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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

January 6, 2021

Mr. Andrew Marsland
Senior Assistant Deputy Minister
Tax Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5
Via email: fin.financepublic-financepublique.fin@canada.ca

Re: Measures to assist in identifying deceased pension plan beneficiaries and in recovering overpaid amounts

Dear Deputy Minister Marsland:

ACPM is the leading advocacy organization for plan sponsors and administrators in the pursuit of a balanced, effective and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

The recovery of amounts paid to pension plan beneficiaries following their death is a challenging and costly process for pension plan administrators. It can also delay the settlement of estates, payment of survivor benefits, and, in some cases, even cause relatives to suffer financial hardship. We are writing to request that you consider the following two measures aimed at reducing such overpayment instances and overpayment recovery amounts:

- permit pension plan administrators to recover tax withheld at source through a credit from CRA to accommodate repayment by the estate of only the net overpayment amount; and
- provide confirmation of a plan beneficiary's death to pension plan administrators.

The issue of overpayments and overpayment recovery

Upon the death of a plan beneficiary there is usually some delay before the plan administrator is notified and can initiate the process to stop the pension and pay any remaining survivor benefits. This results in the overpayment of pension benefits to the individual which the plan will seek to recover, as part of its fiduciary duty, through a repayment from the estate.

The current guidance from the Canada Revenue Agency (CRA) is found in the CRA Registered Plans Directorate Newsletter 18-1: Repayments to Registered Pension Plans, May 17, 2019, which discusses the tax deduction available under ITA s. 60(n.1) for the return of pension plan benefits paid in error. For overpayments made upon the death of a pensioner, this deduction is applicable to repayments made by the member's estate.

This approach requires the estate to return the gross overpayment amount in order to be made whole, which is a larger amount than was received by the deceased individual since a portion of the pension overpayment was remitted directly to the CRA as tax withheld at source. This can make it more challenging for the plan to recover the full amount.

Additionally, this approach is not viable where the overpaid amount is returned to the plan by a party other than the member's estate, such as a deceased plan member's spouse where the estate has been closed, and is not applicable to any overpayment made from a supplementary plan.

Recovery of overpaid benefits is a costly and lengthy process for plan administrators, and where overpayments are not recovered, the pension fund is negatively impacted. It can also delay the final settlement of the estate and prevent survivors or other beneficiaries from receiving death-related benefits to which they are entitled. In cases where the pension plan does not discover the death of a plan beneficiary until some years later, relatives who have innocently received pension overpayments and are later required to return them may suffer financial hardship.

With these considerations in mind, the prevention of improper pension payments to deceased individuals, and the mechanism for recovering such amounts, is a pressing objective.

Proposed Measures

The initiatives set out below would support pension plan administrators in the overpayment recovery process by reducing repayment amounts owed to the pension plan by the estate of the deceased plan beneficiary, and by reducing the instances and amounts of overpayment.

1. **Permit pension plan administrators to recover tax withheld at source through a credit from CRA to accommodate repayment by the estate of the net overpayment amount**

This first measure would seek to reduce the repayment amount owing from the estate by not asking that it return an amount larger than was paid to the plan beneficiary. This could be accomplished by amending the withholding rules in ITA s.153 to accommodate a repayment to the pension plan of only the net overpayment amount and permit the Plan to recover the excess withholding tax through a credit on its CRA account.

The ITA was amended in 2019 by the addition of s. 153(3.1) to streamline the approach for employers to seek recovery of overpayments of remuneration to their employees by having them repay the net portion only and triggering a payroll credit to the employer of the excess tax remitted to the CRA. This was added as part of the federal government's response to the Phoenix payroll system for federal employees and is now available to all employers. The process is described on the CRA Payroll page: Correcting reporting errors and salary overpayments.

It does not appear that this provision is applicable to the repayment of pension benefits, as "remuneration" in this context does not appear to capture pension amounts, and 153(3.1) refers to situations of a "clerical, administrative or system error".

Amending the ITA to permit this approach to also be used for overpayments from pension and superannuation plans, and supplemental plans (e.g., retirement compensation arrangements), would better support the recovery of pension overpayments and help streamline administration.

Ideally, it would be extended to also accommodate the Plan's ability to receive a credit for the excess withholding tax where the repayment of the net amount is made by another taxpayer on behalf of the deceased pensioner (e.g. the member's surviving spouse), particularly where the estate has been closed.

Upon return of the net overpayment amount, the pension plan would issue a T4A (and T4A-RCA, as applicable) for the corrected amount if the repayment is made in the year of the death or amended tax slips for the year(s) of the overpayment if repayment is completed in a later year. The estate would be made whole upon the CRA's reassessment of the year(s).

2. Provide confirmation of a plan beneficiary's death to pension plan administrators

This second measure would assist overpayment recovery by reducing the instances and duration of overpayments. We request that the CRA establish a service that would permit plan administrators to confirm whether a plan beneficiary has died. At present, the options for obtaining such confirmation, such as the use of professional locator services, are costly and of limited effectiveness, and there are practical limits to the effectiveness of the plan's own internal records management and audit programs. By contrast, the CRA is normally one of the first entities to receive formal notice of a taxpayer's death. Our proposal therefore has the potential to significantly reduce the incidence of pension overpayments to deceased individuals.

We appreciate that section 241 of the federal Income Tax Act (the "Act") places restrictions on the ability of the CRA to share taxpayer information with plan administrators. However, we believe that our proposal is permissible under paragraph 241(4)(b) of the Act, which permits disclosure of taxpayer information to any person where that information can reasonably be regarded as necessary for the purposes of determining any tax that is or may become payable, or any other amount that is relevant for the purposes of that determination. Our proposal would permit an administrator to determine whether any pension amount is payable to the taxpayer, which in turn is relevant to the calculation of income tax. Moreover, as noted above, preventing the payment of pensions to deceased individuals would assist the CRA by ensuring that the correct amount of tax is remitted.

These measures, particularly if implemented in tandem, would provide valuable assistance to pension plan administrators in their efforts to effectively fulfil their obligation to plan beneficiaries and limit risk associated with continuing payments where the benefits should cease. They would also support the timely settlement of estates, reduce potential burden on surviving relatives, and ensure correct and timely tax reporting to CRA.

We would be pleased to discuss our recommendations or to provide any further information that may be of assistance.

Yours sincerely,

R Marrero

Ric Marrero
Chief Executive Officer
ACPM

CC: Tax Legislation Division – Andrew Donelle