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*FREE Webinar*

# TAX AND EMPLOYMENT IMPLICATIONS

*of Mergers and Acquisitions*



**FEBRUARY 18TH 2026  
AT 10.30 AM EST**

Hosted by:



Beitel Tax Law



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Litigation Knowledge Portfolio Lead at SpringLaw

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Managing Partner of Beitel Tax Law LLP,

### Hariss Safi

first-year associate at Beitel Tax Law LLP



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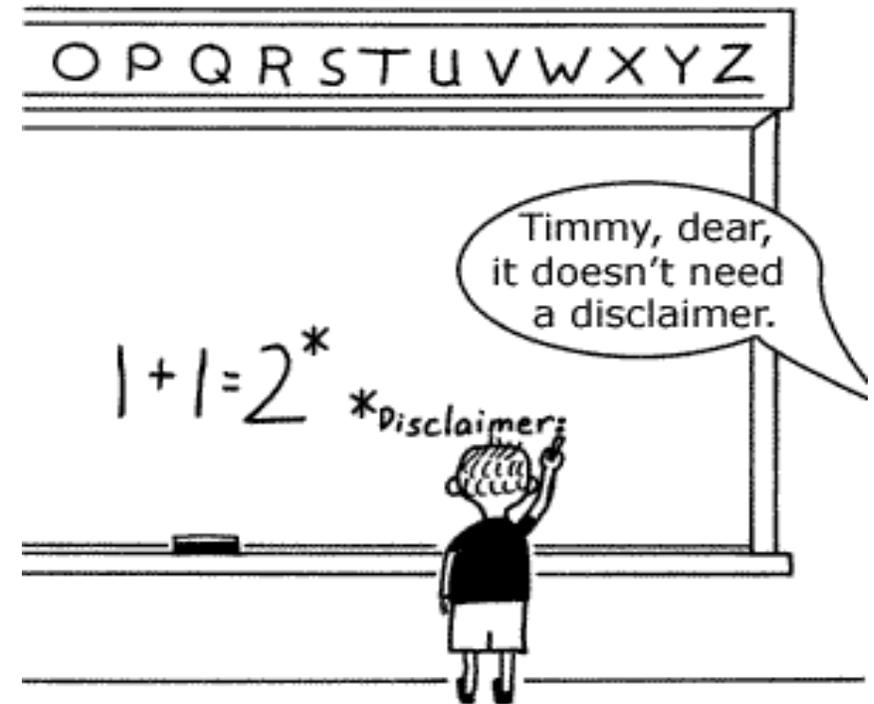
We are grateful to live and work on this land.

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Timmy doesn't  
need a disclaimer  
but we do...

Stu's Views

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# Introduction



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# Presentation Roadmap

1. Share versus asset purchase
2. Refresher = ESA versus common law rights upon termination
3. Successor Employer
4. Successor Employer = Asset Purchase
5. Strategies for Mitigating Risk/Exposure
6. BTL LAW – taxes
7. When Worlds Collide
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# Share versus asset purchase



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# Share versus asset purchase

- How you decide to purchase or sell a company has employment law implications.
- Share purchase
  - No change of employment relationship
  - Purchaser inherits contractual relationships
  - Purchaser should assess employment contracts
  - Also, assess any previous, active, or future leaves by employees; and any previous, active, or impending litigation against the corporation by an employee, etc
- Asset purchase, instant Constructive Dismissal and choice of purchaser whether or not to keep employees.
  - We will discuss this more in later slides

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# Refresher = ESA versus common law rights upon termination



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# Refresher = ESA versus commonlaw rights upon termination

Depending on whether there is an enforceable employment contract, employees in Ontario (and Canada-wide generally) are potentially entitled to two different buckets of money upon termination:

A: If there is an enforceable employment contract – only owed Employment Standards Act (“ESA”) minimums:

- a. One week per year of service as “Termination Pay”, up to a maximum of 8 weeks
- b. If the employee has been there longer than 5 years and the company has a global payroll of over \$2.5 million
  - i. “Severance Pay = 1 extra week per year of service up to a maximum of 26 weeks
- c. Mass terminations have different implications (over 50 employees in a 4-week period)

B: If no enforceable employment contract, they are owed common law notice or pay in lieu thereof, inclusive of their above ESA entitlements.

- a. This is usually 1-2 months of notice and/or pay per year of service, with a lot of variation, depending on the facts

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# Successor Employer



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# Successor Employer

- This is a doctrine that encompasses the idea that owners of a purchased company inherit certain liabilities that come with employees from the sold company.
- In a share purchase, the length of service for employees just keeps running. No change of employer, as discussed above.
- In asset purchases, it gets more complicated

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# Successor Employer = Asset Purchase



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# Successor Employer – *ESA Entitlements*

- Importantly, section 9 of the ESA implies the continuation of service for ESA rights (not common law rights), upon the sale of a business.
  - ESA “Termination Pay” continues to accrue for employees who go to the new corporation as if they were employed the whole time.
  - This is important to know even if you implement valid new contracts.
    - 8 weeks max, even if paid out by the previous employer
  - ESA “Severance Pay” can potentially be paid out without continuation, but I will not get into that today.

## Successor Employer – *ESA Entitlements*

- Often, what happens is that the old employer pays out employees for ESA Termination Pay and Severance Pay, and the new employer rehires chosen employees on new contracts prior to initiating new operations.
  - This is done without realizing that section 9 of the ESA would still require the new employer to pay out ESA Termination Pay and likely ESA Severance Pay for the whole tenure of employment after a subsequent termination (including the tenure with the seller).
- There are strategies to avoid such mistakes, most notably making offers of employment by the purchaser to the seller's employees prior to the closing of the asset purchase.
  - Then, if an employee refuses a subsequent offer, then the seller can simply pay out ESA entitlements to that specific employee.

# Successor Employer – *Common Law Entitlements*

- The asset sale of a corporation is a deemed constructive dismissal.
- Novation = The overt acceptance of common law liability by the purchaser.
  - This rarely happens by overt agreement, because it is when the new employer agrees to take on service length from the old employer of an employee, with all accompanying liabilities – tripartite agreement
- If an employee is entitled to common law notice upon the asset sale/constructive dismissal (no valid contract), then the seller may be on the hook for the common law notice or pay in lieu thereof.
  - However, if the purchaser offers comparable employment to the employee, and the employee refuses that employment, then the employee would likely be deemed to have failed in their duty to mitigate (re-employ) and would lose their rights to wrongful dismissal damages. Of course, this is subject to extenuating circumstances.

## Successor Employer – *Common Law Entitlements*

- Generally, once an employee signs a contract with the purchaser, the employment relationship and related common law liabilities flow to the purchaser.
- Of course, this is subject to extenuating circumstances where the seller and/or purchaser may be bought into a wrongful dismissal case.
- The purchaser will often be on the hook for most if not all the tenure for common law notice calculation.

# Successor Employer – *Common Law Entitlements*

- Even if the purchaser is not on the hook for all of the tenure, employees are usually given a big notice period bump if they come with the business that is purchased, even if somehow their length of service is interrupted – eg 13-week gap and/or paid out upon leaving initial employer and/or upon an asset purchase.
  - This is due to the knowledge value add given to new corporation and time served in previous role.
  - So, no valid contract, still looking at common law bump.
  - This is most common when the owner of a small company is hired on by a purchaser of said company to get the purchased company running under the new banner as an executive of some sort, then terminated shortly thereafter, once operations are running smoothly.
  - It also happens often when an executive assistant comes with the purchase and is terminated shortly thereafter.

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# Strategies for Mitigating Risk/Exposure



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# Strategies for Mitigating Risk/Exposure

- Choose share or asset purchase wisely.
- Thorough review of all employees ages, lengths of service, roles, employee files, and compensation.
- Include review of contracts and all compensation plans, and any leaves.
- Assess any active previous, active litigation, or potential litigation

# Strategies for Mitigating Risk/Exposure

- **Termination agreements:**

- Often, a purchaser can require a seller to terminate certain high-risk employees prior to the sale, and be responsible for all costs associated with such termination.
  - Notably, these have to be done carefully as they come with lots of risk (Human Rights etc)

- **Split cost agreements:**

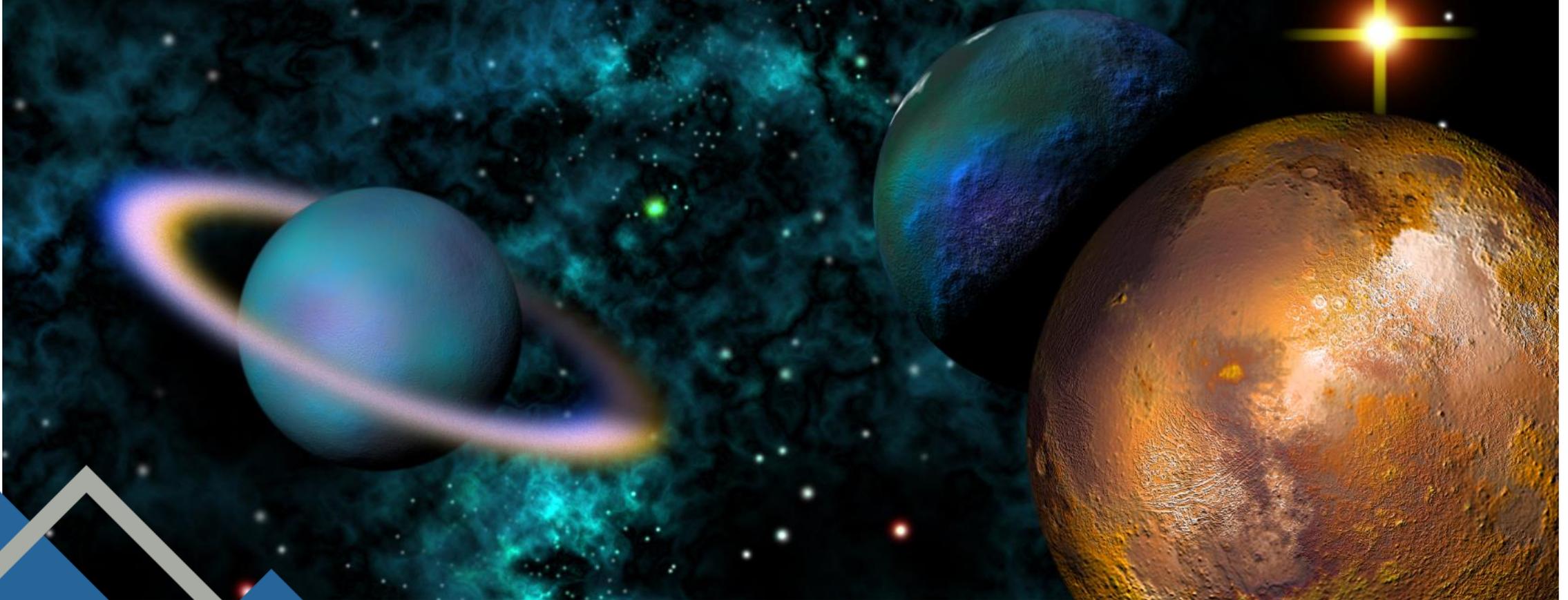
- If a purchaser has lots of leverage, they can make a vendor responsible for a certain portion of termination costs down the road for high-risk/value employees.
- This happens when vendor gives assurances that some employees are great and will be an asset, but the purchaser does not want major risk with long term, high paid employees.
- Very purchaser friendly, tough to negotiate

# Strategies for Mitigating Risk/Exposure

- **New employment contracts:**
  - Always, whether share or asset purchase
  - How the contracts are implemented is very important – need fresh consideration.
- **Corporate lawyers vs Employment lawyers:**
  - Corporate lawyers are great, but some of them ignore getting an employment lawyer involve to avoid extra time and cost on the file that is not recoupable by their firm.
  - Vendors and Purchasers will also often avoid employment lawyers to avoid the extra cost
    - This almost always leads to much larger costs down the line when an expensive employee is entitled to many months or years of pay upon termination.

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# When Worlds Collide



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## Important Note!

- Remote work has different employment and tax considerations whether the employee is within Canada or abroad.
- Start with the Employee v IC analysis
- Know when you are establishing a Permanent Establishment
- Follow the movement of money across borders – there will usually be a tax impact

**Talk to a tax and employment lawyer early in the process!**

# Questions



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## Medical Leave, Long-Term Disability & Return to Work: Navigating the Grey Zones

# EP 68

Wednesday, March 18th, 2026  
10:30 a.m. E.S.T.

A close-up photograph of a silver stethoscope with a blue tube, resting on a stack of yellow folders. The background is a light blue gradient. The image is partially obscured by a white diagonal line and geometric shapes in blue and green.

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# Thank you!

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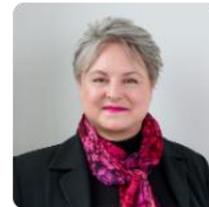
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Tax Implications of Mergers & Acquisitions

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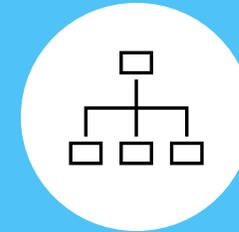
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Beitel Tax Law LLP

# Jeremie Beitel



- Managing Partner of Beitel Tax Law LLP
- Working exclusively in tax law since 2012
- Extensive experience on complex tax issues and corporate reorganizations
- Excellent beard

Beitel Tax Law LLP

# Hariss Safi



- Associate at Beitel Tax Law LLP
- Experience in developing efficient and practical tax-planning strategies
- Supports senior counsel on complex tax matters, primarily regarding CRA disputes

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- ✓ Requirements
- ✓ Strategy

03.

## REVERSE EARNOUTS

- ✓ Standard Earnouts v Reverse Earnouts
- ✓ Tax Treatment

Tax Implications of Mergers & Acquisitions

# SHARE SALE v ASSET SALE

# Tax Considerations-Share Sale

Seller



- ✓ Lifetime capital gains exemption
- ✓ Tax deferral

Buyer



- ✗ No “step-up”

# Non-tax Considerations-Share Sale

## Seller



- ✓ Simple
- ✓ Less third-party consents
- ✗ Added complexity if some assets retained

## Buyer



- ✓ Simple
- ✓ Retain employees
- ✗ Inherit liabilities

# Tax Considerations-Asset Sale

## Seller



- × No LCGE
- × Potential for recapture on depreciable property

## Buyer



- ✓ Step-up
- ✓ Purchase price allocation

# Non-tax Considerations-Asset Sale

## Seller



- ✓ Flexible
- ✗ Complex
- ✗ Unwanted liabilities remain

## Buyer



- ✓ Flexible
- ✗ Complex
- ✗ Hiring employees

# Summary



## Share v Asset sale

Matter of balancing tax, liabilities, and complexity



## Sellers

Generally prefer share sales



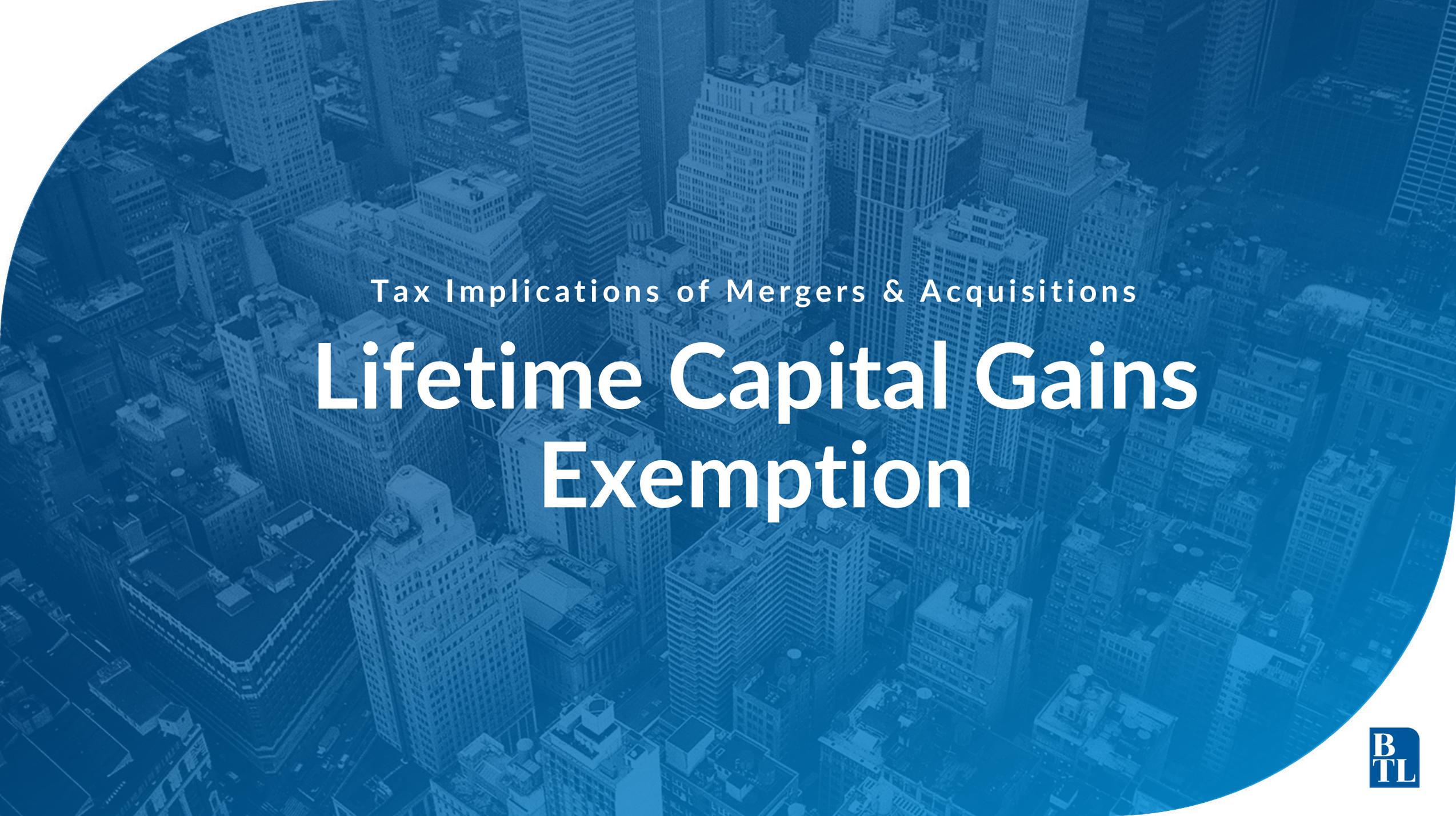
## Buyers

Generally prefer asset sales



## Advice

Exceptions apply, please reach out to us if you have specific questions



Tax Implications of Mergers & Acquisitions

# Lifetime Capital Gains Exemption

# Lifetime Capital Gains Exemption (LCGE)

- Allows you to reduce gains on sale of your business
- Reduction currently \$1,275,000 (indexed)
- Often requires advance planning to meet requirements

Lifetime Capital Gains Exemption

# Primary Requirements



Share Sale



Individual Seller



Resident in Canada



Qualified Small  
Business Corporation

## Share Sale

- LCGE only available for share sales
  - Not available for asset sales
- 





## Individual Seller

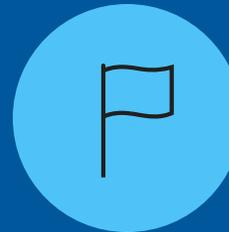
- Seller of shares must be “individual”
  - Real human person or trust
- Shares cannot be sold by a corporation



# 3

## Resident in Canada

- Only available for Canadian residents
  - Resident in Canada if:
    - Have home, spouse, or dependent in Canada; or
    - Physically in Canada  $\geq 183$  days
- 



## 4 Qualified Small Business Corporation (QSBC)

- Corporation must be a “small business corporation”, requiring  $\geq 90\%$  of assets used in an active business in Canada
- 24-Month Tests
  - No unrelated owner; and
  - $\geq 50\%$  of assets used in active business in Canada



# Active Business Requirement

## Real Estate Considerations

- Real estate leased to associated corporation can be active business
- Turns on primary use—can have ancillary 3<sup>rd</sup> party rental income

## Other Considerations

- Goodwill is an asset—often helps meet test
- Cash is generally not considered used in an active business
- Passive investments

# Purification Strategy

- Generally, 'purification' means paying unused cash and passive assets as a dividend to holding company
- Paradox—Holdco must own shares to receive dividends, but shares must be owned by individual to get LCGE
- Many solutions—gold standard is a family trust, but where cost prohibitive can be achieved with multiple share classes or 'butterfly'

# Multiplying the LCGE

- LCGE amount= \$1,275,000
  - Amount deducted from capital gain
- Can be multiplied through sale by trust after an estate freeze
  - E.g., family of four can shelter \$5,125,000 of gain—over \$1,250,000 of tax on sale
- Only appreciation in value after estate freeze can be multiplied through trust
- Professional tax advice strongly recommended



# Summary



## Several Requirements

- Share sale
- Individual
- Canadian resident
- QSBC



## Active Business

≥90% of corporation's assets must be used in active business in Canada



## Holding Period

For 24 months before sale, no unrelated ownership and ≥50% of corporation's assets must be used in active business in Canada



## Strategy

LCGE can be multiplied through advance planning

Purification can keep asset tests outside

An aerial photograph of a dense urban skyline, likely New York City, with numerous skyscrapers and buildings. The image is overlaid with a semi-transparent blue circular shape that frames the text.

Tax Implications of Mergers & Acquisitions

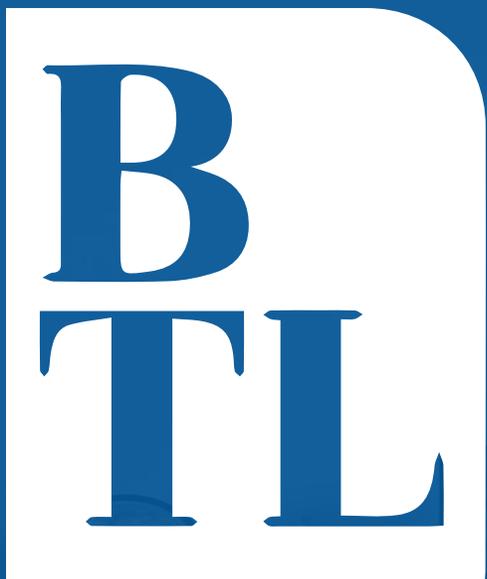
# Reverse Earnouts

# Standard Earnout Agreements

- Buyer agrees to increase purchase price if performance targets met
- Helps manage uncertainty
- Treated as business income to vendor

# Reverse Earnout Agreements

- Economically identical to standard earnout
- High purchase price agreed to reflecting full performance targets
- Purchase price reduced if targets not met
- Preserves capital gain treatment



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# Thank you

If you have any questions or concerns,  
feel free to contact us.

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