Unique Usages for Health & Welfare Trusts

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Our business owner clients are continually demanding that their Trusted Advisors suggest solutions that allow them to provide additional tax minimization solutions that enhance tax efficient benefits for key executives within their organizations.

The Health & Welfare Trust (HWT) is a benefit plan that allows for corporate sponsors of these plans to write-off all contributions and provide key employees these benefits for medical, long term care and critical insurance expenses and benefits tax free. A Health & Welfare Trust can be structured to provide varying reimbursement limits to different classification of employees (e.g., executive, part-time staff, etc.). Each employee classification can be assigned an annual reimbursement limit, with different classes of employees having differing reimbursement limits.

Think of providing Critical Illness (CI) and Long-Term Care (LTC) insurances through a Health and Welfare Trust

For many businesses, the use of a health and welfare trust can be instrumental in providing health benefits and planning for contingencies. The use of an HWT to make the pure insurance portions of CI premiums and long-term care premiums deductible allows a company to provide these benefits on a more cost- and tax-effective basis.

CRA has issued various rulings concerning CI and LTC policies purchased by a Health and Welfare Trust over the last few years.

1. CRA Interpretation Bulletin IT-85R2, July 31, 1986, set out key requirements needed to constitute an HWT and requires that benefits would be restricted to one or more of the following: group sickness and accident insurance plans and private health service plans.

2. CRA Technical Interpretation TI-2003-0026385, December 10, 2003, held that CI policies, which provide only CI coverage, would constitute an accident and sickness plan.

3. A CI insurance policy held by a health and welfare trust is not considered a "life insurance policy" and, therefore, is not a taxable benefit to an employee. A return of premium benefit payable on death, or at the expiry of the term of the coverage or after a certain claim-free coverage period, may result in the disallowance of tax deductions of all contributions to the HWT.

4. Under CRA Interpretation Letter 2002-0160155 dated April 3, 2003, and subsequent CRA letters, a group CI policy may be purchased by the plan, and where such a policy contained no provision for life insurance coverage or for a refund of all, or a portion, of the premiums paid on termination of the policy or on death of the insured employee, it was viewed as a legitimate investment by the plan resulting in no taxable benefits to the employees.

5. A similar situation applies with an LTC policy, where such a policy would be a legitimate investment by the plan, providing it did not contain any return of premium benefits providing a premium refund similar to that for CI policies.

There are two types of CI and LTC policies — individual and group plans. These are generally issued by distinct departments of life insurance companies. Either type of policy may be purchased through a health and welfare trust.

Individual Policy and Split-Dollar Agreements

Individual policies generally provide additional benefits or riders in the form of return of premium benefits. Although the company may find such riders highly attractive, should the premium for such riders be paid through the HWT, it invalidates the HWT, i.e., it disqualifies the eligibility of all contributions made to the HWT. The approach is to prepare a "split-dollar" or "shared ownership" agreement. The cost of pure insurance is funded through the HWT, and the company will pay the premiums for all of the various return of premium benefits and riders. Care must also be taken to ensure that shareholder employees are eligible for such benefits as a result of their employment with the company as opposed to their company ownership and that a policy would be issued on each life.

Group Policy

Group CI policies tend to be simpler than individual policies and can usually be issued without any return of premium benefits or riders.

Requirements

Whether individual or group policies are used to fund critical illness insurance or long term care through a health and welfare trust, the company should ensure the following:

1. The HWT has been properly set up and that no taxable employment benefits or shareholder benefits have been created.

2. The critical illness and/or long-term care benefits constitute a "group sickness and accident plan" by purchasing either a group plan or series of individual plans which will be deemed part of the company plan.

3. No form of return of premium benefits or riders are funded through the HWT. If the company wishes to purchase these riders, they should have their employee benefit consultant prepare a split-dollar/shared ownership agreement. If the company does not require these riders the insurance company should be instructed to issue the policy as pure insurance without any such benefits riders, in particular, any embedded return of premium benefits on death.

The Bottom Line

Health and Welfare Trusts set up, maintenance and wind down require specialties in employment compensation, adjudication of eligible claims and benefit plan construction. Therefore, if you are evaluating the suitability of these medical and dental plan alternatives for your clients or for yourself, it is well worth the time and money to hire the right professionals to assist in the design, implementation, maintenance and adjudication of claims within these alternative medical and dental plan solution.

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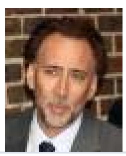

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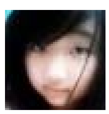
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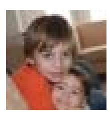
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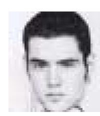
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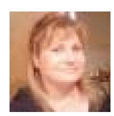
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