

Buying DI

Insurance premiums a taxable benefit

BY JAMIE GOLOMBEK

When you advise clients on the purchase and subsequent ownership of disability insurance (DI), are you certain your client understands what is being purchased and the potential income tax consequences of such a purchase?

A recent tax case decided last fall (*Syrydiuk v The Queen*, 2010 TCC 520) clearly shows a lack of understanding by at least one employee on the tax rules associated with his DI policy.

Jeffrey Syrydiuk, an employee of Vitaid Ltd., objected to the inclusion of a nearly \$15,000 taxable benefit in his income for 2005 and 2006 in respect of insurance premiums for DI paid by his employer.

He argued that: the DI policy was purchased for the benefit of the employer; that the insurance policy was part of the employer's group sickness or accident insurance plan and therefore exempt under the Act; and that Vitaid misled him on the tax consequences of the insurance and therefore the company should be held liable for the tax payable.

The Canada Revenue Agency stated that the premiums on the DI paid by Vitaid were clearly a taxable benefit and were not exempt. The benefit of the DI was to Syrydiuk and "any advantage to the employer was incidental." The CRA also maintained that the definition of "group insurance" is based on insurance legislation and Syrydiuk's policy simply doesn't meet that definition.

WHO WAS THE MAIN BENEFICIARY?

Vitaid paid premiums for the Syrydiuk's personal disability and critical illness insurance policies and also paid the premiums for three key man insurance policies. The annual cost of the premiums for these policies was more than \$30,000, of which the DI portion of the premiums was over \$14,000.

Syrydiuk argued that he should not have

to pay tax on these premiums paid for by Vitaid since he could not afford to purchase, or even accept, any of these policies if there were any associated costs to him, "given his tenuous personal and financial situation."

It was therefore a "complete surprise" when Syrydiuk was contacted by the CRA's audit department in January 2009 — six years after the policies were issued — and was told that he would face a tax liability for the personal benefit derived from the key man insurance policies purchased by Vitaid in 2002.

Since Syrydiuk's policy was not a "group" policy within the ordinary meaning of the word, it did not fall into the statutory exemption and thus the premiums were found to be a taxable benefit.

Syrydiuk maintained that he "always understood these policies to be for the benefit of Vitaid and that these specific policies would not give rise to a taxable benefit for himself."

Syrydiuk relied on a previous case (*Rachfalowski v. The Queen*) to support the assertion that if the primary benefit of something falls to the employer, rather than the employee, it should not be a taxable benefit to the employee. In that case, the Court found that the benefit of a golf club membership was to the employer and therefore was not a taxable benefit to the employ-

ee since the employee didn't enjoy golf.

The judge disagreed and said that the meaning of "benefit of whatever kind" is to be interpreted broadly and that benefits are not restricted to one's employment salary. While the policy premiums did not increase Syrydiuk's net worth, he would indeed benefit financially in the event of personal disability or critical illness. He signed his approval to these policies prior to their issuance and from a contractual viewpoint, it was Syrydiuk's policy.

Finally, while Syrydiuk may have been unaware that the premiums would be taxable to him, he was certainly aware of the benefit that would flow to him in the event of his illness or accident.

The judge concluded that "I have no doubt that a reasonable man or woman on the street would not hesitate in finding these large premiums a personal benefit to the taxpayer. There is insufficient evidence to conclude that Vitaid benefited more than [Mr. Syrydiuk]."

WAS IT A GROUP POLICY?

Syrydiuk argued that even if he was found to be the primary beneficiary of the policies, he should still be exempt from taxation because the policy falls under the Income Tax Act's exemption for group insurance plans.

The judge stated that the words "group insurance" have an "ordinary and popular meaning, which involves a contract that provides for the insurance of a number of persons individually."

The judge concluded that Syrydiuk's policy was designed for him alone and not created to cover a group. He did not accept Syrydiuk's argument that one person's single policy can meet the definition of a "group policy," relying on the definition of the term "group" in the Canadian Oxford Dictionary as "a number of persons or things located or considered together."

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