CANADIAN OVERVIEW

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The quarterly Canadian Overview is a newsletter produced by the Canadian member firms of Moore North America. These articles are meant to inspire conversation and collaboration throughout Canada and beyond.

Sailing into the Sunset

SUCCESSION PLANNING FOR A SUCCESSFUL RETIREMENT

By Amy Duncan, CPA, CGA from DMCL

As a small business owner, you spend your working life building a legacy and pouring countless hard-working hours into your business. Understandably, as you approach retirement age, you might be wondering “now how do I retire?”

Here are some tips for crafting a successful succession plan that allows you to retire worry-free and content in knowing that your legacy will be carried on in good hands:

START THE CONVERSATION

As advisors, we often see business owners delaying the building of a succession plan, which is understandable given the time, energy and passion they have put into making the business what it is today. While it can be difficult to consider handing over the reins to the next generation, it is important to start the discussion early on. Ensure that you have identified the right successor, and start passing on your “tricks of the trade” to solidify a smooth transition for you, your business and your customers. Your decades of experience cannot be downloaded and transferred overnight—they require time and patience to be understood and internalized by your successor.

DETERMINE YOUR EXIT STRATEGY

Consider what your exit strategy looks like. One common method is a transition to children or grandchildren that is structured as an estate freeze, allowing you to “freeze” your current value and exchange your common shares for preferred shares at the value of the company upon transition. In this situation, you can have the new owners purchase common shares to participate in any new growth of the company. This allows you to redeem your shares over time, setting you up for a steady income stream through retirement.

Another option would be to sell the common shares in phases over several years, allowing you to decrease your ownership percentage while still maintaining some direction and control of the company. In this situation, you can phase the new owner(s) in while also participating in the profits over the phase-out period. Again, this option provides an income stream for several years; however, typically this option would be done over a shorter time period and would require a secondary plan for retirement living, which may include contributions to RRSP's, TFSA's or investing in a market-based portfolio.

You also may find that the next generation isn't interested in taking over, but you still want your customers to be in good hands. As such, you may consider the opportunity to sell your business to a third party. Sometimes these will be other business owners looking to expand their business and bring on your location or services, or this may be a new entrepreneur looking to establish themselves. There are two options for succession in this case, which include selling all the shares or selling the assets of the company:

1. When selling the shares, the buyer assumes all of the assets and liabilities of your company, as well as your customers and any goodwill you may have generated. This provides for a smooth and final exit; however, likely the highest tax implications as you would get a larger lump sum for your shares in that first year. However, the lifetime capital gains exemption may be available to curb some of this effect.

2. When selling the assets of the company, you would retain the company and only sell the components of the business to the buyer. This allows you to leave the profits of the sale in the company and slowly draw them out over time, or convert the company to an investment company and derive investment income. This option results in no lifetime capital gains exemption; however, there is the ability to pay a capital dividend tax free from the company to the shareholder.

Each of the above options for exiting your business come with pros and cons—they are not one size fits all.

ENGAGE THE CORRECT ADVISORS

Lastly, it's important to engage professional advisors throughout your succession planning journey. These advisors may include accountants, business valuators, lawyers and business brokers depending on the nature of your situation.

Business and succession accountants handle these conversations with great sensitivity and also offer facilitation services to help mitigate any issues. If you, or someone you know is looking to successfully transition to retirement, connect with your CPA to see how they can help you.

By Amy Duncan, CPA, CGA

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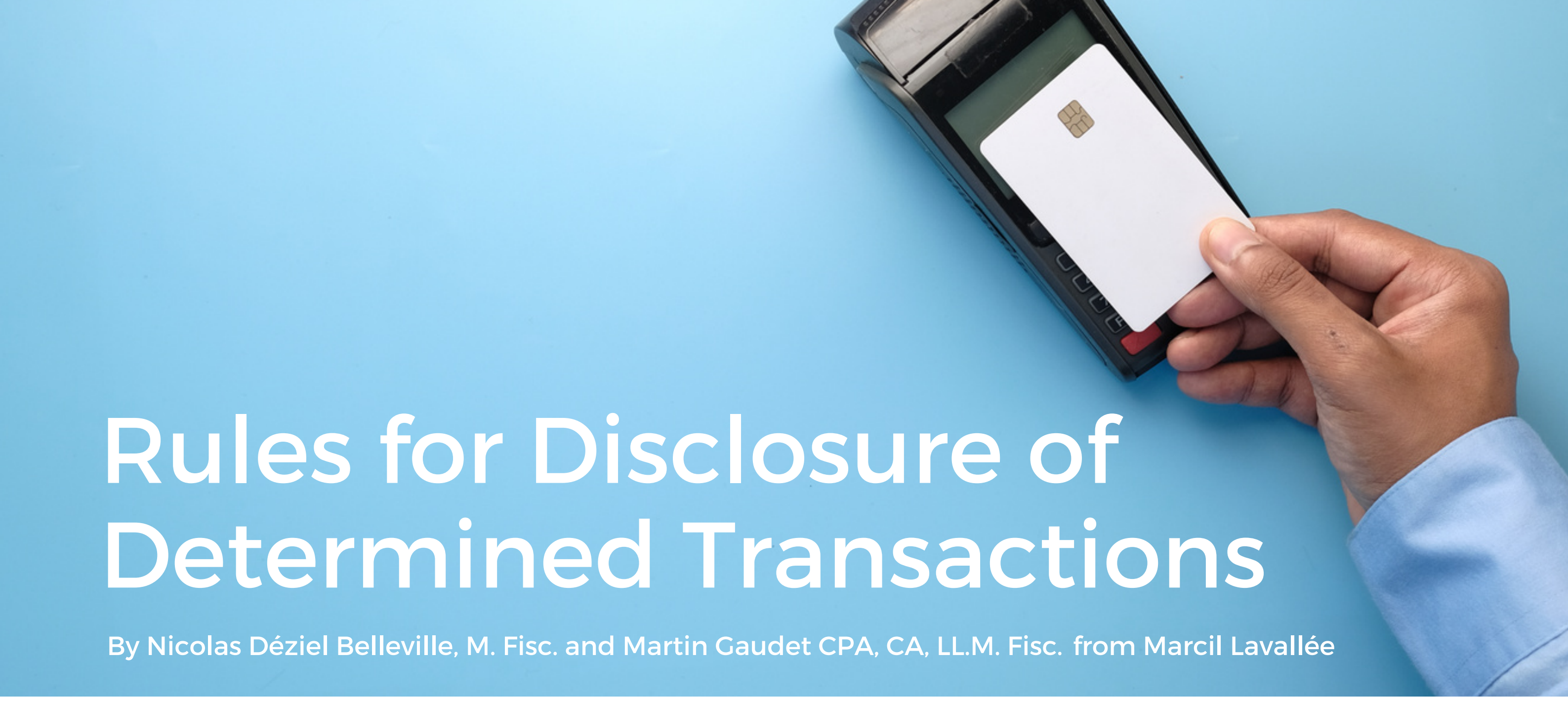

Rules for Disclosure of Determined Transactions

By Nicolas Déziel Belleville, M. Fisc. and Martin Gaudet CPA, CA, LL.M. Fisc. from Marcil Lavallée

Since 2021, taxpayers must disclose to Revenu Québec the specified transactions they have carried out. A specified transaction may be an arrangement, an event or a series of transactions where the form and substance of the facts concerning the taxpayer are similar to the transactions determined by the Government of Quebec.

To date, the first four determined transactions have been published. Revenu Québec has also announced excluded transactions that are intended to be transactions, or series of transactions, that are not included in the specified transactions.

1 MULTIPLICATION OF THE CAPITAL GAINS DEDUCTION

In general, the determined transaction targets the following two types of planning strategies:

a.) A person uses accommodators to claim multiple capital gains deductions, often through a trust, and receives all or part of the accommodators' gains;

b.) The shareholder's spouse becomes a shareholder in order to claim multiple capital gains deductions by manipulating the attribution rules between spouses.

Note that Revenu Québec considers that the transfer to a taxpayer of an amount equal to or less than the non-taxable portion of the realized capital gain is an excluded transaction.

2 TAX ATTRIBUTE TRADING

Generally, the determined transaction targets the following planning strategies:

a.) The use of one taxpayer's tax attributes (for example, operating losses, tax credits that can be carried forward and the balance of scientific research and experimental development expenses) by another taxpayer that is not affiliated with the taxpayer immediately before the start of the series of transactions.

b.) The use, resulting in a loss, of tax attributes by a corporation or trust further to its capitalization by a third party in order to carry on a new business, if there is a relationship between the capitalization and the use of the corporation's or trust's tax attributes.

Again, Revenu Québec has disclosed certain excluded transactions, including the use of tax attributes generated in respect of a taxpayer by another taxpayer that is related to the original taxpayer immediately before the series of transactions began.

3 AVOIDANCE OF DEEMED DISPOSAL OF TRUST PROPERTY

Generally, the determined transaction targets planning strategies used to get around the deemed disposition and postpone taxation of the accumulated gain.

4 PAYMENT TO A NON-TREATY COUNTRY

In general, the determined transaction targets one or more payments, totaling $1,000,000 or more during the year, which are made by a person or partnership to an entity with which it is not dealing at arm's length and which is located in a jurisdiction that has not entered into a tax treaty with Canada.

Finally, determined transactions must be disclosed within the prescribed timeframe by taxpayers, advisors and promoters using the forms (TP-1079.CP and TP-1079.DI) from Revenu Québec. Any failure to disclose carries significant consequences.

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Underused Housing Tax Act

By Brad Berry, CPA from Mowbrey Gil, LLP

On June 9, 2022 Bill C-8 received Royal Assent making the Underused Housing Tax Act (“UHTA”) law. This new legislation requires certain owners of residential property in Canada to file returns annually commencing in 2022, with the first filing deadline coming this April 30, 2023. The UHTA implements an annual tax of 1% on the value of vacant or underused residential property which is not owned (directly or indirectly) by citizens or permanent residents of Canada.

Before you assume this doesn’t apply to you, be aware that penalties for failure to file a return when required is subject to a penalty of the greater of:

- $5,000 for individual or $10,000 or all others, or
- 5% of the Underused Housing Tax (UHT) plus 3% of the UHT for each month the return is late.

Needless to say, the failure to file a return could be costly even where there is no UHT liability. Therefore, if you own residential property in Canada and are not an “excluded owner”, you should make sure you understand your reporting and filing obligations.

The UHT doesn’t apply to “excluded owners”. There are a number of persons included in the definition of an “excluded owner” including “an individual who is a citizen or permanent resident”.

Where you do not meet the definition of an “excluded owner”, a declaration must be filed annually to claim an exemption from the UHT, or a return must be filed to pay the UHT tax. This would include privately owned taxable Canadian corporations and Canadian citizens or permanent residents that hold property as a partner in a partnership or as a trustee of a trust. Failure to do so will result in penalties. The UHTA requires the filing of a separate return for each residential property for the calendar year.

If you are not an “excluded owner” there are exemptions for:

- Specified Canadian corporations, partnerships and trusts;
- The year of death where certain conditions are met;
- The year of acquisition in certain situations;
- Meeting minimum owner occupancy requirements;
- Property that is uninhabitable for a certain portion of the year or only inhabitable at certain times of the year; and,
- Limited other situations.

Due to the highly technical nature of the definitions, these exemptions should be discussed with your tax advisor before relying on them.

The amount of vacant or underused housing taxes can be significant, depending on where you own property. For example, in 2017 Vancouver introduced the Empty Homes Tax at 3% of the fair market value of the property, on which the British Columbian Provincial Government piggybacked the Speculation and Vacancy Tax of up to 2%. Adding the UHT of 1% could result in a 6% annual tax on the fair market value of your property.

By Brad Berry, CPA

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All in the Family

PASSING THE COTTAGE TO THE NEXT GENERATION

By Rishma Jessa, Principal CPA, CGA, MTax, TEP from Segal GCSE

As parents age, they may think about transferring assets and family heirlooms to their children. Often, one such heirloom is the family cottage. Summer vacations at the family cottage are among the most memorable and cherished of times, holding deep sentimental value for parents.

Not surprisingly, many parents want the family cottage to stay in the family for future generations. It's important to understand the issues surrounding the transition of such an asset to the next generation. This article highlights issues to consider, including income tax implications and options available.

Let's use an example for the typical issues parents must consider in transitioning the family cottage. Mary, 68, and John, 65, are married with two adult children. Mary and John own a family home and a cottage, which was purchased 22 years ago. Recently retired, they are considering options to keep the cottage in the family, ensuring their legacy lives on.

FAMILY CONVERSATION

First, Mary and John need to have a conversation with their children to determine what is in everyone's best interests. Are the children interested in keeping the cottage? Will they be able to pay the costs to maintain the cottage? What if only one child is interested in the cottage but cannot afford the costs? What if both children want to share the cottage? How can Mary and John ensure the enjoyment and costs are evenly divided between the children? How can conflicts be resolved?

Mary and John must have an open discussion with their children, expressing their desire to keep the cottage in the family as their legacy. At the same time, Mary and John need to listen to their children's wishes regarding the cottage. The costs and responsibilities associated with cottage ownership must be discussed, especially if the parents will not be financially contributing to cottage upkeep.

Assuming Mary, John and their children all agree the cottage should remain in the family, several options are available to transition the cottage to the children, each with its own tax implications and other considerations.

CLICK HERE to read the full article and to learn more!

By Rishma Jessa, Principal CPA, CGA, MTax, TEP

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