CORPORATE INSURANCE

BY KEVIN WARK

Tax Proposals

CALU updates on proposed legislative changes

CALU is involved in a number of significant tax issues that will impact Advocis members and their clients. We first wrote about some of these initiatives back in October. Here is where things stand now.

EXEMPT TEST AND POLICYHOLDER TAX RULES

The final legislative changes to the Income Tax Act (the "Act") and Regulations relating to the exempt test and policyholder tax rules were given Royal Assent on Dec. 16, 2014. This legislation also included changes to the rules for determining the "net cost of pure insurance," the investment income tax, and the tax treatment of prescribed annuities. The effective date for most of these changes is Jan. 1, 2017, which will allow sufficient time for insurance companies to redesign products and systems to comply with the new rules.

While grandfathering rules are in place for policies issued before 2017, grandfathering can be lost if certain policy transactions take place after 2016. The February CALU Report provides an in-depth analysis of these various changes, which is a must read for members who provide insurance-related advice.

The CLHIA-CALU Exempt Test Working Group continues to meet on a regular basis, working with the Ministry of Finance ("Finance") to clarify certain aspects of the new rules. In particular, a number of questions relate to the grandfathering rules that the industry hopes will be resolved in the next few months. It is possible that technical amendments to the new legislation will occur prior to 2017.

TAXATION OF TESTAMENTARY TRUSTS

The 2014 federal budget contained detailed proposals to implement new tax rules for testamentary and other trusts. This legislation was also enacted on Dec. 16, 2014, with the new rules becoming effective for 2016. What does this mean for your clients?

- Testamentary trusts will become subject to flat top-rate taxation. An exception is provided for an estate that has a testamentary trust that qualifies as a "graduated rate estate" (which is entitled to graduated rate taxation for its first 36 months) or is a "qualified disability trust";
- If a testamentary trust does not qualify as a graduated rate estate, it cannot utilize the loss carry back provision in subsection 164(6) of the Act; the special reduction in the stop-loss calculation in subsection 112(3.2) of the Act; or the more flexible charitable gifting rules on death that were introduced in Budget 2014; and
- For spousal, alter ego, and joint partner trusts, the income triggered on the death of the life interest will be reported in the terminal return of the deceased person (currently such income is taxed in the trust).

CALU, the Society of Trust and Estate Practitioners, and the CPA/CBA Joint Tax Committee are having joint discussions with Finance, seeking modifications to these rules before they take effect in 2016.

LIA GRANDFATHERING RULES

Legislation enacted in 2013 eliminates most of the tax benefits arising from leveraged insured annuities ("LIAs"). Finance provided grandfathering for LIA arrangements that were in place on the budget date (March 21, 2013). The explanatory notes further indicated that it would be possible to renew or refinance those arrangements without affecting grandfathering, provided the amount of the borrowing did not exceed the borrowing that existed on the budget date. However, the CRA has taken a more restrictive view of the grandfathering rules, indicating that if the loan is increased or replaced with new financing, this will result in the loss of grandfathering.

We have requested that the LIA legislation be amended to give effect to the intent of the grandfathering rules as stated in the Explanatory Notes.

BUDGET 2015

The federal government has deferred delivering the budget until April to assess the impact of lower oil prices on its revenues. CALU's recommendations to the House Finance Committee (the "Committee") related to the RRIF minimum withdrawal rule, and a tax incentive for the purchase of long-term care insurance. The Committee endorsed the CALU submission by making the following recommendation: "That the federal government examines ways to help Canadians save for long-term care. Moreover, the government should examine innovative means by which to support retirement security for seniors, such as through modifications to registered retirement income fund withdrawal rates."

CALU's submissions have also been broadly reported in a number of different financial publications. We will now wait and see how Finance responds to the Committee's report.

CRA UPDATES

We are still waiting for responses from the CRA relating to two CALU submissions: the tax treatment of insurance within a spousal or alter ego/joint partner trust (submitted April 2014), and the tax treatment of insurance within a retirement compensation arrangement (submitted August 2014). You can view both submissions on the CALU website.

We are close to finalizing a draft tax folio relating to the taxation of life insurance and corporate-owned life insurance. It will proceed through an extensive third-party review process before going to the CRA for their final review and approval. F

KEVIN WARK is the president of the Conference for Advanced Life Underwriting (CALU) and can be reached at kwark@calu.com. More information on these tax proposals is available at www.calu.com.