



## Benefit Category Limits Incorporated Companies



The CRA has indicated that the employer has complete discretion as to which employees or groups of employees are entitled to benefits under a PHSP<sup>(8)</sup>. They have confirmed that it is acceptable to have a PHSP that covers only upper management, however they caution that where the eligible class of employees includes shareholder/employees it is a question of fact (ie. something provable in a court-of-law scenario) as to whether the benefit for the employee/shareholder is received by virtue of shareholdings or by virtue of employment. It is important, therefore, that benefit categories be setup with a definition of role or equivalent that reflects the nature of a contract of employment. The FBC HSA system contains this aspect of plan setup by requiring employees be assigned a benefit category and that appropriate text be included in the category definition (eg. definition of role, geographic location, years of service, etc.). More specifically, the benefit category names used in the FBC HSA are “Primary” and “Secondary” where the Primary is seen as running the business and the Secondary as directed employees. If desired, other category names can be used to better reflect the nature of the business structure (See example #1 below).

It should also be noted that further proof of a person being an employee (and not just a shareholder) is achieved through receiving a T4 income.

Regarding the limits assigned to benefit categories, it should be noted that the question of what constitutes a reasonable amount has not been before the courts, nor is it legislated under the Act. Therefore, any views presented may not be supportable by the Minister if challenged in a court of law. However, they (CRA) have indicated that limits are generally considered reasonable if they do not exceed amounts that are actuarially determined for the group of employees covered under the plan <sup>(9)</sup>. Said another way, limits that are equivalent to what a group insurance plan could possibly payout would be seen as reasonable. Given the scope of what could “possibly payout”, annual limits that are below 30% of T4 income would seem to be safe and well within the definition of “reasonable”. Additionally, all employees in each benefit category would receive the same annual limit, which is both fair and reasonable.

<sup>8</sup> See Technical Interpretation 9403982

<sup>9</sup> See Technical Interpretation 9403982

Note: The CRA provides many services to taxpayers and tax practitioners to help understand the provisions of the Tax Act. A Technical Interpretation relates to specific questions about the Tax Act and additionally, in this case, the PHSP document called IT-339R2. Technical Interpretation's are not public documents.

## Examples of HSA Limit Assignment:

1. Company A has a total of 10 employees. There is one president who directs the company and 2 managers who lead / supervise the remaining 7 staff. As part of the total compensation package for each category of employee, the company has decided to implement a three-tiered HSA. The president who has a T4 income of \$130,000 / yr. is given an HSA limit of \$10,000. The managers who earn \$75,000 / yr. will each receive a \$4,000 / yr. HSA and the full-time workers, at \$50,000 annual salary, will receive \$1,000 / yr. The 3 benefit categories are defined using role descriptions (Note: these are just examples and text suitable to each company can be used):

*Executive:* Provides overall direction and vision to the company. Able to enter into contracts.

*Manager:* Receives direction from the president. Manages and guides full-time staff.

*Full-time staff:* Works 40 hours per week as directed by manager.

2. Company B is comprised of 1 director and 2 part-time staff. The director earns \$85,000 in T4 income and receives a \$20,000 HSA in the “Primary” benefit category. The two part-time staff, who receive \$20,000 in T4 income per year on average, are placed in the “Secondary” benefit category with a \$300 / yr. HSA limit assignment.

3. Company C is a one-person operation. This sole “employee” takes a T4 income of \$100,000 plus dividends. An HSA is established using a \$15,000 annual limit in the Primary benefit category.