GroupNews

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Benefit Plan Management

Funding of an Employee Life and Health Trust

One of the key issues with the new type of taxable trust proposed by the federal government as a vehicle for employee benefits is how it supports pre-funding of future claims. Under the proposals, an Employee Life and Health Trust (ELHT) can be funded by promissory notes. An example provided by the government in the Explanatory Notes to the new section 144.1(6) of the *Income Tax Act* illustrates the tax assistance offered with the new type of trust; *GroupNews* examines it in detail below.

Government example

To start, the assumed present value of all future post-retirement health benefit obligations of the employer is calculated to be $10-million. For the next five years, the cash benefit payments are projected to be approximately $750,000 each year. The employer and the union that represents most of its employees agree to restructure these future post-retirement health benefit obligations by establishing an ELHT.

The employer agrees to contribute $3-million to start the ELHT by the end of the first year, and to provide the trust with a promissory note bearing 6% simple annual interest on the remaining $7-million obligation. No amount is payable on the note in respect of principal or interest until the end of the fourth year, with the note retiring by the end of the fifth year. The contribution and deduction flow is as follows:

Timing	Employer contribution to the ELHT ($)	Assumed benefit payments from the ELHT ($)	Permissible employer deduction ($)
End of year 1	3,000,000	750,000	750,000
End of year 2	0	750,000	750,000
End of year 3	0	750,000	750,000
End of year 4	3,260,000 *	750,000	750,000
End of year 5	5,600,000 **	750,000	750,000
Total:	**11,860,000**	**3,750,000**	**3,750,000**

** This amount represents a $2-million principal repayment plus three years of simple interest at 6% on a $7-million promissory note.*

*** This amount represents a $5-million principal repayment plus two years of simple interest at 6% on the outstanding principal.*

The example illustrates the ELHT pre-funding mechanism: all of the employer contributions are treated as capital contributions, which are not included in the trust income, and therefore not subject to taxation. As a result, the ELHT can build capital assets and invest them to fund future benefits.

For the sponsoring employer, permissible deductions may continue in future years, up to the total amount contributed to the ELHT. The portion of the pre-funding, if any, that relates to employee benefit payments in a given future taxation year could be deducted in that future year. Permissible deductions for an employer sponsoring an ELHT may be spread over many years when the benefits are paid. By comparison, rules for a Health and Welfare Trust permit the deduction of contributions only in the year they are made (and only to the extent that the contribution matches the expected payments for that year).

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A good idea: Registered Health Savings Plan

The poll, recently conducted for the Canadian Medical Association by Ipsos Reid, shows that government spending on universal health care is of national concern. Canadians were asked about ideas to fund health care costs. Their views:

- 69% of participants believe that it is a 'good idea' to develop a contribution-based Canada Health Plan to raise revenue and set aside financial resources for individuals who need health care the same way that the Canada Pension Plan works for people who want to retire;
- 65% of participants believe that it is a 'good idea' to develop a Registered Health Savings Plan, similar to the Registered Retirement Savings Plan, to allow individuals to save money on a tax-free basis to pay for health services or prescription drugs that are not included in the public health plan coverage.

GroupNews proposed such plans in August 2009 — it seems that these ideas are catching on.

Telus Health Pay-Direct Drug plans: Changes to dispensing fee payments for Ontario pharmacies

There are two kinds of dispensing fees in Ontario: the Ontario Drug Benefit (ODB) dispensing fee, and the "usual and customary" dispensing fee for non-ODB prescriptions. The ODB dispensing fee is subject to a maximum of $7.00. The usual and customary dispensing fee is set individually by each pharmacy. This fee must be registered with the Ontario College of Pharmacists. Pharmacies must display their usual and customary fees in clear view for customers. This enables cash paying customers to compare fees in local pharmacies.

Effective April 15, 2010, Telus Health Solutions, the drug card provider for a number of carriers, is implementing a dispensing fee maximum of $11.99 for prescriptions dispensed in Ontario. The company considers that this amount represents the reasonable and customary rate as the majority of Ontario pharmacies have a dispensing fee at or below $11.99. Currently, Telus Health will reimburse up to the usual and customary dispensing fee as posted in the pharmacy.

According to the company, presently only 1% of pharmacies in Ontario (approximately 30) charge a dispensing fee greater than $11.99. The dispensing fees for those pharmacies range from $12.00 to $15.99. If plan members have a prescription filled at one of these pharmacies after April 15, 2010, they may be subject to a small out-of-pocket expense for the dispensing fee portion that exceeds $11.99. Since some plan sponsors may need to reimburse their members for such out-of-pocket expenses, carriers are exploring ways of accommodating this on an automatic basis. *GroupNews* will monitor and report back as news becomes available.

Medavie Blue Cross cards in Atlantic Canada

Over the past several months, Medavie Blue Cross has been engaged in discussions with independent and chain pharmacies across Atlantic Canada to introduce a new pharmacy agreement that details prescription drug compensation, including reduced reimbursement rates for generic drugs. According to the company, the lower costs that pharmacies were paying for generic drugs were not being passed on to consumers.

Some pharmacies in Nova Scotia, Newfoundland and Labrador, New Brunswick and Prince Edward Island decided against the new agreement, refusing to take Blue Cross cards and asking patients to pay upfront. The majority of Shoppers Drug Mart pharmacies in Atlantic Canada formally advised that they would no longer honour the Medavie Blue Cross card effective March 2010.

Following further negotiations, Medavie Blue Cross and Shoppers Drug Mart reached a tentative agreement on March 5, 2010. Both companies will be returning to the table to finalize details and ratify the agreement in the coming weeks. In the meantime, Shoppers Drug Mart agreed to continue accepting the Medavie Blue Cross card for pay-direct service. Medavie Blue Cross provides updates on the negotiations, including the list of engaged pharmacies on its website: ***Medavie Blue Cross — Pharmacy Updates***.

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Your data is in a cloud

The Privacy Commissioner of Canada has launched public consultations on privacy implications of cloud computing, as the latter is rapidly changing the business paradigm in the world. Some compare the cloud computing paradigm shift to the displacement of electricity generators by electricity grids early in the 20th century.

Cloud computing means internet-based applications, accessed from a web browser, while the software and data are stored on remote servers. It gives users low-cost access to powerful computer resources, without having to purchase and maintain these resources themselves. You don't need a big information technology department to be a computer utility subscriber. But, your data is in a cloud and can be exposed to various risks if your benefit plans use web-based applications provided by a third party.

Users, for instance, could lose control over their personal information stored in a cloud, including where it may be stored; who has access to it; and how it may be used, retained or disclosed. Data may be stored on computers located in different countries, subject to local laws.

The deadline for submissions to the Privacy Commissioner is April 15, 2010. The Office is also seeking expressions of interest from individuals wanting to take part in a formal discussion panel, to be held in Calgary in June. More information can be found online: ***Privacy implications in cloud computing 2010***.

HST for health care professionals and dentists

As previously reported, the Ontario government will implement a single sales tax system effective July 1, 2010. This new system will combine the 5% Federal Goods and Services Tax (GST) and the 8% Retail Sales Tax (RST) to create a 13% Harmonized Sales Tax (HST). The HST will be administered by the Canada Revenue Agency, similar to the current GST regime.

The main advantage of the federal regime is a tax structure that will allow most businesses to claim Input Tax Credits (ITC) in respect of the 13% HST charged on their finished products. The RST, currently applicable to many purchases made by a business in order to produce finished goods or services, is not refundable. As a result, it is embedded in the price of the finished products or services as extra cost to the business. ITCs are designed to remove the hidden tax and lower costs incurred by businesses.

Professional medical and dental services are exempt from the GST/HST. Nevertheless, health care professionals and dentists currently pay 5% GST on many items necessary for them to provide these services, such as — utilities, cleaning services, commercial leases or rents, or maintenance services. After July 1, 2010, they will be paying the 13% HST on these items. They will not be eligible to claim Input Tax Credits because there is no GST/HST on their services. The net result is that their business cost will increase after July 1, 2010.

Our expectation is that, in time, the increase will be passed on to patients, and benefit plans may eventually bear the brunt of it. We will monitor the level of medical and dental services pre- and post-implementation and report as necessary.

Benefits benchmarking

On March 11, 2010, the Conference Board of Canada published a report on *Benefits Benchmarking 2009: Balancing Competitiveness and Cost*. It provides an analysis of their 2009 benefits survey, run in Canada with a response rate of 15% (225 medium-sized and large Canadian organizations). Based on the survey data, the report discusses employer-sponsored benefit programs, including CPP/QPP and EI, extended health care plans, dental plans, life and accident plans, and paid time off. The Conference Board states that the average cost of employee benefits in 2009 was 19.9% of gross annual payroll; in the public sector the average cost was 22.5% of gross annual payroll, and in the private sector — 18.8%. The whole report (49 pages) can be purchased from the Conference Board's website for $1,025: ***Purchase the report***.

Wellness programs, short and long term disability, and sick leave plans are covered by a separate report: *Beyond Benefits: Creating a Culture of Health and Wellness in Canadian Organizations*, issued in February 2010, and available for $225.

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National Employee Benefits Day

This year, National Employee Benefits Day will be celebrated on Tuesday, April 6. It has a special focus on workplace wellness. The International Foundation of Employee Benefit Plans (IFEBP) set up a dedicated website with tips for celebrating, posters, wellness program suggestions and monthly wellness campaign guides.

It is an occasion to reach out to employees with suggestions on living a healthier lifestyle — both at work and at home. The IFEBP website includes links to governmental resources on wellness and other material for the U.S. and Canada. The link to the Canadian resources is here: ***IFEBP: Canadian wellness information***.

Legislative & Legal Update

FEDERAL: Notice of Ways and Means Motion to implement certain provisions of the budget tabled in Parliament on March 4, 2010, and other measures

Medical Expense Tax Credit

The federal budget, tabled on March 4, 2010, proposed to change the definition of Medical Expense Tax Credit under the *Income Tax Act*. The Notice of Ways and Means Motion, tabled on March 22, 2010, formalizes that change — it removes tax assistance for cosmetic procedures. Amounts paid for medical or dental services, or any related expenses, provided purely for cosmetic purposes, no longer qualify for Medical Expense Tax Credits, unless necessary for medical or reconstructive purposes. The provision applies to expenses incurred after March 4, 2010.

As a result, cosmetic procedures lose eligibility for coverage by private health services plans or health spending accounts. If such coverage was provided before March 4, 2010, the plan text should be amended accordingly.

Amendments to the *Excise Tax Act*

The Notice of Ways and Means Motion referenced above also amends the *Excise Tax Act*, changing the definition of "financial services." This change will reclassify activities involved in "arranging for" the provision of financial services and could make insurance agents' commissions, telemarketing services and other activities taxable. The Canada Life and Health Insurance Association (CLHIA) is concerned about potential increases in insurers' GST/HST liabilities, as the changes may create an additional $500-million estimated annual cost for CLHIA members. The CLHIA continues to work with senior Finance officials to rescind this position.

FEDERAL: Bill S–216 An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans

Employees in receipt of employer-funded LTD benefits are classified as "unsecured" creditors under current legislation, when the employer declares bankruptcy. Bill S-216 proposes to reclassify them as "preferred" creditors. According to the Bill sponsors, approximately one million employees in Canada have disability benefits that are self-insured by their employers. It is a public bill, proposed by the Senate, and tabled on March 25, 2010. It appears that the Bill covers not only the long term disability benefits but also the health-related benefits to be paid to the disability plan beneficiaries.

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ONTARIO: Bill 16 - Creating the Foundation for Jobs and Growth Act, 2010

On March 25, 2010, the government tabled Bill 16, supporting the changes announced in the 2010 Ontario Budget. It is an omnibus bill, amending 31 provincial acts.

Professional allowances under the Ontario Drug Acts

The *Ontario Drug Benefit Act* (ODBA) currently prohibits the payment of rebates by drug manufacturers to pharmacies but allows the payment of professional allowances. The latter are up to 20% of the value of the generic drugs sold by the pharmacies. Bill 16 proposes to amend the ODBA and the *Drug Interchangeability and Dispensing Fee Act* to prohibit drug manufacturers from paying pharmacies professional allowances. It is expected that this enactment will help lower the drug cost for Ontario's Drug Benefit Program. The impact on private drug plans may be different. Eckler *GroupNews* will monitor and report as necessary.

Retail Sales Tax on insurance premiums

Bill 16 also proposes to amend the Ontario *Retail Sales Tax Act* to provide that no tax is payable under that Act after October 14, 2009, on any portion of an insurance premium that is otherwise subject to the provincial portion of the Harmonized Sales Tax (HST). It is a technical amendment to ensure that fees associated with insurance plans, such as administration fees for benefit plans, will not be subject to RST after October 14, 2009, if they are subject to the provincial portion of the HST. As a result, insured employee benefit plans will be taxed only once under the new HST and not twice under both the HST and RST.

Drug News

Gardasil® for boys and young males

Health Canada has approved the Gardasil® vaccine for boys and young males from nine to 26 years of age for the prevention of infection and genital warts caused by various types of the Human Papilloma Viruses (HPV). Reducing the risk of HPV infection in men through vaccination is also expected to reduce the risk of HPV infection in women, since men transmit HPV to their sexual partners. The cost-effectiveness of using Gardasil® in males remains to be determined. The National Advisory Committee on Immunization did not recommend immunizing Canadian males with Gardasil® due to limited efficacy data.

In July 2006, the same vaccine was approved in Canada for use in girls and women nine through 26 years of age. Following a massive public promotion, Gardasil® gained provincial coverage as part of school vaccination programs in all 10 provinces.

Warning on Avelox®

On March 22, 2010, Health Canada issued a warning on Avelox® (moxifloxacin). It is an antibiotic drug used to treat a broad range of bacterial infections, including respiratory ones. It can be taken by mouth in a tablet format or administered by injection. Health Canada has conducted a safety review and concluded that Avelox® may be associated with the rare but potentially life threatening risk of liver injury, including liver failure.

Symptoms of liver problems include abdominal pain, loss of appetite, yellowing of the skin and eyes, severe itching, dark urine, and pale-coloured stools. Patients who experience any of these symptoms are advised to stop taking Avelox® and contact a health care professional immediately.

This information has been incorporated into the Warnings and Precautions section and in the Consumer Information section of the product monograph for Avelox®.

Glucose strip recall

On March 18, 2010, LifeScan, the manufacturer of OneTouch® SureStep® test strips, announced a voluntary recall of specific lots of this product, as some of the strips may provide undervalued test results when the blood glucose is greater than 22.2 mmol/L. A warning on OneTouch® SureStep® test strips was also issued by Health Canada.

Patients who receive a meter reading that is greater than 22.2 mmol/L with these test strips should confirm this result by another means, because their actual blood glucose may be significantly higher, or contact their health care professional. To find out which lots of OneTouch® SureStep® test strips are affected, patients are asked to call the manufacturer. Replacement products will be shipped to them immediately.

Miscellaneous

Medical clowns

In March 2010, Toronto hosted the very first world symposium on medical clowning, organized in partnership with the Therapeutic Clown Program at Sick Kids Hospital and The Baycrest Centre. It was attended by many health care professionals and by famous medical clowns, representing Australia's Humour Foundation, the Dream Doctors Medical Clowning degree program at the University of Haifa, Israel, and Canada's Fools for Health from Windsor, Ontario.

Clowning is practised in health care settings worldwide. It has proven to be a vital part of patient recovery by alleviating stress and pain with subtle humour. Therapeutic clowning is a serious matter. The goal of academically institutionalizing it is to pave the way for it to be recognized as a health care profession, similar to physiotherapy and other rehabilitation treatments.

In Canada, medical clowns are already organized professionally in the Canadian Association of Therapeutic Clowns (CATC), founded in 2005 with 27 charter members. The association currently has a membership from coast to coast of over 45 therapeutic clown practitioners. The CATC website provides information on professional standards, annual conferences and symposia, as well as the list of provincial programs: ***http://www.therapeuticclowns.ca/***.

With growing concerns about mental health in the workplace, perhaps it is worth inviting a therapeutic clown to your office, to alleviate stress and work tensions. Laughter is, as they say, the best medicine.

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