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Government proposes amending the *Income Tax Regulations* to support RPPs through the COVID-19 crisis

On July 2, 2020, a Department of Finance press release announced proposed amendments to the Income Tax Regulations that would help employers sponsoring a Registered Pension Plan (RPP) to manage and maintain benefit obligations through the COVID-19 crisis.

RPP relief measures

The temporary relief measures related to RPPs included in the proposed draft – Proposed amendments to the Income Tax Regulations (COVID-19 relief for pension plans and deferred salary leave plans), are detailed below.

Deadline to retroactively account for pensionable service extended

Currently, under the provisions of Chapter 6 Section 8308 paragraph 4 (Period of Reduced Services — Retroactive Benefits) of the Income Tax Regulations, a member of a registered defined benefit (DB) plan (other than a plan that is a specified multi-employer plan) may be able to opt to have an eligible period of reduced service credited as pensionable service, provided the choice occurs by April 30 of the year following the year in which the eligible period of reduced service ends. For eligible periods of reduced service under defined contribution (DC) plans, similar rules and deadline apply under Section 8308 paragraph 5 (Period of Reduced Services — Retroactive Contributions). Under these provisions, plan members can have an eligible period of reduced service recognized on a current service basis, allowing employers to report the period as a pension adjustment rather than a past-service pension adjustment.

The proposed draft would amend Section 8308 of the Income Tax Regulations to extend the April 30, 2020 deadline for eligible periods of reduced service that ended in 2019 to June 1, 2020, or a later date acceptable to the Minister of National Revenue.

Special rules for retroactive contributions for 2020

Section 8308 paragraph 5 of the Income Tax Regulations would be further amended to allow for the possibility of retroactive contributions to an employee's DC account for the year 2020, regardless of reduced work or reduced pay, provided all of the following conditions are met:

- a retroactive employee contribution is made (or committed to in writing) after the year 2020 and before May 2021;
- an employer contribution is made after 2020 and before May 2021 (or, if made at a later date, the employer contribution is conditional on the employee's written contribution commitment); and

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- the contribution, in whole or in part, is in lieu of a contribution that would have been required for the year 2020.

Definition of "eligible periods of reduced pay"

Currently, Section 8500 paragraph (1) of the Income Tax regulations defines eligible periods of reduced pay of an employee with respect to an employer as "a period (other than a period in which the employee is, at any time after 1990, connected with the employer or a period any part of which is a period of disability of the employee)

- that begins after the employee has been employed by the employer or predecessor employers to the employer for not less than 36 months,
- throughout which the employee renders services to the employer, and
- throughout which the remuneration received by the employee from the employer is less than the remuneration that it is reasonable to expect the employee would have received from the employer had the employee rendered services throughout the period on a regular basis (having regard to the services rendered by the employee to the employer before the period) and had the employee's rate of remuneration been commensurate with the employee's rate of remuneration before the period; (*période admissible de salaire réduit*)."

The proposed draft would amend the definition of "eligible period of reduced pay" definition for 2020 to:

- Disregard the 36-month employment requirement for the year 2020, so that an employer would be able to provide unreduced pension coverage to all employees, including those more recently employed who do not yet have 36 months of service.
- Eliminate the requirement that the reduction in pay be generally commensurate with the reduction in work hours.

Temporary amendment of RPP borrowing rules

Under the provisions of Section 8502 Section 7, paragraph (i) of the Income Tax Regulations RPPs are currently prohibited from borrowing except under limited conditions. Two of these conditions would be temporarily relaxed by the proposed draft, namely the conditions that:

- the term of the loan not exceed ninety days; and that
- the loan not be part of a series of loans or other transactions and repayments

Specifically, under the proposed amendments, RPPs would be permitted to obtain a loan or a series of loans after April 2020 and before February 2021, provided the loan or loans are repaid no later than April 30, 2021.

As such, the proposed draft would temporarily suspend the ninety-day limit on borrowing and the prohibition that a loan be part of a series of loans or repayments. All other RPP restrictions would remain unchanged.

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