Employee Benefits: New CRA Guidance Clarifies Difference between Cash & Non-Cash Taxable Benefits

written by vickyp | October 23, 2017

WHAT'S AT STAKE

EI premiums attach to cash-taxable benefits, but not to non-cash taxable benefits.

THE PROBLEM

Distinguishing between non-cash taxable benefits and cash taxable benefits has been a perennial challenge for HR and payroll. After all, *every* taxable benefit involves cash in one way or another.

Example 1: An employer buys a TV and then gives it to an employee. The TV constitutes the benefit. Result: The benefit is non-cash taxable.

Example 2: An employee buys that same TV and is reimbursed by the employer. The reimbursement rather than the TV constitutes the benefit. Result: The employee receives a cash-taxable benefit.

THE THIRD PARTY WRINKLE

The distinction between cash taxable and non-cash taxable benefits becomes particularly difficult when the "benefit" is a service or insurance coverage provided by a third party rather than the employer. In these situations, the CRA looks at who is primarily responsible for the "benefit" cost. If this is the employee, any employer payment is treated as a cash taxable benefit. But if the employer is primarily responsible, any such payment is treated as non-cash.

NEW CRA GUIDANCE

The good news is that recent CRA guidance in the form of a response to a request for a Technical Interpretation offers more clarity. Caveat: A Technical Interpretation is a formal statement by the CRA of its administrative position that's not binding in all cases. Even so, the new Technical Interpretation does provide key clues into 2 aspects of the cash v. non-cash treatment issue.

1. **Employer Payment of BC MSP Premiums = Non-Cash Taxable**

First, the CRA has clarified that the employer payment of BC Medical Service Plan (MSP) premiums is a non-cash taxable benefit. Before June 2017, it took the opposite position. Since the responsibility to pay provincially-levied medical premiums fell on each BC resident, the CRA argued that employer-paid MSP premiums were the equivalent of the TV reimbursement above, i.e., that the *payment* was the benefit, not the health coverage provided.

Now, after further thought, the CRA is changing its position. The new interpretation is based on (Section 32 of) the BC *Medicare Protection Act* requiring employers that to remit MSP premiums where they have established a group plan. Relying on this language, the CRA reasons that a group MSP transfers the responsibility to pay from the employee to the employer, which makes such employer payment a non-cash taxable benefit. Sticking with the TV example, this would be the equivalent of an employee's use of a company credit card to buy a TV for personal use. Since the employer is required to pay off the card balance, the TV is the benefit.

2. **Employer Payment of RRSP Premiums = Non-Cash Taxable**

Of course, the BC MSP scenario is a very narrow one. But the Technical Interpretation also addresses the broader issue of employer-paid RRSP premiums.

The default treatment is that this would be a *cash taxable* benefit based on the understanding that the funds in an RRSP plan are effectively the equivalent of cash, termed "near-cash." However, it's always been understood that when an employer did not permit withdrawals out of a group RRSP (other than under the Home Buyer's or Lifelong Learning Plans or on retirement), the same employer-paid RRSP contributions lose their "near-cash" status. The term used for such restricted plans is a "locked-in RRSP." Employer contributions to a locked-in RRSP are not insurable earnings.

The recent clarification is that when the employer permits employees to transfer funds out of a group RRSP into another RRSP held by the employee as an individual using a T2033 form, this is *not* considered a "withdrawal." Where a group RRSP permits such transfers, but not cash withdrawals, employer-paid RRSP contributions are non-cash and not EI insurable earnings.