

Human Resources Legislative Update

New CRA Technical Direction Published for Health and Welfare Trusts

Date: August 20, 2015

The Canada Revenue Agency (“CRA”) has posted an updated technical direction regarding Health and Welfare Trusts. Effective July 27, 2015, Income Tax Folio S2-F1-C1: [Health and Welfare Trusts](#) replaces and cancels CRA’s prior administrative position, as outlined in Interpretation Bulletin IT-85R2, *Health and Welfare Trusts for Employees*. The new Technical Direction incorporates a number of clarifications and updates, including the following:

- clarification that benefits administered by a health and welfare trust are not always limited to those provided under a third party insurance contract;
- clarification that the funds of a health and welfare trust cannot be invested in or used by the employer or a person or group that is determined not to deal at arm’s length with the employer;
- clarification that the distribution of surplus funds to employees is not an acceptable use of trust funds in most cases and may disqualify the trust as a health and welfare trust;
- acceptable uses of trust funds on the wind-up of a health and welfare trust;
- factors considered when determining trustee independence;
- updated information with respect to deductibility of contributions, including a reference to both insured plans and self-insured plans, and relevant jurisprudence;
- a new overview of employee life and health trusts, clarification that a trust may qualify as both a health and welfare trust and an employee life and health trust in certain circumstances, and the prescribed criteria and conditions required to qualify under each respective trust regime; and
- clarification of the tax treatment of employer contributions to a group sickness or accident insurance plan that provides lump sum payments or pays benefits where there has been no loss of employment income, which reflect paragraph 6(1)(e.1) of the *Income Tax Act* and apply to contributions made on or after March 29, 2012.

Comments on the new Technical Direction may be submitted by October 27, 2015.