



November 30, 2011

Federal Court decision contains good news for Canadians participating in insurance leveraging strategies

On November 1, 2011 the Federal Court quashed orders previously issued which authorized the Canada Revenue Agency (CRA) to require insurers who offer plans with an insurance leveraging strategy, called '10-8', to provide it with the identities of plan holders. Recently, the CRA advised the insurers' counsel of its intention to appeal the Federal Court's quashing of the orders. This decision to appeal is driven by CRA's desire to protect its rights under the Income Tax Act to force third parties to turn over information to it.

The plans, typically purchased by high net-worth individuals, involve the purchase of a life insurance policy with an investment component, which is used as security for a loan from the insurer. The plans have been marketed since 2001 by PPI, a national insurance marketing organization, after extensive research by their lawyers, accountants and actuaries.

"The Federal Court decision interests us because the information that came out during the course of the litigation shows us that CRA's internal analysis made conclusions very similar to our own," said James A. Burton, Chairman and CEO of PPI. "Since March 2009 we have actively participated in CRA's review process through full disclosure about the plan, and through our willingness to help the CRA gain a thorough understanding of the strategy."

A memorandum to the GAAR (General Anti-Avoidance Rule) Committee from a senior rulings officer of the CRA concluded that the 10-8 plan complied with the technical provisions of the Act and that GAAR could not likely be applied to re-determine the tax consequences of the plan. Given this conclusion, the CRA determined that its only real avenue for challenging these plans was with respect to the reasonableness of the loan rate. According to Mr. Burton, "Comprehensive loan interest rate submissions made by PPI to the CRA in February 2011 and September 2011 provide very strong evidence that the loan rates charged have always been reasonable and reflect prevailing market rates for borrowers in similar circumstances and loans with similar terms and conditions."

According to the Federal Court documents, the CRA made general statements regarding its concerns about the plans, and the documents revealed that the CRA took measures to discourage sales of the plans through an audit of insurers. Insurers refused for privacy reasons to provide client lists to the CRA, and the companies made a submission to the Courts that the so-called Unnamed Persons Requirements "were issued for an improper purpose, namely a fishing expedition intended to chill their 10-8 plans." The Judge agreed, saying that "the orders must be quashed solely because of incomplete disclosure." She went on to remark, "It is a misuse of the Minister's powers – powers which the Courts have repeatedly called 'intrusive' – to use section 231.2 to pursue policy objectives rather than to enforce tax obligations." (Source: 2011 FC 1249 – Federal Court of Canada)



“At PPI we believe that the plans continue to meet life insurance needs for individuals, their families and businesses in an economically effective manner,” remarked Mr. Burton. “PPI Advisory, which houses our specialized team of advanced planning experts, continues to support this strategy and our independent advisors who use it with their clients.”

About PPI

PPI is a leading marketer of insurance solutions, offering actuarial, tax and specialized expertise in all aspects of life insurance, and specifically in its design and custom application. As one of the marketing channels of PPI, PPI Advisory is dedicated to the high net-worth market whose complex estate and tax planning needs demand sophisticated insurance strategies. In-house experts work with insurance advisors, their clients and their professional advisors through a consultative and analytical process.

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