Familiar Face Joins Spring

We are pleased to announce today that Peter Bandarenko has joined Spring as Senior Consultant and Head of New Market Development.

Peter brings over twenty five years of group insurance industry experience. He is a proven employee benefits, captive and product development capabilities with a strong background in technical sales, sales management and product development, in both the insurance carrier and broker/consulting fields.

Prior to joining Spring, Peter held various positions within Prudential, The Hartford and MetLife, as well as Dye & Eskin, Inc., an independent insurance and benefits planning firm.

Peter works with companies and plan sponsors of all sizes, on strategy, design and implementation of creative benefit solutions and benefit financing arrangements with focused expertise in captives, benefits funding, global/multinational employee benefits solutions, retiree benefits, voluntary benefits, executive benefits and new product development.

Bandarenko is a graduate of Bucknell University and is a licensed broker and FINRA registered representative (series 6/63) in all 50 states. He is also a member of the Association of Advanced Life Underwriters (AALU), Vermont Captive Insurance Association (VCIA), Captive Insurance Companies of America (CICA) and The National Foreign Trade Council (NFTC).

“We are very excited to have Peter on board,” commented Spring Senior Partner, John Cassell. “Anytime you can add an industry leader like Peter to your team, you have to jump at the opportunity. His vast knowledge and experience with developing creative benefit funding solutions will fit in perfectly to an area of strength for Spring and will serve our clients very well.”
Webcast: Why Fund Employee Benefits in a Captive and How to Gain Approval to Do It

Recently, Spring Managing Partner, Karin Landry, presented a web session on the benefits of employee benefit captives and the process for gaining a prohibited transaction exemption from the US Department of Labor to fund employee benefits in a captive.

As you may know, the Exemption Process (EXPRO) has been on something of a hiatus for a couple of years, but recently, Intel was approved to fund their life and accidental death and dismemberment in their existing captive. This approval, coupled with Coca-Cola’s exemption approval, seems to indicate that EXPRO may be on the way back.

In this session, Landry explained employee benefit captives, the EXPRO process and offered further detail about the recent developments with Intel and Coca-Cola and what other employers seeking exemptions can expect.

The presentation can be found at: http://goo.gl/Zopwun

Spring to Sponsor Women’s Leadership Workshop

We are happy to announce that, for the second year in a row, Spring is a sponsor of the Judson Women’s Leadership Workshop to be held on June 26th at the Double Tree Hilton Hotel in Atlanta.

The workshop’s purpose is to develop leadership skills for the target audience of women collegiate athletes and young professionals. Topics include a number of informative and helpful career-building sessions including “Taking Control of Your Career”, “Effective Use of Social Media” and “Developing Your Personal Brand.”

There is no charge for college students to attend and only $55 for young professionals.

The Judson Collegiate & Legends Pro-Am Challenge golf tournament will follow the workshop at Country Club of Roswell on June 27-30 and pairs collegiate golfers with WGA Legends professionals. Proceeds from the workshop and golf tournament go to not for profit organizations supporting healthy childhood nutrition and exercise.

Where to Find Us

- DMEC 2014 Annual Conference - August 11-14, Las Vegas, NV
- VCIA Annual Conference - August 12-14, Burlington, VT
- ISCEBS Employee Benefits Symposium - September 7-10, Phoenix, AZ
IRS Revenue Ruling 2014-15: More Opportunity to Fund in a Captive

By: Tom King and Josepha Conway

For companies that provide retiree benefits, administration and funding tend to be dually burdened by the requirements imposed by the Employee Retirement Income Security Act (“ERISA”) and the often significant financial reporting standards of the U.S. Generally Accepted Accounting Principles (“GAAP”). Adding further to the burdens are the significant cost increases over the last decade, primarily as a result of lower discount rates. As a result, plan sponsors are faced with the difficult decision of choosing between reducing or eliminating retiree medical benefits.

Luckily for sponsors of retiree medical plans, a potential solution exists that promises to add financial efficiencies, while potentially lowering costs and lowering cost volatility. That solution is a captive insurance company writing a fronted Trust Owned Health Insurance (“TOHI”) Program, which according to the May 9th, 2014, Internal Revenue Service (“IRS”) Revenue Ruling 2014-15, may be just the right mechanism for funding retiree benefits.

PREVIOUS STATE:
Plan sponsors have traditionally funded retiree medical benefits through pay-as-you-go funding (paying current retiree benefits without any advance funding) or through one of the following funding vehicles:

- Voluntary Employee Beneficiary Association (“VEBA”)
- VEBA with Trust Owned Life Insurance (“TOLI”) through a captive (rather than holding traditional investments, the VEBA can purchase life insurance policies)
- 401(h) account
- Trust Owned Health Insurance (“TOHI”) through a captive (rather than holding traditional investments, the VEBA can purchase health insurance policies)

VEBAS
Pre-funding retiree benefits through a VEBA is often inefficient. Employers who fund a portion (or all) of the APBO are able to offset the liability. However, while contributions to the VEBA may be tax-deductible, the investment income from the VEBA may be subject to the Unrelated Business Income Tax (“UBIT”), which taxes investment earnings on funds supporting non-collectively bargained benefits.

TOLI IN A CAPTIVE
Purchasing life insurance through a VEBA to cover retiree medical benefits, while cost-effective, has a number of drawbacks. It requires that the plan sponsor deliver the challenging message that they are purchasing a life insurance policy on an employee who may not be eligible for retiree medical benefits. In addition, the policy is mismatched to the liability (life versus health) and requires a significant amount of cash flow management. Ultimately, it is the trust and other employees and retirees that receive the payment of the death benefit of an employee versus the employee’s beneficiary.

401(H) ACCOUNT
Funding retiree medical benefits through a 401(h) account requires that plan sponsors meet high Qualified Pension Plan funding levels (typically, in excess of 125%), set by ERISA, in addition to more stringent funding requirements. In addition, contributions made to a 401(h) account are permanent, and restrict the Plan Sponsor’s ability to reduce or eliminate benefits in the future.

TOHI IN A CAPTIVE
Prior to the IRS issuance of Revenue Ruling 2014-15, plan sponsors seeking to fund retiree benefits through a captive arrangement with TOHI were required to obtain both a Private Letter Ruling (“PLR”) from the IRS for the tax treatment of the TOHI policy and a Prohibited Transaction Exemption (“PTE”) from the United States Department of Labor (“DOL”).

In addition to these regulatory requirements, employers were required to fund ERISA governed employee benefits through an audited captive that covered property and casualty ("P&C") insurance. In other words, employers could not establish a new captive specifically for funding ERISA benefits.

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IRS Revenue Ruling 2014-15:
More Opportunity to Fund in a Captive

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As a result, the use of captives to fund retiree health benefits has been limited to employers with already established captives or to employers funding non-ERISA employee benefits which do not require DOL approval. In short, the regulatory and established captive requirements have historically resulted in the under-utilization of a captive for the financing of retiree benefits.

SUMMARY OF RR 2014-15:
With the issuance of IRS Revenue Ruling 2014-15, employers can now fund retiree medical benefits with a non-cancellable accident and health insurance policy (i.e. TOHI) and have it receive life insurance treatment without obtaining a Private Letter Ruling. The impact of life insurance tax treatment is that reserves grow tax-free. In order to receive life insurance treatment without obtaining a PLR, the following facts and circumstances must be met:

- The Company maintains a VEBA Trust that satisfies the requirements of 501(c)(9) (the VEBA code section) and contributes directly to the VEBA for the provision of retiree health benefits
- The Company purchases a non-cancellable accident and health coverage policy from an insurance company, who then reinsures the policy through the Company’s captive
- Both the Company and the VEBA retain the right to cancel the retiree health coverage at any time

The result is:
- The Company’s captive is regulated as a life insurance company and gets life insurance company tax treatment (i.e. tax free accumulation if used to pay benefits)
- VEBA Assets used to purchase the policy are no longer subject to UBIT
- The policy receives life insurance reserving treatment, which is effectively tax free growth in reserves if held until the benefits are paid
- Employers may receive accelerated deductions subject to an IRS limit
- Reduction in ASC 715 Expense (formerly FAS 106)
- Overfunding in the captive can be used to fund active employee health benefits

A FEW THINGS TO NOTE:
1.) The non-cancellable accident and health insurance purchased by the VEBA is deemed life insurance because under 26 USC §816(a), captive that writes more than 50% of its business in life insurance during the year is treated as a life insurance company.
2.) Risk shifting occurs because the retiree health benefits provided by the plan are spread across a large group of retirees. By pre-funding the retiree medical benefits in a captive, this risk is transferred from the retirees to the captive.
3.) While the issuance of a PLR from the IRS is no longer required, the PTE requirement remains as the funding of the benefits is a prohibited transaction.

IMPACT ON RETIREE MEDICAL FUNDING:
U.S. GAAP sets out stringent employer requirements when it comes to accounting for the accrual of estimated total retiree medical and other benefits. This includes retiree medical and retiree life insurance payable to current employees throughout their lifetimes, which must be listed on the company’s balance sheet (the Accumulated Postretirement Benefit Obligation, or APBO). This requirement, however, does not force employers to fund these obligations. Employers are merely required to recognize them. Recognition nonetheless creates a liability without an offsetting asset, and always begs the question, “How will the company pay for these benefits?”

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Employers offering retiree medical benefits often respond to the above question by either restricting eligibility requirements, closing the plan to employees who retire after a certain date, increasing the retirees’ portion of the premiums, increasing co-insurance payments and deductibles, and / or modifying or reducing plan benefits.

Due to IRS Revenue Ruling 2014-15, however, employers may be more easily able to use funds from the VEBA to purchase a TOHI or non-cancellable accident and health insurance policy which is then reinsured through a captive. The captive will then hold the assets that were previously held by the VEBA, and properly offset the liability, decrease ASC 715 Expense, and minimize the net present value costs of operating the plan.

HOW THIS WORKS:
When a contribution is made to the VEBA, employers can deduct the contribution, subject to the Qualified Asset Account Limit (“QAAL”). For post-retirement medical and life insurance benefits, the QAAL for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis, and typically covers 30%-50% of the APBO. If a company’s unfunded APBO is $100 million, the company will generally be able to contribute up to $50 million into the VEBA while deducting the contribution. At a 35% effective tax rate, the value of the tax deduction is $17,500,000. As a result, the net cash required to offset $50 million of liabilities is $32,500,000.

When the VEBA in turn purchases a TOHI policy, benefits may include tax-free reserve accumulation (due to the captive being treated as a life insurance company for tax purposes), reduced balance sheet volatility, and increased operating income through the reduction of retiree medical costs. Moreover, a company engaging in pre-funding retiree medical liabilities demonstrates a clear financial commitment to retirees’ welfare.

SUMMARY:
In closing, the IRS Revenue Ruling 2014-15 explicitly permits companies to use captives for the purpose of funding retiree health benefits without obtaining a PLR from the IRS provided certain conditions are met. This ruling, while specific to retiree medical benefits, could potentially be extended to pension plan benefits. While further analysis is required, employers with funded or unfunded retiree benefits should take note of the ruling and take a closer look at funding their retiree benefits through a captive.

Image credit: Simon Cunningham via flickr

Use the Spring Employer Discount and Join Us at the Annual DMEC Conference

As a National sponsor of the 19th Annual Absence and Disability Management Conference, Spring has secured a discounted rate for our employer clients and friends.

The DMEC Conference is one of the industry’s premier gathering of absence and disability management professionals. This year’s conference will take place August 11-14 in Las Vegas.

We are excited that this year’s DMEC conference will feature Spring consultant, Kimberly Mashburn, who will be presenting with Spring client Tricia Engfehr from Memorial Health System. The topic of their session will be Implementing a True Total Absence Management Program.

To get the Spring employer discount on tickets, or to find out more about the DMEC conference, please see this brochure for details: http://goo.gl/1IzkCb.
Recent Court Case Rules That Telecommuting is a Reasonable Accommodation

Recently, a United States court issued a ruling further validating telecommuting may be a reasonable accommodation.

In EEOC v. Ford Motor Company, the U.S. Court of Appeals for the Sixth Circuit ruled on telecommuting and whether it was essential for a disabled employee to be present at an employer’s physical location or if telecommuting was a reasonable accommodation.

THE CASE:
This case started with an employee that had developed health issues that made commuting and moving around from place to place within Ford’s office difficult and sometimes led to embarrassing accidents. The employee’s role was as a resale steel buyer, which meant her core job function was problem-solving, making it essential that she collaborate and stay in contact with her coworkers and vendors throughout the workday.

Ford had a telecommuting policy available to salaried employees, which allowed them to work remotely up to four days a week, depending on their job duties. Ford agreed to a test run of a flex-time telecommuting setup for the inflicted employee, which failed because the employee could not provide consistent work hours, making communication and collaboration with teammates and vendors during normal work hours difficult.

The employee maintained that she needed to telecommute due to her disability and asked Ford to allow her to work remotely providing 80% of it was during normal business hours. Ford rejected this request and ended the trial run but offered the employee additional in-office accommodations that were aimed at making her situation a bit more comfortable in the office. They also suggested she consider seeking another job at Ford that was more conducive to telecommuting.

The employee then filed a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) because she believed that Ford failed to accommodate her disability. She was soon fired and, believing that the termination was due to the employee’s EEOC complaint, the ensuing EEOC court case also included the charge of retaliatory termination.

The trial court ruled in Ford’s favor and indicated that the employee’s request to work remotely was not a reasonable accommodation for the job and that Ford successfully proved that they terminated her due to poor attendance and job performance that took place prior to her EEOC complaint and the firing was not retaliatory in nature.

THE APPEAL:
The lower court’s ruling was appealed to the Sixth Circuit, who reversed the dismissal of the suit in a split (2-1) decision and remanded the case.

The Sixth Circuit determined that the employee remained qualified for her position if her employer’s request for physical presence was removed and if she was available during normal business hours while working remotely. They placed the burden on Ford to prove that physical presence in the office was an essential job function or that the employee working remotely created an undue hardship for the employer.

Ultimately, the higher court ruled that, due to technological advances, workplace attendance doesn’t necessarily mean attendance at the physical location of an employer any longer. They essentially considered a workplace to be any place that the employee can perform their essential job duties.

EMPLOYER TAKEAWAY:
Depending on the position and the documented job description, attendance at a physical location may not be an essential job function. Advances in technology are making it harder for employers to justify the need for work to be performed “on site.” Under ADA/ADAAA, “essential job functions” and “undue hardship” must be reviewed on a case by case basis in order to ensure compliance.
COBRA Changes That Employers Should Know About

The U.S. Department of Labor (DOL) and Department of Health and Human Services (HHS) recently updated and clarified a few aspects of the Consolidated Omnibus Reconciliation Act (COBRA). The changes are important for employers because they relate to the ongoing implementation of the Affordable Care Act (ACA) and require that employers scrap or modify their current COBRA forms.

The first update comes from the DOL in the form of a new COBRA model general notice form and COBRA model election notice. The documents have been modified to incorporate ACA-related language; notifying employees about the option of enrolling in the federal Health Insurance Marketplace, informing them that such an option may be cheaper and that they may qualify for federal subsidies.

The second update comes from HHS and clarifies special enrollment periods (SEPs) in relation to the federal Health Insurance Marketplace and encouraged state exchanges to adopt similar standards. HHS has made it clear that individuals eligible for COBRA will be eligible for enrollment in the Health Insurance Marketplace either when they become eligible for COBRA or after their COBRA coverage runs out.

Clearly, the goal of the Administration in making these updates and clarifications is to push COBRA-eligible individuals to the federal exchange by marketing it as a viable and potentially cheaper option. This may impact an employer’s COBRA administration in the future, but in the short-run, we wanted to be sure that you were aware of these updated documents and the new ACA verbiage.

Got an employee benefit question? Contact us and let us know how we can help. Our brokers and consultants are on the front lines of the ever-changing health insurance and employee benefit industry and are here to help guide you through the changes.

Image credit: Ted Major via flickr