ART GALLERY COLUMN FOR JANUARY

Coke uncaps captive benefit plan

Coca-Cola Company could be providing a new kind of refreshment for corporate America with its plan to fund retiree health benefits through its South Carolina-domiciled captive. If the Department of Labor and the IRS approve the plan it will provide a new model for companies to manage the touchy subject of funding post-retirement employee benefits.

Coca-Cola outlined its complex proposed transaction in a presentation last month at the World Captive Forum on how the company is expanding its use of captives. *Business Insurance* reported that Coke intends to use funds now held in a trust, known as a voluntary employee beneficiary association (VEBA), to purchase accident and health insurance policies from Prudential. Prudential would then reinsure the policies through Red Re Inc., the captive that Coke set up in South Carolina in 2006. The company now uses Red Re to fund a wide range of risks including benefit coverage of employees outside the United States.

Coke's VEBA was also established in 2006 with company funding of $216 million. The world's largest beverage company with 2007 revenue of $29 billion, the Atlanta-based Coca-Cola Co. also has captives in Dublin, Ireland.

Without disclosing many details of the plan prior to filing its application with the DOL, Coke executives said the proposed retiree health benefits funding program follows the company's strategy of expanding the use of its captives.

Stacy Apter, Coca-Cola's senior global benefits consultant, was quoted by *Business Insurance* to the effect that efficiencies are available through captive benefits funding, specifically including reduced administrative costs and improved access to claims data.

Industry observers told *Business Insurance* that there are other special advantages to linking a VEBA to a captive. Under federal law assets contributed to a VEBA must be used either to pay benefits or purchase insurance policies that provide benefits. However, using a captive to fund benefits gives a company greater financial flexibility. For example, investment gains on contributions made to the captive can be paid out as dividends to the parent.

Coca-Cola says its plan must surmount two federal hurdles: approval by the Labor Department and agreement by the IRS.

The Labor Department in 1999 eased certain restrictions on use of captives to fund employee benefits. Since that time only one employer, Whirlpool Corp. of Benton Harbor, Michigan, has applied for permission to fund retiree health benefits through a captive, but withdrew its application when DOL declined to consider the proposal under a special expedited review process.

In addition, Coca-Cola is expected to seek a "private letter" ruling from the IRS concerning its plan to use the VEBA for this purpose.

Coca-Cola's plan is clear evidence that the captive concept and the ingenuity of the ART community can provide custom tailored solutions to corporate risk management. If Coke can win government approval for its program, you can expect other companies to follow a similar path.

You can chime in on offshore tax

Senate Finance Committee Chairman Max Baucus (D-MT) has invited comments on draft legislation (HR 6969) that would increase taxes on certain related-party reinsurance where an offshore parent company reinsures a policy written by its U.S. subsidiary.

The proposal is available at the committee's web site http://finance.senate.gov and comments may be submitted by Feb. 28 by e-mail to reinsurance@finance-dem.senate.gov.

Depending on where you sit, this proposal may be unfairly protectionist (if you sit, say, in Bermuda) or help squelch tax-avoidance (if your seat is in the U.S. Congress) or not such a big deal if you sit anywhere else. The bill shouldn't have a discernable effect on reinsurance availability or premiums for captives in U.S. domiciles. SIIA's ART Committee decided to recommend that the association not take a position on the issue.

Allen Taft is founder and president of The Taft Companies, captive consultant and manager in Bermuda and many U.S. domestic captive domiciles.