

Le Comité mixte sur la fiscalité
de l'Association du Barreau canadien
et

des Comptables professionnels agréés du Canada

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L'Association du Barreau canadien, 865, avenue Carling, bureau 500, Ottawa (Ontario) K1S 5S8

Le 13 octobre 2016

Monsieur Ted Cook
Directeur, Direction de la politique de l'impôt
Ministère des Finances du Canada
90, rue Elgin
Ottawa (Ontario) K1A 0G5

Objet : Documentation sur le paragraphe 55(2) et partie IV

Monsieur,

Plus tôt cette année, nous avons transmis au ministère des Finances (« le Ministère ») des exemples illustrant certains des problèmes et défis soulevés par le Comité mixte et par d'autres membres de la communauté fiscale en ce qui a trait à la façon dont la version remaniée du paragraphe 55(2) interagit avec la partie IV et les dispositions sur les comptes de dividendes en capital de la *Loi de l'impôt sur le revenu* du Canada.

Selon notre interprétation, l'impôt de la partie IV ne vise pas à remplacer l'impôt permanent des sociétés, mais se veut tout simplement un impôt non reportable s'insérant dans le régime d'intégration fiscale existant. De fait, le paiement de dividendes entraîne son remboursement, et si ces dividendes ne sont pas versés à une société ayant droit à la déduction prévue par le paragraphe 112(1), le principe d'intégration fait en sorte que les gains dont proviennent les dividendes sont imposés comme il se doit. Or, nous avons exprimé des réserves en ce qui concerne l'application du paragraphe 55(2) aux dividendes au titre desquels l'impôt prévu à la partie IV est initialement remboursé, et nous sommes d'avis que la modification de l'exemption du paragraphe 55(2) concernant l'impôt de la partie IV dénature le principe d'intégration et pourrait produire des résultats soit plus, soit moins favorables que prévu.

Nous avons aussi exposé notre questionnement au chapitre de la conformité; la décision rendue dans l'affaire *Ottawa Air Cargo* laisse croire que pour que le paragraphe 55(2) puisse être appliqué, le remboursement prévu à la partie IV doit d'abord avoir été demandé et établi dans une déclaration (autrement dit, le remboursement est une condition sine qua non à l'application du paragraphe 55(2)). S'ensuivent des procédures administratives injustifiées et des coûts supplémentaires pour produire des déclarations rectificatives. De plus, l'incertitude

règne quant à la « circularité » des procédures qui pourrait découler d'un choix tardif concernant les dividendes en capital (compte de dividendes en capital). Avec la portée grandement élargie du paragraphe 55(2) et le resserrement proposé de l'exemption de l'impôt de la partie IV, le fardeau de la conformité est considérablement alourdi.

Cette documentation informelle faisait suite aux discussions préliminaires entre les membres du Comité mixte et certains représentants du Ministère. Nous l'avons envoyée dans une volonté d'agir rapidement, et c'est pourquoi elle n'est pas aussi circonstanciée que nos mémoires formels. En effet, bon nombre d'exemples y sont présentés sous forme de points. Toutefois, comme vous le savez, le Comité mixte a notamment pour rôle d'informer la communauté fiscale au sujet des questions que pourraient susciter les nouvelles dispositions législatives sur l'impôt et de collaborer avec le Ministère sur ce qui touche à la modification de ces dispositions.

Nous croyons savoir que le Ministère, après avoir étudié cette documentation informelle, ne juge pas nécessaire pour le moment de discuter plus amplement de ces questions.

Conformément à notre mandat d'informer la communauté fiscale, nous transmettrons à nos éditeurs commerciaux cette documentation informelle, que vous trouverez sous pli, comme nous le faisons pour nos mémoires formels.

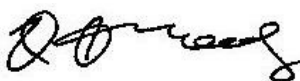
Le Comité mixte tient à souligner la précieuse contribution des personnes suivantes à la préparation de ce document :

Bruce Ball, BDO Dunwoody s.r.l.
Ken Griffin, PwC LLP

Rick McLean, KPMG s.r.l./S.E.N.C.R.L.
Eric Xiao, EY s.r.l./S.E.N.C.R.L.

Nous espérons que nos commentaires vous seront utiles, et nous serions heureux d'en discuter plus amplement avec vous, selon votre convenance.

Veuillez agréer, Monsieur, l'expression de nos sentiments les meilleurs.



Kim G. C. Moody
Président, Comité sur la fiscalité
Comptables professionnels agréés du Canada



K.A. Siobhan Monaghan
Présidente, Section du droit fiscal
Association du Barreau canadien

c. c.

- Brian Ernewein, directeur général, Direction de la politique de l'impôt, Division de la législation de l'impôt, ministère des Finances du Canada
- Gabe Hayos, vice-président, Fiscalité, CPA Canada
- Tamra Thomson, directrice, Législation et réforme du droit, Association du Barreau canadien

Subsection 55(2) Part IV Tax Exception

Part IV Exception

- “the amount of the dividend (other than the portion of it, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend by a corporation where the payment is part of the series referred to in subsection (2.1)) ...”
- Ottawa Air Cargo Centre Ltd. v. The Queen, 2008 DTC 6177 (FCA)
 - there must be an actual assessment of Part IV tax and a dividend refund and not the potential application of tax and a refund but for the application of subsection 55(2)

Scenario 1: Assumptions

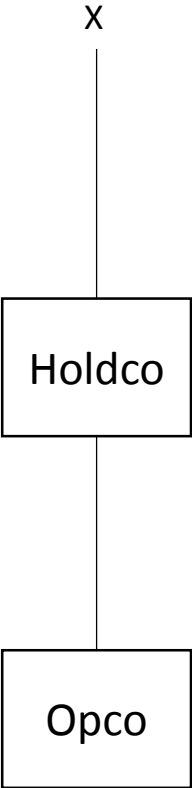
- 55(2) applies if a dividend or deemed dividend is paid by Opco to Holdco
 - For example:
 - Holdco owns “freeze” preferred shares in Opco with no safe income
 - Shares in Opco held by Holdco are redeemed resulting in an 84(3) dividend and resulting in an unrelated person event described in 55(3)(a)
- Opco has 1,000,000 of RDTOH
 - Opco had earned investment income of 3,749,531
 - Permanent tax: 19.5%

731,159
 - RDTOH 26.67%

1,000,000
 - Total 46.17%

1,731,159
- Opco / Holdco have no existing CDA
- Opco to pay dividend / deemed dividend to Holdco
- No other dividends will be paid to Holdco
 - For example, all of Opco’s assets will be distributed on dividend or redemption fully satisfies redemption value of Holdco’s shares in Opco
- Holdco has no other assets

RDTOH: 1,000,000
Cash: 2,000,000

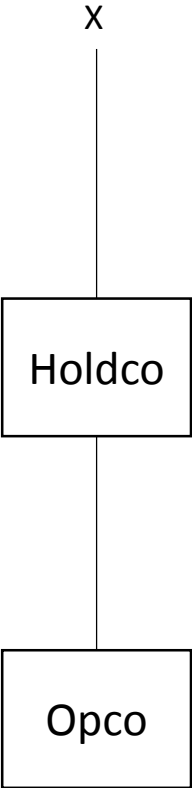


* All tax rates shown are Federal and Ontario 2015

Scenario 1: Step 1: Opco pays dividend to Holdco

- Opco pays 3,000,000 dividend to Holdco

Dividend received by Holdco:	3,000,000
Part IV tax paid by Holdco:	1,000,000
Cash available in Holdco:	2,000,000
RDTOH:	1,000,000
Dividend paid by Opco:	3,000,000
Opco dividend refund:	1,000,000



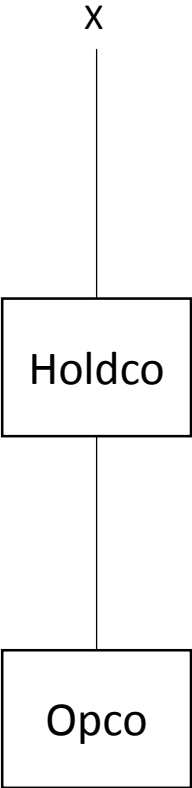
Scenario 1: Step 2: Holdco pays dividend to individual

- Holdco pays 3,000,000 dividend to individual X
 - Includes recovery of RDTOH
- X pays personal tax at ineligible rate of 40.13%
- As a result of Holdco's complete refund of Part IV tax, Holdco is now subject to 55(2) on entire dividend received from Opco
 - See next page

Taxable dividend received: 3,000,000
Tax paid by X: 1,203,900
Cash available: 1,796,100

Cash available in Holdco: 0
RDTOH: 0

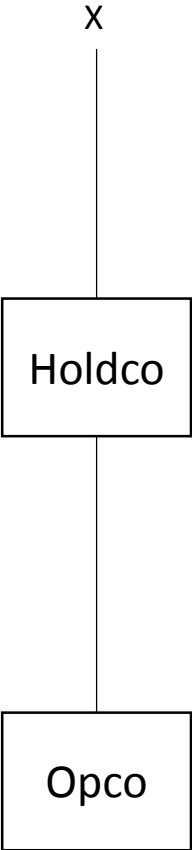
RDTOH: 0



Scenario 1: Dividend received by Holdco now recharacterized as gain

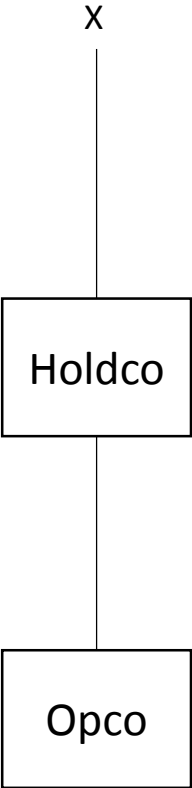
- As a result of Holdco’s complete refund of Part IV tax (in Step 2), Holdco is now subject to 55(2) on entire dividend received from Opco
- Holdco subject to tax at corporate tax rate of 23.09%
 - Permanent tax at 9.75%
 - Refundable tax at 13.33%
- Dividend paid by Holdco in Step 2 is sufficient to recover refundable tax on deemed gain
 - Dividend paid Step 2: 3,000,000
 - Refundable tax on deemed gain: 400,000
- Holdco liable for tax of 292,500 but has no cash
 - Entire cash dividend received by Holdco from Opco was paid to Individual X
 - Individual X would need to fund Holdco tax liability

Cash available:	1,796,100
55(2) deemed gain:	3,000,000
Permanent tax on CG 9.75%:	292,500
Refundable tax on CG 13.33%:	400,000
Less refund:	400,000
CDA (from deemed gain):	1,500,000
Cash available in Holdco:	(292,500)



Scenario 1: Summary of tax paid

- Investment income earned by Opco: 3,749,531
 - Corporate tax rate on investment income: **46.2%**
- Total tax if 55(2) applies
 - Individual X (40.13% on 3M): 1,203,900
 - Holdco (9.75% on 3M): 292,500
 - Opco 19.5% on 3.75M: 731,159
 - Total 2,227,559
 - % (of 3,749,531) **59.4%**
- CDA of 1,500,000 has been stranded in Holdco
- If 55(2) had not applied, total tax would be:
 - Individual X (40.13% on 3M): 1,203,900
 - Opco 19.5% on 3.75M: 731,159
 - Total 1,935,059
 - % (of 3,749,531) **51.6%**
- If 3,749,531 earned directly by Individual
 - Tax rate is **49.5%**



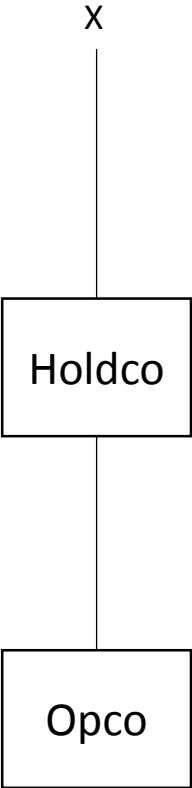
Scenario 1: Revised: Alternative 1

- After Holdco has been deemed not to have received a dividend from Opco and has a deemed gain, can Holdco late file a CDA election?
 - Assume Holdco initially paid the taxable dividend (in step 2) in 2 amounts
 - 1,500,000
 - 1,500,000
- Total tax
 - Individual X (40.13% on 1.5M): 601,950
 - Holdco (9.75% on 3M): 292,500
 - Opco 19.5% on 3.75M: 731,159
 - Total 1,625,609
 - % (of 3,749,531) **43.35%**
- Does CDA election retroactively mean that Holdco did not fully recover Part IV tax on dividend received by Opco that caused 55(2) to apply to entire dividend?
 - Initially, Holdco paid taxable dividends of 3M that caused full dividend refund such that 55(2) applied
 - If portion of dividend is now a CDA paid, does that “undo” the 55(2) recharacterization (in part)?
 - Or, alternatively, once Holdco is assessed under 55(2), is it not necessary to look back to the initial dividend received and dividend refund?

Taxable dividend received:	1,500,000
CDA received:	1,500,000
Tax paid by X:	601,950
Cash available:	2,398,050

Tax paid:	292,500
Cash available:	(292,500)

Tax paid:	731,159
Cash available:	0



Scenario 1: Revised: Alternative 2

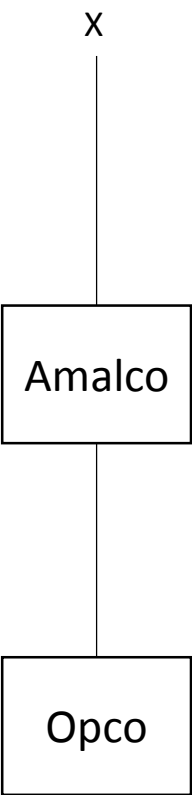
- If the structure was revised so that X owned Holdco1, Holdco 1 owned Holdco2 and Holdco2 owned Opco
 - Opco pays dividends to Holdco2
 - Holdco2 pays dividends to Holdco1
 - Causes 55(2) to apply to dividend received by Holdco2 because Holdco2 receives dividend refund
 - Assume dividend received by Holdco1 not subject to 55(2)
 - Amalgamate Holdco1 and Holdco2
 - Amalco has CDA of 1,500,000

Total tax		
Individual X (40.13% on 1.2075M):	484,570	
Holdco (9.75% on 3M):	292,500	
Opco 19.5% on 3.75M:	731,159	
	1,508,229	
Total		
	% (of 3,749,531)	40.22%

Taxable dividend received:	1,207,500
CDA received:	1,500,000
Tax paid by X:	484,570

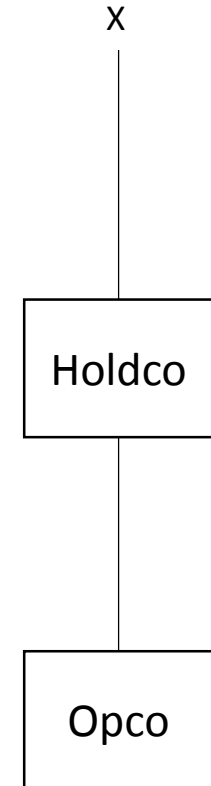
Tax paid:	292,500
Cash available (before	3M – 292,500
Dividends paid to X):	

Tax paid:	731,159
Cash available:	0



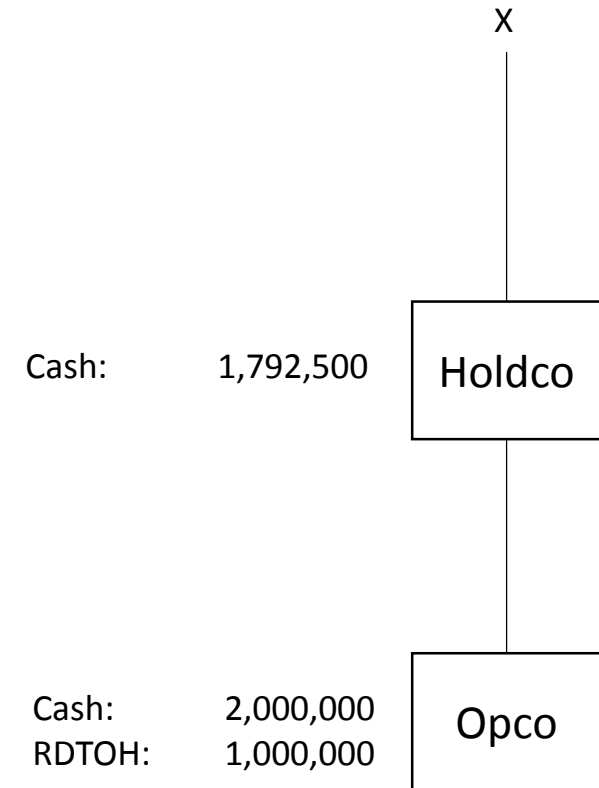
Scenario 1: Summary of tax rates

- | | |
|---|-------|
| • Corporate tax rate on investment income: | 46.2% |
| • On distribution to individual - if no 55(2) to Holdco: | 51.6% |
| • On distribution to individual - if 55(2) applies to Holdco: | 59.4% |
| • If investment income earned directly by Individual: | 49.5% |
| • If CDA election is available if 55(2) applies to Holdco: | 43.4% |
| • If use Holdco1 and Holdco2 structure: | 40.2% |



Scenario 2: Assumptions

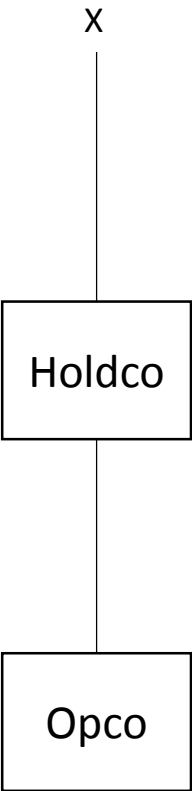
- 55(2) applies if a dividend or deemed dividend is paid by Opco to Holdco
 - See Scenario 1 Assumptions
- Opco has \$1,000,000 of RDTOH
 - Opco had earned investment income of 3,749,531
 - Permanent tax 19.5% 731,159
 - RDTOH 26.67% 1,000,000
 - Total 46.17% 1,731,159
- Opco has no CDA
- Opco to pay dividend / deemed dividend to Holdco
- Holdco has cash that would be distributed to Individual X as eligible dividends
 - Amount is 1,792,500 (“backed into” for illustration)
 - CDA on Holdco deemed gain 1,500,000
 - Holdco tax on deemed gain 292,500
 - 1,792,500 from ABI previously earned in amount of 2,438,776
 - Tax rate at 26.50% - tax of 646,276
 - GRIP balance is 72% of 2,438,776 = 1,755,919



Scenario 2: Step 1: Opco pays dividend to Holdco

- Opco pays 3,000,000 dividend to Holdco

Dividend received by Holdco:	3,000,000
Part IV tax paid by Holdco:	1,000,000
Opening cash:	1,792,500
Cash received:	3,000,000
Part IV tax:	(1,000,000)
Cash available in Holdco:	3,792,500
Dividend paid by Opco:	3,000,000
Opco dividend refund:	1,000,000

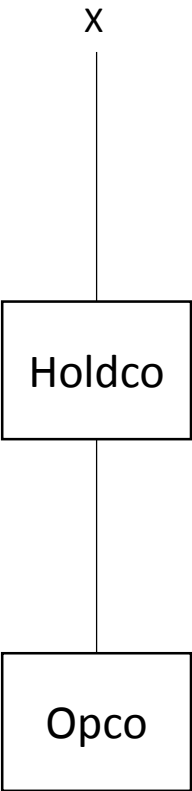


Scenario 2: Step 2: Holdco pays dividend to individual

- Holdco pays 3,000,000 dividend to individual X
 - Includes recovery of RDTOH of 1,000,000
- X pays personal tax at ineligible rate of 40.13% and eligible rate of 33.82%
 - Holdco has GRIP of 1,755,919 (page 11)
 - Tax is $1,755,919 \times .3382 + 1,244,081 \times .4013 = 1,093,102$
- As a result of Holdco's complete refund of Part IV tax, Holdco is now subject to 55(2) on entire dividend received from Opco
 - See next page

Taxable dividend received:	3,000,000
Tax paid by X:	1,093,102
Cash available:	1,906,898

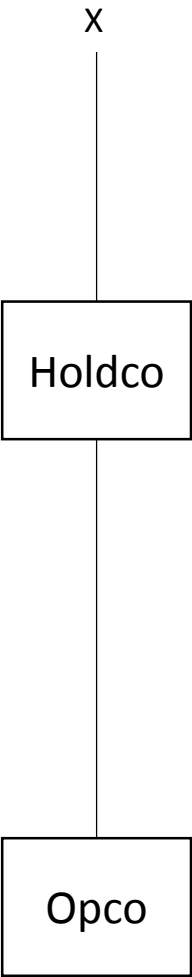
Cash available in Holdco:	1,792,500
RDTOH:	0



Scenario 2: Dividend received by Holdco now recharacterized as gain

- As a result of Holdco’s complete refund of Part IV tax (in Step 2), Holdco is now subject to 55(2) on entire dividend received from Opco
- Holdco subject to tax at corporate tax rate of 23.09%
 - Permanent tax at 9.75%
 - Refundable tax at 13.33%
- Dividend paid by Holdco in Step 2 is sufficient to recover refundable tax on deemed gain
 - Dividend paid Step 2: 3,000,000
 - Refundable tax on deemed gain: 400,000
- Holdco liable for tax of 292,500

Cash available:	1,906,898
55(2) deemed gain:	3,000,000
Permanent tax on CG 9.75%:	292,500
Refundable tax on CG 13.33%:	400,000
Less refund:	400,000
CDA (from deemed gain)	1,500,000
Cash available in Holdco:	1,500,000
(1,792,500 -292,500)	

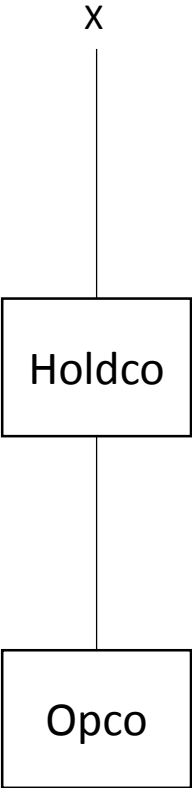


Scenario 2: Holdco pays CDA to Individual X

- Holdco pays its cash of 1,500,000 to Individual X and elects CDA

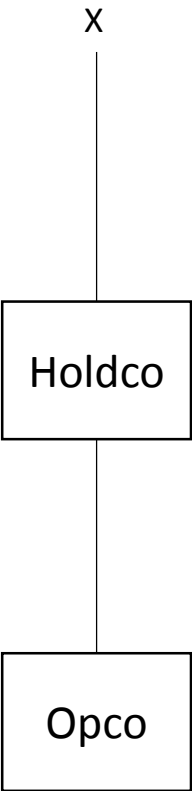
Cash available: 3,406,898

Cash available in Holdco: 0



Scenario 2: Summary of tax paid

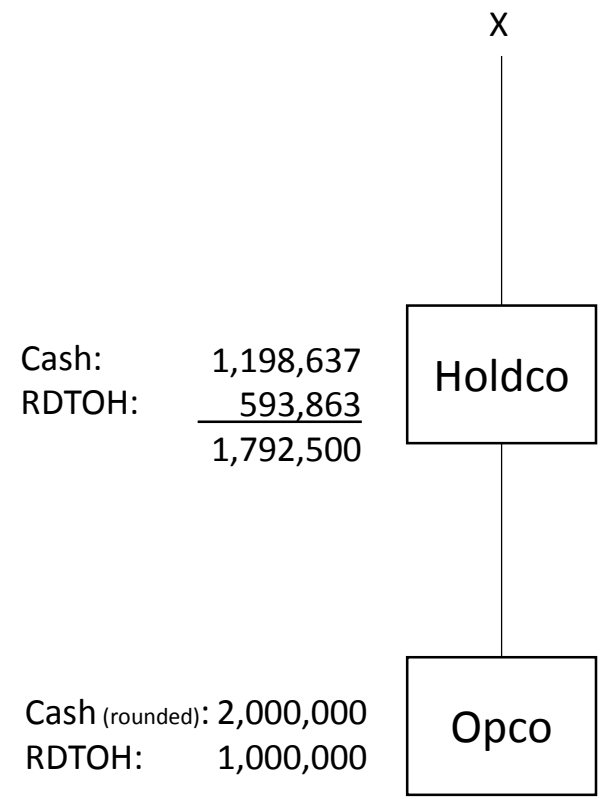
• Investment income earned by Opco:	3,749,531	
• Corporate tax rate on investment income:		46.2%
• ABI earned by Holdco:	2,438,776	
• Corporate tax rate on ABI:		26.5%
• Total income earned by corporations	6,188,307	
• Total tax if 55(2) applies		
• Individual X (page 13):	1,093,102	
• Holdco (9.75% on 3M):	292,500	
• Holdco (26.5% on 2,438,776):	646,276	
• Opco 19.5% on 3.75M:	731,159	
• Total	2,763,037	
• % (of 3,749,531 + 2,438,776 = 6,188,307)		44.6%
• CDA of 1,500,000 has been used to distribute ABI to X		
• If 55(2) had not applied, total tax would be:		
• Individual X	1,812,432	
• (40.13% x 3,036,581 + 33.82% x 1,755,919):		
• Opco 19.5% on 3.75M:	731,159	
• Holdco 26.5% on 2.44M:	646,276	
• Total	3,189,867	
• % (of 3,749,531 + 2,438,776)		51.5%



Scenario 2b: Assumptions

- 55(2) applies if a dividend or deemed dividend is paid by Opco to Holdco
 - See Scenario 1 assumptions
- Holdco has cash that would be distributed to Individual X as ineligible dividends and would result in dividend refund to Holdco
 - If Holdco has deemed gain on dividend received from Opco, Holdco could use its cash to fund permanent tax on deemed gain and pay CDA (from deemed gain) to Individual X
 - Amount of cash needed is 1,198,637 (“backed into” for illustration)
 - CDA on Holdco deemed gain 1,500,000
 - Corporate tax on deemed gain 292,500
1,792,500
 - Holdco RDTOH available (593,863)
1,198,637
 - 1,198,637 from investment income previously earned in amount of 2,226,708

	Opco	Holdco
• Previously earned investment income (A)	3,749,531	2,226,708
• Permanent tax 19.5%	731,159	434,208
• RDTOH 26.67%	1,000,000	593,863
• Total 46.17% (B)	1,731,159	1,028,071
• Cash (A) – (B)	2,018,372	1,198,637



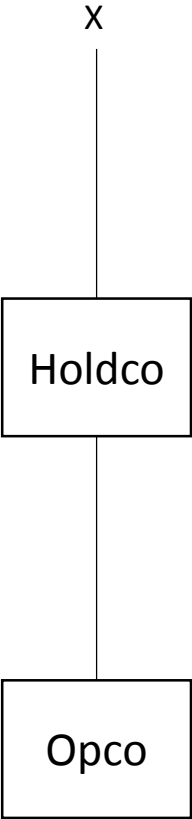
Scenario 2b: Step 1: Opco pays dividend to Holdco

- Opco pays 3,000,000 dividend to Holdco

Opening RDTOH:	593,863
Part IV tax paid by Holdco:	1,000,000
Closing RDTOH:	1,593,863

Opening cash:	1,198,637
Cash received:	3,000,000
Part IV tax:	<u>(1,000,000)</u>
Cash available in Holdco:	3,198,637

Dividend paid by Opco:	3,000,000
Opco dividend refund:	1,000,000



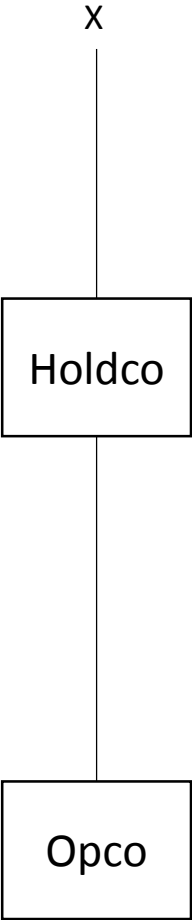
Scenario 2b: Step 2: Holdco pays dividend to individual

- Holdco pays 3,000,000 dividend to individual X
 - Includes recovery of RDTOH of 1,000,000
- X pays personal tax at ineligible rate of 40.13%
- As a result of Holdco’s complete refund of Part IV tax, Holdco is now subject to 55(2) on entire dividend received from Opco
 - See next page

Taxable dividend received:	3,000,000
Tax paid by X:	<u>(1,203,900)</u>
Cash available:	1,796,100

Opening RDTOH:	1,593,863
Dividend refund:	<u>(1,000,000)</u>
Closing RDTOH:	593,863

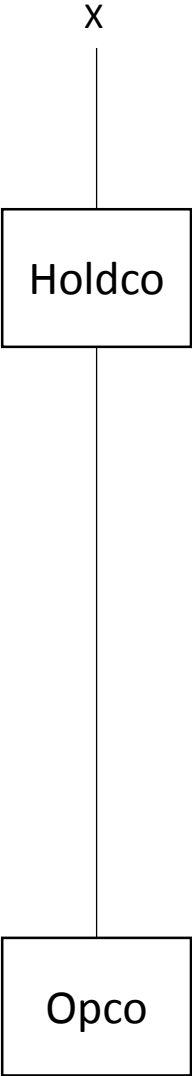
Opening cash:	3,198,637
Dividend paid:	(3,000,000)
Dividend refund:	<u>1,000,000</u>
Cash available in Holdco:	1,198,637



Scenario 2b: Dividend received by Holdco now recharacterized as gain

- As a result of Holdco’s complete refund of Part IV tax (in Step 2), Holdco is now subject to 55(2) on entire dividend received from Opco
- Holdco subject to tax at corporate tax rate of 23.09%
 - 55(2) deemed gain: 3,000,000
 - Permanent tax at 9.75%: 292,500
 - Refundable tax at 13.33%: 400,000
 - CDA: 1,500,000
- Dividend paid by Holdco in Step 2 is sufficient to recover refundable tax on deemed gain
 - Dividend paid Step 2: 3,000,000
 - RDTOH: 993,863

Cash available:	1,796,100
Opening RDTOH:	593,863
Refundable tax:	<u>400,000</u>
Total:	993,863
Dividend refund:	<u>(993,863)</u>
Closing RDTOH:	0
Opening cash:	1,198,637
Tax on deemed gain:	(692,500)
Dividend refund:	<u>993,863</u>
Cash available in Holdco:	1,500,000
CDA (from deemed gain)	1,500,000

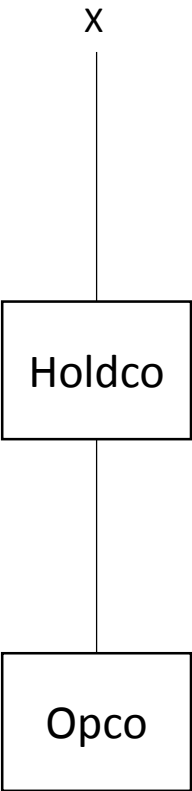


Scenario 2b: Holdco pays CDA to Individual X

- Holdco pays its cash of 1,500,000 to Individual X and elects CDA

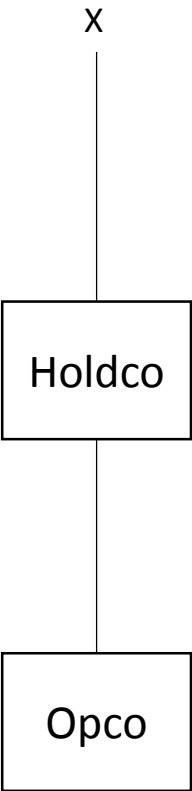
Cash available: 3,296,100

Cash available in Holdco: 0



Scenario 2b: Summary of tax paid

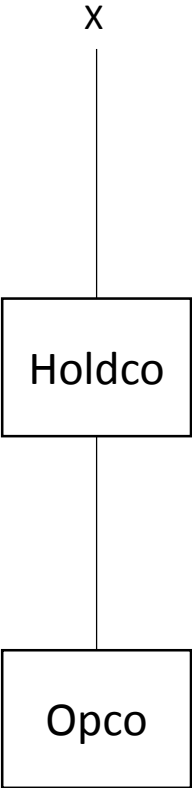
• Investment income earned by Opco:	3,749,531	
• Corporate tax rate on investment income:		46.2%
• Investment income earned by Holdco:	2,226,708	
• Corporate tax rate on investment income:		46.2%
• Total income earned by corporations	5,976,239	
• Total tax if 55(2) applies		
• Individual X (40.13% on 3M):	1,203,900	
• Holdco (9.75% on 3M):	292,500	
• Holdco (19.5% on 2,226,708):	434,208	
• Opco 19.5% on 3.75M:	731,159	
• Total	2,661,767	
• % (of 5,976,239)		44.5%
• CDA of 1,500,00 has been used to distribute investment income to X		
• If 55(2) had not applied, total tax would be:		
• Individual X (40.13% on 3,000,000):	1,203,900	
• Individual X (40.13% on 1,792,500):	719,330	
• Opco 19.5% on 3.75M:	731,159	
• Holdco 19.5% on 2,226,708:	434,208	
• Total	3,088,597	
• % (of 5,976,239)		51.7%
• If investment income earned directly by individual		49.5%



Scenario 3: Assumptions

- 55(2) applies if a dividend or deemed dividend is paid by Opco to Holdco
 - See Scenario 1 assumptions
- Opco realizes a CG of \$2,000,000
 - Permanent tax: 9.75% 195,000
 - RDTOH 13.33% 266,667
 - Total 23.09% 461,667
- Opco / Holdco have no existing CDA
- Opco to pay proceeds as dividend / deemed dividend to Holdco
- No other dividends will be paid to Holdco
 - For example, all of Opco’s assets will be distributed on dividend or redemption fully satisfies redemption value of Holdco’s shares in Opco
- Holdco has no other assets

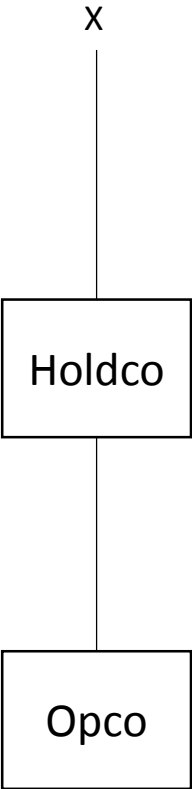
Proceeds from sale:	2,000,000
Permanent tax:	195,000
Cash available (includes RDTOH):	1,805,000
RDTOH:	266,667
CDA:	1,000,000



Scenario 3: Step 1: Opco pays dividends to Holdco

- Opco pays CDA to Holdco: 1,000,000
- Opco pays taxable dividend to Holdco: 805,000
- Holdco pays Part IV tax of 266,667

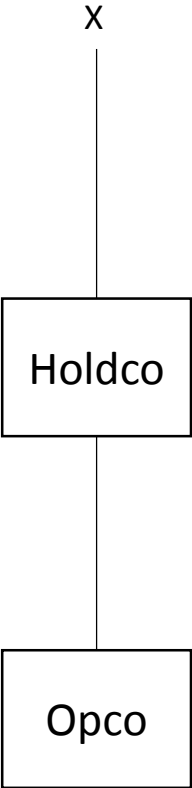
CDA received:	1,000,000
Taxable dividend received:	805,000
Part IV tax paid by Holdco:	266,667
Cash available in Holdco:	1,538,333
RDTOH:	266,667
CDA paid:	1,000,000
Taxable dividend Paid:	805,000
Opco dividend refund:	266,667



Scenario 3: Step 2: Holdco pays dividends to individual

- Holdco pays 1,000,000 CDA dividend to individual X
- Holdco pays 805,000 taxable dividend to individual X
 - Includes recovery of RDTOH
- X pays personal tax at ineligible rate of 40.13%
- As a result of Holdco’s complete refund of Part IV tax, Holdco is now subject to 55(2) on entire dividend received from Opco
 - See next page

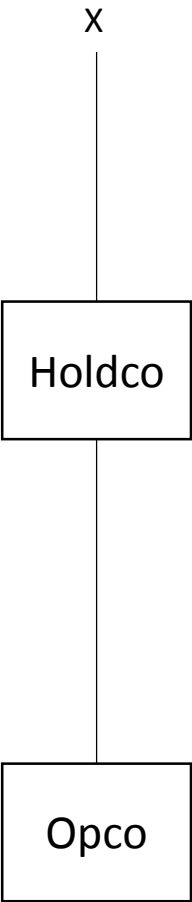
Capital dividend received:	1,000,000
Taxable dividend received:	805,000
Tax paid by X:	323,047
Cash available:	1,481,953
CDA paid:	1,000,000
Taxable dividend paid:	805,000
RDTOH refund:	266,667
Cash available in Holdco:	0



Scenario 3: Dividend received by Holdco now recharacterized as gain

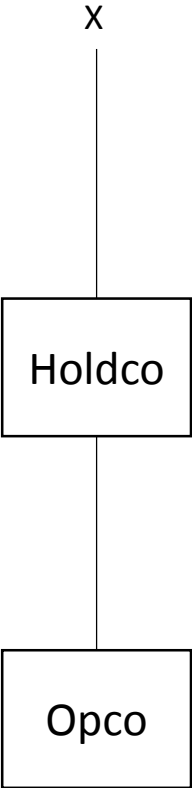
- As a result of Holdco’s complete refund of Part IV tax (in Step 2), Holdco is now subject to 55(2) on entire taxable dividend received from Opco
- Holdco subject to tax at corporate tax rate of 23.09%
 - Permanent tax at 9.75%
 - Refundable tax at 13.33%
- Dividend paid by Holdco in Step 2 is sufficient to recover refundable tax on deemed gain
 - Dividend paid Step 2: 805,000
 - Refundable tax on deemed gain: 107,333
- Holdco liable for tax of 78,488 but has no cash
 - Entire taxable dividend received by Holdco from Opco was paid to Individual X
 - Individual X would need to fund Holdco tax liability

Cash available:	1,481,953
55(2) deemed gain:	805,000
Permanent tax on CG 9.75%:	78,488
Refundable tax on CG 13.33%:	107,333
Less refund:	107,333
CDA (from deemed gain):	402,500
Cash available in Holdco:	(78,488)



Scenario 3: Summary of tax paid

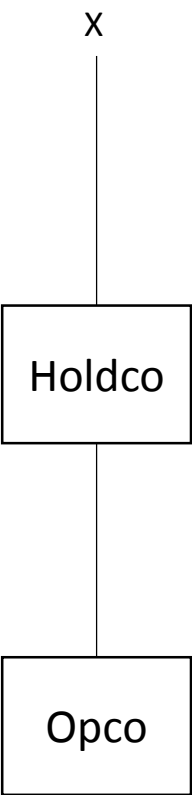
- Capital gain realized by Opco: 2,000,000
 - Corporate tax rate on CG: **23.1%**
- Total tax if 55(2) applies
 - Individual X (40.13% on 805,000): 323,047
 - Holdco (9.75% on 805,000): 78,488
 - Opco 9.75% on 2,000,000: 195,000
 - Total 596,535
 - % (of 2,000,000) **29.8%**
- CDA of 402,500 has been stranded in Holdco
- If 55(2) had not applied, total tax would be:
 - Individual X (40.13% on 805,000): 323,047
 - Opco 9.75% on 2,000,000: 195,000
 - Total 518,047
 - % (of 2,000,000) **25.9%**
- If 2,000,000 CG earned directly by Individual
 - Tax rate is: **24.8%**



Scenario 3: Revised

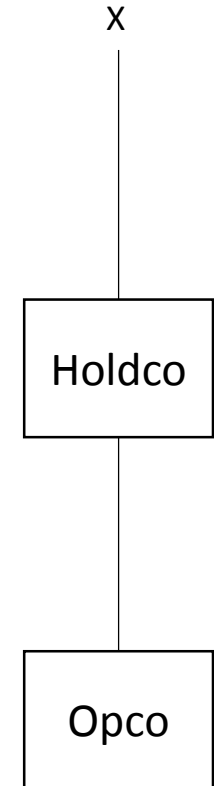
- After Holdco has been deemed not to have received a dividend from Opco and has a deemed gain, can Holdco late file a CDA election?
 - Assume Holdco initially paid the taxable dividend (in step 2) in 2 amounts
 - 402,500
 - 402,500
- Total tax
 - Individual X (40.13% on 402,500): 161,523
 - Holdco (9.75% on 805,000): 78,488
 - Opco (9.75% on 2M): 195,000
 - Total 435,011
 - % (of 2,000,000) **21.75%**
- Does CDA election retroactively mean that Holdco did not fully recover Part IV tax on dividend received by Opco that caused 55(2) to apply to entire dividend?
 - Initially, Holdco paid taxable dividends that caused full dividend refund such that 55(2) applied
 - If portion of dividend is now a CDA paid, does that “undo” the 55(2) recharacterization (in part)?
 - Or, alternatively, once Holdco is assessed under 55(2), is it not necessary to look back to the initial dividend received and dividend refund?

Taxable dividend received:	402,500
CDA received:	1,402,500
Tax paid by X:	161,523
Cash available:	1,643,477
Tax paid:	78,488
Cash available:	(78,488)
Tax paid:	195,000
Cash available:	0



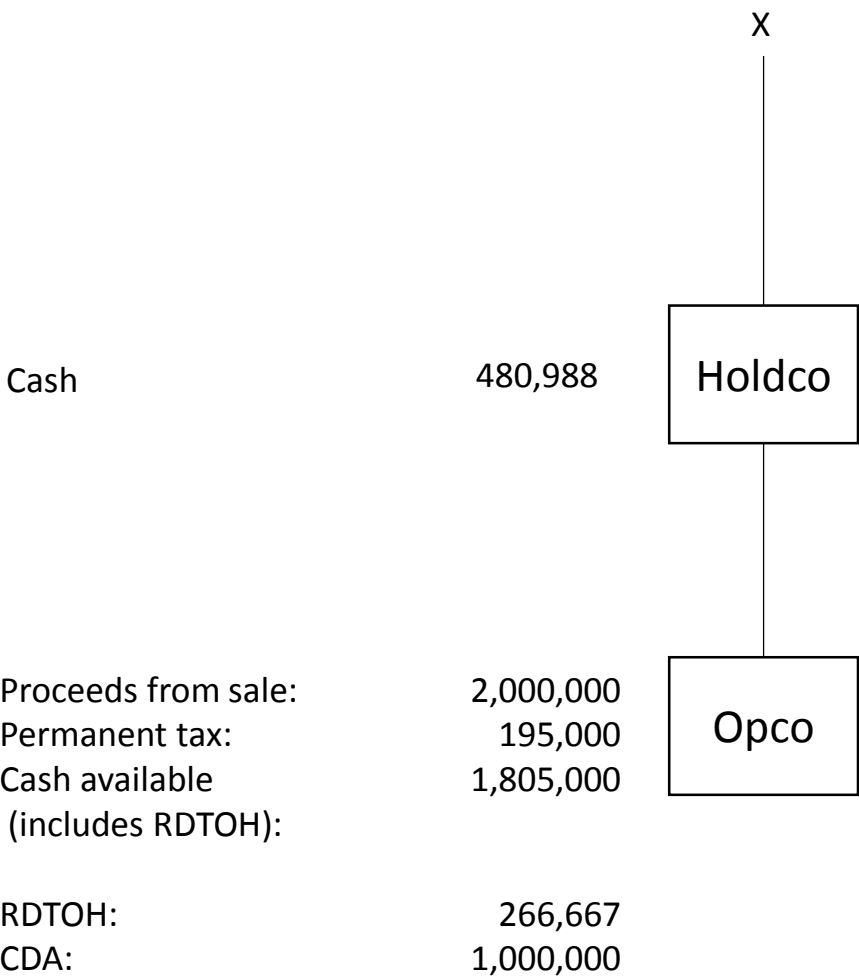
Scenario 3: Summary of tax rates

- Corporate tax rate on CG: 23.1%
- On distribution to individual - if no 55(2) to Holdco: 25.9%
- On distribution to individual - if 55(2) applies to Holdco: 29.8%
- If CG earned directly by Individual: 24.8%
- If CDA election is available if 55(2) applies to Holdco: 21.8%



Scenario 4: Assumptions

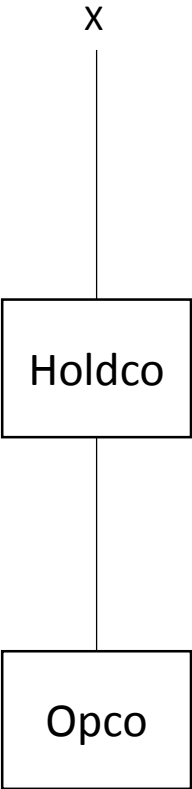
- 55(2) applies if a dividend or deemed dividend is paid by Opco to Holdco – see Scenario 1 assumptions
- Opco realizes a CG of \$2,000,000
 - Permanent tax: 9.75% 195,000
 - RDTOH 13.33% 266,667
 - Total 23.09% 461,667
- Opco / Holdco have no existing CDA
- Opco to pay proceeds as dividend / deemed dividend to Holdco
- Holdco has cash that would be distributed to Individual X as eligible dividends
 - Amount is 480,988 (“backed into” for illustration)
 - CDA on Holdco deemed gain 402,500
 - Holdco tax on deemed gain 78,488
 - 480,988 from ABI previously earned in amount of 654,405
 - Tax rate at 26.50% - tax of 173,417
 - GRIP is 72% of 654,405 = 471,172



Scenario 4: Step 1: Opco pays dividends to Holdco

- Opco pays CDA to Holdco: 1,000,000
 - Opco pays taxable dividend to Holdco: 805,000
 - Holdco pays Part IV tax of 266,667
-
- Cash available in Holdco:
 - Opening 480,988
 - CDA received 1,000,000
 - Taxable dividend received 805,000
 - Total 2,285,988
 - Part IV tax (266,667)
 - Net 2,019,321

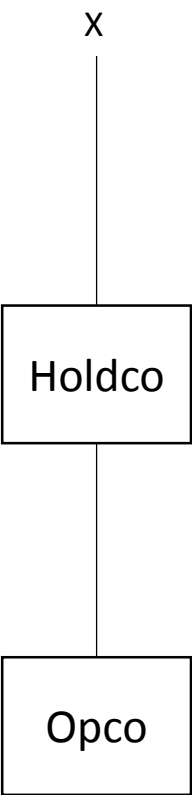
CDA received:	1,000,000
Taxable dividend received:	805,000
Part IV tax paid by Holdco:	266,667
Cash available in Holdco:	2,019,321
RDTOH:	266,667
CDA paid:	1,000,000
Taxable dividend paid:	805,000
Opco dividend refund:	266,667



Scenario 4: Step 2: Holdco pays dividends to individual

- Holdco pays 1,000,000 CDA dividend to individual X
- Holdco pays 805,000 taxable dividend to individual X
 - Includes recovery of RDTOH
- X pays personal tax at ineligible rate of 40.13% and eligible rate of 33.82%
 - Holdco has GRIP of 471,172 (page 30)
 - Tax is $471,172 \times .3382 + 333,828 \times .4013 = 293,316$
- As a result of Holdco's complete refund of Part IV tax, Holdco is now subject to 55(2) on entire dividend received from Opco
 - See next page

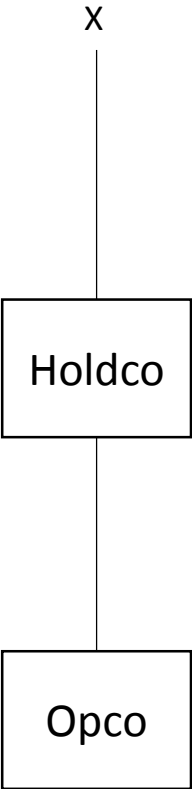
Capital dividend received:	1,000,000
Taxable dividend received:	805,000
Tax paid by X:	293,316
Cash available:	1,511,684
CDA paid:	1,000,000
Taxable dividend paid:	805,000
RDTOH refund:	266,667
Cash available in Holdco:	480,988



Scenario 4: Dividend received by Holdco now recharacterized as gain

- As a result of Holdco’s complete refund of Part IV tax (in Step 2), Holdco is now subject to 55(2) on entire taxable dividend received from Opco
- Holdco subject to tax at corporate tax rate of 23.09%
 - Permanent tax at 9.75%
 - Refundable tax at 13.33%
- Dividend paid by Holdco in Step 2 is sufficient to recover refundable tax on deemed gain
 - Dividend paid Step 2: 805,000
 - Refundable tax on deemed gain: 107,333
- Cash available in Holdco
 - $480,988 - 78,488 = 402,500$

Cash available:	1,511,684
55(2) deemed gain:	805,000
Permanent tax on CG 9.75%:	78,488
Refundable tax on CG 13.33%:	107,333
Less refund:	107,333
CDA (from deemed gain):	402,500
Cash available in Holdco:	402,500

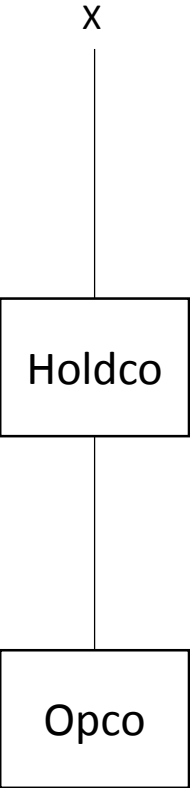


Scenario 4: Holdco pays CDA to Individual X

- Holdco pays its cash of 402,500 to Individual X and elects CDA

Cash available: 1,511,684 + 402,500

Cash available in Holdco: 0



Scenario 4: Summary of tax paid

• Capital gain realized by Opco:	2,000,000	
• Corporate tax rate on CG:		23.1%
• ABI earned by Holdco:	654,405	
• Corporate tax rate on ABI:		26.5%
• Total income earned by corporations	2,654,405	
• Total tax if 55(2) applies		
• Individual X (page 32):	293,316	
• Holdco (9.75% on 805,000):	78,488	
• Holdco (26.5% on 654,405):	173,417	
• Opco (9.75% on 2M):	195,000	
• Total	740,221	
• % (of 2,654,405)		27.9%
• CDA of 402,500 has been used to distribute ABI to X		
• If 55(2) had not applied, total tax would be:		
• Individual X (33.82% on 471,172):	159,350	
• Individual X (40.13% on 814,816):	326,986	
• Opco 9.75% on 2M:	195,000	
• Holdco 26.5% on 654,405	173,417	
• Total	854,753	
• % (of 2,654,405)		32.2%

