

CRA Loses Big: No GAAR for 9-7 Life Insurance Strategies

The judgment for 2011 FC1249 has been released. The insurance companies “win” stops the CRA from obtaining details on their clients who entered into 9-7 plans (formerly referred to as 10-8 plans), and unexpectedly it exposes that the CRA had concluded that 9-7 plans are in compliance with the Act and the GAAR would not apply.

“The GAAR Committee concluded that the proposed 10-8 plan was likely in compliance with the Act and did not believe that the GAAR could be successfully applied.”

Despite the CRA’s GAAR committee concluding that the GAAR is not applicable, the CRA decided at their own peril to pursue audits of 9-7 plans as a “scare tactic”.

The CRA was seeking the names of taxpayers who had implemented a 9-7 plan with various insurance companies. As part of the court discovery process, the CRA was required to provide its own internal documents that contained the following findings:

- The “GAAR Committee concluded that the proposed 10-8 plan was likely in compliance with the Act and did not believe that the GAAR could be successfully applied.”
- The Department of Finance refused the CRA’s request to amend the laws related to insurance policies.
- The CRA decided to “send a message to the industry” by refusing to answer an advance tax ruling request.
- The CRA decided to take measures to “chill” 9-7 plans by undertaking an “audit blitz”.

The evidence revealed in this judgment creates certainty that the GAAR will not be applied and the interest deduction cannot be denied for properly implemented 9-7 plans. The only remaining tax item that may still be under consideration is the reasonableness of the interest rate; however, it would be unprecedented for the CRA to supersede an agreement between two unrelated parties.

In any event, the 9-7 plans interest rates in effect are comparable with market interest rates. The easiest comparison is to the market rates for mortgages. The current rate for a 10 year mortgage at the major Canadian banks is between 6.5% and 6.75%. Typically, these banks will charge a 2% premium to change the mortgage from closed to open. A 10 year open mortgage at 8.5% to 8.75% is comparable to the 9-7 plans credit facility, however, the 9-7 plans have additional provisions that allow for multiple draws over time, partial repayments, interest only payments and payments of the interest at the end of the year (rather than monthly). These additional benefits conferred on the borrower provide justification for the 9% rate.

For complete details see the attached copy of the judgment. For ease of reference the important disclosures by the CRA and the conclusions of the court have been highlighted.

To learn more about Ocean West Financial Group’s process for implementing 9-7 & Cost Reduction Insurance Strategies for you or your clients please contact G. Kim Hinkson at kim.hinkson@oceanwestfg.com or Dave Gillard at dave.gillard@oceanwestfg.com