Citation: 2021 TCC 29
Date: 202104**09**
Docket: 2015-3808(IT)G

BETWEEN:

NICOLE L. TIESSEN INTERIOR DESIGN LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3809(IT)G

AND BETWEEN:

NICOLE L. TIESSEN INTERIOR DESIGN SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3812(IT)G

AND BETWEEN:

DANIEL REEVES ARCHITECT LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3813(IT)G

AND BETWEEN:

DANIEL REEVES ARCHITECT PROF. SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3822(IT)G

AND BETWEEN:

JEFF OLFERT TECHNICAL LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3823(IT)G

AND BETWEEN:

JEFF OLFERT TECHNICAL SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3841(IT)G

AND BETWEEN:

CHRISTOPHER WOOD TECHNICAL LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2015-3843(IT)G

AND BETWEEN:

CHRISOPHER WOOD TECHNICAL SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent

AMENDED REASONS FOR JUDGMENT

Monaghan J.

I. INTRODUCTION

[1] The only issue in these appeals is whether the Appellants were associated corporations in their 2012 and 2013 taxation years. This matters because if they were their entitlement to the deduction in computing tax, commonly known as the small business deduction ("SBD"), will be affected.

[2] The SBD is available only to Canadian-controlled private corporations in respect of a limited amount of active business income each year.[1] In the relevant taxation years, a corporation's maximum income eligible for the SBD (called the business limit) was $500,000. Associated corporations must share a single business limit. Similarly, corporate members of a partnership earning active business income

[1] Both "Canadian-controlled private corporation" and "active business income" are defined terms in the *Income Tax Act* (Canada).

may treat only their share of the partnership's active business income not in excess of $500,000 (called the specified partnership business limit) as eligible for the SBD. Thus, associated corporations, and corporations who are members of a partnership, must share a single business limit effectively limiting the income eligible to be taxed at the SBD rate. In these appeals, both of these business limit sharing rules are relevant.

[3] Four of the Appellants, together with another eleven corporations, were partners (each a "Partnerco") in aodbt architecture + interior design partnership (the "Partnership"). The other four Appellants and eleven other corporations (each a "Serviceco") provided services to a single Partnerco. Each Partnerco was owned by a single individual (each a "Principal")[2] who also controlled a Serviceco established by the Principal.

[4] Thus, in the relevant taxation years, there were 15 pairs of corporations, each pair consisting of a Partnerco and a Serviceco, controlled by a single Principal. The Appellants are four of those pairs.[3] For simplicity, I sometimes refer to the Partnerco and Serviceco controlled by a particular Principal as "a pair", as "paired" or as "the Principal's pair."

[5] Everyone agrees the Partnercos were required to share a single specified partnership business limit to determine each Partnerco's qualification for the SBD in respect of its share of the Partnership's active business income. And, the Appellants do not dispute that each pair must share a single business limit. This is the basis on which the Appellants filed their income tax returns for the 2012 and 2013 taxation years.

[6] However, the Respondent and the Appellants part ways on whether all thirty corporations (or, put another way, all fifteen pairs) are associated and so must share a single business limit. The Respondent reassessed the Appellants for their 2012 and 2013 taxation years on the basis they were associated with each other and with the other eleven pairs.[4] In doing so, the Respondent contends that one of the main reasons for the separate existence of the corporations was to reduce taxes payable

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[2] With one exception described below.

[3] Unless otherwise stated all facts described herein are described with reference to the relevant period, notwithstanding that they may be described using the present tense.

[4] Although the Minister reassessed all 30 corporations on the basis they are associated, the appeals of 22 of them are stayed pending the final decision in the Appellants' appeals.

under the *Income Tax Act* (Canada)[5] in their 2012 and 2013 taxation years, with the result that they are deemed to be associated.

[7] The reassessments also increased the income of the Appellants that are Partnercos. The Respondent's position is that certain amounts deducted in computing income of the Partnership were not deductible (the "disputed expenses"). The parties settled that aspect of the appeals prior to the hearing. Accordingly, while my order reflects the parties' agreement with regard to the disputed expenses, the deductibility of the disputed expenses is not addressed in these reasons.

II. **THE APPELLANTS**

[8] The Appellants in these appeals consist of four pairs of Partnercos and Servicecos.

[9] The first pair consists of Jeff Olfert Technical Ltd. and Jeff Olfert Technical Services Ltd. The relevant Principal is Jeff Olfert who is a chartered professional accountant ("CPA"). Mr. Olfert is the sole director and sole officer of his Serviceco and his Partnerco, the sole shareholder of his Partnerco, and the controlling shareholder and employee of his Serviceco.

[10] The second pair consists of Christopher Wood Technical Ltd. and Christopher Wood Technical Services Ltd. The relevant Principal is Christopher Wood who is an architectural engineering technologist. Mr. Wood is the sole director and sole officer of his Serviceco and his Partnerco, the sole shareholder of his Partnerco, and the controlling shareholder and employee of his Serviceco.

[11] The third pair consists of Daniel Reeves Architect Ltd. and Daniel Reeves Architect Prof. Services Ltd. The relevant Principal is Daniel Reeves who is a registered architect. Mr. Reeves is the sole director and sole officer of his Serviceco and Partnerco, the sole shareholder of his Partnerco, and the controlling shareholder and employee of his Serviceco.

[12] The fourth pair consists of Nicole L. Tiessen Interior Design Ltd. and Nicole L. Tiessen Interior Design Services Ltd. The relevant Principal is

[5] R.S.C. 1985, c. 1, as amended (the "Act"). All references to statutory provisions are references to the provisions of the Act.

Nicole Tiessen who is an interior designer. She is the sole director, officer and shareholder of her Serviceco and Partnerco, and an employee of her Serviceco.

III. **BACKGROUND**

(1) Pre-Reorganization

(a) ***The Corporation***

[13] AODBT Olfert Dressel Burnyeat Tracey Architects Ltd. (the "Corporation") was formed in 1994[6] and carried on the business of providing architectural and interior design related services. The Corporation had the contracts with clients and employed the professional staff, including the architects, technologists, interior designers and engineers. The Corporation's shareholders consisted of professional employees (Principals) considered key to the success of the business, and spouses of certain of the senior Principals.[7] Messrs. Olfert, Wood and Reeves and Ms. Tiessen were shareholders (Principals) at the end of 2010.

[14] The Corporation's share capital was divided into Class A voting non-participating preference shares ("voting shares") and Class B non-voting shares ("participating shares"). For each ten voting shares a Principal owned, the Principal and/or his spouse collectively owned one participating share. Thus, for example, on December 21, 2010, Mr. Olfert owned 75 voting shares and 5 participating shares, and his spouse owned 2.5 participating shares. In contrast, Mr. Wood, Mr. Reeve and Ms. Thiessen alone owned voting and participating shares in that same 10:1 ratio.

[15] Moreover, the Principals had decided to limit the number of issued participating shares to 100 so changes to ownership were effected by share transfers. Mr. Olfert explained that each spring existing Principals would be canvassed to see who wanted to sell shares and who wanted to increase their shareholding. After that

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[6] The Partial Agreed Statement of Facts indicates it was incorporated in 1994. However, the business was established before then. Mr. Olfert joined the firm in 1988. Mr. Wood joined in 1989. Therefore, 1994 may refer to the year a number of corporations were amalgamated to form the Corporation. Mr. Olfert referred to an amalgamation of holding companies with the operating corporation during his testimony.

[7] In March 2010 the spousal shareholders were Kathy Burnyeat (Principal Robert Burnyeat), Bette Fontaine (Dennis Fontaine), Darlene Lutzko (Wayne Lutzko), Leila Olfert (Charles Olfert) and Kathy Lindsay Olfert (Jeff Olfert).

information was collected, the "up and comers"[8] who the Principals thought were ready to become owners would be approached to see if they were prepared to purchase shares. Then the Executive Group would meet to balance out expressed interests. This adjustment of ownership interests occurred annually, at the beginning of November, immediately after the Corporation's year end (October 31).[9] The shares were purchased and sold by individuals.

[16] The price per share was determined annually and intended to be fair market value.[10] Purchasers would either pay cash (from their own resources or loans) to the selling Principal (or spouse) or, by agreement with the seller, issue a promissory note to pay the purchase price to the seller over time, with interest. This practice for changing ownership interests had been in place for many years.

[17] The Corporation was governed by a unanimous shareholders agreement ("USA"). It distinguished between active and inactive shareholders and included as a defined term "Spousal Shareholders". The USA required any spouse to vote her shares in the same manner as her husband (Principal) voted his shares. Since the spouse's shares were not voting shares, this presumably was relevant only where the corporate law provided a vote to holders of non-voting shares. The USA also required the spouse to take the same actions as her husband and precluded independent action. The Corporation's by-laws provided that voting shareholders had the right to attend shareholder meetings.

(b) ***MSLP***

[18] AODBT Management Services Limited Partnership ("MSLP") was established in 1997. It provided administrative services to the Corporation, hiring consultants and technicians, employing all the administrative staff, and paying all of the administrative expenses. MSLP charged its costs back to the Corporation with a mark-up, leaving a profit in MSLP. The limited partners of MSLP were family trusts of the Principals. Thus, this arrangement (together with certain spouses owning

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[8] The next generation of future owners and leaders.

[9] Mr. Olfert maintained a summary showing expected changes in ownership for the following 5 years by year and for years 10 and 15. This was described as a working document that would be updated over time. See Exhibits A-25 and A-27.

[10] A purchaser acquired voting shares and participating shares in the 10:1 ratio. The price of the voting shares was fixed at $1.00. They were redeemable and retractable for that amount.

shares of the Corporation and of Third Avenue Investments Ltd.) permitted income splitting.

(c) ***Third Avenue***

[19] Third Avenue Investments Ltd. ("Third Avenue") owned the building in Saskatoon out of which the Corporation and MSLP operated and leased space to the business. The Corporation's shareholders held shares in the Corporation and in Third Avenue in the same relative percentages. Again, some spouses of Senior Principals were shareholders of Third Avenue. However, the collective interest of a Principal and his spouse would be the same in percentage terms as their collective participating share interest in the Corporation. A purchaser of Corporation shares purchased Third Avenue shares in the same proportion.

(2) <u>Reorganization</u>

[20] Commencing in late 2010, through early 2011, the Corporation, MSLP, and Third Avenue undertook a reorganization (the "Reorganization"). The principal steps in the Reorganization are described in the Partial Agreed Statement of Facts. While all of the relevant transactions are not described and no evidence was led to describe the missing details, the particulars of the transactions are in many ways irrelevant to the issue before me. My concern is the reason for the Reorganization, and the resulting thirty corporations, not the transactions that implemented it. Thus, an overview of the Reorganization is sufficient for purposes of these reasons.

[21] The Reorganization involved each Principal establishing a Partnerco[11] and a Serviceco and the creation of the Partnership among the Partnercos in late 2010. New family trusts were settled for the benefit of the family of each Principal except Ms. Tiessen. Each Partnerco was wholly-owned by the Principal.[12] The Principal had voting control of the paired Serviceco, but each Principal's family trust also subscribed for shares of the Principal's Serviceco.[13]

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[11] With the exception of Robert Burnyeat. The Corporation became his Partnerco.

[12] With the exception of the Corporation. Its shareholders included Mr. Burnyeat, other Principals and (at least until November 2011) some spouses.

[13] Except in the case of Ms. Tiessen's Serviceco. She was its sole shareholder. Ms. Tiessen was not married and had no children.

[22] In early 2011, through a series of transactions, the Principals[14] ceased to be holders of participating shares in the Corporation[15] and the Partnership acquired the businesses of the Corporation and MSLP. In particular, the Partnership acquired MSLP's employees, depreciable property and accounts receivable, acquired the Corporation's assets, and assumed MSLP's debts. Each of the Principals ceased to be employed by the Corporation, and instead became an employee of his or her Serviceco. MSLP and the family trusts that had been limited partners of MSLP were wound up.

[23] Like the Corporation, the Partnership selected an October 31 fiscal period. The taxation year end of each Partnerco[16] and Serviceco was January 1. Thus, a Partnerco's share of the Partnership's income for its October 31, 2011 fiscal period was included in the Partnerco's income for its taxation year ended January 1, 2012, and its share of the Partnership's income for its October 31, 2012 fiscal period was included in the Partnerco's income for its taxation year ended January 1, 2013.[17]

(3) The Post-Reorganization Relationships among the Parties

[24] The partnership agreement governing the Partnership (the "Partnership Agreement") was signed by each Partnerco and each Principal, in his or her personal capacity. Under that agreement the parties agreed as follows:

1. each Partnerco and its Principal agreed to devote their full time and attention to the business of the Partnership;

2. each Principal was required to be employed by their Serviceco;

3. each Partnerco was required to enter into a service agreement with its paired Serviceco under which the Serviceco agreed to provide the services of the Principal to the Partnerco to ensure the Partnerco was able to fulfill its obligations under the Partnership Agreement; and

[14] With the exception of Mr. Burnyeat.

[15] It appears they continued to hold voting shares and in some cases preferred shares.

[16] With the exception of the Corporation (Mr. Burnyeat's Partnerco), the taxation year end of which was October 31.

[17] With the exception of the Corporation. Its share of the Partnership income was included in its taxation year ending on the same day as the Partnership's fiscal period.

4. each Principal was precluded from competing with, or soliciting clients or staff of, the Partnership.

[25] The Partnership Agreement also contained provisions governing capital accounts, income determination, income allocation, draws and capital contributions, transfer of partnership units, and other matters relevant to the relationship among the partners.

[26] As contemplated by the Partnership Agreement, each Serviceco entered into an employment agreement with its Principal. Under that agreement, the Serviceco was required to pay the Principal an annual salary of at least $3,400.[18]

[27] Each pair entered into a service agreement under which the Serviceco agreed to provide the services of its employee (i.e., the relevant Principal) to the Partnerco to enable it to fulfil its duties and obligations to the Partnership. Each Partnerco agreed to pay its paired Serviceco for those services. However, the amount payable was not specified. Rather, the services agreement provided for a minimum annual base compensation of $1.00 and that the Partnerco would pay compensation reflective of the efforts and skill of Serviceco and of the circumstances that Partnerco would be unable to fulfil its obligations under the Partnership Agreement without the effort, skill and responsibility of Serviceco. In each of their 2012 and 2013 taxation years, the Servicecos received fees from the paired Partnerco well in excess of the minimum annual base compensation.

[28] Each Partnerco was allocated a share of the Partnership's income for the Partnership's fiscal periods ending October 31, 2011 and 2012. Each Partnerco paid its paired Serviceco fees for the services provided (i.e., the services of the Principal) and deducted those fees in computing its income for purposes of the Act. Each Serviceco included the fees received from its paired Partnerco in its income and deducted the salary it paid to its Principal.[19]

[29] Messrs. Olfert, Reeves and Wood and Ms. Tiessen all agreed that the Reorganization had no effect on the manner in which they carried out their work

[18] Apparently, this amount could be paid without incurring liability for Canada Pension Plan and/or employment insurance premiums.

[19] In their first taxation year ending after the Reorganization, most Partnercos paid their Principal only the minimum salary. In their second taxation year ending after the Reorganization, each Partnerco paid its Principal only the minimum salary.

day-to-day. Expense reimbursements were made directly by the Partnership to the Principals notwithstanding that they were employees of a Serviceco.

IV. **THE APPEALS**

(1) The SBD Claims

[30] The income earned by the Partnercos as partners in the Partnership was considered active business income eligible for the SBD, subject to any applicable business limit sharing rules. Because the paired Partnerco and Serviceco were associated, the fees paid by a Partnerco to its paired Serviceco, and deducted by the Partnerco in computing its income, were deemed to be active business income earned by Serviceco.[20] Accordingly that income also was considered eligible for the SBD, subject to any applicable business limit sharing rules.

[31] In computing its taxes payable, each Partnerco claimed the SBD in respect of all of its income. Similarly, each Serviceco claimed the SBD in computing its tax payable on the basis that it was associated with its paired Partnerco but no other corporation. However, the aggregate taxable income of a pair did not exceed $500,000. The result was that all of the income earned by a pair was treated as eligible for the SBD.

(2) Matters not in Dispute

[32] The parties agree that:

(i) prior to the Reorganization, the Corporation's business limit was $500,000, the Corporation was entitled to the SBD, and the total maximum SBD available to the Corporation was $85,000;[21]

(ii) the aggregate business limit claimed by the Partnercos in respect of their specified partnership income for the Partnership fiscal periods ending October 31, 2011 and October 31, 2012 was $446,900[22] and

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[20] Subsection 129(6) of the Act.

[21] 17% of $500,000. This excludes the provincial equivalent of the SBD.

[22] The specified partnership business limit in 2011 may have been prorated to something less than $500,000 because the Partnership's first fiscal period was less than 365 days (i.e., December 20, 2010 to October 31, 2011). See (b) of the definition of "specified partnership income" in subsection 125(7). However, the Corporation carried on the business for more than two months before the

$452,704, respectively, resulting in an aggregate SBD claim by the fifteen Partnercos in those years of $75,973 and $76,960, respectively;

(iii) the aggregate business limit claimed by the fifteen Servicecos for their taxation years ended January 1, 2012 and January 1, 2013 was $2,260,576 and $4,563,418, respectively, resulting in an aggregate SBD claim by the Servicecos in those years of $384,298 and $775,781, respectively.

(3) Matter in Dispute

[33] The Respondent's position is simple. Before the Reorganization the Corporation claimed the SBD. Following the Reorganization, 30 corporations claimed the SBD in respect of income that, but for the Reorganization, would have been earned by the Corporation and MSLP, and presumably the Principals,[23] collectively. As partners in the Partnership, the Partnercos collectively were limited to the same $500,000 business limit as the Corporation had been prior to the Reorganization. However, says the Respondent, the pairs resulting from the Reorganization, and the arrangements between a Partnerco and its paired Serviceco, were intended to permit substantially more income to be taxed at the SBD rate. Thus, says the Respondent, one of the main purposes, if not the only main purpose, for the Reorganization giving rise to the 30 corporations was reduction of taxes by multiplying access to the SBD.

[34] The Appellants concede that the Reorganization leading to 30 corporations results in a reduction of tax through additional access to the SBD. However, they assert that additional SBD was not one of the main reasons for the Reorganization or the separate existence of the Partnercos and Servicecos in the relevant years. Rather, the Appellants submit that the main reasons for the Reorganization (and thus the need for the separate existence of the Partnercos and Servicecos) were:

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business was transferred to the Partnership and presumably was entitled to the SBD in computing tax on that income as well as its specified partnership income, subject to any business limit sharing rules.

[23] Before the Reorganization, the Principals were primarily earning salary which would have reduced the Corporation's income but have been subject to personal income tax. Afterward the Partnership's income would have been higher because the salaries of Principals were eliminated as a cost of earning that income, and were a relatively small cost of the Servicecos earning income.

1. addressing succession issues, including creating a structure more attractive to recruitment and retention of senior talent;

2. a desire to remove spouses as direct owners of the "entity" operating the business;

3. a desire to permit individual financial flexibility (i.e., so a Principal could make financial decisions independently without impacting other Principals);

4. improving the ability and flexibility of a Principal to independently undertake estate and succession planning within the Principal's family;

5. asset protection; and

6. simplification of the operational side of the business.

[35] The Respondent denies that these were reasons for the Reorganization, or the existence of the fifteen pairs. However, says the Respondent, if any were reasons, nonetheless multiplication of access to the SBD was the main reason for the Reorganization.

(4) <u>Conclusion</u>

[36] The Appellants' counsel invited me to distinguish between the results of the Reorganization and the purpose as I listened to the evidence because, whatever the result of the Reorganization, what is relevant is its purpose. I agree that what is important in these appeals is the purpose of the Reorganization and the existence of the thirty corporations created to effect it.

[37] However, purpose is to be determined objectively having regard to all the facts and circumstances, not merely the Appellants' statements. The question to be answered is whether, having regard to all the facts and circumstances, it is reasonable to consider that one of the main reasons for the separate existence of the Partnercos and the Servicecos is the reduction of tax.

[38] For the reasons that follow, I have concluded that at least one of the main reasons for the Reorganization, and for the separate existence of corporations comprising the fifteen pairs, was the reduction of taxes, and in particular greater access to the SBD. Multiplication of the SBD was the reason the Reorganization was

proposed and the resulting tax savings presented to the Principals led to the decision to undertake the Reorganization. Most of the reasons advanced by the Appellants for reorganizing were not convincing as main reasons. I believe some were not even relevant to the decision to reorganize. They constitute benefits that the Principals enjoyed, to varying degrees, as a result of the Reorganization, but I have no doubt reduction of taxes was one of the main reasons for it.

V. **ANALYSIS**

(1) Relevant Law

[39] In reassessing the Partnercos and Servicecos as associated corporations the Respondent relied on subsection 256(2.1). This anti-avoidance rule deems corporations to be associated where it may reasonably be considered that one of the main reasons for the separate existence of two or more corporations in a taxation year is to reduce taxes that would otherwise be payable under the Act.

[40] The provision requires me to identify the reasons for the separate existence of the corporations, not the reasons for establishing them.[24] However, in this case, the reasons for establishing the corporations and their separate existence are inextricably linked because the fifteen pairs were always part of the planned Reorganization and considered necessary to effect it. Thus, the reasons for their creation and separate existence in the relevant years is the same.[25]

[41] The provision also requires me to determine whether one of the main reasons for the separate existence of the corporations was the reduction of tax. To do so, I must assess purpose based on inferences drawn from facts that are ascertainable as well as testimony. The inquiry is an objective one with a focus on the relevant facts and circumstances. This is not to say that statements of intention are irrelevant, but they are not determinative. As the Supreme Court of Canada has put it:

> . . . where purpose or intention behind actions is to be ascertained, it must not be supposed that in responding to this question courts will be guided only by a taxpayer's statements, *ex post facto* or otherwise, as to the subjective purpose . . . Courts will, instead, look for objective manifestations of purpose, and purpose is

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[24] *Maintenance Euréka ltée v. R.*, para. 24, as cited in *Prairielane Holdings Ltd. v. The Queen* 2019 TCC 157 [*Prairielane*], at para. 15.

[25] *Prairielane*, at para. 16.

> ultimately a question of fact to be decided with due regard for all of the circumstances.[26]

And

> . . . where purpose or intention behind actions is to be ascertained, courts should objectively determine the nature of the purpose, guided by both subjective and objective manifestations of purpose.[27]

The stated reasons must be objectively reasonable.[28]

[42] Reduction of taxes need not be the sole reason or even the sole main reason for the separate corporations.[29] But, it is clear that it is not enough that the separate existence of the corporations results in a reduction of taxes. The question is whether saving taxes was a main goal or a side effect.[30]

[43] The onus is on the taxpayer to produce an objectively reasonable explanation that none of main reasons was the reduction of taxes.[31] A mere denial of a purpose, even where accompanied by a list of other purposes, by itself is not persuasive.

(2) The Appellants' witnesses[32]

[44] Although the Principals of all of the Appellants testified, the key witnesses regarding the reasons for and history surrounding the creation of the Partnership and the Reorganization were Mr. Olfert and Frank Baldry, a tax partner at PriceWaterhouse Coopers LLP ("PWC"). Each of Mr. Reeves, Mr. Wood and Ms. Tiessen said they were told the reasons for the Reorganization by Mr. Olfert. None of them were involved in the planning of the Reorganization. None conducted any

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[26] *Symes v. Canada* [1993] 4 S.C.R. 695, at p. 736.

[27] *Ludco Enterprises Ltd. v. Canada* 2001 SCC 62, at para. 54.

[28] *Gerbro Holdings Co. v. R* 2016 TCC 173 [*Gerbro*], at para 153.

[29] *Gerbro*, at para. 157. See also *Jencal Holdings Ltd. v. The Queen* 2019 TCC 16.

[30] *R. v. Covertite Ltd*. (1981), 81 DTC 5353 (FCTD), as cited in *Hughes Homes Inc. v. The Queen* [1997] T.C.J. No. 1003, 98 DTC 1082, [*Hughes Homes*] at para. 4.

[31] *Wu v. R.* [1998] 1 C.T.C. 99 (F.C. – Appeal Division), at para.6, cited in the context of subsection 256(2.1) in *Prairielane*, at para. 18.

[32] The Respondent called the auditor, Jason Barlow, as a witness. An Affidavit sworn by him was also in evidence. While I found Mr. Barlow credible, his testimony largely related to facts concerning the tax returns, the SBD claims, and the basis for the reassessment.

significant due diligence with regard to what was presented to them. The Reorganization was recommended by Mr. Olfert and senior management at the Corporation and therefore they accepted it. Their testimony about the reasons for the Reorganization was to relate what they were told by others.

[45] Mr. Reeves did not hear about the partnership proposal until August 3, 2010. He remembered it being described at a Principals' meeting and Mr. Baldry explaining it with diagrams on a screen. A decision to proceed was made no later than August 30, 2010. Mr. Reeves did not recall a formal vote on the Reorganization and said the Principals were pretty informal about decisions. Mr. Reeve said he did not conduct any independent due diligence and was prepared to go along with the proposal because Mr. Olfert and senior Principals were recommending it with professional advice obtained from the Corporation's accountants and lawyers.

[46] Mr. Wood was at the August 3, 2010 meeting and its continuation on August 30, 2010. However, he has no recollection of what was described or discussed at the meeting or why a change in the organization was being proposed. He recalls being told the purpose of the Reorganization was to change from a corporation to a partnership.[33] He also recalls being advised the reasons for the Reorganization were estate and succession planning, but was not sure when he was told those were the reasons.

[47] Ms. Tiessen did not become a shareholder until after the decision to proceed with the Reorganization was made. She learned about it from Mr. Olfert only a few weeks before she became a shareholder, and after she had investigated buying shares of the Corporation and arranged bank financing for that purpose. Ms. Tiessen recalls Mr. Olfert mentioning multiplication of the SBD, but it was not important to her. Ms. Tiessen said she did not understand the positives or the negatives of the Reorganization.

[48] It is also clear that neither Mr. Wood nor Ms. Tiessen understand the relationships between their paired corporations, nor the reasons for them. They went along because, as they understood it, the proposal was an all or nothing, take it or leave it, proposition. You were either in or you were out.

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[33] He actually referred to change from a shareholder partnership to a partner partnership. I attribute this to the practice within the firm to sometimes refer to Principals as partners. Transcript, Vol. 3, p. 43.

[49] I have determined that the decision to reorganize into a Partnership was largely driven by a group of senior Principals, of which only Mr. Olfert testified during these appeals. All of the Appellants' witnesses agreed Mr. Olfert had significant influence when it came to financial matters. Each of Mr. Reeves, Mr. Wood and Ms. Tiessen recognized they had little influence over the decision. While Mr. Reeve and Mr. Wood attended the presentation about the Reorganization, they did not remember much or necessarily understand all of it.

[50] The documentary evidence in these appeals includes minutes from monthly shareholders' (i.e., Principals') meetings,[34] emails, corporate records for the Corporation, reports of external consultants engaged by the Corporation to assist with strategic issues and human resources concerns over the 2005 to 2011 period and related materials, agreements relevant to the Reorganization, and documentation prepared by Mr. Baldry. This evidence reflects the issues that concerned the Corporation and the Principals both in the years before the Reorganization and in the 2010-2011 period. These documents provide important context to my determination concerning the main reasons for the Reorganization.

(3) <u>Consultation with PWC</u>

[51] Mr. Baldry was one of the key architects of the Reorganization. He was introduced to Mr. Olfert and the Corporation by Monte Gorchinski, one of Mr. Baldry's partners at PWC, who had worked with Mr. Olfert and the Corporation for a number of years. Mr. Olfert explained that in late 2009, at his annual post fiscal year-end meeting with Mr. Gorchinski, Mr. Olfert asked for some assistance dealing with certain issues the Corporation was facing. Mr. Gorchinski's practice was a general accounting practice, not tax. Mr. Gorchinski suggested that they consult with Mr. Baldry and a meeting was arranged.[35]

[52] So what were the issues for which PWC's help was being sought?

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[34] The minutes are labelled shareholders' meetings but, consistent with the Corporation's by-laws, there is no suggestion in any of the minutes that any spousal shareholders ever attended or were invited to attend.

[35] Mr. Baldry was uncertain whether he had met only with Mr. Olfert or with Mr. Olfert and some senior Principals at his initial meeting. He agreed that he met with senior Principals several times over the course of 2010 but Mr. Olfert was his main point of contact and they spoke regularly over the course of 2010.

[53] Mr. Olfert testified that the issues he communicated to Mr. Gorchinski were spousal shareholdings and the Principals' desire to undertake individual financial planning. Mr. Olfert explained that younger Principals needed cash to pay expenses but the older ones wanted to leave money in the Corporation. Yet, none of the meeting minutes, emails or consultants' reports mention these concerns. Mr. Olfert said these concerns arose in casual conversations and at Principals' meetings. I am not convinced these are the issues he raised with Mr. Gorchinski.

[54] Mr. Baldry described the principal issue he was consulted about as succession or transition, i.e., attracting new senior level talent and retaining existing talent to replace rainmakers seeking to retire over the succeeding few years.[36] While Mr. Baldry also referred to dissatisfaction that some Principals' spouses were shareholders, he said he had heard about that informally from a junior Principal at the golf course.

[55] So what does the documentary evidence from that period suggest were the issues Mr. Olfert raised with Mr. Gorchinski?

[56] Mr. Baldry said that after an initial meeting with a new client he typically prepared a written summary that he sent to the client seeking confirmation that his understanding of the issues were in fact the client's issues. This gave the client the opportunity to correct Mr. Baldry if he had misunderstood the concerns. Consistent with that practice, after his initial meeting with Mr. Olfert, Mr. Baldry prepared a written summary, bearing the title "Transition Issues," and shared it with Mr. Olfert.[37]

[57] That summary focuses entirely on changes to share ownership and adjustments to remuneration as senior Principals transition out of the practice.[38] It describes the reduction of time commitment and share ownership by senior Principals and the financing concerns around share purchases by younger Principals given the increasing share value.[39] Despite Mr. Olfert's testimony, Mr. Baldry's

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[36] Transcript, Vol. 1, pages 38-39.

[37] Exhibit A-1.

[38] The summary also references future decision making, something Mr. Baldry described as his own observation. The senior Principals had been there a long time and had established how the business was run and who made decisions on various issues. With them starting to consider retirement, he thought future decision making was something to be addressed. This was not an issue raised with him by Mr. Olfert. Transcript, Vol. 1, pages 43 – 44.

[39] Mr. Reeves' first participating share of the Corporation was acquired in 2006 for $25,000. In 2010, a participating share cost $53,000.

summary does not refer to spouses or independent financial planning. Mr. Olfert confirmed the summary accurately reflected relevant issues at the time.[40] No one suggested that Mr. Baldry's summary had not captured the issues of concern.

[58] Finally, as described in more detail below, none of the documentation provided by the Appellants from the relevant period refer to spousal shareholders as a concern. The evidence regarding individual financial planning is consistent with it being a result of the Reorganization and an advantage of it suggested to them by Mr. Baldry. There is nothing to suggest it was something the Principals had given any thought to until it was raised by Mr. Baldry.

(a) ***The Purchaseco Option***

[59] The remainder of Mr. Baldry's summary describes three options for transferring shares: (i) direct share sale; (ii) redemption of the selling Principal's shares, followed by a subscription for shares by the purchasing Principal; and (iii) a transaction under which a special purpose corporation ("Purchaseco") owned by purchasing Principals would acquire shares from the selling Principals and would be liable for the financing costs. Purchaseco would be amalgamated with the Corporation so that the interest on the acquisition financing would be deductible in computing the Corporation's income.[41] Pros and cons of each proposal were summarized. With the exception of financing share purchases, none of the reasons for the Reorganization advanced in these appeals by the Appellants is mentioned in Mr. Baldry's summary.

[60] Mr. Baldry also prepared another document, "A Primer on Selected Aspects of Taxation relating to Share Transactions."[42] Mr. Baldry said he prepared it for his first meeting with Principals on February 7, 2010. Mr. Olfert, however, said he had never seen it before the appeals were instituted; he first saw it as part of preparing for the appeals. Thus, it is not clear whether it was shared with the Principals or it was something Mr. Baldry used as a speaking guide. I have accepted that Mr. Baldry prepared it for his presentation to the Principals' meeting in February 2010.[43]

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[40] Transcript, Vol. 1, page 189.

[41] The same process was proposed for share purchases for Third Avenue, although using a separate Purchaseco.

[42] Exhibit A-2.

[43] None of Mr. Reeves, Mr. Wood or Ms. Tiessen was asked about this document. However, if Mr. Olfert did not recall it, I believe it very unlikely the others would have recalled it.

[61] This primer covers much the same material as the earlier summary with some expanded observations about tax matters: sellers of shares should be eligible for the capital gains exemption, redemptions result in an entirely different tax treatment, so vendors would prefer to sell; and purchasers are mostly concerned with financing, the deductibility of interest and tax-efficient ways to repay principal. It concluded by stating it may be possible to accommodate both sellers and purchasers through structuring and additional temporary complexity. Although the term "Purchaseco" is not used in this document, it is evident the document refers to that option.

[62] The Corporation apparently agreed to further explore the Purchaseco option. The stated advantages were that it would maintain access to the lifetime capital gains exemption for selling Principals while permitting purchasing Principals to repay the purchase debt and interest with after-tax corporate funds, rather than after-tax personal funds. Discussions continued between Mr. Olfert and Mr. Baldry between February and June and it appears the Purchaseco option was further refined by them with reference to the relevant facts.[44]

[63] The minutes for the June 15, 2010 Principals' meeting indicate that the information necessary to finalize the November 1, 2010 share transfers had been obtained,[45] and that a decision about whether a Purchaseco would be set up needed to be made. Thus, as at June 15, 2010, no decision had been made as to whether to adopt the Purchaseco option or to proceed with the existing practice of direct sales between individuals.

[64] In late June 2010, Mr. Baldry identified a potential problem with the Purchaseco option he and Mr. Olfert were then discussing. In particular, he realized section 84.1 of the Act might apply to certain selling Principals. However, Principals who were selling all of their Corporation shares or who were not selling any of their Corporation shares would not be affected by section 84.1. On June 24, 2010,

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[44] Mr. Baldry recalled that at the early stages he had meetings with Mr. Olfert and the senior Principals. If minutes or notes were taken at those meetings, they are not part of the record. The only minutes for shareholders' meetings between June 2009 and the end of 2010 that indicate the presence of Mr. Baldry are the meetings on February 10, 2010 and August 3, 2010. Mr. Olfert read written statements from Mr. Baldry and Beatty Beaubier at meetings in November and December, but they were not in attendance at those meetings. Nonetheless, both Mr. Olfert and Mr. Baldry said they were frequently and regularly in contact.

[45] This information included the number of shares to be transferred, the identity of the vendors and sellers, and a decision about which shares would be purchased for cash and which would be paid by promissory note over time.

Mr. Baldry emailed Mr. Olfert identifying the issue and suggesting a solution: Principals who were selling some of their shares would not become Purchaseco shareholders but rather would remain direct shareholders of the Corporation.[46] In that same email Mr. Baldry advised Mr. Olfert that he wanted to meet with Beatty Beaubier, a tax lawyer, to discuss the issue and his solution and that, while Mr. Beaubier was away, Mr. Baldry tentatively had booked a meeting with him for his return on June 30. Mr. Baldry suggested it would be desirable for Mr. Olfert to attend if he was able to do so.

[65] Sometime after this June 24 email, Mr. Baldry met with Mr. Beaubier.[47] However, the parties could not recall whether the corporate partnership idea was raised at this meeting. I find it unlikely that it was. Mr. Baldry said he thought the discussion at the meeting was mostly about section 84.1 and his proposed solution. He also said he thought Mr. Olfert had attended the meeting as suggested. Mr. Olfert said he had first heard of the corporate partnership from Mr. Baldry, not Mr. Beatty, consistent with the partnership proposal not arising until after the June 30 meeting.

[66] Moreover, the minutes for the July 13, 2010 Principals' meeting state that Mr. Olfert described the Purchaseco option. It is not clear which version of the Purchaseco model he described, although presumably it was the revised version reflecting the suggestion to avoid section 84.1. The minutes record the group's reaction: "further investigation for simplicity was asked for, but probably going with current model – cash/vendor financing". Thus, in mid-July the Principals were planning to proceed on November 1, 2010 as they had in the past – with direct sales by Principals to other individuals – because although the Purchaseco model provided some efficiencies in financing the cost of shares,[48] they were looking for something simpler. Mr. Olfert thought the corporate partnership had not been described to him

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[46] It appears that the Purchaseco option under consideration at this time contemplated all of the Corporation's shareholders (except those selling the remainder of their shares) and any new Principals would become Purchaseco shareholders. Mr. Baldry's solution was consistent with the proposal he had made in the summary he prepared after his first meeting with Mr. Olfert.

[47] The date of this meeting is not certain, but Mr. Baldry said he had no reason to believe it had not been on June 30, 2010.

[48] The idea was that the Purchaseco would incur the financing costs and would receive tax-free dividends from the Corporation to pay the financing costs. It would be connected with the Corporation so Part IV tax would not be payable on the dividends. Ultimately, Purchaseco would be amalgamated with the Corporation so that the loss from interest expense could be deducted in computing the Corporation's income.

before this meeting. I agree that is probable because, if it had, I would expect it to be mentioned in the minutes.

(b) ***The August 2010 Principals' Meetings***

[67] However, sometime before the end of July, Mr. Baldry explained the corporate partnership model to Mr. Olfert. Mr. Olfert in turn shared it with some of the senior Principals (referred to as the Executive Group[49]).

[68] On July 27, 2010, Mr. Olfert emailed Messrs. Gorchinski and Baldry asking them to present the corporate partnership proposal to the Principals at their scheduled meeting on August 3, 2010. The tone of this email is interesting: it relates that Mr. Olfert's description of the proposal "got them [the Executive Group] all excited," asks the PWC partners if they are prepared to spend the long weekend preparing a presentation, and expresses a strong desire for their attendance on August 3rd because the next shareholders' meeting would be in September, not leaving much time before the Corporation's year end. Mr. Baldry agreed to attend and present at "a fairly high level regarding the tax attributes of the structure".

[69] Messrs. Gorchinski and Baldry attended the shareholders' meeting on August 3rd. Mr. Baldry had prepared, and presented, a document titled "Initial Discussion Re Corporate Partnership Possibility,"[50] together with some illustrative examples of tax results arising from it. Diagrams put up on the screen at the meeting by Mr. Baldry to illustrate the proposal, which Mr. Reeves recalled, were not part of the evidence.[51] The document outlined pros and cons of the corporate partnership structure. Some of the reasons the Appellants' advance for the Reorganization are described as pros of the Reorganization, but not all. The possibility of multiple SBDs and substituting tax at the SBD rate or corporate rate for tax at the personal rate on salaries are mentioned in the document as pros of the plan.

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[49] Mr. Baldry described senior management as making decisions on various issues. Mr. Olfert described the Executive Team as meeting to decide on annual share transfers. Mr. Wood identified Messrs. Burnyeat, C. Olfert and J. Olfert as part of senior management. While there may have been others in this group, it is clear that a senior group of Principals met with some regularity and had significant decision-making and/or decision-influencing power in the Corporation.

[50] Exhibits A-4, A-5 and R-3.

[51] Mr. Reeves said he recalled diagrams with triangles and arrows, but could not remember any details of the discussion.

[70] The illustrative examples Mr. Baldry presented are based on a Principal with a 10% ownership interest, and assumed annual earnings of $600,000. They compare after-tax cash from a $600,000 salary paid to a Principal with after-tax cash under the corporate partnership model[52] in circumstances where the Principal and spouse together receive between $100,000 and $200,000 in dividends, each as to 50%, with the balance of the income left in the corporations. Mr. Baldry explained these scenarios were ones Mr. Olfert asked for "reflecting three kinds of typical circumstances of their Principals in terms of how much money they needed to live on annually to support their lifestyle."[53]

[71] The first column in the illustrative examples is headed "Pre-Reorg" and shows the result of a Principal receiving $600,000 salary. For the corporate partnership model, there are two columns, one headed "SBD" and the second headed "Associated." Mr. Baldry explained the SBD column illustrates the result where only the corporations comprising a pair are associated – consistent with the Appellants' position in these appeals. The Associated column illustrates the result where all of the corporations are associated – consistent with the Respondent's position in these appeals.[54] The differences are stark.

[72] In 2011, an individual receiving $600,000 in salary would have a tax burden of approximately $242,000 but, in the corporate partnership model, tax saved and deferred on that same income ranged from $140,685 to approximately $60,000, depending on the amount of dividends paid to the Principal and spouse and whether a Partnerco and paired Serviceco were considered associated with all thirty corporations, or only with each other. Thus, the tax saving/deferral ranged from approximately 60% to 25% of the tax otherwise payable.

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[52] That is, cash remaining in corporation(s) after corporate tax and dividend payments, and cash available to the Principal and spouse after tax on dividends. These examples illustrated tax savings on income received by the individuals and the tax-deferral on cash left in the corporation(s), which would be greater where the SBD was available than when not.

[53] By the end of 2010, only three Principals (Messrs. Burnyeat, C. Olfert and Sutherland) owned 10% or more of the Corporation; another two owned 7.5% or more, including Mr. Olfert. Six owned less than 5%, including Mr. Wood (4%) and Ms. Tiessen (1%). Mr. Reeves owned 6%. In its 2011 and 2012 fiscal periods, the share of the Partnership's income allocated to the Partnercos for Mr. Wood and Ms. Tiessen was less than half of $600,000 and for Mr. Reeve and Mr. Olfert was less than $410,000.

[54] Exhibit R-4.

(c) Why a Corporate Partnership?

[73] Mr. Baldry said that, before suggesting it to the Principals in the summer of 2010, he had not been a proponent of the corporate partnership model. He changed his mind for two reasons. The first related to integration of corporate taxes on business income and personal taxes on dividends where the corporate income was not taxed at the SBD rate. As he explained it, where the SBD was not available, the difference in tax rates in Saskatchewan had been 7% or 8%.[55] He explained this changed with the introduction of the GRIP and LRIP regimes and amendments to the gross-up and dividend tax credit rules. Mr. Baldry described these changes as having occurred before 2010, but could not recall when.

[74] These changes were announced in 2005 and introduced in 2006.[56] By 2009, in Saskatchewan, the tax cost of earning income through a corporation and paying dividends out of the after-tax corporate earnings where the SBD was not available, and the dividends were taxed at the highest marginal rate for approximately 1%. So while there was a nominal cost if the highest marginal rate applied, that rate might not apply, or might apply only to a small portion of the dividends paid.[57] Moreover, by limiting dividend distributions, exactly as proposed in Mr. Baldry's illustrative examples, shareholders could enjoy tax savings and a tax-deferral benefit, notwithstanding that the income was not taxed at the SBD rate.

[75] The second reason Mr. Baldry identified for changing his mind about corporate partnerships was that not long before meeting with Mr. Beatty, he had become aware that the Canada Revenue Agency had granted several advance income tax rulings to other taxpayers confirming that subsection 256(2.1) would not apply to the corporate partnerships that were the subject of those rulings "if none of the reasons for the reorganization involve multiplication of the small business

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[55] Although Mr. Baldry made this assertion, he did not present the underlying facts. For income not eligible for the SBD, the tax cost (or penalty) was actually quite a bit less than 7% in 2010. The combined federal and Saskatchewan non-SBD corporate tax rate in 2010 was approximately 30%, and in 2011 28.5%, so after-tax funds left in the corporation(s) would benefit from significant deferral. Even if paid out immediately, the tax cost in Saskatchewan was not significant at the highest marginal tax rate, and not all income might be taxed at that rate.

[56] See November 23, 2005 Notice of Ways and Means Motion and 2006 Federal Budget.

[57] In Saskatchewan the highest individual marginal tax rate was applicable only to income in excess of approximately $114,000 in 2009, and $115,000 in 2010. So, where the corporation paid tax at the non-SBD rate, an individual and spouse could each receive significant dividends from the pair without incurring any tax cost, because of the integration of corporate and personal taxes.

deduction. So those two changes to me brought the corporate partnership model into the realm of possibility for the AODBT group."[58]

[76] In my view, Mr. Baldry's testimony is quite revealing. Of the two factors that changed Mr. Baldry's mind about corporate partnerships, the one closest in time to Mr. Baldry proposing a corporate partnership to Mr. Olfert was the possibility of multiple claims for the SBD, consistent with the rulings. Because substantial integration for income not eligible for the SBD rate was available before Mr. Baldry was engaged by the Corporation,[59] I am satisfied that what really changed Mr. Baldry's mind was the CRA rulings. Why? Because they confirmed the SBD could be available to all of the corporations.

[77] In my view, it was the prospect that all of the income would be eligible for the SBD rate that excited the Executive Group to whom Mr. Olfert first described the proposal. They were the ones whose income was more likely to be higher, who owned the most significant interests in the Corporation, and who presumably were in the best position to leave money in the corporations. That amount could be substantial at a combined federal-provincial 15.5% SBD corporate tax rate.[60] The integration of corporate and individual taxes on dividends where the SBD was not available provided downside protection if the SBD benefit was not achieved.

[78] Mr. Baldry testified the only impediment to all the corporations qualifying for the SBD was subsection 256(2.1). Mr. Baldry knew, and advised the Principals, they needed to have reasons other than multiplication of the SBD if they hoped to have access to multiple SBDs. Mr. Baldry understood that this was the basis on which the CRA had granted the rulings that changed his mind about corporate partnerships. He acknowledged that from the outset the corporate partnership proposal contemplated Partnercos and Servicecos and the potential for multiple SBDs.

[79] When the Principals decided to reorganize into a corporate partnership, Mr. Baldry did not believe that it addressed the very issue he had been engaged to assist the Corporation with (i.e., finding a tax-effective way to address the financing

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[58] Transcript, Vol. 1, pages 60-61.

[59] That it would improve in 2010 was known because adjustments to tax rates had been announced before 2010.

[60] In its 9 month fiscal period ended October 31, 2011, the partnership's income was approximately $3,600,000 and in its fiscal period ended October 31, 2012 it was approximately $5,800,000.

issues associated with share purchases). In his written document for the August 3, 2010 meeting Mr. Baldry described a con of the corporate partnership as follows:

> Moving to this type of structure does nothing to address the present issues of departure of the "old guard" and admission of the "new guard" in most tax-effective way. These issues will probably have to be addressed through present mechanisms of vendor financing and/or the use of Purchaseco prior to consideration of move to new structure.

[80] Despite not addressing that issue and potentially needing the Purchaseco that had been rejected the previous month in search of something simpler, the minutes of the August 3, 2010 meeting describe the discussion with Messrs. Baldry and Gorchinski as "extremely informative and beneficial." Mr. Olfert agreed that when the Principals found out about the tax savings at the meeting there was excitement. This too is reflected in the minutes from the continuation of the August 3 meeting, on August 30, 2010:

> Jeff [Olfert] is proceeding with Beatty [Beaubier] as quickly as possible to institute the new corporate partnership model that saves taxes for all and updates the company to a 2010 model.

It is telling that the only benefit specifically mentioned in the minutes, and the one tax benefit common all Principals, is saving taxes.[61]

[81] Consistent with that, the illustrative examples Mr. Baldry presented to the Principals at that meeting are based solely on tax benefits. Mr. Baldry said he emphasized to the Principals they should adopt the corporate partnership only if they were happy with the results under the third column (i.e., that the Servicecos would not be entitled to the SBD). The way Mr. Baldry explained it, the decision was to be made on the basis of comparing the two corporate partnership columns. But, neither column takes into account any benefits the Appellants cite as reasons for the Reorganization, including the ability to use after corporate tax dollars to pay off debt.

[82] If the main reasons for pursuing the corporate partnership were those identified by the Appellants, Mr. Baldry should have had no hesitation in

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[61] Although Mr. Olfert suggested "saves taxes for all" referred to after-tax financing, I am not convinced. Mr. Olfert's testimony was 10 years after the meeting. At this stage Mr. Baldry had advised them the corporate partnership did not assist with existing debt. Financing issues were not relevant to all Principals (the most senior Principals were sellers not buyers; others like Mr. Reeves had used available cash not borrowings). Finally, the financial presentation by Mr. Baldry did not illustrate any tax savings from financing purchases of interests in the Partnership.

recommending, and the Principals no hesitation in adopting, the corporate partnership without regard to the SBD. The tax cost, if any, of paying the higher tax rate was relatively small and could be eliminated given the deferral opportunity and the ability to limit dividend distributions to manage personal taxes. Moreover, it solved the acquisition financing issue for future purchases and sales of interests, the very issue Mr. Baldry was engaged to consider. In other words, if the Appellants' stated reasons were the main reasons, Mr. Baldry should have recommended it before knowing anything about the rulings.

[83] But, that is not the way Mr. Baldry framed his advice. The published CRA rulings led Mr. Baldry to suggest the corporate partnership because of the ability to multiply access to the SBD. I have no doubt Mr. Baldry warned the Principals about the risk of subsection 256(2.1) applying in the absence of a ruling. But, he advised them that the downside was the tax deferral and tax savings illustrated in the "Associated" column. Other reasons that Mr. Baldry and the Appellants put forth do not appear to have been part of the decision making process as presented by Mr. Baldry.

[84] When asked under cross-examination about deciding to fundamentally restructure the Corporation in a matter of two to three weeks, Mr. Olfert said that they had already considered restructuring on the Purchaseco model, and this was just a different way of doing it. But they rejected the Purchaseco model in favour of simplicity.

[85] Mr. Olfert said they chose not to seek a ruling because they were under a time crunch. When asked why, he said the sooner it was done the better. But what was the rush? The Corporation had taken five or six months to consider the Purchaseco option, before deciding it was too complicated. The Principals' meeting minutes, including those for the July 2010 meeting, suggest status quo – rather than pursuing the Purchaseco model in the hopes of something simpler.[62]

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[62] In fact, in November 2010 Principals and spouses sold shares: Ms. Tiessen, not previously a Principal, purchased one participating share and ten voting shares; Louis Aussant, a relatively senior architect hired in 2010, but who had no shares, purchased four participating shares and forty voting shares; and several other existing Principals, including Mr. Wood and Mr. Reeves, purchased additional shares. In each case, the shares were purchased by the individual directly from another Principal or spouse. The purchasers paid cash (either from their own resources or loans) or agreed to pay the seller over time, issuing an interest-bearing promissory note. See Exhibit A-29.

[86] And yet on hearing about the corporate partnership model, requiring significant complexity and changes to many aspects of the business, the Executive Team was immediately enthusiastic. The Principals as a group decided to adopt it after the August 3rd presentation by Mr. Baldry, notwithstanding that at that time it included Purchaseco to address debt-financing, and that many of the benefits that were part of the final plan were not yet contemplated.[63] This suggests other purported reasons for (benefits from) the Reorganization flowed from the decision to reorganize in order to access multiple SBDs, rather than that they were the impetus for the Reorganization.

[87] The spreadsheet Mr. Baldry prepared summarizing tax aspects of the Reorganization is entirely consistent with my conclusion that the SBD was a main reason for the Reorganization. Mr. Baldry described its purpose as "to capture information for each of the individuals in terms of how many shares, adjusted cost base, capital gains to be triggered, and . . . to just summarize the amount of tax paid shareholder loan pipeline created." What Mr. Baldry did not mention is that this summary also identifies the "Target taxable income" for each Partnerco (aggregating exactly $500,000 for the fifteen Partnercos), the "Optimum monthly service fee" for each Serviceco and the "Tax set aside" for each Partnerco and Serviceco. Mr. Baldry testified that the service fee selected was an amount that would bring the Partnerco income to something approaching its SBD limit.[64] The tax to be set aside is 16% of target taxable income for the Partnerco and 16% of the optimum service fee for the Serviceco, at a time when the non-SBD combined federal-provincial rate for Saskatchewan was in excess of 26%. Clearly, this summary was premised on multiplication of the SBD and payment of dividends rather than salary to Principals.

[88] While I accept Mr. Baldry advised the Principals that they should not adopt the corporate partnership unless they were satisfied the benefits of the tax savings and deferral in his illustrative examples under the Associated column were sufficient, that does not mean that reduction of taxes was not a main reason for corporate partnership model. In my view, the documents prepared at the time the Reorganization was approved and Mr. Baldry's testimony leave little doubt that the reduction of taxes through multiple corporations having access to the SBD, and more

[63] Transcript, Vol. 1, page 121.

[64] In the taxation years under appeal, the taxable income of the Partnercos aggregated approximately 10% less than $500,000.

corporate income being taxed at the lower SBD rate, was one of the main reasons to adopt the corporate partnership.

[89] Appellants' counsel suggested that because Mr. Baldry warned the Principals that the SBD might not be available, and they nonetheless decided to proceed, the SBD cannot be a main reason for the Reorganization. I do not accept that argument. This is not a case where they did not know the SBD was available[65] or the associated corporation rules might apply.[66] What they knew was they needed reasons other than multiplication of the SBD for reorganizing into the Partnership if they hoped to succeed, and there was a risk they would not succeed, but the downside was not significant. I am satisfied what made it attractive for Mr. Baldry to propose it, and for the Principals to pursue it, was the SBD for all income.

[90] The minutes from the January 11, 2011 Principals' meeting describe a Financial Discussion with Messrs. Baldry, Beaubier, and Mike Deobald. The "key items" mentioned are almost all tax matters, including the observation that the less money that is drawn from the Serviceco the better from a tax perspective. Mr. Olfert agreed the minutes were accurate in summarizing what the advisors said at the meeting. He described the list as describing all of the things accomplished in the Reorganization process.[67] None of the other Principals who testified remember any discussion of these issues.

[91] In summary, despite the testimony about the reasons for the Reorganization, the documents and other aspects of the testimony lead me to conclude that one of the main reasons for the Reorganization was to access multiple SBDs. Mr. Baldry advised the Principals that purposes other than a desire to obtain the SBD were necessary if they hoped that the corporations would not be deemed associated. Accordingly, other benefits of the Reorganization were identified by the Principals with the assistance of their advisors so that, as Mr. Baldry put it, there was a filing position that the thirty corporations were not associated.

(4) Appellants' Stated Reasons for the Reorganization

[92] Let me now turn to the reasons the Appellants advance for the corporate partnership and why, for the most part, I am not persuaded they were main reasons

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[65] As was the case in *Prairielane*.

[66] As was the case in *Hughes Homes*.

[67] Transcript, Vol. 1, page 218.

for the Reorganization, or the separate existence of the thirty corporations that it required. The only real evidence these were reasons is the testimony of the witnesses at trial (i.e., *ex post facto* assertions of purpose), three of whom candidly said they were the reasons they were told the Reorganization was proceeding. In my view, several were reasons suggested by Mr. Baldry and in some cases were identified after the decision to reorganize had been made.

(a) ***Addressing Succession Issues including Recruitment and Retention of Senior Talented Staff***

[93] Succession was a theme returned to again and again in the context of these appeals. That term, and other terms such as transition and strategic planning, were used by the witnesses and in the documents to describe many different issues that, broadly speaking, concerned ownership and management of the business.

[94] External consultants who interviewed staff and Principals in the course of several strategic reviews noted a high degree of satisfaction among staff and observed the Corporation was seen as having a collegial atmosphere, as an employer of choice, with good staff morale and as having very high staff retention rate. The external consultant engaged in December 2010, when the reorganization was being undertaken, was asked to review a number of strategic issues, including shareholder structures, transactions and processes. A shareholder retreat was held in early 2011 and succession issues, including equity ownership, remained a topic to be considered despite the Reorganization having been completed. The succession theme that recurs throughout all of the strategic review material from the 2005-2011 period is delineating a process for those who want to move up in the firm and take on an ownership role, including defining eligibility criteria, and delineating a process for departing from the firm.

[95] I accept that recruiting and retaining senior talented staff was important to the Corporation. I also accept that the Corporation was concerned with transitioning senior Principals out of, and junior Principals into, the business in a way that preserved the goodwill of the business. Staff and client satisfaction were important considerations. However, with the possible exception of the financing aspect of the purchase and sale of interests in the business, I am not convinced that the Reorganization had any effect on, or relevance to, the broader succession issues.

(i) Recruiting and Retaining Talented Staff

[96] Mr. Olfert suggested that it was difficult to attract personnel because of the structure they had (i.e., a corporation owned by Principals). But, he agreed no individuals declined to join the Corporation or left the Corporation because of the ownership structure. In fact, Mr. Olfert agreed it would be unusual in a recruiting context to talk about the way the business was owned.

[97] Shareholders' meeting minutes in 2010 refer to successful efforts to recruit a senior architect, Mr. Aussant. The Corporation's structure is not mentioned as a concern, and Mr. Aussant joined the Corporation in the Spring 2010, before the corporate partnership had been proposed.

[98] Ms. Tiessen, Mr. Reeve and Mr. Wood all stated that when they joined the Corporation they did not know about the ownership structure. Mr. Wood learned about Third Avenue when he became a shareholder in 2006. In Spring 2010, Ms. Tiessen agreed to become a Principal on the understanding she would purchase shares of the Corporation. She was surprised to learn about the Reorganization because she had researched the existing structure before agreeing to become a Principal. By the time she learned about the Reorganization, the decision to implement it had already been made. So, unless she did not want to become an owner, she had no option but to participate. As she put it, she was not in a position to challenge the decision. While Ms. Tiessen was unaware of any issues that would give rise to a change in structure, she was told the reasons included recruiting Principals, and in particular financing share purchases.

[99] I am not persuaded that the ownership structure before or after the Reorganization was relevant to recruiting or retaining staff.

(ii) Financing the Cost of Shares

[100] As described above, before the Reorganization, shares in the Corporation were acquired by direct share sales between individuals. In some cases the seller(s) received cash immediately and in other cases the seller(s) agreed to accept an interest-bearing promissory note from the purchaser, repayable over five years.[68]

[68] Mr. Reeves testified he purchased his first share in November 2006 by mortgaging his house. He similarly borrowed for the second share but thereafter paid cash. Ms. Tiessen purchased her first share with a loan from Royal Bank of Canada, but for additional purchases used vendor financing until 2020. Mr. Wood purchased his first share in 2009 with a bank loan. The two

[101] As the firm grew, the per share fair market value (and therefore the cost to purchase a share) increased. A participating share cost $25,000 in November 2006, but $53,000 by November 2010.[69] Thus, the cost of financing the purchase of shares was increasing. Financing share purchases is the issue that motivated Mr. Olfert to seek PWC's assistance, leading Mr. Baldry to propose the Purchaseco option, and to Mr. Baldry and Mr. Olfert considering various modifications of that option. As Mr. Baldry explained it, because of the higher rates of tax imposed on personal income (relative to corporate income), repaying the acquisition debt out of after-tax dollars was difficult, even though the interest on that debt was deductible. Moreover, he said, at the time, financial institutions were becoming more and more reluctant to provide financing.

[102] I accept that under the corporate partnership model, a Partnerco financing the purchase of a partnership interest would have more after-tax dollars available to repay the acquisition debt, because corporate tax rates generally are lower than individual rates. This is a pro Mr. Baldry mentions in the "Initial Discussion re Corporate Partnership Possibility" document, referring to after-tax dollars of $0.85 (the SBD rate) or $0.70 (the non-SBD rate).

[103] But how important was this to the decision to adopt the corporate partnership model?

[104] Mr. Olfert said the 2008-2010 period was one of significant income growth and Principals could afford to purchase shares. He also said that junior Principals were asked whether they would prefer to become owners on what he termed a "naked in/naked out" basis.[70] They expressed a preference to purchase and sell shares for fair market value. This gave the Principals upside opportunity, coupled with downside risk. Thus, junior Principals wanted to purchase shares for fair market value and were prepared to assume the risk and responsibility for paying any debt associated with purchasing shares out of their resources, including after-tax earnings and dividends.

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additional shares he purchased in 2010 were financed by the vendor agreeing to Mr. Wood paying the purchase price over 5 years.

[69] The price per share was $25,000 in November 2007 and $42,000 in November 2009. The price in 2008 is not in any of the evidence. See Exhibits R-20 and R-21.

[70] This approach would see shares being acquired for a nominal amount (say $1) on becoming a Principal but also being sold for the same nominal amount on ceasing to be a Principal or transitioning out. There would be no financing cost but also no upside.

[105] External consultants engaged to provide strategic planning also had made suggestions to address the rising cost of shares and financing,[71] but none appear to have been pursued. Moreover, although the Corporation considered the Purchaseco option for some five or six months after Mr. Baldry first suggested it, the Principals rejected it because they wanted something simpler.

[106] Principals continued to purchase shares as late as November 2010, seemingly without difficulty. Mr. Reeves said that while he had borrowed, by mortgaging his house, to acquire his first two shares in 2006 and 2007, he had been able to pay cash for his next three shares without the need for financing. Mr. Wood purchased his first share in 2009 with a bank loan.

[107] Ms. Tiessen and Mr. Aussant purchased shares in November 2010, as did other shareholders. Ms. Tiessen agreed to do so without knowing anything about the Reorganization. She testified she had not had any trouble financing the purchase of her first share.[72] Two months before the Reorganization and with no knowledge it was going to happen, she obtained a bank loan from Royal Bank. Ms. Tiessen purchased her next seven "shares"[73] relying on vendor financing. In 2020, she approached four financial institutions but described how difficult that had been compared to her earlier experience because the banks required applications, paperwork, and collateral.

[108] Efficient financing of share acquisitions was one of several aspects of succession that was of interest to at least some of the Principals. However, the decision to reorganize into a partnership was made before the advisers determined that significant amounts of the existing share financing could be assumed by a corporation in the Reorganization. Secondly, many other ideas for addressing this issue, including one suggested by Mr. Baldry were not pursued.[74] Thus, I find that if

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[71] Suggestions included increasing the number of shares, and the Corporation providing financing assistance through bonuses or loan guarantees. See Exhibits A-20 and R-1.

[72] She did say it was a large borrowing based on her income at the time and that it might have been difficult to borrow more than she did.

[73] She said shares but I understand her to mean interests in the Partnership.

[74] Initially, Mr. Baldry was suggesting that Purchaseco might be a part of the Reorganization to address this issue. This too suggests that financing costs was less important than the SBD, because without the SBD the Principals were unprepared to take steps to address financing costs using a Purchaseco.

this was a reason for the Reorganization, it was a far less compelling one than achieving multiplication of the SBD.

(b) ***Removal of spouses from ownership positions***

[109] The Appellants claim one of the main reasons for the Reorganization was to eliminate spouses as direct equity holders in the entity conducting the business. However, the evidence concerning complaints about spouses were centred around two spouses who worked in the business, not about spouses as shareholders. Moreover, those complaints were resolved long before 2010.

[110] Mr. Olfert described the issues concerning one spouse as relating to the perceived value of her contributions as an employee, her husband placing more value on her services than the others. Mr. Olfert's testimony is the only evidence about this concern. None of the minutes of shareholders' meetings reflect this,[75] although they consistently have a heading for Staff Issues and HR Report.[76]

[111] The complaints about the second spouse date back to late 2004 and early 2005, a time when the Corporation did not have a policy concerning employment of spouses, or other family members. The Corporation engaged an external HR consultant to investigate. That consultant interviewed a number of staff, analyzed roles and responsibilities, and delivered a report to the Corporation in early April 2005. The report observed that the firm had employees with no shareholder interest, employees married to shareholders, and employees who are shareholders, but that as a general rule the latter two categories of employees did not use their shareholder status as leverage for special treatment with one exception. The report recommended several initiatives including explicit documented guidelines addressing a number of items, such as a personnel manual, job descriptions, hiring policies and behaviours expected of shareholders conducting business on behalf of the firm. While recognizing some conflicts among some staff, the report did not recommend terminating the spouse in question, but suggested reassigning her to a position she had previously held.

[112] The report resulted in some friction between the Corporation on the one hand and the spouse and her husband (a Principal) on the other, as a result of which the spouse resigned as an employee in April 2005 and her husband took a leave of

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[75] See Exhibits A-23, A-24, A-26, A-28, A-37, R-5, R-6, R-10 and R-14.

[76] This spouse ceased to be a shareholder by November 1, 2010.

absence. However, the spouse's status as a shareholder did not change. She remained a shareholder until November 2009, but each November between 2007 and 2009 participated in the annual share sale process as a seller.

[113] Interestingly, at about the same time as the HR consultant was engaged, the Corporation was conducting a broader strategic review with another external consultant. This strategic review involved the consultant interviewing each of the Principals in early March 2005, close in time to the HR consultant's work. The external consultant's summary of those interviews reflects the need for attention to personnel policies and hints at potential conflicts between Principals arising from spouses' roles. It also refers to the need to address the role of existing family members' share status. But the clear focus of concern was orderly retirement over time, bringing the right people in to replace those retiring, and appropriate transition arrangements, including opportunities for growth, to accommodate proper integration. The absence of a clear policy on share allocation and transfers was also identified.

[114] As recommended, the Corporation created and adopted a HR handbook. The Corporation adopted a policy to not hire spouses or other family members. Subsequent strategic reviews in 2008 and 2010 repeat succession planning as an important theme. But if spousal shareholders was an issue, it was not seen as significant enough to be reflected in any of the resulting reports or descriptions of issues to be considered in those reviews. Moreover, issues concerning spouses as shareholders and internal conflicts did not arise in 2007 staff interviews. It appears that once the policy was adopted, and the relevant spouse ceased to be an employee, concerns about spouses were considered resolved.

[115] Spousal shareholders were raised at a shareholders' meeting in September 2005, five months after the HR consultant's report and the resulting conflict, but the minutes indicate Mr. Olfert said that it was easy to remove them as shareholders although doing so might result in a loss of capital gains exemption.[77] No other meeting minutes in evidence suggest this was a topic of discussion. Mr. Olfert admitted that following the 2005 conflict, no offers to purchase shares from spouses

[77] As part of the annual share ownership adjustment process, shares were purchased from existing shareholders, enabling the selling shareholder to claim a capital gains exemption. Where both a Principal and the Principal's spouse were selling shareholders, presumably both would have claimed a capital gains exemption.

were made and no effort was made to eliminate spousal shareholders. If no efforts were made to remove them, it cannot have been a significant issue.

[116] Mr. Baldry said a junior Principal had expressed some dissatisfaction with spouses of senior Principals being involved in the ownership[78] but that dissatisfaction was raised informally at the golf course where they were both members. This evidence is entirely hearsay and I give it no weight.

[117] Each of Mr. Reeve, Mr. Wood and Ms. Tiessen was asked about concerns with spousal shareholders. Each said they had none. Mr. Reeves said spousal shareholders did not affect his day-to-day life. He claimed to have heard about it as an issue at shareholders' meetings but with the exception of the meeting minutes from 2005, none of the meeting minutes reflect any discussion of this topic.[79] Mr. Reeves said that he would not have wanted his spouse to be a shareholder and understood spousal shareholders to be a holdover from the original structure. Mr. Wood said it was not something he gave any thought to.

[118] The history of spouses' share ownership is also relevant. In the early 1990s, one of the founders of the firm was retiring and seeking to sell his shares to the other shareholders. The other shareholders agreed to purchase the shares through holding companies, as suggested by the Corporation's then accounting adviser. Mr. Olfert testified that the selling founder insisted that each spouse guarantee payment of the purchase price and become a shareholder of the purchasing holding company with her husband Principal. The holding companies were ultimately amalgamated with the corporation that then carried on the business, presumably to form the Corporation.

[119] By the time the Reorganization occurred, spouses had been shareholders for more than 15 years. If anyone asked, the reason could be readily explained: it was a historical arrangement necessitated by the retirement of a founding partner and their interests were being reduced as new Principals became owners. The number of spousal shareholders and their aggregate equity interest in the Corporation

[78] Mr. Baldry actually said "the operations" before correcting himself with ownership. His initial statement is consistent with other evidence on potential concerns.

[79] Mr. Reeves' recollection of this being raised also may relate to reasons described to him, as they were to Mr. Wood and Ms. Tiessen. I do not criticize him for suggesting otherwise since the Reorganization occurred nearly ten years before he testified.

demonstrably declined significantly over the 15 year period.[80] If there was any pressing need to eliminate them as shareholders, it was considered easy to accomplish. Having spouses as shareholders facilitated income splitting and provided more access to the capital gains exemption and so benefited senior Principals.[81]

[120] Mr. Olfert said elimination of spousal shareholders was an important objective of the Reorganization. Each of Mr. Reeves, Mr. Wood and Ms. Tiessen said they were told that was a reason. However, that it was a reason simply is not borne out by the evidence. There is no evidence this was even discussed at the relevant time. I have concluded that eliminating spouses as shareholders of the operating entity was a result of the Reorganization, but was not a reason for it.

(c) Independent Financial Planning/Estate Planning

[121] Mr. Olfert explained that the Principal group were at different life stages. The more senior Principals had less need for immediate access to cash than the more junior Principals. Thus, he says, one of the reasons for the Reorganization was to allow each Principal to determine how much money to take personally (through salary or dividends) and how much to leave behind in a corporation (i.e., the

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[80] As at November 1, 2010, only four spouses, who collectively owned 10% of the participating shares, remained shareholders. In contrast, in 1997, spouses owned 46% of the equity, with each spouse owning the same number of participating shares as her husband. Two spouses had reduced their shareholdings effective November 1, 2010 as part of the annual adjustment to share ownership. Based on planned retirements, the period during which spouses would remain shareholders was reasonably foreseen.

[81] The Principals whose spouses were shareholders were those who had been shareholders the longest, held the greatest interest in the Corporation and were more likely to have a significant capital gain on their shares. Capital gains on Third Avenue also were treated as eligible for the capital gains exemption. On the Reorganization, Mr. Olfert and his spouse collectively realized capital gains on the shares of the Corporation and Third Avenue of approximately $450,000, all of which was considered eligible for the capital gains exemption. The same appears to be true for other senior Principals (and presumably their spouses). See Exhibit A-12. Mr. Reeves realized an aggregate capital gain of approximately $143,000 of which approximately $24,000 was not eligible because he had held the shares for less than two years. Mr. Wood realized a loss on his Third Avenue shares (that was considered a superficial loss) and an approximately $28,000 capital gain on the Corporation shares, although only $7,000 was considered eligible for the capital gains exemption. Ms. Tiessen only purchased her shares two months before the Reorganization and so realized neither a gain not a loss. See Exhibits A-7, A-8, A-9 and A-10.

Serviceco). He explained that where the Principals were employees and shareholders of the Corporation, they did not have that flexibility.

[122] Before the Reorganization, Principals received a combination of salary and dividends. I accept that it may not have been feasible for each Principal to ask for the ideal mix of salary and dividends on an individual basis. However, this does not appear to have been raised by the Principals as desirable or important. It was not something Mr. Baldry was engaged to consider.

[123] Other than Mr. Olfert's statements to that effect, where is the evidence this was important to the Principals? It appears nowhere in any of the minutes, emails, or strategic review documents. Mr. Olfert said he heard about it at shareholder meetings and in casual conversations. None of Mr. Reeves, Mr. Wood or Ms. Tiessen identified this as something important to them, and only Mr. Wood mentioned it as a reason given to him for the Reorganization. None of the senior Principals other than Mr. Olfert testified to substantiate his claim that this was a main reason for the Reorganization.

[124] The ability to undertake an estate freeze and individual financial planning are benefits of the corporate partnership identified in Mr. Baldry's Initial Discussion document. But, this is something Mr. Baldry suggested to the Principals, as he admitted he did to all of his clients. I accept that it may have been a factor relevant to the Principals' decision. But, at best, individual financial planning it is one of the main reasons for the Reorganization. It does not, in my view, support a finding that increased access to the SBD was not one of the main reasons for the Reorganization.

(d) ***Income Splitting***

[125] Mr. Baldry explained that the Serviceco permitted a Principal to income split with the family trust/and spouses. However, the Principals already had an income splitting arrangement in place through the MSLP, the limited partners of which were family trusts. For some Principals, additional income splitting was possible because spouses were shareholders of the Corporation and Third Avenue. Those spouses had their own capital gains exemption and received dividends.

[126] The Appellants did not provide any evidence that the Reorganization enhanced income splitting beyond the previous arrangements or that the then-existing income splitting arrangements were viewed as inadequate. None of the documentation refers to a need to revisit existing arrangements or a desire to improve existing income splitting. None of Mr. Reeves, Mr. Wood or Ms. Tiessen mentioned

this as a reason for the Reorganization. The Appellants have not convinced me income splitting was a reason for the Reorganization.

(e) ***Asset protection***

[127] The evidence regarding the desire for asset protection is particularly weak.

[128] This concern relates almost exclusively to architects, responsible for stamping architectural drawings and thereby becoming personally liable for negligence. Only one of the four Principals of the Appellants is an architect. Of the Partnership's fifteen Principals in the taxation years under appeal, only six are architects.[82] Nothing suggests that a single corporation would not provide at least as much asset protection as the corporate partnership for any Principal other than an architect. As shareholders, they would not normally be liable for the Corporation's debts.

[129] As Mr. Baldry explained it, the Reorganization accommodated the build up of wealth in the Servicecos, rather than the Partnercos. The increase in value in the Servicecos would accrue to the Principal's family trust and thus afforded asset protection from this potential liability.

[130] But there is no evidence to suggest this was a concern.

[131] Asset protection is not mentioned in any of the documents, including reporting letters, emails, Mr. Baldry's presentation materials, meeting minutes, consultant's reports or summaries of interviews with staff, or the list of what was accomplished by the Reorganization in the January 11, 2011 minutes.

[132] Mr. Olfert acknowledged that the Corporation had not obtained an opinion regarding asset protection. Mr. Reeves, the only architect who testified, said personal liability was a topic that had been the subject of much discussion when he was studying to become an architect and he was very aware of it as a potential issue. But, he said he had neither seen nor sought an opinion to substantiate the claim that the corporate partnership model provided additional asset protection.

[133] The Corporation (and the Partnership) both purchased professional liability insurance and carried more professional liability insurance than was required by the Saskatchewan Association of Architects. The Partnership Agreement obliged the

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[82] A naming convention for Partnercos and Servicecos was adopted under which the Principal's profession was part of the name. Only six pairs include the word Architect.

Partnership to purchase public and personal liability insurance to ensure the Partnercos and the Principals had errors and ommissions coverage. Mr. Olfert said that before engaging the firm to do work clients often required insurance coverage that exceeded what in his view was reasonable. No witness could recall a claim being made against the business that was not covered or would not be covered by insurance.

[134] Moreover, under each of the employment agreements in evidence, the Serviceco agreed to indemnify the Principal from any liabilities incurred by reason of the Principal's duties under the employment agreement. That indemnity was stated to survive termination of employment and termination of the employment agreement.[83] Thus, if an architect was professionally negligent, the agreement contemplates that Serviceco's assets will be available to pay any of the architect's liability in excess of relevant professional liability insurance. While Serviceco might distribute some funds (as dividends or salary), leaving the property in the Serviceco further deferred tax, one of the advantages Mr. Baldry identified to the Principals. Indeed Mr. Baldry both said the growth in value would be in the Serviceco and told the Principals the more money that was left in the Serviceco the better. That would leave those funds available for meeting a claim under the indemnity.

[135] While architect Principals might have enjoyed some measure of additional asset protection as a result of the Reorganization, nothing suggests that asset protection was a reason for the Reorganization. At best, it was a result that benefited a few Principals.

(f) ***Simplification***

[136] Prior to the Reorganization, MSLP was responsible for the administrative services, hiring consultants and technicians and paying all administrative expenses. MSLP then charged those costs back to the Corporation with a mark-up, leaving a profit in MSLP. Because the MSLP limited partners were the Principals' family trusts, the arrangement accommodated income splitting.

[137] Mr. Olfert suggested that one of the objectives of the Reorganization was to simplify operations. Mr. Olfert described this as a personal pet peeve: the "cumbersome and time-consuming" process he had to undertake to analyze the profitability of a project because he had to pull information from two places (the

[83] The four agreements in evidence are identical and there is no reason to believe all of the Serviceco's employment agreements are not identical.

Corporation and MSLP) to consolidate in an excel spreadsheet. Following the Reorganization, everything was in a single place – the Partnership – because all operations were consolidated in the Partnership.

[138] But, Mr. Olfert did not explain what made it cumbersome and time-consuming, or otherwise demonstrate how difficult it was. He did not provide any specific examples. What he described did not sound particularly cumbersome or time-consuming. One might expect projects would be identified in both systems, and that people working on them would record their time and the project specific expenses to the project in the relevant system.

[139] Other than Mr. Olfert, no one (and none of the documents[84]) suggested this was a concern, a frustration, or a consideration. It might have presented some inconveniences for Mr. Olfert but the Corporation and MSLP arrangement had been in place for more than a decade.

[140] It is true that the business operations were consolidated in the Partnership. However, the organizational structure after the Reorganization is much more complex, and Mr. Olfert's responsibilities grew as a result. Mr. Olfert assumed responsibility for the bookkeeping for all of the corporations, and for the supervision of PWC's work preparing tax returns for all of the corporations and the Principals.

[141] Thus, while the Reorganization might have simplified profitability analysis for Mr. Olfert, I find that simplification was not a reason for the Reorganization.

(5) <u>Reasons cited by Mr. Baldry for Serviceco and Partnerco</u>

[142] Mr. Baldry explained why it was necessary for each Principal to have both a Partnerco and a Serviceco, rather than only a Partnerco, under the corporate partnership model.

(a) ***Protection of Capital Gains Exemption Status***

[143] One was to permit wealth to be accumulated in a corporation other than a Partnerco so that the shares of the Partnerco would continue to qualify as small

[84] Although it is mentioned in Mr. Baldry's list of pros of the corporate partnership, I consider that to be something he came up with rather than something that was raised by or that motivated the Principals.

business corporation shares permitting the shareholder to benefit from the capital gains exemption on disposition.

[144] But, an individual would realize a capital gain only on a disposition of the Partnerco shares. There is no suggestion this was an intended course of action, or a feasible one.[85]

[145] Mr. Olfert explained that the process for purchasing ownership interests was the same after the Reorganization as it had been prior to the Reorganization. This makes sense. As Principals transitioned out of the firm, they reduced their ownership interest over time, rather than all at once. While those ownership interests became available to others to purchase, the number of sellers did not necessarily match the number of purchasers.[86] Thus, a seller might be selling parts of its ownership interest at a particular time and selling to more than one purchaser. That would not be feasible with a sale of Partnerco shares.

[146] Rather existing partners (the Partnercos) would sell part off their partnership interest and other Partnercos would purchase them.[87] Any gain realized by a Partnerco on the disposition of an interest in the Partnership would obviously not entitle the Principal to claim the capital gains exemption.[88]

[147] Minutes of the shareholders meeting on January 11, 2011 include the observation that it will be challenging to use up the capital gains exemption.[89]

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[85] Purchasing the Partnerco shares potentially would have disadvantages including exposure to past liabilities, potential negative adjusted cost base in the partnership interest, and the need to establish a purchasing corporation followed by an amalgamation if interest on the acquisition financing was to be deductible from the share of partnership income.

[86] For example, in November 2010, four Principals sold 15 participating shares to nine Principals.

[87] Consistent with this, the Partnership Agreement contemplates transfers of units. Alternatively, the Partnership could reduce a selling Partnerco's interest while increasing another Partnerco's interest, but that would not result in a capital gain on the Partnerco shares either.

[88] This makes sense. Under the pre-Reorganization structure, the Principals (and spouses) were eligible for the capital gains exemption on disposing of the Corporation (and perhaps Third Avenue) shares. After the Reorganization they would not be selling Partnerco shares. Mr. Baldry warned it would be more difficult to access the capital gains exemption, recognizing some Principals lost the benefit of something they had under the pre-Reorganization structure. He pointed out that with integration the capital gains would be taxed at the capital gains rate (22%) not the higher dividend rate.

[89] Exhibit A-37.

Moreover, under the arrangements, the growth in value was intended to occur largely in Serviceco not Partnerco. Mr. Baldry said one of the reasons for the service fee was to limit appreciation in value in the Partnerco.

[148] While I accept that on a Principal's death, qualification for the capital gains exemption for any gain deemed realized on the Partnerco shares would be desirable, I am not satisfied preserving eligibility for it was the main reason for each Principal to have both a Partnerco and Serviceco.

(b) ***Personal services business***

[149] Mr. Baldry stated that both a Serviceco and Partnerco were necessary to avoid the Partnerco being characterized as carrying on a "personal services business" as defined in the Act. Mr. Baldry said that if the Principal were an employee of the Partnerco, rather than of the Serviceco, the income earned by the Partnerco would be income from a personal service, and not active business income eligible for the SBD. However, arrangements between associated corporations were deemed to not result in a personal services business.

[150] Accepting without addressing the correctness of Mr. Baldry's assertion, my conclusion about the main purposes of the Reorganization is the same. The existence of the two corporations, coupled with the arrangements between them, only lend further support to my finding that multiplication of the SBD was one of the main reasons for the corporate partnership. In particular, the nominal salary payable by Serviceco to a Principal, coupled with the fees paid to Serviceco being set at an amount close to what was necessary to reduce the Partnerco's SBD limit, and those fees being deemed income from an active business for the Serviceco,[90] suggest no other motivation. The pair were always part of the plan for each Principal, and were necessary to achieve the goal of multiple SBD claims.

(6) Reasons for the Reorganization

[151] The Respondent identifies the multiplication of the SBD as one of the main reasons for the Reorganization. The Appellants have not persuaded me that the Respondent is incorrect. In my view, the subjective statements of purpose advanced by the Appellants' witnesses are not consistent with the other evidence of the purposes.

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[90] A characterization necessary for that income to be eligible to be taxed at the SBD rate.

[152] While tax-efficient financing of share purchases was a factor that led the Corporation to explore alternative ways to effect share transfers, the Principals chose simplicity over a structure that solved that problem. In order to sacrifice simplicity, something more was needed.

[153] In my view it is clear that the something more that led Mr. Baldry to suggest, and the Principals to agree to reorganize into, the corporate partnership was that significantly more income would be eligible for the SBD. Everything about the Reorganization, including the existence of fifteen pairs, the arrangements between the Partnercos and Servicecos, the determination of the ideal service fees between them, and the establishment of a minimum nominal salary for every Principal, regardless of circumstance, was based on achieving that result. While individual financial and estate planning may have been a factor for some Principals, it was not more important or significant than multiplication of the SBD. Multiplication of the SBD was a reason common to all Principals and the very reason Mr. Baldry proposed the Reorganization to them.

[154] Mr. Baldry was asked to describe the main purpose of the Reorganization. While he said the benefits were, in his words, "many and varied, and lots of the benefits they hadn't contemplated,"[91] in describing the purpose he returned to attraction of senior talent, financing for shares and removal of spousal shareholders. However, with the exception of financing share purchases, I find the purposes identified by Mr. Baldry are not reasons for the Reorganization. Those purposes, and the other purposes identified by the Appellants, are results, including some neither Mr. Baldry nor the Principals contemplated when they decided to proceed with the corporate partnership. But, once Mr. Baldry put the illustrative examples in front of the Principals showing the savings from the SBD, it was full steam ahead to implement the corporate partnership as quickly as possible. I have no doubt that was one of the main reasons the Reorganization occurred as it did.

[155] Based on the evidence I find that multiplication of the SBD was a main reason for the Reorganization and the separate existence of a Partnerco and Serviceco for each Principal in the relevant taxation years.

VI. **CONCLUSION ON APPEALS**

[156] In accordance with the above reasons and the agreement of the parties:

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[91] Transcript, Vol. 1, page 104.

1. The appeal by Jeff Olfert Technical Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that its income in its 2012 and 2013 taxation years is reduced by $391 and $750, respectively;

2. The appeal by Jeff Olfert Technical Services Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is dismissed;

3. The appeal by Daniel Reeves Architect Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that its income in its 2012 and 2013 taxation years is reduced by $337 and $779, respectively;

4. The appeal by Daniel Reeves Architectural Services Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is dismissed;

5. The appeal by Christopher Wood Technical Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that its income in its 2012 and 2013 taxation years is reduced by $289 and $587, respectively;

6. The appeal by Christopher Wood Technical Services Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is dismissed;

7. The appeal by Nicole L. Tiessen Design Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that its income in its 2012 and 2013 taxation years is reduced by $155 and $298, respectively; and

8. The appeal by Nicole Tiessen Design Services Ltd. of the reassessment of its taxation years ended January 1, 2012 and January 1, 2013 is dismissed.

VII. **COSTS**

[157] Both the Appellants and the Respondent sought costs. Costs are awarded to the Respondent. The parties shall have until May 7, 2021 to reach an agreement on

the amount of costs. If the parties fail to agree, the parties shall have until June 4, 2021 to file written submissions on costs. Any such submission shall not exceed **10** pages in length.

These Amended Reasons for Judgment are issued in substitution of the Reasons for Judgment dated April 7, 2021 in order to correct the words and figures underscored and bold in paragraphs 148 and 157 hereof.

Signed at Ottawa, Canada, this 9th day of April 2021.

"K.A. Siobhan Monaghan"

Monaghan J.

CITATION:	2021 TCC 29
COURT FILE NO.:	2015-3808(IT)G 2015-3809(IT)G 2015-3812(IT)G 2015-3813(IT)G 2015-3822(IT)G 2015-3823(IT)G 2015-3841(IT)G 2015-3843(IT)G
STYLE OF CAUSE:	NICOLE L. TIESSEN INTERIOR DESIGN LTD. v. HER MAJESTY THE QUEEN NICOLE L. TIESSEN INTERIOR DESIGN SERVICES LTD. v. HER MAJESTY THE QUEEN DANIEL REEVES ARCHITECT LTD. v. HER MAJESTY THE QUEEN DANIEL REEVES ARCHITECT PROF. SERVICES LTD. v. HER MAJESTY THE QUEEN JEFF OLFERT TECHNICAL LTD. v. HER MAJESTY THE QUEEN JEFF OLFERT TECHNICAL SERVICES LTD. v. HER MAJESTY THE QUEEN

CHRISTOPHER WOOD TECHNICAL LTD. v. HER MAJESTY THE QUEEN

CHRISTOPHER WOOD TECHNICAL SERVICES LTD. v. HER MAJESTY THE QUEEN

PLACE OF HEARING:	Saskatoon, Saskatchewan
DATE OF HEARING:	September 21, 22, 23, and 25, 2020
AMENDED REASONS FOR JUDGMENT BY:	The Honourable Justice K.A. Siobhan Monaghan
DATE OF AMENDED REASONS FOR JUDGMENT:	April 9, 2021

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