

# Tax Update for Advisors – March 2010

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**Jamie Golombek**  
Managing Director



# Agenda

- **2010 tax changes**
- **Top 10 Tax Filing Tips (2009 returns)**
- **TFSA update**
- **U.S estate tax update**
- **Hot tax cases**

# 2010 Federal Tax Brackets

<b>2010</b>	<b>2009</b>	<b>Rate</b>
Less than \$40,970	Less than \$40,726	15%
\$40,970 to \$81,941	\$40,726 to \$81,452	22%
\$81,941 to \$127,021	\$81,452 to \$126,264	26%
Over \$127,021	Over \$126,264	29%

# Non-refundable Tax Credits

<b>Amount Type</b>	<b>2010</b>	<b>2009</b>
Basic personal amount	10,382	10,320
Age amount	6,446	6,408
Net income threshold	32,506	32,312
amount	10,382	10,320
Amount for children under age 18	2,101	2,089
Canada employment amount	1,051	1,044
Old Age Security repayment - begins	66,733	66,335
Old Age Security repayment - ends	108,090	107,692

# EI special benefits for self-employed

- **Self-employed can now “opt-in” to receive “Special Benefits”**
  - Maternity (15 weeks)
  - Parental/adoptive (35 weeks)
  - Sickness (15 weeks)
  - Compassionate care (6 weeks)
- **Must opt-in at least one year before collecting**
- **Must have self-employment income > \$6,000**

# Interest deductibility update

- “Borrowed for the *purpose* of earning income”
- Stocks that don’t pay any/sufficient dividends?
- Equity funds that don’t pay sufficient/any income distributions?
- Not deductible? Limited to amount received? Fully deductible?

*CRA Income Tax Technical News (12/23/2009)*



## #2 – Split that pension (*Form T1032*)

- Pension income?
  - Before age 65?
    - Regular monthly pension from DB or DC plan
  - After age 65?
    - Includes RRIF (LIF, LRIF, PRIF) withdrawals
- Benefits:
  - Transfer up to 50% of pension income to lower-income spouse / partner
  - Avoiding / Minimizing impact of **Old Age Security** clawbacks
  - Doubling of **pension income credit**
  - Reducing net income grind of **age credit**



# #3 – Pool your donations (*Schedule 9*)

- **15% credit on first \$200**
- **29% above \$200**
- **Pool husband / wife / common law partner donations**

**T1-2009 Donations and Gifts Schedule 9**

Attach a copy of this schedule to your return along with the official receipts that support your claim. Remember, you may have charitable donations shown on your T4 and T4A slips. See line 349 in the guide for more information.

Total eligible amount of charitable donations and government gifts 1

Enter your net income from line 236 of your return. 2

Note: If the amount on line 1 is less than the amount on line 2, enter the amount from line 1 on line 340 below and continue completing the schedule from line 340.

Gifts of depreciable property (from Chart 2 in Pamphlet P113, *Gifts and Income Tax*) 3

Gifts of capital property (from Chart 1 in Pamphlet P113, *Gifts and Income Tax*) 4

Add lines 3 and 4. 5

Total donations limit: add lines 2 and 5 (not to exceed the amount on line 236 of your return) 6

Allowable charitable donations and government gifts (enter the amount from line 1 or line 6, whichever is less) 340

Eligible amount of cultural and ecological gifts (see line 349 in the guide) 342+

Add lines 340 and 342. 344=

Enter \$200 or the amount from line 344, whichever is less. 345=


Line 344 minus line 345. 347=

Donations and gifts: add lines 7 and 8. Enter this amount on line 349 of Schedule 1. 9

5000-S9

# #4 – Defer stock option benefits (T1212)

- **Election to defer taxable employment benefit until year of sale**
- **Jay receives 1,000 options to acquire shares @ \$20**
- **Jay exercises options in September 2009 when shares worth \$220**
  - Elected to defer tax on the \$200,000 employment benefit

 Canada Revenue Agency / Agence du revenu du Canada

**STATEMENT OF DEFERRED SECURITY OPTIONS BENEFITS**

Complete this form to keep track of the security options benefits you have deferred as a result of exercising a security option after February 27, 2000, to acquire eligible securities as a result of your employment. Eligible securities are common shares of a class listed on a designated stock exchange in or outside Canada and units of mutual fund trusts.


The deferred benefits have to be included in your employment income for the year in which you dispose of the security, become a non-resident, or die.

You have to file this form with your tax return each year that you have an outstanding balance of deferred security options benefits, whether or not you have deferred any security options benefits in the year or disposed of any securities in the year relating to a security option benefit that was previously deferred.

Tax year ..... 2010

Opening balance of deferred security options benefits (from your previous year's notice of assessment or notice of reassessment) .....		1
Security options benefits deferred in the year (from box 53 of all T4 slips) .....	6520	2
Add lines 1 and 2 .....	=	3
Benefits that can no longer be deferred because of a disposition in the year: enter this amount on line 101 of your return .....	6520	4
Note: To claim your "security options deduction" on this amount, see line 249 in your General Income Tax and Benefit Guide.		
Closing balance of deferred security options benefits: line 3 minus line 4 .....	6520	5

If the amount on line 5 is more than "0", we will show it on your notice of assessment.

T1212 E (09) (Vous pouvez obtenir ce formulaire en français à [www.arc.gc.ca](http://www.arc.gc.ca) ou au 1-800-959-3876.) 

# Relief for underwater stock options

- **Share crashes – now worth \$10/share or \$10,000**
- **Jay sells**
  - Gets cash of \$10,000
  - Owes tax on employment benefit deferred of \$200,000
  - Can't use capital loss of \$210,000 against employment benefit
- **HELP!!!**
- Remission order November 2007 – SDL Optics Inc. (JDS Uniphase)

# Relief for underwater stock options

- **BUDGET 2010:** New rule – special tax equal to proceeds of disposition of optioned shares
- Jay would pay tax of \$10,000 (proceeds) vs. tax on employment income benefit of \$50,000 (at capital gains rates)

# Elimination of deferral & remittance requirement

- Effective for exercises after March 4, 2010 – 4 pm ET
- No more tax deferral of employment option benefit
- Employer must now remit tax upon employee exercise

# #5 – Write off the kids!

- **Child amount - \$2,089/child**
  - Non-refundable credit (federal – 15%)
- **Children's fitness tax credit - \$500/child**
  - Children <16 at beginning of 2009
- **File returns for kids**
  - RRSP contribution room
  - RRSP vs TFSA
- **University students**
  - Tuition, education, textbook amounts
  - Interest paid on student loans
  - Transit pass credit
  - Moving expenses

# #6 – Report offshore stash (T1135)

- **Foreign income verification statement**
- **More than \$100,000 (CDN)**
  - Funds in foreign bank accounts
  - Shares of non-resident corporations
  - Foreign real estate
- **EXEMPT**
  - Canadian mutual funds (even if own foreign shares)
- **Penalty - \$25/day (Max \$2,500)**
- **Leclerc**

**FOREIGN INCOME VERIFICATION STATEMENT**

Complete and file this statement with your tax return (or, if a partnership, with your partnership information return) if at any time in the year the total cost amount of all specified foreign property you owned or held a beneficial interest in was more than \$100,000.

**Identification**

Check (✓) a box to indicate who you are reporting for, and complete the areas that apply.

<input type="checkbox"/> Individual	First name	Last name	Initial	Social Insurance number
<input type="checkbox"/> Corporation	Corporation's name	Business Number (B.N.)		
<input type="checkbox"/> Trust	Trust's name	Account number		
<input type="checkbox"/> Partnership	Partnership's name	Partnership's identification number		

Reporting taxpayer's address

No. Street City Province or territory Postal code

For what tax year are you filing this statement? From To

Type of Property (It is important that you use the standard vocabulary for details on the types of property that must be reported.)	For each type of property that applies to you, indicate the total cost of the investment by checking (✓) the appropriate box
	+ \$1 Million + \$700,000 + \$500,000 + \$300,000 + \$100,000 Less than \$100,000
1. Funds held outside Canada	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
2. Shares of non-resident corporations, other than foreign affiliates	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
3. Indebtedness owed by non-residents	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
4. Interests in non-resident trusts	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. Real property outside Canada	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
6. Other property outside Canada	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Where are the above investments located? (Check appropriate box(es)) United States ☐ U.K. ☐ Europe, other than U.K. ☐ Southeast Asia ☐ Caribbean ☐ Other ☐

Total income reported on your tax return in the year from the above assets \$

**Certification**

I certify that the information given on this statement is, to my knowledge, correct and complete, and fully discloses the reporting taxpayer's specified foreign property and related foreign income.

Print name \_\_\_\_\_

Sign here \_\_\_\_\_

It is a serious offence to file a false statement.

Position or title \_\_\_\_\_ Date \_\_\_\_\_

Telephone ( ) \_\_\_\_\_

If you were paid to prepare this statement, provide the following information:

Your name \_\_\_\_\_

Address \_\_\_\_\_

Postal code \_\_\_\_\_

Telephone ( ) \_\_\_\_\_

T1136 (S) (07) (Go forward to page 10) 374 Canada

# #7 – Claim legal fees

- **Loss of employment in 2009**
- **Legal fees paid to:**
  - Collect / establish right to salary or wages owed
  - Collect / establish right to pension / retiring allowance
    - Includes damages / settlements for wrongful dismissal
    - Limited to pension / retiring allowance
    - Seven year carryforward



# #8 – File on time

- **April 30 / June 15**
- **5% of amount owing + 1%/month (12 months)**
  - 2<sup>nd</sup> time – 10% + 2% month (20 months)
- **Arrears interest at prescribed rate + 4%**
  - 5% for Q1/Q2 2010

# #9 – Report *all* your income

- **Missing receipt?**
  - File on time and estimate missing item
- **Penalty of 10% (+ 10% provincially) for failure to include amount in income**
- ***Sabharwal* case**

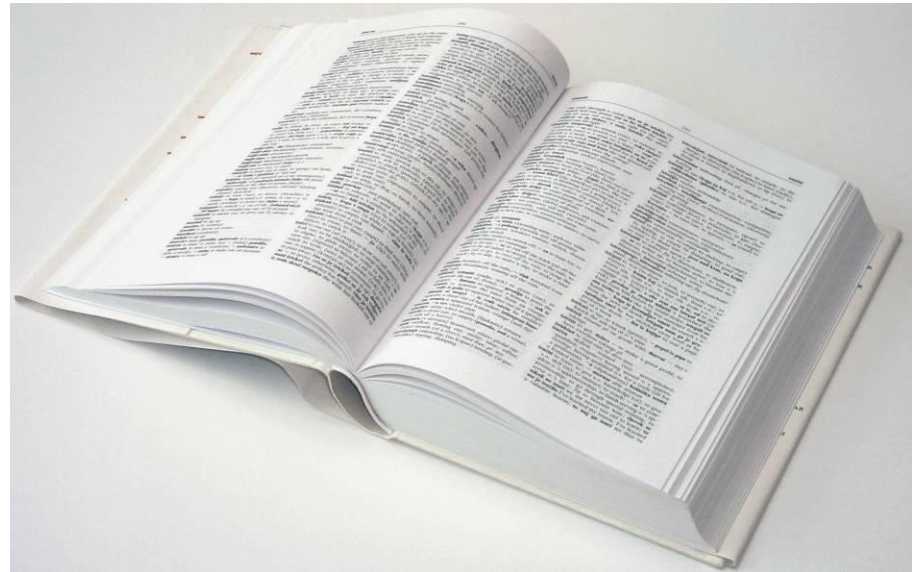
# #10 - Avoid that refund

- **Reduce tax at source**
- **Reduce OAS clawback at source**

# Plan NOT to Get a Refund!

**in·tax·i·fi·ca·tion** (in-täk-sə-fə-kā-shən) **noun**

- the euphoria of getting a tax refund that lasts only until you realize it was your own money to begin with...



# Plan NOT to Get a Refund! (cont'd)

- **“Undue hardship” provision**
- **Too much tax withheld at source**
- **Due to:**
  - RRSP contributions
  - Support payments
  - Childcare expenses
  - Charitable donations
- **Form T1213**

Form T1213: Request to Reduce Tax Deductions at Source for Year(s) \_\_\_\_\_

Canada Revenue Agency / Agence du revenu du Canada

Use this form to ask for reduced tax deductions at source for any deductions or non-refundable tax credits that are not part of the Form TD1, Personal Tax Credits Return.

- All your income tax returns that are due have to be filed and amounts paid in full before you send us this form.
- You usually have to file this request every year. However, if you have deductible support payments that are the same or greater for more than one year, you can make this request for two years.
- Send the completed form with all supporting documents to the Client Services Division of your tax services office. You can find the addresses on our Web site at [www.cra.gc.ca/tso](http://www.cra.gc.ca/tso) or by calling us at 1-800-959-8281.
- We will notify you in writing within four to eight weeks whether or not we approve your request.

**Identification**

First name \_\_\_\_\_ Last name \_\_\_\_\_ Social Insurance Number \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Province or territory \_\_\_\_\_ Postal code \_\_\_\_\_ Residence \_\_\_\_\_ Telephone Business \_\_\_\_\_

Employer Name \_\_\_\_\_ Contact person \_\_\_\_\_ Telephone and fax numbers \_\_\_\_\_

Address \_\_\_\_\_

**Request to reduce tax on**

☐ Salary

☐ Lump sum (indicate the amount and payment type; for example, a bonus or vacation pay)

\$ \_\_\_\_\_ and \$ \_\_\_\_\_

**Deductions and non-refundable tax credits**

Registered retirement savings plan (RRSP) contributions \_\_\_\_\_ \$ \_\_\_\_\_

- Give details or a copy of the payment arrangement contract.
- Do not include contributions deducted from your pay by your employer.

Child care expenses \_\_\_\_\_ \$ \_\_\_\_\_

- Give details on a separate sheet.

Support payments \_\_\_\_\_ \$ \_\_\_\_\_

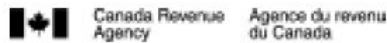
- Attach a copy of your court order or written agreement and Form T1158, Registration of Family Support Payments (if not previously filed).
- Recipient's name and social insurance number: \_\_\_\_\_

# Capital gain in 2009 – OAS

- **Client will pay back all 2009 OAS because large capital gain in 2009 (income > \$107,692)**
- **Client will also lose 2010 OAS based on 2009 income**
- **What if high 2009 income (gain) was a one-time occurrence?**

# Capital gain in 2009 – OAS (cont'd)

- Apply for **2010** reduction of tax at source – OAS
- Form T1213 OAS



## REQUEST TO REDUCE OLD AGE SECURITY RECOVERY TAX AT SOURCE FOR YEAR \_\_\_\_\_

- Use this form to request a reduction in the amount of Old Age Security Recovery Tax withheld.
- All your income tax returns that are due have to be filed and amounts paid in full before you send us this form.
- Send this completed form to the Taxpayer Services Division of your tax services office. You can find the address on our Web site at [www.cra.gc.ca/tso](http://www.cra.gc.ca/tso) or by calling us at **1-800-959-8281**.
- We will write to you in four to eight weeks to let you know if we have approved your request.

Identification			
First name	Last name	Social insurance number	
Address			
City	Province or territory	Postal code	Telephone
Estimated current-year income from all sources			
Employment income	.....	\$	1
Old Age Security pension	.....	+	2
Canada Pension Plan or Quebec Pension Plan benefits	.....	+	3
Other pensions and superannuation	.....	+	4

# Miscellaneous tax update

- **TFSA update**
- **State of US estate tax**
- **Cases of interest**



# TFSA carry-forward room

- **\$10,000 opportunity**
- **\$20,000 opportunity (spouses/partners)**
  - No attribution

# TFSA – New “anti-avoidance” rules

- 1. Deliberate overcontributions**
  - 2. Prohibited investments**
  - 3. Asset transfer transactions**
  - 4. Non-qualified investments (land, etc.)**
- **After October 16, 2009**
  - **Withdrawals of any of the above do not create additional TFSA contribution room**

# TFSA – Deliberate overcontributions

- **Any income attributable to deliberate overcontributions and prohibited investments subject to 100% tax**
  - Tom overcontributes to his TFSA by \$100,000
  - Buys 1 million shares at 10 cents/share of XYZ Jr. Oil
  - Overcontribution penalty is 1% per month = \$1,000
  - Stock doubles, Tom withdraws his over-contribution
  - TFSA has realized a \$100,000 gain inside his TFSA
  - **NEW RULES: \$100,000 of penalty tax payable**

# TFSA – Prohibited investments

- **Any income attributable to prohibited investments subject to 100% tax**
  - Dick invests \$5,000 of his TFSA in private company shares of which he is a significant shareholder (owns > 10%)
  - Company declares a \$1-million dividend on shares held by TFSA
  - Dick pays a one-time penalty tax equal to 150% of the normal tax that would have been payable on the \$1-million dividend if earned outside the TFSA
  - The \$1-million, however, could remain inside the TFSA and grow tax- free for life
  - **NEW RULES: \$1-million of penalty tax payable**

# TFSA – Asset transfer transactions

- **Effectively prohibit asset transfer transactions between TFSAs and other accounts by taxing at 100%**
  - Harry “sells” \$5,000 of ABC shares (Bid \$0.10, Ask \$0.30) to his TFSA for cash, using \$0.10 Bid price
  - Harry subsequently “sells” shares from TFSA to his non-registered account, using \$0.30 cent Ask price
  - Result: \$10,000 “gain” remains inside the TFSA
  - **NEW RULES: Entire gain of \$10,000 taxed back**

# U.S. Estate Tax Update

- **Assume non-resident, non-U.S. citizen (“ALIEN”)**
- **U.S. situs property:**
  - U.S. real estate
  - U.S. stocks
    - **NOT** Cdn mutual funds that own U.S. stocks
    - IRS Chief Counsel Advice (1/22/2010)



# 2009 U.S. Estate Tax Rates

Fro	T	Tax on bottom of range	Rate on Exces
0	10,00	0	18
10,00	20,00	1,80	20
20,00	40,00	3,80	22
40,00	60,00	5,20	24
60,00	80,00	13,00	26
80,00	100,00	18,20	28
100,00	150,00	23,80	30
150,00	250,00	38,80	32
250,00	500,00	70,80	34
500,00	750,00	135,80	37
750,00	1,000,00	248,30	39
1,000,00	1,250,00	345,80	41
1,250,00	1,500,00	448,30	43
1,500,00	0 and over	555,80	45
0		0	%

Source: BDO Dunwoody LLP, May 15, 2008

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# U.S. Estate Tax Exemption / Rates

Year	Exemption	Top Rate
2006	2,000,000	46%
2007	2,000,000	45%
2008	2,000,000	45%
2009	3,500,000	45%
<b>2010</b>	<b>Repealed</b>	<b>Repealed</b>
2011	1,000,000	55%



# Where are we now?

- **December 2009 – U.S. House of Representatives approved Bill to extend**
  - 45% / \$3.5 MM
- **Rejected by U.S. Senate**
  - 45% / \$5.0 MM
- **Constitutionality of retroactive estate tax?**

# Where are we now?



## Toying with Death and Taxes: Some Lessons from Down Under

JOSHUA GANS AND ANDREW LEIGH

**T**he United States House of Representatives has passed legislation to repeal the estate tax. With a Senate vote potentially still on the horizon, a broad debate on the economics of the estate tax has emerged. Here though is one question that neither Democrats nor Republicans have stopped to ask: How will repealing the “death tax” affect the death rate? Why would it, you ask? Well, economists believe that incentives govern almost everything, and the evidence from down under is that they may be right.

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*Joshua Gans is Professor of Management (Information Economics), Melbourne Business School, University of Melbourne. <http://www.mbs.edu/jgans>*  
*Andrew Leigh is a Fellow in the Research School of Social Sciences, Australian National University. <http://econrssh.anu.edu.au/~aleigh>*

Under current United States law, the estate tax will be eliminated on January 1, 2010 (oddly for only one year). As a result, if you were eligible to pay estate taxes and happened to pass away on December 31, 2009, those taxes would be paid, but wait a few hours and you can prevent any part of your wealth passing away with you.

The reaction to this fact is what appears to divide economists from noneconomists. A typical reaction from a noneconomist, is “so what?” When crossing the great cosmic bridge, could anyone really be worried about material concerns? Skeptics may take the view that the only possible issues involved are fairness issues and that any behavioral impact will surely be trivial, and hardly worth worrying about.

Economists, by contrast, naturally think: “Hmm, that will have an interesting effect on

people’s incentives.” Being inquisitive folk, we immediately begin to wonder how this transition might be gamed. Will people plan for it and will families delay deaths or, at the very least, bribe hospital officials to doctor the records? If they did, would it be a bad thing? Perhaps there is too little effort currently put into prolonging life, and so this will counter a wrong. If the books are fiddled, so be it, the government already decided it was a good idea not to tax people like that.

Regardless of one’s initial reaction, magnitudes matter. Is the size of any response to the elimination of estate taxes likely to be high enough that policymakers should at least pause to think about whether they are implementing the change in the right way? One alternative would be a gradual phase-out, something that

# Garron Family Trust (2009)

- **Barbados trusts**
- **\$450 million capital gain**
- **Residency of trusts**
  - IT 447 “Residence of a Trust or Estate”
  - Thibodeau
- ***TCC: “where central management and control actually abides”***

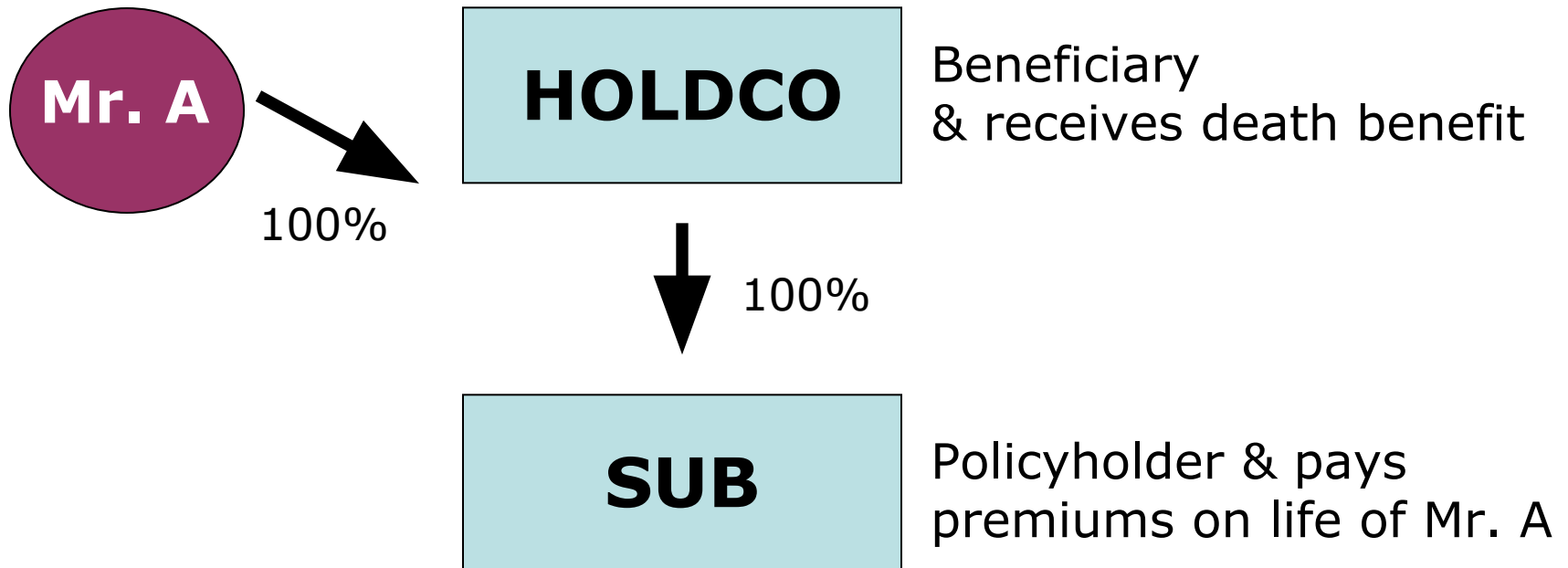
# Marechaux (2009)

- **Leveraged donation tax shelter**
- **Produces "return on donation of up to 62.4%"**
- **Supported by a tax opinion "from a firm of respected tax lawyers"**
- **"subject only to a risk of challenge by the CRA" described as "slim"**
- **\$100,000 donation = \$30K cash + \$80K "interest-free loan" (included \$10K in fees)**
- **Was there a "gift"?**

# Innovative Installation Inc. (2009)

- ***Innovative* borrowed \$220,000 from RBC**
- **“Key person” life insurance purchased on founder’s life**
  - Beneficiary was RBC (creditor)
- **Death benefit paid directly to RBC**
- **Who “received” the proceeds of the policy?**
  - Is there a credit to CDA?

# Life insurance – “Holdco” & “Sub”



- **New CRA position (December 23, 2009) – shareholder benefit conferred on holdco by subco**
- **Jan 1, 2010 for new policies, 2011 for existing policies**

# Bilodeau (2009)

- **Financial advisor purchased two \$1 million UL policies**
- **Life insurance commissions (\$43,000) on advisor's own policy**
- **Taxability**
  - Interpretation Bulletin IT-470R, "Employees' fringe benefits"
  - Paragraph 27 - "Discounts on Merchandise and Commissions on Sales"

# Li (2009)

- **Financial advisor deducted various employment expenses:**
  - Salary to assistant/husband (\$14,000)
    - Form T2200 inconsistencies
  - Commissions on sale of own life insurance policy (\$7,000)



# Rupprecht (2009)

- **Financial advisor deducted:**
  - Costco membership fees
  - Clothing (\$8,400 in “suitable clothing”)
  - RRSP penalties for exceeding foreign content limit

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## "TaxExpert"

– National Post

### 10 Year-End Tax Tips

Act before the end of December to take advantage of 2009 tax breaks. Watch a reply of Jamie Golombek's December 15 webcast for tips

[Register Now](#)

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Canadians sock cash away in TFSAs by Roma Luciw and Kevin Carmichael, *Globe and Mail, Nov. 2009*

RESP or TFSA? What every parent should know when budgeting for a child's future CIBC news release, *Sept. 2009*

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