The Estate Freeze:
Balancing Tax Incentives with Fairness & Simplicity

Nicholas dePencier Wright

Osgoode Hall Law School of York University
LLM in Taxation
LAW 6736.60 Advanced Taxation of Corporations and Shareholders
Professor Neil Brooks
August 2017

ABSTRACT

This paper argues that recently proposed amendments to the *Income Tax Act* (Canada) are effective in promoting a conception of tax fairness and simplicity despite the impact they will have on laudable tax incentives for small business. In making this argument the paper examines in detail the estate freeze – a commonly implemented set of estate and tax planning transactions – showing how the proposed amendments will leave estate planning benefits in place while placing new limitations on tax benefits obtained using complicated business and tax structuring. From a public policy perspective, the paper argues, such incentives can more simply and fairly be obtained through other methods like adjusting the rate of tax on small business corporations.

Keywords: Estate, Freeze, Tax, Proposed, Amendments, Income Splitting, Capital Gains, Small, Family, Business

TABLE OF CONTENTS

1. The Estate Freeze as a Tax Subsidy 4

2. Common Law & Statutory Foundation 5

3. Why Estate Freezes Are Used 8
- 3.1 Capital Gains & Probate 8
- 3.2 Income Splitting 9
- 3.3 Asset Protection 9

4. Non-Tax Considerations 10
- 4.1 Desired Participation in Future Growth 10
- 4.2 Sufficiency of Assets 11
- 4.3 Business Control 11

5. Important Tax Provisions 12
- 5.1 Lifetime Capital Gains Exemption 12
- 5.2 Attribution Rules 14
- 5.3 General Anti-Avoidance Rule 15

6. Implementing an Estate Freeze 15
- 6.1 Section 86 Reorganization 16
- 6.2 Section 85 Rollover 17
- 6.3 Section 51 Conversion 17
- 6.4 Estate Freeze Classes of Shares 18
- 6.5 Discretionary Family Trust 20

7. Types of Estate Freezes 21

8. Altering an Estate Freeze 26

9. Proposed Tax Fairness Reforms 28

10. Balancing Tax Incentives 31

11. The Equitable Estate Freeze 34

END NOTES 35

WORKS CONSULTED 37
- Legislation 37
- Cases 37
- Secondary Sources 38

AUTHOR INFORMATION 39

BIBLIOGRAPHICAL INFORMATION 39

1. The Estate Freeze as a Tax Subsidy

Estate freezes are used by family business owners to facilitate the transfer of a business from one generation to the next while taking advantage of available tax deductions and incentives. They are generally structured to minimize capital gains tax and probate fees and to take advantage of dividend sprinkling to income split amongst family members, thus reducing the total tax liability of the family economic unit. Such tax provisions relied upon by small business owners can fairly be characterized as tax incentives to promote small business. This is a valid public policy goal given the importance of small business in innovation, economic development and employment. There has, however, been significant public policy debate on what has been characterized as "tax fairness." Some argue that complicated tax planning is used by those who can afford costly professional advisors to reduce their tax burden, unfairly shifting their tax obligations to those with fewer resources. Others argue that changing the existing regime will unfairly penalize small business despite its important role, will destabilize private company tax planning and potentially the entire Canadian economy.

As a result of this debate, a number of new proposals have been put forward to place new limits on certain tax planning techniques, including reliance on the lifetime capital gains exemption and income splitting. The estate freeze is an innovation of tax and estate planners that combines useful mechanisms for succession planning with techniques to reduce total taxes. The impact of the proposed amendments on the estate freeze acts as an informative example of how moderate amendments to the *Income Tax Act* can effectively leave a useful estate planning method in place while lessening the reliance on complex tax minimization strategies. This simplifies tax incentives and promotes a conception of tax fairness. In making this case, this

paper will do the following four things: (i) outline the foundation on which estate freezes are based; (ii) provide a detailed explanation of the estate freeze and related considerations; (iii) review the proposed amendments in relation to the estate freeze; and, (iv) argue that despite the controversy, the estate freeze acts as an example of how the proposed changes effectively obtain laudable public policy objectives.

2. Common Law & Statutory Foundation

The estate freeze is a planning technique organized using a series of steps that has been developed based on what common law and statute do and do not permit. Its purpose is to transfer the future growth of the value of a business or other assets to the next generation or other desired beneficiaries (the "children"). In its basic form, it may consist of restructuring an existing corporation so that voting shares and fixed value preference shares are issued to the freezor(s) (the "parents") and equity or growth shares are issued to either the children directly or to a family trust with children as beneficiaries. A commonly used estate freeze structure using a discretionary family trust is illustrated in the figure below:

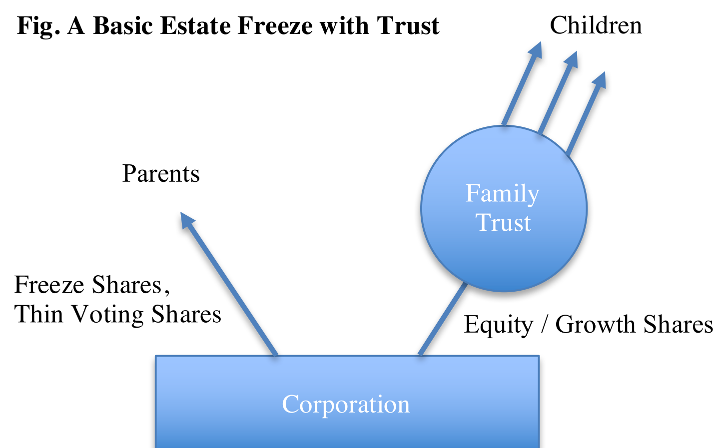


Fig. A Basic Estate Freeze with Trust

There is no legislation that makes reference to the estate freeze *per se*, nor is there any House of Commons Hansard debating the merits and demerits of the practice as is often the case when practices are explicitly legislated. Rather, the foundations on which estate freezes are based are the sections of the *Income Tax Act*[1] (the "Act") and relevant case law on what conduct is and is not permissible. As will be discussed in further detail below, sections like 85, 86 and 51 of the Act, dealing with corporate rollovers, reorganizations and conversions, respectively, the law of trusts including both common law precedent and tax treatment under the Act, along with other provisions can be combined to carry out an estate freeze, assisting business owners with both estate/succession planning and tax minimization.

Case law has undoubtedly played an important role shaping how estate freezes are implemented. By way of example, two Court decisions in the early 1990s show how case law can expand tax planning practices and, alternatively, clearly articulate tax planning limits and the application of relevant anti-avoidance provisions. The 1990 Supreme Court of Canada case of *Mcclurg v. Canada*[2] affirmed corporate discretionary dividends, finding that taxpayers can structure corporations to income split without triggering section 56(2) of the Act, which would otherwise attribute income to the transferor when certain indirect payments are made "pursuant to the direction of, or with the concurrence of, a taxpayer to another person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person…."[3] The case involves a closely held corporation with Articles granting each class of shares the right to receive dividends exclusive of other classes of shares. For the three-year period at issue, the two husband shareholders received salary, bonus and bonus entitlements for their class of shares while their wives each received dividends for their shares of a separate class. Mrs. McClurg, the

wife of the assessed taxpayer, had been actively involved in the operations of the company and was also paid a modest salary. The Minister of National Revenue reassessed arguing that the dividends paid to Mrs. McClurg should be attributed to the husband under section 56(2) of the Act. On appeal, the Supreme Court found in favour of the taxpayer, asserting that "[d]iscretionary dividends may be validly used because they are not expressly prohibited by the [*Saskatchewan Business Corporations*] *Act* and are not contrary to common law or corporate law principles."[4] In making its decision, the Supreme Court affirmed discretionary corporate dividends (when not prohibited by the applicable corporate legislation), income splitting with dividends in certain circumstances where there is a sufficient connection to the business and the principle that that which is not prohibited is allowed. The decision has expanded what is possible using an estate freeze and has made income splitting an important component of corporate tax planning including estate freezes.

Conversely, the 1992 Federal Court case of *The Queen v Kieboom*[5] demonstrates limits, acting as a warning against cavalier estate planning. Specifically, it is a warning against issuing shares at below market value to non-arm's length parties to dilute ownership and, in effect, transfer assets. The case involves a closely held family corporation where, at the time of incorporation, the husband was issued nine common shares and the wife one common share. Several years later the wife purchased eight newly created non-voting shares below market value for $1 per share and, shortly thereafter, each of the three children purchased eight additional class A shares, also below market value for $1 per share. At the end of the new issuances, the husband had reduced his interest in the corporation from 90% to 21.4%. When the company paid dividends to the holders of the class A shares the husband was reassessed by the Minister of

National Revenue. The Minister argued that the issuance of common shares to the children was a disposition under sections 245(c) and 69(1) of the Act, with the husband and wife deemed to have received the proceeds thereof at fair market value. The Minister also stated that section 74(1) attribution rules applied to the issuance of shares to the wife, and that dividends paid to the wife via the Class A shares should be attributed to the husband's income. After several rounds of appeal, the Court found in favour of the Minister in all respects. The case represents all that can go wrong when estate planning is not carefully conducted consistently with the restrictions found in the Act. It also demonstrates the power of anti-abuse rules in preventing undesirable forms of tax planning when the legislature has acted with clear intent.

Having reviewed the foundation on which estate freezes are implemented, we will now explore why and in what circumstances it may be desirable for a taxpayer to implement an estate freeze, including both non-tax estate planning considerations as well as available tax benefits.

3. Why Estate Freezes Are Used

There are a number of different reasons why it may be advantageous to implement an estate freeze, including reducing capital gains and probate tax, income splitting within the economic unit and asset protection.

3.1 Capital Gains & Probate

Perhaps the most common reason to implement an estate freeze is to reduce capital gains and other taxes and probate fees that would otherwise be paid by transferring future

growth/appreciation of a company or asset to the children. This can be accomplished by capping the value of the asset owed by the parents and attributing all future growth (and associated taxes) to the children. A smaller estate at the time of death will result in lower capital gains upon disposition and probate fees.

3.2 Income Splitting

Estate freezes often utilize income splitting by introducing family members as owners of the corporation. This can be carried out using separate classes of shares so that discretionary dividends can be issued in differing amounts to different individuals as desired by the board. Shares of a given class may, alternatively, be held by a discretionary trust with such family members as beneficiaries so that dividends can be flowed through (on a tax neutral basis) as determined by the board of directors of the corporation and the trustees of the trust. Such an arrangement currently allows for income to be taxed in the hands of adult family members that are in a lower tax bracket. Given comparatively low corporate tax rates for small businesses, income splitting in this manner can materially reduce the total tax paid by the family economic unit. Important restrictions related to income splitting that must be taken into account when structuring an estate freeze are the attribution rules including the so called "kiddie tax," which will be discussed in the following section.

3.3 Asset Protection

Depending on the particulars of how an estate freeze is implemented, the transfer of shares in a corporation to a holding company, children and/or a family trust can, in some circumstances,

shield the transferred assets and related growth from future creditor claims against the parents. It may additionally, in some circumstances, shield the growth in the value of the assets transferred from claims made by one spouse against the other in the event of marital breakdown.

When deciding whether or not to implement an estate freeze there are a number of non-tax and tax considerations that must be taken in to account.

4. Non-Tax Considerations

Important non-tax considerations that must be taken into account when implementing an estate freeze include the extent to which the children should participation in future growth of the company, sufficiency of assets for the parents and arrangements regarding corporate control.

4.1 Desired Participation in Future Growth

Of prime importance is for the parents to consider if they in fact want the children to participate in the future growth of the company. Growth/equity shares of the business are generally issued for a nominal amount in order to maximize future growth attributable to the children. There are innumerable personal, financial and business reasons why parents may not actually want to carry out an estate freeze despite potential tax savings. Changing personal relationships and the impact of transferring potentially significant assets to a child, complications due to potential matrimonial claims against a child's share and whether or not the business will likely be sold at the time of death anyways (thus negating intended tax benefits) are all potential considerations.[6]

4.2 Sufficiency of Assets

When implementing an estate freeze the parents must ensure that they maintain sufficient assets to carry them through retirement. This can be difficult as life-span, future living costs, portfolio returns, other sources of income, inflation and marital/relationship status can be hard to predict years in advance. Failure to retain sufficient assets will at best result in incurring additional and material expense in restructuring the estate freeze and at worst (depending on how the estate freeze is structured) result in corporate and trust control and governance issues and tax complications. In some instances, the agreement of the children is required to restructure the estate freeze which may put a strain on relationships or be problematic where relationships have broken down. To the greatest extent possible, careful advanced budgeting and planning is advisable.[7]

4.3 Business Control

The parents must give also careful thought to the implications that an estate freeze will have on the control of the company. In some cases, the parents may wish to pass control of the business on to their children to manage. Often, however, parents want to continue to control the company due to either personal attachment or concern over the ability of the children to continue to operate and grow the business. It should be noted that even where voting shares in the company are retained by the parents, non-voting shareholders have rights under the applicable corporate legislation that places some restrictions on what the voting shareholders can do. For example, the *Canada Business Corporations Act*[8] section 241 oppression remedy provides recourse to the Court for shareholders that have been treated in a manner "that is oppressive or

unfairly prejudicial to or that unfairly disregards the interests of any security holder" and permits the Court to "make an order to rectify the matters complained of."[9] The *Business Corporations Act* (Ontario)[10] has a similar oppression remedy provision in section 248. While the particulars on the application of the oppression remedy are outside of the scope of this paper, the point is that even the issuance of non-voting shares places some restrictions on the activities that the controlling shareholder(s) may engage in.[11]

5. Important Tax Provisions

In addition to non-tax considerations there are also some important provisions of the Act that must be considered including the applicability of attribution rules, the lifetime capital gains exemption and the general anti-avoidance rule ("GAAR").

5.1 Lifetime Capital Gains Exemption

Of significant importance for all owners of Canadian controlled small business corporations is the lifetime capital gains exemption. This exemption is intended to promote the development of small business by providing relief from capital gains tax at the time of the disposition of eligible shares. For the 2016 taxation year, the lifetime capital gain deduction was $824,176 (or, once factoring in that only one half of capital gains are taxable, a cumulative capital gains deduction of half that amount equaling $412,088).[12] In order to be eligible for the lifetime capital gains exemption, the shares must be each be a "qualified small business corporation share," as defined in section 110.6 of the Act. Broadly speaking, this means that:

a) at the time of sale, the shares are capital stock in a "small business corporation," as defined in section 248 of the Act, and are owned by the individual, his or her spouse or common law partner or a partnership related to the individual;

b) for 24 months prior to the disposition of the shares, the shares were not owned by anyone other than the individual, a related person or a partnership of which the individual was a member;

c) for 24 months prior to the disposition of the shares, the shares:

   i. were owned by the individual or a person or partnership related to the individual;

   ii. were shares of a "Canadian-controlled private corporation," as defined in section 125(7) of the Act; and,

   iii. more than 50% of the fair market value of the Canadian-controlled private corporation's assets were: used mainly in an active business carried on primarily in Canada by it or a related corporation; certain shares or debts of connected corporations; or, a combination thereof.

The lifetime capital gains exemption is important principally because the amount of money at issue is so significant and the deduction will normally apply at a time when a very large tax bill becomes due. Ensuring that this exemption applies and maximizing its use is a prime consideration for private company tax planning including the estate freeze. Another important

tax consideration when carrying out an estate freeze is the potential application of the Act's attribution rules.

5.2 Attribution Rules

The attribution rules are found in sections 74.1 to 75.1 and are in addition to specific rules on the conferral of benefits found elsewhere in the Act. The attribution rules must be carefully considered when implementing an estate freeze. As we saw in *The Queen v Kieboom*, failure to do so can have significant and adverse tax consequences. Section 74.1(1) of the Act deals with the attribution of income to a spouse or common law partner. It states, broadly speaking, that if an individual lends or transfers property to, or for the benefit of, a spouse or common law partner, any income or loss (with some exceptions) is deemed to be income or loss for the individual and not the spouse or common law partner. This provision, in effect, prohibits certain tax benefits derived from the transfer of property between spouses or common law partners.[13] Section 74.1(2) of the Act has a similar rule relating to the lending or transferring of property to a non-arm's length person or who is the taxpayer's niece or nephew who is under the age of 18. Similarly, section 74.4 contains attribution rules for transfers of property to corporations when a transfer is made with a main purpose of reducing the income of an individual and to benefit a designated person in respect of the individual, where a series of requirements are met. Finally, section 74.5(1) and (2) state, generally speaking and with exceptions, that these attribution rules do not apply when the loan or transfer is at fair market value with some exceptions. Although an in-depth review and analysis of the attribution rules it outside of the scope of this paper, a practitioner should have a full understanding of the attribution rules and their applicability when implementing an estate freeze as failure to do so can result in significant and adverse tax

consequences. The final related tax provision that we will consider is the general anti-avoidance rule.

5.3 General Anti-Avoidance Rule

The general anti-avoidance rule ("GAAR") is found in section 245 of the Act. It is meant to act as a measure of last resort to restrict certain types of tax avoidance transactions that are not otherwise prohibited in the Act. Simply put, it states the tax consequences of one or more transactions may be invalidated where i) a tax benefit arose form a series of transactions; ii) the transactions are avoidance transactions carried out with the primary purpose of avoiding tax; and, iii) the transaction is abusive. Abusive, in this context, means inconsistent with the object, purpose or spirit of the section of the Act relied upon by the taxpayer. When structuring a series of transactions when carrying out an estate freeze or engaging in other tax and estate planning, it is important to keep the potential application of GAAR in mind lest anticipated tax savings be rejected by the CRA.[14]

As discussed, there are a number of non-tax and tax reasons why implementing an estate freeze may be desirable. Having examined the 'why' we will now turn out attention to the 'how' and review the sections of the Act most commonly relied upon to implement an estate freeze.

6. Implementing an Estate Freeze

When an estate freeze is implemented there is generally a restructuring of the corporation and its shares. Consequently, the provisions in the Act dealing with tax-exempt reorganization,

transfer of assets and share conversions play an important role in structuring an estate freeze. A discretionary family trust and special classes of share are also commonly used. This section will examine these important elements of the estate freeze.

6.1 Section 86 Reorganization

Section 86 of the Act is commonly relied upon when implementing an estate freeze. It permits the tax-exempt exchange of shares by a shareholder in the course of the reorganization of capital when the shareholder disposes of capital property that is all of the shares of any particular class of the capital stock of the corporation owned by the taxpayer, and property is received from the corporation that includes other shares of the capital stock of the corporation. While "reorganization of the capital" is not defined in the Act, it is typically carried out by amending the Articles of Incorporation to change the share structure of the corporation – usually as a conversion from common shares to freeze shares. When one class of shares is exchanged for another, the adjusted cost base carries over to the new shares, subject to the section 86(2) anti-abuse provision. If more than one class of share are transferred, the adjusted cost base is distributed between them in proportion to their fair market value. When non-share consideration is also transferred, it is deemed to have been transferred at fair market value. Notably, the CRA has taken the position that section 84(9) corporate attribution rules may apply in a section 86 reorganization and consequently this section must also be considered. Section 86 does not apply when section 85(1) of the Act does and Section 86, unlike section 85, does not require the filing of an election. Furthermore, section 86(3) states that sections 86(1) and 86(2) do not apply when sections 85(1) or 85(2) do. This means that when a section 85 election is filed it will override any contemporaneous reliance on section 86 in relation to the transaction.[15]

6.2 Section 85 Rollover

Section 85 of the Act allows for the tax deferred transfer of property to an eligible corporation, often referred to as a "rollover." It should be considered when assets that have appreciated in value are being transferred to a corporation. The section allows for an election to be made jointly by an eligible transferor and eligible transferee that must be a taxable Canadian Corporation. The election is in respect to the transfer of eligible property at an amount less than its fair market value. Broadly speaking, and with some exceptions, capital property including depreciable property is eligible property for the purposes of a section 85 rollover. Section 85 is used to defer the realization of capital gains on what would otherwise be considered a disposition of assets. The consideration received in exchange must include at least some shares (which may be a fraction of a share). Non-share consideration (also referred to as "boot") may also be provided as partial consideration. The primary principle behind section 85 is tax neutrality – the idea that business decisions should not be influenced by taxation. The use of section 85, for example, makes the decision to transition from a sole proprietorship to a corporation for business reasons a tax neutral one. In addition to sections 86 and 85, section 51 of the Act is also commonly used when implementing estate freezes.

6.3 Section 51 Conversion

Section 51 of the Act allows for a tax-free rollover of certain conversions of debt or shares into other shares of the same corporation and does not apply when either of section 85 or 86 of the Act do. Section 51 is appealing because it does not involve a disposition (rather it involves an exchange with no other consideration), nor does it require the transfer of *all* shares

held of a given class. Section 51 can be used when a share of the capital stock of a corporation is acquired by the taxpayer from the corporation in exchange for capital property that is another share of the corporation, or capital property that is debt of the corporation (e.g. a bond, debenture or note), and no additional consideration is received, with some exceptions. Like with section 86, the adjusted cost base of the old shares is apportioned to new classes of shares acquired based on their relative fair market values.[16]

Having examined provisions of the Act commonly relied upon when implementing an estate freeze, we will now discuss the classes of shares used and the role that a discretionary family trust can play in an estate freeze.

6.4 Estate Freeze Classes of Shares

When implementing an estate freeze it is common for a corporation to amend its Articles of Incorporation and restructure its classes of shares. When doing so, shares are often created and categorized as growth shares, control shares and freeze shares. Recall Figure A on page 5 illustrating a basic estate freeze where the parents receive freeze shares and thin voting shares while the children (through an intermediate entity) receive growth shares. The freeze shares held by the parents after an estate freeze has been implemented are meant to "freeze" the current value of the company. These shares may be structured as non-voting preferred shares. In addition to granting freeze shares preferential treatment in the event of liquidation or redemption, freeze shares can be expected to be redeemable (re-purchasable by the corporation) and retractable (redeemable at the option of the shareholder). Such provisions are necessary in the event that it is

desirable for the estate freeze to be altered or unwound. Freeze shares will usually also include a price adjustment clause where there has been an elected amount in relation to a transfer of property including shares. This clause will adjust the elected price in the event that the CRA or a Court finds that a different value should have been used. A non-impairment clause may also be added stating that no dividends will be declared if doing so will impact on the ability to retract the shares. Finally, the shares will include voting and dividend provisions as desired.[17]

While the freeze shares may include voting rights, a more flexible arrangement is to separate voting rights and corresponding corporate control from the freeze shares, sequestering them into a separate class of shares also owned by the parents that may be referred to as "thin voting shares." Thin voting shares hold the right to vote. They may also be redeemable and retractable for a nominal amount to allow for the amendment or dissolution of the estate freeze and are generally not entitled to dividends. Thin voting shares allow for the redemption of freeze shares prior to death without impacting control. They also facilitate the change of control of the corporation without affecting the freeze shares.[18]

Lastly, the growth shares, issued to the children, are meant to realize the future growth of the company after the date of the estate freeze. Because the freeze shares would be structured to reflect the existing value of the business, the growth shares would likely be issued at a nominal price. The shares may or may not have voting rights, depending on whether the parents want to retain control and whether thin voting shares are used. They would usually be eligible to receive dividends subject to the payment of any obligations to the freeze shares. The shares may also

contain redemption and retraction clauses at fair market value to facilitate amending or unwinding the estate freeze.[19]

6.5 Discretionary Family Trust

A trust is "[a]n arrangement under which money or other property is held by one person… for the benefit of another person or persons."[20] As shown in Figure A Basic Estate Freeze on page 5, using a discretionary family trust to hold the growth shares with the children as the beneficiaries of the trust has been a commonly used estate freeze structure. While the proposed amendments to the Act relating to the lifetime capital gains exemption, discussed in section 9 of this paper, may materially reduce this practice, there are a number of reasons why a discretionary family trust has been, and in certain situations will continue to be, a useful planning tool.

Trusts are used for both estate planning and tax reasons. The use of a trust with powers granted to the trustees to disburse funds to the trust's beneficiaries at the trustees' discretion (a "discretionary trust") in an estate freeze allows the parents to transfer assets for the benefit of the children while retaining some control over the assets including the ability to later decide in what proportions shares in the business will be distributed. In contrast, if growth shares are issued directly to the beneficiaries, the parents will have to decide the proportion of shares to issue to each child at the time of issuance. Tax reasons for using a trust include the reduction of capital gains tax and income splitting. Assets can flow through a trust retaining their tax character and be taxed at the income tax bracket of the beneficiary. Consequently, it has been possible to structure a discretionary family trust to multiply the lifetime capital gains exemption by

distributing capital gains to multiple trust beneficiaries, each relying on their full lifetime capital gains exemption to reduce tax liability.

There are some important considerations when contemplating the use of a trust. One of them is the 21-year deemed disposition rule found in section 104 of the Act. The rule states that 21 years after the date on which the trust was created, and every 21 years thereafter, certain assets in the trust will be deemed to have been disposed of for tax purposes. This provision is meant to prevent an indefinite deferral of tax on trust assets. Another important provision is section 75(2) of the Act. It is an anti-avoidance clause that, in certain situations, will attribute the property contributed to a trust (and the resulting tax implications) back to the settler where the settler retains certain powers over that property and income or loss is attributed to the person on the property.[21]

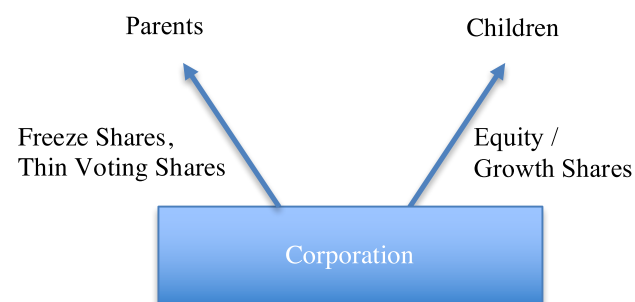
Which elements used when implementing an estate freeze will depend on the particulars of the family and business. These pieces (and many others outside of the scope of this paper) can be put together in a wide variety of ways to create a wide variety of estate freeze structures. The following section will examine several of the more common estate freeze structures and the circumstances in which they are used.

7. Types of Estate Freezes

The internal freeze, asset freeze and holding company freeze are variations of the estate freeze that are used in different situations. While there are also a wide variety of other estate freeze structures, in this section we will discuss only these three commonly used versions. An

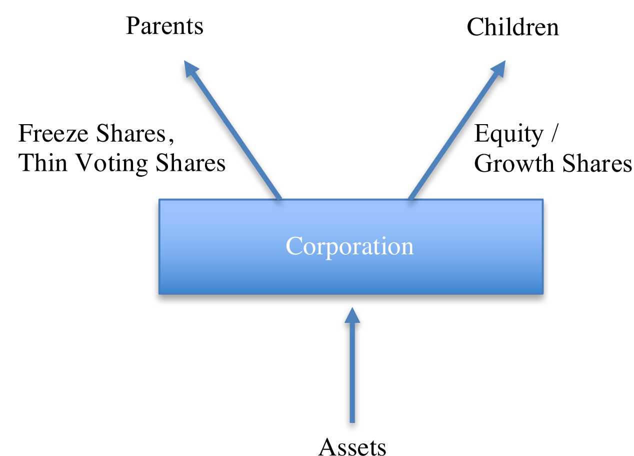
internal freeze is a comparatively simple variation that only involves restructuring an existing corporation to have freeze shares, with thin voting share if desired, and growth shares. The freeze shares can be issued directly to the parents and the equity/growth shares can be issued directly to the children. An internal freeze, by definition, does not require the introduction of a new corporation, instead, the existing corporation's shares are restructured, usually relying on section 86 of the Act. An example of an internal freeze is as shown below in Figure B.

Fig. B Internal Estate Freeze



An asset freeze is an estate freeze carried out when the assets are not already held by the corporation. Asset freezes consequently generally rely on section 85 of the Act. An example is illustrated below in Figure C.

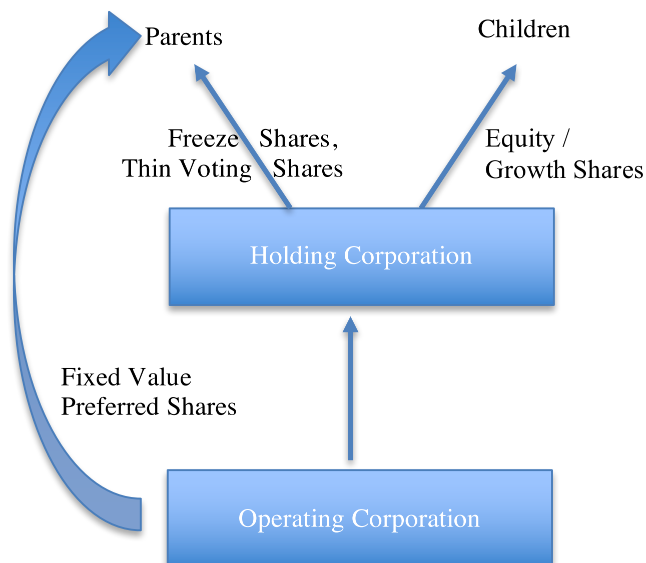
Fig. C Asset Estate Freeze



An asset freeze is often used when business assets are held under a sole proprietorship which can include real estate and portfolio investments like stocks, bonds and mutual funds. An asset freeze is carried out by setting up a new corporation and issuing growth/equity shares to the children. The parents then transfer the assets to the corporation on a tax deferred basis under section 85(1) in exchange for the freeze and/or thin voting shares. Additional non-share consideration such as a promissory note may also be provided to the parents.[22]

Lastly, a holding company freeze is an alternative to an internal freeze where the freeze shares are transferred to a holding company instead of the parents directly. This will usually also rely on section 85. An example with a feature to address the parent's ability to use the lifetime capital gains exemption (as discussed below) is illustrated as follows in Figure D.

Fig. D Holding Company Estate Freeze



A holding company estate freeze is usually carried out by setting up a holding corporation and issuing common shares in it to the children. The parents then transfer the operating corporation shares to the holding corporation relying on section 85(1) of the Act, receiving in return freeze shares and thin voting shares if desired. A holding company can be used to hold assets and/or pool retained earnings to protect them against creditors and liabilities of the operating company. Furthermore, intercorporate dividends between a Canadian parent and its wholly owned subsidiary are generally deductible under section 112 of the Act. Consequently, an operating and holding corporation structure can be implemented without adverse tax consequences. This protects surplus retained earnings and other assets from operating company creditors and liabilities.

A potential issue with a holding corporate estate freeze as described, where the holding corporation is used to store accumulated assets, is that the shares of the operating company will not be shares of a "qualified small business corporation" because they are owned by a corporation rather than individuals. This means that they will not be eligible for the lifetime capital gains exemption as defined under section 110.6 of the Act. While shares in the holding corporation may qualify at the beginning, if the holding corporation is used to hold surplus assets it may quickly run afoul of the requirement that the corporation's assets be used principally in an active business carried on primarily in Canada. A method to preserve the parent's ability to make use of the lifetime capital gains exemption on a future sale of the operating corporation is for the operating corporation to declare a stock dividend of preferred shares prior to the freeze to the parents, redeemable for the amount of the remaining lifetime capital gains exemption. So long as the common shares that the dividend was declared upon were qualified small business

corporation shares at the time the dividend was issued, so to should the issued preferred shares. Likewise, a secondary freeze could be carried out to freeze the common shareholding of the holding corporation in the operating corporation, allowing the children to subscribe for common shares for the operating corporation directly with different post-freeze common shares issued to the holding corporation. This can allow future retained earnings to be removed from the holding corporation on an ongoing basis, the children holding shares directly in the operating corporation and the children's use of the lifetime capital gains exemption with respect to the operating corporation shares.[23]

Two potential traps that should be considered when implementing a holding company estate freeze are sections 55(2) and 84.1 of the Act. Section 55(2) is an is an anti-avoidance provision designed to prevent certain capital gains stripping — the removal of capital gains from a corporation on a tax-free/preferred basis. With exceptions, it can apply when a series of events or transactions create a significant reduction in a capital gain that would otherwise be realized on the fair market value disposition of a share. If the section applies it deems the dividend to be proceeds of a disposition or a gain.

Section 84.1 is another anti-avoidance clause aimed at restricting the tax-free removal of surplus from a corporation in non-arm's length transactions. It can deem that a dividend has been paid equal to the value that non-share consideration received exceeds the greater of paid-up capital and the hard-adjusted cost base of the transferred shares. While a detailed explanation of these anti-avoidance provisions is outside of the scope of this paper, they must be considered when implementing a holding corporation estate freeze. They also act as examples of the

legislature engaged in imposing limitations on what tax avoidance practices are and are not permitted.[24]

Even with the best planning, things can change and unexpected events can occur. It is important when planning an estate freeze to allow for altering the freeze structure to address changing circumstances. The next section will examine some of common ways in which an estate freeze may be altered should things not go as planned.

8. Altering an Estate Freeze

Changes to an estate freeze may be desired for a variety of reasons such as changing financial needs of the parents or family or marital circumstances. While there are many ways that an estate freeze can be altered (and re-implemented), three common ways that we will review are the melt, thaw and refreeze. In the context of the estate freeze, 'melt' is a term used to describe steps to allow the parents to access some of the appreciation of the corporation without affecting the structure of the estate freeze. A melt can be done in a variety of ways including by salary or bonus, dividend, management fee, share redemption and interest on notes taken back as part of the freeze. It is important to ensure, however, that the corporation will be able to deduct the payment to the parents. Notably, section 18(1)(a) of the Act limits deductions to amounts made or incurred for the purposes of gaining or producing income for the business or property. Section 67 of the Act limits deductions to amounts "reasonable in the circumstances." These considerations could cause concern where the parents are not active in the business and the payout is particularly large. Additionally, there may be taxes resulting from the transfer which

must also be considered. Share redemptions, for example, can trigger deemed dividends and capital gains taxes.[25]

In the context of an estate freeze, 'thaw' refers to the dissolution of the effects of an estate freeze. It can be carried out by way of the reacquisition of growth shares, conversion of freeze shares into common shares, or the use of a trust. The parents' reacquisition of the growth shares that were issued to the children during the estate freeze is an obvious way of undoing the freeze. Because the non-arm's length transfer will have to take place at fair market value, pursuant to section 69 of the Act, immediate capital gains tax will apply on the difference (if any) between the adjusted cost base of the shares and their fair market value. Because it can be difficult to value shares in a private corporation, the services of a professional business valuator and the use of a price adjustment clause are recommended. The conversion of the freeze shares into common shares is another possible approach to a thaw. This should not be a problem if the freeze shares were given a conversion right when issued. If they were not, however, it must be considered whether the attachment of such a conversion right constitutes a disposition and subsequent shareholder benefit under section 15(1) of the Act, which would be added to the computation of the parents' income for the year. Lastly, another way to thaw an estate freeze is to settle the growth shares into a discretionary family trust (often referred to as a "gel") with careful attention to ensure that the attribution rules found in sections 74.3 and 75(2) and section 107(4.1) do not apply.[26]

An estate freeze is implemented on the assumption that the value of the business (and growth shares) will go up. Should this not prove to be true and the business depreciate in value, it

may be desirable to carry out an estate 'refreeze' to reflect the new lower value of the business. This can be carried out by reorganizing the corporation so that the existing freeze shares are exchanged for new freeze shares reflecting the new lower value of the corporation. New growth shares can be given to the children or trust. Depending on the particulars of the initial structure consent of all parties may be required. Implementing a refreeze when the value of the business has declined can reduce taxes paid on the freeze shares at the time of death, free up capacity to pay dividends to the growth shares by reducing obligations to freeze shares and can reset the 21-year clock for deemed disposition of a trust when a new trust is created to hold newly issued growth shares.[27] The CRA has stated that generally an estate refreeze will not be considered to confer a shareholder benefit on the common shareholders so long as the reduction in fair market value of the freeze shares is not as a result of the stripping of corporate assets and the fair market value of the new preferred shares correspond to the fair market value of the preferred shares covered by the refreeze.[28]

As we have discussed, the estate freeze is a flexible structure that can be tailored to a variety of circumstances to impart numerous estate planning and tax benefits to family business owners. Recent political debate over the appropriateness of private company tax structures like those used in an estate freeze has resulted in proposals that will have a material impact on tax and estate planning for private companies.

9. Proposed Tax Fairness Reforms

A consultation paper and draft legislation were released on July 18, 2017 by the Minister of Finance, Bill Morneau, to "improve the fairness of Canada's tax system by closing tax loopholes

and amending existing rules to ensure that the richest Canadians pay their fair share of taxes and that people in similar circumstances pay similar amounts of tax."[29] If implemented, the proposed changes will place new restrictions on income splitting / tax on split income ("TOSI"), lifetime capital gains exemption, passive investment income and converting income to capital gains. The proposal would materially impact private company estate and tax planning and estate freeze structures.

The proposed changes specifically seek to place further limits on income splitting by amending the TOSI rules. Currently, the aforementioned "kiddie tax" precludes any tax benefit from income splitting with those under the age of 18. The new rules create a distinction between people between the ages of 18 and 24 and then those 25 or older. They implement a reasonableness test for "adult specified individuals" receiving split income, which varies depending on the age category of the individual, to assess his or her contribution to the business. The test seeks to determine if the labour and/or capital contributed justifies the payment and whether the individual should be taxed at his or her normal tax rate or the highest possible tax rate. The proposal also makes a number of additional minor changes relating to TOSI.[30]

The proposed changes also seek to put an end to the practice of multiplying the lifetime capital gains exemption by distributing capital gains to each family member so that each can rely upon his or her respective exemption. The proposal would exclude calculation of the lifetime capital gains exemption: i) on any gains realized or accrued before the taxpayer turns 18 years old; ii) to the extent to which a capital gain from the disposition of property is included in an individual's split income; and, iii) with exemptions for certain spousal or common-law partner

trusts, alter ego trusts and certain employee share ownership trusts, on gains accrued during the time that the property was held by a trust.[31] These changes to the applicability of the lifetime capital gains exemption will fundamentally alter tax planning considerations when implementing an estate freeze and will likely mean that the use of a family trust (as illustrated on page 5 in Fig. A) will no longer be desirable in many instances.

A common current practice is the retention of assets in a corporation for passive investment. Because the small business corporate tax rate is comparatively low, it can be advantageous to have a corporation invest surplus assets rather than paying it out to a shareholder as salary or a dividend for investment. This is so because the deferral of tax allows for a larger up-front investment amount. The government is currently engaged in public consultation on how best to eliminate the benefits from leaving assets in a private corporation for passive investment.

Finally, the proposal seeks to amend section 84.1 of the Act to prevent individuals from using non-arm's length 'step-up' transactions to increase the cost base of shares of a corporation in order to avoid the application of section 84.1 in a subsequent transaction, which, can in effect, convert what would otherwise be income into a tax preferred capital gain.[32]

While the particulars of an estate freeze will depend on the particulars of the family and business, these changes, if implemented, will in many instances, lessen the income splitting advantages of an estate freeze and the desirability of holding corporate shares in a trust with family members as beneficiaries.

10. Balancing Tax Incentives

Minister Morneau's proposed legislative amendments are a continuation of the ongoing balancing of competing tax principles. Morneau justifies the proposed amendments by stating:

> "I am proud to say that our Government has provided a middle-class tax cut that has benefited nearly 9 million Canadians and targeted the Canada Child Benefit to families who need it most. Canada also has a highly competitive corporate tax system, one of the most competitive among the G7 and the Organisation for Economic Co-operation and Development. The vast majority of Canadians work hard and pay their fair share of taxes on time, but when some are not paying their fair share, this leaves less money for health care, housing, child benefits, and other essential services and programs. And I will make every effort to ensure that our tax system continues to support our vision of a fair and prosperous Canada."[33]

While the statement is simplistic in its characterization of the changes, the underlying message is that prohibiting more sophisticated tax planning in favour of direct tax cuts promotes tax fairness by ensuring that taxpayers pay a rate of tax that is not dependent on whether they have the means or sophistication to set up a complicated business structure for tax avoidance purposes.

In response to Minister Morneau's proposals there has been significant alarm and concern expressed by members of the business community. Such objections include the assertions that the changes will in fact make the tax regime more complex due to the additional anti-avoidance provisions,[34] will hurt small business and potentially the Canadian economy,[35] are an attack on

business that disregards the risks that business people take,[36] and that the proposal has already thrown the Canadian private business owner tax system into turmoil and could result in a 93% tax rate on private corporations.[37] Though some of the points are alarmist, these objections do illustrate very real concerns about the impact of making significant tax changes that remove tax benefits that act as incentive for small business owners to engage in high risk activities that are of great benefit to the country and economy. The importance of small business and entrepreneurs to the economy is widely acknowledged including by the government of Canada.

Government statistics tell us that small businesses (as defined as businesses with fewer than 50 employees) are responsible for 30% of Canada's gross domestic product, that 97.9% of business in Canada are small businesses, that small businesses employ 70.5% of people employed in the private sector, and that 87.7% of net new job creation between 2005 and 2015 was from small businesses (all defined as businesses with fewer than 100 employees). Small business is not only essential for employment, it is responsible for a significant amount of the country's innovation, which can both improve the country's standard of living and keep the Canadian economy competitive in the international marketplace. For example, between 2011 and 2013 small business generated 27% of spending on research and development. A 2014 survey indicates that 41.7% of small businesses have implemented at least one type of innovation.[38] It should also be noted that medium and large businesses usually started off as small ones.

Clearly, there are important public policy reasons to support and incentivize the creation, growth and prosperity of small business. That said, however, there are a variety of different incentives for small business, in the Act and otherwise, and other principles must also be taken

into account when creating or reforming government policy. The proposed legislative changes, the response from members of the business community and the government request for additional input are examples of an ongoing discussion over how best to structure the tax system in light of competing considerations. As discussed at the beginning of this paper, the estate freeze is an example of one of a planning structure that was never explicitly legislated. Rather, established tax and estate planning practices have developed over time in response to what legislation and case law permit. Though there is no doubt that the current common practice use of corporations and trusts in business structures is beneficial for many small business owners and entrepreneurs and no doubt consequently acts as an incentive for small business, such organic development means that such incentives are only available to those who engage in complicated and costly tax planning exercises. Furthermore, what should be irrelevant factors like whether or not a business owner has a spouse, relatives or children to income split with or distribute capital gains to, currently impacts total tax paid by a business owner. Minister Morneau is therefore right to advance changes that will reduce the prevalence of complicated structures and allow for direct incentives to small businesses like adjusting the small business corporate tax rate. Increased tax neutrality with regard to business structuring will continue to allow for beneficial estate planning while treating small businesses in an equitable manner. As pointed out by members of the business community, the proposed changes may not be perfect, will surely add additional text to the act, and will cause a temporary stir as adjustments to existing structures are made. But the longer-term policy rationale behind the proposed changes is sound. Tax fairness, neutrality and simplicity are all advanced with ample opportunity to provide additional incentives directly.

11. The Equitable Estate Freeze

The estate freeze has become a commonly used structure for family business in Canada for both estate and tax planning reasons. It is useful to facilitate the transition of a family business from parents to children and is commonly used to income split with dividends and to reduce capital gains both by deferring the realization of capital gains on growth and by using the lifetime capital gains exemptions of multiple family members. Because it is a practice that has developed out of what common law and the Act do and do not permit, which are in effect policy decisions, it is fair to characterize the tax advantages that come from implementing an estate freeze as an incentive for small business. Public debate about whether or not some of these provisions, including income splitting with dividends and multiplying the capital gains exemption through the use of a trust, are fair, or whether they are unfair tax planning strategies that favour the wealthy and sophisticated at the expense of others has led to proposed legislative reform. While providing tax incentives to small business is a worthy aim, doing so should not be at the expense of tax fairness and simplicity. In this case these principles overlap in that a fair policy is one that in its applied form is also simple and therefore widely accessible. Because the policy of promoting small and family business can be advanced in other simpler and fairer ways, such as a reduction of the small business tax rate, the tax system is better served by phasing out tax planning strategies that reward undesired characteristics like the family make-up or the wherewithal to engage in complex tax planning. While the proposed amendments to the Act will be unpopular among some, the fact that such incentives can be simpler and fairer make the proposed legislative reforms ones that clearly advance laudable public policy goals.

END NOTES

[1] *Income Tax Act R.S.C., 1985, c. 1 (5th Supp.)*

[2] *Mcclurg v. Canada, [1990] 3 SCR 1020, 1990 CanLII 28 (SCC)* as cited in Stephanie Daniels and Kay E. Gray, "Advantages and Disadvantages of Various Forms of Estate Freeze Transactions," in 2015 British Columbia Tax Conference (Toronto: Canadian Tax Foundation, 2015), 8:1-32.

[3] *Income Tax Act*. *Supra*. Section 56(2).

[4] *Mcclurg v. Canada*. *Supra*. Page 2.

[5] *The Queen v. Kieboom, 92 DTC 6382 (FCA)* as cited in "Advantages and Disadvantages of Various Forms of Estate Freeze Transactions." *Supra*.

[6] David Louis. *Implementing Estate Freezes*. CCH (Toronto: 2011). Page 22.

[7] Martin J. Rochwerg and Krystle A. Ng-A-Mann, "Freezing, Thawing, and Refreezing: The Intricacies of an Estate Freeze," 2009 Ontario Tax Conference, (Toronto: Canadian Tax Foundation, 2009), 12:1-29. Page 6.

[8] *Canada Business Corporations Act, RSC 1985, c C-44*

[9] *Ibid*. Section 241(1).

[10] *Business Corporations Act, RSO 1990, c B.16*

[11] "Freezing, Thawing, and Refreezing: The Intricacies of an Estate Freeze." Supra. Pages 6-7.

[12] Canada Revenue Agency. "Capital Gains – 2016" <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4037-capital-gains-2016/capital-gains-2016.html#Whatisthe>. Accessed August 27, 2017.

[13] David G. Duff; Loomer, Geoffrey. *Taxation of Business Organizations in Canada*. Lexis Nexis (Toronto: December 2015). Pages 812-813.

[14] For a summary of the general anti-avoidance rule see: Canada Revenue Agency. "IC88-2 General Anti-Avoidance Rule - Section 245 of the Income Tax Act" <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic88-2-general-anti-avoidance-rule-section-245-income-tax-act/general-anti-avoidance-rule-section-245-income-tax-act.html>. Accessed August 28, 2017.

[15] David Louis. *Implementing Estate Freezes*. CCH (Toronto: 2011). Page 102.
[16] *Ibid*. Pages 106-107.

[17] *Ibid*. Pages 5-6.

[18] *Ibid*. Pages 6-7.

[19] *Ibid*. Page 7-8.

[20] Irwin Law's Canadian Online Legal Dictionary. "Trusts". <https://www.irwinlaw.com/cold/trusts>. Accessed August 29, 2017.

[21] *Implementing Estate Freezes*. *Ibid*. Pages 8-9.

[22] Robert C. Dunseith. "Estate Freezes: What, Why, When and How" Duncan & Craig LLP. <https://www.dcllp.com/publications/LESA_paper_on_Estate_Freezes.pdf>. Accessed August 30, 2017. Pages 7-9.

[23] *Ibid*. Pages 10-15.

[24] *Ibid*.

[25] Jesse Brodlieb. "Estate Freezes: An Update for 2015." Dentons Canada LLP. 2015. <https://www.ctf.ca/ctfweb/Custom/CMDownload.aspx?ContentKey=10b91032-7b37-4d46-9fb0-64ce1798d4e2&ContentItemKey=d1ec707d-04d5-4ac7-8852-fa9cbc74523d> Accessed September 1, 2017. Pages 17-18.

[26] "Freezing, Thawing, and Refreezing: The Intricacies of an Estate Freeze." *Supra*. Pages 23-25.

[27] Samantha Prasad. "Canada: The Taxletter: Family Business Succession Planning II: The Refreeze." Minden Gross. <http://www.mondaq.com/canada/x/518982/property+taxes/The+Taxletter+Family+Business+Succession+Planning+II+The+Refreeze> Accessed September 2, 2017.

[28] "Freezing, Thawing, and Refreezing: The Intricacies of an Estate Freeze." *Supra*. Pages 25-26.

[29] Department of Finance. "Minister Morneau Announces Next Steps in Improving Fairness in the Tax System by Closing Loopholes and Addressing Tax Planning Strategies." July 18, 2017. <https://www.fin.gc.ca/n17/17-066-eng.asp>. Accessed August 27, 2017.

[30] Department of Finance Canada. "Tax Planning Using Private Corporations." July 18, 2017. <https://www.fin.gc.ca/activty/consult/tppc-pfsp-eng.asp>. Accessed September 4, 2017.

[31] *Ibid*.

[32] *Ibid*.

[33] Department of Finance Canada. “Minister Morneau Brings Message of Tax Fairness to Toronto Region Board of Trade.” May 25, 2017. <http://www.fin.gc.ca/n17/17-049-eng.asp>. Accessed September 2, 2017.

[34] Tim Cestnick. “Proposed Tax changes would shake the small-business world.” The Globe and Mail. July 20, 2017. <https://beta.theglobeandmail.com/globe-investor/personal-finance/taxes/proposed-tax-changes-will-shake-the-small-business-world/article35754872/?ref=http://www.theglobeandmail.com&>. Accessed September 4, 2017.

[35] Martin Pelletier. “Beware the unintended consequences of Ottawa’s private corporation tax changes.” Financial Post. August 1, 2017. <http://business.financialpost.com/investing/investing-pro/beware-the-unintended-consequences-of-ottawas-private-corporation-tax-changes#comments-area>. Accessed September 4, 2017.

[36] Kevin Cheung. “Feds’ proposed private corporation tax changes are an attack on lawyers and business.” Canadian Lawyer. August 14, 2017. <http://www.canadianlawyermag.com/author/kevin-cheung/feds-proposed-private-corporation-tax-changes-are-an-attack-on-lawyers-and-business-3716/>. Accessed September 4, 2017.

[37] Jamie Golombek. “A 93% tax rate? Private corporation tax could make it possible.” Financial Post. August 4, 2017. <http://business.financialpost.com/personal-finance/taxes/a-93-per-cent-tax-rate-private-corporation-tax-could-make-it-possible>. Accessed September 4, 2017.

[38] Innovation, Science and Economic Development Canada, Small Business Branch. “Key Small Business Statistics - June 2016.” <https://www.ic.gc.ca/eic/site/061.nsf/eng/h_03018.html#toc-01>. Accessed September 4, 2017.

WORKS CONSULTED

Legislation

Business Corporations Act, RSO 1990, c B.16

Canada Business Corporations Act, RSC 1985, c C-44

Income Tax Act R.S.C., 1985, c. 1 (5th Supp.)

Cases

Mcclurg v. Canada, [1990] 3 SCR 1020, 1990 CanLII 28 (SCC)

The Queen v. Kieboom, 92 DTC 6382 (FCA)

Secondary Sources

Canada Revenue Agency. “Capital Gains – 2016” <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4037-capital-gains-2016/capital-gains-2016.html#Whatisthe>. Accessed August 27, 2017.

Canada Revenue Agency. “IC88-2 General Anti-Avoidance Rule - Section 245 of the Income Tax Act” <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic88-2-general-anti-avoidance-rule-section-245-income-tax-act/general-anti-avoidance-rule-section-245-income-tax-act.html>. Accessed August 28, 2017.

David G. Duff; Loomer, Geoffrey. *Taxation of Business Organizations in Canada*. Lexis Nexis (Toronto: December 2015).

David Louis. *Implementing Estate Freezes*. CCH (Toronto: 2011)

Department of Finance. “Minister Morneau Announces Next Steps in Improving Fairness in the Tax System by Closing Loopholes and Addressing Tax Planning Strategies.” July 18, 2017. <https://www.fin.gc.ca/n17/17-066-eng.asp>. Accessed August 27, 2017.

Department of Finance Canada. “Minister Morneau Brings Message of Tax Fairness to Toronto Region Board of Trade.” May 25, 2017. <http://www.fin.gc.ca/n17/17-049-eng.asp>. Accessed September 2, 2017.

Department of Finance Canada. “Tax Planning Using Private Corporations.” July 18, 2017. < https://www.fin.gc.ca/activty/consult/tppc-pfsp-eng.asp>. Accessed September 4, 2017.

Innovation, Science and Economic Development Canada, Small Business Branch. “Key Small Business Statistics - June 2016.” <https://www.ic.gc.ca/eic/site/061.nsf/eng/h_03018.html#toc-01>. Accessed September 4, 2017.

Jamie Golombek. “A 93% tax rate? Private corporation tax could make it possible.” Financial Post. August 4, 2017. <http://business.financialpost.com/personal-finance/taxes/a-93-per-cent-tax-rate-private-corporation-tax-could-make-it-possible>. Accessed September 4, 2017.

Jesse Brodlieb. “Estate Freezes: An Update for 2015.” Dentons Canada LLP. 2015. <https://www.ctf.ca/ctfweb/Custom/CMDownload.aspx?ContentKey=10b91032-7b37-4d46-9fb0-64ce1798d4e2&ContentItemKey=d1ec707d-04d5-4ac7-8852-fa9cbc74523d> Accessed September 1, 2017.

Kevin Cheung. “Feds’ proposed private corporation tax changes are an attack on lawyers and business.” Canadian Lawyer. August 14, 2017. <http://www.canadianlawyermag.com/author/kevin-cheung/feds-proposed-private-corporation-tax-changes-are-an-attack-on-lawyers-and-business-3716/>. Accessed September 4, 2017.

Kevin Fritz. Important changes proposed for the taxation of Canadian private corporations. July 24, 2017. DLA Piper. <https://www.dlapiper.com/en/canada/insights/publications/2017/07/changes-for-taxation-canadian-private-corporations/>. Accessed August 27, 2017.

Martin Pelletier. "Beware the unintended consequences of Ottawa's private corporation tax changes." Financial Post. August 1, 2017. <http://business.financialpost.com/investing/investing-pro/beware-the-unintended-consequences-of-ottawas-private-corporation-tax-changes#comments-area>. Accessed September 4, 2017.

Martin J. Rochwerg and Krystle A. Ng-A-Mann, "Freezing, Thawing, and Refreezing: The Intricacies of an Estate Freeze," 2009 Ontario Tax Conference, (Toronto: Canadian Tax Foundation, 2009), 12:1-29.

Robert C. Dunseith. "Estate Freezes: What, Why, When and How" Duncan & Craig LLP. <https://www.dcllp.com/publications/LESA_paper_on_Estate_Freezes.pdf>. Accessed August 30, 2017.

Tim Cestnick. "Proposed Tax changes would shake the small-business world." The Globe and Mail. July 20, 2017. <https://beta.theglobeandmail.com/globe-investor/personal-finance/taxes/proposed-tax-changes-will-shake-the-small-business-world/article35754872/?ref=http://www.theglobeandmail.com&>. Accessed September 4, 2017.

Samantha Prasad. "Canada: The Taxletter: Family Business Succession Planning II: The Refreeze." Minden Gross. <http://www.mondaq.com/canada/x/518982/property+taxes/The+Taxletter+Family+Business+Succession+Planning+II+The+Refreeze> Accessed September 2, 2017.

Stephanie Daniels and Kay E. Gray, "Advantages and Disadvantages of Various Forms of Estate Freeze Transactions," in 2015 British Columbia Tax Conference (Toronto: Canadian Tax Foundation, 2015), 8:1-32.

AUTHOR INFORMATION

Nicholas dePencier Wright. Wright Business Law, Toronto. BA (2000) King's College, Halifax; JD (2007) Dalhousie; MBA (2007) Dalhousie; LLM Taxation candidate at Osgoode Hall Law School, York University. Email: nick@wrightbusinesslaw.ca.

BIBLIOGRAPHICAL INFORMATION

Nicholas dePencier Wright "The Estate Freeze: Balancing Tax Incentives with Fairness & Simplicity" (Toronto: 2017).