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Exiting Canada and life insurance – Part II – Common life insurance issues when leaving with private company shares

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This is the second article of a mini-series related to life insurance and departure from Canada. Part I (https://tompkinsinsurance.com/exiting-canada-and-life-insurance-part-i-leaving-with-personally-held-life-insurance/) dealt with the tax consequences and other issues to consider when an individual moves out of Canada with an exempt life insurance policy issued on their life while a Canadian resident. In this article we'll address some of the common questions that relate to life insurance when an individual holding shares of a private company decides to leave Canada.

Interest in departure has been on the rise

In recent years, departure from Canada has been a hot topic. Even before the 2024 proposed increase to the capital gains inclusion rate, discussions and activity involving departure from Canada were increasing. Although Prime Minister Carney released an official statement on March 21, 2025, announcing the cancellation of the proposed increase to the capital gains inclusion rate, the underlying drivers of those contemplating departure from Canada remain. High top marginal tax rates are a significant factor.

Rules on emigration

In general, an individual who departs Canada is deemed to dispose of each property they own immediately before departure for deemed proceeds of disposition equal to the fair market value (FMV) at the time (subparagraph 128.1(4)(b) of the Act). This results in a realization of accrued gains at the time of departure. An individual holding private company shares will face this deemed disposition in respect of accrued gains at the time of departure. Individuals thinking of exiting should seek advice well in advance to understand and plan for departure tax.

An election (Form T1244) to defer the tax payable may be made (subsection 220(4.5) of the Act) and security posted for the tax liability. The property posted as security is encumbered in favour of the CRA and legal documents drafted by the Department of Justice are provided to the taxpayer for execution. Value of the property posted may be required to exceed the value of the liability based on the nature of the asset. For example, in the case of private company shares, the CRA has stated that it must hold

100% of the shares owned by the taxpayer and at least a 2:1 ratio of the share value to the tax liability. Where security is accepted, payment of the tax owing is deferred without interest until a subsequent sale of the property or death.

What are some common questions posed to us about life insurance in the context of departure? The following are the big three.

What if the private company owns life insurance when a shareholder departs Canada?

When the shares are deemed disposed of on departure, corporate-owned life insurance, as an asset of the corporation would contribute to the FMV of the shares. For purposes of valuing the shares of the company, the value of corporate-owned life insurance on the life of the departing shareholder (or the lives of persons not dealing at arm's length with the departing shareholder) would be deemed to be the cash surrender value (CSV) immediately before departure (subsection 70(5.3).

Assuming that the corporation remains a Canadian resident private corporation, at death, the death benefit received less the adjusted cost basis (ACB) of the policy would credit the corporation's capital dividend account (CDA). If a dividend is paid to the deceased non-resident shareholder's estate Part XIII withholding tax will arise. Depending on the country of residence withholding tax rates range from 5% to 25% on the payment of dividends.

Can life insurance be used as security for departure tax?

We don't know.

The CRA has discretion regarding what form of security it will accept. Each situation is case by case. Based on recent information provided to taxpayers by the Taxpayer Migration Unit of the CRA in general, acceptable security includes: cash; publicly traded securities; a letter of guarantee or a letter of credit issued by a Canadian financial institution; the shares in a Canadian private company giving rise to the departure tax liability; a mortgage on Canadian real property.

The CRA has not provided any official guidance regarding whether the CSV of a life insurance policy would be acceptable security.

It may be possible that personally held life insurance CSV may be used as security for a Bank letter of credit or guarantee which may then be provided as security for departure tax with the CRA. However, if life insurance is corporate-owned, its use in this way, may give rise to taxable shareholder benefits under subsection 15(1). Where there is a shareholder benefit to a non-resident, paragraph 214(3)(a) deems such an amount to be a dividend to which the normal non-resident tax rules under Part XIII apply. Whether this concern could be addressed if the shareholder pays the corporation a commercially reasonable guarantee fee and what is an appropriate fee in this circumstance is, are all good questions with only fact specific answers.

Where other assets are used as security (particularly where the shares of the corporation are being contemplated for use as security), life insurance may still play a role in funding the ultimate liability arising on the deemed disposition of the shares on death. If the shares are not considered "taxable

Canadian property", the liability will be fixed at the time of departure with no further growth. This amount would be payable on death and life insurance would provide the liquidity to pay the tax instead of having to liquidate the other security provided. This insurance may already be in place at the time of departure.

Where the shares are considered TCP, the tax liability after departure will not remain fixed. Essentially, the growth in value after departure will also be taxable, not just the amount determined at the time of departure. As Canadian situs property, Canada maintains primary taxing jurisdiction over TCP. International tax treaties may relieve the taxpayer from tax in respect of the growth from the time of entry (to the new jurisdiction) to disposition on death within the new jurisdiction, but Canada has the primary authority to tax this value.

Will a Canadian life insurer issue coverage on the life of a non-resident shareholder of a private company in Canada?

The short answer is yes.

While such a policy would not be considered a "life insurance policy in Canada", there is still a Canadian risk to be insured. Generally, a Canadian insurer would issue coverage for Canadian risks if there is sufficient information presented about the current and expected tax liability in Canada on death, and the nature of the property as TCP, where that is the case. Such a policy may be owned by the Canadian resident private corporation. Canadian insurers will generally charge an additional premium to compensate for the fact that the policy does not qualify as a life insurance policy in Canada. In general terms, the insurer would not be able to deduct its reserves as an expense for policies that do not meet this definition.

Advice is required

Planning for departure from Canada should be initiated well in advance of actually leaving. Advice in the new country of residence is also a must.

FOOTNOTE:

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