

DIVORCES: IMPACT ON COMMON PLANNING TECHNIQUES FROM TAX LEGISLATIVE CHANGES

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On marital breakdown, the division of assets, particularly corporate assets, can be challenging. Recent changes to income tax rules include changes to personal and corporate tax rates, the creation of the TOSI rules, amendment to the Section 55 dividend re-characterization rules and changes to rules related to alter ego and testamentary trusts add further complexity to process. The focus of this paper/presentation will be to first provide a brief overview of the income tax tools available to an advisor to divide assets on marital breakdown in a tax efficient manner, and second to discuss in detail how these planning options have been impacted by recent legislative changes.

1) Introduction / Overview

2) Division of Assets

i. Shares of Private Company

1. TOSI going forward
2. Attribution
3. Capital gain versus dividend extraction of capital – integration, rates, lowest cost to fund, etc.
4. 84.1 considerations
5. Related party butterfly
6. Capital gain reserve
7. Lifetime capital gains exemption
8. Valuation of corporations
9. Stop-loss rules
10. Wasting freeze or transfer over time to facilitate utilization of marginal rates

ii. Real Property

1. Principal Residence Exemption
2. PTT

- iii. Deferred Income Plans
- iv. Tax liability on NAL property transfers (joint and several liability)

3) Support payments and inter-spousal transfers

- a. Criteria to deduct
- b. Tax efficient funding
- c. Lump sum payments outside separation agreement or court order, or “Qualifying Retroactive Lump Sum” payment
- d. Legal fees relating to obtaining spousal support deductibility
- e. Child support (tax neutral)

4) Deductibility of legal costs

- a. Criteria for deduction

5) Other

- a. Non-capital property
 - i. RRSPs, DPSPs, TFSAs, RRIFs
 - ii. Life insurance policies and annuities
 - iii. Joint accounts
- b. Utilization of tax losses of spouses
- c. Claim of amount for eligible dependent