

Post-mortem pipelines under the new GAAR are OK

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As noted in [A new GAAR – Pretty chilly right now](#), one of the big concerns to many in the tax planning community was the reference in Finance's explanatory notes for the economic substance test of the new GAAR to one type of surplus strip transaction that brings about capital gains as opposed to dividends from a private company using an inter-vivos pipeline. The concern was whether this could open the door for the CRA to apply the GAAR in the post-mortem pipeline planning context? And, whether CRA would continue to provide positive rulings in the post-mortem pipeline context under the new GAAR?

In #2023-098794117 dated February 29, 2024, the CRA confirmed that it would:

"The Directorate does not consider the use of a pipeline transaction as a means to preserve the capital gain arising on death of a shareholder while limiting double taxation on the subsequent distribution of Opco's assets to be a misuse as described in paragraph 245(4)(a) or an abuse within the meaning of paragraph 245(4)(b). Accordingly, the Directorate will continue to issue favourable Rulings on the non-application of the amended GAAR in the context of post-mortem pipeline transactions that meet our existing administrative guidelines described in document 2018-748381C6."

What does this mean for life insurance planning?

Business as usual. And as a brief reminder, think of it as pipeline AND insurance, not pipeline OR insurance.

Providing funding for the ultimate capital gains tax liability using life insurance not only makes sense from a liquidity perspective, it can also contribute to lowering the tax liability arising upon death even further than with pipeline alone. Where life insurance on the life of the deceased shareholder is in place in the corporation, the CDA credit from life insurance proceeds may be distributed as a capital dividend as part of the post-mortem plan. Using capital dividends from life insurance in redemption and loss carry back planning integrated with pipeline planning can reduce the tax liability overall.

FOOTNOTE:

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