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Tax in a time of transition: Must- know updates for 2025 and beyond



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Agenda

EIFEL

Excessive interest and financing expenses limitation rules

GAAR

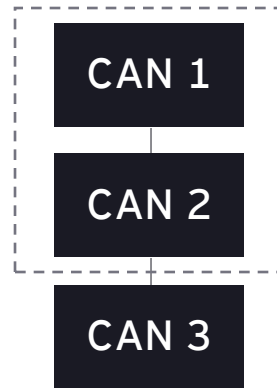
General anti-avoidance rule

MDR

Mandatory Disclosure Rules

Group ratio and reorgs

Starting structure



Ending structure



Group ratio criteria

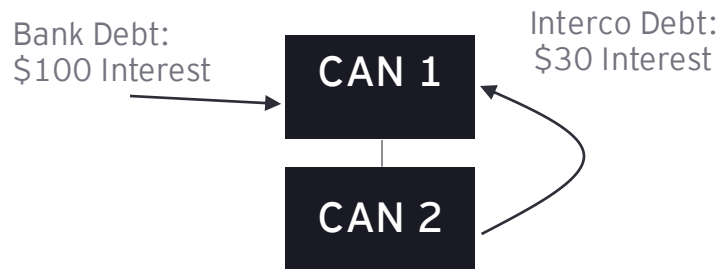
- Eligible group entity in respect of that taxpayer **throughout the relevant period**, and
- A member of the same consolidated group as the taxpayer

Relevant period

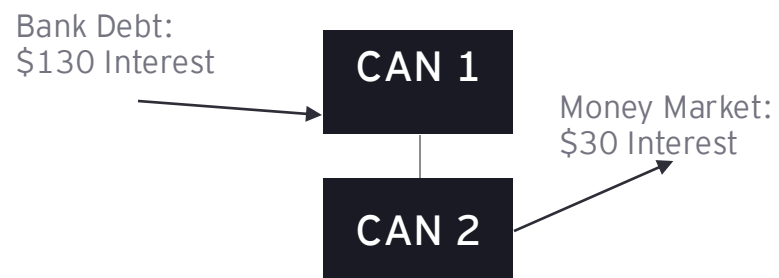
- Audited FS
- “Beginning to end”
- Wind ups, Newcos, AOCs

Group ratio: AGRA and IFR

Interco loan



External interest



Unexpected RIFE

- GANBI: \$200 (A)
- GNIE: \$100 (B)
- GR: 55% (C) = $1.1 \times (B) / (A)$
- Can 1 ATI: \$200 (D)
- Can 2 ATI: \$0 (E)
- Total ATI: \$200 (F) = (D) + (E)
- AGRA: \$100 (G)

Lesser of:

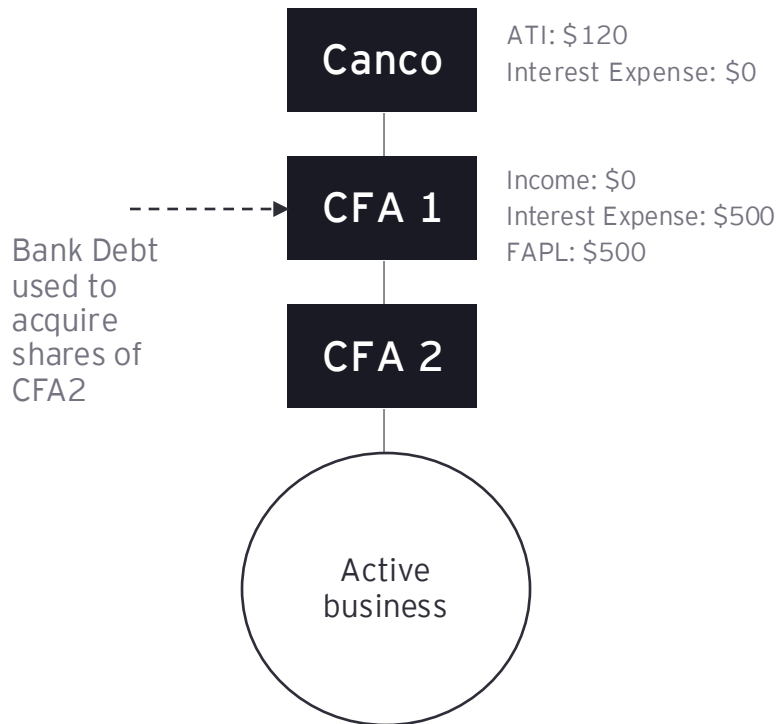
- GNIE (B)
- Total ATI (F)
- Total ATI x GR (F x C)

	Can 1	Can 2
Allocation	\$100	\$nil
IFE	\$130	\$nil
IFR	\$nil	\$30
RIFE	\$30	\$nil
Excess Capacity	\$nil	\$nil

AGRA not increased by IFR

- Self-help may be available for Interco Loans
 - Consider "Excluded Interest" election

EIFEL and CFAs



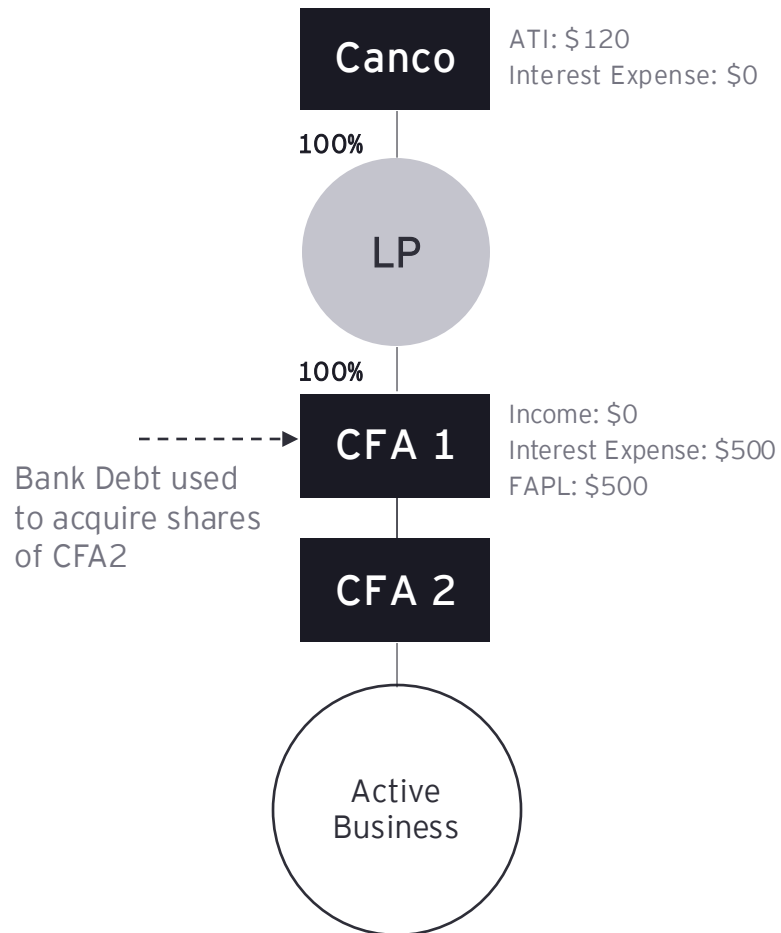
EIFEL rules and CFAs

- Interest paid by CFA1 is “relevant affiliate interest and financing expenses”, (“RAIFE”) which should be included in the IFE of Canco.
- Canco’s IFE is \$500, and not \$0.
- Denial ratio of 92%:
 - $92\% = (\$500 - 30\% \times \$120) / \$500$.
 - Denial ratio applied at both levels:
 - At the level of Canco - no adverse tax implications as Canco does not have any IFE.
 - At the level of CFA1 - add-back of \$460 in computing CFA1’s FAPI/FAPL.
- Canco should have a RIFE of \$460, but FAPL of CFA1 should be reduced to \$40.

Other considerations

- Importance of reviewing the RAIFE of CFAs as this may create unexpected tax cash impact in Canada... or a tax attribute.
- Election to forgo a FAPL to create excess capacity in Canco that can be transferred to another group entity.

Trap: EIFEL and CFAs



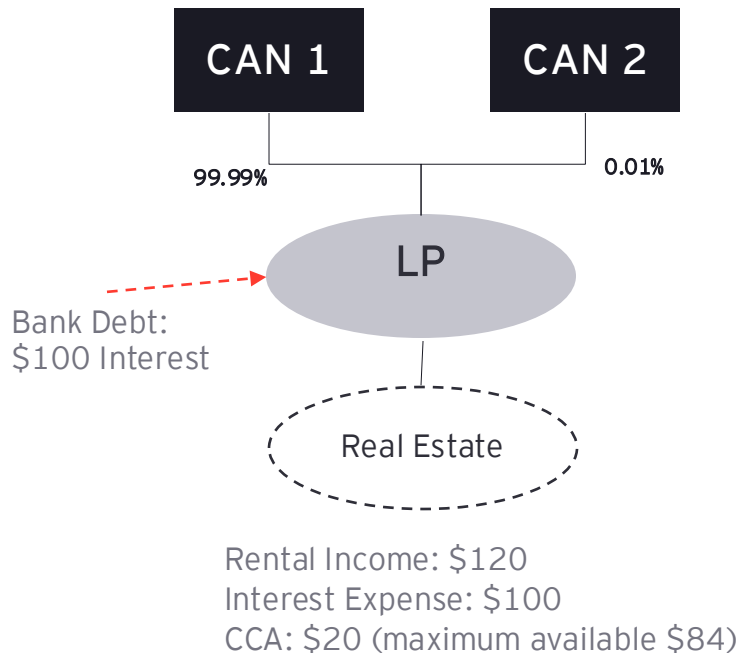
EIFEL rules and CFAs of partnership

- Interest paid by CFA1 is RAIFE, which should be included in the IFE of Canco.
- Canco's IFE is \$500.
- Denial ratio of 92%.
- As the CFAs are below the partnership, the FAPI/FAPL calculation of CFA1 is not impacted by Canco's denial ratio.
- Instead, this should result in an income inclusion pursuant to paragraph 12(1)(l.2) of \$460.
- Canco should have RIFE of \$460, CFA1 should have a FAPL of \$500, but there is a cash tax impact at the level of Canco.

Other considerations

- Consider filing an election to forgo the FAPL of CFA1

Unexpected cash tax: EIFEL and partnerships



EIFEL rules and limitation on partnership losses

- Reg. 1100(11) may limit CCA of LP to \$20 despite additional CCA of \$64 being available
- EIFEL not applicable to LP
- Excessive interest of \$64 added back at Can 1 level pursuant to 12(1)(l.2)
- Not able to claim additional CCA at LP level as income inclusion from restricted interest occurs at Can 1 level

Other considerations

- Ability to separate leverage from asset holdings (tiered structure)

Around we go: EIFEL and existing NOLs

CAN 1

- Net Income for tax: \$1,000
- NOLs applied in the year (before EIFEL rules): \$1,000
- Taxable Income (before EIFEL rules): nil
- Interest Expense: \$400
- NOLs remaining after application of the \$1,000: \$2,000 (arising prior to 2022)

EIFEL rules and limitation on partnership losses

- $A = \text{taxable income} = \text{nil}$
- $B = \text{IFE } (\$400) + 25\% \text{ of specified pre regime losses } (\$250) = \$650$
- $C = \text{IFR} = \text{nil}$
- $\text{ATI} = \$650$
- Capacity: $\$195 (\$650 \times 30\%)$
- RIFE: $\$205$ (offset by losses)

- $A = \text{taxable income} = \text{nil}$
- $B = \text{IFE } (\$400) + 25\% \text{ of specified pre regime losses } (\$301) = \$701$
- $C = \text{IFR} = \text{nil}$
- $\text{ATI} = \$701$
- Capacity: $\$210 (\$701 \times 30\%)$
- RIFE: $\$190$ (\$15 reduction to losses used)

- Iterative calculation
- Equilibrium eventually reached

Other considerations

Finance is aware:

- Joint committee
- CPA Canada EIFEL working group

General Anti-Avoidance Rule (GAAR)

Introduction of the "economic substance" concept

- When a transaction lacks economic substance, this is a critical factor that suggests the avoidance transaction could be considered an abuse.
- This applies to transactions taking place on or after January 1, 2024.

Penalties

- A penalty of 25% will be imposed, along with an extension of 3 years to the audit limitation period.
- Exceptions include:
 - If disclosed to the CRA voluntarily or categorized as reportable or notifiable transactions.
 - If the transaction closely resembles those that have already received administrative guidance from the CRA.
- There is no defense for due diligence.
- These penalties apply to transactions occurring on or after June 20, 2024.



GAAR cont'd

Canadian courts have not had the chance to consider the application of the new GAAR

On December 20, 2024, the CRA published its views on the GAAR in a new webpage: [General anti-avoidance rule \(GAAR\) - Canada.ca](https://www.cra.ca/General-anti-avoidance-rule-GAAR)

- Purpose of GAAR and relationship between CRA and Finance GAAR Committee
- Examples of transactions subject to GAAR (i.e., surplus stripping, creation of artificial capital loss, discretionary trust and the avoidance of the 21-year deemed disposition)
- Taxpayers can proactively send examples of transaction to which CRA should consider applying GAAR

Disclosure of GAAR transaction – what we see in practice



Mandatory Disclosure Rules (MDR)

Taxpayers need to report:

- Reportable transactions and notifiable transactions - Form RC312
- Uncertain tax treatment (RUTT) - Form RC3133
- Similar obligations exist at the Quebec level - which predates the federal MDR
 - **RUTT** - separate Form CO-1079.TF-T

Revenue Quebec published a new type of Determined Transaction on May 29, 2024

- Targets estate freeze through the payment of a dividend in preferred shares with high redemption value and low issued and paid-up capital stock
- Does not apply to estate freeze involving small business corporation

RUTT

- Applies to taxation years starting after 2022, therefore for taxpayers with a December 31 taxation year end the first filing deadline was June 30, 2024.
- CRA View 2024-1042821E5
 - CRA indicates that a multi-year RUTT must be reported for each year and that it is "reflected" in the FS if it impacts them

MDR cont'd

Notifiable transactions and cross-border cash pooling arrangement

CRA provided guidelines at the 2024 IFA conference – these guidelines have been included on the CRA's MDR webpage

- Filing is generally not required for a Canadian taxpayer participating in a cross-border cash pooling arrangement who is (and is reasonably expected to remain) solely a creditor.
- When the Canadian taxpayer is a debtor and at least one non-resident member of the pool resides in a jurisdiction with a higher interest withholding tax than the rate applicable to the intermediary, the arrangement would be required to be disclosed where:
 - The taxpayer takes the position that the debt or other obligation owing by it is not subject to the thin capitalization rules, or
 - The taxpayer considers that the interest is subject to the lower rate of withholding tax applicable to the intermediary



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Joannie is a partner in the International Tax Services group in Montreal. Joannie has assisted various Canadian and foreign multinational companies across a broad range of industries. She has advised both in-bound and out-bound clients on international tax issues, reorganization transactions, financing structures, mergers and acquisitions, and compliance matters.

Joannie has presented at both the IFA Canada International Tax Conference and the Tax Executive Institute International Day Conference and has contributed to International Tax Highlights and to updates of the book Taxation of Foreign Affiliates.

She has a Bachelor of Business Administration, a Bachelor of Law (LL.B.) and a Master of Law (Tax) from HEC Montréal / University of Montréal. She is a member of the Barreau du Québec, the Canadian Tax Foundation and the International Fiscal Association.



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Florie has been a lecturer at the University of Montreal (2012 to 2015) and the Association de Planification Fiscale et Financière (2012 to 2018) and the Canadian Tax Foundation (2024 to 2025). Florie also lectured on international tax topics as part of CPA Canada's In Depth Tax Program (2020-2022) and acted as a tutor for the CPA Canada's In Depth Corporate Reorganization Course (2023 to 2024).

She also published articles on various tax topics. She is notably a co-author of various chapters of the Introduction to International Tax in Canada book published by Carswell.



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