

Tax Law for Lawyers

Amalgamations and Wind-Ups

Blakes

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

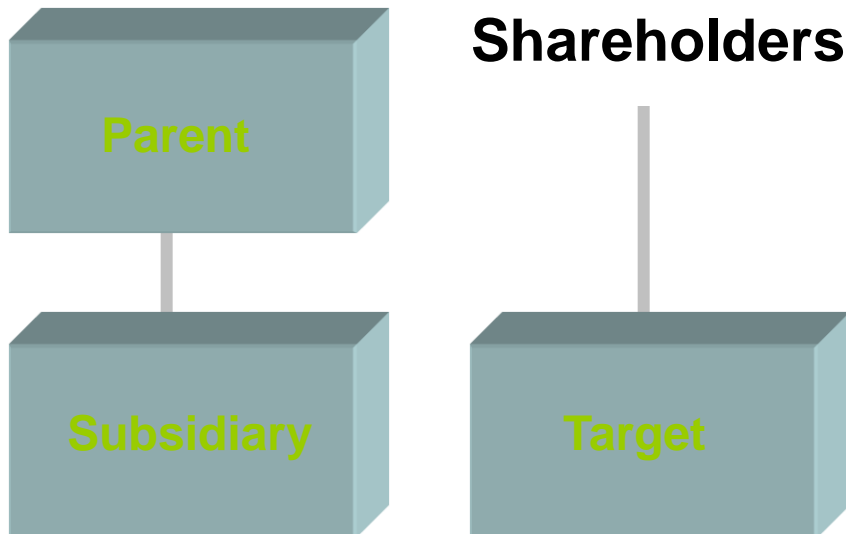
Amalgamations



Corporate Law:

- articles of amalgamation
- no conveyance
- streams → river

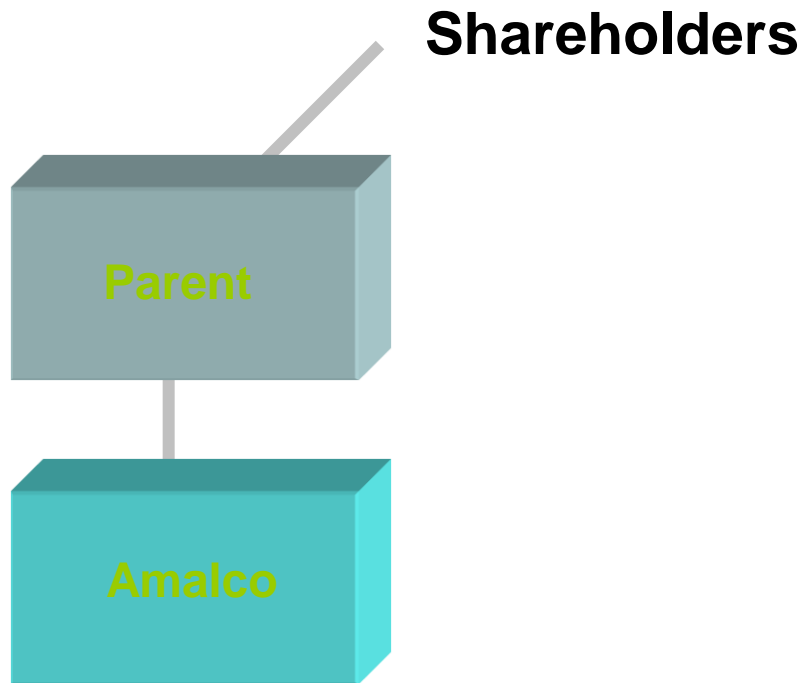
Amalgamations



Corporate Law:

- triangular amalgamation

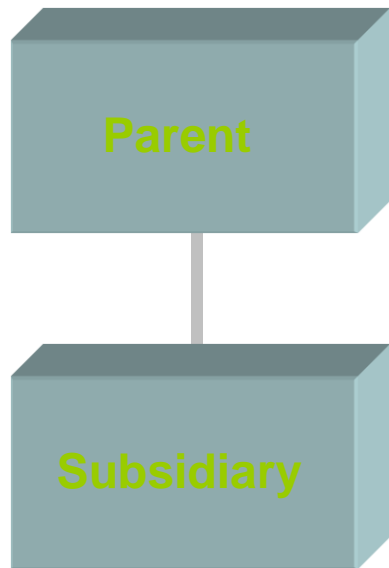
Amalgamations



Corporate Law:

- triangular amalgamation

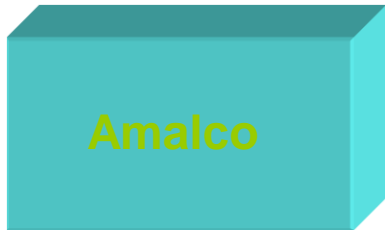
Amalgamations



Corporate Law:

- vertical short-form

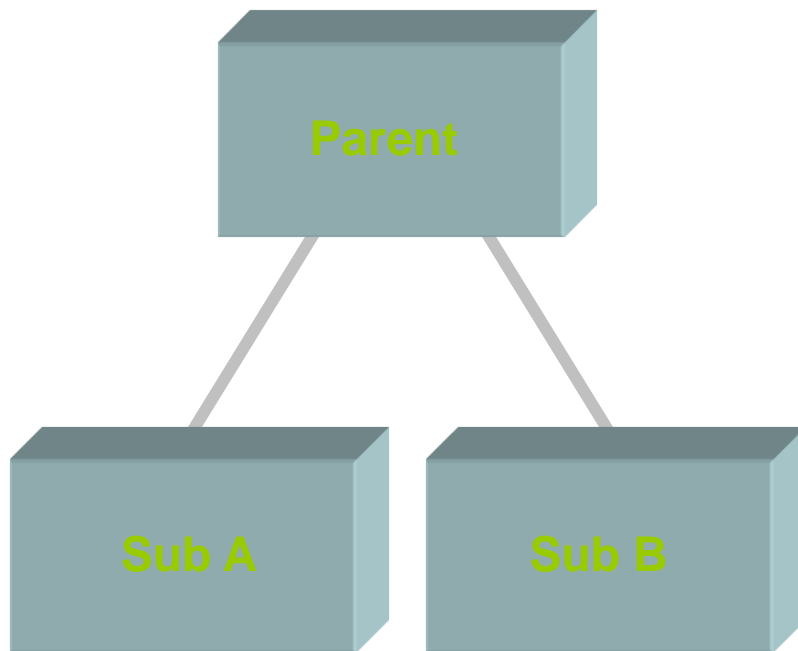
Amalgamations



Corporate Law:

- vertical short-form

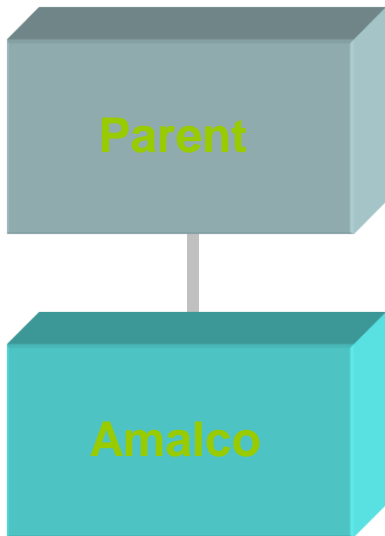
Amalgamations



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:

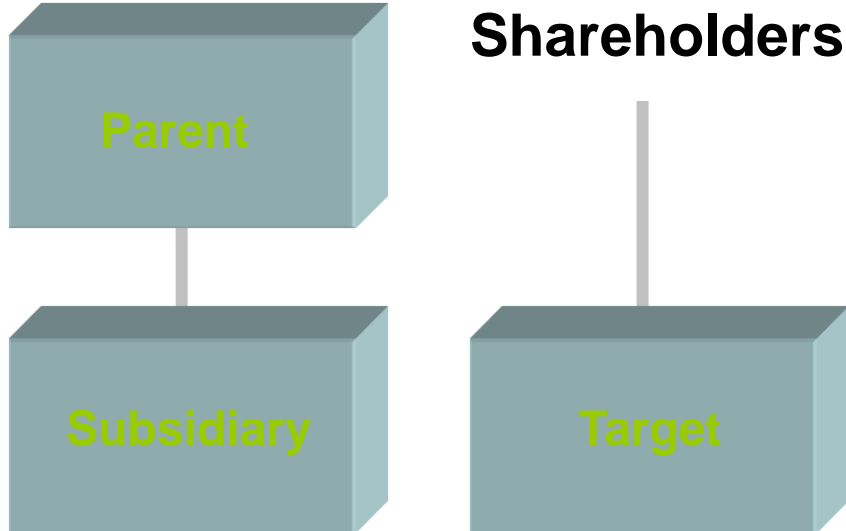
- s. 248(1) “disposition”
- s. 87(4) rollover
 - qualifying amalgamation
 - capital property
 - no boot
 - no benefit

Amalgamations

Shareholders - s. 87(4):

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

Amalgamations

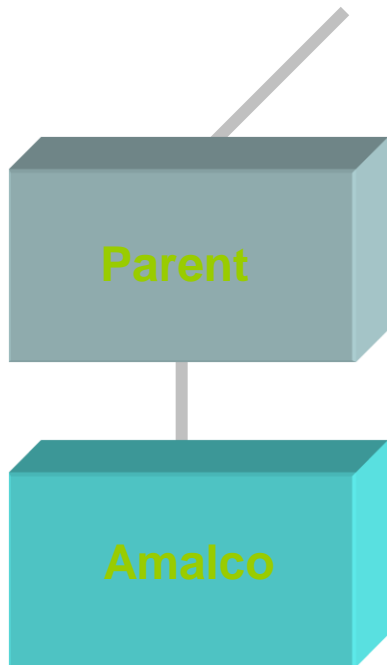


Shareholders - s. 87(4):

- no boot
- triangular amalgamation

Amalgamations

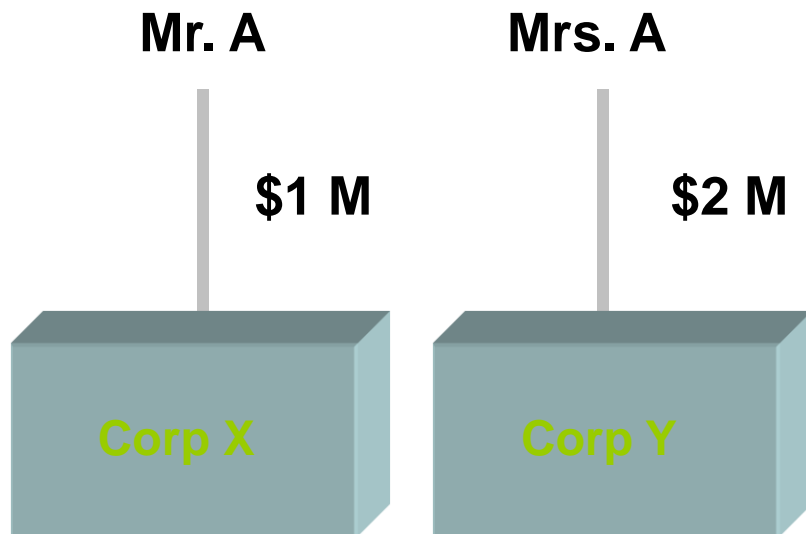
Shareholders



Shareholders - s. 87(4):

- **no boot**
 - **triangular amalgamation**

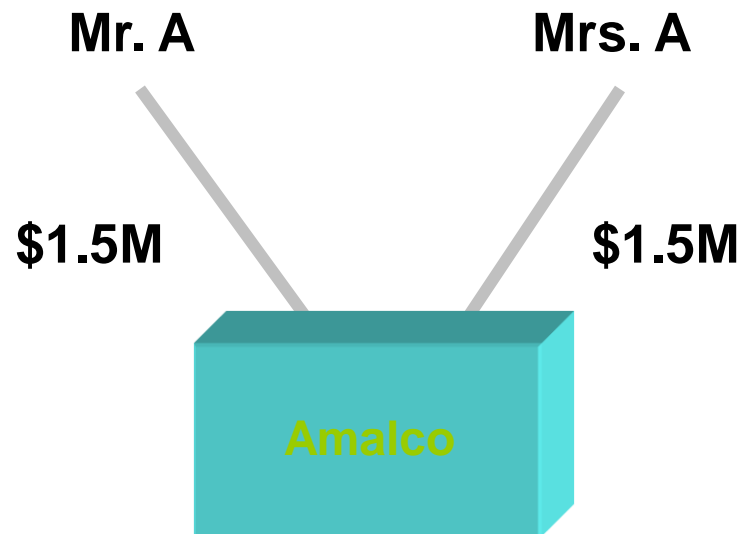
Amalgamations



Shareholders - s. 87(4):

- no benefit rule

Amalgamations



Shareholders - s. 87(4):

- no benefit rule

Amalgamations

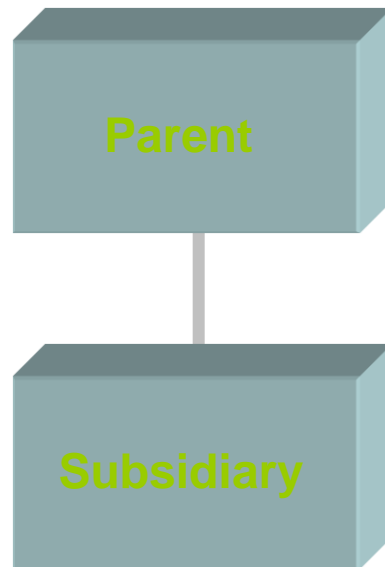
Shareholders - s. 87(4):

- 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!**



puc:	\$1000
net tax value of Sub's assets:	\$1500
acb:	\$ 100
gain:	$\$1000 - \$100 = \$900$

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

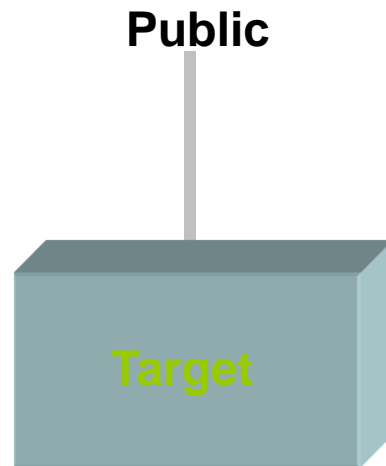
Amalco

acb:	100	liabilities:	60
ucc:	200	net tax cost:	<u>290</u>
cash:	<u>50</u>		350
	350		

Bump acb of Amalco shares to 290

Amalgamations

Comparison of triangular amalgamation and takeover bid:



total acb: 200
 puc: 100
 fmv: 1000
 net tax value: 290

	85.1	85(1)	No rollover	87(9)(c)
acb to Parent	100	200	1000	290

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

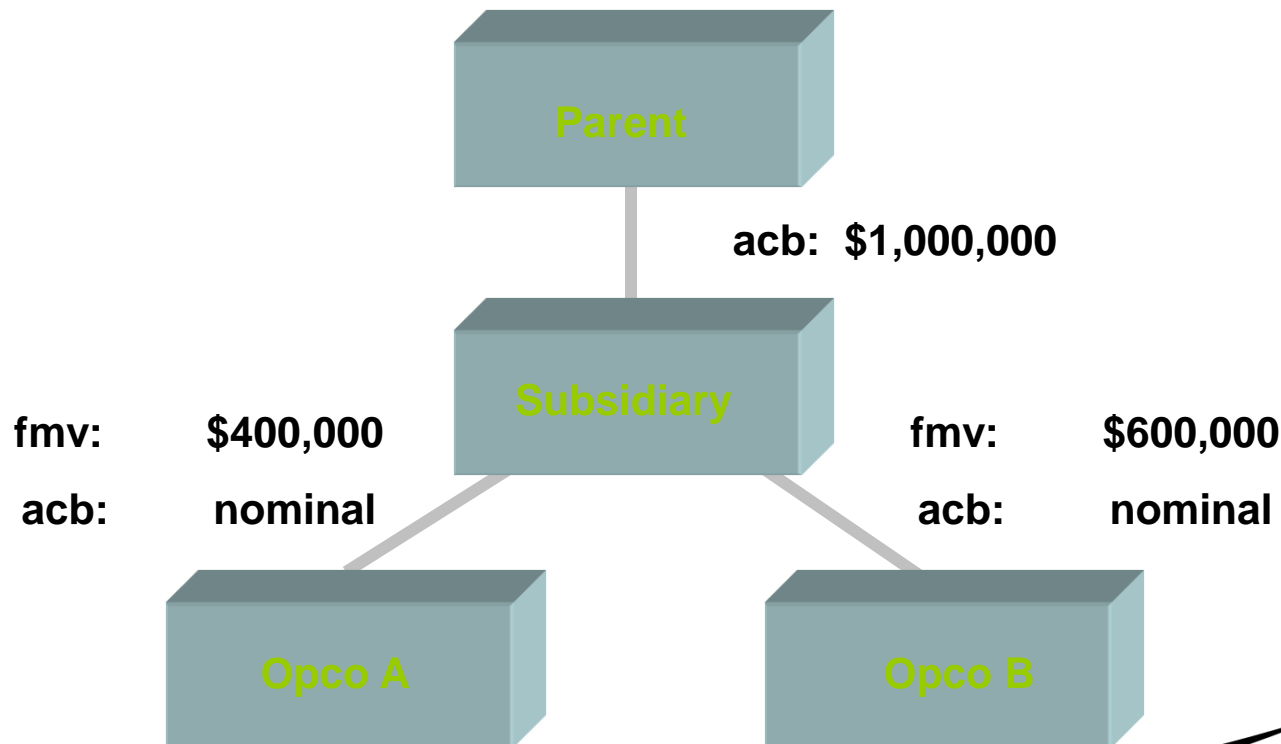
Corporate level rules:

- 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:

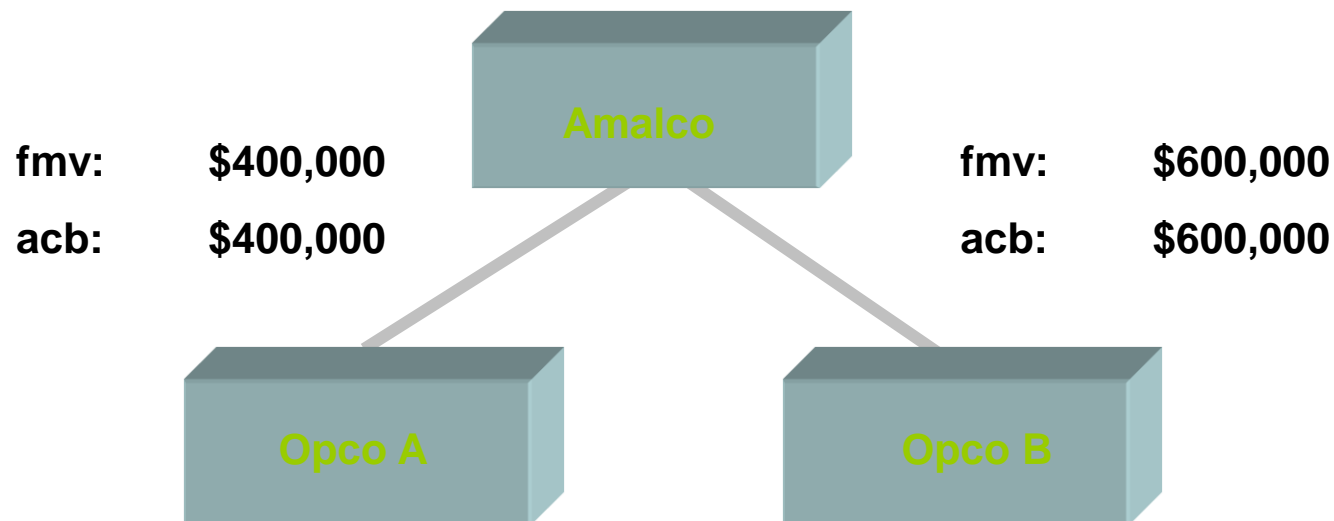
- cost bump on vertical amalgamation



Amalgamations

Corporate level rules:

- cost bump on vertical amalgamation



Amalgamations

Corporate level rules:

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

Amalgamations

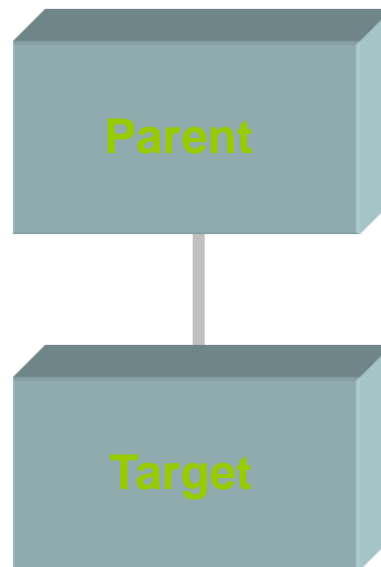
Corporate level rules:

- continuity of reserves, tax accounts

Amalgamations

Corporate level rules:

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



debt: \$20,000,000

acb: \$20,000,000

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:

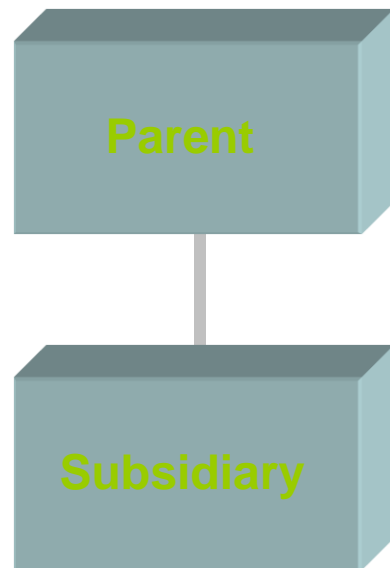
- foreign tax implications
- U.S. FIRPTA
 - U.S. rollover
 - Article XIII 8

Amalgamations

Corporate level rules:

- no LTT, GST, RST
- no doubling up of CPP, EI contributions

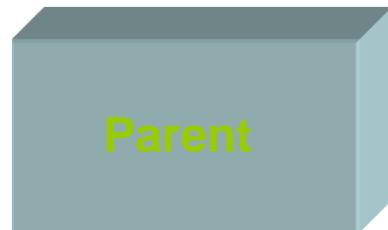
Wind-Ups



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

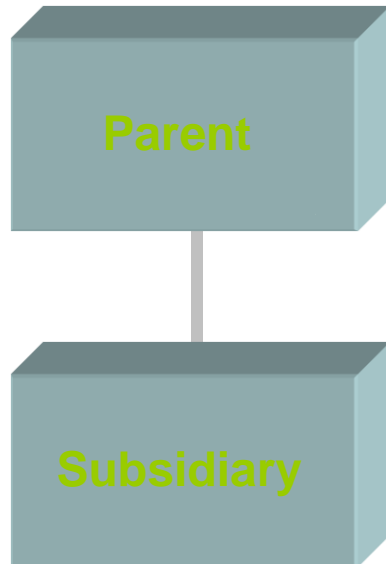
Wind-Ups

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:



June 30 year-end

wind-up July 31/09

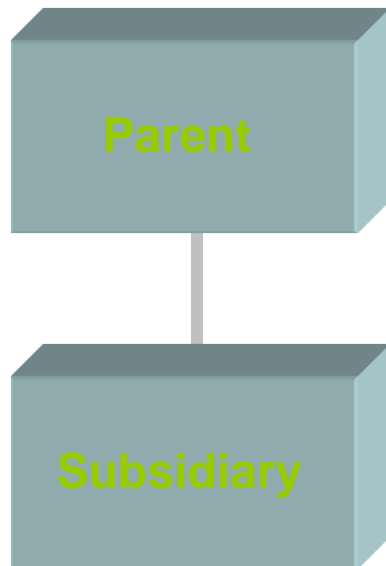
December 31 year-end

loss in 2008

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

Wind-Ups

Loss Carryforwards:



June 30 year-end

wind-up on June 30, 2010

**Parent cannot access
2003 loss**

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

	2003	2004	2005	2006	2007	2008	2009	2010		
parent	↑	1	2	3	4	5	6	7		
subsidiary	loss	1	2	3	4	5	6	7	X	X

67

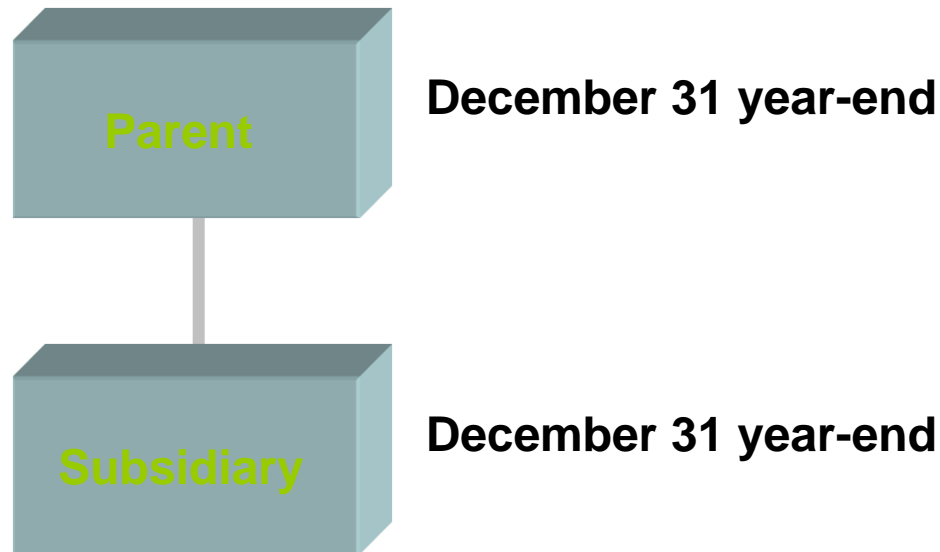
Acquisition
of control

Acquisition wind-up
of control

Blakes

Wind-Ups

Loss Carrybacks:



wind-up June 30, 2010: losses of Parent in December 31, 2010
(normal) year carried back to December 31, 2007 year of Parent
amalgamation June 30, 2010: losses of Amalco in December 31, 2010
(short) year carried back to December 31, 2008 year of Parent

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