Tax --- Income tax — Tax avoidance — General anti-avoidance rule (GAAR) — Avoidance transaction
[ENGLISH TRANSLATION] 1 This is an appeal from a decision of Justice Favreau of the Tax Court of Canada (the TCC judge) confirming the validity of a reassessment issued by the Minister of National Revenue (the Minister) with respect to Pierre Pomerleau's (Mr. Pomerleau or the appellant) 2005 taxation year. 2 This reassessment was issued pursuant to the general anti-avoidance rule (GAAR) provided for in section 245 of the Income Tax Act , R.S.C. 1985, c. 1 (5th Supp.) (the ITA) and, as a consequence of the appellant's alleged abuse of section 84.1, taxes in his hands the

Pomerleau c. Canada

PIERRE POMERLEAU (Appellant) and HER MAJESTY THE QUEEN (Respondent)

Citation: 2018 CarswellNat 3433, 2018 FCA 129, 2018 CAF 129, 2018 D.T.C. 5076, 2018 D.T.C. 5081, [2019] 3 C.T.C. 134
Federal Court of Appeal
Marc Noël C.J., Richard Boivin, Yves de Montigny JJ.A.
Heard: April 16, 2018
Judgment: June 29, 2018
Year: 2018
Docket: A-456-16

Proceedings: affirming *Pomerleau c. R.* (2016), 2016 CarswellNat 12004, 2016 TCC 228, (sub nom. *Pomerleau v. R.*) 2016 D.T.C. 1206, 2016 CarswellNat 5819, 2016 CCI 228 (T.C.C. [General Procedure])

Counsel: Angelo Nikolakakis, Rachel Robert, Maude Lussier-Bourque, for the Appellant
Nathalie Goulard, for the Respondent

Subject:
Corporate and Commercial; Income Tax (Federal)

Table of Authorities

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APPEAL from judgment reported at Pomerleau c. R. (2016), 2016 CCI 228, 2016 CarswellNat 5819, 2016 D.T.C. 1206, 2016 TCC 228, 2016 CarswellNat 12004 (T.C.C. [General Procedure]), dismissing appeal from Minister's assessment annulling capital loss.
***Marc Noël C.J.*:**

[ENGLISH TRANSLATION]

1 This is an appeal from a decision of Justice Favreau of the Tax Court of Canada (the TCC judge) confirming the validity of a reassessment issued by the Minister of National Revenue (the Minister) with respect to Pierre Pomerleau's (Mr. Pomerleau or the appellant) 2005 taxation year.

2 This reassessment was issued pursuant to the general anti-avoidance rule (GAAR) provided for in section 245 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA) and, as a consequence of the appellant's alleged abuse of section 84.1, taxes in his hands the deemed dividend he would have received, had this provision not been circumvented.

3 In support of his appeal, the appellant argues that the TCC judge erred in concluding that there was abusive tax avoidance within the meaning of subsection 245(4). In the alternative, the appellant submits that the proposed tax consequences are not "reasonable in the circumstances" within the meaning of subsection 245(5) and that the TCC judge erred in failing to address this issue.

4 Her Majesty the Queen (the Crown or the respondent), for her part, takes the position that neither of these arguments warrant this Court's intervention.

5 For the reasons that follow, I am of the view that the appeal should be dismissed. First, the TCC judge correctly identified the object, spirit and purpose of section 84.1and properly held that the tax plan culminating with the appellant's share redemption defeats the rationale which underlies this provision. Second, the appellant has not succeeded in showing that levying tax on the resulting deemed dividend in the amount of $994,628 pursuant to subsection 245(5) is unreasonable, given the abuse identified.

6 The relevant statutory provisions for the analysis that follows are reproduced in the appendix to these reasons.

FACTS
7 The appellant is president of Hervé Pomerleau Inc., a Quebec construction company. In 2004, the appellant wanted to build a chalet and desired to obtain the required funds from his company (Reasons, paragraph 14).

8 After consulting with an accounting firm, a tax plan was put in place in order to minimize the impact of any resulting tax liability. A central element of the plan was the preservation of the adjusted cost base (ACB) of certain shares of Groupe Pomerleau Inc. (Groupe Pomerleau), the sole shareholder of Hervé Pomerleau Inc.

9 Groupe Pomerleau's share capital was held by members of the Pomerleau family. The shares held by the appellant, his mother and his siblings (Gaby, Élaine and Francis) were Class F shares. They had become the owners of these shares in 1989 as the result of an estate freeze during which they availed themselves of the rollover under subsection 85(1) to exchange

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their Class A shares for Class F shares of Groupe Pomerleau. Upon the disposition of their Class A shares, the appellant, his mother and his sister claimed the capital gains deduction provided under subsection 110.6(2.1) and therefore paid no tax on the capital gains arising from these dispositions. Moreover, in accordance with subsection 85(1), the proceeds of disposition of the Class A shares became the ACB of the Class F shares of Groupe Pomerleau so that the capital gains subject to the deduction were now reflected in the ACB of the Class F shares of Groupe Pomerleau.

10 In order to implement that tax plan, the appellant's mother first gave him half of her Class F shares. As they were related persons within the meaning of the ITA, the ACB of those shares in the hands of the appellant was deemed to be equal their fair market value (FMV) at the time the gift was made, which was $195,128 (see paragraph 69(1)(*c*)).

11 The appellant and his sister Gaby then transferred all of their Class F shares to a holding company named P Pom Inc. (P Pom), which was wholly owned by the appellant. In exchange, they were issued Class A and G shares of P Pom. In making this exchange, the parties availed themselves of the rollover provided for under subsection 85(1) and the elected amount thereunder corresponded to the ACB of the transferred shares—*i.e.*: the Class F shares of Groupe Pomerleau. Because the parties chose to allocate the agreed amount solely to the Class G shares of P Pom, the ACB originating in the Class F shares of Groupe Pomerleau was henceforth entirely reflected in the Class G shares of P Pom while the ACB of the Class A shares of P Pom was nil.

12 Gaby then transferred all of the shares she held in P Pom to the appellant. Given the fact that no consideration was paid and that they are siblings, the transfer triggered the application of paragraphs 69(1)(*b*) and 69(1)(*c*). The appellant was therefore deemed to have acquired those shares at a cost equal to their FMV, that is, $999,184 for the Class A shares and $407,600 for the Class G shares. The ACB of the Class A shares of P Pom held by the appellant thus went from nil to $999,184.

13 It is useful to point out that the Minister did not take issue with this part of the increase of the ACB of the Class A shares of P Pom given that it reflects an amount on which tax was paid.

14 The same cannot be said about the ACB of the 1,010,328 Class G shares of P Pom which the appellant held at this stage, which stood at $1,010,328. This ACB was previously part of the ACB of the Class F shares of Groupe Pomerleau and reflects amounts with respect of which a capital gains deduction had been claimed by the appellant, his sister and his mother.

15 P Pom then redeemed its Class G shares at a price equal to their FMV, $1,010,328. As their paid-up capital stood at $15,700, subsection 84(3) became operational with the result that the appellant was deemed to have received a dividend in the amount of $994,628 and to have incurred a capital loss of $994,628 (See subsection 84(3) when read in conjunction with the definition of "proceeds of disposition" in section 54). This loss was in turn deemed to be nil by the operation of paragraph 40(3.6)(*a*) and was added to the ACB of the Class A shares held by the appellant in the capital stock of P Pom by the operation of paragraphs 40(3.6)(*b*) and 53(1)(*f.2*). Accordingly, the ACB of these shares was increased to $1,993,812 from $999,184.

16 Such was the situation when the appellant transferred his Class A shares of P Pom to Gestion Pierre Pomerleau Inc. (Gestion), a holding company of which he was the sole shareholder. In exchange for his Class A shares of P Pom, the appellant received Class A and C shares of Gestion. The transfer was once again made by way of a rollover pursuant to subsection 85(1). The elected amount corresponded to the ACB of the Class A shares of P Pom, and was allocated exclusively to the ACB of the Class C shares of Gestion. As a result, the paid-up capital of Gestion's Class C shares was set at the same amount—*i.e.*: $1,993,812.

17 The Class C shares of Gestion were then redeemed for an amount equal to their paid-up capital, thus putting $1,993,812 in the hands of the appellant as a return of capital.

18 To achieve this result, the appellant had to avoid the application of section 84.1 (Partial Agreed Statement of Facts, Appeal Book, Vol. 1, Tab f, page 6, paragraph 17). This provision provides, among other things, that where a taxpayer transfers shares of one corporation to another corporation with which it does not deal at arm's length and receives shares

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as consideration (respectively the "subject shares" and the "new shares", undersection 84.1), the paid-up capital of the new shares will be equal to the greater of the paid-up capital of the subject shares or their ACB. For the purposes of this calculation, the ACB of the subject shares must be reduced when it comprises amounts in respect of which the taxpayer or a person related to the taxpayer has previously claimed a capital gains deduction. In the present case, this reduction (See paragraph 84.1(2)(*a.1*)) had no effect by reason of the combined application of paragraphs 40(3.6)(*a*), 40(3.6)(*b*) and 53(1)(*f.2*) triggered by the tax plan put in place by the appellant.

- The reassessment

19 According to the Minister, this result, although consistent with the text of paragraph 84.1(2)(*a.1*), defeats its underlying rationale because out of the $1,993,812 received by the appellant upon the redemption of the Class C shares of Gestion, $994,628 can be traced to amounts in respect of which the capital gains deduction had been claimed and on which no tax had therefore been paid.

20 In issuing the reassessment, the Minister acknowledged that the ACB of the Class A shares of P Pom (*i.e.*: the subject shares) does not represent an "[...] amount in respect of which a deduction under section 110.6 [had been] claimed [...]" (subparagraph 84.1(2)(*a.1*)(ii)). Rather, it represented the loss that was refused following the deemed dividend since it is this loss that was added the ACB of the Class A shares of P Pom Inc pursuant to paragraph 40(3.6)(*b*).

21 The Minister's reassessment altered the tax consequences of the share redemption by using that amount as a reduction factor in the calculation provided for in subparagraph (ii) of paragraph 84.1(2)(*a.1*), thereby rendering the appellant liable for tax on a deemed dividend of $994,628 as a result of the combined effect of paragraph 84.1(1)(*a*) and subsection 84(3).

22 The appellant appealed the reassessments to the Tax Court of Canada after they were confirmed by the Minister.

DECISION OF TAX COURT OF CANADA

23 Because the appellant conceded that his plan gave rise to a series of avoidance transactions that yielded a tax benefit, the only issue that the TCC judge had to decide was whether there had been an abuse of the statutory provisions relied on in order to obtain this benefit (Reasons, paragraphs 32 and 45).

24 Turning first to the text of section 84.1, the TCC judge noted that this provision applies when an individual resident in Canada transfers shares from one Canadian corporation to another with which he or she is not dealing at arm's length and, following the transfer, the two corporations are connected. In such a case, section 84.1 alters the tax consequences of the transaction (Reasons, paragraph 51).

25 The effect of section 84.1 "is either to reduce the paid-up capital of the new shares [...] or to deem a taxable dividend to have been paid to the transferor, insofar as the non-share consideration and/or the paid-up capital of the new shares exceed the greater of the paid-up capital or the ACB of the subject shares immediately before the disposition" (Reasons, paragraph 52).

26 The impact of section 84.1 on the new shares turns on the modification of the ACB of the subject shares brought about by paragraphs 84.1(2)(*a*) and (*a.1*). Paragraph (*a.1*) reduces the ACB of the subject shares by any amount in respect of which a capital gains deduction has been claimed under subsection 110.6(2.1), either by the transferor or by an individual with whom the transferor does not deal at arm's length (Reasons, paragraphs 53 and 54).

27 In this case, paragraph 84.1(2)(*a.1*) did not apply despite the fact that nearly half the ACB of the Class A shares of P Pom (*i.e.*: $994,628) came from an amount in respect of which a capital gains deduction had been claimed. The TCC judge, relying on the joint position of the parties on this point, explained that it was the combined effect of paragraphs 40(3.6)(*a*), 40(3.6)(*b*) and 53(1)(*f.2*) that caused the Class A shares of P Pom to escape the application of subparagraph 84.1(2)(*a.1*)(ii) (Reasons, paragraphs 56 and 57).

28 Turning next to the "contextual analysis", the TCC judge concluded that the relevant legislative context is the legislative scheme dealing with the taxation of corporations and their shareholders as well as the scheme related to the computation of

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paid-up capital. With respect to corporate taxation, the TCC judge began by noting that a corporation's surplus is distributed by way of dividend. When the shareholder is a corporation, the dividend is included and then deducted from its income. When the shareholder is an individual, the dividend is grossed up and included in income, and a tax credit is granted in recognition of the tax paid by the corporation. This gives effect to the principle of integration according to which income is taxed the same way, whether it be earned directly or through a corporation (Reasons, paragraphs 60 to 63).

29 According to the TCC judge, there is a clear scheme whereby corporate surpluses must be distributed to shareholders by way of dividend and be taxed as such, unless the amount represents a return of capital (Reasons, paragraph 64). When the distribution is done by other means, sections 84.1 and 212.1 together with subsection 85(2.1) come into play to ensure that the resulting tax treatment is similar to what would occur, if the corporate surplus had been distributed by way of dividend (Reasons, paragraph 64).

30 In contrast, paid-up capital represents amounts on which tax has been paid and accordingly can be distributed by a corporation on a tax-free basis (Reasons, paragraphs 65 and 66). Sections 84.1 and 212.1 are specific anti-avoidance rules that prevent a taxpayer from taking advantage of non-arm's length relationships in order to remove amounts in excess of the paid-up capital on a tax free basis (Reasons, paragraph 67).

31 After reviewing the history of section 84.1 (Reasons, paragraphs 70 to 75), the TCC judge concluded his analysis as follows (Reasons, paragraph 78):

> [T]he textual, contextual and purposive analysis shows that the object, spirit or purpose of section 84.1 of the Act is to prevent a taxpayer from performing non-arm's length transactions whose goal is to strip a corporation of its surpluses tax-free through the use of a capital gains deduction or the tax-free value on valuation day [...].

32 The TCC judge therefore concluded that the object, spirit and purpose of section 84.1 was frustrated by the result achieved in this case. Despite the fact that part of the ACB of the Class A shares of P Pom came entirely from an amount in respect of which a capital gains deduction had been claimed, the appellant circumvented the application of paragraph 84.1(2)(*a.1*) by isolating the ACB of the Class F shares of Groupe Pomerleau in the Class G shares of P Pom and then triggering a capital loss in order to increase the ACB of the Class A shares of P Pom (Reasons, paragraphs 81, 84 and 85). Consequently, $994,628 from Gestion's surplus was distributed to the appellant tax-free, which defeats the object, spirit and purpose of section 84.1 (Reasons, paragraphs 81, 83 and 87).

POSITIONS OF THE PARTIES

- Appellant

33 The appellant challenges the Tax Court judge's conclusion and points to three errors. First, he submits that the series of transactions was part of an intergenerational transfer of a family business and that the object, spirit and purpose of section 84.1 does not have the effect of preventing surplus stripping in such a context. The appellant cites the legislative history of section 84.1 and certain extrinsic materials in support of this argument.

34 The former section 138A, which the appellant describes as a [TRANSLATION] “predecessor to section 84.1”, gave the Minister the discretion to take action against abusive surplus stripping. In 1974, the Canada Revenue Agency (CRA) stated that this provision would not be applied when taxpayers sold all of the shares they had in a corporation in the course of a genuine sale (Appellant's Memorandum, paragraph 40). Authors Heward Stikeman and Robert Couzin have also noted that, from 1975 onwards, it was reasonable to assume that this discretion would not be exercised in respect of certain transactions involving members of the same family (Appellant's Memorandum, paragraph 41).

35 In the same vein, the appellant points out that, in a budget document published by the Department of Finance in 1977, the Minister explained that the rules applicable to surplus stripping would have [TRANSLATION] “a considerably narrowed scope” (Appellant's Memorandum, paragraph 42). When section 84.1 was amended in 1985 following the introduction of the capital gains exemption, this policy of restraint remained unchanged (Appellant's Memorandum, paragraphs 43 to 46).

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36 Finally, around the same time, the CRA reiterated its position that section 84.1 would not be applied to certain transactions between persons who do not deal at arm's length, for example, when a father sells a company to a son who participates in its operation. The appellant argues that, even though the CRA disavowed this policy following the Tax Court of Canada's decision in *Descarries v. The Queen*, 2014 TCC 75 [*Descarries*], the object, spirit and purpose of section 84.1 does not prevent transactions such as the one in issue when carried out in the context of an intergenerational transfer of a family business (Appellant's Memorandum, paragraphs 48 to 50).

37 Second, the appellant submits that the ACB of the Class A shares of P Pom was increased by operation of subsection 40(3.6) and not, as the respondent claims, because of a crystallization of the capital gains deduction. Had Parliament intended subparagraph 84.1(2)(*a.1*)(ii) to apply to reduce the ACB of a share in these circumstances, it would have amended the ITA accordingly (Appellant's Memorandum, paragraphs 53 and 54).

38 According to the appellant, the principle of implied exclusion must be applied in construing section 84.1. In this respect, he relies on the Supreme Court's decision in *Copthorne Holdings Ltd. v. Canada*, 2011 SCC 63, [2011] 3 S.C.R. 721 [*Copthorne*] where the Court acknowledged that the object, spirit and purpose of the provisions of the ITA may be no broader than the text itself (Appellant's Memorandum, paragraph 58). It follows that the principle of implied exclusion remains a relevant approach to statutory interpretation, even where the GAAR is in play (Appellant's Memorandum, paragraph 59).

39 Moreover, in *Canada v. Collins & Aikman Canada Inc.*, 2010 FCA 251, [2011] 1 C.T.C. 250 [*Collins & Aikman*], this Court confirmed that [TRANSLATION] “the implied exclusion principle applies to section 84.1 of the Act” (Appellant's Memorandum, paragraph 64). The limited scope of this section must therefore be respected. Had Parliament intended subparagraph 84.1(2)(*a.1*)(ii) to apply to an increase resulting from the application of subsection 40(3.6), it would have so provided. According to the appellant, using the GAAR to expand the scope of subparagraph 84.1(2)(*a.1*)(ii) runs afoul well-established jurisprudential principles (Appellant's Memorandum, paragraph 64).

40 Third, the appellant submits that the decision of the Tax Court of Canada in *Descarries* is based on problematic reasoning and should not guide this analysis. The judge who heard that case did not review the legislative history of section 84.1. Had he done so, he would have had no choice but to find that section 84.1 does not apply in the context of a genuine intergenerational transfer of a family business (Appellant's Memorandum, paragraphs 77 to 79). Nor did the judge apply the principle of implied exclusion in construing section 84.1, contrary to the approach called for in *Collins & Aikman* (Appellant's Memorandum, paragraph 83).

41 Alleging the same shortcomings, the appellant argues that the decision of the Tax Court of Canada in *Desmarais v. The Queen*, 2006 TCC 44 [*Desmarais*] was also wrongly decided and should not have been followed by the TCC judge (Appellant's Memorandum, paragraphs 84 to 94).

42 Finally, should this Court conclude that there was abusive tax avoidance, the appellant submits that the consequential adjustments brought about by the reassessment are unreasonable because they give rise to double taxation (Appellant's Memorandum, paragraph 96). This double taxation would result from the fact that a capital loss was deemed to be nil in accordance with paragraph 40(3.6)(*a*) and that the reassessment had the effect of levying tax on this same amount (Appellant's Memorandum, paragraphs 95 to 97). According to the appellant, [TRANSLATION] “the proceeds of disposition of the shares should be reduced by operation of the Act so that the loss is preserved” (Appellant's Memorandum, paragraph 101). The TCC judge erred in not ruling on this issue (Appellant's Memorandum, paragraphs 95 and 100).

- Respondent

43 According to the respondent, the implied exclusion principle on which the appellant relies was clearly rejected by the Supreme Court in *Copthorne*. In that case, Rothstein J. explained that, by invoking the GAAR, the Minister acknowledges that the transaction in question is consistent with the text of the statute but contends that it frustrates its object, spirit and purpose. Therefore, when the GAAR is invoked, it is not the literal meaning of the text but the underlying rationale of the provision that is in issue (Crown's Memorandum, paragraphs 33 to 36 and 40). That being said, the Crown acknowledges that

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the object, spirit and purpose of certain provisions may be circumscribed by their language. In her view however, section 84.1 is not one of these provisions (Crown's Memorandum, paragraph 37).

44 Contrary to the appellant's assertions, in *Collins & Aikman*, the Federal Court of Appeal did not use the implied exclusion principle to limit the application of section 84.1. Rather, the Court concluded that the transaction in issue was not subject to section 212.1 and that the limited scope of that provision had to be respected (Crown's Memorandum, paragraph 38).

45 According to the respondent, the TCC judge correctly concluded that the purpose of section 84.1 is [TRANSLATION] "to prevent a taxpayer from performing non-arm's length transactions whose goal is to strip a corporation of its surpluses tax-free through the use of a capital gains deduction or the tax-free value on valuation day" (Respondent's Memorandum, paragraph 41). The fact that the series of transactions was allegedly undertaken to carry out an intergenerational transfer has no impact on its application (Crown's Memorandum, paragraph 42).

46 Section 84.1 is an anti-avoidance rule that applies when an individual transfers shares in one corporation resident in Canada to another with which the transferor does not deal at arm's length and, immediately after the share transfer, the corporations are related (Respondent's Memorandum, paragraph 45). When these conditions are met, section 84.1 provides that the paid-up capital of the shares issued as consideration for the subject shares (*i.e.*: the "new shares") will be limited to the greater of the paid-up capital of the subject shares or their ACB as modified by subsection 84.1(2) (Respondent's Memorandum, paragraph 48). The effect of subparagraph 84.1(2)(*a.1*)(ii) is to reduce the ACB of the new shares by the amount of the capital gains deduction claimed by the transferor or by a person with whom the transferor is not dealing at arm's length in a prior disposition of the subject shares or shares for which they were substituted (Crown's Memorandum, paragraphs 47, 48 and 49).

47 In the present case, subparagraph 84.1(2)(*a.1*)(ii) did not apply despite the fact that $994,628 of the ACB of the subject shares came indirectly from funds in respect of which a capital gains deduction had been claimed (Crown's Memorandum, paragraph 51). Indeed, the ACB of the Class A shares of P Pom came from the ACB of the Class G shares of P Pom, which itself came from the Class F shares of Groupe Pomerleau (Respondent's Memorandum, paragraph 52).

48 According to the respondent, the relevant legislative context in this case includes the statutory scheme pertaining to the taxation of corporations and their shareholders as well as the scheme related to paid-up capital. The former involves two levels of taxation. The corporation is taxed on its income, and the shareholder is taxed when he or she receives a distribution from the corporation (Crown's Memorandum, paragraph 56).

49 Where the distribution is made by way of dividend to a shareholder that is a corporation, the dividend is included in and then deducted from its income. When the shareholder is an individual, a gross-up and credit system applies to recognize the amount of tax already paid by the corporation. This mechanism ensures a certain degree of neutrality by taxing all income the same, whether it is earned directly by the shareholder or through a corporation (Crown's Memorandum, paragraphs 54 to 59).

50 Where corporate surpluses are distributed otherwise than by way of dividend, the ITA taxes such amounts as if they were dividends, unless they represent a return of capital (Crown's Memorandum, paragraph 60). The amount initially invested when the shares are issued comes from funds on which tax has already been paid, which explains why these funds can be returned to the shareholder tax-free whereas amounts in excess of the paid-up capital cannot. The purpose of sections 84.1 and 212.1 is to give effect to this objective; the reduction in paid-up capital sought in these provisions prevents shareholders from receiving amounts in excess of their initial investment on a tax-free basis (Crown's Memorandum, paragraphs 61 to 63).

51 In this case, the appellant successfully thwarted this objective through his abuse of subsection 40(3.6) (Crown's Memorandum, paragraph 79). The high ACB of the shares derived from amounts on which a capital gains deduction had been claimed was [TRANSLATION] "isolated in a single class of shares", which were then redeemed in order to trigger a capital loss subject to the deeming rule and the ACB adjustments provided for in subsection 40(3.6) (Crown's Memorandum, paragraph 81). The appellant thereby increased the ACB of the Class A shares of P Pom and exchanged them for shares with a paid-up capital equal to their ACB, thus avoiding the application of subparagraph 84.1(2)(*a.1*)(ii).

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52 Finally, the respondent submits that the appellant's alternative argument must also be rejected. The only effect of the reassessment was to deny the tax benefit obtained. To achieve this, the appellant was deemed to have received a dividend, the effect of which was to eliminate the tax benefit he would have otherwise obtained (Crown's Memorandum, paragraph 83).

53 The question surrounding the tax consequences of the remaining shares and the preservation of a possible loss was not in issue before the TCC judge, and no evidence was introduced in support of such an adjustment. It was only when the reply was filed that this question was raised (Crown's Memorandum, paragraph 84). The respondent adds—citing paragraphs 55 to 59 of this Court's decision in *Triad Gestco Ltd. v. Canada*, 2012 FCA 258, [2014] 2 F.C.R. 199—that the question is hypothetical and that it is too late to raise it (Respondent's Memorandum, paragraph 85).

ANALYSIS

54 In a GAAR analysis, three questions must be addressed: was there a tax benefit? If so, were the transactions giving rise to that benefit avoidance transactions? If so, were these transactions abusive? (*Copthorne*, paragraph 33, citing *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 [*Trustco*], paragraphs 18, 21 and 36).

55 The appellant acknowledges that the receipt of the amount of $994,628 on a tax-free basis upon the redemption by Gestion of its Class C shares constitutes a tax benefit and that this benefit was achieved by entering into avoidance transactions. The only issue to be decided is therefore whether the TCC judge was correct in concluding that this outcome frustrates the object, spirit and purpose of section 84.1.

56 This is a question of mixed fact and law and is therefore subject to the standard of palpable and overriding error (*Trustco*, paragraph 44; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*], paragraph 37). However, the abuse analysis proceeds in two stages. The first stage requires the determination of the object, spirit and purpose of the provisions at issue, and the second is to determine whether the tax benefit obtained frustrates these provisions so construed (*Trustco*, paragraph 44). The object, spirit and purpose of a provision is discerned byway of statutory interpretation (*Copthorne*, para 70). This gives rise to a question of law which is an extricable part of the analysis. It is therefore subject to the standard of correctness (*Trustco*, paragraph 44, *Housen*, paragraphs 8 to 37).

57 Finally, it is useful to recall that in a GAAR analysis, the textual, contextual and purposive analysis is employed to determine the object, spirit and purpose of the provisions in issue which requires a search for the rationale that may not be captured by the text itself (*Copthorne*, paragraph 70, *Trustco*, paragraph 65). In this respect, the burden of demonstrating that a GAAR analysis gives the relevant provisions a broader scope than that revealed by the words rests with the Crown.

- Paid-up capital and ACB

58 Before embarking on the analysis of the object, spirit and purpose of section 84.1 as such, it is helpful to briefly consider the two fundamental concepts which underlie this provision—*i.e.*: the paid-up capital of a share and a shareholder's ACB.

59 As the Supreme Court explained in *Copthorne*, the paid-up capital, as defined in subparagraph 89(1)(*b*)(iii), is initially determined by reference to the concept of stated capital under the applicable corporate law (*Copthorne*, paragraphs 75 and 76). In the present case, the corporations involved were incorporated under the *Companies Act*, C.Q.L.R., c. C-38, and have been governed by the *Business Corporations Act*, C.Q.L.R., c. S-31.1 (the Corporations Act) since 2011.

60 The stated capital—designated as "issued and paid-up share capital account" under the Corporations Act—essentially represents a shareholder's investment in a corporation, calculated in monetary terms. This investment must be recorded separately for each class of shares. When additional shares of a particular class are issued, the consideration received is added to the stated capital of that class and, if this consideration is not monetary—for example, when it consists of shares—, the FMV of that consideration is added to the stated capital (Corporations Act, sections 68, 69 and 70).

61 Paragraph 89(1)(*a*) establishes that the paid-up capital of a share is that of the entire class divided by the number of issued shares. It follows that for the purposes of the ITA the paid-up capital will be the same for all shareholders.

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62 The ACB of a share is different in this respect because it can vary from one shareholder to the next. At the outset, a share's paid-up capital and its ACB will coincide because the ACB of any property under the ITA, including a share, is equal to its cost reflected by the price paid in order to obtain it (section 54). However, if a subsequent shareholder acquires the share at a price higher than its issue price, that shareholder will have an ACB that exceeds the paid-up capital of the share. In such circumstances, the stated capital of the issuing corporation will not have increased because it is the initial shareholder, not the corporation, who received the price paid for the share. As a result, a shareholder can hold shares whose paid-up capital and ACB are not the same.

63 As is the case for the initial investment made in exchange for newly issued shares, the ITA operates on the assumption that the cost of acquiring property—*i.e.*: its initial ACB—is paid with amounts that have been subject to tax. Thereafter, the only adjustments allowed pursuant to section 53 result from taxable transactions or events. It follows that, as a rule, the ACB is composed of amounts that have been subject to tax,

- Section 84.1

64 The purpose of section 84.1 is to prevent amounts which have not been subject to tax from being used in order to allow shareholders to withdraw corporate surpluses on a tax-free basis. At the onset, the amounts which may be extracted without tax are limited to the paid-up capital (*Copthorne*, paragraph 95). However, as the Supreme Court further explained, paid-up capital, after the initial investment is made, can be increased by amounts that have not been subject to tax (*Copthorne*, paragraph 96). That is why subparagraph 89(1)(*b*)(iii) provides by way of reference that once established in accordance with the applicable corporate law, the paid-up capital may be subject to downward adjustments in order to exclude from its computation amounts which have not been subject to tax. Section 84.1 is one of the provisions to which reference is made for this purpose. Its specific aim is to prevent paid-up capital from being increased by non-taxed amounts generated through non-arm's length transactions (*Copthorne*, paragraphs 95, 96).

65 Section 84.1 applies when an individual resident in Canada transfers shares in a Canadian corporation (the subject shares) to another Canadian corporation with which the individual does not deal at arm's length and where both corporations are “connected” corporations within the meaning of subsection 186(4) immediately after the transfer. Where the subject shares reflect an accrued capital gains and are transferred at their FMV for newly issued shares (the new shares), paragraph 84.1(1)(*a*) sets the paid-up capital of the new shares at the greater of the paid-up capital or the ACB of the subject shares. Absent this provision, the paid-up capital of the new shares would be equal to the FMV of the subject shares at the time of the exchange with the result that the holder of the new shares could receive a tax-free distribution up to this FMV upon redeeming the new shares even though only half of the accrued value would have been subject to tax. The underlying logic for that adjustment is that, as noted earlier, the paid-up capital and the ACB of the subject shares will both reflect amounts that have been subject to tax. Accordingly, by providing that the paid-up capital of a new share is equal to the greater of the two, paragraph 84.1(1)(*a*) preserves the cost assumed by the shareholder while limiting the amounts that may be removed tax-free when redeeming the new shares to those that have been subject to tax.

66 There exists however two situations where the ACB of a subject share can reflect an amount that has not been subject to tax. Both are addressed in paragraph 84.1(2)(*a.1*). The first (subparagraph (i)) is where the ACB of a subject share reflects a gain that accrued prior to December 31, 1971 (Valuation-Day), and the second (subparagraph (ii)) is where the ACB of a subject share reflects amounts in respect of which a capital gains exemption, in force since 1985, has been claimed.

67 In order to prevent these accrued gains and exempt amounts from increasing the paid-up capital of a new share received in the course of a share exchange, paragraph 84.1(2)(*a.1*) alters the computation of the ACB of the subject share (or share for which it has been substituted) by subtracting these accrued gains and exempt amounts in its calculation. It is this subtraction set out in subparagraph 84.1(2)(*a.1*)(ii) which was successfully avoided thereby giving rise to the tax benefit.

- Series of transactions

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68 Having identified the object, spirit and purpose of section 84.1, it is useful to review the tail end of the series of transactions with an emphasis on the provisions that were used in order to avoid the application of subparagraph 84.1(2)(*a.1*)(ii).

69 The appellant first triggered the application of subsection 84(3). This provision fulfills a purpose similar to section 84.1 in that it ensures that only the paid-up capital, as adjusted pursuant to the ITA, can be withdrawn from a corporation on a tax free basis. When shares are redeemed at a price that exceeds their paid-up capital as adjusted, subsection 84(3) deems a dividend equal to that excess to have been paid. In the present case, subsection 84(3) was triggered because the paid-up capital of the Class G shares of P Pom was equal to $15,700 while the redemption price was equal to their FMV—*i.e.*: $1,010,328—with the result that a dividend of $994,628 was deemed to have been paid with a resulting loss equal to the same amount made up by the difference between the ACB of these shares ($1,010,328) and their "proceeds of disposition" computed after subtracting the deemed dividend ($15,700) (See in this respect the definition of "proceeds of disposition" in section 54).

70 This loss was provoked with the knowledge that it would be deemed nil pursuant to paragraph 40(3.6)(*a*). Subsection 40(3.6) is another anti-avoidance provision, the effect of which is to defer losses arising from share transfers when made to an affiliated corporation until a disposition outside the affiliated group takes place. The deferral is achieved by deeming the loss to be nil (paragraph 40(3.6)(*a*)) and adding the disallowed loss to the ACB of the shares of another class held by the taxpayer immediately after the disposition (paragraph 40(3.6)(*b*)). Paragraph 53(1)(*f.2*) confirms that the amount thus added becomes part of the ACB of the shares so designated. The loss is therefore preserved and may be realized on a subsequent disposition of these shares, in this case, the Class A shares of P Pom.

71 The result of this series of transactions is that based on a reading focused on the words, the "amount" referred to in subparagraph 84.1(2)(*a.1*)(ii), is no longer one "in respect of which a deduction under section 110.6 was claimed", but one which reflects the deemed capital loss triggered by the appellant. This must be accepted when construing this provision under the normal interpretative approach given the legal fiction created by the deeming rule in paragraph 40(3.6)(*a*), the effect of which is to make the deemed loss a reality. It follows that subparagraph 84.1(2)(*a.1*)(ii) could not reduce the ACB of the Class A shares of P Pom (the subject shares) and, consequently, paragraph 84.1(1)(*a*) did not reduce the paid-up capital of the Class C shares of Gestion (the new shares). In the end, this allowed the appellant to remove $994,628 on a tax-free basis following the redemption of the Class C shares of Gestion.

- Brief recollection of the position of the parties

72 The Minister argues that allowing amounts on which the capital gains exemption has been claimed to be part of the ACB of the Class A shares of P Pom, frustrates the object, spirit and purpose of subparagraph 84.1(2)(*a.1*)(ii), when regard is had to its reason for being.

73 The appellant responds that, in some instances, the object, spirit and purpose of a provision is no broader than the text itself. In such a case, the text is conclusive because it is consistent with, and fully explains its underlying rationale (*Copthorne*, paragraph 110). This thesis is at root of all the appellant's arguments. The object, spirit and purpose of section 84.1 is limited by its text, and when regard is had to the specific wording subparagraph 84.1(2)(*a.1*)(ii), no reduction of the ACB of subject shares in respect of amounts resulting from the application of subsection 40(3.6) is provided for. In the present case, the amount of $994,628 comes from subsection 40(3.6) and not from a deduction claimed under section 110.6. Although this amount originally consisted of funds in respect of which the capital gains deduction had been claimed, it can no longer be treated as such given the interposition of subsection 40(3.6).

74 Relying on the principle of implied exclusion, the appellant adds that subtracting $994,628 from the ACB of the Class A shares of P Pom could only be justified if Parliament had expressly provided that the ACB of a subject share be reduced when it originates from a loss that has been disallowed and deemed nil under subsection 40(3.6), the same way as it did with respect to amounts subject to the capital gains deduction under section 110.6 (Appellant's Memorandum, paragraph 55).

- Why the appeal cannot succeed

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75 I first turn to the contention that the object, spirit and purpose of section 84.1 is fully revealed by its text. As already said, there may be instances where the object, spirit and purpose of a provision is fully captured by its text, but this conclusion must be supported by an object, spirit and purpose analysis of the provision in issue (*Copthorne*, paragraph 111). In this case, an analysis of the object, spirit and purpose of section 84.1 shows that this provision has a scope that extends beyond its words.

76 I reject at the onset the contention that this Court in *Collins & Aikman* would have held that the scope of section 84.1 is generally constrained by the implied exclusion principle. In that case, the Court dismissed from the bench the argument —raised for the first time on appeal—that section 212.1, along with section 84.1, had to be taken into account in the abuse analysis. The Court was responding to the Crown's contention that section 212.1 had become relevant even though a corporation connected with the respondent had become non-resident in 1961, well before the implementation of the series of transactions in issue, and before section 212.1 became part of the ITA. In rejecting this argument, the Court confirmed that the "limited scope" of sections 84.1 and 212.1 was the result of a "deliberate [...] choice" (*Collins & Aikman*, paragraph 4). The words had the effect of rejecting the argument put forth by the Crown; they do not have the broad scope which the appellant attributes to them.

77 What then is the object, spirit and purpose of section 84.1? Based on the above analysis, the object, spirit and purpose of this provision is to prevent amounts that have not been taxed from being used to remove corporate surplus on a tax-free basis. Subsection 84.1(2) achieves this goal by focussing on amounts which although reflected in the ACB of the subject shares were not derived from tax paid funds, and excluding them from the computation of the paid-up capital of the new shares. To this end, subparagraph 84.1(2)(*a.1*)(ii) requires looking beyond the ACB of the subject shares—or shares for which they were substituted—and asking whether it is made up of amounts on which tax has not been paid.

78 The appellant maintains that the link between the ACB of the Class A shares of P Pom and the amounts on which the capital gains deduction was claimed was broken because these amounts now find their origin in the loss that was deemed to be nil pursuant to paragraph 40(3.6)(*b*). However, when regard is had to the object, spirit and purpose of subparagraph 84.1(2)(*a.1*)(ii), what matters is the connection between the amounts that were not subject to tax and the use that is made of those amounts in order to achieve a tax-free distribution. This flows from this provision's reason for being, which I repeat, is to prevent amounts on which tax has not been paid from being taken into account in the computation of the paid-up capital of a subject share thereby allowing surpluses to be paid out tax-free on the redemption of the new share obtained in exchange of the subject share.

79 This rationale was frustrated by the plan implemented by the appellant. Out of the $1,993,812 that he withdrew, $994,628 represented amounts in respect of which no tax had been paid. The planned interposition of the deemed dividend provided for in subsection 84(3) and the resulting deemed loss under paragraph 40(3.6)(*a*) does not alter the fact that the amount of $994,628 continues to represent funds on which no tax was ever paid.

80 I also cannot accept the appellant's contention that section 84.1, when construed in accordance with its object, spirit and purpose, would reveal an intent to bypass its application when dealing with the intergenerational transfer of family businesses. As we have seen, this provision prevents persons who do not deal at arm's length from taking advantage of their close relationship in order to remove corporate surplus on a tax-free basis (*Copthorne*, paragraph 95). Nothing in the language or the object, spirit and purpose of this provision points to an intent to exclude from its scope such extractions when carried out by family members, no matter the context.

81 That said, I believe it useful to point out that section 84.1 could, in certain cases, have a punitive effect in the context of an intergenerational transfer of a family business, for instance, where a corporation is sold by way of a share transfer at their FMV to a corporation controlled by the family member inheriting the business. In such a case, the transferor would pay tax on a deemed dividend whereas he or she would have realized a capital gain had the transferee been at arm's length.

82 This particular situation, if it arose in the context of an analysis under the GAAR, could possibly give rise to a construction of section 84.1 which would prevent this punitive result. However, this is not the situation before us.

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83 I therefore conclude that the TCC judge correctly held that the withdrawal of the amount of $994,628 from the surpluses of Gestion without tax being paid frustrates the object, spirit and purpose of section 84.1 and, more specifically, subparagraph 84.1(2)(*a.1*)(ii).

- Alternative argument
84 Finally, the appellant's alternative contention that subjecting him to tax on a deemed dividend in the amount of $994,628 is not a "reasonable" way of denying the tax benefit he obtained, must also be rejected. The argument is that in failing to rule on this issue, the TCC judge [TRANSLATION] "converted [...] a rule for deferring the use of a capital loss into one that makes the loss permanent" (Appellant's Memorandum, paragraph 98). According to the appellant, [TRANSLATION] "the proceeds of disposition of the shares should be reduced by operation of the Act so that the loss is preserved" (Appellant's Memorandum, paragraph 101). Paragraph 60 of the decision of the Tax Court of Canada in *Descarries* is cited in support of the adjustment claimed.

85 There is no need to address the appellant's alternative argument since the loss in question was preserved. It is true that because the Minister subtracted the amount of $994,628 from the ACB of the Class A shares of P Pom under subparagraph 84.1(2)(*a.1*)(ii), the loss is no longer reflected in the ACB of those shares, but it is now reflected in the ACB of the Class A shares of Gestion. This results from the redemption by Gestion of the Class C shares held by the appellant together with the adjustment brought by the Minister and the consequential application of paragraphs 40(3.6)(*a*) and (*b*), paragraph 84.1(1)(*a*), subsection 84(3), and the definition of "proceeds of disposition" in section 54.

86 It follows that the TCC judge did not have to address the appellant's alternative argument.

- Disposition
87 I would dismiss the appeal with costs.
***Richard Boivin J.A.*:**

I agree.
***Yves de Montigny J.A.*:**

I agree.
Appeal dismissed.

Appendix

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

Loss on shares

40(3.6) Where at any time a taxpayer disposes, to a corporation that is affiliated with the taxpayer immediately after the disposition, of a share of a class of the capital stock of the corporation (other than a share that is a distress preferred share as defined in subsection 80(1)),

> (a) the taxpayer's loss, if any, from the disposition is deemed to be nil; and
>
> (b) in computing the adjusted cost base to the taxpayer after that time of a share of a class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added the proportion of the amount of the taxpayer's loss from the disposition (determined without reference to paragraph 40(2)(g) and this subsection) that
>
>> (i) the fair market value, immediately after the disposition, of the share is of

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(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation owned by the taxpayer

Adjustments to cost base

53(1) In computing the adjusted cost base to a taxpayer of property at any time, there shall be added to the cost to the taxpayer of the property such of the following amounts in respect of the property as are applicable:

f.2) where the property is a share, any amount required by paragraph 40(3.6)(b) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(b) as it read in its application to property disposed of before April 26, 1995) to be added in computing the adjusted cost base to the taxpayer of the share;

54 In this subdivision,

proceeds of disposition of property includes,

…

but notwithstanding any other provision of this Part, does not include

(j) any amount that would otherwise be proceeds of disposition of a share to the extent that the amount is deemed by subsection 84(2) or 84(3) to be a dividend received and is not deemed by paragraph 55(2)(a) or subparagraph 88(2)(b)(ii) not to be a dividend, or

(k) any amount that would otherwise be proceeds of disposition of property of a taxpayer to the extent that the amount is deemed by subsection 84.1(1), 212.1(1) or 212.2(2) to be a dividend paid to the taxpayer; (*produit de disposition*)

Non-arm's length sale of shares

84.1 (1) Where after May 22, 1985 a taxpayer resident in Canada (other than a corporation) disposes of shares that are capital property of the taxpayer (in this section referred to as the “subject shares”) of any class of the capital stock of a corporation resident in Canada (in this section referred to as the “subject corporation”) to another corporation (in this section referred to as the “purchaser corporation”) with which the taxpayer does not deal at arm's length and, immediately after the disposition, the subject corporation would be connected (within the meaning assigned by subsection 186(4) if the references therein to “payer corporation” and to “particular corporation” were read as “subject corporation” and “purchaser corporation” respectively) with the purchaser corporation,

(a) where shares (in this section referred to as the “new shares”) of the purchaser corporation have been issued as consideration for the subject shares, in computing the paid-up capital, at any particular time after the issue of the new shares, in respect of any particular class of shares of the capital stock of the purchaser corporation, there shall be deducted an amount determined by the formula

$(A - B) \times C/A$

where

A is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of all shares of the capital stock of the purchaser corporation as a result of the issue of the new shares,

B is the amount, if any, by which the greater of

(i) the paid-up capital, immediately before the disposition, in respect of the subject shares, and

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(ii) subject to paragraphs 84.1(2)(a) and 84.1(2)(a.1), the adjusted cost base to the taxpayer, immediately before the disposition, of the subject shares,

exceeds the fair market value, immediately after the disposition, of any consideration (other than the new shares) received by the taxpayer from the purchaser corporation for the subject shares, and

C is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of the particular class of shares as a result of the issue of the new shares; and

(b) for the purposes of this Act, a dividend shall be deemed to be paid to the taxpayer by the purchaser corporation and received by the taxpayer from the purchaser corporation at the time of the disposition in an amount determined by the formula

(A + D) - (E + F)

where

A is the increase, if any, determined without reference to this section as it applies to the acquisition of the subject shares, in the paid-up capital in respect of all shares of the capital stock of the purchaser corporation as a result of the issue of the new shares,

D is the fair market value, immediately after the disposition, of any consideration (other than the new shares) received by the taxpayer from the purchaser corporation for the subject shares,

E is the greater of

(i) the paid-up capital, immediately before the disposition, in respect of the subject shares, and

(ii) subject to paragraphs 84.1(2)(a) and 84.1(2)(a.1), the adjusted cost base to the taxpayer, immediately before the disposition, of the subject shares, and

F is the total of all amounts each of which is an amount required to be deducted by the purchaser corporation under paragraph 84.1(1)(a) in computing the paid-up capital in respect of any class of shares of its capital stock by virtue of the acquisition of the subject shares.

(2) For the purposes of this section,

(a) where a share disposed of by a taxpayer was acquired by the taxpayer before 1972, the adjusted cost base to the taxpayer of the share at any time shall be deemed to be the total of

(i) the amount that would be its adjusted cost base to the taxpayer if the *Income Tax Application Rules* were read without reference to subsections 26(3) and (7) of that Act, and

(ii) the total of all amounts each of which is an amount received by the taxpayer after 1971 and before that time as a dividend on the share and in respect of which the corporation that paid the dividend has made an election under subsection 83(1);

(a.1) where a share disposed of by a taxpayer was acquired by the taxpayer after 1971 from a person with whom the taxpayer was not dealing at arm's length, was a share substituted for such a share or was a share substituted for a share owned by the taxpayer at the end of 1971, the adjusted cost base to the taxpayer of the share at any time shall be deemed to be the amount, if any, by which its adjusted cost base to the taxpayer, otherwise determined, exceeds the total of

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(i) where the share or a share for which the share was substituted was owned at the end of 1971 by the taxpayer or a person with whom the taxpayer did not deal at arm's length, the amount in respect of that share equal to the amount, if any, by which

(A) the fair market value of the share or the share for which it was substituted, as the case may be, on valuation day (within the meaning assigned by section 24 of the *Income Tax Application Rules*) exceeds the total of

(B) the actual cost (within the meaning assigned by subsection 26(13) of that Act) of the share or the share for which it was substituted, as the case may be, on January 1, 1972, to the taxpayer or the person with whom the taxpayer did not deal at arm's length, and

(C) the total of all amounts each of which is an amount received by the taxpayer or the person with whom the taxpayer did not deal at arm's length after 1971 and before that time as a dividend on the share or the share for which it was substituted and in respect of which the corporation that paid the dividend has made an election under subsection 83(1), and

(ii) the total of all amounts each of which is an amount determined after 1984 under subparagraph 40(1)(a)(i) in respect of a previous disposition of the share or a share for which the share was substituted (or such lesser amount as is established by the taxpayer to be the amount in respect of which a deduction under section 110.6 was claimed) by the taxpayer or an individual with whom the taxpayer did not deal at arm's length;

84(3) Where at any time after December 31, 1977 a corporation resident in Canada has redeemed, acquired or cancelled in any manner whatever (otherwise than by way of a transaction described in subsection 84(2)) any of the shares of any class of its capital stock,

(a) the corporation shall be deemed to have paid at that time a dividend on a separate class of shares comprising the shares so redeemed, acquired or cancelled equal to the amount, if any, by which the amount paid by the corporation on the redemption, acquisition or cancellation, as the case may be, of those shares exceeds the paid-up capital in respect of those shares immediately before that time; and

(b) a dividend shall be deemed to have been received at that time by each person who held any of the shares of that separate class at that time equal to that portion of the amount of the excess determined under paragraph 84(3)(a) that the number of those shares held by the person immediately before that time is of the total number of shares of that separate class that the corporation has redeemed, acquired or cancelled, at that time.

Definitions

89(1) In this subdivision,

paid-up capital at any particular time means,

(a) in respect of a share of any class of the capital stock of a corporation, an amount equal to the paid-up capital at that time, in respect of the class of shares of the capital stock of the corporation to which that share belongs, divided by the number of issued shares of that class outstanding at that time,

(b) in respect of a class of shares of the capital stock of a corporation,

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(iii) if the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1) and (8), 86(2.1), 87(3) and (9), paragraph 128.1(1)(c.3), subsections 128.1(2) and (3), section 135.2, subsections 138(11.7), 139.1(6) and (7), 148(7), 192(4.1) and 194(4.1) and sections 212.1 and 212.3,

Capital gains deduction—qualified small business corporation shares

110.6(2.1) In computing the taxable income for a taxation year of an individual (other than a trust) who was resident in Canada throughout the year and who disposed of a share of a corporation in the year or a preceding taxation year and after June 17, 1987 that, at the time of disposition, was a qualified small business corporation share of the individual, there may be deducted such amount as the individual may claim not exceeding the least of

(a) the amount determined by the formula in paragraph (2)(a) in respect of the individual for the year,

(b) the amount, if any, by which the individual's cumulative gains limit at the end of the year exceeds the amount deducted under subsection 110.6(2) in computing the individual's taxable income for the year,

(c) the amount, if any, by which the individual's annual gains limit for the year exceeds the amount deducted under subsection 110.6(2) in computing the individual's taxable income for the year, and

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (to the extent that that amount is not included in computing the amount determined under paragraph (2)(d) in respect of the individual) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares of the individual.

Business Corporations Act, C.Q.L.R., c. S-31.1

Issued and paid-up share capital account

68 A corporation must maintain an issued and paid-up share capital account.

The account must be subdivided by class of shares and, if applicable, series of shares.

69 A corporation must pay into its issued and paid-up share capital account the money received as consideration for the shares it issues, but not more than the amount of the par value in the case of shares with par value.

70 A corporation that issues shares without par value may pay into the issued and paid-up share capital account all or part of the value of the consideration received for the shares issued

(1) in exchange for property of a person who, at the time of the exchange, is not dealing at arm's length with the corporation within the meaning of that expression in the *Taxation Act* (chapter I-3);

(2) in exchange for property of a person who, at the time of the exchange, is dealing at arm's length with the corporation within the meaning of that expression in the *Taxation Act*, if the person, the corporation and all the holders of shares in the class or series of shares so issued, whether or not their shares otherwise carry voting rights, consent to the exchange; such consent is not required, however, if the issue of shares does not result in a decrease in the value obtained by dividing the value of the issued and paid-up share capital account maintained for the class or series of shares issued by the number of issued shares in the class or series;

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(3) in exchange for shares of a legal person who, at the time of the exchange or immediately afterwards, is not dealing at arm's length with the corporation within the meaning of that expression in the *Taxation Act*; or

(4) to shareholders of an amalgamating corporation who are receiving the shares in addition to or instead of shares of the amalgamated corporation, in the case of a long-form amalgamation.

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