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## TOSI – A TECHNICAL DISCUSSION

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This session will include a discussion of the following:

1. **TOSI Decision Tree**
2. **TOSI Key Definitions: briefly discuss the following definitions**
  - a. Specified/source individual
  - b. Split income
  - c. Excluded amount
3. **Summary of “Excluded Amounts” or “Exceptions” for Different Age Groups**
4. **Key Exceptions to TOSI: Details/CRA’s Recent Views/Whether CRA’s Interpretation Consistent with the Scheme of the Act.**
  - 1) Excluded business:
    - a. general rule and bright-line deeming rule
    - b. CRA’s examples of the application of the general rule
  - 2) Not from a related business:
    - a. for the year and historical RE
    - b. “directly or indirectly” and CRA’s interpretations
    - c. what constitutes a business (common law/legislation/CRA’s view):
      - i. rebuttable presumption of a business carried on by a corporation
      - ii. can investment activities constitute a business?
      - iii. what level of activity is needed for a business to exist and CRA’s views
    - d. CRA’s view re second generation income whether derived directly or indirectly from the source business (applicable to excluded share exception too)
    - e. Discretionary family trust interest and related business (valuation uncertainty)
  - 3) Excluded shares:
    - a. Less than 90% of the business income/what constitutes a business (refer to above)
    - b. What does “income” mean? (Gross income versus net income)
    - c. Income from provision of services: CRA’s view re supply of goods necessary and incidental to service business
    - d. Direct share ownership
    - e. All or substantial all income for last taxation year: skip a year
  - 4) Reasonable return:
    - a. Factors taken into account
    - b. CRA’s comments re
      - i. Terms and conditions of the loan and risks assumed by inactive spouse
      - ii. Reasonable if a good-faith judgement is made
      - iii. Undistributed RE is not considered “capital at risk” thus not relevant
      - iv. Contributions relative to others
  - 5) Deceased continuity rules: interpretation of “as a consequence of death”
  - 6) Capital gains on disposition of QSBC shares: QSBC classification versus actual use of CGE
5. **GAAR Consideration:**
  - 1) CRA’s comments regarding the potential GAAR application where transactions were primarily effected to circumvent the TOSI
  - 2) Assess the potential application of GAAR: important whether there’s an avoidance transaction