Personal Tax Planning

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GOT ME THOSE "LOW CAPITAL GAIN, HIGH DIVIDEND TAX, STOP-LOSS RULES, ESTATE-PLANNING" BLUES

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In recent years, there have been a number of amendments to the Income Tax Act that have significantly (and negatively) affected what had hitherto been considered "standard" estate-planning strategies. The changes have included the extension of the stop-loss rules to individuals who are in receipt of capital dividends, the introduction of the new "kiddie tax," and, most recently, the reduction in the capital gains inclusion rate without a concomitant reduction in the rate of tax applicable to dividends. With the effective rate of tax on dividends approximately one-third greater than the tax on capital gains, tax planners will be forced to readdress a number of estate plans to determine their efficacy under the new regime.

This article reviews a number of traditional planning strategies (with regard to both inter vivos planning and post mortem planning) and re-evaluates those strategies in light of the changes to the capital gains inclusion rate and other tax changes of recent years. In the post mortem context, the article considers the interaction of (1) the reduction in the capital gains inclusion rate, (2) planning around the loss carryback rule in subsection 164(6), and (3) the application of the stop-loss rules in subsection 112(3.2) et seq. A variety of strategies are considered which are designed to avoid the potential double tax liability that can arise in the post mortem planning context. Particular attention is given to planning strategies involving corporate-owned life insurance.

The article recognizes that different planning considerations apply in the family business succession planning context, the shareholder buyout context, and the context of investment holding companies. The article addresses

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the tax issues that may arise in each of these situations. ***Keywords:** Estate planning; personal income taxes; life insurance; closely held corporations; shareholder agreements; capital gains.*