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2025 CLHIA Roundtable - CDA Anti-avoidance rule considered

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The CRA recently released its responses given at the Canadian Life and Health Insurance Association (CLHIA) Roundtable held on September 18, 2025. Question 2 (#2025-1067941C6) involved the interaction of the CDA anti-avoidance provision in subsection 83(2.1) and the rules upon amalgamation in a situation where a CDA balance arose from life insurance proceeds.

Background

Subsection 83(2.1) is a specific anti-avoidance provision introduced in 1988 to curtail trading in CDA – acquiring shares of a company that has a CDA balance where one of the main purposes is to receive a dividend and benefit from the target's CDA. To compute the CDA of an amalgamated corporation (Amalco), paragraph 87(2)(z.1) deems Amalco to be the same corporation as each predecessor corporation but not if the CDA anti-avoidance rule would have applied had a capital dividend been paid immediately before the amalgamation. Figuring out whether the anti-avoidance rule could have applied requires looking at whether any of the exceptions to 83(2.1) would have applied, specifically, subsections 83(2.2)-(2.4). Two of these exceptions, (2.3) – the life insurance exception and (2.4) – the related party exception were considered in the CRA's response.

Facts

The fact pattern in the question closely resembles the facts of the case of Groupe Honco Inc. v. The Queen 2012 TCC 305, affirmed (2013) FCA 128. That case did not explore the life insurance exception as it was not argued by the taxpayer. In the case, the CDA anti-avoidance rule applied and denied capital dividend treatment.

The CLHIA question was posed to shed light on whether arguing the life insurance exception would have made a difference. It did not.

The question presented the following facts:

- Mr. A was the controlling shareholder of Opco A, a CCPC;

- Opco A entered a partnership with Opco B (also a CCPC) controlled indirectly via Holdco B by Mr. B who was unrelated to Mr. A;
- Opco A had financial difficulty and borrowed $100k from Opco B;
- Opco A purchased $100k of life insurance on the life of Mr. A as security for the borrowing;
- Mr. A died and Opco A used the life insurance proceeds to repay the loan owing to Opco B;
- Opco A's CDA balance as a result of receiving the life insurance proceeds was $100k;
- Mr. A's spouse then sells the shares of Opco A to Opco B for $10k;
- Opco A and Opco B amalgamate forming Amalco;
- Immediately before the amalgamation, Opco A's CDA balance was $100k and Opco B's CDA balance was 0;
- After several years Amalco became profitable and paid a $100k capital dividend to Holdco B.

The question assumed that one of the main purposes of the acquisition of shares by Opco B was to acquire Opco A's CDA balance, thus admitting that the CDA anti-avoidance rule was in play. The CRA's view is that 83(2.1) would have applied to a capital dividend on the shares of Opco A had it been paid ("the hypothetical dividend") immediately prior to the amalgamation thus falling into the limitation in paragraph 87(2)(z.1). The CRA concluded that Amalco had no CDA balance, so that when it paid the dividend to Holdco B the dividend was excessive and thus subject to Part III tax.

In considering whether any of the exceptions to the CDA anti-avoidance rule could have helped, the CRA concluded that none of the exceptions would have been met in respect of the hypothetical dividend. The life insurance exception was not met because the proceeds were fully used by Opco A to repay the borrowing from Opco B prior to the amalgamation and not for the purpose of distributing the life insurance proceeds.

The related party exception was also not met because Opco A's CDA existed before it became related to Opco B. The hypothetical dividend would not qualify for the exception due to paragraph 83(2.4)(b).

Some observations

This commentary establishes an order of operations that requires playing out the consequences of a hypothetical dividend prior to amalgamation. And the exceptions would have to be operable in respect of the hypothetical dividend to avoid the application of the anti-avoidance rule. It corroborates prior CRA commentary (#2008-0296371E French – the "2008 TI") about the order of operations and impacts if the exceptions are not met.

The conclusion in the present question was, in the absence of filing an election under subsection 184(3), Part III tax (a 60% penalty tax on the excessive dividend) applied. Where this is the case, Holdco B would still have a CDA credit which could be distributed to Mr. B (#2011-0417511E 5 French). If an excessive capital dividend election were made, the taxable dividend to Holdco B could be a tax-free intercorporate dividend (provided Amalco has sufficient safe income – see: Intercorporate Dividends, Safe Income and Life Insurance – News and views – Tompkins Insurance) but can't be distributed to Mr. B as a capital dividend.

This question did not discuss corporations that are not at arm's length (NAL) prior to amalgamation, for example, a wholly owned Sisterco and Holdco. It would seem that the related party exception could apply and insurance ownership could be structured with this possibility in mind. The 2008 TI did consider a NAL situation but did not have sufficient facts for the CRA to give a definitive positive answer since it could not answer the question whether any part of the CDA of the predecessor corporation represented an amount of CDA realized before it became related to the acquirer corporation.

Take aways

The CDA anti-avoidance provision is a bit of a word salad. If you are in, there are outs, but within the outs, there are ins again. Facts are important. And, tracking the CDA balance through time is key.

FOOTNOTE:

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