## Taxation of Corporate Groups

Many developed countries have a formal system to consolidate the tax reporting of corporate groups or to otherwise transfer corporate profits and losses among related companies. Canada does not. Instead, various tax-planning strategies are used to directly or indirectly transfer tax attributes between related entities. Techniques include intercompany financing arrangements, mergers of related companies, transfers of property between related corporations and the wind-up (dissolution) of a subsidiary into its parent company.

These techniques entail significant internal reorganization, are disruptive to normal business operations and are time consuming. They result in high compliance and administration costs—associated legal and accounting fees can be significant.

Not all corporations are able to use tax-planning strategies, making the system unfair and inequitable. For small and medium-sized businesses, the complexity of the existing system is particularly challenging and onerous because they do not have the resources—the time, money and management expertise—to engage in complex tax planning arrangements. Additionally, legislative and regulatory constraints may limit the ability of some corporations within corporate groups (for example, those operating in the banking and telecom sectors) from using mergers and windups to consolidate losses.

Finally, Canada Revenue Agency auditors expend considerable resources auditing businesses to ensure loss consolidation techniques are legally effective and comply with the Income Tax Act. In November 1996, the Auditor General of Canada noted "one of the schemes we saw involved over 30 individual transactions to accomplish the loss consolidation. We question why taxpayers should have to go to such lengths if it is Parliament's intent that they be allowed to pay tax only on the net profits of the group."

The Canadian Chamber of Commerce believes a more formalized loss transfer system is the least disruptive to the current tax system and a practical approach for the taxation of corporate groups. It would be easier to design, implement, administer and comply with a lost transfer system than with a full consolidation system. The latter would be particularly complex as well as difficult to implement given Canada has both federal and provincial/territorial levels of corporate taxation.

Designed properly, a new formal loss transfer system can increase tax certainty, reduce complexity, enhance flexibility and improve productivity for businesses of all sizes. It would enhance the global competitiveness of our businesses and Canada's economy.

**Recommendations**

That the federal government expeditiously work with provincial/territorial governments to implement a formal loss transfer system with the following design attributes:

1. *Degree of Common Ownership*: To allow more corporate groups to participate, base it on >50 per cent common ownership of votes and value and use the concept of "affiliated person" as the basis for determining a control group.

2. *Eligible Groups*: Exclude trusts and Canadian branches of non-resident corporations. Limit it to domestic subsidiaries of corporate groups.

3. *Range of Attributes*: Permit group utilization of current-year and prior year non-capital losses and investment tax credits (ITCs) in addition to allowing the transfer, on paper, of taxable income (net of deductions).

4. *Elective Components*: Ensure participation is voluntary and allow corporate groups to decide on a year-to-year basis (i.e. annual election) whether to participate.

5. *Use of Previously Accumulated Attributes in a New System*: Do not exclude previously accumulated losses, where both companies party to the loss transfer were part of the same economically

integrated group when the losses arose. However, if there are significant revenue implications, consider phasing in the ability to transfer existing losses over a period of years.

6. *Revenue Impact*: Consider any potential impacts on federal and provincial/territorial government revenues and federal-provincial/territorial tax arrangements (including the general interprovincial/territorial allocation formula).

**Submitted by the Taxation Committee**

**Replaces 2009 resolution "Taxation of a Group of Companies"**