Corporate insurance borrowing arrangements

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Insurance

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Private corporations often earn income that is not immediately required for business reasons. The corporation may decide to distribute the income/profit to shareholders as a bonus or taxable dividend. The shareholders can use it to acquire investments for personal or retirement savings purposes. Alternatively, the after-tax profits can be retained and invested by the corporation. Corporate investments can subsequently be used to fund business growth or supplement the retirement income of shareholders or key employees.

Another option that the corporation may consider is life insurance. Life insurance offers the dual benefit of insurance protection and the ability to accumulate capital in the policy in the form of a cash surrender value up to prescribed limits on a tax-deferred basis.[1] Thus, in addition to providing valuable life insurance protection for the business, a corporate-owned exempt life insurance policy can be an effective way to utilize corporate surplus.

Should the need arise, a corporation can access the cash surrender value of an insurance policy. Common methods include taking a policy loan or withdrawing cash from the policy. However, these policy transactions are treated as a disposition of the policy and may trigger tax reporting of policy gains.[2]

On the other hand, the collateral assignment of a policy to a financial institution as security for a loan is not treated as a disposition of the policy.[3] Collateral borrowing against a policy may also create the possibility of additional tax deductions for the corporation.

This guide to corporate insurance borrowing arrangements reviews a couple of potential ways to structure borrowing arrangements involving corporate-owned life insurance. These arrangements create a source of cash that may be used:

- To supplement retirement income of shareholders and key employees (retirement borrowing arrangements); or
- For business investment purposes (immediate financing arrangements).

Corporate retirement borrowing arrangements

In addition to obtaining life insurance protection against the untimely death of a shareholder or key employee, the corporation may accumulate capital within a corporate-owned life insurance policy on a tax-deferred basis up to the limits prescribed in the Income Tax Act. In future, the corporation may borrow against this accumulating capital to supplement the retirement income of a retiring shareholder or key employee.

How does it work?

The corporation may directly borrow against the insurance policy or facilitate loans to a shareholder by collaterally assigning the policy as security for the shareholder loan. These two arrangements would involve the following:

(a) Corporate borrowing

The corporation acquires a permanent life insurance policy on the life of the shareholder or key employee and funds the policy to the extent permissible to create a higher cash surrender value in the policy. The cash surrender value grows on a tax-deferred basis subject to the limits prescribed in the Income Tax Act. Premiums are funded from the after-tax profits of the corporation.

Once the life insured retires, the corporation may establish a line of credit or loan facility with a financial institution, using the policy's cash surrender value as collateral security. Depending on the type of policy and the underlying investment accounts, the financial institution may lend up to 90% of the cash surrender value of the policy. The loan interest may be paid annually or effectively capitalized.

As discussed, obtaining a loan secured by a life insurance policy does not result in the disposition of the policy by the corporation. Further, assuming that the loan is used for business purposes, interest expense and collateral insurance deductions (as discussed below) may be available.

The taxation of the loan proceeds on distribution by the corporation to the shareholder/life insured will depend on whether such payments are treated as employment income (fully taxable) or taxable dividends (eligible for the dividend tax credit). Where the amount is paid as employment income, the corporation will be able to deduct this amount as a business expense.

The loan may be repaid at any time. However, upon the death of the life insured, the lender will be repaid from the insurance death benefit with the remaining death benefit received tax-free by the corporation.[4] The corporation will also be entitled to a credit to its capital dividend account, generally equal to the full amount of the death benefit less the adjusted cost basis of the policy.[5] This may permit the payment of tax-free capital dividends to the shareholders of the corporation (which may include the estate of the deceased shareholder) who are residents of Canada.[6]

(b) Shareholder borrowing

It may also be possible for the shareholder (who is the life insured) to borrow using a corporate-owned policy. In this case, the corporation agrees to guarantee the shareholder loan and assign the insurance policy as collateral security to the financial institution. Again, depending on the type of policy and the underlying investment accounts, the financial institution may lend up to 90% of the cash surrender value of the policy. The loan interest may be paid annually or effectively capitalized. The collateral loan will not result in a taxable disposition of the policy to the corporation, and the proceeds of the loan will not be considered taxable income of the shareholder.

A shareholder benefit may be assessed where the interest rate being charged is lower due to the corporate guarantee and security. However, a shareholder benefit may be avoided/reduced by the shareholder paying a commercially reasonable guarantee fee to the corporation for providing the guarantee and security. What constitutes a reasonable fee is a question of facts.

The loan may be repaid by the shareholder at any time. However, upon the death of the life insured, the lender will be repaid from the insurance death benefit with the remainder being received tax-free by the corporation.[7] The corporation will also be entitled to a credit to its capital dividend account, generally equal to the full amount of the death benefit less the adjusted cost basis of the policy.[8] This may permit the payment of tax-free capital dividends to the shareholders of the corporation (which may include the estate of the deceased shareholder) who are residents of Canada.[9]

Upon repayment of the loan using the insurance death benefit, a shareholder benefit may also arise to the extent the life insurance proceeds (to which the corporation is entitled) are used to repay the shareholder loan. This may be avoided by the shareholder's estate providing additional security for the loan. If this is not feasible, the loan repayment from the life insurance death benefit could be set up as a shareholder loan, with the loan offset by the corporation paying tax-free capital dividends (resulting from the life insurance proceeds) to the shareholder's estate. In both cases, the estate needs to be a shareholder after the death of the insured shareholder so it can receive the dividend.

Given the potential for the Canada Revenue Agency (CRA) to assess a shareholder benefit under this type of arrangement, it is important that the shareholder consult with their tax and legal advisors before implementing this arrangement.

Corporate insurance immediate financing arrangements

Business owners often face competing demands for the capital they may have available. For example, the business may need long-term life insurance protection on the life of a shareholder or a key employee. At the same time, the cash may also be needed for other business operations and projects. The immediate financing arrangement may be a possible option to consider in such situations. It may help facilitate the purchase of corporate-owned life insurance while minimizing the after-tax cash required to own the insurance policy. To accomplish this, the corporation borrows against the cash surrender value of the policy immediately after making a premium payment. The proceeds of this loan are then reinvested in the business.

How does it work?

Corporate insurance immediate financing arrangements involve many of the same steps as corporate retirement borrowing arrangements. They typically involve the corporation using the cash surrender value of a life insurance policy as collateral security for a loan. However, under an immediate financing arrangement, the loan facility is established at the time the policy is acquired and drawn on immediately after each premium has been paid.

The purpose of the borrowing is to replace most of the capital used to fund the insurance premiums. Where permissible, a deduction can also be claimed for the loan interest. In effect, the loan (and allowable tax deductions for interest and insurance costs) reduces the cash cost to the corporation of funding the insurance policy. While the loan may be repaid at any time, upon the death of the insured, the outstanding loan balance and accrued interest will be repaid using the insurance death benefit. Generally, it is anticipated that even after repaying the outstanding loan, the corporation will still receive a portion of the death benefit.

Consider the following example:

B's Opco requires $2 million of life insurance for business purposes. B is the sole shareholder of Opco, which has capital available for other business purposes. B has been provided with an illustration for a permanent insurance policy with premiums payable over a 10-year period. However, B is concerned with using corporate capital for the purchase of a permanent insurance policy as this capital is required for other business purposes. Instead, B would prefer to purchase low-cost term insurance.

To address B's concerns, the insurance advisor recommends that Opco establish a credit facility with its financial institution, which will allow Opco to borrow up to 90% of the cash surrender value of the policy, using the policy as security. The borrowed funds will be invested in Opco's business. As the borrowed funds are used for earning taxable income from business or property, Opco will be able to claim the interest and collateral insurance deductions, subject to meeting the Income Tax Act requirements. This will reduce the after-tax cash cost of the policy. In effect, this loan replaces much of the corporate cash used to fund the insurance policy. As additional deposits are made (combined with the tax-deferred growth in the policy), additional funds can be borrowed against the policy. The outstanding loan balance at the time of death and the accrued interest will be repaid from the policy's death benefit. The remaining death benefit can be retained by Opco or distributed to B's estate as a tax-free capital dividend.

Immediate financing arrangements may also be structured with the corporation as the policy owner and premium payor, and the shareholder as the borrower. As discussed in the section on corporate retirement borrowing arrangements, steps should be taken to minimize potential shareholder benefits that may arise, and such arrangements may be considered only after consulting with tax and legal advisors.

What are the benefits of corporate insurance borrowing arrangements?

The following outlines the key benefits of using corporate insurance borrowing arrangements. Please note that the RBC Insurance® Life Insurance for Business Owners Advisor Guide discusses these topics in additional detail.

(a) Tax-deferred accumulation

Any accumulating income on the policy reserve of an exempt life insurance policy up to the prescribed limit is not subject to accrual taxation.[10] Thus, much like a registered retirement savings plan, the growth of the cash surrender value of an exempt life insurance policy is not subject to tax provided there are no policy transactions that result in a taxable disposition.[11] The cash surrender value of the insurance policy (which secures the loan and accruing interest) grows on a tax-deferred basis, while the interest costs associated with the arrangement may be tax-deductible as discussed below.

(b) Tax-free death benefit

The payment of a benefit under an exempt life insurance policy as a result of the death of a life insured is not considered to be a disposition of the policy.[12] Thus, the full amount of the death benefit under an exempt life insurance policy can be paid to the corporate beneficiary on a tax-free basis. As well, any portion of the policy's cash reserve that is included in the death benefit will not be subject to taxation. Thus, the tax-deferred growth in the policy may be converted to a tax-free death benefit. This tax-free death benefit is available to repay the loan and accrued interest on the death of the life insured.

(c) Credit to the capital dividend account

The capital dividend account is a notional tax account that tracks certain amounts received by a private corporation that would have been tax-free had the shareholders of the corporation received them directly.[13] Generally, the excess of a death benefit over the adjusted cost basis of the policy received by the corporate beneficiary is included in the calculation of the capital dividend account balance. A corporation can pay a tax-free capital dividend from its capital dividend account to its Canadian-resident shareholders.[14]

The portion of the death benefit equal to the adjusted cost basis can be distributed to shareholders as a taxable dividend. However, the adjusted cost basis of an insurance policy generally declines to nil near life expectancy. Consequently, the amount of death benefit that can be credited to the capital dividend account increases as the life insured grows older.

Also, it is important to note that even though a portion of the death benefit may be used to repay the outstanding loan on the death of the shareholder due to the collateral assignment of the policy, the corporation is still entitled to the full credit to its capital dividend account arising from the insurance policy.[15] Thus, the corporation can pay capital dividends in the future out of business profits or other sources of income to its shareholders who are residents of Canada.

(d) Deductions for collateral borrowing

Where the loan proceeds are used to earn taxable income from a business or property, the loan interest may be deductible.[16]

In addition, there is another deduction that may be available where the policy is used for income-generating purposes, referred to as the collateral insurance deduction.

In order to claim the collateral insurance deduction, the following conditions[17] must be satisfied:

- The policyholder must be the borrower.
- The policy must be collaterally assigned for a loan from a restricted financial institution,[18] which includes a bank, an insurance company or a trust company.[19]
- The interest payable on the loan must be deductible for income tax purposes.
- The assignment of the policy must be required by the lender as collateral for the loan.

If the above criteria are met, the deduction is equal to that portion of the lesser of the following two amounts that relates to the loan amount owing from time to time during the year:

- The premiums payable for the year; and
- The policy's net cost of pure insurance for the year.

The ability to claim the interest expense and collateral insurance deductions can further reduce the after-tax cash cost of an insurance borrowing arrangement. However, it is important to note that if the borrower is the shareholder, and the loan is secured by a policy owned by the corporation, the collateral insurance deduction will not be available.

(e) Continued access to the small business deduction

The small business deduction reduces the tax rate on the first $500,000 of active business income earned annually by a private corporation.[20] This results in significantly less taxes being paid on business income earned by a corporation in relation to earning that income through a sole proprietorship.[21] Before 2018, if the after-tax profits that benefited from the small business deduction were not required for business purposes, there was a potential tax advantage to the corporation investing those funds rather than distributing those profits to the shareholders to invest. This is due to the fact that there was an additional tax levied on the dividends, which reduced the after-tax amount available to invest by the shareholder. It is important to note that investment income earned by a corporation is taxed at a rate similar to the top marginal tax rates applicable to personal investment income. Therefore, the main benefit would be having more capital available to invest in the corporation.

Because of the potential tax benefits arising from the corporation investing after-tax profits that benefit from the small business deduction, eligibility for the small business deduction is now reduced once a corporation (and associated corporations) earns more than $50,000 of the adjusted aggregate investment income (AAII) in the immediately preceding taxation year. For every dollar of investment income earned by the corporation in excess of $50,000, the small business deduction limit is reduced by five dollars. Thus, the small business deduction will be fully eliminated once the corporation's AAII exceeds $150,000 in the preceding year.[22]

However, income accumulating within a corporate-owned exempt life insurance policy is not considered to be AAII and will therefore not impact access to the small business deduction.[23] Therefore, it is possible for a corporation to accumulate income within an exempt life insurance policy without affecting access to the small business deduction. Any taxable policy gain arising from the disposition of a corporate-owned life insurance policy will be included in a corporation's AAII for the purposes of these rules.

(f) Avoiding the tax on split income rules[24]

The tax on split income (TOSI) rules, which became effective from 2018, limit the ability of business owners to split business income and related capital gains with family members. Where these rules apply, the recipient will be subject to tax at the top marginal personal tax rate (over 50% in most provinces) on split income[25] received in the year, unless such income is otherwise exempt from these rules. Such exemptions are complex in application and may apply to one family member but not another, to one type of business but not another, or in one taxation year but not another.

Corporate-owned life insurance on the life of a key shareholder may provide a long-term strategy for this purpose. This is because all or a significant portion of the death benefit received by the corporation can ultimately be paid to Canadian-resident family members (through the estate or directly as shareholders) as a tax-free capital dividend.

(g) Life insurance valuation rules on death

A taxpayer is generally deemed to have disposed of all capital property that they owned at the time of death for proceeds of disposition equal to the fair market value of those properties immediately before death.[26] Thus, if a corporation uses the after-tax income to acquire investments, rather than distributing those earnings to the shareholders, this will potentially increase the fair market value of the shares, and in turn, the capital gain that will ultimately be realized on those shares.

The question then becomes – will using after-tax corporate earnings to fund a corporate-owned life insurance policy have a similar impact on the value of those shares upon the death of the shareholder/life insured? The answer is yes, but only to the extent of the cash surrender value of the policy. There is a special rule that applies where a corporation owns a life insurance policy on the life of the deceased shareholder. This rule provides that the fair market value of the insurance policy, in determining the value of the shareholder's shares on death, will be equal to the cash surrender value of the policy immediately before death.[27]

Other important considerations

Below are some of the points that should also be considered when borrowing against a life insurance policy.

(a) Retirement compensation arrangements

A retirement compensation arrangement (RCA) is a type of non-registered retirement savings plan under which an employer makes contributions to a custodian that are to be used to fund supplementary retirement benefits for former employees.[28] Employer contributions to an RCA are tax-deductible[29] but not taxable to plan members[30] until benefits are distributed by the RCA. However, a 50% refundable tax is levied on all employer contributions to the RCA.[31] In addition, the RCA must remit a 50% refundable tax on all investment income and taxable capital gains earned by the RCA.[32] The refundable tax is refunded when taxable benefits are paid to plan beneficiaries[33] on the basis of one dollar refunded for every two dollars paid.[34]

A corporate-owned life insurance policy may be deemed to be an RCA where the employer has established a plan to fund retirement benefits for employees, and it may reasonably be considered that the life insurance policy was acquired to fund part or all of the benefits under the arrangement. In these circumstances, the employer is deemed to be the custodian of the plan, the life insurance policy is deemed to be the property of an RCA trust and an amount equal to twice the insurance premium is deemed to be a contribution to the RCA.[35] Thus, an amount equal to the premium must be remitted to the CRA by the employer as refundable tax. As well, the ownership of life insurance within an RCA may result in the imposition of an advantage tax.[36]

It is, therefore, important to ensure that the life insurance policy has not been acquired by the corporation as part of a formal plan or arrangement to provide retirement benefits to employees (including owner/managers) so that such policy may not be deemed to be an RCA.

(b) Tax status of shareholders

Corporate borrowing strategies generally assume that an individual shareholder is already paying tax near or at the top personal marginal tax rates and otherwise maximizing contributions to registered retirement saving plans and tax-free savings accounts. However, if the shareholder is in a lower marginal tax rate bracket, it may make sense for the corporation to pay out part or all of the earnings to the business owners as a bonus or dividend income (but see the discussion of the TOSI rules below) rather than retain those funds in the corporation for investment purposes.

(c) Creditor protection

Provincial insurance legislation provides creditor protection for life insurance policies in certain circumstances. While it might be possible for a corporate-owned policy to qualify for creditor protection, the designation of a family member as a beneficiary of the policy will trigger a shareholder benefit,[37] typically equal to the insurance premium being paid by the corporation.[38] Thus, where creditor protection of the insurance policy is important, this may require ownership of the policy through a separate holding company. The operating company can pay tax-free dividends (subject to safe income rules) to the holding company from its after-tax profits to fund the insurance policy owned by the holding company. In this case, the borrowing arrangement is typically implemented at the holding company level.

(d) Impact on the lifetime capital gains exemption

Capital gains arising on the disposition of shares in a private corporation owned by an individual shareholder may qualify for the lifetime capital gains exemption.[39] The exemption is available with respect to capital gains arising on the disposition of shares in a qualified small business corporation (QSBC shares).[40] There are a number of requirements that must be satisfied for shares to qualify as QSBC shares including the fact that "all or substantially all"[41] of the assets owned by the corporation must be used in an active business carried on by the corporation in Canada immediately prior to the disposition of the shares.

The CRA has indicated that a corporate-owned life insurance policy will be considered to be a passive investment asset.[42] Thus, if the value of a corporate-owned insurance policy combined with other passive investments becomes too great, the shares in the corporation may not qualify for the lifetime capital gains exemption.

This raises the question of what value should be given to a corporate-owned life insurance policy for purposes of the QSBC share definition. There is a specific rule that applies where a shareholder of the corporation (or a corporation connected with the corporation, such as a holding company) is the life insured under the corporate-owned life insurance policy.[43] This rule provides that the fair market value of the insurance policy at any time before the death of the life insured will be its cash surrender value.[44] The cash surrender value is to be determined without taking into account any policy loans against the policy.[45]

In circumstances where the shareholder has died, there is another rule that will deem the value of the insurance proceeds to be the cash surrender value of the policy immediately before death, provided the insurance proceeds are used within 24 months from the date of death to redeem, acquire or cancel the shares owned by the life insured immediately before death.

(e) Future changes to tax laws

A client must appreciate that tax laws may change in the future, which could affect the tax treatment of life insurance policies held within a private corporation. The risk of future tax changes is perhaps greater with life insurance strategies involving borrowing against the cash value. This is because, in many cases, they may be dependent on the death of the life insured, so they generally need to be in place over an extended period of time.

(f) Tax risks of loan defaults

As is the case with any strategy involving borrowing to invest, changes in the underlying credited rates of return within the insurance policy or changes in interest charges on the loan can require the borrower to post additional security for the loan. Also, there is an additional risk that there may be a default under the loan that requires the surrender of the policy for its cash surrender value. Depending on when the policy surrender occurs, the disposition could result in a significant tax liability to the policyholder. In addition, where the borrowing is being done by the shareholder, the use of the policy's cash surrender value (which is owned by the corporation) could result in the assessment of a shareholder benefit unless it is treated as a shareholder loan and repaid by the shareholder within a prescribed period of time.

(g) Avoiding a future transfer of the policy

Corporate ownership of a life insurance policy can be problematic where the shareholder is planning to sell their shares in the corporation and wishes to retain control of the insurance policy. The transfer of a life insurance policy from the corporation to a shareholder will be a disposition for tax purposes and may result in a taxable policy gain. As well, if the shareholder does not pay fair market value for the policy, this could result in a shareholder benefit equal to the amount by which the value of the policy exceeds the amount paid by the shareholder. These issues become even more complicated where the corporate-owned policy is being used as security for a loan, as the lender will need to consent to its transfer or may require repayment of the loan. Again, this situation can be avoided by having the life insurance policy owned by a holding company that is not to be sold rather than by the operating company.

Summary

This marketing guide has been designed to outline the benefits and other considerations in implementing a corporate insurance borrowing arrangement. Given the complexity of these arrangements, the client should seek the assistance of legal and tax professionals before implementing these types of arrangements.

[1] An exempt life insurance policy is not subject to the income accrual rules by virtue of paragraph 12.2(1)(a) of the Income Tax Act (the "Act").

[2] Subsection 148(1) of the Act. See the discussion on the taxation of policy dispositions in the RBC Insurance Advisor Guide to Business Life Insurance.

[3] Paragraph (f) of the definition of disposition in subsection 148(9) of the Income Tax Act (the "Act")

[4] The payment of the death benefit under an exempt life insurance policy is not considered a disposition of the policy (paragraph (j) of the definition of disposition in subsection 148(9) of the Act).Therefore, it is received tax-free.

[5] Paragraph (d) of the definition of capital dividend account in subsection 89(1) of the Act.

[6] Subsection 83(2) of the Act.

[7] The payment of the death benefit under an exempt life insurance policy is not considered a disposition of the policy (paragraph (j) of the definition of disposition in subsection 148(9) of the Act).Therefore, it is received tax-free.

[8] Paragraph (d) of the definition of capital dividend account in subsection 89(1) of the Act.

[9] Subsection 83(2) of the Act.

[10] There is a specific exemption in paragraph 12.2(1)(a) of the Act.

[11] For example, a partial surrender of the policy or taking of a policy loan could trigger tax reporting on gains in the policy.

[12] Paragraph (j) of the definition of "disposition" in subsection 148(9) of the Act.

[13] Defined in paragraph 89(1) of the Act.

[14] Subsection 83(2) of the Act.

[15] CRA technical interpretation 2014-055581E5 and paragraph 1.67 of Income Tax Folio Sc-F2-C1 "Capital Dividends" released on December 16, 2016.

[16] Paragraph 20(1)(c) of the Act.

[17] Paragraph 20(1)(e.2) of the Act.

[18] The term "restricted financial institution" is defined in subsection 248(1) of the Act.

[19] The lender must require the insurance be assigned as collateral as a term of the borrowing. See Norton v. The Queen, 2010 TCC 62.

[20] Subsection 125 of the ITA. The federal tax rate is generally reduced from 26% to 9% and the provinces also provide reduced tax rates on active business income up to provincial limits.

[21] For example, if a sole proprietor living in Ontario earned $200,000 of active business income, the average rate of tax on this income would be approximately 35% and the marginal tax rate on additional income would be over 50%. However, the same level of income earned within a corporation would be taxed at a rate of approximately 12%.

[22] Paragraph 125(5.1)(b) of the Act.

[23] See the definition of "adjusted aggregate investment income" in subsection 125(7) of the Act and the definition of "aggregate investment income" in subsection 129(4) of the Act.

[24] Section 120.4 of the Act.

[25] Split income can include taxable dividends received from private corporations, income arising from the shareholder benefit rules under subsection 15(1) of the Act and taxable capital gains arising from the disposition of shares in a private corporation.

[26] Subsection 70(5) of the Act.

[27] Subsection 70(5.3) of the Act. This rule can also apply where the policy is a multi-life policy and the other life insured does not deal at arm's length with the shareholder. See CRA technical interpretations 2005-0138111C6 and 2005-0138361C6.

[28] A retirement compensation arrangement is defined in subsection 248(1) of the Act.

[29] Paragraph 20(1)(r) of the Act.

[30] Subparagraph 6(1)(a)(ii) of the Act.

[31] Definition of refundable tax in subsection 207.5(1) and subsection 207.7(1) of the Act.

[32] Ibid.

[33] Paragraphs 56(x)-(z).

[34] Subsection 207.7(2) of the Act.

[35] Subsection 207.6(2) of the Act.

[36] Sections 207.62 and subsection 207.5(1) of the Act. See also CRA technical interpretations 2013-0481421C6 dated May 17, 2013 and 2014-0544211E5 dated December 14, 2015 and 2015-0580461E5 dated May 15, 2107.

[37] Subsection 15(1) of the Act.

[38] CRA Technical Interpretation 2004-008190 dated June 23, 2004.

[39] Section 110.6 of the Act. The lifetime exemption limit is indexed and for 2020 is equal to approximately $880,000. However, the limit is increased to $1 million where the disposition involves qualified farming and fishing property.

[40] Defined in subsection 110.6(1) of the Act. Also see the definition of "small business corporation" in subsection 248(1) of the Act.

[41] This is understood to mean 90% or more of the assets.

[42] Canadian Tax Foundation 1988 Roundtable, Q. 32.

[43] Paragraph 110.6(15)(a) of the Act.

[44] Subparagraph 110.6(15)(a)(ii) of the Act.

[45] Definition of "cash surrender value" in subsection 148(9) of the Act.

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