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Marmer Penner Inc. Newsletter

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Timing Is Everything

According to the *Child Support Guidelines* (“*Guidelines*”), capital gains earned by a parent are included in income. If they are earned personally, the taxable capital gain is increased to the amount of the actual capital gain pursuant to Schedule III. If the gains are earned through an investment holding corporation, the gain is included if the parent controls the corporation according to Section 18. It is our understanding that capital losses may not be accorded equivalent treatment. If the loss is incurred personally or through a holding corporation, the loss may not be considered. For this reason, it may be in a support paying parent’s best interest to time capital gains and losses to coincide in the same taxation year.

Consider the following example. Ralph triggered a $10,000 capital gain in December 2001 by selling CIBC shares. In January 2002, he realized a $10,000 capital loss when he sold Air Canada shares. As a result, his *Guidelines* income increased by $10,000 based on his 2001 income but no decrease was allowed for his 2002 loss. If Ralph had sold both investments in the same year, his net gain for that year would have been nil and no increase in *Guidelines* income would have occurred. Furthermore, Ralph would not have paid tax on his 2001 gains and had to wait one year to recover it by carrying back his 2002 loss.

A similar situation could have occurred if Ralph had earned the same gains and losses through an investment holding corporation in two separate taxation years as opposed to offsetting the two in one taxation year. The lesson learned is that offsetting gains and losses in the same year is both prudent for income tax savings and income minimization for the *Guidelines*.

What happens if a parent personally holds securities with an accrued capital gain, while in a corporation holds securities with an accrued capital loss? Ed was in such a situation and considered his options. If he realized both the gain and the loss, he faced the prospect of having the gain included in his personal income and paying income tax thereon and having the corporate loss denied for *Guidelines* purposes. It looked like Ed was out of luck...until he spoke to his tax accountants. The accountants advised Ed to transfer his personally held shares to the holding corporation on a tax-free basis electing under Section 85 of the *Income Tax Act*. Accordingly, Ed's Line 150 income was unaffected. Now the holding corporation held both the securities with the accrued gain and the accrued loss. Ed caused the holding corporation to sell both in the same fiscal year. As a result, no net gain or loss was reported in that year by the corporation, leading to no income tax and what may be no *Guidelines* inclusion.

We are unable to advise if such a manoeuvre would be viewed as an attempt to circumvent the *Guidelines.* As more *Guidelines* cases are heard, we hope the courts will clarify:

(a) Whether capital losses incurred personally or through corporations can reduce *Guidelines* income; and

(b) Whether a tax pan such as described above would be acceptable for the *Guidelines*.

This newsletter is intended to highlight areas where professional assistance may be required. It is not intended to substitute for proper professional planning. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at ***www.marmerpenner.com***.