



Current Estate Planning Issues

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Value of skinny voting shares

- Value to ascribe to special voting shares
- CRA position (ITTN #44)
 - Limited to estate freeze
 - Voting rights “eventually extinguished for no consideration”
 - Don’t act like the votes have value

Value of skinny voting shares

- Special voting shares might be used in other circumstances
 - “connected” status for Part IV tax purposes
 - avoiding “holding body corporate” issue for OBCA purposes
 - Benefit if issued for nominal subscription?
- Extinguish voting rights
 - Draft to terminate upon death or other event?

Change of Trustees and Acquisition of Control

- 2011 STEP National Conference
 - CRA confirmed position (again) and stated that the position applies to both inter vivos and testamentary trust
 - But recall IT-302R3, paragraph 10 re estate
- Notable acquisition of control consequence with commonplace effect is the shortened taxation year
 - s.15(2) problem

Income Interest in a Trust

- McKenzie v. The Queen 2011 CarswellNat 1994
 - Structured as disposition of income interest back to the trust
 - S.106(2) N/A
- Why did CRA litigate?
 - Indication of attention to formality?
 - Or forgotten employment benefit?

Income Interest in a Trust

- Can be taxable Canadian property, without need for underlying Canadian real property
 - TCP for limited purposes only
 - Not s.116
 - s. 2, 85(1), 150

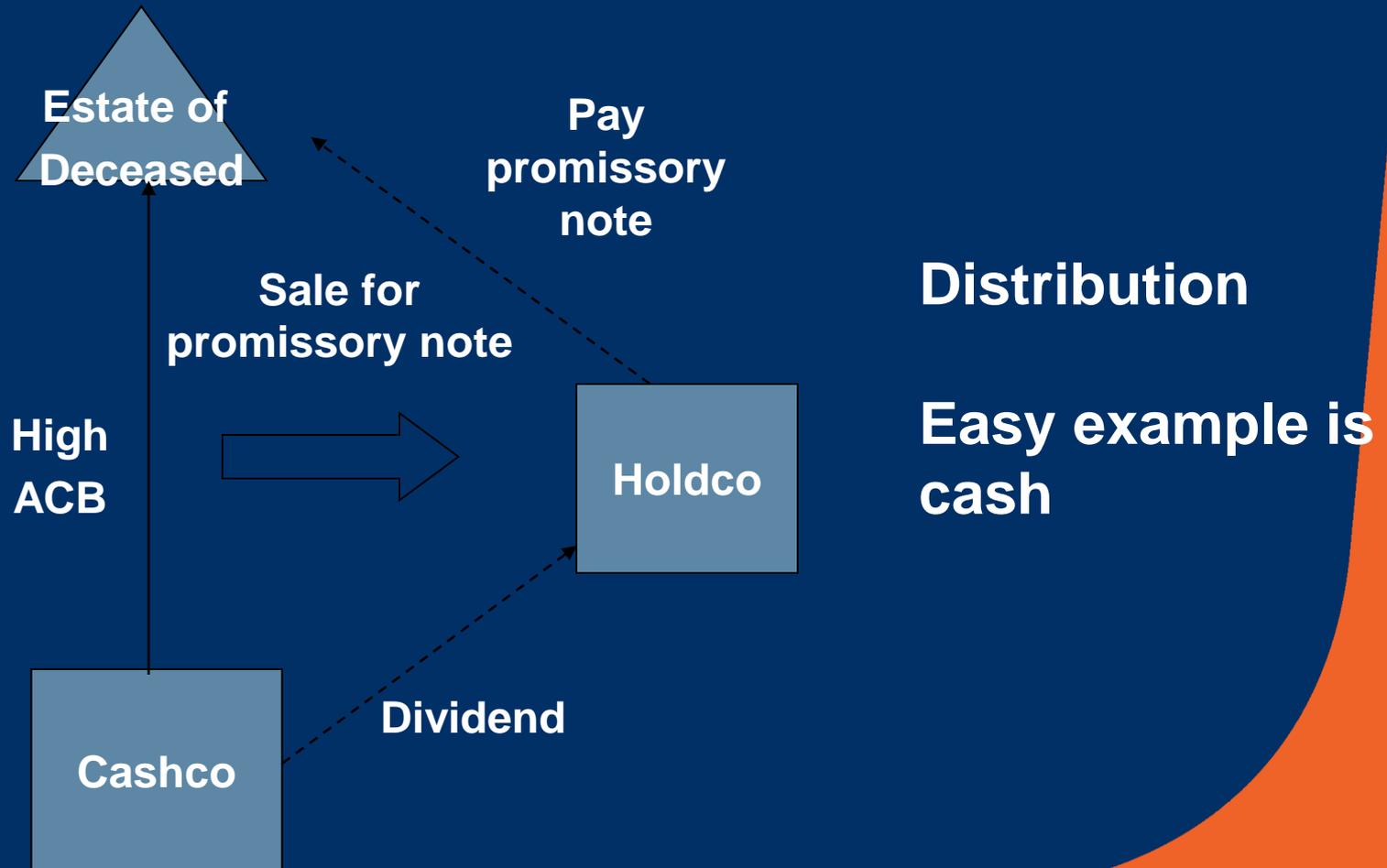
Trustee and tax liability

- s.159(2) clearance certificate not feasible for every distribution
 - Trust/estate tax liability not known; relieves trustees but not trust or beneficiaries
- Part XIII tax
 - tax of the non-resident
 - JJ Herbert Family Trust v. The Queen 2011 TCC 476
 - “payable” for purposes of s.104(24) not equivalent to “credited” for purposes of s.212(1)

Trustee and tax liability

- Trustees owning shares of a private corporation
 - If non-arm's length, risk of s.160 assessment in respect of corporation's tax
 - Requires transfer of property for < FMV consideration
 - Dividend?
 - Part VI.I tax upon redemption of "taxable preferred shares" (e.g., typical freeze p/s) held by Trustees
 - s.160 assessment of trust – s.159 assessment of trustees?

Post mortem – the Pipeline



- CRA says the pipeline is not dead, while raising the spectre of s.84.1 and 84(2)
 - s.84(2) risk where
 - funds of Opco distributed “in a short time frame” following death
 - Underlying assets are cash where corporation has no activity
- CRA document no. 2010-0389551R3
- See discussion in 2011 Ontario Tax Conference

Undervalued Freeze Shares

- CRA document no. 2010-036630117
 - Undervalue constituted a transfer of property to a trust
 - s. 75(2) applied because the individual was also a beneficiary and sole trustee
 - citing Kieboom and Garron (TCC)
 - Price adjustment clause did not help

Reporting of Aggressive Tax Planning

- Budget 2010 - - - August 27 2010 legislative proposals
- “Aggressive tax planning” is a misnomer
- Where does estate planning fit?
- “reportable transaction” is an “avoidance transaction” having at least 2 of 3 hallmarks
 - “avoidance transaction” means any transaction that would result directly or indirectly in a tax benefit unless undertaken primarily for BF reasons other than to obtain the tax benefit

Reporting of Aggressive Tax Transactions

- Hallmarks
 - Fee contingency
 - Confidential protection
 - Contractual protection
- One concern is breadth of “reportable transaction”
 - Each transaction that is part of a series that includes an avoidance transaction is itself a reportable transaction
 - 2 of 3 hallmarks not required for each transaction within the series