



Tax Court Case

Are commissions on an advisor's life insurance policy taxable?

The taxation of commissions on the sale of advisors' own policies has always been a hot topic, as there still appears to be some confusion among advisors as to whether such commissions are indeed taxable. A recent tax case (*Ghumman v The Queen, 2019 TCC 125*) shows that this issue is still misunderstood by some insurance advisors.

The Canada Revenue Agency (CRA)'s long-standing published administrative position on the taxation of insurance commissions is articulated in T4130, "Employers' Guide — Taxable Benefits and Allowances," which states: "Commissions that sales employees receive on merchandise they buy for personal use are not a taxable benefit. When life insurance salespeople acquire life insurance policies, the commissions they receive are not taxable as long as they own the policies and have to make the required premium payments. This only applies where the income received is not significant and the insurance policy has no investment component or business use."

This administrative position is based on the analogy that the commission income is akin to an employee product discount, where effectively, the amount of the commission received by the advisor is netted against the premium payable.

TAX CASE

The recent case involved a life insurance broker who provided life insurance brokerage services on behalf of, and as an employee of, his corporation. The commissions in respect of any life insurance policies placed through the services of his corporation were paid to, and received by, his corporation, which in turn paid him a salary for the services that he provided on its behalf.

In 2014, the taxpayer purchased a life insurance policy on his own life with a death benefit face amount of \$1 million. His corporation was paid a first-year commission in the amount of \$20,822.41 and

a bonus commission in the amount of \$36,439.22, for a total of \$57,261.63.

For that tax year, his corporation paid him a salary of \$111,617. Relying on the CRA's administrative policy outlined above, in computing his income for 2014, the taxpayer deducted from his salary the amount of \$57,261.63, representing the total of the commissions he received in respect of his personal policy. The CRA reassessed him, disallowing this deduction and he took the CRA to Tax Court.

An important reminder to all insurance advisors: The commissions received on personal policies generally need to be included in income.

The CRA advised the taxpayer that its administrative policy did not apply to him because the CRA was of the view that the amount of the commissions (i.e., \$57,261.63) was "significant."

The taxpayer wanted to know the difference between "a significant commission and an insignificant commission." As the judge remarked, "When he asked to know where the dividing line was, the CRA could not provide him with any specific indication."

Nonetheless, the judge was unable to rule in the taxpayer's favour, and explained the basic theory behind the taxation of insurance commissions and where the CRA was coming from in its occasional non-enforcement of the rule.

He explained that "a commission received

on a sale is by its very nature taxable," yet the CRA views some of these commissions as "a privilege for the seller who receives it. Thus, just as an employer may sell merchandise to employees at a discount, so can an insurance company offer a discount to its sellers if they acquire a personal life insurance policy from it, according to the CRA. In such cases, the CRA views the discount as a privilege related to employment or profession, and agrees to treat the benefits as non-taxable."

The judge went on to point out, however, that this only reflects the administrative policy of the CRA that, to his knowledge, cannot be in any way derived from the *Income Tax Act*. As he wrote, "there is nothing in the provisions of the [Act] exempting from taxation this type of privilege."

The bottom line is that commission income earned by a life insurance broker (at least on permanent insurance policies) is generally taxable, unless the CRA determines that a particular commission qualifies for the favourable treatment set out in the CRA's administrative policy above.

In dismissing the taxpayer's appeal, the judge concluded, "While the CRA's denial of its administrative policy to (the taxpayer) without a satisfactory explanation was unfortunate, this Court cannot provide the relief that the taxpayer is seeking."

It's an important reminder to all insurance advisors that the commissions received on personal policies generally need to be included in income. **■**

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