CRA - Aggressive Tax Planning Division

CIFP Conference 2013
Niagara Falls
May 27, 2013
Background

Traditional judicial attitude to tax avoidance:

*Duke of Westminster* (1936 HL)

Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it would otherwise be

Continues to be repeated and endorsed by the Supreme Court and Tax Court
Certainty and Fairness

GAAR: court’s role is to conduct an objective thorough and step by step” analysis.

Courts should not make value judgments-no smell test

The GAAR may introduce a degree of uncertainty into tax planning

Provision of last resort: Abusive nature of transaction must be clear-MNR to demonstrate
Topics

- JITSIC/OECD
- Third party Penalties
- GAAR Statistics/GAAR Issues
- Case Studies
JITSIC/OECD
Joint International Tax Shelter Information Centre

Established in April 2004 to supplement the ongoing work of tax administrations in identifying and curbing abusive tax avoidance transactions and schemes
Joint International Tax Shelter Information Centre

International and Large Business Directorate

Competent Authority Services Division

Exchange of Information Services Section

Aggressive Tax Planning Division

Joint International Tax Shelter Information Centre
JITSIC members

HMRC
United Kingdom

DGFIP
France

FCTO
Germany

NTS
Korea

CRA
Canada

IRS
United States

SAT
China

ATO
Australia

NTA
Japan

Offices
Purpose of JITSIC

- Identification and understanding of abusive tax schemes and those who promote them.
- Share expertise, best practices and experience in tax administration to combat abusive tax schemes.
- Work together to better address abusive tax schemes promoted by firms and individuals who operate without regard to national borders.
- Exchange information on abusive tax schemes
Objectives of JITSIC

- To deter promotion of and investment in abusive tax schemes.
- Increase public awareness of the potential civil and criminal risks of promoting and investing in abusive tax schemes.
- Enhance each party’s compliance and enforcement efforts through coordinated and “real time” exchanges of tax.
Objective (cont)

- Develop new internet search and other techniques for early identification of promoters and investors involved in abusive tax schemes.

- Identify emerging trends and patterns to anticipate new, abusive tax schemes.

- Improve parties’ knowledge of techniques used to promote abusive tax schemes cross-border
JITSIC Delegate Duties:

- Examines incoming and outgoing exchanges and recommends a course of action.
- Provides co-ordination for on-going exchanges.
- Develops best policies and procedures for future exchanges.
- Shares information spontaneously.
JITSIC Activities

- Case specific exchanges
- Generalised exchanges on avoidance schemes
- Wider issues about members tax regimes
- Operational issues of common interest
- Policy support
OECD

- Active member of the ATP Steering Group
- Hosted workshop on Hybrids in May 2012
Third Party Civil Penalties
Objectives of the Legislation

- To deter the making of false statements relating to tax matters
- To ensure **compliance** by deterring behaviour that results in non-compliance
- To financially penalize planners and preparers.
Intention of the Legislation

The legislation is meant to apply to third parties who:

- Make false statements in relation to tax planning arrangements that are typically marketed as tax shelter and tax shelter-like arrangements; or

- Are wilfully blind to obvious “errors” when preparing, filing, or assisting another person in filing a return.
3 Steps to Third-Party Civil Penalties

Identify the False Statement

Determine who made or used the False Statement

Assess the level of knowledge/culpable conduct of the Person(s) who made the False Statement
Measures to control the application of the penalties

- A Third-Party Penalty Review Committee (TPPRC).
- A technical support group in HQ.
- A comprehensive referral process
- Training program delivered to over 2,000 CRA auditors.
Recommendation Process – 3 Trips:

Approval from HQ necessary:

- Prior to TPP Audit being initiated (Technical support group at HQ)
- After audit, prior to TPP Proposal (TPPRC)
- After proposal, with representations, prior to assessment (TPPRC)
Statistics

As of August 31, 2012 a total of 185 cases have been reviewed, as follows:

- 71 cases assessed for $79 million;
- 64 TPP Audits are on-going;
- 50 cases were rejected.
Third party penalty assessments
June 29, 2000 to August 31, 2012
Impact of a Third Party Penalty assessment

Once a TPP assessment has been issued the following may occur:

- The privilege to e-file for the partnership or tax preparer may be denied (http://www.efile.cra.gc.ca/l-scrn-eng.html#define)
- In the cases of charities, publications in CRA Charities “What’s new” (http://www.cra-arc.gc.ca/charities/)
- Taxpayer Appeal rights
- Taxpayer Relief or Remission Order
Dispute Resolution

- Auditor
- Team leader/case manager
- Manager
- Assistant Director Audit
- Director
- HQ
GAAR Statistics
Referrals to the GAAR Committee: 1080

GAAR Recommended: 822 (76%)
   Primary  369 (45%)
   Secondary 453 (55%)

GAAR Not Recommended 258 (24%)

* Statistics do not include 1,439 files (1,363 from RRSP Project and 78 from Barbados Spousal Trust Project) where GAAR was applied as an alternative position.
## GAAR Statistics* – September 30, 2012

<table>
<thead>
<tr>
<th>Issue</th>
<th>Y</th>
<th>N</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surplus Strips</td>
<td>194</td>
<td>32</td>
<td>226</td>
<td>21%</td>
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<tr>
<td>Kiddie Tax</td>
<td>88</td>
<td>6</td>
<td>94</td>
<td>9%</td>
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<tr>
<td>Loss creation via stock dividend</td>
<td>91</td>
<td>0</td>
<td>91</td>
<td>8%</td>
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<tr>
<td>Losses, Capital &amp; Non-Capital</td>
<td>42</td>
<td>19</td>
<td>61</td>
<td>6%</td>
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<tr>
<td>Part I.3 Tax</td>
<td>38</td>
<td>11</td>
<td>49</td>
<td>5%</td>
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<tr>
<td>Debt Forgiveness</td>
<td>33</td>
<td>10</td>
<td>43</td>
<td>4%</td>
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<td>Interest Deductibility</td>
<td>19</td>
<td>17</td>
<td>36</td>
<td>3%</td>
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<tr>
<td>Capital Gain</td>
<td>25</td>
<td>10</td>
<td>35</td>
<td>3%</td>
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<tr>
<td>Partnership Issues</td>
<td>26</td>
<td>8</td>
<td>34</td>
<td>3%</td>
</tr>
<tr>
<td>Indirect Loan</td>
<td>28</td>
<td>3</td>
<td>31</td>
<td>3%</td>
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<tr>
<td>Charitable Donations</td>
<td>16</td>
<td>10</td>
<td>26</td>
<td>2%</td>
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<td>Debt Parking</td>
<td>17</td>
<td>7</td>
<td>24</td>
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<td>Foreign Tax Credit</td>
<td>15</td>
<td>3</td>
<td>18</td>
<td>2%</td>
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<td>Income Splitting</td>
<td>14</td>
<td>3</td>
<td>17</td>
<td>2%</td>
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<td>Offshore Trusts</td>
<td>15</td>
<td>1</td>
<td>16</td>
<td>1%</td>
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<td>Losses, Stop Loss</td>
<td>10</td>
<td>5</td>
<td>15</td>
<td>1%</td>
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<td>Kiwi Loan</td>
<td>14</td>
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<td>Part XIII Tax</td>
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<td>12</td>
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<tr>
<td>Cross-Border Lease</td>
<td>11</td>
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<td>Tower Structure</td>
<td>6</td>
<td>3</td>
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<td>Treaty Exemption Claim</td>
<td>5</td>
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<td>Provincial GAAR</td>
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<td>3</td>
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<td>0%</td>
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<td>Miscellaneous</td>
<td>112</td>
<td>96</td>
<td>208</td>
<td>19%</td>
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<td><strong>Total</strong></td>
<td>822</td>
<td>258</td>
<td>1080</td>
<td>100%</td>
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GAAR Issues

- PUC shifts or creation & other surplus strip schemes
- Artificial capital loss / Tax Attribute Manipulation
- Avoidance of stop-loss rules (foreign and domestic)
- Use of partnerships
- Foreign Tax Generators
- Financial Instruments (Future potential) – Area concern CRA
Case Studies
USING FOREIGN TAX CREDITS
TONIGHT’S JACKPOT

$300,000,000
Jim

$150M Win
Jim

$150M Win
Jim

US Taxes
$150M Win
$45M Tax
Jim

Canadian Tax free

$150M Win

US Taxes

$45M Tax
Can I get a deduction for the US taxes?

Jim

Tax free

$150M Win
$45M Tax

US Taxes
Foreign Tax Credits

- Calculated on a country by country basis
- Calculated separately for business income and non business income taxes
- Unused FTC relating non business income taxes cannot be carried back or forward
Problem

- Jim has $30,000,000 of foreign non-business taxes;

**BUT**

- The winnings were not included in income for Canadian Tax purposes; AND
- The taxpayer has no other US non business income.
Calculation of Limitation of deductible FTCs

\[
\frac{\text{Foreign Non-Business Income}}{\text{World Income}} \times \text{Canadian Tax Otherwise payable}
\]
Calculation of Limitation of deductible FTCs

\[
\begin{align*}
\text{World Income} & \quad \times \quad \text{Canadian Tax Otherwise payable} \\
$4,000,000 & \quad \times \quad $1,160,000 \\
= & \quad $0
\end{align*}
\]
The loan is left outstanding for 1 year and therefore 15(2) is applied to add the amount of the loan to the taxpayer’s income in the year the loan was made.
Calculation of Limitation of deductible FTCs

\[
\frac{\$150,000,000}{\$154,000,000} \times \$44,660,000 = \$43,500,000
\]
In subsequent years

$150,000,000
Shareholder’s Loan is repaid

Since the shareholder’s loan has been repaid the taxpayer is entitled to claim a $100,000,000 para. 20(1)(j) deduction which is used to offset other Canadian taxable income
Interest Deductibility Issues
HMTQ vs. John Singleton

$300,000 Partnership Capital

Mr. S

Law Partnership
HMTQ vs. John Singleton

Mr. S

$300,000 Partnership Capital

Law Partnership

Vendor
HMTQ vs. John Singleton

Mr. S

Withdrawal of $300,000 Partnership Capital

$1 Partnership Capital

Law Partnership

Vendor
HMTQ vs. John Singleton

Withdrawal of $300,000 Partnership Capital

Use Capital Withdrawal to purchase house

$1 Partnership Capital

Vendor

Law Partnership

Mr. S
HMTQ vs. John Singleton

Mr. S

$1 Partnership Capital

Law Partnership

Mrs. S

$1 Partnership Capital
HMTQ vs. John Singleton

$300,000 loan

Mr. S

Contribution of $300,000 Partnership Capital

Law Partnership

Mrs. S

$1 Partnership Capital
HMTQ vs. John Singleton

Mr. S

$300,000 loan

Mrs. S

$300,000
Partnership
Capital

Law Partnership
HMTQ vs. John Singleton

… a direct link can be drawn between the borrowed money and an eligible use, so the respondent was entitled to deduct from his income the relevant interest payments. The transactions in question are properly viewed independently.
Application of the GAAR after John Singleton

Earl Lipson
2007 FCA 113
Offer to Purchase House

OPCO

Mr. X

Mrs. X

Vendor
Share Purchase

OPCO

Mr. X

Mrs. X

Vendor
Share Purchase

- Mr. X
- Mrs. X
- OPCO
- Vendor
Share Purchase

Mr. X  
Mrs. X  

OPCO  

Vendor
Share Purchase

Mr. X -> OPCO -> Vendor

Mrs. X
Share Purchase

Mr. X

Mrs. X

OPCO

Vendor
Purchase of House

Mr. X  

Mrs. X  

OPCO  

Vendor
Replacement Financing

Mr. X -> OPCO
Mrs. X

Mortgage
Loan

OPCO
OPCO

Mr. X  

Mrs. X

Mortgage
Reverse Attribution

Mr. X  Mrs. X

OPCO

Dividend Income Attribution

Mortgage
Reverse Attribution

Interest Deduction

Mr. X

Mrs. X

OPCO

Dividend Income Attribution

Mortgage
CRA’s Position:

GAAR was applied as our sole position to deny the interest deduction:

The true economic purpose for which the mortgage proceeds were being used was to purchase a home not dividend-producing corporate shares, so that the mortgage interest should not be deductible.
Taxpayer’s position

What is your problem??
If the Purpose Test in 20(1)(c) has been met....how can there be a misuse or abuse?
[23] I think that the series of transaction involved here resulted in a misuse of the provisions of the ITA, specifically paragraph 20(1)(c) and subsection 20(3). To the extent that subsection 73(1) and section 74.1 are used to achieve that misuse and to execute the scheme as a whole, they too are being misused.
[23]...Not one of the purposes of the provisions that I referred to above is being fulfilled by this series of transactions. The overall purpose as well as the use to which each individual provision was put was to make interest on money used to buy a personal residence deductible.
Reverse hybrid
$500 million
CANCO

US Branch
CDN bank

CANSUB

USP

$500M @ 8%

US OPCO
CANCO US LLC

US Branch CDN bank

CANSUB

$500M @ 8%

USP

$500M C/S

US LLC

US OPCO

$500M @ 8.25%

Interest

Dividends
CANCO US LLC

US Branch CDN bank

CANSUB

99.99%

Dividends

100%

USP

$500M @ 8%

US LLC

$500M @ 8.25%

US OPCO

Interest
SUMMARY

- CANCO and CANSUB invested in USP
- USP borrowed $500 million from a US branch of a Canadian bank
- Interest ($40 M) is deductible to the Canadian partners pursuant to paragraph 20(1)(c) of the ITA
- Interest deduction of $41.25M for US Opco
- FAPI exemption for LLC pursuant to clause 95(2)(a)(ii)(B)
- 5% US withholding tax (Article X Para. 2(a))
- Dividends received from LLC are deductible by NSULC pursuant to paragraph 113(1)(a) of the ITA
- Dividends received from NSULC are deductible by USP pursuant to paragraph 112(1)(a) of the ITA.
Assumptions
- USP borrowed $500 M @ 8%
- Cancos tax rate = 35%
- USP’s tax rate = 38%
- US Opco borrowed at 8.25%
- US Opco’s tax rate = 38%
- Treaty rate on dividends = 5%

<table>
<thead>
<tr>
<th></th>
<th>Without Tower</th>
<th>With Tower</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax savings – Cancos</td>
<td>$14,000,000</td>
<td>$14,000,000</td>
</tr>
<tr>
<td>Tax saving – US Co</td>
<td>N/A</td>
<td>15,675,000</td>
</tr>
<tr>
<td>Tax cost – USP</td>
<td>N/A</td>
<td>(256,500)</td>
</tr>
<tr>
<td>5% withholding</td>
<td>NA</td>
<td>(2,062,500)</td>
</tr>
<tr>
<td>Net saving</td>
<td>$14,000,000</td>
<td>$27,356,000</td>
</tr>
<tr>
<td>Effective after tax borrowing cost</td>
<td>5.20%</td>
<td>2.53%</td>
</tr>
</tbody>
</table>
Deputy Minister of Finance, testifying before a parliamentary committee, stated:

“a typical double dip is consistent with tax policy”
If our own finance department wasn’t (isn’t) concerned with these types of structures, why should we be offended?
- Was this an initial financing structure?

OR

- Is this a replacement of an existing structure?
It is our position that these structures offend the purpose of both paragraph 20(1)(c) and the foreign affiliate rules.
Foreign Tax Credit Generator
Incorporation of US entities

Parent

US Holdco

US Opco
Loan from Bank and P/S subscription

Bank

$50M

Parent

US Holdco

$50M

US Opco
(6) Loan to Parent

- Bank
- US Holdco
- US Opco

$50M

$50M

$50M
Incorporation of Holdco and HOC

- Bank
- Parent
- US Holdco
- Holdco
- US Opco
- HOC

$50M

Diagram shows the relationships and capital flows between the entities.
Sale of preferred shares of US Opco to HOC

- **Bank**
- **US Holdco**
  - $50M
  - **US Opco**
  - $50M
- **Parent**
  - $50M
  - **Holdco**
  - $50M
  - **HOC**
  - $50M
Repay the loan to Bank

- Bank
- Parent
  - US Holdco
  - US Opco
  - Holdco
  - HOC
Compensatory Tax Payments

- **Parent**
  - **US Holdco**
  - **US Opco**
  - **Holdco**
  - **HOC**

Reimburse
Artificial Capital Losses

Abusive Use of Stock Dividends
Taxpayer has sold capital property and recognized $1 million capital gain
The taxpayer is concerned about the amount of tax he will have to pay on the gain and undertakes the following series of transactions:
Step 1: Taxpayer incorporate NewCo and subscribes for $1 million worth of common shares
Step 1: Taxpayer incorporate NewCo and subscribes for $1 million worth of common shares

- Taxpayer
  - $1M Capital Gain
- NEWCO
  - Common Shares
    - FMV $1,000,000
    - ACB $1,000,000
    - PUC $1,000,000
Step 2: NewCo declares a “stock dividend” on the common shares issuing “hi-lo” preferred shares having PUC $1 but a redemption value of $1 million.
Step 3: Taxpayer sets up a Family Trust. The beneficiaries are his wife and children. The trustee is close and trusted friend of taxpayer but not related.

- **Family Trust**
- **Taxpayer**
  - $1M Capital Gain
- **NEWCO**

**Common Shares**
- FMV $1
- ACB $1,000,000
- PUC $1,000,000

**Preferred Shares**
- FMV $1,000,000
- ACB $1
- PUC $1
Step 4: Taxpayer sells the common shares of Newco to the Family Trust for their FMV of $1.00

- Taxpayer
  - $1M Capital Gain
- Family Trust
- Common Shares
  - FMV $1
  - ACB $1
  - PUC $1,000,000
- NEWCO
  - Preferred Shares
    - FMV $1,000,000
    - ACB $1
    - PUC $1

Proceeds $1.00
Less: ACB $1,000,000
Capital Loss $999,999
Step 4: Taxpayer sells the common shares of Newco to the Family Trust for their FMV of $1.00

- **Family Trust**
- **Taxpayer**
  - Capital Loss: $999,999

- **NEWCO**
  - Common Shares
    - FMV: $1
    - ACB: $1
    - PUC: $1,000,000
  - Preferred Shares
    - FMV: $1,000,000
    - ACB: $1
    - PUC: $1

- **$0 tax**
Step 5: Taxpayer can redeem preferred shares and recognize dividend income as money is required.

- **Family Trust**
  - Common Shares
    - FMV $1
    - ACB $1
    - PUC $1,000,000
  - Preferred Shares
    - FMV $1,000,000
    - ACB $1
    - PUC $1

- **NEWCO**
  - Dividend income

- **Taxpayer**
Artificial loss
What are the tax implications from the following series of transactions???
HOLDCO

ACB = $1,000,000
FMV = $1,000,000
PUC = $100

OPCO
SHARES REDEEMED FOR $1,000,000

HOLDCO

ACB = $1,000,000
FMV = $1,000,000
PUC = $100

OPCO
Calculation of Deemed Dividend

- Proceed of Disposition $1,000,000
- Less: PUC of shares 100
- Deemed Dividend $ 999,900
Calculation of Capital Gain

- Proceed of Disposition $1,000,000
- Less: Deemed Dividend 999,900
- Revised Proceeds 100
- Less: ACB 1,000,000

- Capital Gain/(Loss) $(999,900)

LOSS DENIED BY 112(3)
Avoidance of 112(3)
HOLDCO

Common Shares:
ACB = $1,000,000
FMV = $1,000,000
PUC = $100

OPCO
Step 1: Stock Dividend

Class E Preferred:
- ACB = $100
- PUC = $100
- FMV = $1,000,000

Common Shares:
- ACB = $1,000,000
- FMV = $1,000,000
- PUC = $100

Deemed Divided = increase in PUC = $100
Step 2: Redemption of Class E shares for $1,000,000

Class E Prefs:
ACB = $100
PUC = $100
FMV = $1,000,000

Common Shares:
ACB $1 million
FMV $1
PUC $100
Calculation of Deemed Dividend on Class E shares

- Proceed of Disposition: $1,000,000
- Less: PUC of shares: 100
- Deemed Dividend: $999,900
Calculation of Capital Gain on Class E shares

- Proceed of Disposition $1,000,000
- Less: Deemed Dividend 999,900
- Revised Proceeds 100
- Less: ACB 100

- Capital Gain/(Loss) NIL
Step 4: Sale of Common Shares to 3rd Party

HOLDCO → OPCO

Common Shares:
ACB $1 million
FMV $1
PUC $100

3rd PARTY
Calculation of Capital Gain/(Loss) on sale of Common shares shares

- Proceed of Disposition: $1
- Less: ACB: 1,000,000
- Capital Gain/(Loss): ($999,999)
- Loss Denied 112(3): (100)
- Revised Loss: ($999,899)
Surplus Stripping
Dr. Robert G. MacDonald v. The Queen

2012 TCC 123
Facts

1) Taxpayer: Dr. operating his own private practice through a corporation (PC)
   a) Wants to emigrate from Canada
   b) No market for the shares

2) Sale of PC shares to brother-in-law (J.S.)
   a) In consideration for a note receivable
   b) Resulting capital gain fully offset by capital losses

3) J.S. sells the PC shares to 601 Ltd.
   a) In consideration for a note receivable

4) Windup of PC
Queen v. MacDonald

1. Sells PC shares for $525,500 Note
2. Transfers shares for Note=$525,000
3. Dividend=$535,500
4. Repays Note=$525,500
5. Repays Note=$525,500
6. Repays Loan=$160,000

HOLDCO

MacDonald

Brother-in-law

PC

Cash=
375,500
MacDonald Loan
160,000
535,500
Alleged Purpose of Series

- To avoid double taxation:
  - Upon departure: deemed disposition in Canada
  - U.S. would not recognize the increase in cost base
    - Capital gain would again be taxed in the U.S.
Reassessment

- Primary reassessing position: subs. 84(2)
- Secondary reassessing position: GAAR
Subsection 84(2)

Where funds or property of a corporation resident in Canada have at any time after March 31, 1977 been distributed or otherwise appropriated in any manner whatever to or for the benefit of the shareholders of any class of shares in its capital stock, on the winding-up, discontinuance or reorganization of its business (…)

(…) a dividend shall be deemed to have been received at that time by each person who held any of the issued shares at that time (…)
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| to or for the benefit of the shareholders (...) by each person who held any of the issued shares at that time | • The shareholder at that time was 601 Ltd.  
• At law, there really should be no dispute that the Appellant received the PC funds *qua creditor*  |


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| to or for the benefit of the shareholders (...) by each person who held any of the issued shares at that time | • The shareholder at that time was 601 Ltd.  
• At law, there really should be no dispute that the Appellant received the PC funds *qua creditor*                                                                                                                    |
| distributed (...) in any manner whatever                            | • The express language of "in any manner whatever" does not redirect to whom the dividend was paid.  
• It is the manner of effecting the distribution to the shareholder  
• Any manner of distribution to 601 Ltd. other than as a dividend would, pursuant to subsection 84(2), result in 601 Ltd. being deemed to have received a dividend |
Subsection 84(2) – Cont’d

- Comparison to RMM:
  - Per Bowman: The status of creditor was inextricably bound to the distribution qua shareholder.
  - Per Judge: RMM stands in contrast of McNichol, where 84(2) was said not to apply.
    - Justice Bonner applied the language of subsection 84(2) strictly in finding that it did not apply.
    - Correct approach is to look to section 245 when subsection 84(2) does not apply on a strict construction of its language
GAAR

- **Tax benefit:**
  - The use of the capital losses is the only actual tax benefit in this case
  - Issue of the case is then:
    - Objectives and policies of the Act that relate to the limited use of capital losses
- **Avoidance transaction:**
  - No need to analyse series.
  - Given tax benefit identified: the sale of the PC shares to J.S. is, in itself, an avoidance transaction.
GAAR

- **Misuse and abuse:**
  - Analysis must focus on tax benefit identified: the utilization of the capital losses
  - Sections of the Act
    - 84(2) cannot be said to have anything to do with a purpose in the Act to prevent capital losses from sheltering income
    - Real question: was section 3 abused?
      - Triggering capital gains to utilize capital losses is not discouraged by the Act in any way
Other Comments Made by Judge – Obiter (?

1) Post-mortem “pipeline” planning

2) GAAR: Abuse in avoiding dividend treatment?

3) GAAR: Tax avoidance from lack of integration
1) Pipeline Transactions

- Judge argued that result of series is the same as result achieved in a “pipeline” transaction
  - Conversion of dividend treatment to capital gain treatment
<table>
<thead>
<tr>
<th></th>
<th><strong>No Pipeline</strong></th>
<th><strong>Pipeline</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Situation</td>
<td>An individual owns the shares of a corporation</td>
<td></td>
</tr>
</tbody>
</table>
| 2. On death | • Deemed disposal = CG  
• Subsequent windup of corporation: deemed dividend  
• Ensuing capital loss from disposition of corporation | • Deemed disposal = CG  
• Sale to Holdco in exchange for a note  
• Liquidating dividend paid. Surpluses are therefore used to repay note |
| 3. Net impact | • Dividend treatment | • Capital gain treatment |
2) GAAR: Abuse in avoiding dividend treatment?

- It is a position that does not expressly identify a tax benefit

- It would require that subsection 84(2) be found to operate beyond its express language.
  - Judge found to the contrary.
3) GAAR: Lack of Integration

- The tax avoidance and tax benefit resulting from a lack of integration in this case is systemic.
- Neither subsection 84(2) nor GAAR can be used to fill a gap between two approaches to taxing an individual shareholder's realization of accumulated after-tax funds in a company.
Loss purchase transaction
Current structure

Unitholders

SIFT

Assets

Shareholders

Lossco

Assets
Newco created

Unitholders

SIFT

Assets

Shareholders

Lossco

Assets

Newco
Lossco assets to Newco
SIFT units exchanged for Lossco shares
Lossco shares exchanged for Newco Shares
SIFT wound up

Unitholders

Lossco

Assets

Newco

Assets

Shareholders
The end