SHARE CAPITAL ATTRIBUTES: CORPORATE AND TAX ISSUES

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For shareholder-owners of private corporations, the implementation of tax planning brings into play many legal elements, such as contracts and declaration of dividends, and often requires the issuance of shares with specific features. While some of these features may be influenced by external documents such as shareholders’ agreements, the rights attached to shares are provided for in the constating documents of a corporation, such as its articles of incorporation or articles of amendment. This article reviews a number of relevant corporate law issues involved in the design of share capital attributes as they relate to different types of tax planning—for example, the issuance of different classes of shares with identical features but allowing for different treatment between classes, such as the right to discretionary dividends. While the provisions of the Income Tax Act will affect a tax-planning strategy, in the case of shares, corporate law must allow for the appropriate attributes if the tax planning is to be implemented correctly. For example, payment of a stock dividend to a shareholder that defers tax thereon until the shares are redeemed may require the issuance of shares with a high redemption value but a very low stated capital. In the case of an estate freeze, preference shares may be issued that have certain attributes in order to avoid unintended negative consequences. The policy statements of the Canada Revenue Agency often shed light on the type of attributes that such shares should have. In other cases, shares issued in transactions such as a purchase and sale, amalgamation, etc., must have a legal stated capital that matches the paid-up capital for income tax purposes (which may not otherwise be the same). The applicable corporate law may not always accommodate such planning.

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