

# FLOW CHART FOR INTERGENERATIONAL BUSINESS TRANSFERS AS PROPOSED IN THE 2023 FEDERAL BUDGET

YOU MUST ANSWER 'YES' TO ALL OF THE FOLLOWING QUESTIONS

**CONTROL IMMEDIATELY BEFORE DISPOSITION TIME**

1. Immediately before the DT, did the Vendor, either alone or together with a Spouse, have De Jure Control the SC?

2. Immediately before the DT, was the Vendor or Spouse the only person or the only group that had De Facto Control over the SC?

**DISPOSITION TIME TESTS**

3. Is the Vendor an individual (other than a trust)?

4. At the DT, are the shares of the SC either QIBC Shares or QIFP Shares?

5. At the DT, do one or more Children (18 or older) have De Jure Control over the PC?



**IMMEDIATE TRANSFER OF MAJORITY OF VOTING AND GROWTH SHARES**

6. At all times after the DT, does the Vendor, either alone or together with a Spouse, own **less** than:

- 50% of any class of shares (other than Spec Shares) in the SC or the PC, and
- 50% of any class of equity interest (other than Spec shares) in any RGEs?

**TRANSFER OF ALL VOTING AND GROWTH SHARES WITHIN 36 MONTHS**

7. Within 36 months from the DT, and at all times thereafter, does the Vendor or Spouse no longer own

- any shares (other than Spec Shares) in the SC or the PC, and
- any equity interest (other than Spec Shares) in any RGEs?

YES



**IMMEDIATE INTERGENERATIONAL BUSINESS TRANSFER**

**IMMEDIATE TRANSFER OF DE JURE AND DE FACTO CONTROL**

8. At all times after the DT, does the Vendor, either alone or together with Spouse, have **neither** De Jure nor De Facto Control over (i) the SC (ii) the PC; and (iii) any RGEs?

**TRANSFER OF MANAGEMENT WITH 36 MONTHS SAFE HARBOUR**

9. Within 36 months from the DT or a reasonable longer period, has the Vendor and Spouse taken reasonable steps to:

- Transfer management of all RBs of SC and of any RGEs to Active Child(ren); and
- Permanently cease to manage all such RBs?

Test deemed satisfied upon an Exit Event or a Loss-Of-Active-Child Event.

**THERE IS NO QUESTION #10. PLEASE CONTINUE.**

**CHILDREN RETAIN CONTROL FOR 36 MONTHS**

11. At all times, within 36 months after the DT, does the Child or the group of Children who had De Jure Control over the PC at the DT continue to hold De Jure Control over both the SC and the PC?

Test deemed satisfied upon an Exit Event or a Loss-Of-Active-Child Event.

**CHILDREN WORK IN BUSINESS FOR 36 MONTHS**

12. At all times, within 36 months after the DT:

- Do all the RBs of the SC and of the RGEs continue to be carried on as active businesses? and
- Is there at least one Active Child who is actively engaged on a regular, continuous and substantial basis in a RB?

Test deemed satisfied upon an Exit Event of a Loss-Of-Active-Child Event.

**YOU MADE IT!**

**GRADUAL INTERGENERATIONAL BUSINESS TRANSFER**

**IMMEDIATE TRANSFER OF DE JURE CONTROL**

8. At all times after the DT, does the Vendor, either alone or together with Spouse, **not have** De Jure Control over (i) the SC (ii) the PC; and (iii) any RGEs?

**TRANSFER OF MANAGEMENT WITH 60 MONTH SAFE HARBOUR**

9. Within 60 months from the DT, or a reasonable longer period, has the Vendor and Spouse taken reasonable steps to:

- Transfer management of all RBs of SC and of any RGEs to Active Child(ren); and
- Permanently cease to manage all such RBs?

Test deemed satisfied upon an Exit Event or a Loss-Of-Active-Child Event.

**MANDATORY REDUCTION OF ECONOMIC INTEREST WITHIN 10 YEARS**

10. Within 10 years from the DT and at all times after, is the FMV of the combined interests (including all debt or equity interest) owned by the Vendor and Spouse in any of the SC, the PC and the RGEs 30% or less of the combined FMV of such interests immediately before the DT? (The moment in time that the interest is reduced to 30% or less is referred to as the "Final Sale Time")

Note: for QIFP shares, replace 30% with 50%.

**CHILDREN RETAIN CONTROL FOR 60 MONTHS OR UNTIL FINAL SALE TIME**

11. At all times from the DT until the later of 60 months and the Final Sale Time (whichever occurs later), does the Child or the group of Children who had De Jure Control over the PC at the DT continue to hold De Jure Control over both the SC and the PC?

Test deemed satisfied upon an Exit Event or a Loss-Of-Active-Child Event.

**CHILDREN WORK IN BUSINESS FOR 60 MONTHS OR UNTIL FINAL SALE TIME**

12. At all times from the DT until the later of 60 months and the Final Sale Time (whichever occurs later):

- Do all RBs of the SC and of the RGEs continue to be carried on as active businesses? and
- Is there at least one Active Child is actively engaged on a regular, continuous and substantial basis in a RB?

Test deemed satisfied upon an Exit Event or a Loss-Of-Active-Child Event.

**YOU MADE IT!**

The Vendor and each Child gets to jointly elect on or before the Vendor's filing-due date for the DT year, so that ITA 84.1 does **not** apply to the Disposition and the capital gain reserve extends to 10 years.

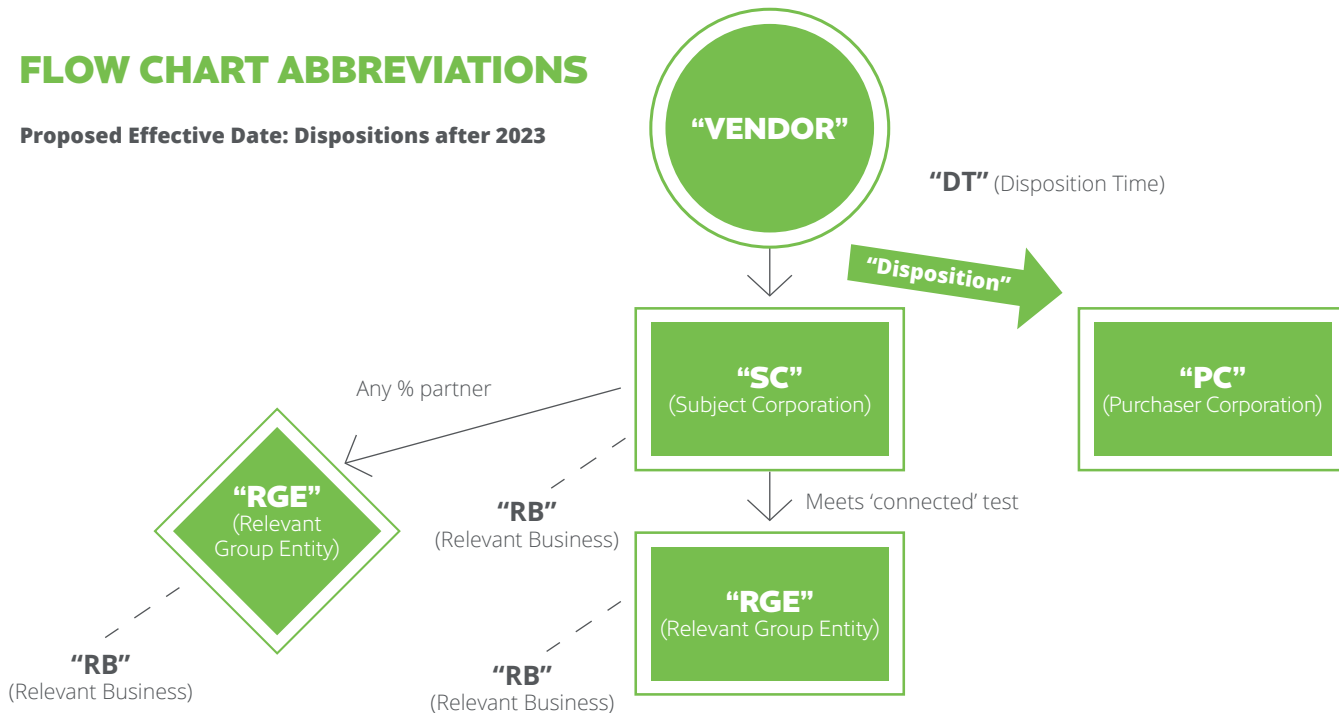
All parties are jointly liable if conditions are not satisfied. CRA's normal reassessment period in respect of the Disposition is extended by an **additional three** years.

The Vendor and each Child gets to jointly elect on or before the Vendor's filing-due date for the DT year, so that ITA 84.1 does **not** apply to the Disposition and the capital gain reserve extends to 10 years.

All parties are jointly liable if conditions are not satisfied. CRA's normal reassessment period in respect of the Disposition is extended by an **additional ten** years.

## FLOW CHART ABBREVIATIONS

Proposed Effective Date: Dispositions after 2023



- **“QSBC Shares”** means ‘qualified small business corporation shares’ as defined in subsection 110.6(1)
- **“QFFP Shares”** means ‘shares of the capital stock of a family farm or fishing corporation’ as defined in subsection 110.6(1).
- **“Spec Shares” (Specified Class Shares):** shares that meet all the below criteria:
  - Non-Voting;
  - Dividend is a fixed \$ or fixed % based on Fair Market Value (FMV) of subscription consideration;
  - Annual dividend rate ≤ prescribed rate at time of share issuance;
  - Redemption amount ≤ (FMV of subscription consideration + unpaid dividends); and
  - Not convertible or exchangeable.
- **“De Jure Control”** generally refers to the legal right to elect a majority of directors of a corporation.
- **“De Facto Control”** means economic and other influences that allow for effective control. See subsections 256(5.1) & (5.11) of the ITA.
- **“Spouse”** includes common-law partner.
- **“Child” or “Children”** means:
  - Vendor’s biological or adopted child;
  - Child of Vendor’s spouse;
  - Spouse of Vendor’s child;
  - A child of Vendor’s child;
  - A child of the Vendor’s child’s child;
  - A person who was the Vendor’s child immediately before person’s spouse passed away;
  - Vendor’s or the Vendor’s spouse’s niece/nephew, or such niece/nephew’s spouse or child.
- **“Active Child(ren)”** means a Child who:
  - Had, or as part of a group of children had, De Jure Control over the PC at the DT;
  - Has, or as part of a group of children has, De Jure Control over the PC and the SC at all times after the DT; and
  - Is actively engaged on a regular, continuous and substantial basis (factually or averaging ≥ 20 hours/week while the business operates) in a RB.
- Everywhere **“own”** is used in the abbreviations or the flow chart, it refers to owning directly or indirectly. Also, a beneficiary of a discretionary trust is deemed to own everything the trust owns.
- **“Final Sale Time”** is the time referred to in Q.10.
- **“Exit Event”** means a sale to an arm’s length purchaser by the Children who has, or as part of a group of Children has, De Jure Control over the SC and the PC. The sale must consist of all the shares of the PC, SC and all RGEs. Any equity interests in all the RBs owned by the Children must be included in the sale as well.
- **“Loss-Of-Active-Child Event”** occurs where all Active Children have died, or, after the DT, have suffered one or more severe and prolonged impairments in physical or mental functions.