

The Bottom Line

A "quick-read" for estate planning professionals from the JCF Professional Advisory Committee

February 2008

Update on.... 2008 Federal Budget & Marketable Securities (MS)

The budget confusingly extends the MS exemption to capital gains realized on shares or partnership interest exchanged for publicly traded marketable securities, and then donated.

Thus, if we donate these securities within 30 days of the original taxable disposition, the original capital gain is exempted.

Two other conditions: (1) No other consideration can be received on the exchange; (2) The original asset would have contained a condition allowing for the exchange to marketable securities.

We imagine that there are only a few situations where this applies.

Envision a Canadian private company bought out by a foreign public company.

- The Canadian shareholder receives as consideration shares of a Canadian company convertible to the foreign public company shares (and this occurs tax-free).
- Sometime later, when the shares are converted to the foreign marketable security, taxation results.
- Therefore: donate the foreign marketable security within 30 days to eliminate the taxation.

Another warning: the exemption will not apply for certain partnership interest dispositions where the capital gains realized are seen to occur due to tax write-offs such as oil and gas, which reduce the ACB of partnership interests.

The bottom line: Yes, this is confusing.

Questions? Comments?

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