



## Advanced Estate Planning: Insurance Shares





# Agenda

- What are life insurance shares?
- The mechanics
- When are they used?
- CRA position
- Example entitlements
- Other considerations



# What are life insurance shares?

- A special class of shares issued for the sole purpose of streaming corporate-owned life insurance proceeds to the heirs of a shareholder
- Typically non-voting, non-participating, redeemable for \$1 at discretion of corporation, with no entitlement to anything other than some or all of the life insurance proceeds



# What are life insurance shares?

- Entitlement with reference to a specific policy is best but possible to reference all insurance owned by the corporation
- May be useful for non-tax reasons but can also have an impact on taxation



## The Mechanics: pre-insurance

- Corporate share reorganization may be necessary
- Life Insurance Shares (LI Shares) are issued to the heirs of the controlling shareholder, directly or indirectly
- LI Shares issued before obtaining life insurance
- LI Shares have nominal value at that time and are issued for a nominal amount
- Normally no voting rights



## The Mechanics: post-insurance

- Corporation obtains a life insurance policy
- Corporation is named as beneficiary
- At death of any shareholder, policy death benefit is usually attributed to the LI Shares rather than the common shares
- Corporation gets the usual credit to CDA
- Corporation normally redeems LI Shares using CDA



# The importance of Timing

- Main question is one of valuation of LI shares at time of issuance
- Has there been a transfer of value from the existing shareholders to the LI shareholders?

# When are they used? – non-tax reasons

- Equalization to children not receiving business
- Excess death benefit to be directed to family
- Insurance is on spouses of shareholders
- Shareholder is US citizen (can't use CDA)
- Family law obligations
- Continuing joint-last policies in corporation



# When are they used? - tax reasons

- Concern that CSV of policy will add to capital gain on death
  - CSV attributed to LI Shares, not common shares
  - Not a concern on redeeming shares but with pipeline planning it is an issue
- Method of avoiding insurance CDA stop-loss rule
  - CDA directed to living heir rather than to the deceased
- A way to avoid the need to transfer policy later and potential application of section 55(2)
  - “Safe Income” issues



# CRA Position

- 2005 APFF conference question 11
  - CRA presented with a scenario using LI Shares
  - LI Shares had no value other than the right to the death benefit of a corporate-owned insurance policy
  - The CSV of the insurance policy would be included in that valuation of the common shares immediately before death for the purposes of 70(5.3)



# CRA Position

- 2005 APFF conference question 12
  - CRA presented with a scenario using LI Shares
  - Rights of shares carefully drafted to include not only death benefit but also CSV of policy before and after death of life insured
  - “It would not be unreasonable” to allocate the amount of the policy’s CSV to the LI Shares immediately before death for the purposes of 70(5.3)



# CRA Position

- 2021 CLHIA/CRA Roundtable
  - CRA reaffirmed that positions outlined in 2005 APFF conference were still valid
  - However, only in the context of 70(5.3) and only where the share attributes were as specifically described in those scenarios



# Example entitlements

1. nominal then full death benefit
2. nominal then CDA
3. CSV then full death benefit
4. CSV then CDA
5. FMV then full death benefit



## Other considerations

- Prior death of holder of LI shares
- Creditor issues
- Family law issues
- Minority shareholder rights

For Further Questions



[service@haunnlanders.ca](mailto:service@haunnlanders.ca) | 905-821-8224

15 – 6645 Kitimat Rd Mississauga ON L5N 6J3