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RETIREMENT COMPENSATION FUNDING

Stand Alone RCAs funded by RCF's PENSION*Plus*™
vs.
Split-Dollar or Shared Ownership Funded RCAs

BY

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History

R^C F was the first company in Canada to develop a "Stand Alone" insurance contract that could be used as a funding vehicle for RCAs and that was fully integrated with the Refundable Tax Account (RTA).

This was back in 1988 and sprung from an idea developed by the author from his involvement with the first RCA established in Canada. Why an "exempt" insurance contract? To tax shelter growth in the RCA Investment Account (RCAIA) and provide better performance. Back in 1988 there was not considered to be much use for RCA's for Private Corporations since RRSP contribution levels were projected to increase significantly to provide adequate pensions. As well, there was the concern that the RCA could be deemed a Salary Deferral Arrangement (SDA). The focus was to allow public corporations to reduce RCA funding costs and / or to provide survivor benefits at the same cost of funding primary benefits. As well, any excess mortality gains or those arising from pre-mature deaths would lower the corporation's cost of funding supplemental pension benefits over time.

Why a "Stand Alone" funding product. First, the RCAs usually stood beside a Defined Benefit Pension Plan (DBPP). It was important that all assets in both the DBPP and the RCA be fully segregated from the corporation and in the later case, the mortality was required for survivor benefits. However there was a second concern, in that, when the RCA Regulations were introduced, section 207(6) 2 of the Income tax Act referred to the use of Life Insurance to provide post retirement benefits.

Sec. 207.6(2) reads as follows:

Life insurance policies

For the purposes of this Part and Part I, where by virtue of a plan or arrangement an employer is obliged to provide benefits that are to be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by a taxpayer, the retirement of a taxpayer or the loss of an office or employment of a taxpayer, and where the employer, former employer or a person or partnership with whom or which the employer or former employer does not deal at arm's length acquires an interest in a life insurance policy that may reasonably be considered to be acquired to fund, in whole or in part, those benefits, the following rules apply in respect of the plan or arrangement if it is not otherwise a retirement compensation arrangement and is not excluded from the definition "retirement compensation arrangement", in subsection 248(1), by any of paragraphs (a) to (I) and (n) thereof:

(a) The person or partnership that acquired the interest is deemed to be the Custodian of a retirement compensation arrangement;
(b) The interest is deemed to be subject property of the retirement compensation arrangement;
(c) An amount equal to twice the amount of any premium paid in respect of the

interest or any repayment of a policy loan there under is deemed to be a contribution under the retirement compensation arrangement; and

(d) Any payment received in respect of the interest, including a policy loan, and any amount received as a refund of refundable tax is deemed to be an amount received out of or under the retirement compensation arrangement by the recipient and not to be a payment of any other amount.

The RCA provisions and this section caused immediate concerns for private corporations that were using corporate owned insurance contracts to defer compensation.

Not for Profit Corporations

In "not for profit" corporations that were deferring bonuses that would otherwise have been paid out to executives, the RCA rules meant that the corporation had to send an amount equal to what had not been paid to the executive, to what was referred to as a Refundable Tax Account (RTA) and, every year, add to this RTA an amount equal to what had been earned on the funds held by the corporation. The funds held in the RTA account would be paid back to the corporation when the corporation eventually paid the deferred compensation to the executive and tax was paid. The RCA rules effectively stopped not-for-profit corporations from using their not-for-profit status to help their executives defer compensation.

It was one thing to defer funds owed to the executive but the "not-for-profit" corporation could not add their own funds.

For Profit Corporations

From 1981 to 1986 a new form of "deferred compensation" evolved in Canada. Prior to 1981 "deferred compensation" in Canada utilized corporate owned Single Premium Deferred Annuities (SPDAs) (which were not subject to accrual tax) and Income Averaging Annuities, (IAAs), which amortized the tax on the lump sum benefit paid at retirement. When the SPDAs were cashed in by the corporation at retirement, the corporation offset the deferred tax by paying out a retiring allowance to the executive which the executive used to buy the Income Averaging Annuity.

In 1981 amendments to the Income Tax Act changed the rules. Insurance products were split into "exempt" and "non exempt" categories. The SPDA falling into the latter and IAAs were eliminated.

As a result, the "exempt" Corporate Owned Life Insurance (COLI) contract became the vehicle of choice used by "for profit" corporations for "deferred compensation". This new class of high cash value participating whole life insurance contracts (there was no UL or Term to 100 in 1981) effectively combined the benefits of SPDAs and IAAs in one contract. These contracts tax sheltered investment earnings and settlement options provided most of the advantages of IAA's.

To avoid the "deemed benefit" provisions of the Income Tax Act, a letter was given to the executive promising certain benefits at retirement but no vesting until then. To protect the executives, a corporate resolution was passed stating that the cash in the "exempt" Corporate Owned Life Insurance (COLI) contract could be used for no other purpose than providing executive benefits at retirement. No bankruptcy protection was given.

Section 207(6) 2 ended this practice. The word "obliged" was specifically used in the section to address the corporate resolution and letter to executives that accompanied these COLI policies. It is important to note that the word "obliged" is not used in the current RCA guide (but remains in the Act).

Interpretation

Because of the use of the word "obliged" some might try to disguise the arrangement as key person insurance. They could allege that there is no written obligation to pay a retirement benefit. However an obligation can be verbal. What is certain is that the use of Corporate Owned Life Insurance creates a trail for CRA regardless of corporate structure (including holding companies). If there is a danger of the purchase being deemed an RCA, it might as well be set up properly at the start. If the policy was deemed to be an asset of an RCA, the corporation had to send a matching contribution to the RTA. The real danger is that the proceeds of the policy on death would be considered to be taxable income and will not be credited to the Capital Dividend Account. Fortunately, existing COLI policies were grandfathered but it has been important to make no material changes to both the arrangement and the policies since then.

Split-Dollar Arrangement with RCA

It was because of section 207(6) 2 that interest in the use of Split-Dollar policies for deferred compensation appeared. On May 31, 1988, a prominent East Coast law firm went to then Revenue Canada for a technical interpretation, which was received on July 6, 1988. The facts are summarized as follows:

1) A Corporation requires a whole life exempt insurance policy on the life of an executive employee.
2) The employer immediately assigns the right to the cash surrender value of the policy to the custodian of a Retirement Compensation Arrangement (RCA) as that term is defined under subsection 248(1) of the Income Tax Act. The RCA is established by the employer for the benefit of the employee. The employer would retain the right to receive the protection element of the policy.
3) The responsibility for paying the annual premiums on the policy would be the split so that the employer will pay the 'net cost of pure insurance' as defined in the Income Tax regulations and the custodian will pay the remaining premium, which would be financed by the employer contributions to the RCA grossed up by 100% in order to cover the 50 percent RTA tax under The Act

4) If the employee dies before retirement, the custodian would receive the cash surrender value and would pay a death benefit to the estate in accordance with the terms of the RCA equal to that amount grossed up by the balance in the Refundable Tax Account (RTA). The employer would receive the remaining proceeds of the policy and could use the amount as a basis for paying a death benefit to the employee's estate.
5) If the policy was in force at the time of the employee's retirement, the employer would purchase the custodian interest in the policy by paying its cash surrender value to the custodian, who would pay a retirement benefit to the employee equal to the cash balance in the RCA, plus the tax refund. The employer would retain full ownership of the policy on the death of the employee. The employer could pay a death benefit to the employee's estate using all or part of the proceeds of the policy.

CRA's Position

Notwithstanding that the employer agreed to pay the "pure cost of net insurance" up to the retirement and at retirement buy back the balance of the policy for its then cash value, CRA's (then Revenue Canada) position was.

"In our opinion, where an employer acquires an interest in a Life Insurance policy that may be reasonably considered to fund benefits that are to be received by any person in contemplation of any substantial change in services rendered, the interest is deemed to be, and <u>remains thereafter</u>, subject property of an RCA under paragraph 207.6(2)(b) of the Act, notwithstanding that the employer subsequently assigns an interest in the policy to a third party."

Because of that technical interpretation and the reasons previously given, the first RCA policy and all subsequent ones designed by Retirement Compensation Funding (R^C^F) have been on a "stand alone" basis. The underlining of "remains thereafter" is for the purpose of this research paper.

Split-Ownership – Corporation & Executive

CRA's position on Split Dollar insurance between a corporation and a RCA is quite clear from the July 6, 1988 technical interpretation but it made no reference to Split Dollar ownership between an individual employee and corporation. Again, in 1993, someone went to then Revenue Canada for a Technical Interpretation (#9322475, Sept 16, 1993) in this regard which read as follows:

" In a situation where an employer and employee shared the cost of an insurance policy and the employer's portion if the premium was equal to the pure cost of term insurance, a Retirement Compensation Arrangement **<u>may</u>** exist".

It is important to note that then Revenue Canada in this part of the interpretation only used the word "may".

However, they further indicated that:

"The employer's interest in the policy **would** be a Retirement Compensation Arrangement, where the employee's share of the premiums was less than would be required to fund similar benefits if the employee paid all the premiums".

At this point of the Interpretation, Revenue Canada has gone from a **"may" to a "would"** which is significant.

If there is any doubt about CRAs feelings, the final part of the Interpretation stated:

"Death benefits from a Retirement Compensation Arrangement would be included in the recipient's income".

The underlining and bolding of "may" and "would" and last sentence is for the purpose of this research paper.

It becomes clear from these interpretations that there is a real danger if insurance policies are used on a Split-Dollar or Shared Ownership basis with RCA's and a corporation or policies between the corporation and the executive if the primary purpose is to provide supplemental benefits in retirement.

Even though one might debate the Legal meaning of the word "obliged" in this section of the Act, it could be easily changed by CRA. Not only did they use wording "may reasonably be considered" in the July 8, 1988 interpretation, CRA have clearly signaled their intent with the wording in the RCA guide which reads as follows:

"An employer may acquire an interest in a Life insurance policy to fund benefits for an employee's retirement, loss of an office or employment or any substantial change in the services the corporation provides. In this case, we consider this interest to be an RCA and the employer to be the custodian of the RCA".

It is RCF's position that Arrangements that try to camouflage an "obligation to pay benefits" and both Corporate IRP's and Individual Shared Ownership arrangements are too dangerous to be used for retirement purposes. With respect to a Living Buy-Out arrangement, it is important that the insurance cash values not exceed an "arms length" valuation of the shares or interest in the corporation.

Manulife Financial Tax Topic

In looking at Split-Dollar between the corporation and the RCA, Manulife Financial's Tax Estate Planning Group (although they did not specifically address the 1988 interpretation) expressed the following concerns in their Tax Topic relative to Split Dollar Life Insurance and RCAs.

1) "If the RCA trust applies for and owns the Life Insurance policy initially and, then transfers the death benefit interest in the policy to the corporation, this may be considered a distribution from the RCA Trust. The value of the distribution would be taxable to the corporation."

2) "If on the other hand the corporation applies for and owns the life insurance policy initially and, then transfers the cash value interest in the policy to the RCA Trust, the RCA Trust may be deemed to be established at the time the Life insurance policy is issued under subsection 207.6(2) of the Act.
The entire policy, including the interest in the level amount of the death benefit, may then be considered property of the RCA Trust. As a result, the portion of the premium paid by the corporation may also be subject to refundable tax. Further, the entire life insurance proceeds receivable at the death of the life insured may be considered to be received by the RCA Trust and taxable upon distribution to the corporation. Also, the corporation may not receive a credit to the capital dividend account."

Even if one attempted to avoid the pitfalls outlined above by having the policy jointly owned from the outset, there are technical complications and the concerns of the 1988 technical interpretation.

PENSION*Plus*™

R^C^F's PENSION***Plus***™ (Insurance Funding for RCAs) has been designed as a cost efficient Stand Alone RCA asset so there is no need to use Split-Dollar / Shared-Ownership and expose the client and corporation to unnecessary risk.

However, some would say that there is no subsection 207(6) 2 risk if the policy was split dollared or shared between the RCA and the individual. For the purpose of discussion of the financial merits, let us assume that is the case. There are some deemed benefits issues, which must be considered which we will address along with some other technical issues.

It should be noted that R^C^F asked for a Technical Interpretation from the CRA relative to Split-Dollar Shared Ownership arrangements between an RCA and individual some two years ago. At present (despite regular follow ups) it still has not been received. This gives pause for concern since it indicates that CRA might have problems with this issue.

The mathematical and practical side of such an arrangement must also be examined.. As has been said, R^C^F has no need to use Split-Dollar RCA products since the PENSION***Plus***™ configuration product is efficient on a Stand Alone basis. But what if we took this efficient product configuration and in fact did Split-Dollar it with the individual? Would it be even more efficient? We will examine this in the next section. It should be noted that some companies must use Split-Dollar / Shared Ownership in trying to compete in the RCA market since their products are not efficient on a "Stand Alone" basis as an asset of an RCA.

Split-Dollar or Shared Ownership RCA's with Individual

The term "Split-Dollar" has been around for many years. A "Split-Dollar" policy is where one of the owners owns the cash value of the policy and the other owns the death benefit less the cash value (i.e.: one owns the cash the other owns the pure mortality).Generally both parties apply for the policy with their respective rights outlined in the Split-Dollar agreement that forms part of the transaction.

A "Shared Ownership" arrangement is somewhat different? Here, generally one party applies for and owns the contract and the other party buys certain interests in the contract under the terms of a Shared Ownership agreement.

In a pure Split-Dollar arrangement each party's interest continues for as long as the policy. In a Shared Ownership arrangement, one party may maintain the mortality interest for a period of time, after which, all rights to the policy will revert to the other party. Each arrangement has different tax concerns.

If a Shared Ownership Arrangement between an RCA and an Individual were to be established it would be done as follows:

(1) Company contributes to RCA Trust

(2) RCA Trust enters into a Shared Ownership agreement with the individual shareholder / beneficiary so that the death benefit is paid to the individual and the cash value is paid by the Trust.

(3) Company bonuses out an amount to the individual (grossed up for income tax) sufficient to pay the insurance premium personally

(4) One half of the company contribution to the RCA is remitted to CRA for the Refundable Tax Account (RTA)

(5) RCA Trust applies other half to the Insurance Contract (Pension *Plus*™). Individual applies their portion to contract

(6) Plan member (shareholder) receives retirement benefits from cash value of contract and refunds from RTA.

(7) On death of the plan member, life insurance proceeds are paid to the surviving spouse or estate tax free and the RCA Trust is wound up.

From a tax perspective, most tax lawyers are currently of the opinion that:

(a) There are no shareholder's benefit or terminal funding issues since the policy is not Corporate owned.

(b) The insurance premiums for the mortality portion of the contract are paid for personally with after tax dollars and the death benefit is accordingly received personally tax-free.

As mentioned, Shared Ownership Arrangements between an RCA and individual are being recommended by some life insurance companies whose life insurance policies are not designed to be held as a "Stand Alone " asset of an RCA Trust. However, how does the arrangement compare if used with R^C^F's PENSION***Plus***™. Since PENSION***Plus***™ is a stand-alone product at the same funding cost of conventionally Funded RCA there is no need to eliminate any inefficiency through the use of "Split-Dollar" or "Shared Ownership" arrangements.

The design criteria for PENSION***Plus***™ were:

(1) The funding cost would be the same as if conventionally funded using GIC's, Bonds, etc.

(2) It must provide greater benefits for this same cost
   (a) pre-retirement death benefit (medical required on plan member)
   (b) survivor benefits
   (c) lower costs of administration

(3) Must be fully integrated with Refundable Tax Account (RTA)

(4) Must adhere to regulations of Income Tax Act and CRA Guidelines without complex or questionable tax opinions and the requirement for rulings.

(5) Must have a competitive advantage over Split-Dollar or Shared Ownership RCA's.

Stand-Alone Funding

For comparison purposes, let us first examine the benefit using R^C^F's PENSION***Plus***™ as a Stand Alone asset.

The plan member is a 45 year old non-smoking male with a post retirement RCA entitlement of $ 218,882 (indexed at 2%) from Age 65 to Age 82. If taken on Joint-Last Survivor basis with the spouse the primary benefit drops to $173,215.

The corporate pre-tax of funding is $141,270 for 20 years to age 64 using conventional non-insurance funding (Please refer to www.rcf.ca for the sample case). For the same amount of funding using PENSION***Plus***™, not only does Plan Member receive an unreduced primary benefit, giving him a projected $45,667 (indexed at 2%) of additional retirement income, but his wife receives an additional $42,651 (indexed at 2%) over the normal survivor benefit. As well, if the life insured is the plan member a pre-retirement death benefit is included

The survivor benefit is provided by way of the death benefit paid to the trustee of $1,168,615 along with the remaining Refundable Tax Account (RTA) balance of $746,906. The pre-retirement death benefit is paid from extra insurance required to maintain policy exempt status up to retirement.

On a Stand Alone basis, the client has received substantial extra benefits using PENSION*Plus*™ as the funding asset in the RCA.

Split-Dollar of PENSIONPlus™ policy

But what if the PENSION***Plus***™ policy was a Split-Dollared? Could any improvement of benefit be obtained? In the example discussed, the initial insurance face value is $1,997,000 and the total premium is $70,635 with a matching contribution to the RTA. Death is projected in policy year 38 (Age 82)

The RCA Trust that owns the policy could sell off the mortality portion of the policy to the Plan Member for a YRT cost of insurance starting at $3,715 annually to the plan member death at Age 82. At death the surviving spouse would receive the tax-free insurance benefit (Death Benefit minus Fund Value) to be used to provide a survivor benefit.

It is important to understand that under a Split Dollar arrangement, one side pays the cost of insurance and receives only the pure mortality side of the death benefit and the other side (that pays the difference between the YRT and the maximum premium allowed) receives the cash fund value portion of the death benefit.

Those that support Split Dollar Insurance for RCAs would have the RCA sell the mortality portion. Let us assume that this was done to the individual Plan Member and the Plan Member paid the YRT premiums so that the mortality component was paid tax free to the survivor.

The total after-tax cost of the premium to Age 82 is $623,356, but at that age, the fund value and death benefit are almost equal. **As such, under a Split-Dollar arrangement, the Plan Member has paid substantial premiums for no benefit.**

PENSION***Plus***™ is a specially designed configuration of a Universal Life product to be held as an asset of an RCA Trust. From retirement, part of this design is to have the face amount of insurance reduce to $1 as soon as possible. It then becomes irresponsible to suggest and is clearly not in the client's best interest to recommend Split-Dollar of PENSION***Plus***™ on a post retirement basis.

Why would any client pay post retirement YRT insurance costs totaling $623,356 for a tax free benefit at age 82 of $69,987? There is no logic to the suggestion.

To focus on survivor benefits for death prior to retirement goes against the sale of RCAs which assumes the client will live long.

Why then is there so much discussion and talk about Split-Dollar insurance for RCA's? The reason is simple. Other than R^C^F's PENSION***Plus***™, there are few insurance products on the market specifically designed to be held as an asset of an RCA Trust. As such, other carriers and producers try to use normal UL with a level cost of insurance (costing more over the funding period of the RCA) as the funding asset which unless properly configured is inefficient and non-competitive to funding with non-insured assets such as GIC's or bonds. The only way of camouflaging this inefficiency is through Split-Dollar. But let's not be fooled. When the employers pre-tax cost of both the contributions to the RCA for the cash portion of the policy, and the pre-tax cost of the payment to the executive to pay the mortality of the policy are added together, the total is more than the funding on a non insured conventionally funded RCA. PENSION***Plus***™ is at the same cost.

Pre-retirement Shared-Ownership of PENSIONPlus™

Now that we examined Split-Dollar, can a case be made for a PENSION***Plus***™ policy owned by an RCA to be shared up to retirement with an individual? With Shared-Ownership, the mortality portion could be purchased up to Age 64 before it starts to reduce. What would be the reason for considering such an arrangement? Is the performance of the policy impaired? Are there any tax or legal concerns? Let us first look at the business reasons.

The bigger the RCA, the larger the amount of pre-retirement insurance is required to maintain the 'exempt' status of the policy. Sometimes a client also requires substantial amounts of personal life insurance pre-retirement and underwriters are not happy with total risk. Perhaps a client has a large 5, 10, or 20 year term contract that can be converted and who has either become uninsurable or at the limit the insurers wish to consider. In Alberta, low personal tax rates make the effective cost of funding Supplemental Pension benefits higher than in other parts of Canada.

Now let us look at the cost and benefit side. Supplemental Pensions are established with the thought that people will not only live to normal retirement age, but hopefully to normal life expectancy. **We have shown that Split-Dollar with death at normal life expectancy makes no sense.**

However, if death occurs pre-retirement, the Trustee not only receives the cash value back under the PENSION***Plus***™ product, but the original face value of the insurance in the example used $1,997,000. In the event of pre-retirement death that the total mortality portion passes through the RCA and is taxed at the personal rate of the RCA beneficiary, whereas if it passed directly to the estate of the plan member or beneficiary, would be tax-free.

Clearly, on the surface that would be a desirable consequence for the beneficiary but not so desirable for the life insured who had hoped to live to receive the benefits on retirement from the RCA.

Providing the RCA is established as previously outlined and subject to the Technical Interpretation requested but not received, the plan member enters into a shared ownership arrangement with the Trustee to purchase the pure mortality benefit of $1,997,000 up to retirement. After retirement age 65, all benefits in the policy revert back .

The plan member pays the YRT cost of insurance to Age 65 to the RCA. This totals $206,350 from age 45 to age 65. The corporation grosses up this amount relative to the plan members personal tax rate. The pre-tax corporate cost to fund the RCA is therefore reduced since if the cost of insurance is paid by the RCA, the gross up is effectively 50 % because of requirement for a matching contribution to refundable tax account (RTA). The corporation's cost of funding the supplemental benefit is reduced by the spread between tax rates and the beneficiary is ahead of the game in the event of the pre-mature death of the plan member.

But what about the RCA and the Plan Member? Are they worse off? The answer to that is yes, since the RTA account is out the $206,350. At younger ages the impairment to the survivor benefit is small but at older ages and dependent on RCA size, they could be significant. The client must be clearly shown the difference and make a judgment call relative to the odds of dying prior to retirement.

It should also be noted, that Shared-Ownership assumes a first-to-die configuration.

Failure to pay Mortality Cost

One could argue that it is unlikely that an owner / manager would default on the mortality premium with the corporation continuing to pay the annual RCA payment. However, it is important to understand the risk if this should happen.

Since the policy is owned by the RCA and the Shared Ownership arrangement is between the RCA and the plan member, the insurance company normally has no part of the arrangement. Failure to pay the mortality premium will cause the insurance company to deduct the mortality cost from the cash value. This then becomes a distribution from the RCA since the RCA has paid the mortality cost on behalf of the Plan Member or other person that owns the mortality under the Shared-Ownership Agreement. The trustee should have withheld tax on this amount. Not only is the Trustee not aware of the transaction but would not have the cash to do so without making a further withdrawal from the cash value or withholding from the current year corporate contribution to the RCA.

Failure to withhold tax results in serious penalties for the Trustee. It is for this reason that corporate Trustees are reluctant to act for Shared Ownership RCAs. Not only do the documentation and notice requirements become complex, insurance companies face a problem in not paying the premium out of the RCA interest in the cash value and allowing the policy to lapse. One solution might be to have an agreement with the insurer would be for the policy to immediately become reduced paid up in the event the owner of the mortality defaults on the premium.

Shared Ownership Arrangement Prepaid to Retirement

One way of eliminating the concern of the mortality premium being paid to retirement would be for them to be prepaid. We believe that might be one of the reasons in the delay in receiving the Technical Interpretation requested relative to Split-Ownership between the RCA and Plan Member.

If the owner of the mortality made such a prepayment to the policy, the underlying increase in cash/fund value in the policy relative to the prepayment is that of the owner of the mortality. How then can it be justified that the RCA owns the remainder cash/fund value without any cost of keeping the monies ‘exempt’?

One could argue that the RCA deserves the full cash value (less plan member prepaid premium), because it is giving up the pre-retirement death benefit under the Shared Ownership agreement that is being paid for by the owner of the mortality. What is ignored is that the owner could purchase from an insurance company a separate policy containing the same insurance and cash values that he is getting under the Shared Ownership arrangement but the RCA cannot.

With no mortality benefit included, an insurance company would only sell the RCA segregated funds for its share of the premium. As such there would not be sufficient cash to fund the primary benefits causing the corporation to put in more cash and thus making the Shared Ownership RCA more expensive.

Tax and Technical Issues

As mentioned, section 207(6) 2 of the Income Tax Act specifically refers to corporate life insurance contracts. The July 6, 1988 request for a technical interpretation was relative to a split dollar arrangement between a corporation and the RCA. The September 16, 1993, Technical Interpretation dealt with a shared-ownership between the employee and the corporation. There appears to be no ruling or Technical Interpretation to date relative to a Split-Dollar or Shared-Ownership Arrangement between an employee (plan member) and an RCA.

However, is there a concern that CRA might subsequently take the position that:

(1) The RCA is receiving a benefit because of the premium being paid by the plan member since the RCA would be unable to maintain the 'exempt' status of the policy and the same cash value with the RCA's share of the premium and as such.

(2) Deem the entire policy to be an asset of the RCA .

There are a number of sections in the *Income Tax Act* whereby an individual may be deemed to have received benefits from a corporation. However, it is less clear when a corporation could be deemed to have received a benefit from an individual. Can it be safely assumed (without the benefit if a ruling or tax opinion) that an individual cannot confer a benefit to an RCA?

Summary

In certain situations (to be determined on a case by case basis) there could be a valid case for Shared-Ownership between to RCA and a Plan Member or the other owner (assuming section 207.6(2) does not apply) on a pre-retirement basis. However, it is strongly advised that there be reasonable proof that the coverage cannot be obtained on a Stand-Alone basis. As well, the extra legal costs and costs of using a Corporate Trustee (who want a tax opinion, CRA ruling or Technical Interpretation) must also be considered.

Even if we forget the tax concerns, Split-Dollar Arrangements make no sense for RCAs since for an "exempt" product to be used in an RCA it must be at the same cost of "conventionally funded RCAs, and provide increased benefits. For this to happen, mortality cost must be reduced resulting in the owner of the mortality receiving benefits substantially below premiums paid. Only Shared-Ownership should be considered between the RCA and Individual but only up to retirement and with the caveat that CRA might subsequently move against it.

R^{C}F's PENSION*Plus*™ on a Stand-Alone basis as an asset of the RCA Trust eliminates the concerns of a Shared-Ownership Arrangement and provides enhanced benefits at the same cost of funding a conventional non-insurance funded RCA.