

As a Matter of Tax

from Manulife's Tax & Estate Planning Group

Parentco beneficiary of Subco policy – CRA reverses position

At the 2009 APFF Conference Roundtable (Q 15) on October 9, 2009, the CRA stated that where a wholly owned subsidiary (Subco) owns and pays the premiums for a policy under which the 100% shareholder, parent company (Parentco) is named as beneficiary, Subco has conferred a shareholder benefit on Parentco pursuant to subsection 15(1) of the Act.

The value of the benefit must be included in Parentco's income. No discussion of "value" was undertaken in this context. The CRA quoted from the *Del Grande v. The Queen*, 93 TCC 133 decision where the notion of "impoverishment" giving rise to an economic benefit was discussed.

This reverses prior statements made by the CRA in technical interpretations 2004-006546 (see *As a Matter of Tax* from July 2004 – Shareholder benefits and corporate-owned life insurance) and 9824645 (see *As a Matter of Tax* from April 1999 – Maximizing the Capital Dividend Account).

It is interesting to note that the CRA made the following statement (unofficial translation):

The above interpretation constitutes a change of position with respect to what was set out in documents E2004-006546 and E9824645 and this interpretation will apply as of the calendar year 2010. However in the case of a life insurance policy that has already been issued, the amount of the benefit must be included in the shareholder's income under subsection 15(1) of the Act as of the calendar year 2011.

What's the real story? It is my understanding that this was not a question that the APFF asked. The CRA asked the APFF to add this question to its roster of questions so that CRA could answer it. Maybe that's why there's a timeframe provided for compliance.

Also, by the following statement, the CRA also appears to want to preserve the original commentary to the extent that it made comments regarding the application of GAAR in



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these situations: “However, CRA stated in interpretation E9824645 that subsection 245(2) of the ITA may, as the case may be, apply to the computation of the capital dividend account for Parentco.”

Taxpayers with existing arrangements of this sort may need to review beneficiary designations to ensure this issue does not give rise to negative tax consequences.

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