Affidavit of J. Bell, sworn September 3, 2010 Exhibit B

Deloitte & Touche
BC Healthcare Benefits Trust
An Independent Review
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Appendix A: Tax Opinion on HBT Surplus.

Analysis

Background

Health and Welfare Trusts in Canada are not expressly provided for in the Income Tax Act (Canada) (the "Act"). They are a result of a CCRA administrative policy as set out in IT-85R2. Health and Welfare Trusts enable employers to provide certain health and welfare benefits to employees (current and former) and their families. In order to qualify as a Health and Welfare Trust, the trust must meet certain requirements. For purposes of this analysis, it is assumed the HBT currently meets these requirements and is a qualifying Health and Welfare Trust.

A Health and Welfare Trust pays income tax at a combined federal and provincial rate of 43.7%. In determining the Trust's income for tax purposes, it will include only its investment income, and capital gains. The Trust can then deduct: (a) its investment expenses, (b) its administrative expenses, and (c) its insurance premiums expenses and benefits paid to its beneficiaries. The Trust is then subject to income tax on the remaining income. The trust is not required to include in its taxable income its employer or employee contributions received.

The employer may deduct all of its contributions to the Trust at the time of payment (employee contributions are not deductible).

At the time the Trust provides benefits to an employee, depending on the type of benefit, the employee may then be subject to income taxes. Trust payments to employees may arise well after the deductible employer contribution, thus resulting in an overall tax deferral.

CCRA is concerned with intentional excess contributions by employers designed to give them early tax deductions. In the case of HBT, the majority of contributions are from employers who are not taxable and thus they cannot benefit from the tax deductions associated with contributions to a Health and Welfare Trust. CCRA should be less concerned in this situation but still may be concerned in view of the taxable employers.

In the context of a Health and Welfare Trust, what is a surplus and what is the difference between the term "surplus" and the term "reserve"?

For the purposes of discussing and applying its rules regarding Health and Welfare Trusts, CCRA has adopted a special definition of the term "surplus". In this context, a "surplus" is an amount of a trust's net assets in excess of its actuarially determined liabilities. We believe that in applying this definition of "surplus", CCRA's reference to actuarially determined liabilities is to current and future liabilities resulting from events or conditions which have already occurred or are already in existence, such as known actual disabilities and illnesses, but not to events or conditions which are reasonably expected to occur in the future. In addition, liabilities relating to the employees' health and welfare, which are not

supported by an actuarial determination, are not taken into account in determining whether or not a Health and Welfare Trust has a "surplus" under CCRA's definition.

Making a "reserve" or "provision" can generally be viewed as earmarking, appropriating, or setting aside a surplus amount for a future use.

If this reserve or provision is actuarially determined and relates to known liabilities, i.e. liabilities that have arisen due to events such as disabilities, occurring prior to the year end, the making of the reserve or provision will eliminate the surplus. On the other hand, to the extent that such a reserve or provision is not actuarially determined or for some future occurrence, such as disabilities which may occur in the future, this will not reduce the surplus for purposes of CCRA's rules.

If the HBT has a surplus, how does this affect its Health and Welfare Trust status?

(i) Interpretation Bulletin 85R2

Paragraph 6 of IT-85R2 states:

"To qualify for treatment as a health and welfare trust … the employer's contributions to the fund must not exceed the amounts required to provide [health and welfare] benefits".

Paragraph 6 does not explicitly refer to the term "surplus". It only states that employer's contributions must not exceed the required amounts. On this basis, if an employer contributes to a health and welfare trust so as to fund an actuarially determined liability, the Trust should be able to take the position the employer is not exceeding the amounts required to fund the health and welfare benefits. This is taken to mean that no surplus exists.

Paragraph 14 of IT-85R2 also states:

"Although actuarial studies of the trust may recommend the establishment of "contingency reserves" to meet its future obligations, transfers to such reserves are not deductible for tax purposes by the trust".

Paragraph 14 falls under the "Taxation of Trusts" subheading and operates to deny a Health and Welfare Trust a deduction for any transfers to a contingency reserve.Paragraph 14 does not state that a Health and Welfare Trust cannot have a contingency reserve effectively reducing or eliminating its surplus. In fact, it seems to imply that it can have such a reserve, presumably where it would be reasonably required to fund the health and welfare benefits.

(ii) Jurisprudence

There is no case law on the status of Health and Welfare Trusts. As these trusts are a creation of CCRA administrative policy, this is not surprising.

(iii) Other CCRA Pronouncements

In general, CCRA's pronouncements[6] state that the existence of a surplus in any given year will not necessarily, in itself, affect the status of a trust as a Health and Welfare Trust. Where a surplus exists in any given year, a review of all the circumstances will generally be required in order to determine whether the surplus can be expected to be temporary or more or less permanent in nature. Where the surplus is seen to be relatively permanent, the most common mechanism for its reduction is a premium (contribution) holiday. Where such a step is not taken within a reasonable time, the level of annual contributions by participant employers may be seen as being in excess of that which is needed to meet their obligations under the health and welfare plan administered by the trust, and as a result may jeopardize the status of the trust as a Health and Welfare Trust.

The CCRA also indicates they expect temporary accumulations of cash to be placed in relatively liquid short term investments rather than higher risk, longer term investments so that funds will be available to meet the expected claims experience. The implication is that a surplus invested in longer term investments is an indication that the surplus is more permanent.

If the surplus affects the HBT's status as a Health and Welfare Trust, what are the income tax consequences?

The consequences of a loss of status as a Health and Welfare Trust are not entirely clear-cut. The deductibility of future contributions by the employers may be impacted. This would not affect the non-taxable HBT employers. The trust itself could become taxable on all of its income rather than just its investment income. In addition, the preferential tax treatment of benefits to employees could be negatively impacted.

Based on the CCRA rulings and technical interpretations to date, depending on the circumstances, an offside Health and Welfare Trust may be treated as an employee benefit plan or an employee trust. Such treatment is much less severe than discussed in the previous paragraph. Under an employee benefit plan or employee trust, employers can generally only take deductions in the year in which the employee takes the benefit into income. Although CCRA indicates this is the likely reclassification of an offside Health and Welfare Trust, the treatment depends on the whether the terms of the trust and the overall arrangement meet the requirements of the Act. A detailed discussion of these requirements is beyond the scope of this analysis, but we would be happy to provide additional analysis on this point should it be required.

[6] CCRA Rulings Document number: 9223025; CCRA Rulings Document number: 9412155