

# & Davidson Company

## — 2022 — ANNUAL TAX UPDATE

*Thursday, September 22<sup>nd</sup>, 2022*

2:00-4:00PM VIRTUALLY AND IN-PERSON

(LIMITED SEATING AT ROSEWOOD HOTEL GEORGIA)

A DAVIDSON & COMPANY SEMINAR

AIU	1,822	12,349,000
EJK	3,680	238,681,000
HPL	1,062	85,678,000
KEE	485	8,369,000

# Welcome!

- Submit questions via Zoom Q&A function
- Survey, link to PD Certificate, slides and video recording emailed to you following the webinar



# Agenda

- **JAMIE NGUYEN CPA, CA - Tax Partner**  
*Federal Budget Tax Changes*
- **HOWARD CHANG CPA, CGA - Tax Principal**  
*Loss Utilization Planning*
- **NAMIR HALLAK CPA, CA, CPA (KS), CGMA - U.S. Tax Principal**  
*Breaking Down Biden's 2022 Inflation Reduction Act;  
Cannabis/CBD 2022 U.S. Tax Update*
- **FRANK LIN CPA - Tax Principal**  
*Flow-through Share Regime and Pitfalls*
- **LES FABIAN CPA, CA - Tax Partner**  
*GST/HST for Holdco's and Stock Compensation Basics (RSU's/DSU's)*
- **Q&A SESSION**

# Federal Budget Tax Changes

Jamie Nguyen CPA, CA

*Tax Partner*



# Budget Tax Highlights

Federal Budget was presented on April 7, 2022 and announced some key tax measures:

- Expanding eligibility for the Small Business Deduction
- Addressing tax planning that manipulates Canadian-Controlled Private Corporation status for investment income taxation
- Introducing Tax-Free First Home Savings Account
- Increasing Home Accessibility Tax Credit and introducing the Multigenerational Home Renovation Tax Credit
- Taxation relating to selling real estate

# Small Business Deduction Rules

## Background

- SBD generally applies on up to \$500K of active business income per taxation year; intended to provide tax-deferral for Canadian-controlled private corporations (CCPCs).
- Active business income eligible for the SBD is taxed at 11% BC/federal corporate tax rate (compared with 27% for non-SBD income)
- Access to the SBD is reduced on straight-line basis when:
  - Combined taxable capital (between associated corps) is between \$10M and \$15M
  - Combined adjusted aggregate investment income is between \$50K and \$150K
- In general, Taxable Capital = Retained earnings + Loans payable – Loans receivable – Investments in other corporation
- Essentially, if retained earnings and long term debt is significant, this could prevent a CCPC from fully accessing the SBD. At \$15M of taxable capital, the SBD is fully ground down. All active business income is then subject to the general corporate income tax rate (27%).

# Small Business Deduction Rules

## Proposal

- Budget proposes to *expand* the taxable capital range to be \$10 M to \$50 M. This would provide more access to the SBD for CCPCs. Proposed for taxation years beginning on or after April 7, 2022
- Example:
  - *Existing rules*: if a CCPC had taxable capital of \$30 M, it would not have any access to the SBD.
  - *Proposed rules*: if a CCPC had taxable capital of \$30 M, it would have up to \$250k of the SBD available.

# Substantive CCPC Rules

## Background

- Although a CCPC status has its advantages (e.g. access to SBD), a CCPC is generally subject to a high corporate tax rate (BC/Fed = 51%) on its investment income to avoid tax-deferral. Non-CCPCs enjoy a lower flat tax rate on *all* of income, including investments (BC/Fed = 27%).
- As such, some corporations purposely avoid CCPC status with the use of foreign entities for tax-deferral advantage on investment income earned.
- For example, if a non-resident or public corporation has a right to acquire shares of a target company, this could cause the target company to be a non-CCPC for tax purposes. On investment income, this would allow for a lower corporate tax rate.



# Substantive CCPC Rules

## Proposal

- Finance proposed amendments to align taxation of investment income earned and distributed by “substantive CCPCs”, and would apply for tax years that end on or after April 7, 2022.
- A “substantive CCPC” would be defined to be a (non-CCPC) private corporation at any time in the taxation year when it:
  - is controlled (in law or in fact) directly or indirectly, by one or more Canadian resident individuals; or
  - would be controlled by a particular individual that owns all of the shares by a Canadian resident individual, even if they are dealing at arm’s length (i.e., in substance is a specified CCPC).
- There is also a proposed anti-avoidance provision which captures situations where it is reasonable to conclude that a transaction was completed to avoid the substantive CCPC status.

# Substantive CCPC Rules

## Proposal

- Substantive CCPCs earning and distributing investment income would be subject to the same high corporate tax rate as CCPCs
  - CCPC's investment income is subject to BC/federal combined tax rate of 51% of which a portion would be refundable upon a taxable distribution to shareholders.
- Certain tax advantages for normal CCPCs would not be available for substantive CCPCs including: SBD, GRIP addition.
  - Effectively makes it punitive to be a substantive CCPC due to lack of tax integration.

# Foreign Accrual Property Income Rules

## Background

- Investment income earned by a controlled foreign affiliate (CFAs) of a Canadian taxpayer is generally included in foreign accrual property income (FAPI).
- This rule avoids tax-deferral by having investments stored offshore in low tax rate jurisdictions
- A Canadian taxpayer is eligible for an offsetting deduction for the foreign tax paid on FAPI to prevent double taxation equal to  $\text{Foreign tax} \times \text{Relevant tax factor}$
- Relevant tax factor = 4 for Canadian corporation; 1.9 for individual
  - Larger deduction for corporations since there is an additional layer of taxation when distributed to shareholders

# Foreign Accrual Property Income Rules

## Proposal

- Budget proposes to eliminate tax-deferral advantage available to CCPCs and their shareholders earning income through CFAs
- CCPCs and substantive CCPCs would now have a relevant tax factor of only 1.9
- This would reduce foreign tax deductions that CCPCs and substantive CCPCs may claim for FAPI and further eliminate any tax incentive for CCPCs and shareholders to earn investment income in a CFA

# Tax-Free First Home Savings Account

## Background

- Concerns about Canadian real estate market prices and ability for Canadians to afford down payment on a new home.
- The existing Home Buyers' Plan allows individuals to withdraw from their RRSPs but benefits are still limited. For example, the funds must be repaid into the RRSP over time and/or the withdrawn amounts are taxable over time. There is also a first-time home buyers' tax credit.

# Tax-Free First Home Savings Account

## Proposal

- Budget proposes a new registered account, FHSA, to be opened in 2023, to help individuals save for their first home
- Contributions to FHSA would be deductible, and income earned within the account would not be subject to tax.
  - Provides the upfront tax deduction benefit of an RRSP while also allowing the income earned to be tax-free like a TFSA.
- \$40K lifetime and \$8K annual contribution limits
- Qualifying withdrawals from FHSA made to purchase a first home would be non-taxable
  - Other withdrawal purposes would be taxable

# Tax-Free First Home Savings Account

## Eligibility

- Resident of Canada, at least 18 years of age
- Must not have lived in a home that they owned at any time in the year the account is opened **OR** during the preceding 4 calendar years
- Limited to making non-taxable withdrawals to a single property in their lifetime
- Once a non-taxable withdrawal is made to purchase a home, the FHSA must be closed within a year and will not be eligible to open another one

# Tax-Free First Home Savings Account

## Withdrawals and Transfers

- Funds may be transferred to RRSP (at any time before the year individual turns 71) or RRIF
  - Not taxable at the time of transfer
  - Taxable upon withdrawal from RRSP or RRIF
- Transfers would not reduce (or be limited by) available RRSP room, and would not replenish FHSA contribution limits
- If funds not used for a qualifying first home within 15 years of opening, FHSA would be closed. Any unused savings could be transferred tax-free to RRSP or RRIF, or would have to be withdrawn on taxable basis



# First-Time Home Buyers' Tax Credit

## Background

- Currently, individuals can claim the First-Time Home Buyers' Tax Credit (HBTC) of up to \$750 in tax savings ( $\$5,000 \times 15\%$ )
- Some of the important conditions for HBTC eligibility:
  - Home must be in Canada
  - Cannot have owned a home in previous four years
  - Must intend to occupy home within a year of purchase

## Proposal

- Budget proposes to double the HBTC to \$1,500 ( $\$10,000 \times 15\%$ ) and would apply to acquisitions made on or after January 1, 2022.
- Home accessibility tax credit doubled to \$3,000 ( $\$20,000 \times 15\%$ ) for expenses incurred in 2022 or subsequent years.

# Multigenerational Home Renovation Tax Credit

## Proposal

- Budget proposes to introduce the Multigenerational Home Renovation Tax Credit (MHRTC) and would apply for the 2023 and subsequent years.
- Refundable credit on eligible expenses for a qualifying renovation
- Tax credit = 15% of the lesser of: i) the eligible expenses and ii) \$50K. Maximum credit = \$7,500.
- A qualifying renovation would be one that creates a secondary dwelling unit to permit an eligible person to live with a qualifying relation

# Multigenerational Home Renovation Tax Credit

## Eligible persons

- Seniors – individuals who are 65 years of age or older
- Adults with disabilities who are 18 years of age or older or are eligible for the Disability Tax Credit

## Qualifying Relations

- In respect of an eligible person, a qualifying relation would be an individual who is 18 years of age or older and is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew of the eligible person

# Multigenerational Home Renovation Tax Credit

## Eligible expenses

- Cost of labour and professional services
- Building materials, fixtures, equipment rentals, and permits

## Non-eligible expenses

- Items that retain value independent of the renovation (e.g. furniture, construction tools, audio-visual electronics)
- Financing costs or costs of recurring nature, such as maintenance, gardening, housekeeping, or security

# Multigenerational Home Renovation Tax Credit

## Qualifying renovation

- a qualifying renovation would be defined as a renovation or alteration of, or addition to, an eligible dwelling that is:
  - of an enduring nature and integral to the eligible dwelling; and
  - undertaken to enable an eligible person to reside in the dwelling with a qualifying relation, by establishing a secondary unit within the dwelling for occupancy by the eligible person or the qualifying relation.
- A secondary unit would be defined as a self-contained dwelling unit with a private entrance, kitchen, bathroom facilities and sleeping area.
- The secondary unit could be newly constructed or created from an existing living space that did not already meet the requirements to be a secondary unit.
- To be eligible, relevant building permits for establishing a secondary unit must be obtained.

# Residential Property Flipping Rule

## Background

- The sale of real estate generally falls into one of two categories for income tax purposes: capital or income.
- Capital gains are only taxable at 50% and business income is taxable at 100%. In order to utilize the principal residence exemption, the property must be capital property of the taxpayer.
- The classification is generally based on *intention* which creates uncertainty and possibly aggressive tax positions.
- “Property flipping” involves purchasing real estate with the intention of reselling the property in a short period of time to realize a profit.
  - Typical tax treatment = fully taxable as business income
  - Not eligible for 50% capital gains inclusion rate nor the principal residence exemption
- Government was concerned individuals were purchasing real estate, living in the property as their principal residence for short period, selling the property and claiming the principal residence exemption to avoid paying taxes. Government did not like taxable capital gain treatment either in situations where it was clear the taxpayer intended to flip the property.

# Residential Property Flipping Rule

## Proposal

- The government wanted to eliminate aggressive tax positions. For example, a situation where an individual purchases a property, lives in it as their primary residence, and sells the property within the year.
- Budget proposes for residential properties sold after December 31, 2022 and where the property is owned for *less than 12 months*, the profits would be deemed to be *business income* (100% taxable). In this situation, the principal residence exemption would not be available even if an individual lived in the property.

# Residential Property Flipping Rule

## Exclusions to deeming rule

If disposition of property related to at least one of the following life events:

- Death
- Household addition
- Separation
- Personal safety
- Disability or illness
- Employment change
- Insolvency
- Involuntary disposition

*Even if any of the above applies, it is still a question of fact whether profits are taxed as business income or capital gains.*



# Minimum Tax for High Earners

- The government is concerned with high income earners not paying sufficient income taxes
- Current legislation has an “alternative minimum tax” but their concern is the rules are outdated.
- Budget announced the government’s intention to examine a new minimum tax regime targeting high income Canadians with details to be released in the 2022 Fall Economic and Fiscal Update

# GST/HST on Assignment Sales by Individuals

## Background

- An assignment sale is a transaction where a purchaser (an assignor), who has entered into an agreement of purchase and sale with a builder of a new home, assigns the agreement, including all related rights and obligations, to another person (an assignee).
  - Example: an individual purchases a pre-sale condo and sells the agreement prior to the condo being completed.
- Under current rules, an assignment sale may be either taxable or exempt from GST depending on **intention** at the time when an individual enters into the agreement of purchase & sale with the builder
  - Primary purpose of profit = taxable
  - Primary purpose to occupy as residence = exempt
- This resulted in uncertainty in the application of GST and so taxpayers often took the position the assignment sale was GST-exempt.

# GST/HST on Assignment Sales by Individuals

## Proposal

- Budget proposes to eliminate uncertainties by making all assignment sales of newly constructed or substantially renovated residential housing GST-taxable; changes would apply to any assignment entered into on or after the day that is one month after April 7, 2022.
- Currently, consideration for an assignment sale includes a deposit which is subject to GST/HST, and is paid by the assignor to builder. To avoid double taxation, Budget proposes that the amount attributable to the deposit be excluded from the consideration for a taxable assignment sale (for agreements after May 7, 2022).
- Bill C-19 – received royal assent and became enacted.

# Summary

- Business limits for calculating SBD increased to \$10M to \$50M (from \$10M to \$15M)
- Introducing tests for “substantive CCPCs” to address manipulation of CCPC status to earn investment income
- Eliminating tax-deferral advantage available to CCPCs and shareholders earning income through CFAs
- New Tax-Free First Home Savings Account
- New Multigenerational Home Renovation Tax Credit
- Residential property dispositions deemed business income with <12 month ownership, unless exceptions exist
- All assignment sales by individuals subject to GST/HST



# Loss Utilization Planning

Howard Chang, CPA, CGA

*Tax Principal*

# Agenda

- Basic elements of Canadian tax losses
- Examples of specific loss restriction rules
- Loss utilization planning

# Categorization

- Non-capital (business or property) vs. Capital
- Each business/property a separate source of income
- Taxable capital gain less allowable capital loss is added to taxable income
- Allowable capital loss can only be applied against taxable capital gains
- Non-capital loss (carry forward 20, carry back 3)
- Capital loss (carry forward indefinitely, carry back 3)

# Recognition

- Profit motive
- Transactions with affiliated persons – suspended losses
- Specific stop-loss rules
- General anti-avoidance rules



# Affiliated Persons

- Individual is affiliated with their spouse
- Examples of persons a corporation is affiliated with
  - Any person who controls the corporation
  - Another corporation if controlled by same person
  - Another corporation if each controlled by a person and the two persons are affiliated
- “Control” refers to de facto control (control in fact)

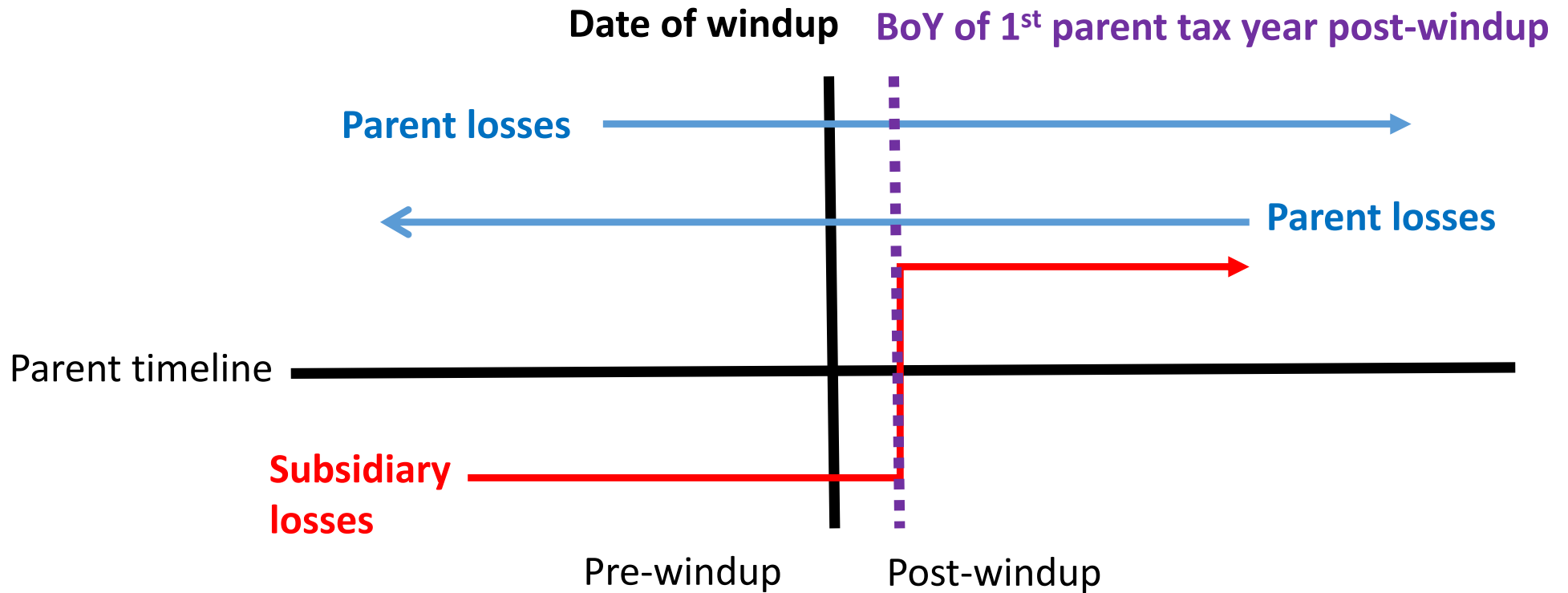
# Suspended Losses

Examples of suspended losses on transfers to affiliated persons:

- Depreciable property – terminal loss is suspended in the transferor's hands
- Other capital properties – capital loss suspended in the transferor's hands
- Disposition of a debt to a related party – the loss added to the ACB of debt held by the related party

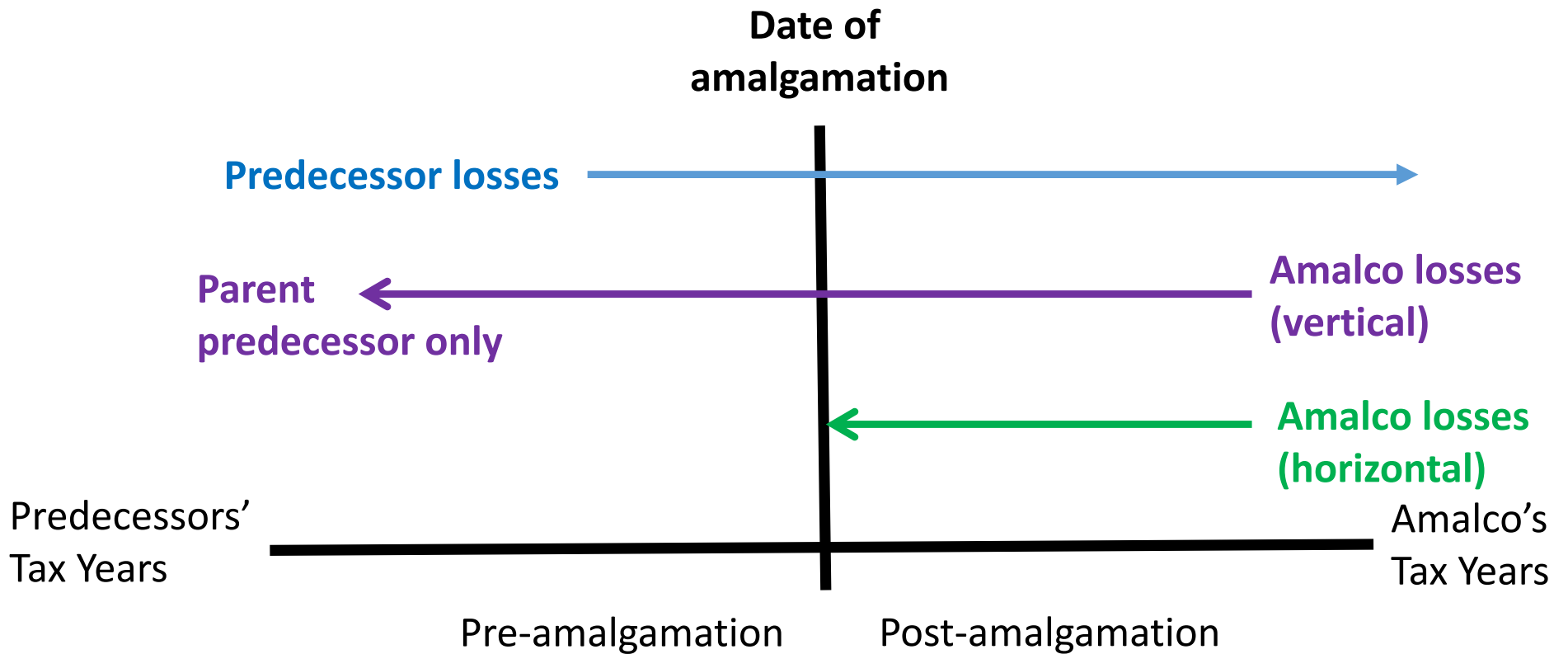
Triggering events vary, but generally suspension is released upon transfer to non-affiliated persons

# Windups



\*Applicable for Canadian parent corporation that owns more than 90% of outstanding shares of wound-up subsidiary

# Amalgamation

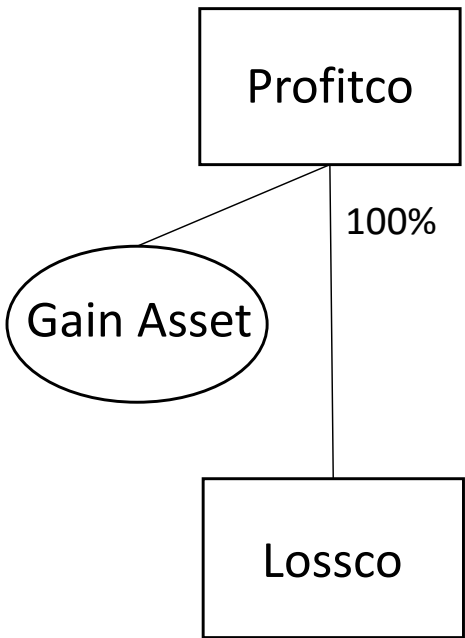


# Inter-company charges

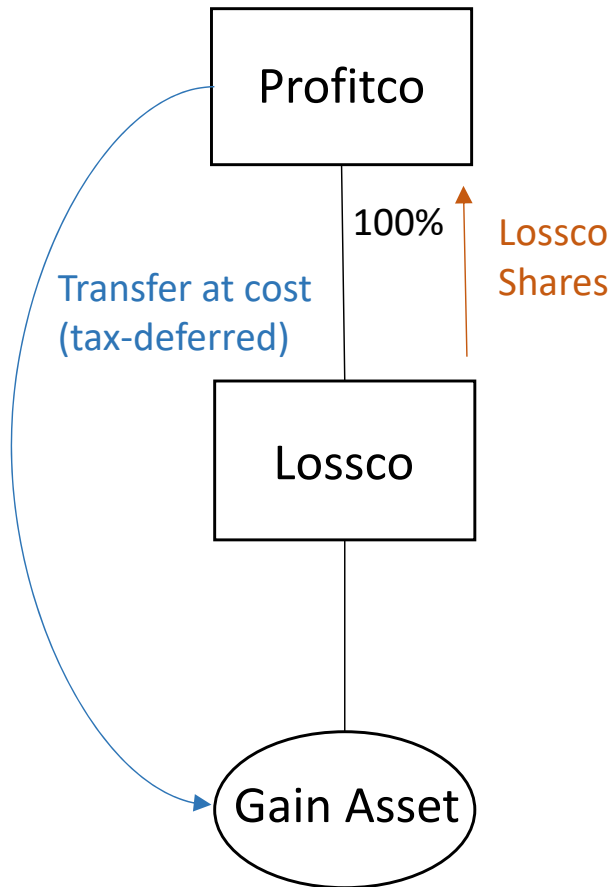
- Transfer income within the corporate group
- Examples:
  - Management fees
  - Lease payments
- Considerations:
  - Reasonable
  - Duplication
  - Transfer pricing (cross border)
  - Sales tax
  - Documentation (TP, agreements, invoices)

# Property Sale by Lossco

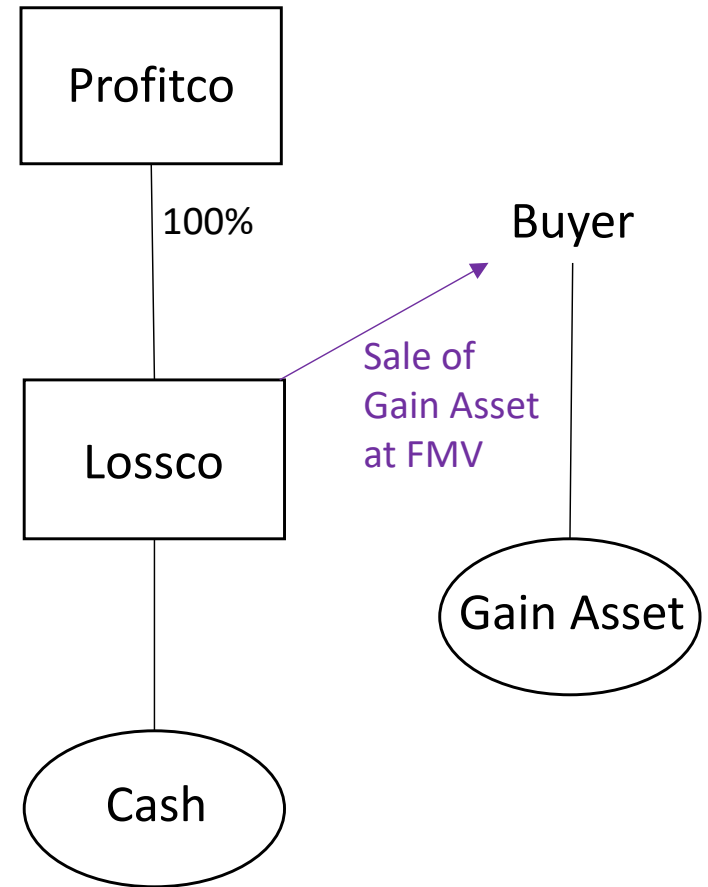
Before



Transfer

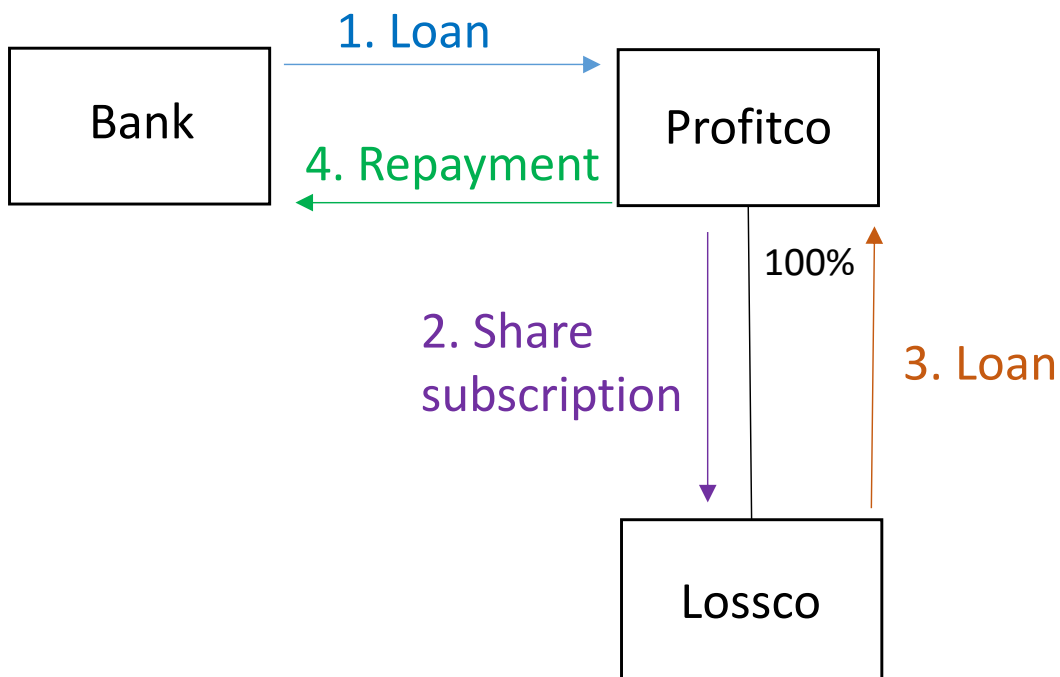


Sale

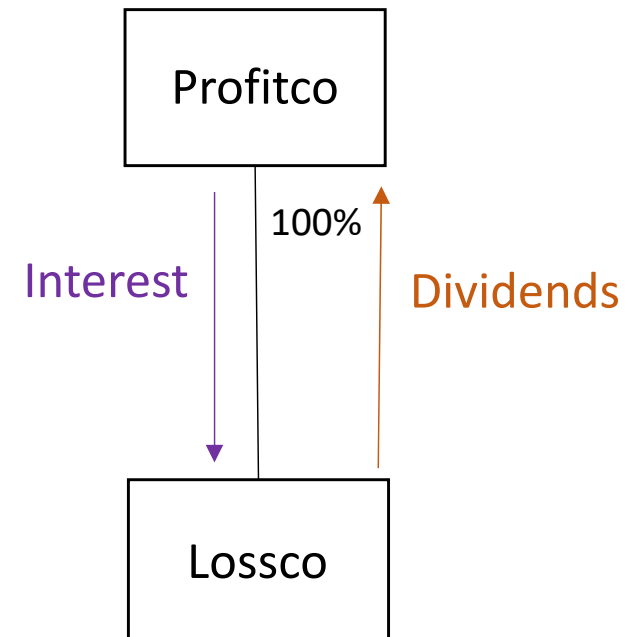


# Preferred Share-Loan

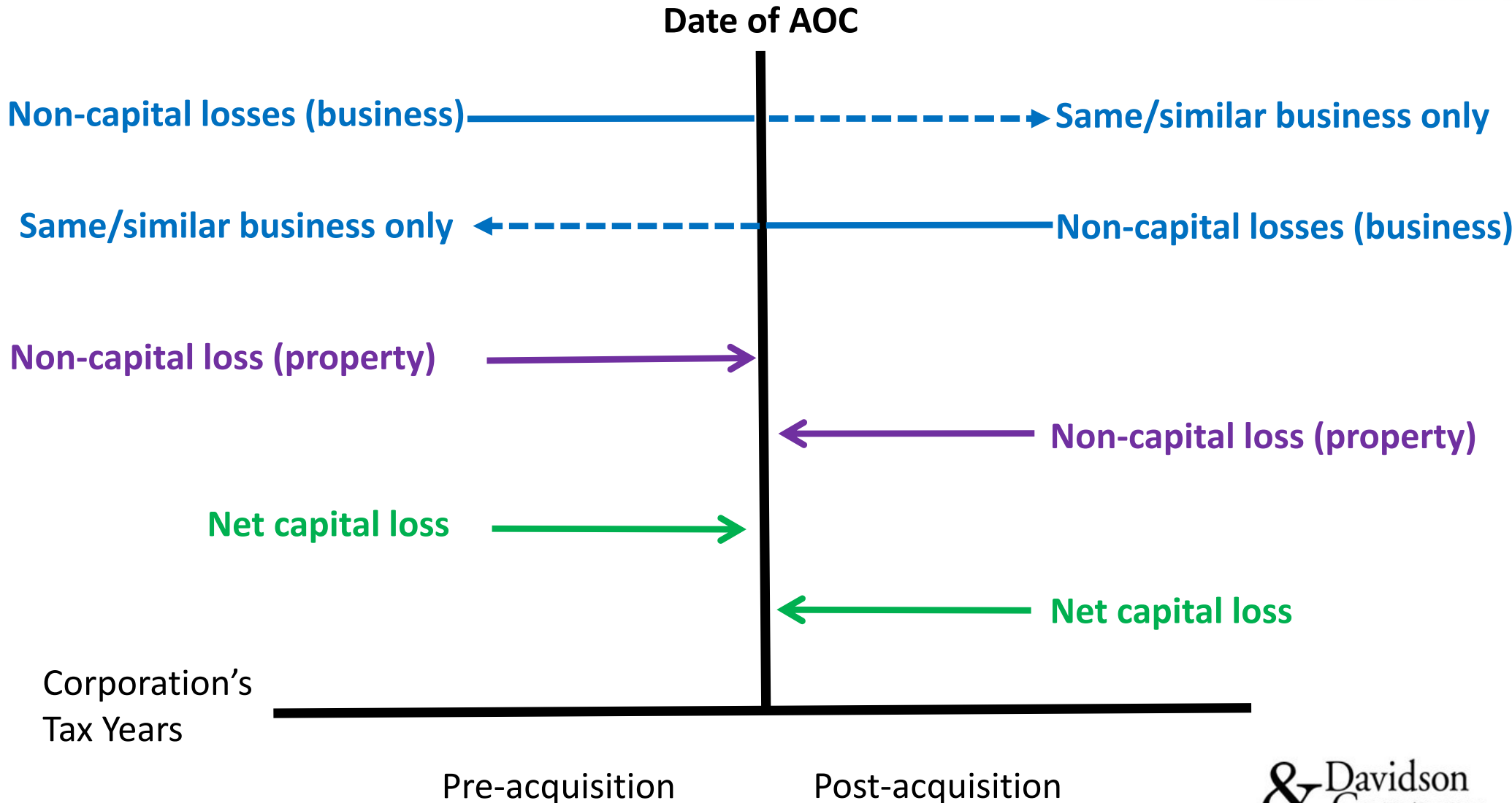
## Implementation steps



## Final Structure



# Acquisition of Control (“AOC”)





# Basis Bump Upon AOC


- Elect in pre-AOC return to deem a disposition of certain capital properties which appreciated in value
- Deemed proceeds up to FMV at time of AOC
- May result in capital gain as well as recapture (depreciable property) to use up the losses that would otherwise expire/become streamed
- In post-AOC return, deemed to re-acquire the same asset at the elected amount, increasing the tax basis. For depreciable property, the capital cost will equal old capital cost plus 50% of capital gain realized

# Other considerations

- Not claiming discretionary deductions or reserves
- Amend to reduce discretionary deductions
- Using non-capital losses to reduce Part IV tax
- Elect to capitalize interest on debt used to acquire depreciable property

# Summary

- Loss consolidation within affiliated group is generally acceptable, subject to loss suspension
- Track sources of tax losses
- Acquisition of control/loss restriction event rules



**Breaking Down Biden's 2022  
Inflation Reduction Act;  
&  
Cannabis/CBD 2022 U.S. Tax Update**

*Namir Hallak CPA, CA, CPA (KS), CGMA*

*U.S. Tax Principal*

# Breaking down Biden's 2022 Inflation Reduction Act

1

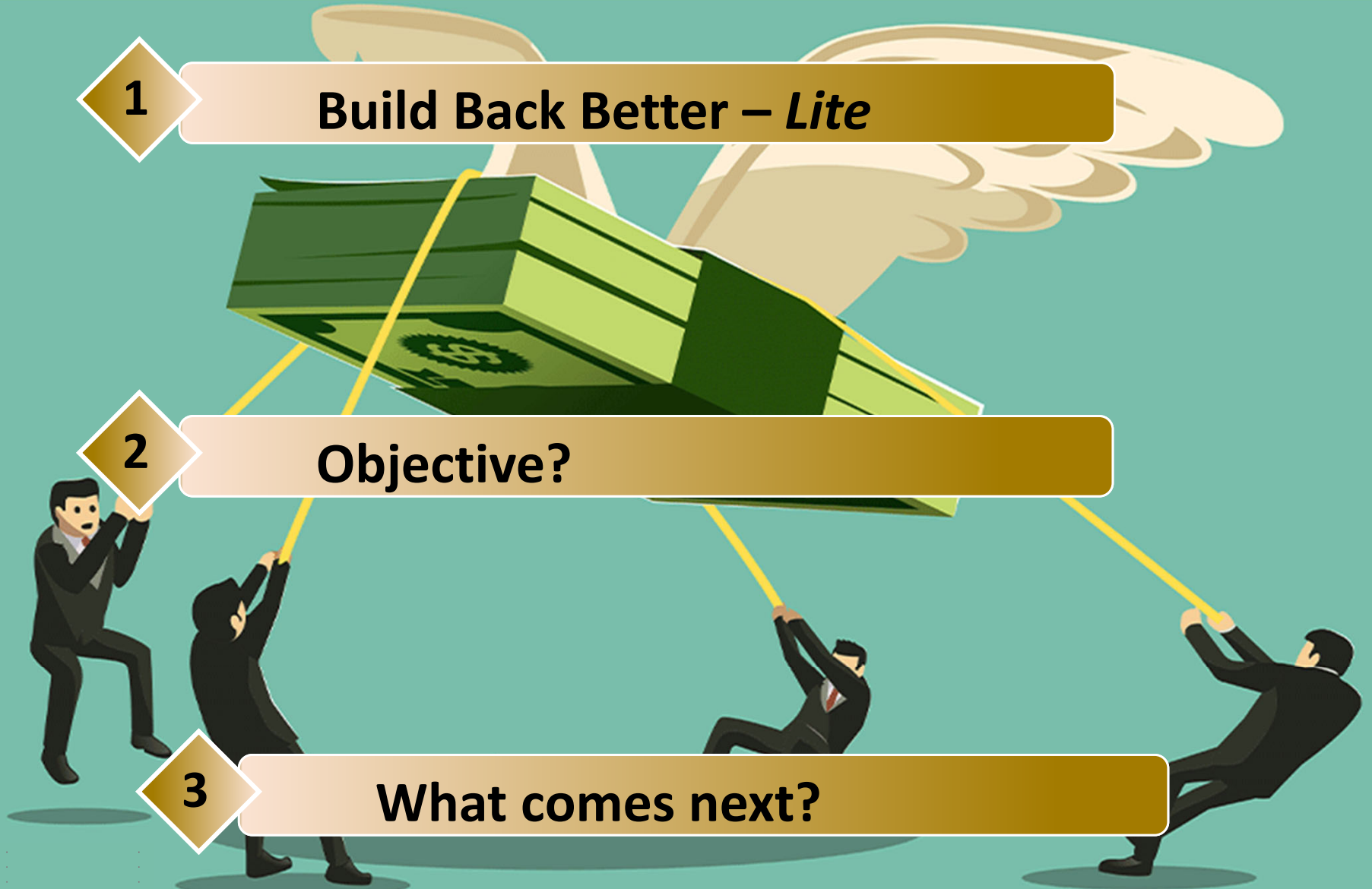
**Build Back Better – *Lite***

2

**Objective?**

3

**What comes next?**



# Breaking down Biden's 2022 Inflation Reduction Act

## Corporate Minimum Tax: New!

- **Applicable Corporations**
- **How to calculate it?**
  - Tax preference for capital investments
- **OECD Pillar Two model rules?**

# Breaking down Biden's 2022 Inflation Reduction Act

## 1% Excise Tax on Stock Repurchases

- Netting rule
- Covered Corporation
- Exceptions
- How can corporations avoid this tax?



# Breaking down Biden's 2022 Inflation Reduction Act

## **Excess Business Losses Limitation— extended!**

- Non-corporate taxpayers

- \$270k / \$540k (MFJ)

- \$150 Billion revenue raiser

- Who is this targeting?

- State mismatches!



# Breaking down Biden's 2022 Inflation Reduction Act

## R&D Tax Credit to offset payroll taxes: doubled!

- Target: Small Startups
- Which industries are especially impacted?
- What's changed?
- 5 year max runway



# Breaking down Biden's 2022 Inflation Reduction Act

## Green Energy Initiatives - Tax Credits for Home Owners

### 1. Energy Efficient Home Improvement 30% Credit: \$1.2k/yr

- Qualified Energy Efficiency Improvements
- Residential Energy Property
- Home Energy Audits

Improvement	Annual Credit Max	Qualifications
Windows	\$600	Energy Star Most Efficient
Exterior Doors	\$250/door, \$500 max	Energy Star
Insulation	\$600	Intl Energy Conservation Code
Heat pumps, biomass, boilers	\$2,000	Consortium for Energy Efficiency Highest Tier
HVACs, furnaces, water heaters, boilers	\$600	
Home energy audit	\$150	TBD
Panel upgrade	\$600	TBD

# Breaking down Biden's 2022 Inflation Reduction Act

## Green Energy Initiatives - Tax Credits for Home Owners

### 2. Residential Clean Energy Credit

### 3. Electric Vehicle (EV) Charger Credit: \$100k/station

- Commercial
- Residential



# Breaking down Biden's 2022 Inflation Reduction Act

## Green Energy Initiatives

### Multi-family and commercial buildings: §179D Revamp

- “Accelerated Depreciation” for larger property
- Certification



### Solar Panel on Commercial Buildings: 30% credit

- Short recovery & bonus depreciation
- Who is this available to?
- Requirements



### Electric Cars: \$7.5k/\$4k

- S. 30D: Impact to North America supply chain?
  - Max AGI: \$150k/\$300k (MFJ)
  - Who's in? Who's out?
  - Luxury / higher priced EVs: \$55k/80k
- S. 25E: previously owned clean vehicles



# Breaking down Biden's 2022 Inflation Reduction Act

## \$80 BILLION: Increase in IRS Funding!

- Civil and criminal enforcement
- What to expect?
- Unenviable appointee: IRS Commissioner
- Strong ROI expectation
- No news is good news!

IRS Exam Rates for Corporations	2020 TY
Overall	0.3%
Assets < \$250k	0.1%
Assets \$10M - \$50M	1.3%
Assets: $\geq$ \$20B	36.8%



# Cannabis/CBD: 2022 U.S. Tax Update

- 2021 & 2022 IRS audits
- Cannabis Admin and Opportunity Act – July 2022
- How can a business survive S. 280E?
- Tax Planning for U.S. entities subject to S. 280E



# U.S. Tax Update – Thank YOU!



Contact us: [ustax@davidson-co.com](mailto:ustax@davidson-co.com)

**&** Davidson  
Company



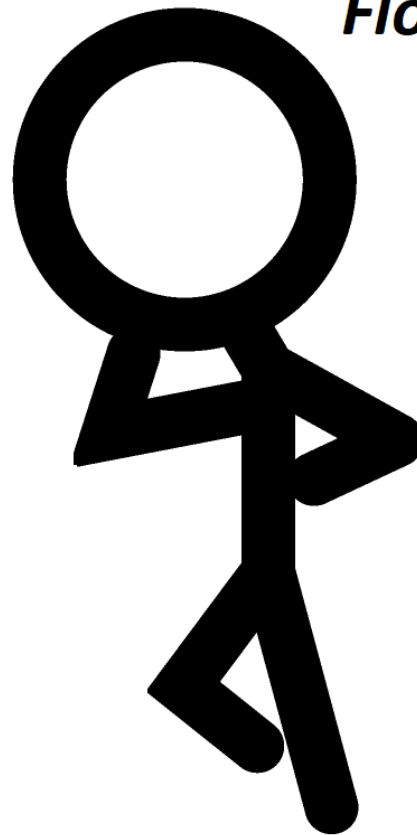
# Flow-Through Share Regime and Pitfalls

Frank Lin CPA  
*Tax Principal*

**ILLUSTRATED  
EDITION**



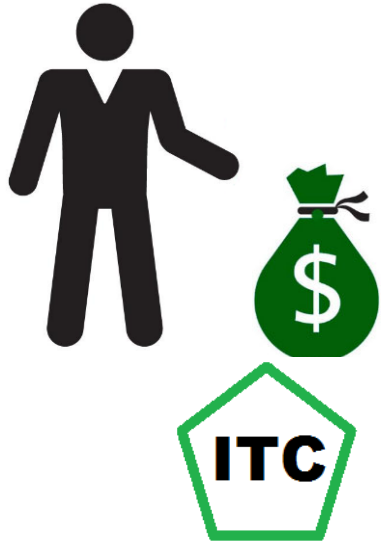
# General Overview



*Flow-through?*



# General Overview



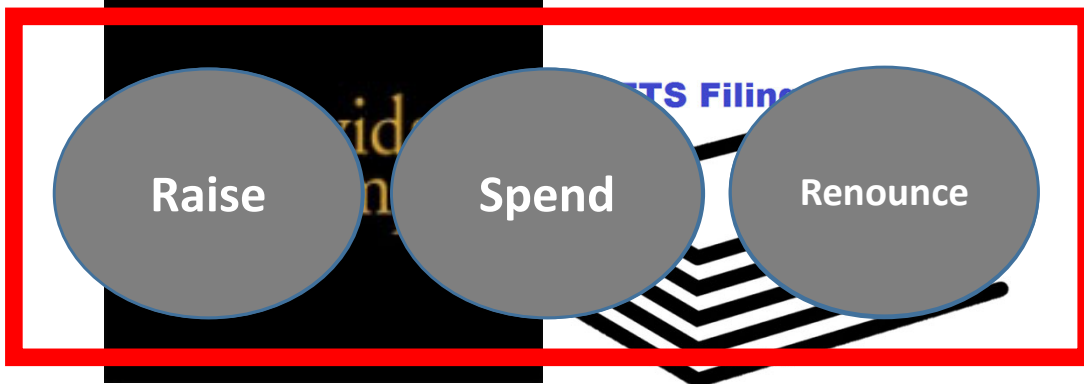
ACB = \$nil



FTS Agreements



## Reporting Requirements



# FT-Eligible Expenditures



**Grass-Roots  
Expenditures**



**Pre-Production  
Expenses**

**\* Purpose Test must be met**

# Ineligible Expenditures

**CEDOE**

**MP  
Acquis.  
Costs**

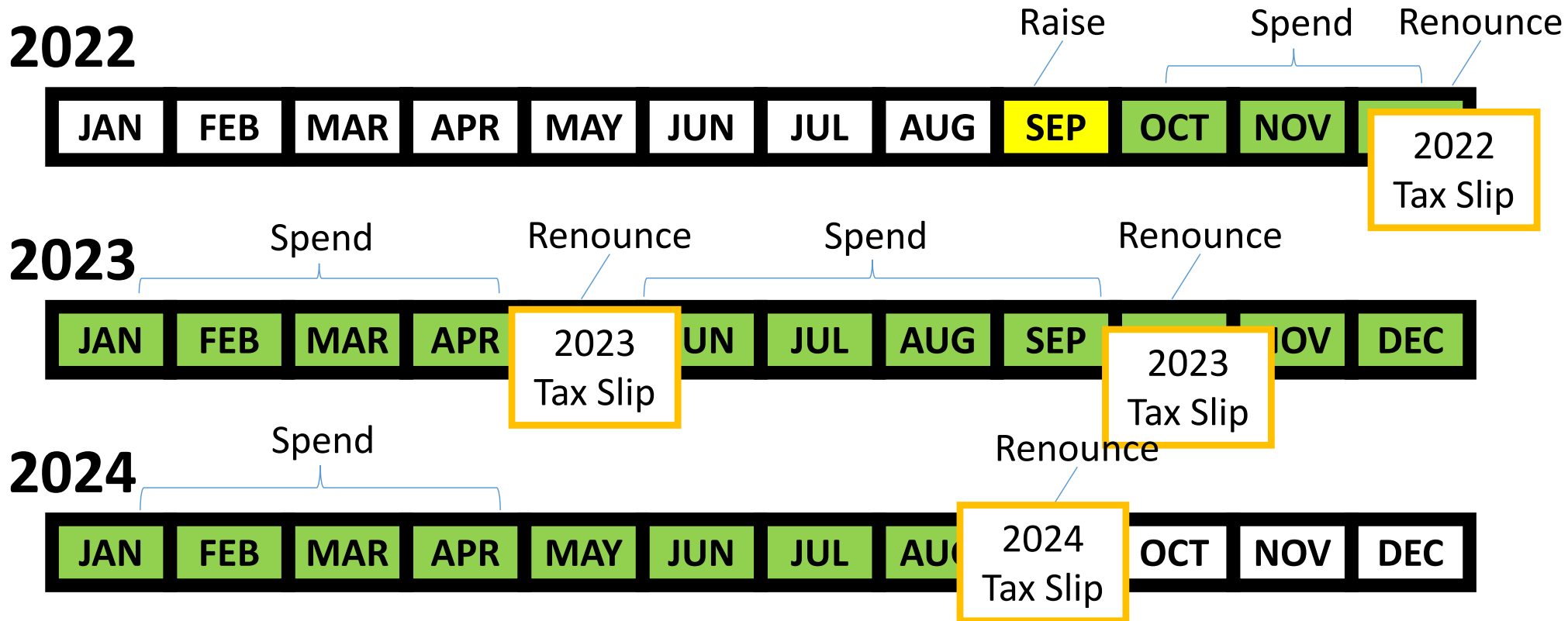
**Capital  
Costs**

**Assistance**

**Certain  
Seismic  
Data**

**Personal  
Expenses**

# Renunciation – General Rule

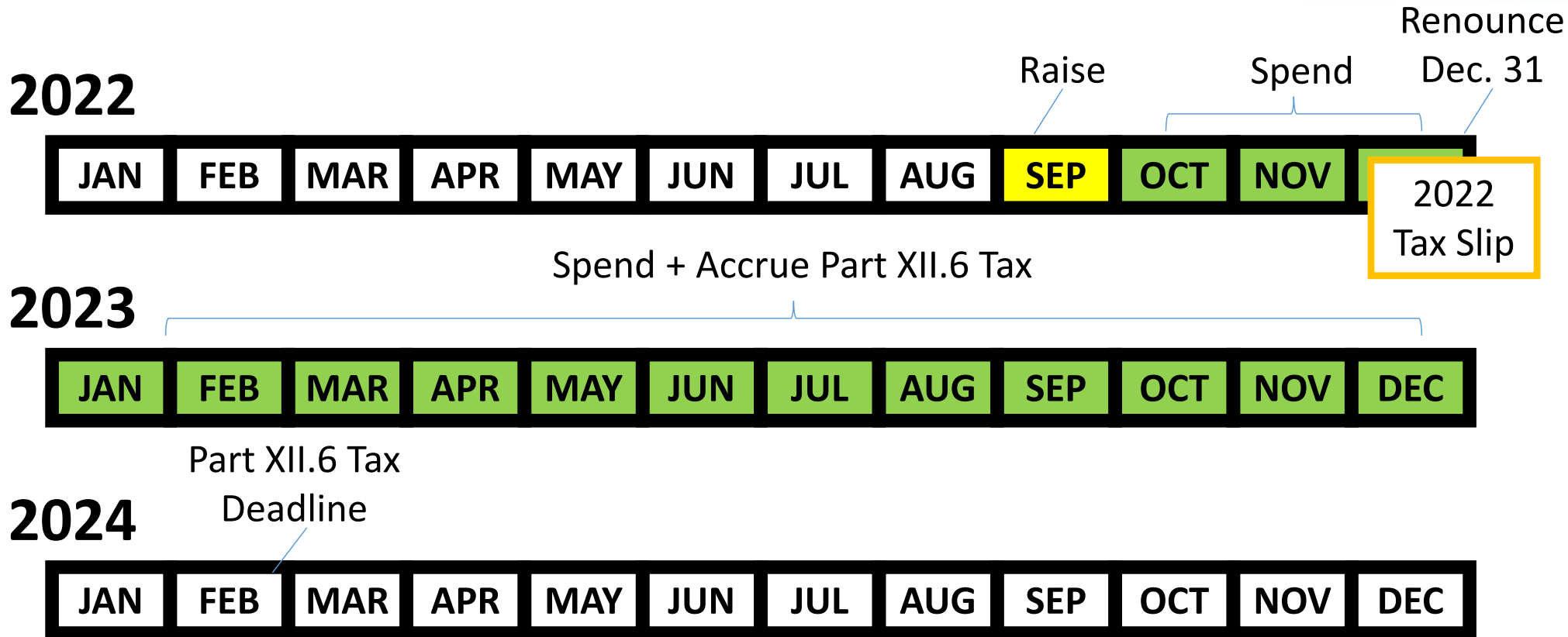


**General Rule: 24-month Spending Period**



**No thanks!**

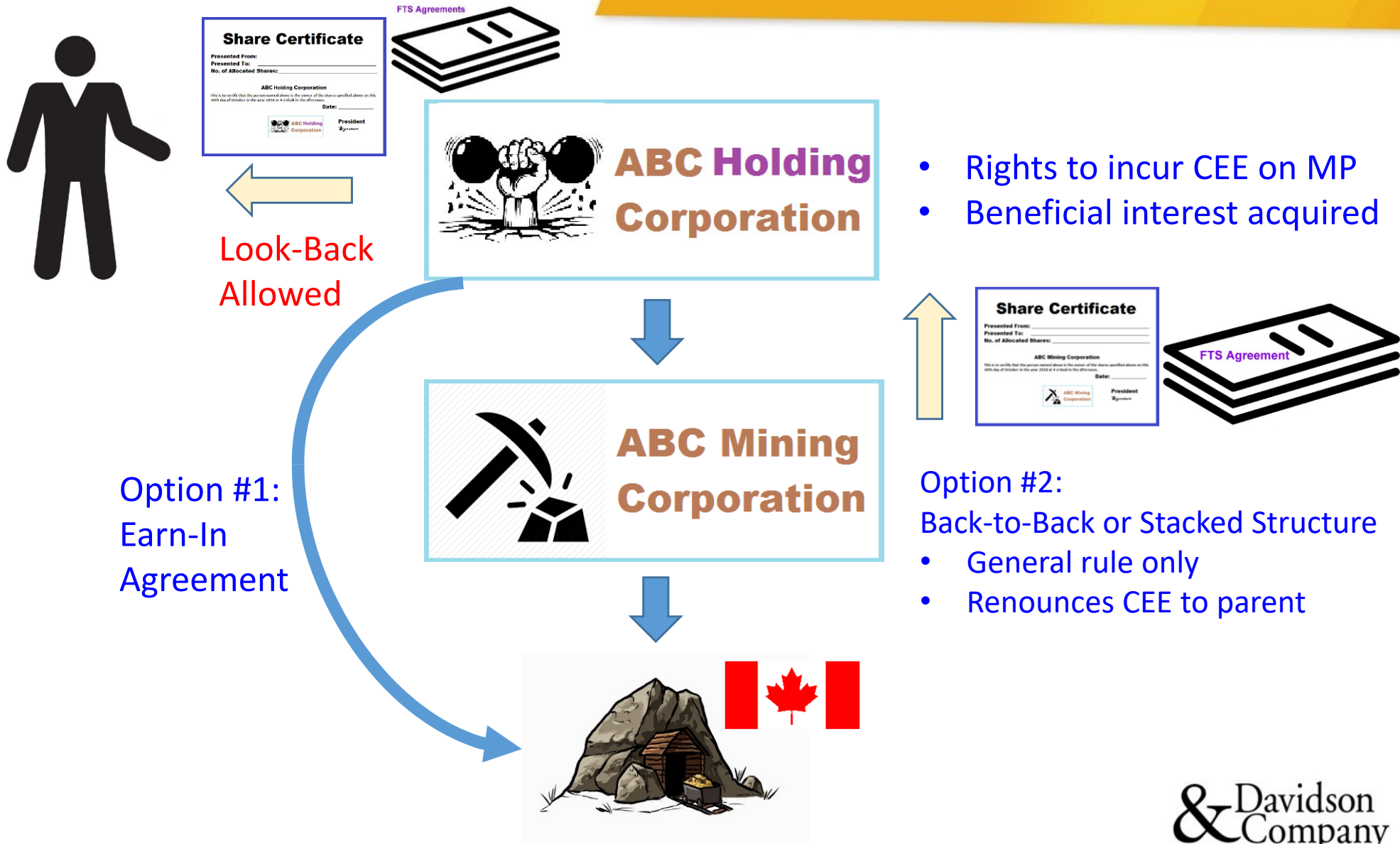
# Renunciation – Look-Back Rule



**Look-Back Rule: Spend by December 31 of Year 2**

**Full Investment Amount in Year 1! Thanks!**

# Tiered FT Structures



# COVID-19 Relief – General Rule

**2020**

Raise



**2021**



**2022**



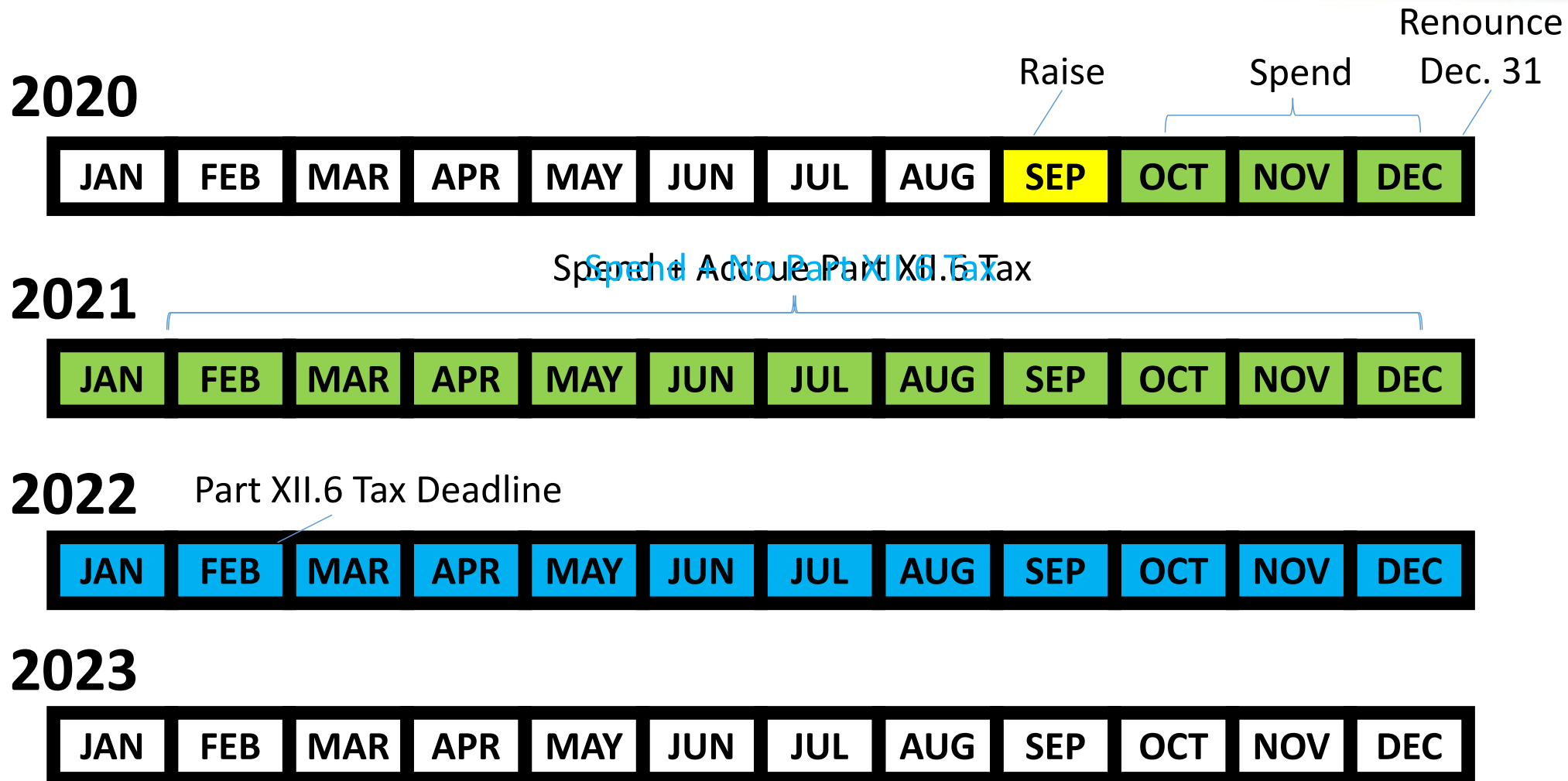
**2023**



FTS Agreements: March 1, 2018 to December 31, 2020  
→ Spending period extended by 12 months



# COVID-19 Relief – Look-Back Rule



FTS Agreements in 2019 or 2020  
→ Extension on spending and Part XII.6 tax by 12 months

# Federal Budget 2022



\* FTS agreements after March 2023

# Federal Budget 2022

## Critical Mineral Exploration Tax Credit (“CMETC”) – 30% Federal ITC



Critical  
Mineral

Vanadium, Niobium,  
Magnesium, Zinc, A  
Platinum Group Metal,  
or Uranium

\* Must be certified by a “Qualified Engineer or Geoscientist”

\* FTS agreements after April 7, 2022 and before March 31, 2027



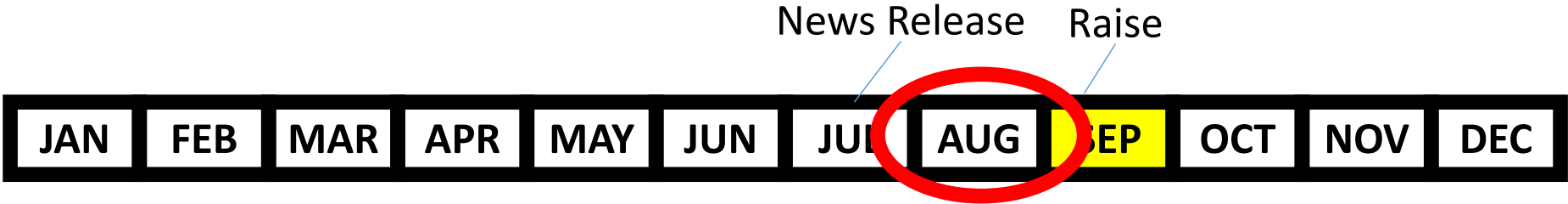
# Major Pitfall #1



**FTS Filings**



# Major Pitfall #2



FTS Filings



Canada



Canada Revenue Agency

REVENU

QUÉBEC



& Davidson Company

# Major Pitfall #3

A logo for "ABC Holding Corporation" featuring a fist holding two spheres, with the text "ABC Holding Corporation" to the right.

**ABC Holding Corporation**

A logo for "ABC Mining Corporation" featuring a pickaxe and a rock, with the text "ABC Mining Corporation" to the right.

**ABC Mining Corporation**



Issuance of FTS and renunciation to external investors without rights to incur CEE on sub's MP

# Other Pitfalls

- FTU price used inappropriately
- Non-FT eligible expenditures incurred
- Filing deadlines missed
- Spending outside allowable period
- COVID-19 relief not extended past 2020
- EDOR vs. DOR

# In Closing...



*“Flow-through shares are inevitable.  
Growth on the shares is optionable.”*

- An Optimistic FTS Investor





# **GST/HST for Holding Companies and Stock Compensation Basics (RSU's/DSU's)**

Les Fabian CPA, CA  
*Tax Partner*

# GST for Holding Companies

- Background – Claiming Input Tax Credits (“ITC’s”)
- Restrictions on ITC’s & Relieving Provisions (S.186)
- Pre-2019 Legislation (Old Rules)
- Post-2018 Legislation (New Rules)

# Background – Input Tax Credits

- General Rules for ITC Claims:

- GST registrants eligible to recover GST paid on expenditures to the extent “engaged in commercial activities” (i.e. business carried on by a corp)
- *Exempt* transactions are excluded from the “commercial activity” definition >>> such as financial securities which can deny ITC claims while corporation is CPC (Capital Pool Co.)
- Cdn public co business through foreign subs & raising capital in Cdn public markets >>> not considered engaged in commercial activity on its own since business is in sub, require special look-through relieving provisions....

# Input Tax Credits – Relieving Provisions

- Pre-2019 special relieving provisions to allow Cdn holding companies to claim ITC's (ETA S.186)
  1. Expenditures must reasonably be “in relation to” the shares or debt of its subsidiary; *and*
  2. All or substantially all of the sub's assets must be used in commercial activities
- Examples provided by CRA included accounting & legal fees on acquisition or sale of shares in sub and certain admin costs
- Pre-July 28, 2018 taxpayer position was parent corp's main reason for existence was to hold shares and/or debt of sub so all costs considered “in relation to” sub's shares/debt

# Pre- 2019 - CRA Interpretation of S.186

- Ongoing issue – CRA auditors assessed based on a narrow interpretation of the legislation to restrict ITC claims by holding companies
- Tax advisors/taxpayers have a broader interpretation of the legislation to allow ITC claims
- Court cases favored a broader interpretation (i.e. *Miedzi Copper Corp, Stantec Inc.*), however, still challenged at CRA audit level
- Significant restrictive amendments effective July 27, 2018

# Post-2018 – ITC Restrictions

- **Post-2018 rules to limit HoldCo S.186 ITC's to:**
  - Transactions involving the shares and debt of the subsidiary/operating corporation;
  - Costs involving issuance/sale of shares/debt of the holding company to the extent that the proceeds are transferred to the subsidiary/operating corporation; and
  - Other activities of the holding company if the holding company meets a new property test, which requires that all or substantially all (90%+) of the property of the holding company is shares or debt of the operating corporation.

# Post-2018 – ITC Restrictions

- **Post-2018 Rules continued....**

- Substantial changes in wording of S.186 involve replacement of “reasonably” and “in relation to” in reference to shares/loans of subsidiary, with amended provisions that list specific activities/circumstances when Holdco eligible for ITC’s
- Other amendments include revising ownership test of operating corporation from “related” (i.e. 50%+) to “all or substantially all” (i.e. 90%+)

End result = more ITC’s denied under CRA audits.

# Stock-Based Compensation

Public and private companies are turning more and more towards stock-based compensation for employees (including officers and directors).

Tax-deferred incentive plan to build staff retention and reward key executives based on company's success.

Align incentives w/ shareholders.



# Equity Compensation Plans

- Stock Options
- Restricted Stock
- Restricted Share Units (“RSU’s”)
- Performance Share Units (“PSU’s”)
- Deferred Share Units (“DSU’s”)
- Share Appreciation Rights (“SAR’s”)

# Employee Stock Options

- Employer agrees to sell or issue shares at fixed price
- Taxable benefit = (FMV on Exercise) minus (Option Price)
  - Generally non-deductible to employer
- Generally tax-deferred until exercise (non-CCPC)
  - Benefit subject to payroll tax withholdings (Tax & CPP)
- 50% Deduction available (i.e. half taxable) if:
  - Employer-employee are arm's length; and
  - Option price is at least FMV on grant date

# Employee Stock Options

- Effective July 1, 2021:
  - 50% Stock option deduction limited to annual cap of \$200,000 on FMV of shares on grant date
  - Does not apply to CCPC's or non-CCPC's with consolidated group revenue of \$500 million or less
  - Portion of employee's deduction that does not qualify may be deducted by employer if:
    - Corp is individual's employer at time option granted; and
    - Employer notifies employee with 30 days of option grant

# Restricted Stock

- Employer awards stock of company subject to conditions
- Not common due to adverse tax consequences
- Employee taxable on stock FMV upon issuance (i.e. no tax deferral)

# Restricted/Performance Share Units

## Restricted Share Units (“RSU’s”)

- RSU’s awarded to employees with vesting conditions
  - Generally based on time, performance or combination
  - Settled with either cash or shares
  - Deductible to employer in year paid
- Key issue for employees – avoiding “salary deferral arrangement” (“SDA”) rules which would trigger tax upon granting of award and not deferred to time of receiving cash/shares settlement

# Restricted/Performance Share Units

## Exemption from SDA for RSU's

- Exempt from SDA per paragraph (k) of definition in S.248
- Plan or arrangement where employee has right to receive bonus or similar in respect of services paid within 3 years following end of the year
- Watch for period(s) employee compensated
  - If awards prior period services, may inadvertently exceed 3 year limit per SDA and trigger immediate tax

# Restricted/Performance Share Units

## Performance Share Units (“PSU’s”)

- Similar to RSU’s – PSU’s awarded to employee with vesting conditions based on performance targets
- Avoid SDA rules if “substantial risk” that one or more conditions/targets will not be met
- Risk of forfeiture must be definite/significant with high threshold
- If likely conditions fully or partially met, no SDA exemption and immediately taxable at FMV

# Deferred Share Units

## Deferred Share Units (“DSU’s”)

- DSU’s awarded to employee with contingent right to receive shares (or equivalent amount) per vesting conditions
  - Settled with either cash or shares of employer (or related)
  - Intended as tax-efficient retirement plan for staff retention
  - Employee taxed upon receipt of cash/shares unless SDA applies
  - Deductible to employer in year paid
- Exempt from SDA rules as “prescribed plan or arrangement” if conditions met (Reg 6801(d))



# Deferred Share Units

Exempt from SDA rules as “prescribed plan or arrangement” if following conditions met:

1. Agreement between recipient & employer (or related corp)
2. DSU's attributable to duties of office/employment
3. All amounts under arrangement must be received after time of employee's death, retirement, or loss of employment
4. Amount must depend on FMV of shares (determined at point in time within one year before death/retirement/loss of employment and payment date)
5. DSU cannot guarantee a minimum value to employee

# Share Appreciation Rights

## Share Appreciation Rights (“SAR’s”)

- SAR’s award employee with right to receive a payment equal to increase in share value between grant and exercise dates
  - Employee taxed upon settlement/receipt of proceeds (if SDA rules do not apply)
  - Deductible to employer in year paid/settled
  - Also sometimes known as “Phantom Stock Plans”

# Share Appreciation Rights

- SDA rules do not apply if:
  1. Exercised within 3 year exemption period (similar to RSU's);
  2. Rights have Nil FMV at grant date
  3. Payment is required on a fixed future date



# Q & A SESSION

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Any unanswered questions or comments can be sent to [events@davidson-co.com](mailto:events@ davidson-co.com)



# Closing Items

- Survey, link to PD Certificate & Slides e-mailed shortly
- Video recording will be posted to our website
- Upcoming Events – **save the date!**
  - IFRS Update: October 20, 2022
  - TSX & Regulatory Update: January 18, 2023
- Door prize draws

# THANK YOU FOR JOINING!

## YOUR SPEAKERS:



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**& Davidson  
Company**  
CHARTERED PROFESSIONAL ACCOUNTANTS

# & Davidson Company

## — 2022 — ANNUAL TAX UPDATE

*Thursday, September 22<sup>nd</sup>, 2022*

2:00-4:00PM VIRTUALLY AND IN-PERSON

(LIMITED SEATING AT ROSEWOOD HOTEL GEORGIA)

A DAVIDSON & COMPANY SEMINAR

AIU	1,822	12,349,000
EJK	3,680	238,681,000
HPL	1,062	85,678,000
KEE	485	8,369,000