

BREAKFAST FOR BUSINESS

WINTER WONDERLAND- TAX IN A CHANGING ECONOMY

February 18, 2009

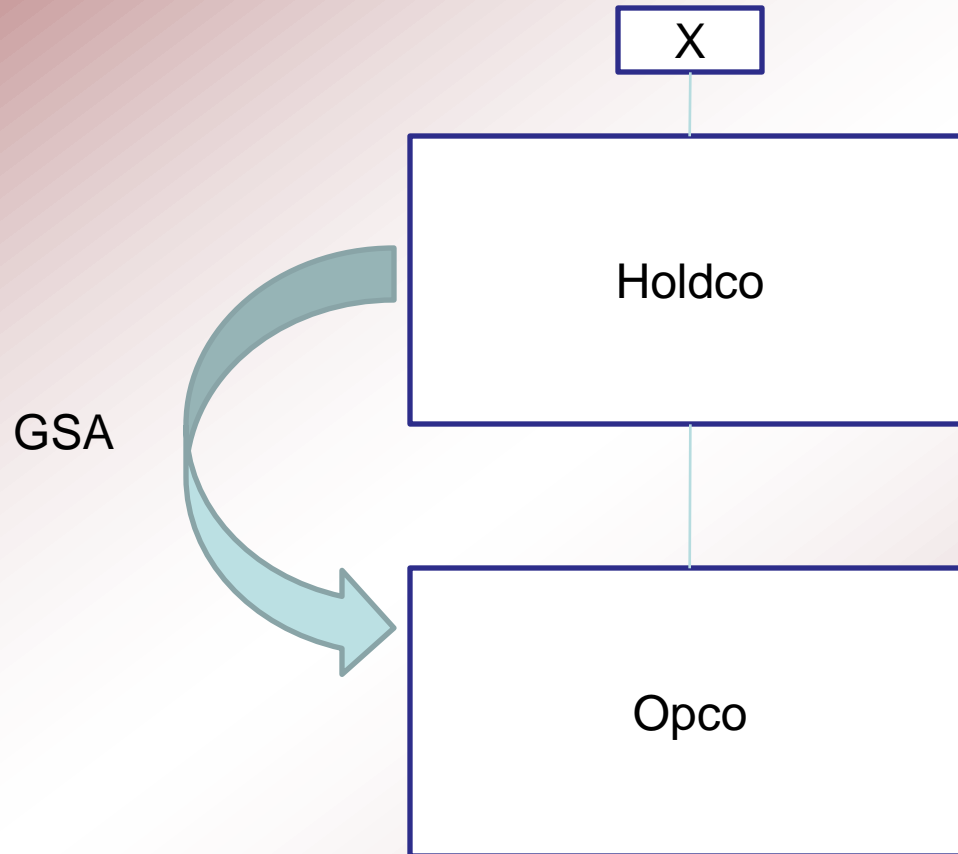
Gwen Benjamin
Rob Martini
Robin MacKnight



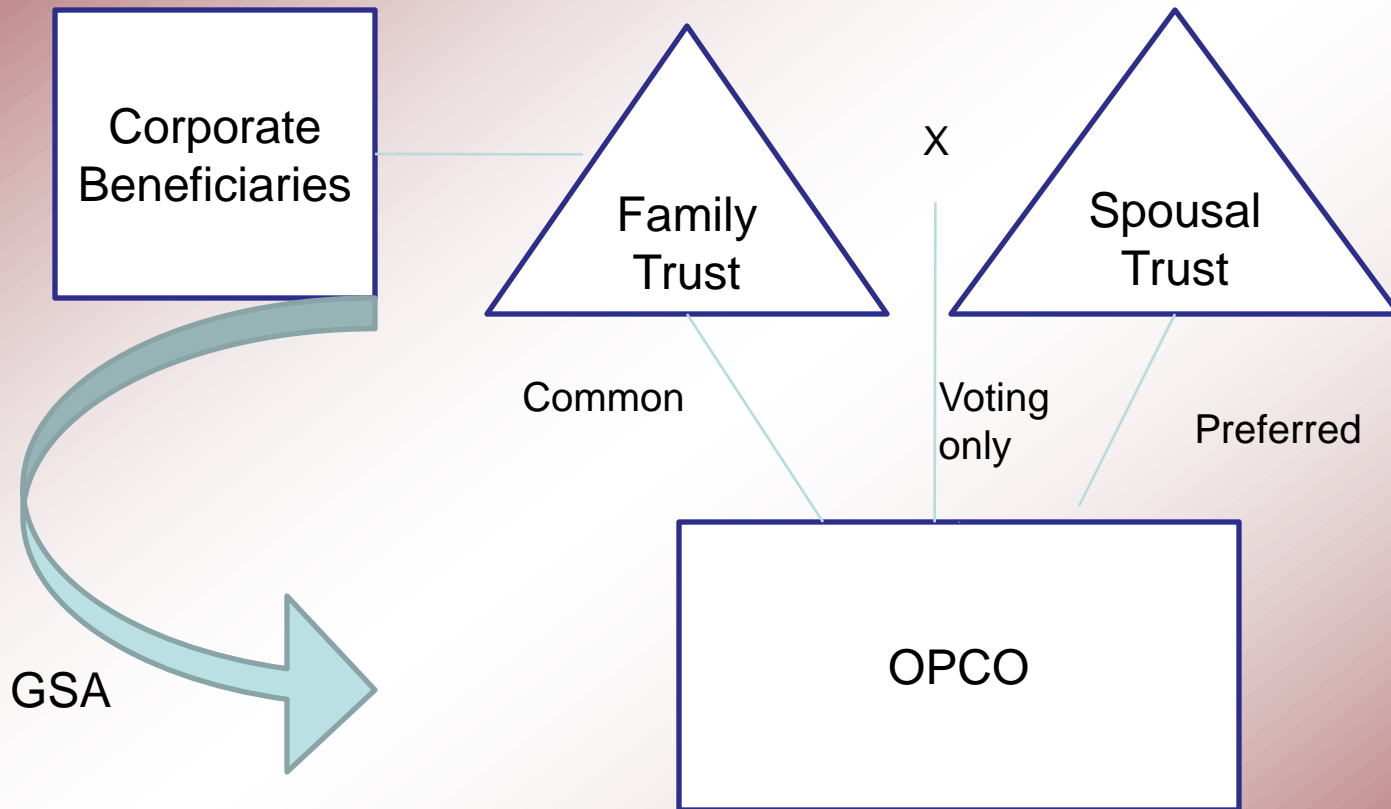
Planning ahead for Tough Times

- Director's liability
- Ownership of assets versus assumption of liabilities
- Two-year rule
- The Queen v. Aujla (FCA)
- Due diligence

Planning Ahead for Tough Times

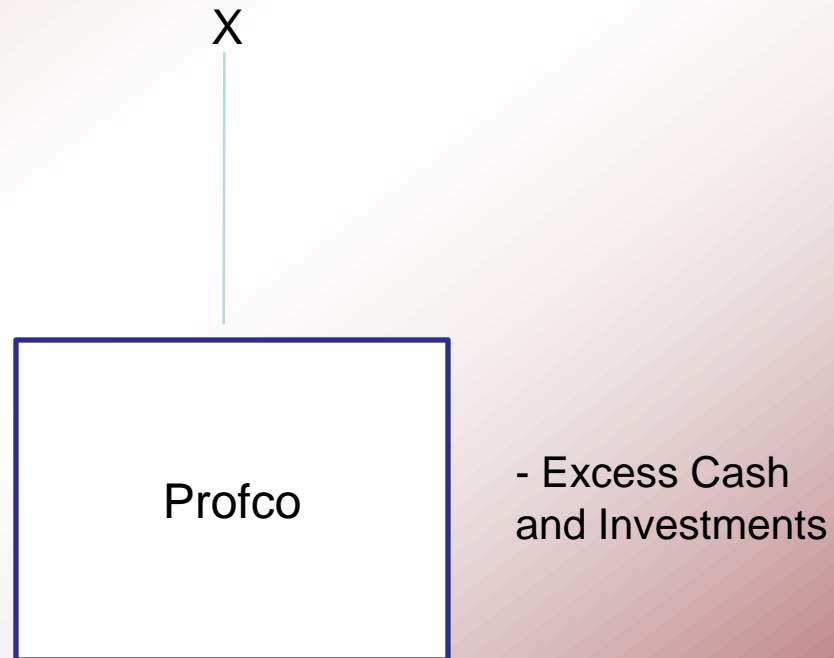


Planning Ahead for Tough Times



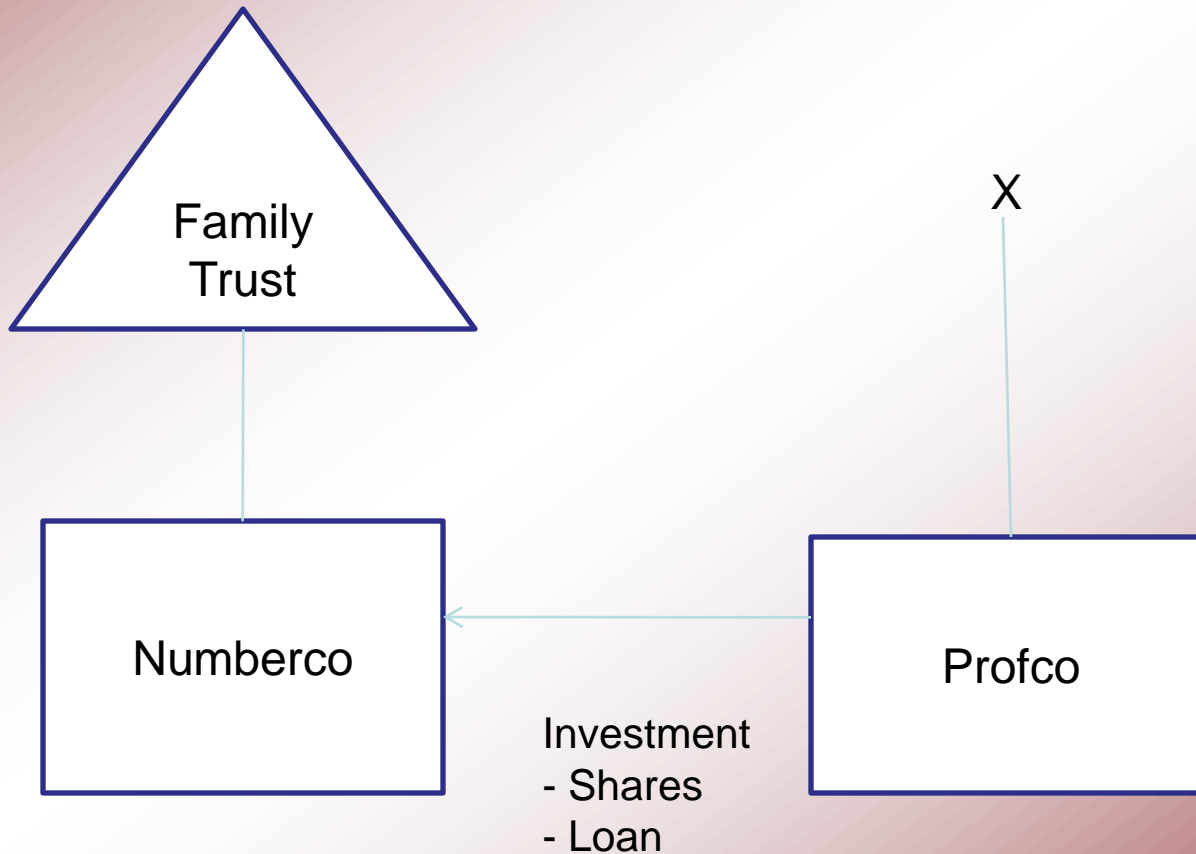
Planning Ahead for Tough Times

- Problem



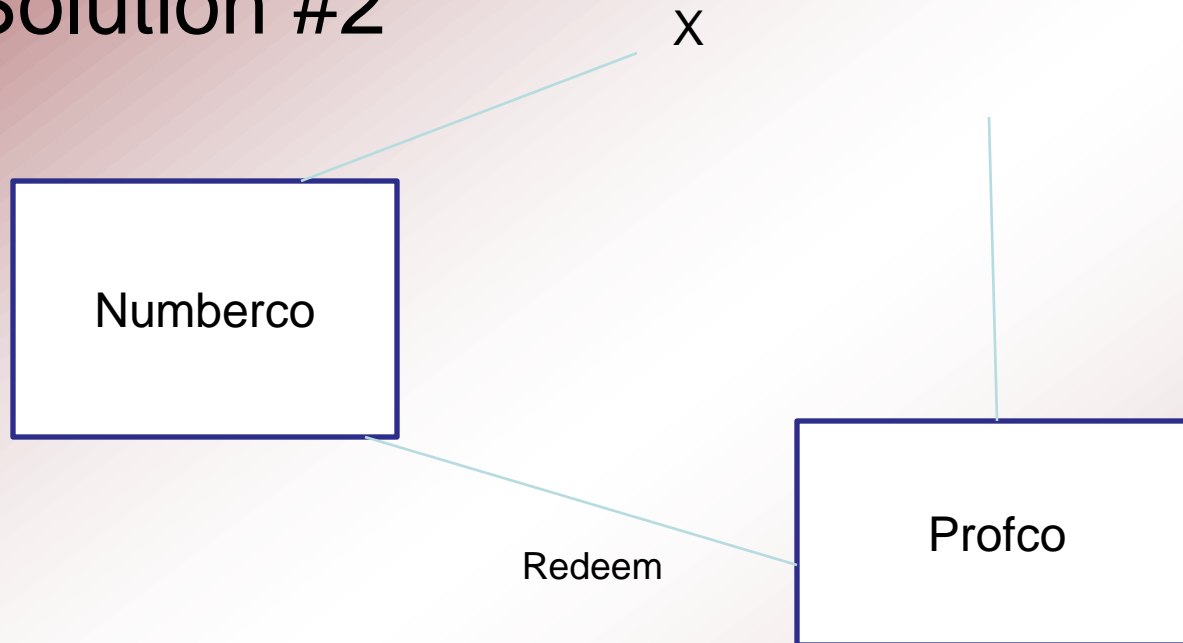
Planning for Tough Times

- Solution #1



Planning for Tough Times

- Solution #2



- 55(3)(a) Redemption
- X transfers Numberco shares to spouse/spousal trust
- Professional Body Rules

Planning for Tough Times

- Need to consider:
 - Tax
 - Corporate Law
 - Bankruptcy/Insolvency Law
 - Provincial Fraudulent Conveyance/Preference Rules
 - Family Law

10-8 Plan

- Insurance company guarantees the policy investment component will earn 8% for a fixed period of 10 years
- The policy is assigned as collateral back to insurance company
- Loan is made to the policy holder at rate of 10%

- Loan proceeds are used to acquire an investment
- Interest deduction – reduced to approximately 5.4% after tax
- Provides a positive spread on the investment

- CRA Round Table – 2008
- Loans secured with life insurance policy, particularly 10/8 plans under CRA review
- Issue – is the interest deductible, does GAAR apply?
- No assessing position yet arrived at

Recent Cases of Interest

- Interest Deduction and GAAR – *Lipson* 2009 DTC 5015 (SCC)
- RTPs and CRA claims for priority
 - *PCL Constructors Westcoast Inc. v. Norex Civil Contractors Inc. et al* 2009 BCSC 95
 - *In re Gabriele* Ontario Superior Court of Justice in Bankruptcy and Insolvency, December 4, 2008



Recent Cases of Interest

- Capital Dividends, Trading and Sham – *2529-1915 Quebec Inc (Langlois and Faraggi)* 2008 FCA 398
- Resulting Trusts and section 160 – *Warren* 2008 TCC 674
- Advances to subsidiaries – capital loss or operating expense – *Valiant Cleaning Technology Inc.* 2008 TCC 637

Recent Cases of Interest

- SRED and Beer – *Blais* 2005 TCC 417
(English translation released February 2009)

