

Creative Planning

November 16, 2021

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Remuneration by Capital Gains

- Advantage of capital gains is clear
 - Rate advantage
 - Can extract more funds before top rate applies (since capital gains only 50% taxable, CDA not included in income)
 - Generate capital dividend if the capital gain is first triggered in corporation, then no personal tax
- How to remunerate as capital gains?
- Can CRA apply GAAR?
- Consider kiddie tax as well

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Capital Gain Rate Advantage

	<u>ABI</u>	<u>High Rate Active</u>
Income	\$100	\$100
Tax	<u>(12.2)</u>	<u>(26.5)</u>
Net	81.8	73.5
Create capital gain in corporation, pay out		
Overall tax rate on capital gain 28.97% at top bracket		
Tax	23.70	21.29
Total Tax	35.9%	47.79%
Savings	<u>18%</u>	<u>7.6%</u>

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Capital Gain Strategies

Various ways

Internal share reorganization

Drop down of shares/assets

Pipeline

Deemed capital gain

Acquisition of control election

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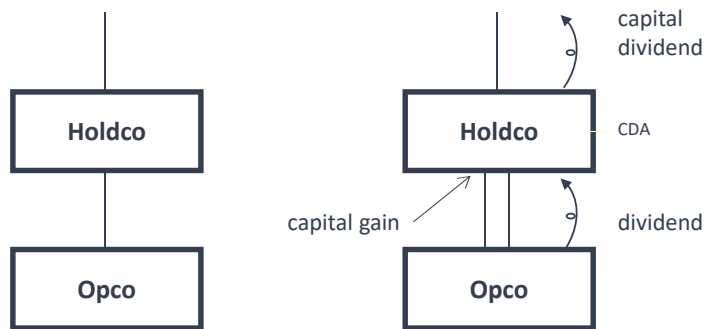
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Capital Gain Reorganization

Internal Share Reorganization



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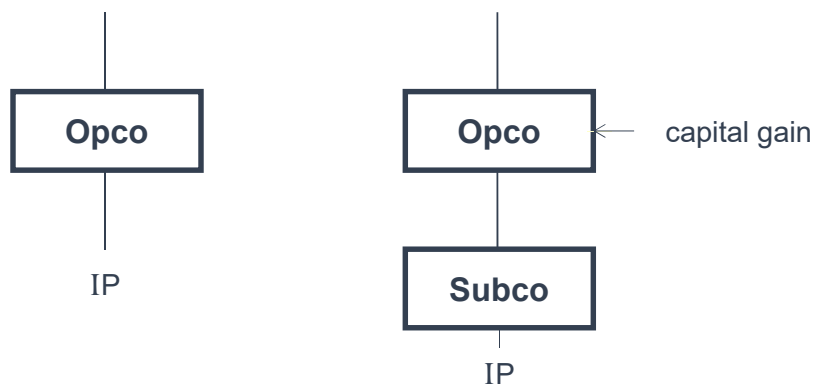
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Capital Gain Strategies

Drop Down IP



Steps up Shares of Subco and cost of IP (50% for UCC purposes)

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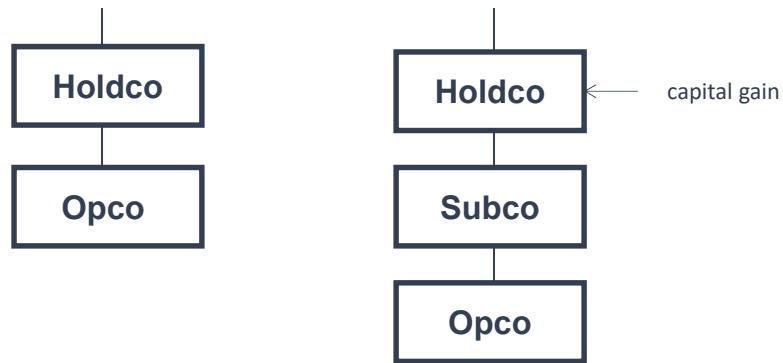
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Capital Gain Strategies

Drop Down



Steps up Shares of Subco and Opco

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Pipeline

Many rules deem a capital gain to arise. Some automatic, some by election.

Use deemed gain to get high ACB personally, then use pipeline.

Reorganize shares to deliberately create personal capital gain.

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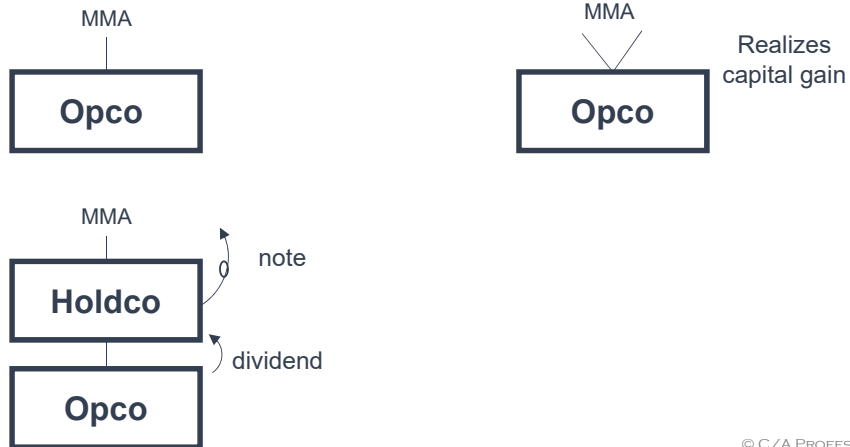
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Capital Gain Strategies

Pipeline



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Triggering Capital Gain

Automatic

- Death and no spousal rollover
- Deliberate sale or gift to family trust
- Allow 21 year rule to apply

Elect

- Rollout of trust and FMV election
- Sale to spouse and elect for no spousal rollover

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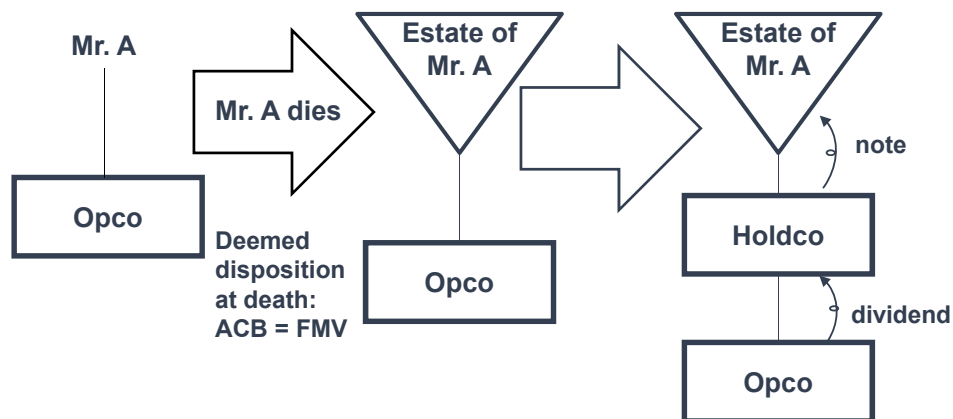


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Ultimate Capital Gain Pipeline Strategy



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Elect Capital Gain

Acquisition of control of corporation by unrelated person.

Elect for capital assets of corporation disposed of at FMV

Pay out CDA/maybe taxable dividend

Will create recapture on depreciable property (e.g. real estate)

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Evaluation of Methods

Drop Down

- Aggressive but no specific anti-avoidance rules, some GAAR risk but arguable no misuse on realizing capital gain (Act prevents loss realization not gain on realization).
- Some forms (e.g. IP to Subco) more robust than others

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Evaluation of Methods

Pipeline

- Issue of note being a dividend (subsection 84(2) per MacDonald case) and GAAR risk (but per Gwantz case no prohibition on surplus stripping if anti-avoidance rules don't apply). Take out note over three years.
- More risk than drop down. Better if deemed gain arises in normal cause (e.g. 21 year rule)

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Evaluation of Methods

Acquisition of Control

- Many complex issues to consider in mechanics.
- Safer if “real” acquisition of control than artificial

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