

Legislative Proposals Relating to the Income Tax Act

Employee Life and Health Trusts

1 (1) Paragraph 144.1(2)(c) of the *Income Tax Act* is replaced by the following:

(c) the trust meets one of the following two conditions:

(i) the trust is required to be resident in Canada determined without reference to section 94, and

(ii) if the condition in subparagraph (i) is not met, it is the case that

(A) employee benefits are provided to employees who are resident in Canada and to employees who are not resident in Canada,

(B) one or more participating employers are employers who are resident in a country other than Canada, and

(C) the trust is required to be resident in a country in which a participating employer resides;

(2) The portion of paragraph 144.1(2)(d) of the Act before clause (ii)(A) is replaced by the following:

(d) the trust may not have any beneficiaries other than persons each of whom is

(i) an employee of a participating employer or former participating employer,

(ii) an individual who, in respect of an employee of a participating employer or former participating employer, is (or, if the employee is deceased, was, at the time of the employee's death)

(3) Subsection 144.1(2) is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (g) and by repealing paragraph (h).

(4) Paragraph 144.1(2)(i) of the Act is replaced by the following:

(i) a majority of the trustees must deal at arm's length with each participating employer.

(5) Paragraph 144.1(3)(a) of the Act is replaced by the following:

(a) is not operated in accordance with the terms required by subsection (2) to govern the trust, unless it reasonable to conclude that its trustees neither knew nor ought to have known that designated employee benefits have been provided to, or contributions have been made in respect of, beneficiaries other than those described in subparagraph (2)(d)(i) or (ii); or

(6) Subsection 144.1(6) of the Act is replaced by the following:

Deductibility – collective agreement

(6) Notwithstanding subsection (4) and paragraph 18(9)(a), an employer may deduct in computing its income for a taxation year the amount that it is required to contribute for the year to an employee life and health trust if the following conditions are met at the time that the contribution is made:

(a) the employer contributes to the trust under a collective bargaining agreement, or a participation agreement in respect of the collective bargaining agreement, and in accordance with a negotiated contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the trust; and

(b) contributions that are to be made by each employer are determined, in whole or in part, by reference to the number of hours worked by individual employees of the employer or some other measure that is specific to each employee with respect to whom contributions are made to the trust.

(7) Section 144.1 of the Act is amended by adding the following after subsection (13):

Conditions — deemed employee life and health trust

(14) Subsection (15) applies in respect of a trust if

- (a)** the trust was established before February 28, 2018;
- (b)** the contributions to the trust are determined under a collective bargaining agreement;
- (c)** all or substantially all of the employee benefits provided by the trust are designated employee benefits; and
- (d)** the trust elects in prescribed form and manner that subsection (15) applies as of a particular date that is after 2018.

Deemed employee life and health trust

(15) If this subsection applies in respect of a trust,

- (a)** the trust is deemed for the purposes of this Act to be an employee life and health trust from the particular date referred to in paragraph (14)(d) until the earliest of
 - (i)** the effective date of the next collective bargaining agreement, relating to benefits under the trust, that is entered into after Announcement Date,
 - (ii)** the end of 2022,
 - (iii)** the day that the trust satisfies the conditions in subsection (2), and
 - (iv)** the day on which the condition in paragraph (14)(c) is no longer satisfied; and
- (b)** at any time that the trust is an employee life and health trust because of paragraph (a),
 - (i)** subsection 111(7.5) applies to the trust as if the reference in that subsection to “subsection 144.1(3)” were read as a reference to “paragraph 144.1(3)(b)”, and
 - (ii)** subsection 144.1(3) applies to the trust without reference to its paragraph (a).

Trust-to-trust transfer

(16) If a property is transferred from a trust that provides employee benefits substantially all of which are designated employee benefits (referred to in this subsection as the “transferor trust”) to an employee life and health trust (referred to in this subsection as the “receiving trust”), and if the Minister has been so notified in prescribed form, then

- (a)** the transferred property is deemed to have been disposed of by the transferor trust, and to have been acquired by the receiving trust, for an amount equal to the cost amount of the property to the transferor trust immediately before the disposition; and
- (b)** section 107.1 does not apply to the transfer.

Deductibility of transferred property

(17) If subsection (16) applies to a transfer of property to an employee life and health trust, the transfer shall not be considered to be a contribution to the employee life and health trust for the purposes of subsections (4) and (6).

(8) Subsections (1) to (7) are deemed to have come into force on February 27, 2018. As of that date, section 144.1 of the Act, as amended by subsections (1) to (7), applies in respect of trusts regardless of the date that the trust was established.

2 (1) The Act is amended by adding the following after Part XI.4:

PART XI.5

Tax in Respect of Employee Life and Health Trust

Definitions

207.9 (1) The following definitions apply in this Part.

participating employer of an employee life and health trust means an employer who is required to make contributions to the employee life and health trust in respect of the employer's employees. (*employeur participant*)

prohibited investment, at any time for an employee life and health trust, means property that is at that time

- (a) a share of the capital stock of, an interest in or a debt of
 - (i) a participating employer of the employee life and health trust, or
 - (ii) a person or partnership that does not deal at arm's length with a participating employer of the employee life and health trust; or
- (b) an interest (or, for civil law, a right) in, or a right to acquire, a share, interest or debt described in paragraph (a). (*placement interdit*)

Tax payable on prohibited investment

(2) A trust shall pay a tax under this Part for a calendar year if, at a time in the year while the trust is an employee life and health trust,

- (a) the trust acquires property that is a prohibited investment for the trust; or
- (b) income is received or becomes receivable by the trust from, or the trust has a taxable capital gain from the disposition of, a prohibited investment for the trust.

Amount of tax payable

(3) The amount of tax payable in respect of each property described in subsection (2) is

- (a) if paragraph (2)(a) applies, 50% of the fair market value of the property at the time it is acquired; and
- (b) if paragraph (2)(b) applies, 50% of the income or the taxable capital gain.

Refund

(4) If in a calendar year a trust disposes of a property in respect of which a tax is imposed on the trust under subsection (2), the trust is entitled to a refund for the year of an amount equal to

- (a) the amount of the tax so imposed, unless paragraph (b) applies; or
- (b) nil, if
 - (i) it is reasonable to consider that the trust knew, or ought to have known, at the time the property was acquired that it was, or would become, a property described in subsection (2), or
 - (ii) the property is not disposed of by the trust before the end of the calendar year following the calendar year in which the tax arose, or any later time that the Minister considers reasonable in the circumstances.

Deemed disposition and reacquisition

(5) If, at any time, a property held by an employee life and health trust ceases to be, or becomes, a prohibited investment for the trust, it is deemed to have disposed of the property immediately before that time for proceeds of disposition equal

to the fair market value of the property at that time and to have reacquired the property at that time at a cost equal to that fair market value.

(2) Subsection (1) applies to the 2014 and subsequent taxation years.

3 (1) The portion of the definition *employee benefit plan* in subsection 248(1) of the Act before paragraph (b) is replaced by the following:

employee benefit plan means an arrangement under which contributions are made by an employer or by any person with whom the employer does not deal at arm's length to another person (in this Act referred to as the "custodian" of an employee benefit plan) and under which one or more payments are to be made to or for the benefit of employees or former employees of the employer or persons who do not deal at arm's length with any such employee or former employee (other than a payment that, if section 6 were read without reference to its subparagraphs (1)(a)(i) and (ii) and paragraph (1)(g), would not be required to be included in computing the income of the recipient or of an employee or former employee), but does not include any portion of the arrangement that is

(a) a deferred profit sharing plan, an employee life and health trust, an employees profit sharing plan, a pooled registered pension plan, a registered pension plan or a supplementary unemployment benefit plan,

(a.1) a plan (other than a plan that is administered or provided by a trust) that is a group sickness or accident insurance plan, a group term life insurance policy or a private health services plan,

(2) Subsection (1) comes into force on January 1, 2021.

