

Current developments in post mortem planning

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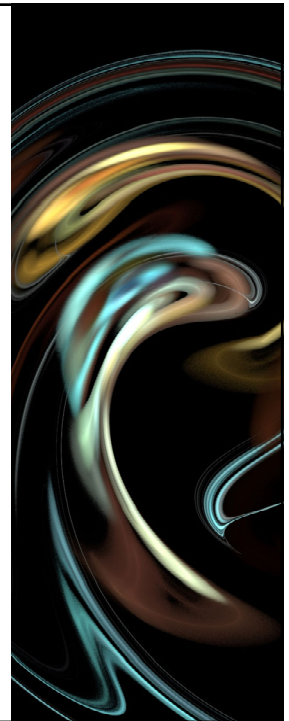
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Agenda

- Appreciate tax deferral is not tax elimination.
- Understanding that double taxation on death can be problematic.
- Post mortem planning can help double taxation.
- Life insurance enhances the results of post mortem planning.



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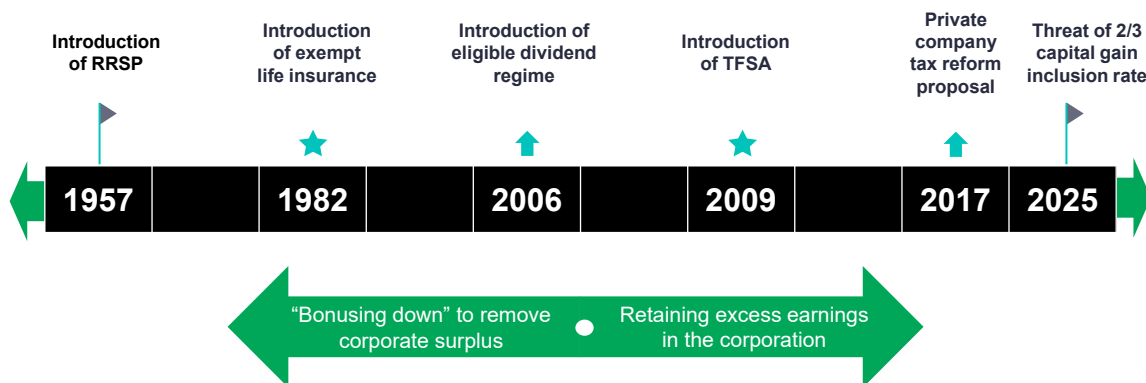
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The tax deferral story

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Tax measures affecting how we save

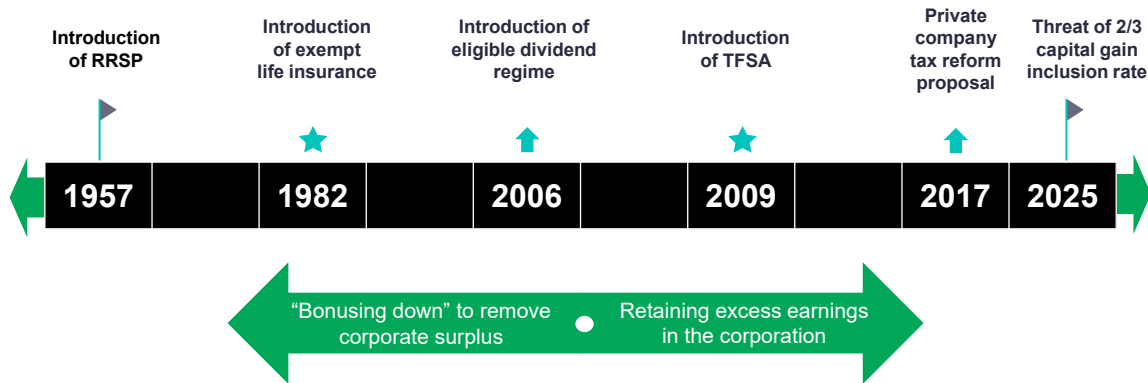


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Tax measures affecting how we save

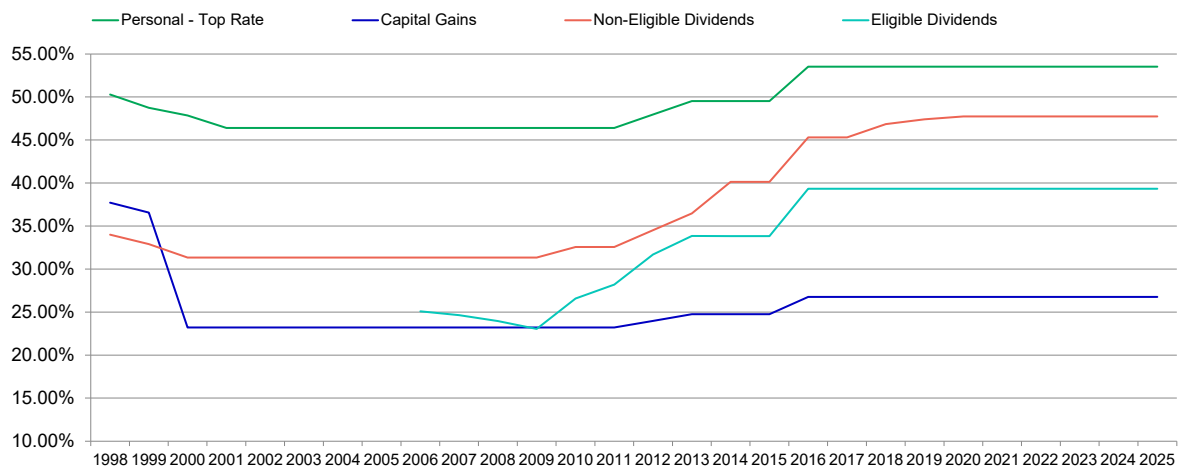


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Personal tax rates – The last 25+ years (ON)

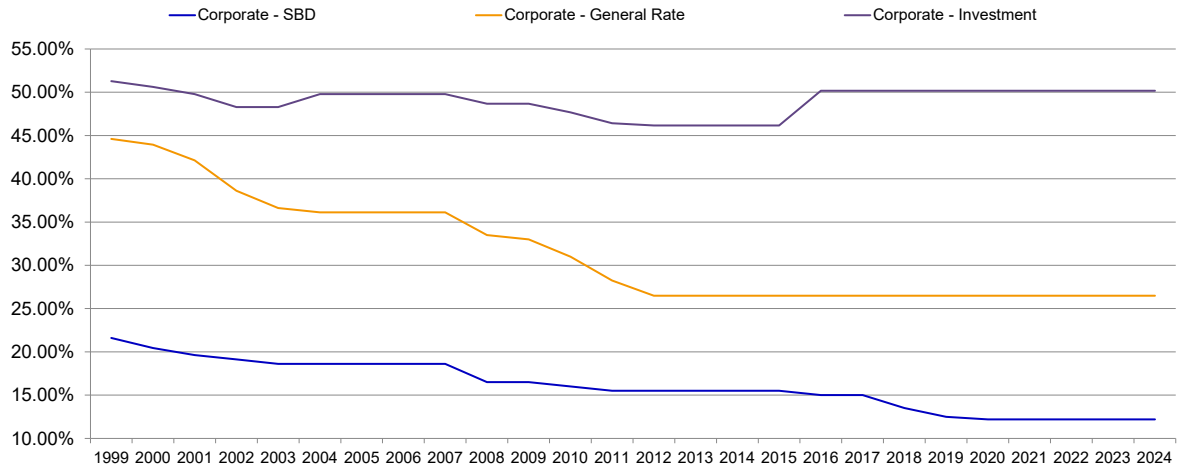


Manulife * Ontario tax rates used for illustration purposes

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Corporate tax rates – The last 25+ years (ON)

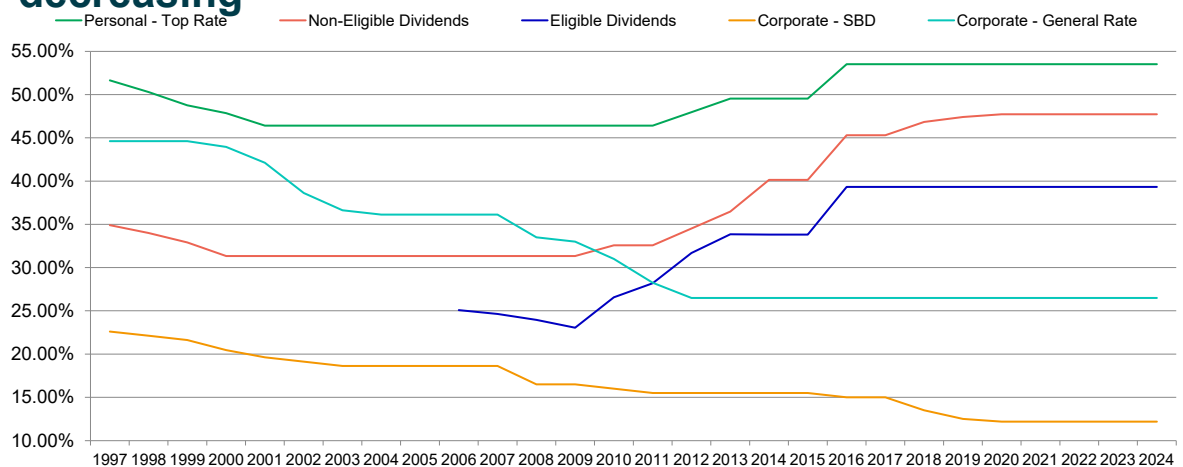


Manulife * Ontario tax rates used for illustration purposes

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Personal tax rates increasing, corporate tax rates decreasing



Manulife * Ontario tax rates used for illustration purposes

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Summary

- Eligible/Non-eligible dividend regime.
 - Better integration = More deferral
- Falling small business rates = More deferral
 - Lower corporate tax rates = Higher personal rates on dividends.
 - Integration discrepancies arise on a year over year basis.
- TOSI makes it more challenging to split income
 - More incentive to defer through a corporation.
- Small business deduction claw back = Less future deferral

Post mortem planning

Slide 9



KW0 Did you want to comment on capita gains rates and AMT ?

Kevin Wark, 2025-03-19T19:12:36.076

HB0 0 I'm not going to include a comment in the slide - but I will incorporate something into the speaker points.

Hemal Balsara, 2025-03-27T12:25:06.323

Post mortem planning

 Purpose:	 Techniques:
<ul style="list-style-type: none">• Minimize overall tax burden associated with death and beneficiary distributions.• Reduce or eliminate double taxation of corporate owned assets.	<ul style="list-style-type: none">• Redemption and loss carryback planning - Subsection 164(6).• Pipeline planning.• Paragraph 88(1)(d) bump.• Hybrid planning – Combination of the above.

Recent developments in post-mortem planning

- Ss. 164(6) Loss carryback for graduated rate estates (GREs) draft legislation to provide extension
- Pipelines
 - Continuing uncertainty
 - Para. 212.1(6)(b) – positive proposed legislative change
 - Positive pipeline rulings
- Proposal and cancellation of two-third capital gain inclusion rate

What's changing? Redemption and loss carryback

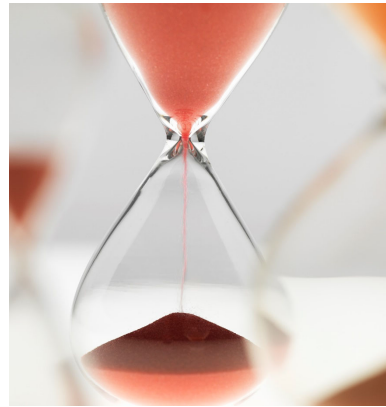
- Draft legislation to extend time limit for capital losses realized by the GRE to be carried back to the terminal tax return of the deceased from **one taxation year to three taxation years**
 - Increased flexibility, better alignment, accommodates more complex estate administration (although note to obtain refund from terminal return requires loss carryback to be claimed).
 - Would apply to deaths on or after August 12, 2024
 - Also see STEP Canada Submission relating to ss. 164(6), Misaligned Timing, and the Avoidance of Double Taxation dated June 21, 2024
- To require prescribed form to simplify election for ss. 164(6) loss carryback
- Similar proposed change to ss 112(3.2) to extend loss carry-back relief

Loss carryback: spousal trust, ss. 40(3.6) and recent ruling

- Life-interest trusts are subject to loss denial rule in ss. 40(3.6), if, generally, they are affiliated with corporation immediately after disposition of its shares
- 2023-0989821R3, 2025 – Post-mortem pipeline ruling and loss in a spousal trust
- Steps related to loss:
 - Spousal trust had voting control of Investco immediately following individual's death
 - Freeze implemented included shifting of voting control of Investco to deceased's two children
 - Spousal trust redeemed some but not all the Preferred Shares of Investco to trigger a loss
- CRA confirmed ss. 40(3.6) and GAAR did not apply

Pipelines: ss. 84(2) & CRA admin position

- Ss. 84(2) can deem a dividend to occur in a pipeline plan, thwarting pipeline strategy to extract property from corporation tax-free (so plan fails = double tax)
- General CRA administrative position in post-mortem pipeline rulings for ss. 84(2) not to apply:
 - One-year waiting period after putting pipeline structure in place
 - Corporation must continue to operate as a business
 - After first period expired, gradually make distributions over at least one year



Pipelines: *Robillard* 2022 TCC 13

- Ss. 84(2) applied to a post-mortem pipeline – transactions took <1 month
- Bound by *MacDonald* 2013 FCA 110
- Recognized CRA's position made a ruling necessary to be certain if ss. 84(2) applies

MacDonald v. R 2012 TCC
123
(April 17, 2012)

MacDonald v. R 2013 FCA
110
(April 25, 2013)



Robillard: individual's
death and pipeline
completed

What's changing? Pipeline and Non-Residents

- Ss. 212.1(6) complex look-through cross-border surplus stripping rule (Feb 26, 2018)
 - Can apply to pipelines with non-resident beneficiaries creating withholding tax requirement
 - Finance comfort letter proposed carve-out to GREs to be effective Feb 26, 2018
- Draft legislation fixes issue limited to scope of original comfort letter
 - Carve-out for GREs, on condition shares were received as consequence of individual's death who was a resident of Canada immediately before death
 - Retrospective to Feb 26, 2018
 - Life interest trusts not covered by this rule

Pipelines: Good news on the horizon?

- Pipeline and Positive Rulings
 - The CRA has indicated that they will continue to issue favourable rulings on the non-application of new GAAR in the context of post-mortem pipeline transactions
 - CRA doc no. 2023-098741I7, February 29, 2024
 - CRA doc no. 2024-1003541C6, June 4, 2024
 - CRA doc no. 2024-1028961C6, October 10, 2024
 - The CRA also indicated that it will not provide Rulings for inter vivos pipeline transactions
- Para. 212.1(6)(b) proposed amendment fixes certain pipelines for non-residents



Pipelines: Developments to accelerate tax payment

- Recent positive pipeline rulings allow for acceleration to allow *for tax payment only* in first year of pipeline
 - CRA doc no. 2018-0789911R3, 2019
 - CRA doc no. 2018-0819191R3, 2020
 - CRA doc no. 2022-0937661R3, 2022
 - CRA doc no. 2023-0993651R3, 2024
 - CRA doc no. 2023-0989821R3, 2025



Bump planning, hybrids and other strategies

- Bump planning
 - Increases ACB of non-depreciable capital property that is held in the corporation.
 - Complex bump denial rules can make it unattractive or impossible
- “Hybrid” post-mortem planning is typically, but not always, a mix of loss carryback and a pipeline
 - Implement loss carryback to maximize value of good tax attributes, remainder of value extracted as a pipeline
- Spousal roll and redeem strategy
 - Increased interest in this strategy

Numerical Example – 50% inclusion rate

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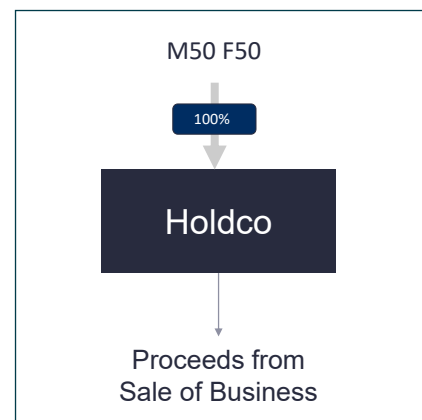
Investment company example



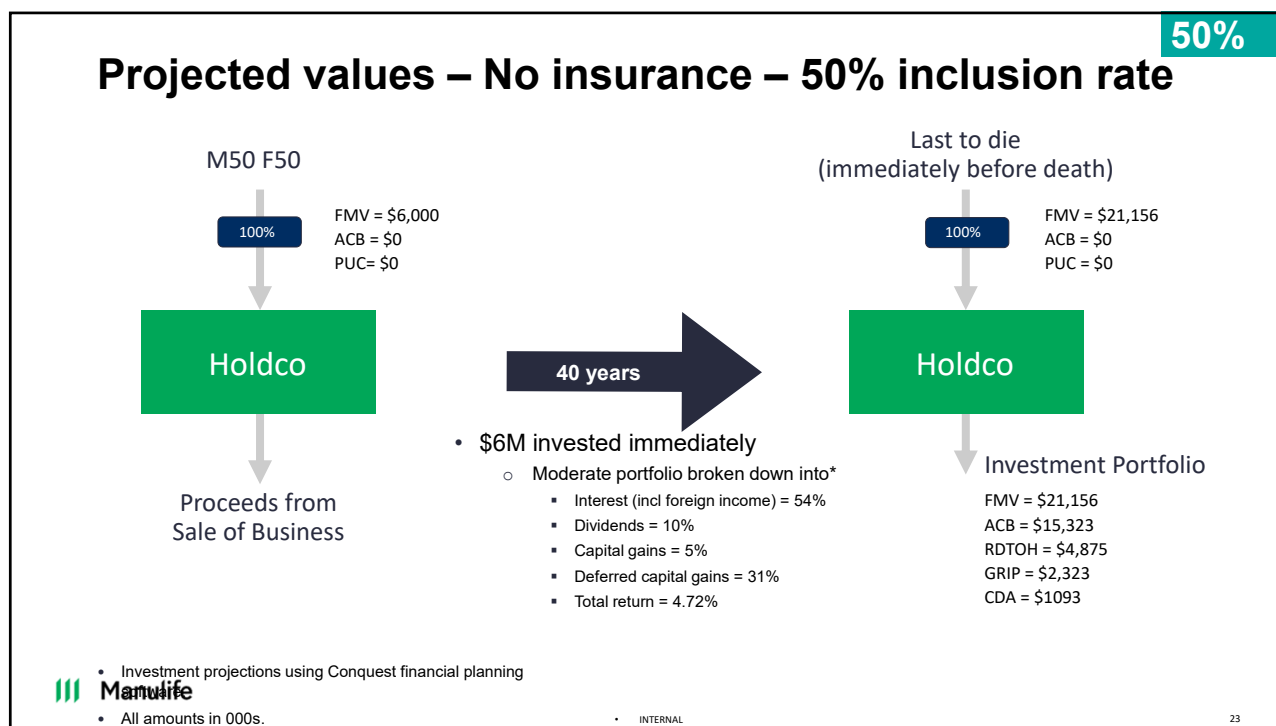
Scenario

Clients sell their business. After distributing assets out of the company through the CDA, they are left with net cash proceeds of \$6 million.

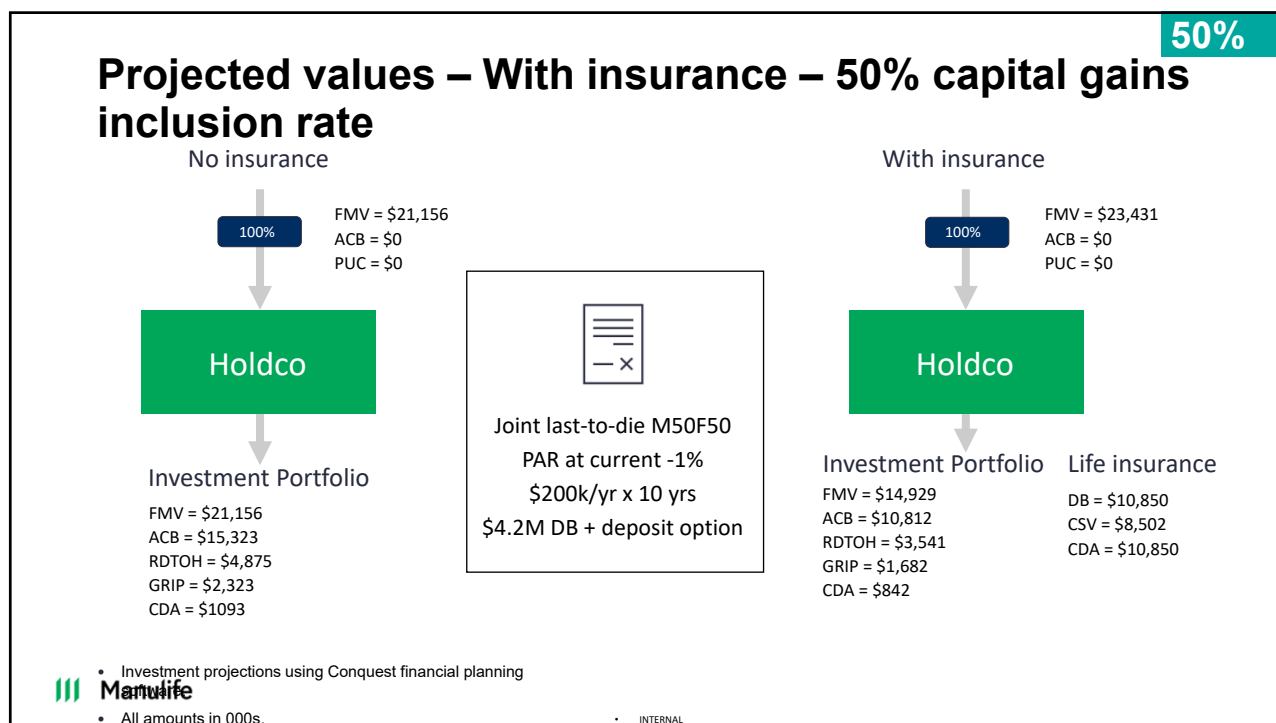
They are considering the purchase of a life insurance policy as an alternative investment option.



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24

50%

Post-mortem planning – Common shares

50% inclusion rate

	No Planning
Deemed disposition of shares	26,000
Less: corporate taxes	(600)
add: DB in excess of CSV	-
Pre-tax distribution available	25,400
Less: capital gains tax on death	(7,000)
Less: dividend tax	(10,000)
Net funds to estate	8,400
Effective combined tax rate	67.69%

• All amounts in 000s.
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50%

Post-mortem planning – Common shares

50% inclusion rate

	No Planning	164(6)	
		Alternative Investment	Life insurance
Deemed disposition of shares	26,000	26,032	26,972
Less: corporate taxes	(600)	(600)	(500)
add: DB in excess of CSV	-	-	2,348
Pre-tax distribution available	25,400	25,432	28,821
Less: capital gains tax on death	(7,000)	-	-
Less: dividend tax	(10,000)	(10,000)	(7,100)
Net funds to estate	8,400	15,432	21,721
Effective combined tax rate	67.69%	40.72%	25.92%

• All amounts in 000s.
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50%

Post-mortem planning – Common shares

50% inclusion rate

	No Planning	164(6)		Pipeline	
		Alternative Investment	Life insurance	Alternative Investment	Life insurance
Deemed disposition of shares	26,000	26,032	26,972	21,157	23,431
Less: corporate taxes	(600)	(600)	(500)	(1,500)	(1,100)
add: DB in excess of CSV	-	-	2,348	-	2,348
Pre-tax distribution available	25,400	25,432	28,821	19,657	24,680
Less: capital gains tax on death	(7,000)	-	-	(5,700)	(6,300)
Less: dividend tax	(10,000)	(10,000)	(7,100)	-	-
Net funds to estate	8,400	15,432	21,721	13,957	18,380
Effective combined tax rate	67.69%	40.72%	25.92%	34.03%	28.70%

• All amounts in 000s.
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50%

Post-mortem planning – Common shares

50% inclusion rate

	No Planning	164(6)		Pipeline		Pipeline and bump	
		Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance
Deemed disposition of shares	26,000	26,032	26,972	21,157	23,431	21,157	23,431
Less: corporate taxes	(600)	(600)	(500)	(1,500)	(1,100)	-	(600)
add: DB in excess of CSV	-	-	2,348	-	2,348	-	2,348
Pre-tax distribution available	25,400	25,432	28,821	19,657	24,680	21,157	25,180
Less: capital gains tax on death	(7,000)	-	-	(5,700)	(6,300)	(5,700)	(6,300)
Less: dividend tax	(10,000)	(10,000)	(7,100)	-	-	-	-
Net funds to estate	8,400	15,432	21,721	13,957	18,380	15,457	18,880
Effective combined tax rate	67.69%	40.72%	25.92%	34.03%	28.70%	26.94%	26.77%

• All amounts in 000s.
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50%

Post-mortem planning – Common shares

50% inclusion rate									
	No Planning	164(6)		Pipeline		Pipeline and bump		Hybrid (no bump)	
		Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance
Deemed disposition of shares	26,000	26,032	26,972	21,157	23,431	21,157	23,431	26,032	26,972
Less: corporate taxes	(600)	(600)	(500)	(1,500)	(1,100)	-	(600)	(600)	(500)
add: DB in excess of CSV	-	-	2,348		2,348	-	2,348		2,348
Pre-tax distribution available	25,400	25,432	28,821	19,657	24,680	21,157	25,180	25,432	28,821
Less: capital gains tax on death	(7,000)	-	-	(5,700)	(6,300)	(5,700)	(6,300)	(1,700)	(1,200)
Less: dividend tax	(10,000)	(10,000)	(7,100)	-	-	-	-	(7,000)	(5,100)
Net funds to estate	8,400	15,432	21,721	13,957	18,380	15,457	18,880	16,732	22,521
Effective combined tax rate	67.69%	40.72%	25.92%	34.03%	28.70%	26.94%	26.77%	35.73%	23.19%

• All amounts in 000s.
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Impact to post-mortem planning if the inclusion rate had changed

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Cancelled proposal to move to two-third inclusion rate

66.67
%



Timeline

- April 16, 2024 – 2024 Federal Budget announced inclusion rate change, to be effective June 25, 2024.
- January 31, 2025 – announced deferral of change, to be effective January 1, 2026
- March 21, 2025 – announced cancellation of change

Observations from the two-third inclusion rate “fire drill”



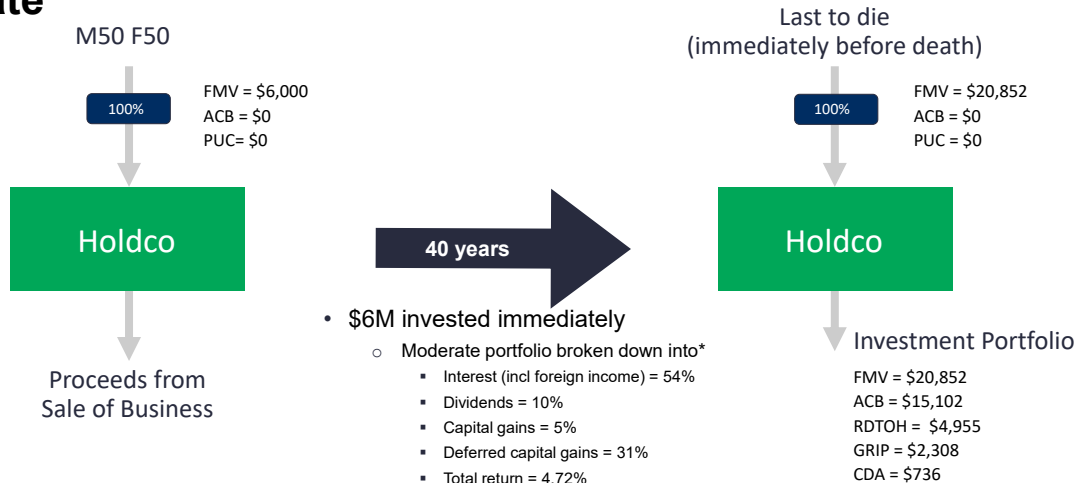
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Projected values – No insurance – 66.67% inclusion rate

66.67
%



• Investment projections using Conquest financial planning

• All amounts in 000s.



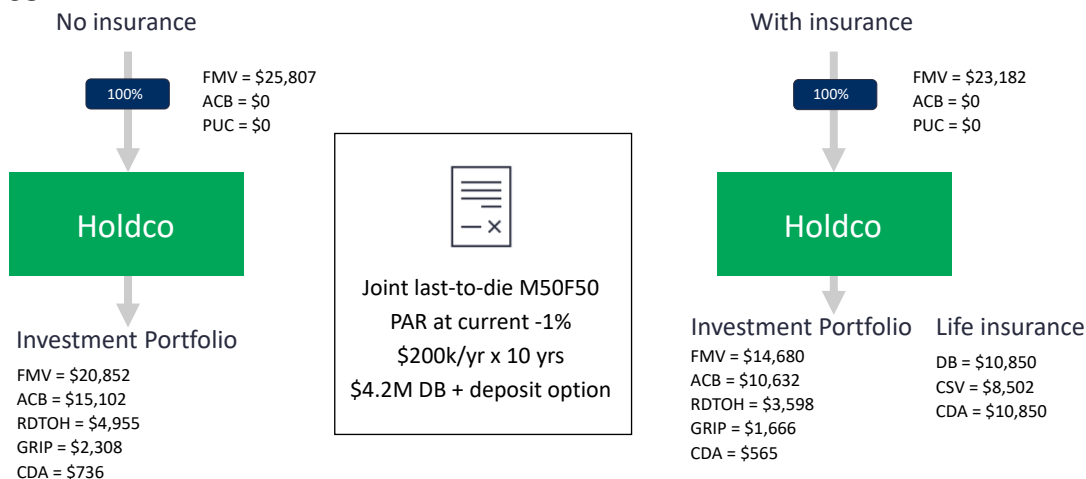
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Projected values – With insurance – 66.67% inclusion rate

66.67%



- Investment projections using Conquest financial planning
- All amounts in 000s.

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Post-mortem planning – Common shares (2/3 inclusion rate)

66.67%

	No Planning	164(6)		Pipeline		Pipeline and bump		Hybrid (no bump)	
		Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance
Deemed disposition of shares	25,810	25,810	26,780	20,850	23,180	20,850	23,180	25,810	26,780
Less: corporate taxes	(748)	(748)	(527)	(1,923)	(1,355)	-	(786)	(748)	(527)
add: DB in excess of CSV	-	-	2,350	-	2,350	-	2,350	-	2,350
Pre-tax distribution available	25,063	25,063	28,604	18,927	24,175	20,850	24,744	25,063	28,604
Less: capital gains tax on death	(9,188)	-	(699)	(7,418)	(8,250)	(7,418)	(8,250)	(2,329)	(2,606)
Less: dividend tax	(10,503)	(10,503)	(7,419)	-	-	-	-	(7,448)	(5,505)
Net funds to estate	5,372	14,560	20,486	11,508	15,926	13,432	16,494	15,285	20,493
Effective combined tax rate	79.19%	43.59%	29.67%	44.80%	37.62%	35.58%	35.39%	40.78%	29.65%

- All amounts in 000s.

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Post mortem Planning – Common shares – Different inclusion rates

50%

50% inclusion rate									
No Planning	164(6)		Pipeline		Pipeline and bump		Hybrid (no bump)		
	Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance	
Deemed disposition of shares	26,000	26,032	26,972	21,157	23,431	21,157	23,431	26,032	26,972
Less: corporate taxes	(600)	(600)	(500)	(1,500)	(1,100)	-	(600)	(600)	(500)
add: DB in excess of CSV	-	-	2,348	-	2,348	-	2,348	-	2,348
Pre-tax distribution available	25,400	25,432	28,821	19,657	24,680	21,157	25,180	25,432	28,821
Less: capital gains tax on death	(7,000)	-	-	(5,700)	(6,300)	(5,700)	(6,300)	(1,700)	(1,200)
Less: dividend tax	(10,000)	(10,000)	(7,100)	-	-	-	-	(7,000)	(5,100)
Net funds to estate	8,400	15,432	21,721	13,957	18,380	15,457	18,880	16,732	22,521
Effective combined tax rate	67.69%	40.72%	25.92%	34.03%	28.70%	26.94%	26.77%	35.73%	23.19%

66.6%

67% inclusion rate									
No Planning	164(6)		Pipeline		Pipeline and bump		Hybrid (no bump)		
	Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance	Alternative Investment	Life insurance	
Deemed disposition of shares	25,810	25,810	26,780	20,850	23,180	20,850	23,180	25,810	26,780
Less: corporate taxes	(748)	(748)	(527)	(1,923)	(1,355)	-	(786)	(748)	(527)
add: DB in excess of CSV	-	-	2,350	-	2,350	-	2,350	-	2,350
Pre-tax distribution available	25,063	25,063	28,604	18,927	24,175	20,850	24,744	25,063	28,604
Less: capital gains tax on death	(9,188)	-	(699)	(7,418)	(8,250)	(7,418)	(8,250)	(2,329)	(2,606)
Less: dividend tax	(10,503)	(10,503)	(7,419)	-	-	-	-	(7,448)	(5,505)
Net funds to estate	5,372	14,560	20,486	11,508	15,926	13,432	16,494	15,285	20,493
Effective combined tax rate	79.19%	43.59%	29.67%	44.80%	37.62%	35.58%	35.39%	40.78%	29.65%
Difference in effective tax rate	11.50%	2.87%	3.75%	10.77%	8.92%	8.64%	8.63%	5.05%	6.46%

• All amounts in 000s.



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Macro principles



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Comparison of loss carry back and pipeline

Plan	Approx. effective combined tax rate	Tax considerations
Loss carryback	<p>If the retained earnings represented by tax attributes and otherwise have unrealized capital gains, effective rate close to the effective integrated capital gains tax rate</p> <p>If the retained earnings have no tax attributes and/or inventory that when sold, does not result in capital gain, then dividend tax rate</p>	<ul style="list-style-type: none"> • Must occur within first year of estate (draft legislation to increase to three years) • Allows for recovery of refundable tax • Benefit of CDA generated by insurance limited by stop-loss rule in ss. 112(3.2) • Estate requires GRE status, unless in life-interest trust
Pipeline	Capital gain, plus corporate tax to extent capital gain by corporation realized to liquidate funds	<ul style="list-style-type: none"> • No time limit • Requires consideration of ss. 84(2) • May be complications if non-resident beneficiaries, subject to certain carve-outs

Practical considerations in selecting loss carryback and pipeline

Plan	Obtain ruling	Follow CRA guidelines	Considerations beyond tax-savings
Pipeline	No	No	<ul style="list-style-type: none"> • Fast (if successful) • Significant uncertainty of tax result • If challenged, may require appeal and success at the Federal Court of Appeal to prevent detrimental tax result
	No	Yes	<ul style="list-style-type: none"> • Slow (2 years+) • Uncertainty of tax result
	Yes	Yes	<ul style="list-style-type: none"> • Slow (2 years+) • Expensive • Certainty of tax result
Loss carryback	N/A	N/A	<ul style="list-style-type: none"> • Fast • Generally cheaper • Certainty of tax result

What can be done today?

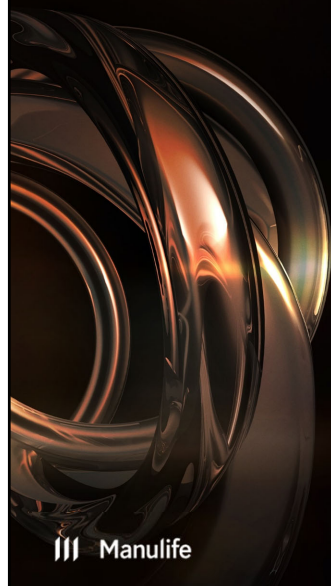
- Will planning
 - Sufficient flexibility to engage in reorganizations
- Executor education
 - Spending time with the executor to help them understand that they should engage the appropriate professionals
- Buying life insurance
 - Liquidity
 - CDA
 - Icing on the cake



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Takeaways



- Appreciate tax deferral is not tax elimination.
- Understanding that double taxation on death can be problematic.
- Post-mortem planning can help double taxation.
- Life insurance enhances the results of post-mortem planning and acts as “icing” for the proverbial post-mortem planning “cake”.

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Questions? Thank you!



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