



2009 Professional Development Seminar



Tax-planning opportunities in
today's economy

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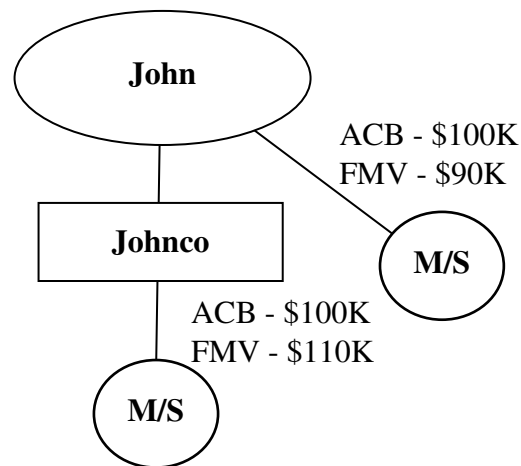


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LOSS TRANSFERS – INDIVIDUAL TO CORPORATION

- John personally owns marketable securities with inherent losses and does not have any gains against which to offset such losses
- Cohen Realties Ltd. (“**Johnco**”) owns marketable securities with inherent gains
- Planning is required in order to offset the losses against the gains





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LOSS TRANSFERS – INDIVIDUAL TO CORPORATION

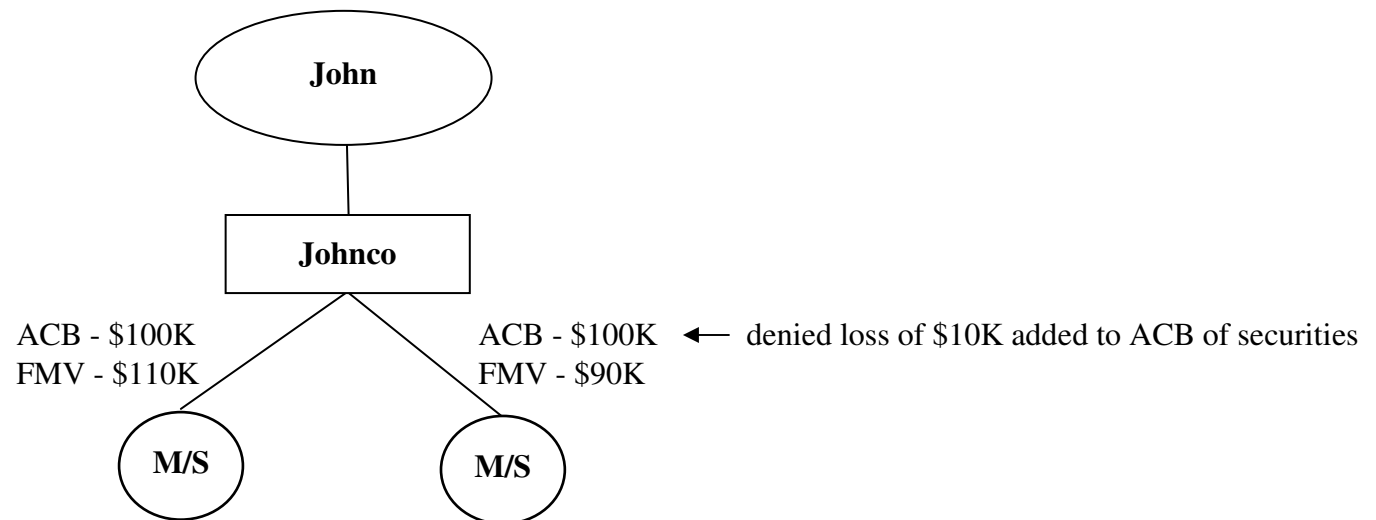
- John can consider transferring securities to Johnco for a note or shares of Johnco having a value of \$90K thus realizing a \$10K loss
- If Johnco owns the property for 30 days, the loss is deemed to be a “superficial loss” under s. 54
- Under s. 40(2)(g)(i) the superficial loss is denied in John's hands
- Under s. 53(1)(f) the deemed loss is added to the ACB of the transferred securities, so Johnco has the inherent loss



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LOSS TRANSFERS – INDIVIDUAL TO CORPORATION



- Johnco can sell both groups of securities (following the 30 day hold period) and offset gains and losses

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LOSS TRANSFERS – INDIVIDUAL TO CORPORATION

Traps

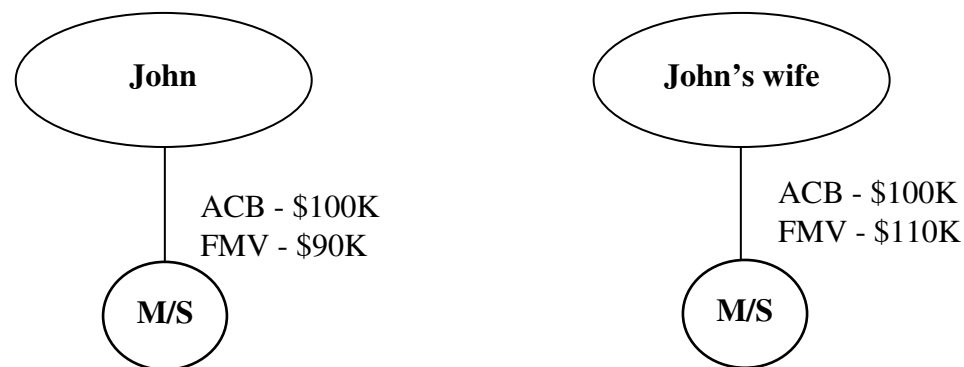
- Be sure that Johnco holds securities for 30 days, otherwise loss will be realized in John's hands
- Beware of section 69 – do not transfer to Johnco for \$1.00 as John will have proceeds of \$90K (s. 69(1)(b)), but Johnco will have ACB of \$11 (\$1 paid plus \$10 superficial loss - there is no corresponding ACB adjustment under s. 69)
- Trusts, partnerships and corporate transferors are subject to different loss suspension rules under s. 40(3.3) – (3.4)
 - Loss is suspended in hands of transferor until sold to a third party if held for 30 day period
- Loss is triggered when sale transaction is settled-sell loss assets a few days earlier if year end is approaching

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LOSS TRANSFERS – INDIVIDUAL TO SPOUSE

- Assume John's wife owns securities with inherent gain



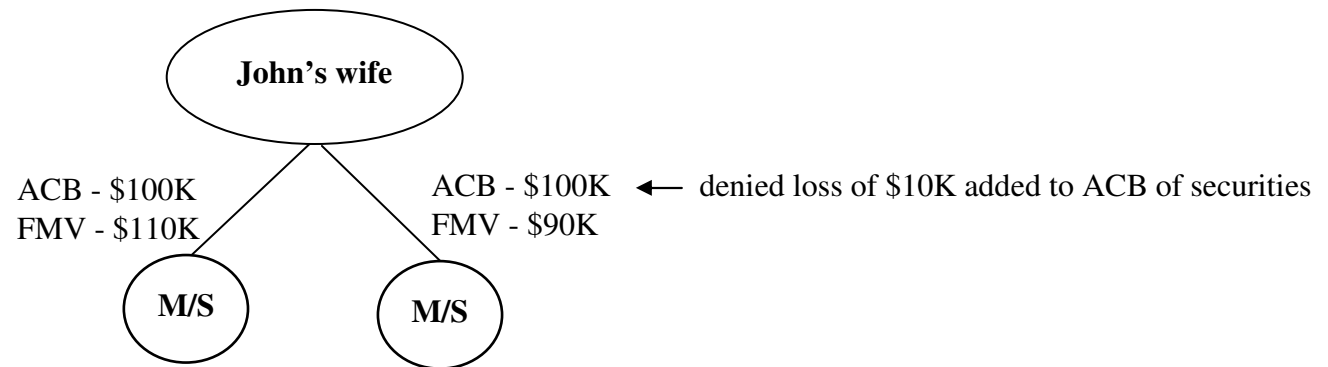
- John can sell the securities to his wife for \$90K cash and if he elects out of the s. 73(1) spousal rollover the transfer will trigger a loss in his hands
- However if John's wife holds the securities for 30 days, under s. 54 and s. 40(2)(g)(i), the loss will be denied to John and added to the ACB of the securities transferred to John's wife under s. 53(1)(f)



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LOSS TRANSFERS – INDIVIDUAL TO SPOUSE



- John's wife can sell securities after 30 day period and offset gains and losses
- Pursuant to s. 74.5(1) the spousal attribution rules will not attribute the loss back to John

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LOSS TRANSFERS – INDIVIDUAL TO SPOUSE

- Query whether CRA would seek to apply GAAR in light of Lipson decision of SCC where court found that use of the spousal attribution rule was GAARable
- In the Lipson case, Mrs. Lipson borrowed money from the bank to purchase her husband's shares in a holdco. The purchase took place on a rollover basis under 73(1). Mr. Lipson used the proceeds to buy a home. Mr. and Mrs. Lipson mortgaged the home and used the proceeds to repay the original bank loan. Mrs. Lipson offset the interest expense against the dividends on the shares under 20(1)(c) and 20(3), incurring a loss. Under 74.1(1), the loss was attributed to Mr. Lipson which he deducted against his income
 - In a split decision, the SCC held that GAAR applied to the transactions, as there was a misuse or abuse of the attribution rules



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LOSS TRANSFERS – INDIVIDUAL TO SPOUSE

- Alternatively, John can sell the securities and his wife can purchase the same securities within the 30 day period and sell them after the 30 day period to realize the loss
 - In this way, the attribution rules do not come into play
- The fact that you can achieve the same result in this way suggests that it is not abusive to use the attribution rules to achieve the same result

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LOW INTEREST LOAN TO SPOUSE

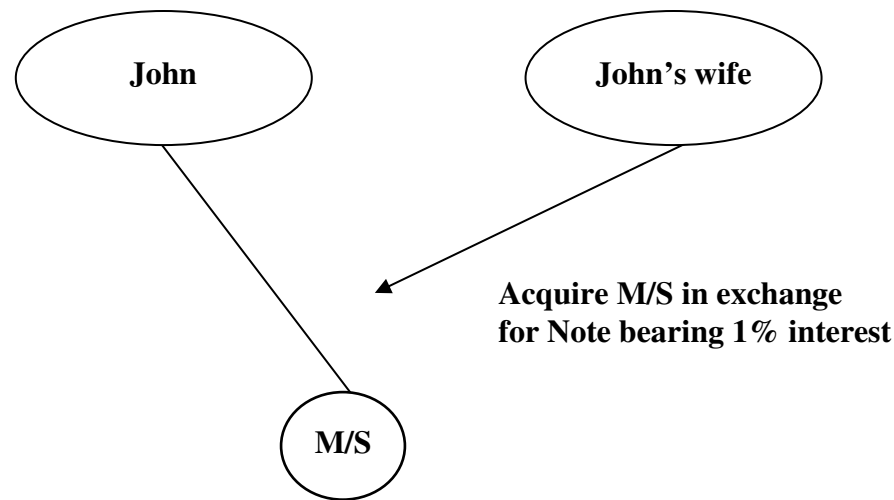
- Consider low prescribed rate loan to lower income spouse
 - Prescribed rate under Regulation 4301(c) for third quarter 2009 is at a historical low of 1%
 - Rate is set at the time the loan is made (i.e. no need to adjust rate thereafter)
- John could transfer securities at FMV to his wife in exchange for promissory note with 1% interest rate and elect out of s. 73(1) spousal rollover
- Interest must be paid by January 30 of each year
- Attribution rules will not apply – i.e. income / gain from securities will be taxed in wife's hands at wife's effective marginal rate



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LOW INTEREST LOAN TO SPOUSE



- John includes 1% interest received in his income
- John's wife includes income from securities in her income and deducts interest paid to John



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FREEZE / REFREEZE – OTHER ISSUES

- Family Conflicts
 - Children own non-voting common shares in Johnco which may increase in value
 - Children, who are now shareholders in Johnco, may wish to realize that value prior to John's death
 - ◆ Possibility of oppression remedy?



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FREEZE / REFREEZE – OTHER ISSUES

- Consider use of discretionary family trust
 - Flexibility in allocating shares to specific beneficiaries
 - ◆ Consider making John a beneficiary
 - Multiplication of capital gains exemption (may need to purify due to decrease in value of business assets)
 - Residence of majority of trustees determines residence of trust (consider s. 94 if non-resident trustees)
 - Consider 21 year rule planning
 - Consider attribution rules (particularly if John is a beneficiary – 75(2))



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FREEZE / REFREEZE – OTHER ISSUES

Non-Canadian Child

- Plan to stream CDA to Canadian children
 - ◆ May be facilitated by separate share class
- Consider post-mortem planning where a portion of the gain on freeze shares on death of John is replaced by deemed dividend to non-resident child at a 15% withholding rate
 - ◆ May be issue under protocol if grantor trust used
 - ◆ No pipeline available on death – 212.1
- Seek US tax advice