Legislative Proposals Relating to the Income Tax Act

Employee Life and Health Trusts

1 (1) Subsection 111(7.4) of the *Income Tax Act* is replaced by the following:

Non-capital losses of employee life and health trusts

(7.4) For the purposes of computing the taxable income of an employee life and health trust for a taxation year, there may be deducted such portion as the trust may claim of the trust's non-capital losses for the seven taxation years immediately preceding and the three taxation years immediately following the year.

(2) Subsection (1) is deemed to have come into force on February 27, 2018.

2 (1) The definition *designated employee benefit* in subsection 144.1(1) of the Act is replaced by the following:

designated employee benefit means a benefit that is

(a) from a group sickness or accident insurance plan;

(b) from a group term life insurance policy;

(c) from a private health services plan;

(d) in respect of a counselling service described in subparagraph 6(1)(a)(iv); or

(e) not a death benefit, but that would be a death benefit if the amounts determined for paragraphs (a) and (b) in the definition *death benefit* in subsection 248(1) were nil. (*prestation désignée*)

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

(a) the only purpose of the trust is to provide benefits to, or for the benefit of, persons described in subparagraphs (d)(i) or (ii) and all or substantially all of the total cost of the benefits is applicable to designated employee benefits;

(3) Paragraph 144.1(2)(c) of the 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;

(4) 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)

(5) Paragraph 144.1(2)(e) of the Act is replaced by the following:

(e) the trust meets one of the following conditions:

(i) it contains at least one class of beneficiaries where

(A) the members of the class represent at least 25% of all of the beneficiaries of the trust who are employees of the participating employers under the trust, and

(B) either of the following conditions is met:

(I) at least 75% of the members of the class are not key employees of any of the participating employers under the trust, or

(II) the contributions to the trust in respect of key employees who deal at arm's length with their employer are determined under a collective bargaining agreement, or

(ii) in respect of the private health services plan under the trust, the total cost of benefits provided to each key employee (or to each person described in subparagraph (2)(d)(ii) in respect of the key employee) in relation to the year does not exceed the amount determined by the formula

$$A(B/C)$$

where

A is $2,500,

B is the number of days in the year that the key employee was employed on a full-time basis by an employer that participates in the plan, and

C is the number of days in the year;

(6) Subsection 144.1(2) of the Act is amended by adding "and" at the end of paragraph (g) and by repealing paragraph (h).

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

(i) trustees who do not deal at arm's length with one or more participating employers must not constitute the majority of the trustees of the trust.

(8) Subsection 144.1(3) of the Act is replaced by the following:

Breach of terms, etc.

(3) No amount may be deducted in a taxation year by an employee life and health trust pursuant to subsection 104(6) if in the taxation year the trust

(a) is not operated in accordance with the terms required by subsection (2) to govern the trust, unless it is 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

(b) provides any benefit for which, if the benefit had been paid directly to the employee and not out of the trust, the contributions or premiums would not be deductible in computing the income of an employer in respect of any taxation year.

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

Deductibility — collectively bargained or similar agreement

(6) Despite 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 in accordance with a contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the trust and either of the following conditions is met:

(i) if there is a collective bargaining agreement, the trust provides benefits

(A) negotiated under the collective bargaining agreement, or

(B) under a participation agreement that are substantially the same as under the collective bargaining agreement, or

(ii) in any other case, the trust provides benefits in accordance with an arrangement that meets the following conditions:

(A) there is a legal requirement for each employer to participate in accordance with the terms and conditions that govern the trust,

(B) there are a minimum of 50 beneficiaries under the trust who are employees of the participating employers in respect of the trust, and

(C) each employee who is a beneficiary under the trust deals at arm's length with each participating employer in respect 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.

(10) 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 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 the 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 end of 2022,

(ii) the day that the trust satisfies the conditions in subsection (2), and

(iii) any day on which the condition in paragraph (14)(c) is not 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).

Requirement to file

(18) A trust shall, on or before its first filing-due date after 2021, notify the Minister in prescribed form that it is an employee life and health trust if

(a) prior to February 27, 2018 it provided employee benefits substantially all of which are designated employee benefits;

(b) after February 26, 2018, it becomes an employee life and health trust because it satisfies the conditions in subsection (2); and

(c) subsections (15) and (16) do not apply to the trust.

(11) Subsections (1) to (10) 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 (10), applies in respect of trusts regardless of the date that the trust was established.

3 (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) In this Part,

participating employer of an employee life and health trust means an employer that provides designated employee benefits for its employees through a trust that meets the conditions described in subsection 144.1(2). (*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 any 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 under 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 trustees 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 employee life and health trust, the employee life and health trust 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.