Tax Law for Lawyers

Amalgamations and Wind-Ups
Amalgamations

Corporate Law:
• statutory procedure
• same jurisdiction
  – continuance
  – Quebec – new BCA
• amalgamation agreement
• shareholder approval
• dissent rights
Amalgamations

Corporate Law:
• articles of amalgamation
• no conveyance
• streams → river
Amalgamations

Corporate Law:
• articles of amalgamation
• no conveyance
• streams → river
Amalgamations

Corporate Law:
• triangular amalgamation
Amalgamations

Corporate Law:
• triangular amalgamation
Amalgamations

Corporate Law:
• vertical short-form
Amalgamations

Corporate Law:
• vertical short-form
Amalgamations

Corporate Law:
• horizontal short-form
Amalgamations

Corporate Law:
• horizontal short-form
Amalgamations

Tax Considerations:

- Objectives
  - rollovers for shareholders and other security holders
  - rollovers and continuity of tax accounts for predecessor corporations
- Qualifying Amalgamation - s. 87
  - not all amalgamations qualify
Amalgamations

Qualifying Amalgamation:

- taxable Canadian corporations
- property of predecessors becomes property of amalgamated corporation
  - cash consideration to shareholders
  - cash for fractional shares
Amalgamations

Qualifying Amalgamation:

– merger of leasehold/royalty interests
– option for shares of other predecessor
– shares of other predecessors
Amalgamations

Qualifying Amalgamation:

- liabilities of predecessors become liabilities of amalgamated corporation
- all shareholders receive shares of amalgamated corporation
  - vertical/horizontal short-form - s. 87(1.1)
  - triangular - s. 87(9)(a)
  - dissenting shareholders
  - squeeze-out
Amalgamations

Non-Qualifying Amalgamation:
• no disposition by predecessors
• continuity of tax accounts?
• no rollover for shareholders
Amalgamations

Shareholders:

• s. 248(1) “disposition”
• s. 87(4) rollover
  – qualifying amalgamation
  – capital property
  – no boot
  – no benefit
Amalgamations

Shareholders - s. 87(4):

- no boot
  - cash for fractional shares
  - squeeze-out
  - shareholder rights plans
Amalgamations

Shareholders - s. 87(4):
- no boot
  - triangular amalgamation
Amalgamations

Shareholders - s. 87(4):
• no boot
  - triangular amalgamation
Amalgamations

Shareholders - s. 87(4):
• no benefit rule

Mr. A $1 M
Mrs. A $2 M
Corp X
Corp Y
Amalgamations

Shareholders - s. 87(4):  
• no benefit rule

Mr. A $1.5M
Mrs. A $1.5M

Amalco
Amalgamations

Shareholders - s. 87(4):

• rollover
  – no election required
  – disposition at acb
  – acquisition at acb
Amalgamations

Shareholders:

- potential gain on vertical amalgamation
- 87(11) and 88(1)(b)
- tax trap!

\[
\begin{align*}
\text{puc:} & \quad \$1000 \\
\text{net tax value of Sub’s assets:} & \quad \$1500 \\
\text{acb:} & \quad \$100 \\
\text{gain:} & \quad \$1000 - \$100 = \$900
\end{align*}
\]
Amalgamations

Shareholders:

• bump in acb to Parent on triangular amalgamation
  – s. 87(9)(c)
  – if Parent owns all Amalco shares
  – bump to net tax cost of Amalco’s assets (not to exceed fmv)
Amalgamations

s. 87(9)(c) bump - triangular amalgamation

<table>
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<tr>
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<th>Amalco</th>
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<tr>
<td>acb:</td>
<td>100</td>
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<td>ucc:</td>
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<td>net tax cost: 290</td>
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<td>350</td>
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Bump acb of Amalco shares to 290
Amalgamations

Comparison of triangular amalgamation and takeover bid:

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<td>290</td>
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<tr>
<td>total acb</td>
<td>200</td>
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<tr>
<td>puc</td>
<td>100</td>
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<tr>
<td>fmv</td>
<td>1000</td>
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<td>net tax value</td>
<td>290</td>
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Amalgamations

Shareholders - puc:

- relevance of puc of shares of amalgamated corporation
- s. 87(3)
- limit under s. 87(3): puc of predecessor’s shares (other than shares held by another predecessor)
- proportionate reduction of puc of class if exceed limit
Amalgamations

Shareholders:

- registered plans
  - qualified investment
Amalgamations

• Option holders:
  – s. 87(5) rollover if capital property
  – s. 7(1.4) rollover if employee options

• Debtholders:
  – s. 87(6) rollover
  – s. 87(7) – former 212(1)(b)(vii)
Amalgamations

Corporate level rules:

- year-end
- effective time of amalgamation
- short year-end of predecessors
- multiple year-ends
  - acquisition of control followed by amalgamation
  - tax trap!
Amalgamations

Corporate level rules:

• new corporation - s. 87(2)(a)
• continued corporation - corporate law
• Guaranty Properties
• Pan Ocean Oil
  – new corporation for purpose of computing income, taxable income and tax
• CGU Holdings – extension of new corporation rule?
Amalgamations

Corporate level rules:

• no disposition by predecessors
• acquisition by amalgamated corporation?
• cost to amalgamated corporation
Amalgamations

Corporate level rules:

• cost bump on vertical amalgamation
  – s. 87(11) and s. 88(1)(c) - (d)
  – certain non-depreciable capital property
  – acb of shares of subsidiary - [net tax cost of subsidiary’s assets and dividends received by parent]
  – up to fmv of designated eligible property when parent last acquired control
Amalgamations

Corporate level rules:

- cost bump on vertical amalgamation

**Parent**

- acb: $1,000,000

**Subsidiary**

- fmv: $400,000
- acb: nominal

**Opco A**

- fmv: $600,000
- acb: nominal

**Opco B**
Amalgamations

Corporate level rules:

• cost bump on vertical amalgamation

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<tr>
<td>fmv</td>
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<tr>
<td>acb</td>
<td>$400,000</td>
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</table>
Amalgamations

Corporate level rules:

- cost bump on vertical amalgamation
  - “back-door butterfly” rules
  - tax trap!
Amalgamations

Corporate level rules:

• continuity of reserves, tax accounts
Amalgamations

Corporate level rules:

- interest expense - IT-533 paragraph 21
- capital tax (where it still exists)

```
Parent
debt: $20,000,000
acb: $20,000,000

Target
capital: $10,000,000
```
Amalgamations

Corporate level rules:

- loss carryforwards
- acquisition of control
- losses carried forward from predecessors
  - usable from time of amalgamation
  - compare with wind-up
  - carryforward period
Amalgamations

Corporate level rules:

- loss carrybacks
- losses cannot be carried back to predecessor, except:
  - s. 87(2.11) vertical amalgamation
  - equal footing with wind-up
  - carryback from amalgamated corporation to parent
- planning regarding amalgamation of sisters
Amalgamations

Corporate level rules:

- foreign tax implications
- U.S. FIRPTA
  - U.S. rollover
  - Article XIII 8
Amalgamations

Corporate level rules:

- no LTT, GST, RST
- no doubling up of CPP, EI contributions
Corporate Law:
- voluntary wind-ups
- jurisdiction of subsidiary
  - Quebec – new BCA
- special resolution of shareholders
- general conveyance to parent
Wind-Ups

Corporate Law:
- consents, conveyancing
- liabilities
- tax clearances
- articles of dissolution
Wind-Ups

Tax Considerations:

- s. 88(1)
- qualifying wind-up
- rollover of assets from subsidiary to parent
- bump of cost of eligible property
- continuity of tax accounts
Wind-Ups

Qualifying Wind-Up:

- taxable Canadian corporations
- at least 90% of shares of each class/series
  - balance owned by arm’s length persons
- subsidiary “has been wound up”
  - IT - 126R2
Wind-Ups

Non-Qualifying Wind-Up:
- s. 69(5) disposition at fmv of subsidiary’s assets
- s. 84(2) deemed dividend
- s. 88(2) use of CDA, pre-72 CSOH
- gain/loss to parent
Wind-Ups

Rollover of assets under s. 88(1):

- disposition at cost amount
- acquisition at cost amount plus bump
- bump of cost of eligible property
- assets distributed to repay debt or for assumption of liabilities
Wind-Ups

Potential gain to Parent:

- s. 88(1)(b)
- tax trap!
Wind-Ups

Characterization of Property

- Mara Properties
  - inventory of subsidiary became inventory of parent
- Hickman Motors
  - depreciable property of subsidiary became depreciable property of parent
- factual analysis v. automatic flow-through
Wind-Ups

Capital Cost Allowance:

• CCA claim available only if depreciable property owned at end of year
• no CCA in year sub distributes its assets
• compare with amalgamation
Wind-Ups

Loss Carryforwards:

• s. 88(1.1) and (1.2)
• first taxation year of parent that begins after commencement of wind-up
  — compare with amalgamation
• loss would have been available to subsidiary for year beginning after commencement of wind-up
Wind-Ups

Loss Carryforwards:

Parent

- June 30 year-end
- wind-up July 31/09
- December 31 year-end
- loss in 2008

Subsidiary

Parent accesses loss in June 30, 2011 year (i.e. beginning July 1, 2010)
Wind-Ups

Loss Carryforwards:

- Parent
  - June 30 year-end
  - Wind-up on June 30, 2010
  - Parent cannot access 2003 loss

- Subsidiary
  - December 31 year-end
  - Loss in 2003 (expires December 31, 2010)
## Wind-Ups

### Loss Carryforwards:

- Loss in subsidiary’s loss year deemed loss of parent in taxation year of parent in which subsidiary’s loss year ended

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Blakes
Wind-Ups

Loss Carrybacks:

Wind-Ups

Transfer taxes, CPP, EI

- LTT in Ontario unless affiliated corporation holds legal title and apply for exemption
- no GST
- no RST in Ontario if tax paid, for resale or exempt (HST starts in Ontario on July 1, 2010)
- doubling up of CPP, EI contributions (fixed by 2004 Budget)
Wind-Ups v. Amalgamation

- amalgamation not possible under corporate law – new Quebec BCA
- deemed year-end undesirable
- extend life of loss carryforwards
- minority shareholders
Tax Law for Lawyers

Amalgamations and Wind-Ups