

Presented by:

Vinay Khosla, M. Acc., CA

Bateman MacKay LLP

Phone: 905 593 3033 ext. 212

Mobile: 416 420 7753

Email:

vkhosla@batemanmackay.com

CIMA 2012 TAX UPDATE

PERSONAL AND BUSINESS TAX
CHANGES

FEBRUARY 25, 2012

Bateman MacKay

*chartered accountants
& business advisors*

Federal Budget 2011 – Overview

- ❑ Tabled,
- ❑ The budget of non-confidence and not passed
- ❑ Forms the basis of remaining post-election tax changes for 2011

Personal Tax Update

Children's Arts Tax Credit

- ❑ Non-refundable credit up to \$75 (15% of \$500 of eligible expenses);
- ❑ Artistic, cultural, recreational or developmental activity for children <16;
- ❑ Child <18 qualifies for disability tax credit, extra credit of \$75;
- ❑ No double dip of Children's Fitness Tax Credit.

Personal Tax Update

Children's Arts Tax Credit

- ❑ Eligible activities contribute to development of creative skills, or expertise in an artistic or cultural activity;
- ❑ Substantial focus on wilderness and natural environment;
- ❑ Develop and use intellectual skills;
- ❑ Interpersonal skills;
- ❑ Provides enrichment/tutoring in academic subjects.

***Business Advice for
Tomorrow.***

Personal Tax Update

Family Caregiver Amount (“FCA”)

For providing care to an infirm dependant in 2012, FCA provides an additional \$2,000 credit for each of the following non-refundable tax credits:

- ❑ Spouse of common-law partner amount;
- ❑ Amount for an eligible dependent;

Personal Tax Update

Family Caregiver Amount (“FCA”) – Cont’d

For providing care to an infirm dependant in 2012, FCA provides an additional \$2,000 credit for each of the following non-refundable tax credits:

- ❑ Amount for children under age 18 at the end of the year;
- ❑ Amount for infirm dependents age 18 or older, and;
- ❑ Caregiver amount.

***Business Advice for
Tomorrow.***

Personal Tax Update

Family Caregiver Amount (“FCA”) – Cont’d

FCA conditions:

- Individual age 18 or older, dependent on you by reason of mental or physical infirmity;
- Child under 18, medical or physical infirmity expected to be indefinite needing more care assistance when compared to children of same age;

CRA may request physician certification re:
Infirmity;

Can apply for each infirm dependent. *Business Advice for Tomorrow.*

Personal Tax Update

Tax Credit for Children

- ❑ Credit currently \$319.65 (15% x \$2,131);
- ❑ Previous restriction: only one person per residence could claim credit;
- ❑ Restriction removed effective for 2011;
- ❑ Assists two families sharing a residence.

Personal Tax Update

Medical Expenses

- ❑ For 2011, no maximum amount for medical expenses that may be claimed for dependent 18 years of age or older (previously limited to \$10,000);
- ❑ No change to Medical Expense Threshold: 3% of net income to a maximum of \$2,052.

Personal Tax Update

Tuition Credit

- ❑ Professional association exam fees paid in 2011 greater than \$100 now eligible;
- ❑ Exam must be required to obtain professional designation or licensed or certified to practice a profession or trade in Canada;
- ❑ Includes exam materials;
- ❑ Excludes study program admission tests.

Personal Tax Update

Tuition and Educational Credits

- ❑ For 2011, foreign university programs qualify if at least 3 weeks duration (previously 13 consecutive week minimum applicable);
- ❑ Also applicable for payments out of RESPs

Personal Tax Update

Volunteer Firefighters' Tax Credit

- ❑ Non-refundable credit of \$450 (15% of \$3,000) for 2011;
- ❑ Minimum 200 hours of volunteer firefighting services,
 - ❑ Includes training and meeting time;
- ❑ Requires written certification of Fire Chief;
- ❑ Cannot be employee firefighter;
- ❑ Cannot also claim \$1,000 exemption

Personal Tax Measures

2012 Taxable Income	2012 Marginal Tax Rates			
	Other Income	Capital Gains	Canadian Dividends	
			Eligible Dividends	Ineligible Dividends
First \$39,020	20.05%	10.03%	-6.23%	2.77%
Over \$39,020 up to \$42,707	24.15%	12.08%	-0.32%	7.90%
Over \$42,707 up to \$68,719	31.15%	15.58%	9.76%	16.65%
Over \$68,719 up to \$78,043	32.98%	16.49%	10.55%	17.81%
Over \$78,043 up to \$80,969	35.39%	17.70%	14.02%	20.82%
Over \$80,969 up to \$85,414	39.41%	19.70%	16.49%	23.82%
Over \$85,414 up to \$132,406	43.41%	21.70%	22.25%	28.82%
Over \$132,406	46.41%	23.20%	26.57%	32.57% <i>for</i>

Tomorrow

Personal Tax Update

RRSP Prohibited Investments

- ❑ Previously Qualified Investments denied to includes shares where:
 - ❑ Plan and plan holder held less than 10% of issued shares, or
 - ❑ Investment less than \$25,000 AND arms length
- ❑ Prohibited Investment now includes ANY investment where plan and plan holder owns 10% or more of the shares;
- ❑ Penalty tax = 50% at time prohibited investment
- ❑ After March 22, 2011 – 100% tax on income or gains of prohibited investment

***Business Advice for
Tomorrow.***

Personal Tax Update

Health and Dental Plans (HDP)

- ❑ HDP cancellation amounts paid to employees and retirees taxable after 2011;
- ❑ CRA previously had favourable admin position that HDP cancellation payments non-taxable.

Personal Tax Update

Registered Disability Savings Plans (RDSPs)

- ❑ Where shortened life expectancy of RDSP beneficiary, no repayment of Canada Disability savings Grants (CDSGs) and Canada Disability Savings Bonds (CDSBs) required if:
 - ❑ Tax election filed;
 - ❑ Taxable withdrawals < \$10,000 per year;
 - ❑ No further RDSP contributions
- ❑ For withdrawals after June 26, 2011

***Business Advice for
Tomorrow.***

Personal Tax Update

Donations of Flow Through Shares (“FTS”)

- ❑ Prior to rule change, very tax effective solution to donate was FTS donation;
 - ❑ Purchase FTS, take the tax deduction;
 - ❑ Donate the FTS and if publicly traded, gain would be exempt;
 - ❑ Still receive FMV charitable donation receipt;
- ❑ FTS purchased after March 22, 2011 – Gain now taxed up to 50% of cost.

***Business Advice for
Tomorrow.***

Business Tax Update

Tax on Split Income (aka “Kiddie Tax”)

- ❑ Kiddie Tax introduced in 2000;
 - ❑ CCPC dividends received by minors taxed at top rate;
 - ❑ Objective: frustrate income splitting/dividend sprinkling with minors;
- ❑ Tax strategy to implement a corporate reorganization to result in capital gains reported by minor children → Kiddie Tax then N/A.
- ❑ New Kiddie Tax rules apply to capital gains realized by minors
- ❑ Applicable where minors acquire shares in series of transactions by non-arm’s length person and dividends on shares would have been subject to Kiddie Tax

***Business Advice for
Tomorrow.***

Business Tax Update

Tax on Split Income (aka “Kiddie Tax”)

- ❑ If new Kiddie Tax rules apply:
 - ❑ Capital gain deemed to be non-eligible taxable dividend which is then subject to Kiddie Tax
 - ❑ Corporation deemed NOT to pay a dividend (so no Refundable Dividend Tax on Hand recovery)
- ❑ No capital gains exemptions available by minors

Business Tax Update

Employees Profit Sharing Plans (EPSPs)

Overview – tax deferral strategy over and above bonus.

- ❑ Possible EPSP tax filing position: since not a salary, not subject to the salary reasonability rules;
 - ❑ Computed with reference to profits rather than employee effort,
- ❑ Budget announced review of EPSPs; main issues:
 - ❑ EPSPs used to income split;
 - ❑ EPSPs used to defer taxes;
 - ❑ EPSPs avoiding CPP and EI;
- ❑ Consultation Process.

***Business Advice for
Tomorrow.***

Business Tax Update

Capital Cost Allowance Manufacturing & Processing (M&P) Equipment

- ❑ M&P Equipment acquired before 2014 now will qualify for Class 29 CCA Treatment
 - ❑ 50% CCA Rate, Straight Line
- ❑ Previously M&P equipment had to be purchases prior to 2012.

Business Tax Measures

Corporate Income Tax Rates

- No changes to corporate income tax rates

	2010	2011	2012
Federal General/ Invest/M&P	18.0	16.5	15.0
ON General/ Investment	14.0/12.0	12.0/11.50	11.5/11.0
Fed Small Business	11.0	11.0	11.0
ON Small Business	5.5/4.5	4.5	4.5
ON M&P	12.0/10.0	10.0	10.0

***Business Advice for
 Tomorrow.***

Business Tax Update

Taxation of Corporate Groups

- ❑ Reviewing possible new rules for taxation of corporate groups;
- ❑ Formal system of loss transfers or consolidated reporting;
- ❑ Stakeholder views will be obtained prior to intro of changes.

Presented by:

Vinay Khosla, M. Acc., CA

Bateman MacKay LLP

Phone: 905 593 3033 ext. 212

Mobile: 416 420 7753

Email:

vkhosla@batemanmackay.com

CASE LAW UPDATE

FEBRUARY 25, 2012

Bateman MacKay

*chartered accountants
& business advisors*

Tax Cases of Interest

- ❑ *Bozzer v. Her Majesty The Queen*, 2011 DTC 5106 (FCA)
- ❑ *Innovative Installations Inc. v. Her Majesty The Queen*, 2010 FCA 285 (FCA)
- ❑ *Triad Gestco Ltd. v. Her Majesty The Queen*, 2011 DTC 1254
1207192 Ontario Limited v. Her Majesty The Queen, 2011 TCC 383
- ❑ *Spence et al v. Her Majesty The Queen* 2011, DTC 5111 (FCA)
- ❑ *McNamee v. McNamee*, 2011 ONCA 533 (Ont C.A.)

Bozzer v. HMQ FCA

- Reviewed the interpretation of Fairness provisions of the ITA
- ITA reads as follows:

“The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer....waive or cancel all or any portion of any interest...payable...by the taxpayer...in respect of that taxation year...”

***Business Advice for
Tomorrow.***

Bozzer v. HMQ

FACTS

- ❑ Taxpayer relief applied in 2005.
- ❑ Tax assessment for 1989/1990 taxation years.
- ❑ Minister denied relief; 10 year limitation period applied. ITA precluded interest relief 1989/1990 more than 10 years from 2005 application date.



***Business Advice for
Tomorrow.***

Bozzer v. HMQ

- ❑ Federal Court – denied the application for judicial review -> 10 year limitation period expired
- ❑ Conclusion: the ITA's time limit is for the ten calendar years after the relevant taxation year (i.e.: year of assessment).

Bozzer v. HMQ

- Taxpayer appealed to FCA re: interpretation of phrase “interest payable in respect of a taxation year”.
- Taxpayer contended submitted that the phrase means any interest accrued in that taxation year on a tax debt. i.e.: ITA permits Minister to cancel any interest that accrued in the 10 taxation years preceding the application – January 1, 1995 to December 31, 2004.

Bozzer v. HMQ

FCA

- Purpose Fairness provisions of ITA to allow CRA to administer system fairly and reasonably by helping taxpayers to resolve issues that arise through no fault of their own.
- Prior to 2004, 10 year Fairness limit non-existent.
- FCA agreed with the taxpayer's interpretation and allowed the appeal.

Bozzer v. HMQ

- ❑ TAX TIP #1: review fairness applications and voluntary disclosures where interest relief limited by 10 year rule as interpreted by CRA;
- ❑ Review fairness request;
- ❑ CRA response – accept Bozzer decision and is revisiting its policy
- ❑ Taxpayers may need to make a post-Bozzer fairness request

Innovative Installations Inc. v. HMQ

FACTS

- ❑ Taxpayer obtained an RBC business loan;
- ❑ Taxpayer purchased a life insurance policy from RBC on the life of the shareholder;
- ❑ Life insurance death benefit to be utilized to discharge RBC debt – RBC named as beneficiary.

Innovative Installations Inc. v. HMQ

FACTS (cont`d)

- ❑ Shareholder subsequently dies.
- ❑ Insurer paid the death benefit of the policy directly to RBC.
- ❑ RBC was obliged to use the life insurance death benefit to discharge the debt.
- ❑ Taxpayer included in its Capital Dividend Account (CDA) the amount paid by RBC life insurance on shareholder`s death

***Business Advice for
Tomorrow.***

Innovative Installations Inc. v. HMQ

- ❑ TCC – Court held the insurance death benefit was in fact received by Taxpayer and increase to its CDA was appropriate.
- ❑ Minister appealed to FCA

Innovative Installations Inc. v. HMQ

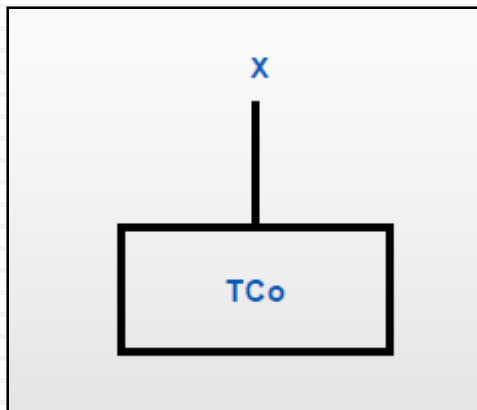
- ❑ FCA agreed with TCC proceeds of life insurance were received by Taxpayer and not RBC;
- ❑ Taxpayer still received the benefit of life insurance even though paid directly to the bank;
- ❑ Although proceeds of insurance never actually passed in Taxpayer's hands, Taxpayer permitted to include amount in calculating CDA

***Business Advice for
Tomorrow.***

Triad Gestco Ltd v. HMQ 1207192 Ontario Limited v. HMQ

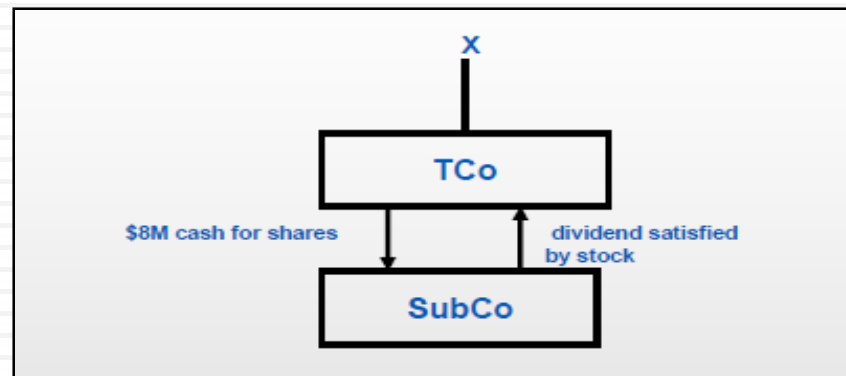
- ❑ Both GAAR reassessments;
- ❑ Both involved sophisticated tax planning to create a capital loss to offset a capital gain realized in the same taxation year;
- ❑ Fundamentally utilized the same structure to create the capital loss.

Triad Gestco Ltd 1207192 Ontario Limited



- TCo sold capital property (Triad) resulting in \$8M capital gain.

Triad Gestco Ltd 1207192 Ontario Limited



- ❑ Tco causes to be incorporated Subco;
- ❑ Tco subscribes for 8M worth of common shares in Subco (ACB = 8M);
- ❑ Subco the next day declares a dividend satisfied by stock of 8M fixed value freeze shares (Low PUC/High Value);
- ❑ Tco sells common shares to (i) trust (Gestco principal beneficiary) (ii) trust (1207192) non affiliated.

***Business Advice for
Tomorrow.***

Triad Gestco Ltd 1207192 Ontario Limited

Result

- ❑ Common shares 8M ACB no value;
- ❑ Sale to Trust – TCo realized a capital loss of 8M;
- ❑ Tco in determination of taxable income 8M gain – 8M capital loss.

Triad Gestco Ltd 1207192 Ontario Limited

Application of General Anti Avoidance Rule (GAAR)

- ❑ Tax benefit;
- ❑ Avoidance transaction;
- ❑ Abusive tax avoidance.

Triad Gestco Ltd 1207192 Ontario Limited

Avoidance Transactions

- ❑ Declaration of stock dividend – high/low shares;
- ❑ Creation of trust;
- ❑ Sale of common shares to trust;
- ❑ The entire series of steps.

Business Purpose

- ❑ Reverse estate freeze (Triad);
- ❑ Creditor proofing (1207192);
- ❑ TCC rejected business purpose concluded primary purpose of the entire series was to obtain a tax benefit. ***Business Advice for Tomorrow.***

Triad Gestco Ltd 1207192 Ontario Limited

Was it Abusive Tax Avoidance?

- ❑ Court held –object spirit and purpose of ITA was to allow only the recognition of “true” capital losses sustained outside the economic unit;
- ❑ GAAR applied to deny the capital loss.

Spence v. HMQ

FACTS

- ❑ Taxpayer was a school teacher at a Montessori School;
- ❑ Taxpayer was arm`s length to Montessori School and its shareholders;
- ❑ Taxpayer`s children attended the Montessori School;
- ❑ Montessori School granted a 50% discount on the tuition fees paid by Taxpayer and all other employees,
- ❑ Montessori School calc taxable benefit = cost of education service less amount paid by employees

Spence v. HMQ

- ❑ Minister reassessed Taxpayer.
- ❑ Employment benefit = FMV of Tuition less Amount paid by Taxpayer;
- ❑ TCC agreed with Taxpayer: benefit is determined to be measured against actual costs of the good or service incurred by the employee.

Spence v. HMQ

- ❑ Minister appealed to FCA
- ❑ The issue is not the cost for the employer of granting the benefit to the employee; ITA captures the value of the benefit received by the employee;
- ❑ FCA ruled that value of benefit = amount of the tuition fees Taxpayer had to otherwise pay

McNamee v. McNamee

FACTS

- ❑ Family Law decision
- ❑ Father completes classic estate freeze of Opco;
- ❑ Parent of the estate freeze subscribes for common shares and gifts common shares to son;
- ❑ Father at all times maintains control of the Opco through voting special shares.

***Business Advice for
Tomorrow.***

McNamee v. McNamee

- ❑ Deed of Gift – contained Family Law Act exclusion condition that shares and growth remain separate property of son;
- ❑ Son and spouse divorce
- ❑ Spouse claimed value of common shares should be included in net family property.

McNamee v. McNamee

ISSUE

- ❑ Was the transfer of shares a gift?

FAMILY COURT

- ❑ Court held – no gift, father never intended to gift control of Opco to son as he maintained special voting shares;
- ❑ Purpose of Deed of Gift: was to disenfranchise the son's spouse;
- ❑ Value of common shares not excluded from net family property calculation.

McNamee v. McNamee

Court confirmed basic law re. requirement for a gift:

- ❑ An intention to make a gift on the part of the donor without consideration or expectation of remuneration;
- ❑ An acceptance of the gift by the donee; and
- ❑ A sufficient act of delivery or transfer of the property to complete the transaction.

Presented by:

Vinay Khosla, M. Acc., CA

Bateman MacKay LLP

Phone: 905 593 3033 ext. 212

Mobile: 416 420 7753

Email:

vkhosla@batemanmackay.com

STRUCTURING REAL ESTATE INVESTMENTS

FEBRUARY 25, 2012

Bateman MacKay

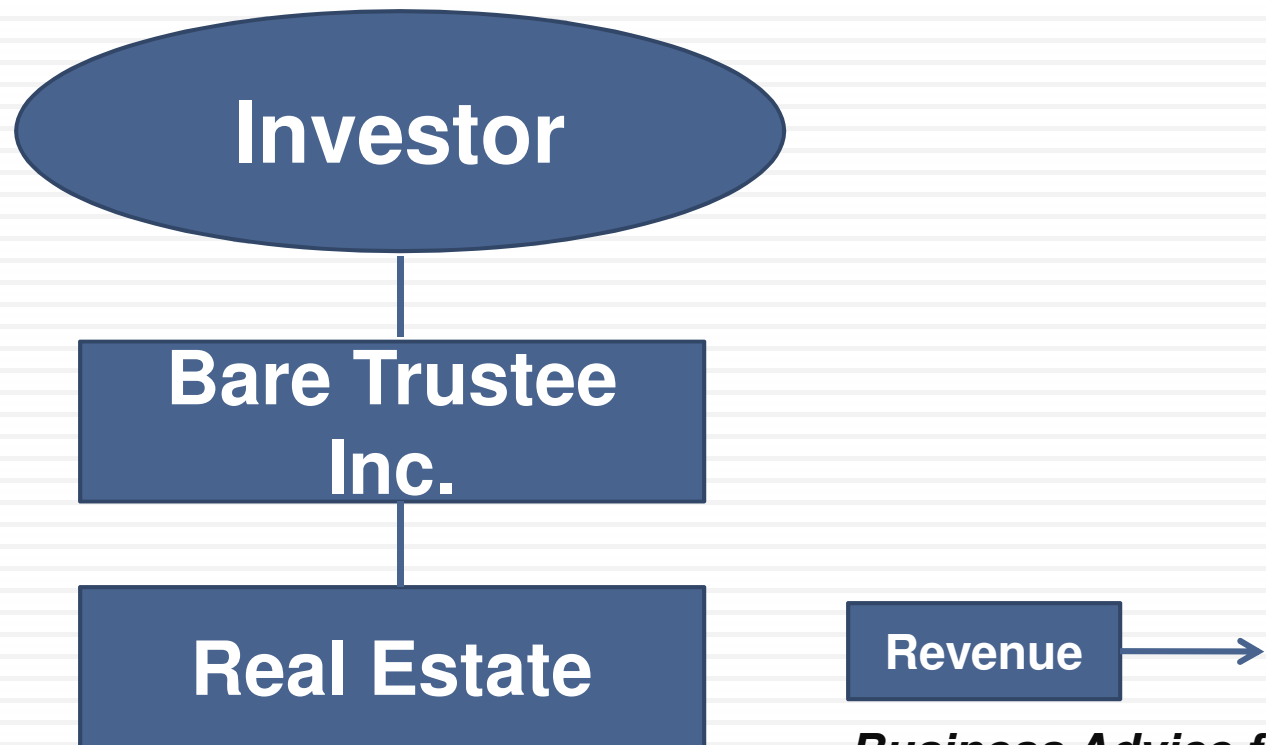
*chartered accountants
& business advisors*

Sole Proprietorship



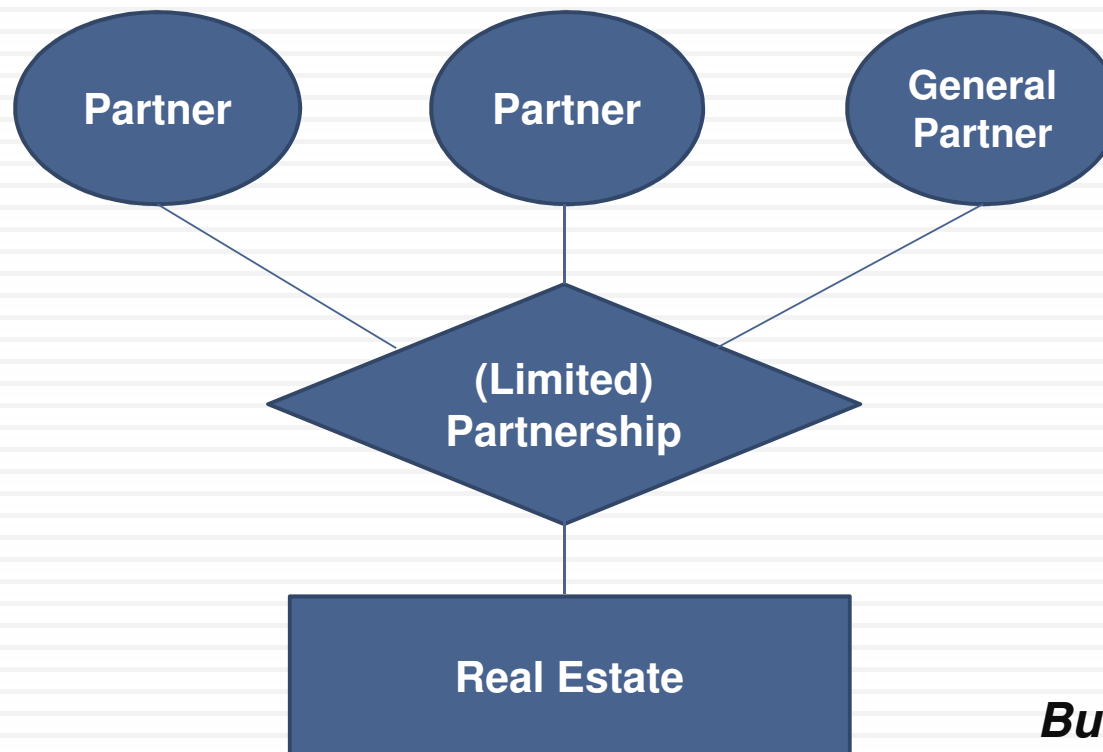
***Business Advice for
Tomorrow.***

Bare Trustee



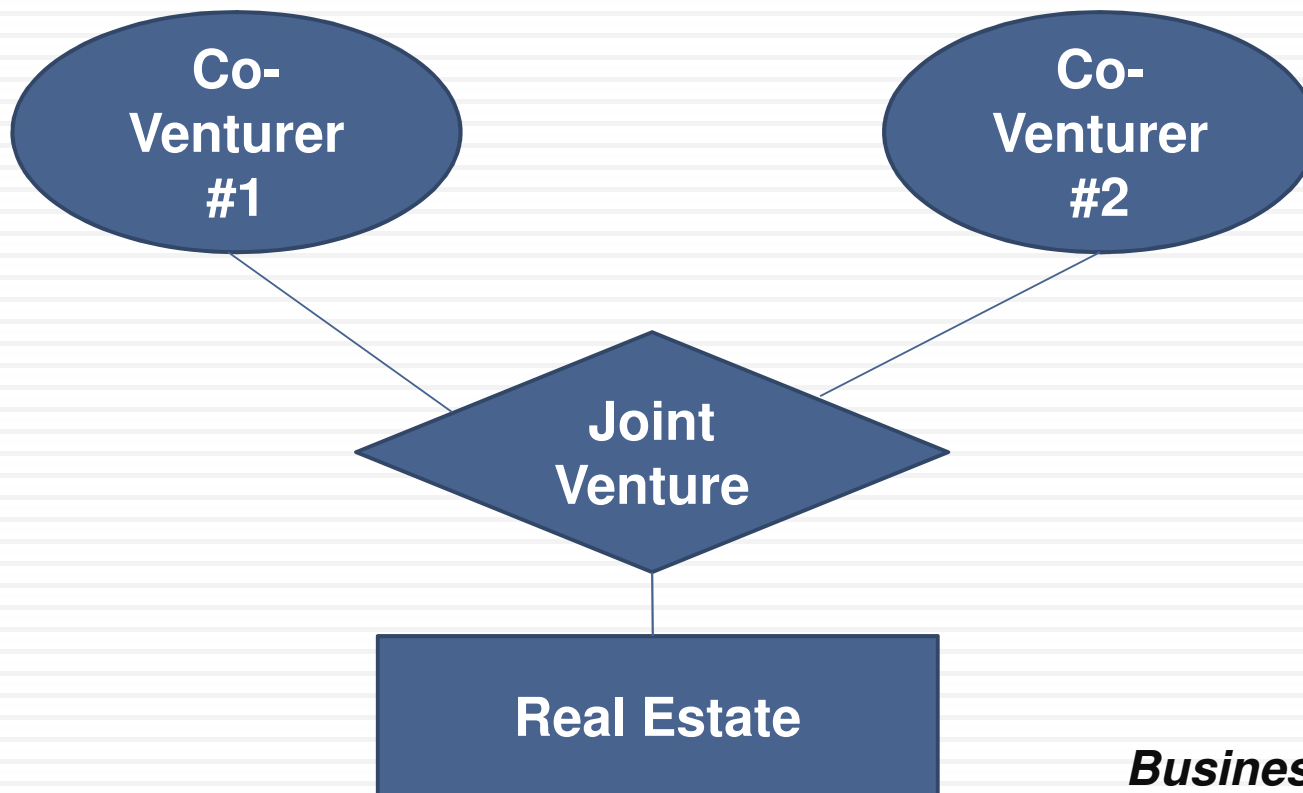
***Business Advice for
Tomorrow.***

Partnership/Limited Partnership



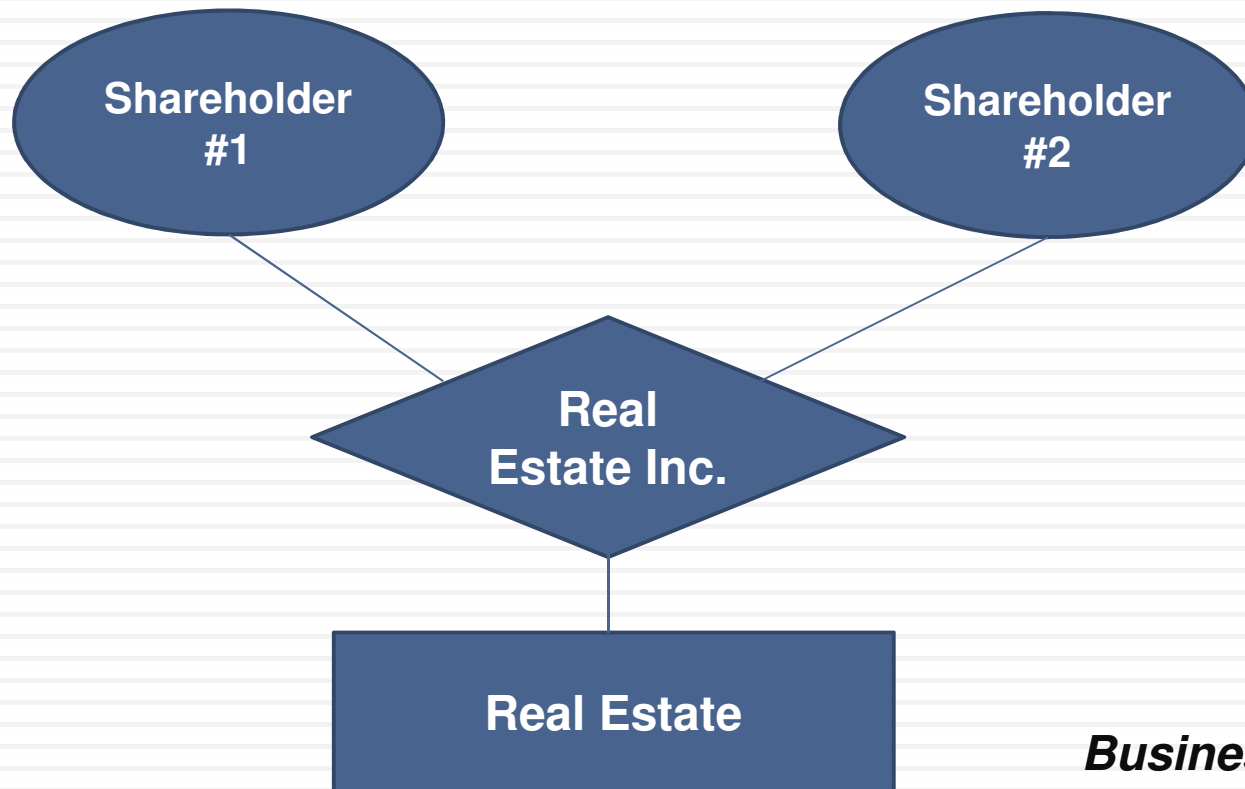
***Business Advice for
Tomorrow.***

Joint Venture (a.k.a. Co-Tenancy)



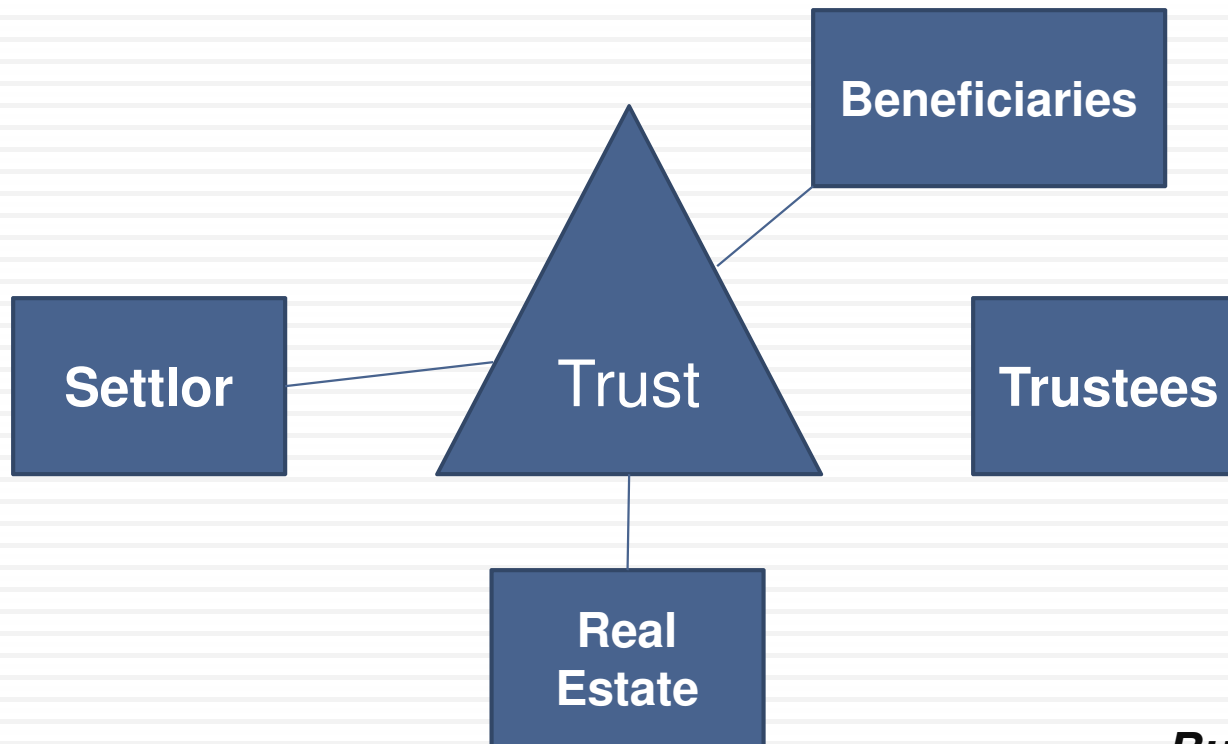
***Business Advice for
Tomorrow.***

Corporation



***Business Advice for
Tomorrow.***

Trust



***Business Advice for
Tomorrow.***

Any Questions?



***Business Advice for
Tomorrow.***

Vinay Khosla, M. Acc., C.A.

Bateman MacKay LLP

200 - 40 Village Centre Place

Mississauga, ON

L4Z 1V9

Phone: 905 593 3033 (ext. 212)

Mobile: 416 420 7753

Email: vkhosla@batemanmackay.com

www.batemanmackay.com

Business Advice for

Tomorrow