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Changes to the federal Pension Benefits Standards Act, 1985

Proposed amendments to Bill C-9, the *Jobs and Economic Growth Act*, came into effect on April 1, 2011, while others came into force on July 1, 2011. Bill C-9 amends the *Pension Benefits Standards Act, 1985* (PBSA) and was adopted on July 12, 2010,

It should be noted that most Bill C-9 amendments to the PBSA, such as immediate vesting, do not come into force upon their adoption. In fact, these amendments were expected to come into force on the date(s) set by a Government of Canada Order-in-Council.

Therefore, the Government of Canada, by Order-in-Council, has set the commencement date of certain amendments to be April 1, 2011, and, for others, July 1, 2011.

Essentially, the amendments to the *Pension Benefits Standards Act* of 1985 which came into force on **April 1, 2011**, impact defined benefit (DB) pension plans. The amendments stipulate the following measures:

- plan sponsors are authorized to secure properly structured letters of credit in lieu of making solvency payments to the pension plan;
- plan sponsor are required to fully fund pension benefits on plan termination; and
- plan members and retirees of a distressed pension plan are authorized to negotiate their own funding arrangements to facilitate a plan restructuring.

These amendments allow for the implementation of the amendments to the Pension Benefits Standards Regulations of 1985 (see box on next page).

The amendments that came into force on **July 1, 2011**, will impact both DB and defined contribution (DC) pension plans. They will affect how benefits are calculated. The amendments essentially stipulate the following measures:

1. Immediate vesting from the beginning of membership in the plan. The vesting will be immediate for both pre-1987 and post-1986 plans.
2. Locking-in after two years of plan membership for memberships having begun as of October 1, 1967.
3. Removal of the rule allowing a refund from 25% of the commuted value of a deferred pension plan (benefits accrued before 1987). *Reminder – The small benefit unlocking threshold has been modified in December 2010 from an annual pension of less than 4% of the Year's Maximum Pensionable Earnings (YMPE) for the year of termination of membership to a total pension benefit credit of less than 20% of the YMPE in the year of termination of membership and the provision that required a transfer if the pension benefit credit is less than 10% of YMPE has been repealed – i.e. is no longer applicable.*

4. Technical changes to the pre-retirement death rules taking into account, among other things, immediate vesting, or, to whom the death benefits will be paid in case there is no surviving spouse – i.e., to the designated beneficiary or, if none, to the estate. The differentiation between a pre-retirement death benefit for members eligible for early retirement and members who are not has been removed.

On March 25, 2011, the Ministry of Finance of Canada released the final version of the amendments to the Pension Benefits Standards Regulations, 1985. These amendments, which impact DB pension plans, came into force on **April 1, 2011** and now:

- authorize plan sponsors to secure properly structured letters of credit in lieu of making solvency payments to the pension fund, up to a limit of 15% of plan assets;
- require the plan sponsor to fully fund pension benefits on plan termination;
- void any amendments to a pension plan that would reduce the solvency ratio of the pension plan if the plan's solvency ratio would then be below a ratio of 0.85; and
- authorize sponsors, plan members and retirees of a distressed pension plan to negotiate their own funding arrangements to facilitate a plan restructuring.

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Individual Pension Plans (IPPs)

As we explained in the special June 2011 issue of *Legislation matters*, the 2011 Federal Budget proposed two new measures for the IPP. The measures are the following:

- Annual minimum amounts will be withdrawn from the IPP, as with Registered Retirement Income Funds (RRIFs), effective on the member's 72nd birthday.
- IPP contributions that relate to previous employment years will be funded first by the member's RRSP assets (including account balances of the individual's defined contribution Registered Pension Plan (RPP), wherever warranted), or by reducing the individual's accumulated RRSP contribution room before newly deductible past service contributions are permitted.

The first measure regarding minimum withdrawals will be limited in scope, since it covers cases where:

- Taxpayers had transferred the cash surrender value of their pensions from a defined benefit RPP to an IPP offering fewer benefits; and
- The transfer of value became, in part, surplus assets that are not subject to any withdrawal requirement under existing tax rules applicable to the RPP.

Therefore, these taxpayers might, depending on the case, defer the beginning of the payments of a larger portion of their retirement savings over a longer period than is generally possible for other RPP members or RRSP holders. However, this will not be possible starting in 2012 as minimum amounts will have to be withdrawn annually.

However, the second measure regarding past service contributions will have a significant and immediate impact on IPP's tax appeal, particularly for business owners who participate as both an employer and individual.

As a result, an individual who opens an IPP later in his career and is able to recognize his previous years of service under an IPP by making additional contributions for past services can benefit from much higher tax deductions for these contributions than he who is now required to reduce his RRSP assets or accumulated RRSP contribution room. This ability to make further contributions to an IPP in respect of past service can provide a significant tax advantage.

The 2011 Federal Budget proposes to require that the cost of past service under the terms of an IPP be first funded by transferring the member's RRSP assets or reducing the member's accumulated RRSP contribution room before past service contributions are permitted.

It should be understood that the contribution and benefit limits that apply to RPPs and RRSPs are designed to provide Canadians with comparable retirement savings opportunities, whether they save through a defined benefit RPP, a defined contribution RPP, an RRSP or a combination of these plans.

The second measure came into force retroactively on March 22, 2011. Specifically, this measure will apply to IPP past service contributions made after March 22, 2011. However, it will not apply to IPP past service contributions credited to an IPP member before March 22, 2011, under terms of the IPP submitted for registration on or before that date.

While the IPP was, until now, an attractive retirement savings strategy for business owners and employees with high incomes, they should consult their financial advisors about any changes they may need to make with regards to this strategy.

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New Brunswick – Rights of common-law partners

On April 30, 2008, the Government of New Brunswick passed Bill 31, amending the *Pension Benefits Act* in order to establish rights for same sex partners.

However, Bill 31 never came into force. These amendments are expected to come into force on the date fixed by Government of New Brunswick proclamation.

On March 31, 2011, the Government of New Brunswick introduced a new bill – Bill 16 – which proposes to amend Bill 31.

Bill 16 aims to update the definition of “common-law partner”, including same sex spouses.

Therefore, a common-law partner qualifies as such, for the purposes of the *Pension Benefits Act*, if he/she is cohabitating, for at least two years, in a conjugal relationship with a member to whom he/she is not married (instead of three years, under the present definition of the term) immediately before (instead of “during the previous year”):

- The death of the member
- The date of the conjugal relationship breakdown
- Before the particular instance, in all other cases.

Accordingly, the additional “substantially dependent on another for support” criterion, which currently applies to the period of three years, will be eliminated. In addition, the opportunity to qualify as a spouse when there was birth of a child will be eliminated.

Consequently, the provisions concerning the “joint and survivor pension”, the “pre-retirement death benefit” and the “marriage or conjugal relationship breakdown” shall, under the new definition, apply to common-law partners, whether they are of the opposite or same sex. Needless to say, the spouse married to the member continues to qualify as a spouse for the purposes of the *Pension Benefits Act*.

The bill was passed and received Royal Assent on June 10, 2011, but the amendments introduced by Bills 16 and 31 will come into force at a later date by proclamation. When they come into force, texts on pension plans and administrative procedures, in particular, will have to be reviewed and amended.

We will keep you posted.

You can contact us

Your feedback is important to us. If you have any comments about our publication, or if you would like us to address a particular issue or subject in a subsequent edition, please feel free to drop us a line at the following address:
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