



September 7, 2023

Trevor McGowan  
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Via email: [Trevor.McGowan@fin.gc.ca](mailto:Trevor.McGowan@fin.gc.ca)

Dear Trevor:

### **August 4, 2023 draft legislation relating to section 84.1 of the Income Tax Act**

The Conference for Advanced Life Underwriting (CALU) is pleased to make this submission to the Department of Finance (Finance Canada) on the draft legislation released on August 4, 2023 (the August 2023 draft legislation) relating to the revised intergenerational business transfer rules in section 84.1 of the Income Tax Act (the Act).

CALU is Canada's national association for leaders in the life insurance and financial advisory industry. Our members include insurance and financial advisors as well as accounting, tax, legal and actuarial experts. Along with our partner organization, Advocis, we speak for more than 17,000 insurance and financial advisors in every part of Canada to grow and preserve the financial well-being of Canadians and family businesses.

## **Background and discussion**

In Budget 2023 the government released draft legislation that would amend the intergenerational business transfer rules contained in paragraph 84.1(2)(e) of the Act, effective for disposition of shares after 2023.<sup>1</sup> CALU was generally supportive of the approach taken by the government in Budget 2023 and decided to make no further submissions with respect to these proposed changes.

In August 2023 the government introduced a package of draft legislation which included revised legislation governing intergenerational business transfers (GIBTs), which is substantially similar to the Budget 2023 draft legislation. We are appreciative of the additions of new paragraphs 84.1(2.3)(g) and (i) of the Act which will maintain the exemption provided in proposed section 84.1(2)(e) of the Act where shares are disposed of in circumstances described in those two provisions.

However, there is a new condition in both subparagraphs 84.1(2.31)(a)(ii) and (2.32)(a)(ii) of the Act which will prevent a taxpayer from benefiting from the exemption under paragraph 84.1(2)(e) of the Act in respect of the

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<sup>1</sup> Budget 2023 dated March 28, 2023 (Tax Measures: Supplementary Measures (Notice of Ways and Means Motion), herein referred to as Budget 2023.



disposition of shares that “derive their value from an active business that is relevant to the determination of whether the subject shares satisfy subparagraph (b)(iii).”

The explanatory notes to the August 2023 draft legislation state these new provisions are intended:

“to ensure that a business is effectively transferred only once from a taxpayer to their child pursuant to the exception in paragraph 84.1(2)(e). This condition precludes a taxpayer from undertaking successive transfers of shares of a subject corporation that derive their value from the same active business that was relevant to the determination of whether a prior disposition of subject shares satisfied paragraph 84.1(2)(e).”

CALU is concerned with this measure being introduced at this late stage in the legislative process rather than in the draft legislation released with Budget 2023. This significantly limits stakeholder input on this condition given the short consultation period provided for by the government.

We also believe this limitation runs counter to the intent of both the immediate business transfer (IBT) and the gradual business transfer (GBT) rules which provide that the business owner can continue to own voting shares for 36 months after the initial sale of shares, and that under a GBT rules can retain a significant equity interest (in non-voting shares) for up to 10 years. These rules are designed to ensure a GIBT takes place and while permitting the business owner to retain an equity interest in the business for specified periods of time (similar to an arm’s length sale transaction). In our view, these new provisions unnecessarily limit much of the flexibility that appeared to be provided to business owners in structuring their succession plans when these rules were first announced in Budget 2023.

**CALU is therefore recommending that the new condition in subparagraphs 84.1(2.31)(a)(ii) and (2.32)(a)(ii) of the Act not be included in the final legislation [or at least these conditions be tied into the timelines for divesting voting and non-voting shares under the IBT and GBT rules].**

Another concern is to ensure that this type of condition is not imposed on business owners who have disposed of their shares prior to 2024 pursuant to the existing exemption in paragraph 84.1(2)(e) of the Act. In other words, a business owner who made a share transfer under the existing paragraph 84.1(2)(e) should continue to qualify for an exemption on the transfer of shares relating to the same active business under the rules that come into effect in 2024. In addition to the concerns noted above, we believe it would be particularly unfair for the proposed limit on exempt transfers to apply to transfers taking place before 2024, given business owners and their advisors would not have been aware that such a condition would apply to transfers of shares after 2023.

**Therefore, should the government proceed with the implementation of a version of subparagraphs 84.1(2.31)(a)(ii) and (2.32)(a)(ii), we are requesting that the legislation clarify that this limitation does not apply to a business owner who transfers shares before 2024 pursuant to existing section 84.1(2)(e) of the Act.**



Once again, we appreciate this opportunity to provide input on the proposed changes to section 84.1 of the Act contained in the August 2023 draft legislation and would be pleased to engage in further dialogue on this issue.

Yours truly,

*Robert McCullagh*

Robert McCullagh  
Chair

*Guy Legault*

Guy Legault  
President & CEO

cc.

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