

Checklist: new proposed intergenerational transfer options

As announced in the 2023 Federal Budget, changes are proposed to the rules enacted in Bill C-208 to ensure that only genuine intergenerational family business sales will qualify for the rule deeming family members to be dealing at arm's length. In particular, two newly proposed approaches are available:

- Immediate business transfer (3 year test)
- Gradual business transfer (5 - 10 year test)

The criteria for each transfer approach are very detailed, so CPA Canada have compiled this checklist to facilitate your analysis of the proposed legislation. When all criteria are satisfied, section 84.1 will generally not apply as the parties will be deemed to be dealing with each other at arm's length. As you read through the checklist, conditions that apply to both approaches are shown as a single column.

Disclaimer: This checklist is based on proposed legislation released on March 28, 2023, and is subject to change.

CONDITIONS AND SPECIFIC CRITERIA TO CONSIDER	
IMMEDIATE TRANSFERS (3-YEAR TEST)	GRADUAL BUSINESS TRANSFERS (5- TO 10-YEAR TEST)
Conditions that apply at the time of disposition	
<input type="checkbox"/> Immediately before the disposition ("disposition time"), the vendor, either alone or together with their spouse or common-law partner ("spouse"), controls the subject corporation and no other person or group of persons can legally or factually control the subject corporation.	
<input type="checkbox"/> At the disposition time, the following three conditions must be met: <ul style="list-style-type: none"> <input type="checkbox"/> The vendor must be an individual (other than a trust); <input type="checkbox"/> The purchaser corporation must be controlled by one or more of the vendor's children¹ who are 18 years of age or older; and <input type="checkbox"/> The subject corporation shares are either: <ul style="list-style-type: none"> <input type="checkbox"/> qualified small business corporation shares² (QSBC); or <input type="checkbox"/> shares of the capital stock of a qualified family farm or fishing corporation (QFFF)³ 	
Conditions related to the transfer of economic interests in the business	
<input type="checkbox"/> At all times after the disposition time, the vendor does not – either alone or together with a spouse, own directly or indirectly: <ul style="list-style-type: none"> <input type="checkbox"/> 50% or more of any class of shares, other than shares of a "specified class"⁴ of the subject corporation or the purchaser corporation; or <input type="checkbox"/> 50% or more of any class of equity interest (other than a specified class) in any relevant group entity 	

¹ The proposed meaning of child of a taxpayer has the same meaning found in subsection 70(10) but is expanded to include a niece or nephew of the taxpayer, a niece or nephew of the taxpayer's spouse and spouses of these individuals.

² As defined in subsection 110.6(1)

³ As defined in subsection 110.6(1)

⁴ As defined in subsection 256(1.1), generally defined to be fixed value shares that are non-voting, non-convertible and dividends on these shares must be fixed at amount not exceeding a prescribed limit.

<input type="checkbox"/> Within 36 months of the disposition time and all times thereafter, the vendor and their spouse does not own, directly or indirectly: <ul style="list-style-type: none"> <input type="checkbox"/> Any shares of the capital stock (other than a specified class) of the subject corporation or of the purchaser corporation; or <input type="checkbox"/> Any equity interest (other than a specified class) in any other person or partnership (“relevant group entity”) 	
<input type="checkbox"/> No additional criteria	<input type="checkbox"/> Within 10 years after the disposition time (“final sale time”) and at all times after, the vendor and their spouse does not own, directly or indirectly, debt or equity interests in any of the subject corporation, the purchaser corporation, and any relevant group entity with a fair market value that exceeds 50% (for QFFFs) and 30% (for QSBCs) of the fair market value of all the interests that they owned before the disposition time
Conditions related to the transfer of control of the business	
<input type="checkbox"/> At all times after the time of sale, the vendor does not – either alone or together with a spouse, legally or factually control : <ul style="list-style-type: none"> <input type="checkbox"/> The subject corporation; <input type="checkbox"/> The purchaser corporation; or, <input type="checkbox"/> Any relevant group entity that carries on an active business (“relevant business”) at the disposition time 	<input type="checkbox"/> At all times after the time of sale, the vendor does not – either alone or together with a spouse, legally control : <ul style="list-style-type: none"> <input type="checkbox"/> The subject corporation; <input type="checkbox"/> The purchaser corporation; or, <input type="checkbox"/> Any relevant group entity that carries on an active business (“relevant business”) at the disposition time
<input type="checkbox"/> From the disposition time until 36 months after that time: <ul style="list-style-type: none"> <input type="checkbox"/> The child or group of children legally controls the subject corporation and the purchaser corporation;* <input type="checkbox"/> The child, or at least one member of the group of children, is engaged on a regular, continuous and substantial basis⁵ in a relevant business of the subject corporation or a relevant group entity; and 	<input type="checkbox"/> From the disposition time until the later of 60 months after the disposition time and the final sale time: <ul style="list-style-type: none"> <input type="checkbox"/> The child or group of children legally controls the subject corporation and the purchaser corporation;* <input type="checkbox"/> The child, or at least one member of the group of children, is engaged on a regular, continuous and substantial basis⁶ in a relevant business of the subject corporation or a relevant group entity; and

⁵ As defined in the Tax On Split Income (TOSI) rules in paragraph 120.4(1.1)(a) i.e. excluded business test

⁶ As defined in the Tax On Split Income (TOSI) rules in paragraph 120.4(1.1)(a) i.e. excluded business test

<input type="checkbox"/> Each relevant business of the subject corporation and any relevant group entity is carried on as an active business	<input type="checkbox"/> Any relevant business of the subject corporation and any relevant group entity is carried on as an active business
<p>* Exception: the first condition above is deemed to have been met on:</p> <input type="checkbox"/> Date of disposition, if one or more children have disposed of all shares in the capital stock of the purchaser corporation, subject corporation or all relevant group entities to an arm's length person or group of persons <input type="checkbox"/> Date of impairment or death, if a child or each child suffers a proloner impairment in physical or mental functions or death	
Conditions requiring the transfer of management of the business to children	
<input type="checkbox"/> Within 36 months of the time of sale (or greater under reasonable circumstances), the vendor and/or their spouse takes reasonable steps to: <ul style="list-style-type: none"> <input type="checkbox"/> Transfer management of each relevant business of the subject corporation and any relevant group entity to the children;* and <input type="checkbox"/> Permanently cease to manage any relevant business of the subject corporation and any relevant group entity 	<input type="checkbox"/> Within 60 months of the time of sale (or greater under reasonable circumstances), the vendor and/or their spouse takes reasonable steps to: <ul style="list-style-type: none"> <input type="checkbox"/> Transfer management of any relevant business of the subject corporation and any relevant group entity to the children;* and <input type="checkbox"/> Permanently cease to manage any relevant business of the subject corporation and any relevant group entity
<input type="checkbox"/> * Exception: the first condition above is deemed to have been met on: <ul style="list-style-type: none"> <input type="checkbox"/> Date of disposition, if one or more children have disposed of all shares in the capital stock of the purchaser corporation, subject corporation or all relevant group entities to an arm's length person or group of persons <input type="checkbox"/> Date of impairment or death, if a child or each child suffers a proloner impairment in physical or mental functions or death 	
Election form requirement	
<input type="checkbox"/> The vendor and the child, or the vendor and each member of the group of children need to elect in prescribed format to have new proposed paragraph 84.1(2)(e) to apply. This will deem the taxpayer and purchaser corporation to deal with each other at arm's length at the time of the sale of the subject shares. The election must be filed on or before the vendor's filing due date for the taxation year that includes the disposition time.	