

Department of Finance Clarifies Legislative Intent for Amendments to Taxation of Intergenerational Transfers of Businesses

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On July 19, 2021, the Department of Finance (“**Finance**”) released a statement (the “**July 19 Announcement**”) acknowledging that the amendments contained in Bill C-208 form part of the *Income Tax Act* (Canada) and are now law. The July 19 Announcement replaces the June 30 news release in which Finance previously indicated it intended to introduce legislation providing that the amendments in Bill C-208 would not apply until January 1, 2022.

For information on the effect of the changes enacted by Bill C-208, please refer to our firm’s article “Bill C-208: Tax Implications for Family Businesses,” from July 8, 2021.

The July 19 Announcement clarifies that the federal government intends to introduce legislation that will amend the changes effected by Bill C-208, but that these amendments will “honour the spirit of Bill C-208 while safeguarding against any unintended tax avoidance loopholes that may have been created by Bill C-208.” The July 19 Announcement identifies surplus stripping (that is, the extraction of corporate surplus at capital gains tax rates rather than at the higher dividend tax rates) as a potential abuse of the rules enacted through Bill C-208.

The July 19 Announcement makes reference to a number of factors, which may be addressed in new legislation, that will determine whether taxpayers qualify for the preferred tax treatment afforded by Bill C-208. These factors include:

- whether a child or grandchild acquires control of the corporation carrying on the business being sold by a parent or grandparent;
- the level of ownership a parent or grandparent can retain in the corporation carrying on the business after the transfer to a child or grandchild;
- the requirements and timeline for a parent or grandparent to cease to be involved in the business; and
- the level of involvement required by a child or grandchild in the business after having acquired shares in the corporation carrying on the business.

The July 19 Announcement indicates that the draft legislation will be released for consultation and final legislative proposals will take effect on the later of November 1, 2021, and the date of publication of the final draft legislation.

You should consult with your tax advisor if you are considering a genuine intergenerational transfer of the shares of a corporation carrying on an active business in Canada. If you have any questions or would like more information on these changes, please contact Edward Miller, Robert Santia or any member of our Tax Group.

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