

Corporate vs. Personal Ownership Checklist

When business owners buy insurance, should they own the insurance personally, or should the corporation own it? While this is a simple question, the answer is not always obvious. The following checklist includes questions that should be answered when coming to such a decision. Many people may find that the answers reveal both factors in favour of personal ownership and factors suggesting corporate ownership is the appropriate course of action. Once the checklist is completed, it will still be necessary to weigh and analyze the responses.

On completing the checklist, you may wish to obtain copies of documents included in our Taxing Issues series. These documents will provide a greater understanding of the tax and other considerations listed below.

Documents that you may wish to refer to include:

- *The Tax Implications of Corporate-Owned Life Insurance (PC 5675-07-2005)*
- *The Capital Dividend Account (PC 5674-07-2005)*
- *Savings Available Where Corporate Dollars are Used to Acquire Life Insurance (PC 5676-08-2005)*
- *Life Insurance: Corporate versus Personal Ownership (PC 5707-10-2005)*

ISSUE	RESPONSE
General Considerations	
1. What is the insurance needed for? (i.e. the purpose of the insurance)	
2. Who should be the beneficiary? (i.e. who does the policy owner/insured want to receive the proceeds of the insurance?)	
3. When will the insurance proceeds be needed?	
Taxation Issues	
1. Will the corporation (or individual) be able to deduct the premiums? A deduction will be available in either case where the insurance is required as collateral. A corporation will also be able to deduct the premiums related to the employee's interest in the contract where an employee or shareholder is the beneficiary of a corporate-owned contract and the benefit arose by virtue of the employment and not the shareholding.	

ISSUE	RESPONSE
Taxation Issues (continued)	
<p>2. If the insurance is corporate-owned, will this result in either an employee or shareholder benefit?</p> <p>A benefit would be computed where a shareholder or employee is the beneficiary.</p> <p>Where a person is both a shareholder and an employee, a determination will have to be made as to the capacity in which the benefit was received.</p> <p>Shareholder benefits are not deductible to a corporation, whereas employee benefits are.</p>	
<p>3. If the corporation is the beneficiary, will it be able to credit the life insurance death proceeds to its Capital Dividend Account (CDA)?</p> <p>Is the corporation a private corporation that will have access to the CDA?</p> <p>Are the shareholders resident in Canada so that any Capital Dividend will be tax-free?</p> <p>Is the individual(s) who is to receive the death benefit a shareholder of the corporation?</p> <p>Is the calculation of the Capital Dividend clear, or are there issues in calculating the amount that may be credited to the CDA? If so, should multiple dividends be declared?</p> <p>Is there a process in place for making the appropriate Capital Dividend elections on a timely basis?</p>	
<p>4. Will corporate ownership of the life insurance policy eliminate access to the \$500,000 capital gains exemption?</p> <p>If the insurance is corporate-owned, can it be considered to be used in a Canadian active business?</p> <p>How will ownership of the insurance impact the 50% and 90% tests?</p> <p>If there are risks with respect to meeting the 50% or 90% tests, does it make sense to have the insurance in another corporation?</p>	

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<p>5. How should any corporate-owned insurance be valued</p> <p>(a) At death</p> <p>(b) For purposes of accessing the \$500,000 capital gains exemption?</p> <p>Will it be permissible to value the policy at death at its Cash Surrender Value (CSV)?</p> <p>If the policies are multi-life or joint-life policies, how will the FMV at death be established?</p> <p>What is the impact of Canada Revenue Agency's (CRA) general valuation rules?</p> <p>If the purpose of the insurance is to fund a buy-sell agreement, will the purchase, redemption or cancellation take place within 24 months of death so that the CSV may be used as the FMV?</p>	
<p>6. Could the deemed Retirement Compensation Arrangement (RCA) rules come into play?</p> <p>Is there any risk that CRA might contend that it is reasonable to consider that the insurance was acquired to fund (in whole or part) retirement or other post-employment benefits?</p> <p>If so, is there an administrative process in place to comply with the ITA requirements?</p>	
<p>7. If a corporation is providing retirement or other benefits, should an RCA be considered?</p> <p>If an RCA is being established and benefits are to be provided, is it appropriate to have the ownership of the insurance contract split?</p>	
<p>8. Will be policy be leveraged?</p> <p>Will the interest be deductible?</p> <p>If so, will this change if the October 31, 2003 measures are adopted?</p> <p>If the leveraging is only attractive because of interest deductibility, what happens if interest deductibility were to be eliminated, either because of the October 31, 2003 measures (Reasonable Expectation of Profit, REOP, rules) or other modifications to these rules (per the announcement in the 2005 Federal Budget)?</p>	

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<p>9. Is a departure from Canada imminent?</p> <p>Might an RCA be implemented? Amounts then payable to non-residents are subject to Canadian non-resident withholding taxes of only 15% or 25%.</p> <p>Is corporate-owned insurance (where owned by a private corporation) less attractive than personally owned insurance because of “departure tax” considerations?</p> <p>(i.e. assets that are deemed disposed of upon leaving Canada exclude a “life insurance policy in Canada” that is personally held, but include shares of private corporations, with the FMV of the shares taking into account the value of any life insurance held by the corporation. Value will be CSV, except for joint-life and multi-life contracts).</p>	
<p>10. Will there be an on-going insurance need?</p> <p>Might there be a transfer in the ownership of the policy?</p> <p>If there is a high likelihood that the policy will be transferred, will the tax consequences be significant? (e.g. Will a significant policy gain have to be recognized? Will shareholder benefits arise? What is the ACB after the transfer?)</p>	
<p>11. In a corporate situation, was there a shareholder agreement in place on April 26, 1995, which dealt with the share disposition?</p> <p>In such a situation, corporate owned insurance may be appropriate because the shares are “grandfathered,” i.e., not subject to the “stop loss” rules. Thus, new or additional corporate-owned insurance may be acquired (or the existing policy may be replaced or converted).</p>	
<p>12. Was the corporation a beneficiary of a life insurance policy on April 26, 1995 that insured the life of an individual (or his or her spouse), where it was reasonable to conclude that a main purpose of the insurance was to fund the redemption, acquisition or cancellation of shares?</p> <p>This may also allow the corporation to acquire new or additional life insurance, or to replace or convert an existing policy, without the “stop loss” rules applying.</p>	

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<p>13. Is there the potential that US estate taxes may apply? Would the life insurance proceeds be subject to US estate taxes?</p>	
<p>14. Should a shared ownership structure be considered? (i.e. one party would own death benefit component and other party would own investment component of UL contract). Can the interests of the parties be appropriately segregated, so that each could own a separate component of the UL contract? If so, is there a methodology to share costs, so employer/shareholder benefits are avoided, with each party paying an appropriate portion of the costs?</p>	
<p>15. Will corporate ownership have an impact on capital taxes or the Large Corporations Taxes?</p>	
Accounting & Administrative Concerns	
<p>1. If the insurance is corporate-owned, is there a process in place so the appropriate values can be shown on the corporation's financial statements? Will the corporation be able to access the CSV information on a timely basis so that the financial and tax return deadlines may be met?</p>	
<p>2. Is the insurance being put in place to fund a buy-sell agreement? Is corporate ownership preferred because the corporation has the administrative processes in place to ensure that the policies are kept in force? If there are multiple shareholders, is corporate ownership preferred because the shareholders will not have to pay varying amounts of insurance premiums because their ages and/or health vary? For multiple shareholders and corporate ownership, should other than a multi-life contract be considered because of the CDA implications?</p>	

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<p>3. If the contract has an investment component, who will direct the investments?</p> <p>If there are various parties to the contract, who will make the investment decisions?</p> <p>If, for example, the contract is corporate-owned and insured is one of many shareholders, is it appropriate to have the shareholder or another officer of the corporation direct investments, especially where investment performance may have a bearing of future premium payments?</p>	
Creditor Protection & Family Law Concerns	
<p>1. Are there creditor protection concerns?</p> <p>If the insurance is corporate-owned, is there the likelihood that creditors would lay claim to it?</p> <p>If the insurance is to be personally owned, will it enjoy the protection provided by the provincial insurance legislation?</p> <p>In common law provinces, is there the appropriate family relationship between the life insured and the designated beneficiary? In Quebec, is there the appropriate relationship between the owner and the beneficiary?</p>	
<p>2. Are there any family law concerns?</p> <p>Will insurance proceeds (or a right to proceeds) enter into the calculation of matrimonial property that is subject to division? Does this create a bias for a personally owned policy?</p>	
Other concerns	
<p>1. Are there other considerations that have not already been noted above?</p>	

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