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# INTERNATIONAL TAX PLANNING

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## SUBSECTION 88(3): DEFERRING GAINS ON LIQUIDATION AND DISSOLUTION

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Bill C-48, introduced in November 2012, proposes significant changes to subsection 88(3) and related provisions of the Income Tax Act. The proposed amendments specify the tax consequences that will arise on the liquidation and dissolution of a top-tier foreign affiliate (“the disposing affiliate”) into the taxpayer. When the taxpayer elects for the liquidation and dissolution to be a qualifying liquidation and dissolution (QLAD), the disposing affiliate will be deemed to have transferred all of its properties to the taxpayer on a rollover basis. In certain circumstances, the taxpayer may further make a suppression election to defer any capital gain that it would otherwise realize on the disposition of its shares of the disposing affiliate. The results that can be achieved in this way are much more favourable than those possible under previous iterations of subsection 88(3).

In this article, the authors review several situations in which a taxpayer may realize a capital gain on the disposition of its shares of the disposing affiliate in the context of subsection 88(3), including gains resulting from the application of the fill-the-hole rule in proposed regulation 5905 (7.2) and from currency fluctuations. The authors review the intricacies of the proposed amendments and discuss how a taxpayer may be able to defer such capital gains in light of the new QLAD election and suppression election.

The authors further discuss the application of the stop-loss rules where a taxpayer realizes a capital loss on the disposition of its shares of the disposing affiliate under proposed subsection 88(3) and a QLAD election is not filed.

**KEYWORDS:** LIQUIDATION ■ DISSOLUTION ■ FOREIGN AFFILIATES ■ DISPOSITIONS ■ CAPITAL GAINS ■ ELECTIONS

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