

**Adapted from CCH Tax Topics No. 1960**  
**Control Premium – CRA Changes Policy on Freezes**

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At the British Columbia Tax Conference on September 22, 2009, the CRA announced a change in its assessing policy on the control premium issue. It was stated that, in the context of an estate freeze of a CCPC, where a freezor, as part of the freeze, keeps controlling non-participating preference shares in order to protect his or her economic interest in the corporation, the CRA will generally<sup>[1]</sup> ignore control premium. This is notwithstanding Income Tax Technical News No. 38<sup>[2]</sup> in which the CRA indicated that “a hypothetical purchaser would be willing to pay some amount for voting control of a company”.

The CRA response is reproduced below.<sup>[3]</sup> It should be noted that it did not specifically address control premium for so-called exclusionary dividend structures, such as those used for dividend splitting or capital-gains-exemption multiplication<sup>[4]</sup>. Also, the policy is applicable “for the purposes of subsection 70(5)” – i.e., the deemed disposition on death; no mention is made of an inter vivos sale<sup>[5]</sup>.

As stated in Income Tax Technical News No. 38, the CRA does not have an established position on valuing different types of property, including shares, as the valuation is dependent on the facts and circumstances of each situation. Information Circular 89-3 (IC 89-3), Policy Statement on Business Equity Valuations, outlines the valuation principles and policies that the CRA considers and follows in the evaluation of securities and intangible property of closely held corporations for income tax purposes. In determining the fair market value of a class of shares, the CRA determines the fair market value of the corporation “as a whole” or “en bloc” and then allocates the value to each class of shares in isolation. The fair market value of each class is determined according to the rights and restrictions of each class and voting control is a right that may have significant value.

The CRA’s position is that non-participating controlling shares have some value and may therefore bear a premium. However, in the context of an estate freeze of a Canadian-controlled private corporation, where the freezor, as part of the estate freeze, keeps controlling non-participating preference shares in order to protect his economic interest in the corporation, the CRA generally accepts not to take into account any premium that could be attributable to such shares for the purposes of subsection 70(5) of the Income Tax Act at the freezor’s death.

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<sup>[1]</sup> I understand that the use of the word “generally” (i.e., as an exception to disregarding control premium in the circumstances delineated by the CRA) may, specifically, contemplate a situation where all of the freeze shares have been redeemed but the thin voting shares are retained.

<sup>[2]</sup> September 22, 2008.

<sup>[3]</sup> Among other things, the question asks whether the CRA is proposing to recommend that a premium be placed on new common shares issued after a freeze.

[4] As will be noted, the end of the first paragraph indicates that a voting control right may have “significant value.”

[5] Consider, for example, a “garden variety” freeze, where some years after the freeze is implemented, the shares of the corporation are sold, with the position being taken that there is no control premium in order to maximize multiple capital gains exemption claims. There is no indication that the administrative largesse would apply in this situation.