Signant Capital Gains Questions

Vic Tousignant <victortous@outlook.com>

Jun 12, 2024, 12:13 PM

to Chrisohou, Almond, Vic, Tousignant, me, Tousignant

Dear Fay,

I am following up on an email which I believe I sent to you earlier this year. I have reiterated the email below so you can ignore the earlier version.

We would prefer to receive your written responses, possibly followed by a zoom meeting for further discussion or clarification. [Cody, please forward to Carson and Brenna. Thanks.]

I write on behalf of the shareholders of the above corporation in relation to the question of capital gains tax on Signant shares.

I have set up below what I believe to be the relevant history of the corporation, followed by a series of questions.

The shareholders are asking you to reply to the questions in writing, (within the body of this email would be perfectly fine) after which there may be follow-up questions or a request to have a video meeting with you

History
Signant is essentially a holding company whose only assets, aside from an operating bank account, are the family cabin and dock located at

Fintry on Lake Okanagan, British Columbia. The company does not carry on business and has no income.

I was the sole owner and shareholder of Signant until I donated it to the family in approximately 1995 when Alphonse and Eileen wished to transfer their cabin at Fintry to their six children.

They transferred the cabin to Signant, and each of their six children received 12 shares in the corporation. The Transfer of Land at the time indicated the value for the cabin to be $150,000. The corporation signed a promissory note in favour of Alphonse and Eileen in the amount of $30,000, which was paid off in the following year or so.

There were important changes to share ownership in 2015. Rhonda elected to put her shares up for sale under Signant's Unanimous Shareholders Agreement, which mandated that she do so at essentially half price. My recollection is that she received $66,000 for her 12 shares.

The purchasers of three of Rhonda's shares each were Sharyn, Vic, Sheila and the estate of brother Dale. His existing 12 shares plus the three he owns acquired from Rhonda were transferred to Dale's children Cody, Carson and Brenna (each receiving five shares).

Duane did not participate in the purchase of any of Rhonda's shares.

For the sake of this discussion, let's say the cabin was worth $900,000 in 2015 when these changes in share ownership took effect. (It had been listed the previous year for sale at $890,000.) I do not believe the dock was separately assessed at that time. That works out to $12,500 for each of the 72 shares.

Duane may now be selling his 12 shares to the remaining shareholders (three to each of Sharyn, Vic and Sheila and one each to Cody, Carson and Brenna).

For the sake of this discussion let us say that Duane sells his shares at half price. There would be some deduction for notional real estate fees on an eventual sale, but I believe we can ignore them for the present discussion.

There are now separate assessments for both the cabin ($1,362,000) and the dock ($11,600) for a total of $1,373,600. By my calculation that works out to $19,078 per share times 12 shares equals $228,936 divided in half equals $114,468 or $9539 per share.

Questions
1. What is the law relating to capital gains tax in Canada generally?

2. What is the law relating to an individual's lifetime capital gains exemption, and does it apply to the disposition of shares in Signant?

3. What capital gains were triggered for Rhonda and for Dale's estate, if any?

4. What capital games would be triggered and payable if either I or my estate transferred my shares to my three children in the very near future?

5. If I or my estate were to transfer my shares to my three children in the very near future, what would the statute of limitations be for CRA, coming after me or my estate for undeclared and unpaid capital gains? I have heard that CRA could allege fraud and that there would be no statute of limitations. Is that understanding correct? (To be clear, and for the record, I have no intention of not declaring capital gains, but perhaps the administrator of my estate might not know the relevant law.)

6. In all of this discussion, what difference does it make, if any, if a shareholder sells his or her shares at below market value?

7. Does the fact that we are a bear trust have a impact on this discussion?

Thank you for your assistance,
The shareholders of Signant

F

Fay Chrisohou <fay@fcpcgroup.ca>

Jun 19, 2024, 11:26 AM

to Vic, Almond, Tousignant, me, Tousignant

Hi Victor,

Please see my response below.

I'm happy to arrange a call to discuss further.

Thanks!
Fay

Fay Chrisohou **CPA, CA, TEP**
Principal
587-349-7325
Suite 227, 333 Aspen Glen Landing SW, Calgary AB T3H 0N6
Sign in **to TaxFolder now**.
Book a time with me!

NOTE: Fay's responses (June 19, 2024) to Vic's June 12, 2024 email are embedded in blue font in the following copy of Vic's email. The information provided is excellent general information regarding Capital Gains Tax.

From: Vic Tousignant <victortous@outlook.com>
Sent: Wednesday, June 12, 2024 12:13 PM
To: Fay Chrisohou <fay@FCPCgroup.ca>
Cc: Almond Sharyn <bamma1947@shaw.ca>; Vic Tousignant <victortous@outlook.com>; Tousignant Duane <duanejt1950@gmail.com>; Tousignant Sheila <sheila.tousi@gmail.com>; Tousignant Cody <codyatousignant@gmail.com>
Subject: Signant Capital Gains Questions

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Questions

1. What is the law relating to capital gains tax in Canada generally?

   As you may be aware, a new Bill was passed last week (June 11, 2024) implementing new changes to capital gains inclusion rate.

   As of June 25, 2024, the capital gains inclusion rate for individuals will be as follows:

   $0 to $250,000   50% capital gains inclusion

>$250,000 ***66 2/3% capital gains inclusion rate***

2. What is the law relating to an individual's lifetime capital gains exemption, and does it apply to the disposition of shares in Signant?

   The are specific criteria that must be met in order to claim the lifetime capital gains exemption. They are as follows:

   - ***Your company must be a small business corporation (SBC) at the time of the sale.***
   - ***It must be a share sale of your business (sole proprietorships and partnerships do not qualify).***
   - ***More than 50% of the business's assets must have been used in an active business in Canada for 24 months prior to the sale.***
   - ***The shares must not have been owned by anyone other than you or someone related to you in the 24-month period before the sale.***

   With respect to Signant, the company does not meet the criteria of a small business corporation therefore the disposition of the shares are not eligible for the lifetime capital gains exemption.

3. What capital gains were triggered for Rhonda and for Dale's estate, if any?

   Based on my previous analysis, the company is a bare trust for the benefit for the "shareholders".

   In general, a deemed disposition is reported on an individual's final return. The proceeds are deemed to be the fair market value (FMV) of the assets as at the date of death. The capital gain is calculated base on the FMV less the adjusted cost base (ACB) of the asset.

   Depending on the terms of the Will of the deceased, the asset may rollover tax-free to a spouse/common-law

partner therefore the capital gain is deferred and reported on the last to die spouse/common-law partner. The capital gain calculation remains the same.

Each shareholder is responsible to maintain and calculate their ACB. This would include the original amount + additional amounts due to buy-outs.

4. What capital games would be triggered and payable if either I or my estate transferred my shares to my three children in the very near future?

   The tax treatment is similar to the deemed disposition upon death. If an individual gifts an asset to a family member, the individual is deemed to have disposed of the asset at FMV at the time of transfer. Based on the new legislation, there would be a 50% inclusion rate for the first $250K of capital gain and 66 2/3% inclusion rate for the capital gain in excess of $250K.

5. If I or my estate were to transfer my shares to my three children in the very near future, what would the statute of limitations be for CRA, coming after me or my estate for undeclared and unpaid capital gains? I have heard that CRA could allege fraud and that there would be no statute of limitations. Is that understanding correct? (To be clear, and for the record, I have no intention of not declaring capital gains, but perhaps the administrator of my estate might not know the relevant law.)

   I'm not aware of these provisions. In general, it is the responsibility of the Executor to report the income/dispositions correctly.

   If the Executor follows the proper steps in that there is an application for a Grant of Probate, it is likely that all of the assets of the deceased are identified at that time and the

Executor is then aware of all of the assets. It is recommended that the Executor work with an accountant to ensure that all income/dispositions are reported on the final return.

After that, the Executor will likely file an application for a Clearance Certificate. This process provides CRA a "last kick at the can" to determine if there are any outstanding tax liabilities or balances owing to CRA. It is my understanding that when CRA issues the Clearance Certificate that they have no recourse to the Executor.

6. In all of this discussion, what difference does it make, if any, if a shareholder sells his or her shares at below market value?

A number of issues could arise if CRA reviews the transaction and determines that the transaction did not occur at FMV, including but not limited to: reassessing the return and applying penalties and/or interest or assessing the taxpayer as GAAR (General Anti Avoidance Rule) which has much more severe penalties, including jail time if the matter is determined to be egregious.

7. Does the fact that we are a bear trust have a impact on this discussion?

A bare trust implies that the beneficial owner is responsible to report the dispositions. The bare trust essentially excludes the shareholder from claiming the lifetime capital gains exemption as the bare trust company does not meet the definition of a small business corporation.

S

Sheila Tousignant <sheila.tousi@gmail.com>

Jul 9, 2024, 2:05 PM

to Carson, Brenna, Fay, Vic, Almond, Tousignant, Tousignant, bcc: Joel, bcc: Stephen, bcc: Ron, bcc:

Hello Fay,

My apologies for the delay in responding to your written responses to our Signant inquiries regarding capital gains tax implications for the sale or transfer of Signant shares. Thank you for these clarifications, Fay. They are very helpful. We have not spoken as a group in this regard, but for me, this information is adequate for my purposes at this time.

My only remaining concern, one which other shareholders have previously expressed as well, is regarding capital gains tax implications for the transfer of Dale's shares to his children. There was no provision in Dale's will, to my knowledge, regarding transferring his shares to his children. My understanding is that the shares rolled over automatically to Melanie Tousignant, Dale's wife, in her capacity as executrix/personal representative of Dale's estate. Melanie transferred the shares, in the name of Dale's estate, to Signant who then assigned them to Cody, Carson and Brenna. Attached are the documents associated with this transfer. Are you able to determine whether capital gains taxes were triggered at any point in this process or would we need to engage a tax lawyer to opine on this?

Following is the list of documents from the Signant Minute Book related to the transfer of Dale's shares to Cody, Carson and Brenna, all of which are attached to this email.

1. Declaration of Transmission – October 14, 2015
(This is a declaration by Melanie Tousignant that Dale Tousignant's shares in Signant Two devolved upon her as the executrix/personal representative of Dale, and not personally.)

2. Resolution of the Directors of Signant Two Holdings Ltd. Authorizing Transfer of Dale's Shares to Dale's Estate – September 2015
(This document confirms and ratifies that Dale's shares were transferred to Melanie in her capacity as executor/personal representative of Dale's estate, and not personally, and confirms that Melanie has agreed to transfer Dale's shares to each of his children, assigning 4 Common Shares to each child: Cody, Carson and Brenna.)
NOTE: Item #9 in this resolution directed that a Share Certificate (No. 9) representing the Shares in the name of the Estate was to be issued; however, it seems that this was not done.
Share Transfer – October 14, 2015

3. Share Transfer – October 14, 2015

(This document attests to Melanie Tousignant, as executrix/personal representative of the Estate of Dale Tousignant, transfering to each of Dale's three children: Cody, Carson and Brenna, 4 shares in Signant Two Holdings Ltd., for a total of 12 shares.)

4. Transfer of Shares to Children – October 2015
(This resolution gives unanimous approval by all the shareholders for the transfer of Dale's shares in Signant Two Holdings Ltd. to Dale's children, Cody, Carson and Brenna, from Melanie Tousignant as executrix/personal representative of the estate of Dale Tousignant. The new share certificate numbers are indicated.)

Thank you,
Sheila

4 Attachments • Scanned by Gmail

S

Sheila Tousignant <sheila.tousi@gmail.com>

Jul 9, 2024, 2:13 PM

to Melanie, Cody, Carson, Brenna, me

Hi Melanie,

I don't know if Cody shared the June 19/24 response from Fay Chrisohou, accountant, regarding Capital Gains Tax implications for the sale or transfer of Signant Two shares, but I am finally responding to it today. I still have a concern that there is not clarification regarding whether or not Capital Gains Taxes were triggered by the transfer of Dale's shares to Cody, Carson and Brenna. We need this clarification.

So I have asked Fay, specifically, if she can comment on this or whether we need a tax lawyer to opine on it. I have included copies of the pertinent documents regarding the transfer of shares. I want you to be aware of my request, Melanie. Not to worry you, but we need to know what the requirement is.

Sheila

4 Attachments • Scanned by Gmail

V

Vic Tousignant <victortous@outlook.com>

Jul 9, 2024, 5:30 PM

to Fay, Almond, Tousignant, me, Tousignant, Carson, Brenna

I have a follow-up question which relates to all past, present and future dispositions of shares in Signant. (I thought I had posed this question earlier, but perhaps not.)

I understand the general rule to be that any disposition of shares (whether by sale, gift or inheritance) is subject to capital gains based on the then-current value of the shares. In the case of sign and shares, the current value would be based on the market value of cabin, being essentially the only asset held by the corporation.

My question is whether, in a situation such as ours where any sale of shares must be completed at essentially 1/2 market value, is it not arguable that the disposition should be subject to capital gains tax taking into account only 1/2 the market value because we are subject to restrictive terms under the USA?

I believe all shareholders will benefit from your response to this question, and that it specifically ties in with Sheila's current questions. Thanks.
Vic
