

R^CF News

SPECIAL UPDATE

Update on RCA Abuses

The CRA has again emphasized its concerns over RCA abuses by publishing, on April 27, 2006, on the CRA internet site at www.cra.gc.ca as Income Tax Technical News No. 34, their minutes of the Canadian Tax Foundation conference in Vancouver on September 27, 2005.

In answer to the question on recent interpretative issues regarding the use of RCAs, the CRA stated that “**innovative tax plans purporting to be RCAs are being marketed and promoted to avoid taxes.** Here are some examples: corporations that contribute excessive amounts for the benefit of owners/managers who receive the amounts after moving offshore, corporations that are attempting to use such arrangements to streamline their long term profits, and corporations that are claiming deductions as part of a series of contributions/ loan backs.”

The CRA stated its policy that “**tax avoidance schemes purporting to be RCAs will be targeted for review with the aim of, for example, applying the salary deferral arrangement rules, denying deductibility, applying subsection 15(1), and/or subjecting the arrangements to GAAR.**”

Combined with the CRA letter dated September 16, 2005 (2005-013240117) referred to in R^CFNews Issue #12 (“RCA Abuses: CRA Speaks Out”) located in the R^CFLibrary at www.rcf.ca, this clearly indicates that RCAs with contributions and loan backs to the corporation or a related entity (leveraged RCAs), RCAs established in an outstanding profit year which lowers profits but is not thereafter continuously funded, and RCAs where the benefits are excessive will be targeted for examination, and improper transactions will be attacked as a salary deferral arrangement, as a violation of subsection 15(1) (being a benefit conferred on a

shareholder), as a violation of section 20(1)(i)(r) (denying the deduction as not being a proper contribution to an RCA), and/or as a violation of GAAR.

The Income Tax Technical News No. 34 repeated the standard for reasonable benefits from an RCA for an employee which are no “**more generous than benefits that would be commensurate with the employees position, salary, and service**” and that “**take into account benefits that are provided through one or more registered plans**”. Clearly attempts to fund benefits in excess of these normal pension standards will be attacked as salary deferral arrangements.

R^CF has always integrated other pension arrangements for owners of private corporations.

The CRA has spoken. Corporations using the RCA provisions aggressively will do so at their peril.

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