Principal® Loan Split Dollar

Shared benefits for you and your key employees

Presented to:

Sample Company

Presented by:

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Proprietary and confidential

We appreciate the opportunity to prepare and present this loan split dollar plan.

The information contained in this proposal has been developed based on our years of knowledge and experience in the key employee benefits industry. Rest assured who the information contained in this proposal will be kept strictly confidential.

This proposal was created by and is the proprietary property of Principal®. This material is provided for informational purposes only. It is presented with the understanding that Principal is not rendering legal, accounting or tax advice. Please consult with your professional advisors to review your specific situation.

The right benefits can make all the difference.

We understand that you have select key employees who play important roles in your company. Would your business be as successful without them?

Having the right tools in place to recruit, reward, retain, and retire those key employees can make all the difference to the success of your company. Key employee benefits can play a big role in helping you by helping them. Nonqualified plans can provide additional benefits to help them meet their financial security goals and provide survivor benefits for their families. They can also provide “golden handcuffs,” which are a valuable recruiting and retention tool to create more engaged and loyal employees.

Multiple benefits in one solution

A loan split dollar plan can have a positive impact on your business and meet both your goals, as well as those of your key employees. Specifically, it’s designed to help you:

Recruit. Attract top talent as part of a competitive benefits package.

Reward. Provide performance-based contributions to achieve organizational goals.

Retain. Encourage loyalty by helping to secure financial futures.

Retire. Offer additional savings and long-term income diversification options.

WHAT TO EXPECT

Let’s walk through the flexibility of this plan and how it can be tailored to fit your specific needs. You’re in control of key decisions and determining next steps. This proposal will help you do that by covering the following areas:

Design. Choose the plan design that can help you accomplish your goals.

Financing. Decide which cash value life insurance product best meets your plan objectives.

Support. Understand the valuable support services available to maintain this plan.

Next steps. Review how to implement your plan.

Before we dive into the details of the design elements, let's take a quick look at how the plan works and its benefits and considerations.

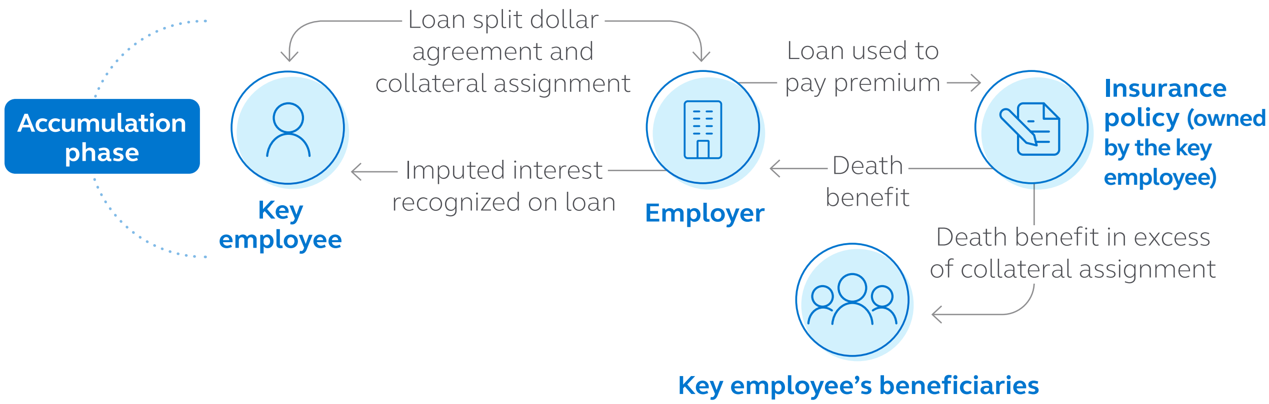
Here's how it works

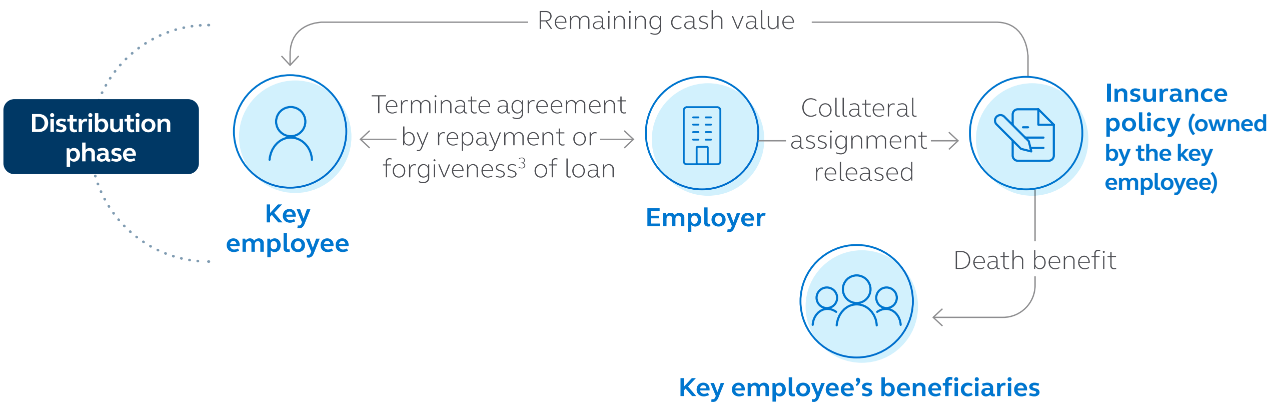
A loan from you to your select key employees allows you both to share the cost and benefits of the plan. This proposal demonstrates a demand loan with imputed interest.[1]

You enter into a written split dollar agreement with the key employee, which results in the purchase of a cash value life insurance policy. The loan proceeds are used to pay the premiums on the policy owned by the key employee, who has imputed interest income during the accumulation phase. This imputed interest will be taxable income to the key employee.

A portion of the cash value and death benefit equal to the loan is assigned back to you as collateral. In addition to survivor benefits, the remaining cash value may provide enhanced retirement benefits to the key employee, with minimum employee cash outlay—and potential cost recovery for you.

An exit strategy, defined at plan implementation, is key. During the distribution phase,[2] the loan is paid off or forgiven, and the collateral assignment is terminated. This gives the employee sole access to the remaining policy benefits for supplemental retirement income and/or survivor benefits.





[1] Other plan designs are available, including term loans and payment of interest by the employee. Imputed interest is the interest at a minimum level required by tax law. Often, the key employee won't pay any interest on the loan, but instead will be taxed as if a minimum level of interest had been paid.

[2] This distribution phase is sometimes referred to as the rollout.

[3] Forgiveness of the loan creates taxable income for the employee, but cash values from the policy may be used to help pay taxes due.

BENEFITS AND CONSIDERATIONS

For you

Increase morale. It's an effective way to recruit, reward, retain, and retire key employees.

Be selective. Plan participation can be made on a selective basis; no need to provide the same benefit to all participants.

Enjoy flexibility. Plan can be designed to help meet your specific goals.

Secure the loan. The collateral assignment on the policy secures the company's interest in the loan repayment.

Receive a tax deduction. If you choose, you may use bonuses, which are tax deductible, to pay the key employees' income tax on the loan interest. If the loan is forgiven at plan termination, an additional deduction may be available.

Avoid payroll taxes. Premium payments (loan amounts) do not incur payroll taxes.

Recover costs. If desired, you may recover your investment in the plan upon plan termination.

Rely on us. You can trust our dedicated team of experts to provide ongoing services for your plan.

For your key employees

Provide for the future. Benefits from the plan can help supplement retirement income on a tax-advantaged basis, as well as provide survivor benefits to the key employee's beneficiaries at death.

Save on protection. Provides life insurance protection at a current cost (imputed interest[1]) to the key employee that's significantly less than the full policy premium.

Receive multiple benefits. In addition to tax-advantaged supplemental income, the plan can also provide access to funds to address unplanned events—such as disability, chronic illness, and other financial needs.

Tailor investment strategy. Depending on the life insurance policy used, each participant can tailor an investment strategy to meet changing needs and objectives.

Pay taxes. During the accumulation phase, income tax is due only on the imputed loan interest.[1] During the distribution phase, loans may be forgiven through employer bonuses. These bonuses may be increased to offset the key employee's taxable income.

Give your top talent a valuable reason to stay.

You're in control of making this split dollar plan yours—it's based on your company goals and your key employees' needs. Together with your financial professional, we'll walk you through the necessary plan design decisions that make sense for your business. Consider the following as you tailor your plan.

Who's eligible to participate in the plan?

You can select any key employee or group of key employees to participate. This plan isn't limited to a select group of management or highly compensated employees who qualify for the "top hat" exemption. But, employers with more than 100 participants may limit their exposure to certain Employee Retirement Income Security Act (ERISA) requirements if they choose to limit it to top hat employees. (Refer to the ERISA section on page 16 for further details.) Executive officers of publicly traded companies are not eligible due to the Sarbanes Oxley Act of 2002.

What financing options are available?

Several types of life insurance products are available. When selecting a life insurance product, it's important to consider the design features. Generally, a cash value life insurance policy will be most effective with this plan design. You can choose a fixed, indexed, or variable life insurance product.

How much does the employer contribute for life insurance premiums?

The plan is flexible and can be tailored to meet the specific needs of both you and your key employees. During the accumulation phase, the premiums you pay to the plan will be treated as a loan to the key employee. The plan can be designed so when it's terminated, no additional premium is required from the key employee.

Is the premium taxable to the key employee?

No. However, the loan that's used to pay the premium will generate imputed interest[1], which is includable as taxable income to the key employee. You may choose to pay the key employee a bonus to cover these taxes.

How is the interest rate on the loan determined?

It depends on the loan. There are two types of loans—**term** and **demand**. The interest rate that must be used depends on when the loan must be repaid—either at a specified time (term loan) or on demand (demand loan).

The examples that follow demonstrate that for the sample time period used, imputed interest for 10-year term loans would have been significantly higher than the blended annual rate for demand loans. Because most loan split dollar arrangements don't specify a repayment date (meaning they're considered demand loans), this proposal will focus more on this type of loan.

[1] Imputed interest is the interest at a minimum level required by tax law. Often, the key employee doesn't pay any interest on the loan, but instead is taxed as if a minimum level of interest had been paid on the employee's behalf.

Term loans | End at a specified repayment date or event.

Applicable federal rate (AFR). This must be used when the loan has a set repayment date (term loan). AFRs are set monthly by the IRS, and rates are provided for short-term, mid-term, and long-term loans.

- **Short-term:** Repayment in up to three years
- **Mid-term:** Repayment in more than three years, up to nine years
- **Long-term:** Repayment in more than nine years

Example (payable in 10 years)

Acme Company established a loan split dollar arrangement for Ross, a key employee, in 2019. Acme paid four annual premiums of $50,000, with each loan repayable in 10 years. Each premium payment is treated as a new term loan, with interest imputed to Ross and calculated as follows:

Year	Premium payments	Long-term AFR[1]	Imputed Interest			
			2019	2020	2021	2022
2019	$50,000	2.09%	$1,045	$1,045	$1,045	$1,045
2020	$50,000	1.31%		$655	$655	$655
2021	$50,000	1.90%			$950	$950
2022	$50,000	4.34%				$2,170
		Yearly amounts:	**$1,045**	**$1,700**	**$2,650**	**$4,820**
			Total imputed interest over 4 years: **$10,215**			

It might seem logical that long-term rates would be the lowest, but this was not the case in the time period used in the example above. In fact, the blended annual rates were much lower than any of the AFRs. Let's now take a look at the demand loan example below and the resulting imputed interest.

Demand loans | Payable at an indefinite time in the future, or on the demand of the lender (your business) at any time.

Blended annual rate. This must be used when the loan doesn't have a set repayment date (demand loan). The blended annual rate is set annually by the IRS.

Example (payable on demand)

Using the same information from the prior example, assume that Acme Company paid four annual premiums as described, but did not establish a repayment date for any of the loans. The loans would be treated as one demand loan, with interest imputed to Ross and calculated as follows:

Year	Accumulated premium payments	Blended annual rate[2]	Imputed Interest
2019	$50,000	2.42%	$1,210
2020	$100,000	.89%	$890
2021	$150,000	.13%	$195
2022	$200,000	1.40%	$2,800
		Total imputed interest over 4 years: **$5,095**	

[1] Interest rates are long-term AFRs compounded annually, as issued in December 2019-2022.

[2] Interest rates are blended annual rates, as issued in July 2019-2022.

Can the interest rate be locked in?

The ability to lock in a rate is limited. When the blended annual rate applies (demand loan), it's charged on the entire outstanding loan amount, but it changes each year.

When the AFR applies (term loan), it applies to the specific loan (i.e., one specific premium), based on the number of years until repayment is called for. The AFR locks in an interest rate for the term of the loan, but only for the specific premium payment to which it applies. Each premium payment is a new loan.

How do the employer and employee treat the interest on the loan?

The employer generally either charges interest or treats the employee as though interest was paid on his or her behalf. In most cases, the taxable interest is imputed to the employee as taxable income. Employers sometimes gross up the imputed interest amount (i.e., they pay the employee a bonus that's enough to cover the tax on the imputed interest). This can minimize or eliminate the employee's out-of-pocket expense. Imputed interest income is taxable to the employer, but is generally offset by a corresponding deduction for the amount that's taxed to the employee.

Example

Using the information from the previous examples, assume Acme Company made a split dollar loan to employee Ross by paying the $50,000 annual premium on a life insurance policy owned by Ross. Assume the loan is a demand loan and that the blended annual rate is 3%, meaning that the imputed interest amount is $1,500 for the current year.

Acme has two options. It can require Ross to make a $1,500 payment to Acme out of pocket. Or, it can report $1,500 income to Ross as imputed interest. If Acme reports $1,500 imputed interest to Ross, then he will owe income tax of $525 (assuming Ross's tax rate is 35%) on that imputed interest income.

Acme could also choose to make an additional bonus to Ross to cover the income tax liability on the $1,500 imputed interest amount. If the tax on the interest is 35%, the bonus amount calculation is: $525 tax on imputed interest divided by (1 - .35 employee tax rate) = $808 bonus. This means a bonus of $808 would cover both the $525 tax on the imputed interest and the $283 tax ($808 x .35 = $283) on the bonus itself. This limits the out of pocket tax costs to the employee.

How can your interest in the plan be protected while the split dollar arrangement is in force?

You can help protect your right to recover the loaned premiums by having the policy assigned to you (your company) as collateral. While the plan is in force, the collateral assignment prevents the key employee from accessing policy values (via partial surrenders, policy loans, or policy cancellation) without your signed approval. And if the employee should die before the plan's termination, the collateral assignment ensures your company will receive a portion of the policy death benefit equal to the deceased employee's repayment obligation (the loaned premiums), with the balance of the proceeds payable to the employee's beneficiaries.

Note: Majority shareholders generally use a restricted collateral assignment if the coverage is intended to be outside the insured's estate through the use of an irrevocable life insurance trust (ILIT).

What are the key employee's options following plan termination during his or her lifetime?

As indicated above, the key employee typically repays the loan (your premium costs) in conjunction with the plan's termination. Once the repayment is satisfied (or forgiven), the collateral assignment is released, and the employee is then free to exercise any and all policyowner rights going forward. For instance, with adequate funding, the employee might elect to take a series of policy distributions (partial surrenders and/or policy loans) to help supplement retirement income.

Is cost recovery available for the company?

A loan split dollar agreement requires the key employee to fully repay the loan obligation (the premiums advanced). This can be either through a bonus, withdrawal from the policy, or other funds. If the agreement terminates during the employee's lifetime and the policy cash value is insufficient to cover the repayment obligation, the employee will need to obtain cash from another source to cover the difference. Or, you could forgive (bonus) some or all of the loan.

When does the split dollar arrangement terminate?

Timing of plan termination is generally tied to the release of the collateral assignment, which is determined by you. Some common termination events include retirement, disability, and death.

Does a loan split dollar plan work for a tax-exempt employer? If so, how would it be different?

Loan split dollar plans can offer attractive key employee benefit opportunities in tax-exempt and non-profit organizations. The structure, loan options, and tax treatment of the employee are the same as in a for-profit company, except that if the employee is promised a future benefit (such as a bonus or loan forgiveness), that benefit generally becomes taxable when it's no longer subject to a substantial risk of forfeiture.

Tax-exempt organizations are subject to an excise tax of 21% on compensation exceeding $1 million annually to certain employees.[1] Covered employees include the organization's top five highest-paid employees, and any employee who was covered in a previous year after 2016.[2] Compensation is considered paid when there's no longer a substantial risk of forfeiture.

As a result of the excise tax, keeping compensation below the $1 million threshold might be one of the objectives of the organization. Loan split dollar can help minimize current taxable compensation, while offering a substantial future benefit.

Many states have laws prohibiting tax-exempt organizations from making loans to directors, and sometimes officers. If the key employee is a director or officer, discuss with local counsel whether loans from non-profits to directors or officers are permitted in your state.

[1] See IRC Sec. 4960. This tax took effect in 2018, as part of the Tax Cuts and Jobs Act.

[2] Compensation to medical professionals for medical or veterinary services are not subject to the excise tax.

Planning helps ensure a smoother exit.

When the plan terminates during the employee's life, one of two things can happen regarding the release of the collateral assignment:

- **Loan repayment (release requiring reimbursement).** If you choose not to forgive the loan, the key employee must reimburse you for the premiums loaned.
- **Loan forgiveness (release without repayment).** You can choose to forgive the loan and treat it as a bonus. This creates taxable income equal to the amount of the loan for the key employee and a tax deduction for you (assuming reasonable compensation[1]).

If the plan terminates with the death of the employee, the collateral assignment will require part of the death proceeds from the life policy to be used to repay the loan.

Begin with the end in mind

It's best to plan the exit strategy in advance. That way, when the split dollar agreement terminates, both you and your key employee are more prepared to fulfill the requirements of the agreement. This planning can help you:

- Structure the life insurance policy to accumulate cash value that can be used if necessary.
- Consider other assets to pull cash from to repay amounts due under the split dollar loan agreement.
- Plan for a taxable event if the loan might ultimately be bonused or forgiven.[2]

Exit strategies	Benefits and considerations
Loan repayment Can be repaid from cash drawn from the policy or other resources.	• Repayment may be during life or after death. • Timing may be driven by when the imputed loan interest costs become prohibitive. • If the loan isn't repaid or forgiven, taxable costs continue to accrue for the employee.
Loan forgiveness Generally decided upon plan termination. Should not be promised to the employee, which would cause it to be considered deferred compensation and subject to IRC Sec. 409A (Sec. 457 for tax-exempt entities), ERISA requirements and current income taxation.	• Lower individual income tax rates caused by tax reform may make this option more desirable for the key employee while the reductions are in effect. • Full amount forgiven is includable as income in the year it was forgiven and is taxable as compensation.[3] • A promise of loan forgiveness is a deferred compensation arrangement, which would require a written agreement under IRC Sec. 409A.[2]

[1] The IRS determination of reasonable compensation is based on the facts and circumstances.

[2] Employers might want to avoid making any promise of future loan forgiveness. Doing so could create a funded deferred compensation plan and trigger unexpected ERISA requirements and income tax consequences.

[3] The U.S. Tax Court (***Neff v. Commissioner of Internal Revenue*** T.C. Memo 2012-244) rejected using the present value of amount due many years in the future as the taxable amount..

Focused on your plan's details—today and tomorrow.

It takes a lot of work to run your business. We understand that you may not have time to think about the details associated with administering a benefit plan like this one. That's why we're here. We have the expertise and services to help you with implementation today and administration throughout the life of your plan.

The Business Market Administration team at Principal provides dedicated, ongoing support for your employer-owned and employer-sponsored plans funded with life insurance. And as your needs change, or regulations change, we'll help you keep up with both.

Supporting you every step of the way

Beginning at plan implementation, we understand what you need and what needs to be done. You and your key employees will benefit from the complimentary administrative services offered by Principal.

Dedicated administrator. Personally assists you with enrollments, policy adjustments, service requests, policy illustrations, and more.

Plan-level reporting. Makes participant communications and any needed tax reporting easier. Consolidated reports show current coverage amounts, policy values, and premium information for all participants with life policies under your plan. This includes providing you with the amount of the annual imputed interest for each participant.

List billing. Delivers consolidated payment reminders covering all policies under your plan.

Online access. Allows you and your key employees to view policy information at principal.com. Policyowners may also make changes or initiate service requests.

Walking you through a successful implementation.

Helping you tailor a split dollar plan to your specific needs and goals is a top priority. Once you're comfortable with the plan design and financing to support it, attention will shift to you and your financial professional putting the plan in place using the Principal platform.

As everyone works together to successfully implement your plan within your desired timing, the goal is to deliver a positive experience for everyone involved. Here's what you can expect:

Next steps

1 Strategy development

- Finalize designated documents[1]
- Confirm funding levels

2 Application process

- Educate owners on the funding program
- Collect applications and signatures, if applicable

3 Administrative set-up

- Finalize underwriting, if applicable
- Enter plan information into recordkeeping systems

4 Implementation

- Begin premium payments
- Issue new insurance policies, if applicable

[1] Proper documentation for this plan is particularly important since many of the plan benefit details need to be documented in agreements. Principal offers sample documents that your attorney can use.

You benefit from a company that knows business.

As a business decision maker, your financial needs are different than those of other individuals. So, it only makes sense to work with a company that understands the financial needs of businesses and their owners. We help business owners like you every day. Leverage our expertise, solutions, and services as we consult with you on financial solutions that help address specific needs.

- A member of the FORTUNE 500®, we have $714 billion in total assets under management and serve clients worldwide of all income and portfolio sizes.[1]
- Year after year, we receive strong financial ratings from the four major rating agencies — A.M. Best Company, Moody's Investor Services, Standard & Poor's, and Fitch Ratings.[1]
- No. 1 small-case business life insurance provider.[1]
- No. 1 provider of nonqualified deferred compensation plans.[1]
- Preparer of thousands of informal business valuations since 2011.
- Reviewer of more than 1,800 buy-sell agreements since 2011.

[1] Principal® 2022 Company Profile, December 2021 https://secure02.principal.com/publicvsupply/GetFile?fm=DD730&ty=VOP&EXT=.VOP.

Accounting

With this split dollar plan, the life insurance policy is owned by the key employee, subject to the collateral assignment. Amounts advanced by you to pay premiums are treated as loans. If these loans are forgiven, they're also generally treated as additional compensation in your financial statements.

Journal transaction example

Acme Company has a written split dollar loan agreement with Ross, a key employee, to pay $50,000 annual premiums on a life insurance policy owned by Ross. Assume the loans are demand loans and that the blended annual rate is 2%, meaning that the imputed interest amount is $1,500 for the current year.

Acme reports $1,500 income to Ross as imputed interest. If Acme reports $1,500 imputed interest to Ross, then he will owe income tax of $525 (assuming Ross's tax rate is 35%) on that imputed interest income.

Acme also makes an additional bonus to Ross to cover the income tax liability on the $1,500 imputed interest amount. If the tax on the interest is 35%, the bonus amount calculation is: $525 tax on imputed interest divided by (1 - .35 employee tax rate) = $808 bonus. This means a bonus of $808 would cover both the $525 tax on the imputed interest and the $283 tax ($808 X .35 = $283) on the bonus itself. This limits the out-of-pocket tax costs to the employee.

The split dollar agreement is terminated after the fourth year.

1. Loaned amounts from you pay annual premiums on the life policy owned by the key employee.
2. Loan triggers taxable imputed interest to the key employee.
3. You pay a bonus to the key employee to cover the tax on the imputed interest.
4. In year four, the collateral assignment is released and the key employee reimburses you.
5. Alternatively, the split dollar agreement is terminated in year four (the collateral assignment is released) and you forgive the loan amount. This amount is considered compensation to the key employee.

	Balance sheet		Income statement	
	Debit	Credit	Debit	Credit
1 Employer loaned premium amount				
Loan receivable	$50,000			
Cash		$50,000		
2 Imputed Interest				
Compensation expense			$1,500	
Miscellaneous income				$1,500
3 Tax cost of bonus to employee				
Compensation expense			$808	
Cash		$808		
4 Termination of split dollar agreement (if paid in cash)				
Cash	$200,000			
Loan receivable		$200,000		
5 Termination of split dollar agreement (if forgiven)				
Compensation expense			$200,000	
Loan receivable		$200,000		

Tax considerations

Employee income tax

According to final regulations for split dollar arrangements (published September 11, 2003), the amount of "sufficient interest" that's taxable to an employee for a demand loan (meaning the repayment date is not specified) is determined by applying the blended annual rate published each year by the IRS against the total loan balance. This rate is announced each year in July.

If the loan is a term loan (repayable at a specific date), the applicable interest is determined using the appropriate applicable federal rate (AFR) for the term of the loan based on the month the loan was made. The rates are either short-term (less than three years), mid-term (three years to nine years), or long-term (more than nine years).

Loans are generally structured, so that if policy values are not adequate to fully repay the employer for premiums loaned, the employee is personally liable for the difference. It's necessary to structure the loans this way to comply with the final regulations. You still have the ability to forgive the entire loan balance, if desired.

If you decide to forgive the loan, you can also choose to provide a bonus to help the key employee cover taxes on the amount of the forgiveness. Use this formula to compute the amount of the bonus:

$$\frac{\text{Forgiven amount x key employee tax rate}}{\text{(1 – employee tax rate)}} = \text{Bonus needed to cover taxes}$$

Note: Bonuses received are taxable under IRC Sec. 61(a).

Estate taxes

A life insurance policy death benefit is includable in an insured's gross estate for federal estate tax purposes if the insured possessed any incidents of ownership in the life insurance policy at the time of death. Consequently, under a loan split dollar arrangement, the benefit paid to the insured's beneficiary could be included in the insured's estate. An employee may be able to avoid inclusion in the estate by either having the policy originate inside an ILIT or by transferring (gifting or selling) the policy to an ILIT.

Employer income tax

Premium payments are not deductible since they constitute loans. Under the final regulations for split dollar arrangements and IRC Section 7872, the amount of imputed interest taxed to the employee creates a deduction for you under Section 162(a). However, the regulations require that you account for imputed interest for tax purposes. Therefore, you're required to include the amount of sufficient interest in your income for the year, as if it were paid by the employee.

You receive a deduction for the full amount of any bonus to the key employee in any year a bonus is paid. This would likely have a net effect of zero on your tax return. A bonus deduction may also be available for any loan amounts forgiven by you. The full deduction is allowed as long as the amount of the bonus plus the gross-up is not considered unreasonable or excessive compensation. Bonuses are generally deductible under IRC Sec. 162(a).

Payroll taxes

All bonuses are treated as compensation and are subject to both the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) when paid. Amounts loaned annually to the employee to pay policy premiums are not subject to payroll taxes.

ERISA

The loan split dollar plan is generally treated as a welfare benefit plan under ERISA. The requirements differ depending on the number and type of employees who are participants. If the plan is top hat (applying only to a select group of management or highly compensated employees), it's subject to the "selected employees exemption" described below. If the plan is not top hat, but covers fewer than 100 employees, the small welfare plan exemption requirement (below) will apply. If the plan is not a top hat plan and there are 100 or more participants, the summary plan description must be filed with the U.S. Department of Labor, as well as filing an annual report (Form 5500).

Most plans will be subject to one of the following exemptions:

Selected employees exemption. This exemption is available only to employee benefit plans:

- That are maintained by an employer primarily for providing benefits for a select group of management or highly compensated employees (i.e., a top hat plan).
- Where benefits are paid solely from the general assets of the employer. Or, where benefits are provided exclusively through insurance contracts, the premiums for which are paid directly by the employer from its general assets.

Under this exemption, you are exempt from reporting and disclosure requirements under Part I of Title I of ERISA, except for providing plan documents to the U.S. Secretary of Labor upon request.

Small welfare plan exemption. This exemption provides an employer will not be required to file numerous forms with the Department of Labor and the Internal Revenue Service (IRS) if:

- Fewer than 100 employees are participating in the plan at the beginning of the year,
- The employee benefits are either paid out of the employer's general assets or are provided exclusively through insurance contracts issued by an insurance company or a qualified health maintenance organization where the premiums are paid directly by the employer from its general assets,
- Any employee contributions for premium payments are forwarded to the insurance company within three months of their receipt,
- Under an insured plan where the employees contribute toward the premiums, any refunds to which employees are entitled are returned to the employees within three months of receipt by the employer, and
- Contributing employees are informed of the plan's provisions concerning the allocation of refunds upon entry into the plan.

If the preceding requirements are not met, you must file with the Department of Labor:

1) A summary plan description

2) An annual report, Form 5500, (filed with the IRS, which forwards a copy to the Department of Labor)

3) A description of material modifications and

4) Terminal reports

There's also authority for the position that a benefit negotiated by an employer and a single employee is not a plan for purposes of ERISA. For an employer relying on this position, to strengthen the argument that there's no ERISA plan, each arrangement should be individually negotiated and include an employment agreement. It shouldn't be written as part of a plan or set up in such a way that any employee meeting certain requirements is entitled to have this arrangement included in their compensation package. The specific terms and potential forfeiture provisions of the plan should be subject to negotiation.