Trust can lessen burden of disability

MERRICK WEALTH

By Peter Merrick

An owner of an incorporated business who has a dependent diagnosed with a developmental disability can make business tax deductions for expenses related to the disability through a health and welfare trust.

An incorporated business establishes a trust to pay for the trust member's health care costs. Health and welfare trusts follow the framework laid down in S. 248(1) of the Income Tax Act and the Canada Revenue Agency (CRA) interpretation bulletins IT-85R2, IT-339R2, and IT-519. In order for CRA to allow medical and dental expenses to be tax deductible for an employer, and the benefits to be non-taxable in the hands of employees, the administration and adjudication of claims must be through specialized third-party trustees.

There are over 60 different eligible expenses available for individual taxpayers to claim for themselves and their dependents on after-tax expenses. By creating a health and welfare trust a business owner can turn these same expenses into corporate deductions. The results of doing so are quite spectacular.

The most popular special expenses for developmental disabilities that can be claimed through a health and welfare trust are:

• Psychological assessment: The cost of psychological assessments to determine if there is a diagnosis of a developmental disability by either a registered psychologist or medical doctor. This can also include counseling and therapy for sufferers and family members.

• Tutoring: The cost of tutoring to help with the basic academic skills, such as reading, spelling, writing and math, provided these services are recommended in writing by either a doctor or registered psychologist as a remedy for the developmental disability. For these tutoring services to qualify, they must not be provided by a family member.

• Transportation and traveling: The cost for transportation and traveling to and from assessments, therapy, special educational facilities, special camps, assisted living facilities and tutoring sessions for the individual with the developmental disability. If the individual with the developmental disability needs to be accompanied by another person, the expenses for this traveling companion can be claimed provided that a qualified person (medical doctor or registered psychologist) has certified that the person with a developmental disability needs this assistance.

• Specialized schools, camps, programs, group homes and assisted living: The cost of these can be put through a trust in accordance with the rules set down in S. 118.2(2) of the Income Tax Act provided that the following three criteria have been met:

• A qualified person has certified that the individual has a developmental disability;

• A qualified person certifies that the individual with the developmental disability requires the service or equipment;

• The specialized private venue has the required equipment, facilities and personnel to assist the individual with disability needs

Imagine we have a business owner who has an incorporated business in Ontario, who earns a T4 income of $200,000 and has a marginal tax rate of 46.4 per cent. This business owner has an adult son who has been diagnosed with a developmental disability by a certified psychologist (criteria one met).

This psychologist recommends in writing that the best educational programs in Canada to meet this adult son's developmental needs are through the assisted living programs at the Reena Foundation. Reena is a non-profit social service agency dedicated to integrating individuals who have a developmental disability into the mainstream. Reena was established in 1973 by parents of children with developmental disabilities, as a practical alternative to institutions. Since 1977, Reena began receiving funding from the Ministry of Community and Social Services in Ontario (criteria two met).

Reena currently has the facilities and personal to meet the educational and developmental needs of this adult son (criteria three met).

The fees associated with Reena's specialized programs and assisted living facilities for the 2008 year are $35,500.

Now let us compare this business owner's two options and find out what the final financial outcomes for each are.

In option one, the business owner plans to pay for the cost associated with Reena's assisted living and programs with his after-tax dollars. In the second option, the business owner has set up a health and welfare trust with his company and plans to pay through the trust.

In option one, the client will have to earn approximately $66,231 before taxes to pay $35,500 with after-tax dollars.

But in the second option, the business owner's company will pay $39,000 ($35,500 in Reena's fees plus a $3,500 administration fee of 10 per cent) into the trust. The total savings this client and his company receive for using option two and setting up the health and welfare trust are $27,231. This savings equals approximately 75 per cent of Reena's entire 2008 cost.

Health and welfare trusts require specialties in employment compensation, adjudication of eligible claims and benefit plan construction. Therefore if you are evaluating the suitability of a trust for yourself or your clients, it is worth the time to hire the right professionals.

Peter J. Merrick, BA, FMA, CFP, FCSI, is the president of Merrick-Wealth.com, a fee-for-service financial planning and executive benefit consulting firm in Toronto. He is the author of "The Essential Individual Pension Plan Handbook" (Lexis-Nexis Canada, 2007). He can be contacted at: (416) 854-1776 or *peter@merrickwealth.com.*

Activist Verdun is butting heads with CIBC

By KEN MARK

During the upcoming annual shareholder meeting season, proposals on executive compensation policies will likely again create the biggest bang. At this year's, CIBC meeting on February 28, such fireworks could be deafening.

Shareholder activist Bob Verdun has submitted a proposal requesting that, "all compensation programs for senior executives in the past decade shall be re-examined to ensure that they fully complied with Ontario Securities Commission (OSC) regulations."

Verdun is seeking more details on a Special Incentive Program (SIP) that was implemented only once and was disclosed in what he alleges was "a sparse, improper and misleading manner" in CIBC's March 1, 2001 proxy circular.

He further alleges that CIBC failed to disclose the true cost of this bonus program for the executive team in 2000, which was headed by John Hunkin and that also included current CEO Gerry McCaughey, among others. The benefits were vested on their behalf to be paid out upon their retirement or leaving the bank.

However, CIBC issued a statement saying the allegations are unfounded.

"CIBC is required by the Bank Act to include the shareholder statement submitted with this proposal but in no way agrees with, supports or endorses in any manner, or for any purpose, the statements being made," the bank says. "There are numerous false statements about CIBC's disclosure obligations and transparency of information" regarding the matter.

Verdun cites bank proxy statements that reported when Hunkin retired in 2005, his 5,000 units were worth $25,719,137.

Canada's fifth largest chartered bank claims they have played within the rules. The bank's "executive compensation disclosure has been compliant with the disclosure rules of the (OSC) except for three minor omissions that were subsequently corrected a number of years before Mr. Verdun's inquiries," comments CIBC, citing an example from 2003, when disclosure should have noted the existence of dividend equivalents as part of two restricted share programs.

Verdun attributes the source of the SIP funds to the proceeds of CIBC's "one rare good investment", the high-tech boom supernova Global Crossing. He alleges that these funds were channelled into the pockets of a few senior executives, rather to the benefit of all CIBC shareholders.

The bank "engaged external

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counsel to review CIBC's executive compensation disclosure in management's proxy circular in light of Mr. Verdun's inquiries, commencing with the circular relating to the 2000 fiscal year," says CIBC. "External counsel advised that with the exception of the minor omissions which were subsequently corrected, CIBC has disclosed all information legally required to be disclosed," and "over time, has disclosed additional information on a voluntary and supplementary basis that exceeded such requirements."

Recently, CIBC annual reports have included full disclosure of the value of McCaughey's 3,500 SIP units. The bank's management proxy circular prepared for the 2008 shareholder's meeting stated the value of McCaughey's units as $29,506,050 on Nov 2.

"In the past few years," says Mississauga-based independent financial analyst Diane Urquhart, "we have witnessed CIBC's US$2.4 billion payment to close out liabilities related to its Enron investments, the $1.3 billion losses on its Amicus project and the more recent $3.2 billion writedown on its U.S. subprime mortgage exposure."

Verdun has sent his CIBC dossier to the OSC, the U.S. Securities and Exchange Commission (SEC), the RCMP and the U.S. Department of Justice. In principle, such organizations refuse to comment on investigations that have not been publicly announced.

"Since all this is related to executive remuneration, I am not sure the bank has done anything illegal. Companies can use just about any method they choose to pay employees," says University of Alberta accounting professor Karim Jamal. "And from what I remember of OSC disclosure regulations, they are so vague that it is quite possible that the bank may not have broken any of their rules."

A much less incendiary side of executive compensation practices – requests for 'say on pay' provisions will also be discussed at various corporate annual general meetings. These measures set up non-binding, advisory shareholder votes on how corporations should pay senior executives.

Such legislation is already on the books in various countries, including the UK. Last March, the U.S. House of Representatives passed the Shareholder Vote on Executive Compensation Act. Although it still requires Senate passage and White House approval, it is possible that the SEC will be implementing it by 2009.

"It's a wedge issue," says Toronto-based executive compensation consultant Ken Hugessen, "that divides large shareholders from small ones. The big players are not in favour, because they already enjoy access.

"If the head of the Ontario Teachers' Pension Fund has concerns with a major bank's compensation policies, he simply calls up the bank's CEO and they settle the issue very quietly over the phone. But if the director of a minor shareholder association or a small, individual investor calls the bank CEO, not much is likely to happen."

Still, the divide between large and small investors may be more ritualistic than philosophical.

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