

Tax Question:

What happens with losses on an Acquisition of Control?

Facts:

When a shareholder acquires over 50% of the company's voting shares there is an acquisition of control for tax purposes. This triggers a year end and most importantly places restrictions on the use of losses.



Discussion:

Non-capital losses (those generated from the normal operations of the company) can only be carried forward or back if the following conditions have been met:

- The company continues in the same business post-change of control as it did pre-change of control
- The losses are only applied against profits of the same business as they were incurred
- The company is expected to make a profit

If you purchase a company that manufactured widgets and decided to stop manufacturing widgets and instead operate a warehouse storage business, then the losses could not be used, since you have not continued in the same business. If you decided to continue to manufacture widgets but also operated a warehouse storage business, the losses could only be applied against the income that was generated from manufacturing widgets. If the company did not make any future profits from manufacturing widgets then you would not be able to use the losses irrespective of how profitable other operations run through the company are.

Capital losses (those generated from the sale of non-depreciable property) cannot be carried forward or carried back following an acquisition of control. They are simply wiped out.

Recommendation:

If you plan to purchase or sell shares of a company that has unused losses, please contact Gilmour Knotts Chartered Accountants to determine the tax implications.

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