



Intergenerational business transfers

This table provides a comparison of the criteria used to determine if the exception to section 84.1 of the *Income Tax Act* (ITA) applies based on the current rules enacted under Bill C-208 and the rules proposed in the 2023 federal budget under either the immediate transfer option or gradual transfer option. **Information contained herein is current as of Aug. 4, 2023.**

Specific criteria necessary for exception to section 84.1 of the ITA	Current rules enacted under Bill C-208 (effective June 29, 2021 to Dec. 31, 2023)	Option 1 Immediate transfer (effective Jan. 1, 2024)	Option 2 Gradual transfer (effective Jan. 1, 2024)
(A) Immediately before disposition time			
Control of subject corporation before sale	Not applicable	<p>The taxpayer, either alone or together with their spouse*, controls the subject corporation, and no other person or group of persons controls, directly or indirectly in any manner whatever, the subject corporation</p> <p>The taxpayer has not previously sought an exception to 84.1 under Bill C-208 rules, immediate transfer option or gradual transfer option</p>	

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(B) At disposition time			
Taxpayer (vendor)	Taxpayer must be an individual (other than a trust)		
Subject corporation qualification	Shares of the subject corporation must be qualified small business corporation shares (QSBC) or shares of the capital stock of a family farm or fishing corporation (FFFC)		
Control of purchaser corporation	Controlled by one or more children or grandchildren of the taxpayer who are 18 years of age or older	Controlled by one or more children of the taxpayer, each of whom is 18 years of age or older	
Extended meaning of child or children	<p>The extended meaning of “child” under ITA 252(1) applies, which includes:</p> <ul style="list-style-type: none"> • a person of whom the taxpayer is the legal parent • a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control • a child of the taxpayer’s spouse* • a spouse* of a child of the taxpayer 	<p>A “child” as defined under ITA 84.1(2.3)(a) includes:</p> <ul style="list-style-type: none"> • a child of the taxpayer’s child • a child of the taxpayer’s child’s child • a person who was a child of the taxpayer immediately before the death of the person’s spouse* • a person who, at any time before the person attained the age of 19 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control • a niece or nephew of the taxpayer • a niece or nephew of the taxpayer’s spouse* • a spouse* of a niece or nephew referred to above • a child of a niece or nephew referred to above <p>The extended meaning of “child” under ITA 252(1) also applies, which includes:</p> <ul style="list-style-type: none"> • a person of whom the taxpayer is the legal parent • a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control • a child of the taxpayer’s spouse* • a spouse* of a child of the taxpayer 	
(C) At all times after the disposition time			
Taxpayer gives up control of business	Not applicable	<p>The taxpayer, either alone or together with their spouse* does not control (<i>directly or indirectly in any manner whatever</i>):</p> <ul style="list-style-type: none"> • the subject corporation • the purchaser corporation or • a relevant group entity that carries on a relevant business <p><i>Note that this requires giving up both legal (de jure) and factual (de facto) control.</i></p>	<p>The taxpayer, either alone or together with their spouse* does not control:</p> <ul style="list-style-type: none"> • the subject corporation • the purchaser corporation or • a relevant group entity that carries on a relevant business <p><i>Note that this requires giving up legal (de jure) control only.</i></p>

Specific criteria necessary for exception to section 84.1 of the ITA	Current rules enacted under Bill C-208 (effective June 29, 2021 to Dec. 31, 2023)	Option 1 Immediate transfer (effective Jan. 1, 2024)	Option 2 Gradual transfer (effective Jan. 1, 2024)
Taxpayer gives up majority of economic interest (excluding shares of a specified class**)	Not applicable	The taxpayer, either alone or together with their spouse*, does not own (directly or indirectly) <ul style="list-style-type: none"> • 50 per cent or more of any class of shares (other than a specified class**) of the capital stock of the subject corporation or of the purchaser corporation, or • 50 per cent or more of any class of equity interest (other than a specified class**) in any relevant group entity 	
(D) Within 36 months of the disposition time and at all times thereafter			
Taxpayer gives up remaining control and economic interest (excluding shares of a specified class**)	Not applicable	The taxpayer and their spouse* does not own (directly or indirectly) <ul style="list-style-type: none"> • any shares of the capital stock (other than a specified class**) of the subject corporation or of the purchaser corporation, or • any equity interest (other than a specified class**) in any relevant group entity 	
(E) Within 36 months (immediate option) or 60 months (gradual option) of the disposition time (can be longer than 36 months or 60 months, respectively, if reasonable in the circumstances)			
Taxpayer transfers management of business	Not applicable	The taxpayer and their spouse* take reasonable steps to: <ul style="list-style-type: none"> • transfer management of each relevant business of the subject corporation and any relevant group entity to the child or at least one member of the group of children who are actively engaged on a regular, continuous and substantial basis in a relevant business of the subject corporation or a relevant group entity, and • permanently cease to manage each relevant business of the subject corporation and any relevant group entity Exceptions (see ITA 84.1(2.3) for details): <ul style="list-style-type: none"> • Arm's length disposition of all shares in the capital stock of the purchaser corporation, subject corporation or all relevant group entities • Death or prolonged impairment in physical or mental functions of the child or each of the children; and • Disposition of shares of the purchaser corporation, subject corporation or relevant group entity to a child or group of children 	

(F) From disposition time until 36 months after that time (immediate option) or from the disposition time until the later of 60 months after the disposition time and the final sale time (gradual option)

A child is actively engaged in the business	Not applicable	<p>The child or at least one member of the group of children is actively engaged on a regular, continuous and substantial basis in a relevant business of the subject corporation or a relevant group entity</p> <p>Exceptions (see ITA 84.1(2.3) for details):</p> <ul style="list-style-type: none"> • Arm's length disposition of all shares in the capital stock of the purchaser corporation, subject corporation or all relevant group entities • Death or prolonged impairment in physical or mental functions of the child or each of the children; and • Disposition of shares of the purchaser corporation, subject corporation or relevant group entity to a child or group of children
Children retain control	Not applicable	<p>The child or group of children controls the subject corporation and the purchaser corporation</p> <p>Exceptions (see ITA 84.1(2.3) for details):</p> <ul style="list-style-type: none"> • Arm's length disposition of all shares in the capital stock of the purchaser corporation, subject corporation or all relevant group entities • Death or prolonged impairment in physical or mental functions of the child or each of the children; and • Disposition of shares of the purchaser corporation, subject corporation or relevant group entity to a child or group of children
Active business	Not applicable	<p>Each relevant business of the subject corporation and any relevant group entity is carried on as an active business</p> <p>Exceptions (see ITA 84.1(2.3) for details):</p> <ul style="list-style-type: none"> • Arm's length disposition of all shares in the capital stock of the purchaser corporation, subject corporation or all relevant group entities; and • Death or prolonged impairment in physical or mental functions of the child or each of the children; and • Disposition of shares of the purchaser corporation, subject corporation or relevant group entity to a child or group of children • If the business has ceased to be carried on due to the disposition of all the assets that were used to carry on the business in order to satisfy debts of the corporation or entity

Specific criteria necessary for exception to section 84.1 of the ITA	Current rules enacted under Bill C-208 (effective June 29, 2021 to Dec. 31, 2023)	Option 1 Immediate transfer (effective Jan. 1, 2024)	Option 2 Gradual transfer (effective Jan. 1, 2024)
(G) Within 10 years after the disposition time and at all times thereafter			
Taxpayer meets legislative percentages of debt and equity interest	Not applicable	No requirement	QSBC and FFFC – Debt or equity interests in any of the subject corporation, purchaser corporation and any relevant group entity are limited to 30 per cent (QSBC) and 50 per cent (FFFC) of the fair market value of all the debt and equity interests that were owned, directly or indirectly, by the taxpayer and spouse immediately before disposition time.
(H) Other relevant information			
Elections	<p>No election, but the following filing requirements apply:</p> <ul style="list-style-type: none"> • Independent assessment of fair market value of the subject shares • Affidavit signed by third party attesting to disposal of shares • No legislated due date for either <p><i>Per Canada Revenue Agency Include documentation for paper return or retain documentation for electronically filed return</i></p>	Taxpayer and child(ren) file joint election on or before taxpayer's filing due-date for the year that includes the disposition time	
Normal reassessment period	3-year normal reassessment period	Additional 3 years after the end of the 3-year normal reassessment period	Additional 10 years after the end of the 3-year normal reassessment period
Joint liability between taxpayer (vendor) and child(ren)	Not applicable	Parties to the joint election are jointly and severally or solidarily liable for the tax payable by the taxpayer to the extent that the tax payable by the taxpayer is greater than it would have been if the conditions of subsection 84.1(2.31) – immediate option or 84.1(2.32) – gradual option respectively were met.	
Reserve	5-year capital gains reserve. A disposition directly to a child (but not a grandchild) may qualify for a 10-year capital gains reserve under ITA 40(1.1), but not a disposition to a corporation, even if controlled by a child.	10-year capital gains reserve if all conditions for immediate transfer are met.	10-year capital gains reserve if all conditions for gradual transfer are met.

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Capital gains deduction grind	Capital gains deduction grind for taxable capital employed in Canada in excess of \$10,000,000	Not applicable	Not applicable
Restriction on disposition of subject corporation shares	Purchaser corporation cannot dispose of the subject corporation shares to a person not dealing at arm's length with the parent or grandparent within 60 months of original purchase, otherwise than by reason of death	No specific requirement other than those discussed in section (F)	No specific requirement other than those discussed in section (F)

* Spouse also includes common-law partner

** 256 (1.1) Definition of "specified class" means a class of shares of the capital stock of a corporation where, under the terms or conditions of the shares or any agreement in respect thereof,

- (a) the shares are not convertible or exchangeable;
- (b) the shares are non-voting;
- (c) the amount of each dividend payable on the shares is calculated as a fixed amount or by reference to a fixed percentage of an amount equal to the fair market value of the consideration for which the shares were issued;
- (d) the annual rate of the dividend on the shares, expressed as a percentage of an amount equal to the fair market value of the consideration for which the shares were issued, cannot in any event exceed,
 - (i) where the shares were issued before 1984, the rate of interest prescribed for the purposes of subsection 161(1) at the time the shares were issued, and
 - (ii) where the shares were issued after 1983, the prescribed rate of interest at the time the shares were issued; and
- (e) the amount that any holder of the shares is entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length cannot exceed the total of an amount equal to the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends thereon.

Information contained herein is for information purposes only and is not intended to be complete in all respects. It contains draft legislation introduced by way of Notice of Ways and Means Motion in the 2023 federal budget, which is not law and subject to change. We recommend that you consult with a Baker Tilly tax professional before acting on the basis of material contained herein.

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