Canada Revenue Agency / Agence du revenu du Canada

Mr. Kevin Wark, President
Conference for Advanced Life Underwriting
Suite 504 - 220 Duncan Mill Road
Toronto, ON M3B 3J5

Victor Pietrow
2014-054421

December 14, 2015

Dear Mr. Wark:

RE: RCA advantage tax rules

We are writing in reply to CALU's submission in correspondence dated August 18, 2014 from Ms. Jillian Welch and further to various telephone conversations with you and Ms. Welch and your email dated December 11, 2015.

The submission questions the position that our Directorate took in response to a question at the CRA Roundtable session at the CLHIA Conference in May 2013 in connection with the applicability of the advantage tax rules in Part XI.3 of the *Income Tax Act* (the "Act") where a retirement compensation arrangement (RCA) trust owns a life insurance policy (2013-0481421C6). We stated that it is not clear under what circumstances an RCA would be holding a life insurance policy that provides for more than a nominal death benefit. We expressed the view that the holding of such a life insurance policy would appear to have little to do with providing for benefits under the RCA in relation to retirement, a loss of an office or employment, or a substantial change in services rendered. We concluded that the holding of such a life insurance policy by the RCA could give rise to an advantage in relation to the RCA and, therefore, advantage tax under section 207.62 of the Act.

In general, the determination as to whether an advantage in relation to an RCA arises, in a taxation year, because of a life insurance policy held by the RCA, and the determination of the amount of such an advantage, are questions of fact. Given the broad variations in life insurance policies and RCAs, each situation must be considered based on its own facts, on a case-by-case basis. This would normally be undertaken only in the context of an advance ruling request. However, we provide the following comments for your assistance.

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Canada

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In the example set out in the submission, an employer (a private corporation) has established a defined benefit registered pension plan (RPP) for all of its employees. It has also established a trusteed defined benefit supplementary pension plan for several key owner-managers, which the submission indicates is an RCA. Under the terms of the RCA, new members may be added to the plan. Any surplus that exists upon the termination of the RCA (i.e., where there are no longer any members of the plan or the accumulated values in the RCA are determined to be more than sufficient to fund all future benefits) can be returned to the employer. The RCA is given broad discretionary investment powers, which include the ability to purchase exempt life insurance policies on the life of plan members and make excess contributions to such policies that will result in the accumulation of cash values. Such policies are in fact acquired on the life of certain (but not all) plan members, and in these cases the employer contributions (after the RCA refundable tax) are used both to fund the mortality charges and to accumulate cash within the policy. Benefits for those members whose lives are insured will be primarily funded by the RCA by making withdrawals from the cash values on their life and using these funds to make payments to those members. On the death of an insured member, the death benefit under the life insurance policy will be retained in the RCA to fund benefits to the surviving spouse (if any) and/or fund benefits to other members of the plan (or surviving spouses) who continue to participate in the plan. Upon a future winding-up of the RCA, any remaining funds including any funds derived from the proceeds of life insurance death benefits will be returned to the employer on a taxable basis.

The submission did not provide details as to why the life insurance policies were acquired by the RCA trust. However, in our view, if the survivor benefits under the RCA are in line with the survivor benefits under the RPP, and the amount payable under the life insurance policy on death of the insured does not exceed the amount reasonably required to satisfy the RCA survivor benefits payable in respect of the insured, then generally there would not be an RCA advantage. In any other case, there may be an RCA advantage depending on the facts and circumstances. For example, there would be an RCA advantage if the policy was acquired to, in effect, provide key-person coverage to indemnify the employer for potential loss of profits or additional costs that may be incurred in the event of the death of the insured. If the insured is a specified beneficiary of the RCA and does not deal at arm's length with the employer, RCA advantage tax would arise in this situation.

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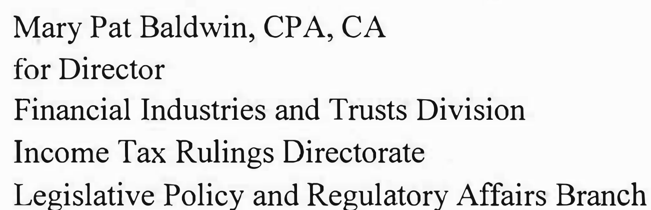
Although (as noted above) the determination of the amount of the RCA advantage in each year is a question of fact, the cost of equivalent term-life insurance coverage based on insurance underwriting considerations such as the individual's age, gender, and health would be a relevant factor.

We therefore confirm that the position set out in 2013-0481421C6 with respect to RCA advantages remains unchanged.

We trust that you will find these comments to be of assistance.

Yours truly,



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