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Department of Finance Canada
Ottawa Canada

16 August 2018

Subject: Consultation on the *Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed Pension Balances Framework* published by the Department of Finance Canada (the “Proposed Framework”)

Thank you for providing us with the opportunity to comment on behalf of Mercer with respect to Part 2 of the Proposed Framework, which addresses unclaimed balances in pension plans subject to the *Pension Benefits Standards Act, 1985* (the “PBSA”).

The consultation document solicits feedback on a number of questions on the Proposed Framework. Our responses take into account our professional experience in dealing with a wide variety of pension plans registered under the PBSA, as well as pension plans registered in other Canadian jurisdictions (including jurisdictions that have already adopted unclaimed property legislation applicable to pension plans). We appreciate the opportunity to provide you with our input.

Sincerely,



Luc Girard, FSA, FCIA
Partner

**Comments with respect to the Department of Finance Canada Consultation Paper:
*Modernization of the Unclaimed Balances Regime and Proposals for an Unclaimed
Pension Balances Framework (the “Proposed Framework”)***

August 2018

Overview

Our comments are with respect to Part 2 of the Proposed Framework. To start we want to emphasize our support for the implementation of an unclaimed pension balances (“UPBs”) framework for federally-registered pension plans. UPBs represent a significant issue for both terminated pension plans and ongoing pension plans.

In general, we agree with Part 2 of the Proposed Framework. Below are our comments and suggestions as to how Part 2 of the Proposed Framework could be improved, in light of our experience with federally-registered pension plans and unclaimed property legislation in other Canadian jurisdictions. We also address the specific questions raised in Part 2 of the Proposed Framework.

Comments

While we agree that UPBs in terminated pension plans represent a pressing issue that needs to be immediately addressed to allow pension plan administrators to complete the termination process, we believe that UPBs in ongoing pension plans should also be addressed in the Proposed Framework. We note that there have been relatively few terminations of federally-registered pension plans, when compared to other jurisdictions and those terminations have been in respect of smaller plans. Consequently, most of the current UPBs are held in ongoing federally-registered pension plans and we submit that excluding ongoing plans from the Proposed Framework will hinder the fulfillment of its main objectives (i.e. helping beneficiaries reclaim their UPBs and relieving pension plan administrators from the burden of administering them).

We are aware that the inclusion of ongoing pension plans would represent additional efforts for the designated entity during the first years of the Proposed Framework’s implementation, in light of the current backlog of UPBs. However, this burden could be alleviated by postponing the remittance process for ongoing plans for a certain period of time (e.g. for a period of two (2) years, the Proposed Framework could apply solely to terminated pension plans, and it could then be extended to ongoing pension plans on a going forward basis). Simply put, we believe this is the opportunity to create a comprehensive framework and that the benefits of extending the Proposed Framework to ongoing pension plans, even in a transitional manner, will largely outweigh its initial burden.

We agree that the new legislation and/or regulations should not prescribe missing beneficiary search methods. In that respect, we believe that the more flexible approach would be for OSFI to set guidelines on locating missing beneficiaries. Such guidelines should, among other things, address the search effort that

a plan administrator should deploy given the UPB quantum, the timing of searches and the methodology to value defined benefits for remittances purposes.

Finally, we would recommend that the UPB remittance process be voluntary for pension plan administrators and that no penalties should be imposed for failing to remit UPBs before a prescribed deadline. We believe that making the remittance process mandatory is unnecessary as pension plan administrators will ultimately be forced to remit UPBs in order to comply with the benefit distribution requirements of the Income Tax Act (i.e. as it currently stands, when a given beneficiary turns 71).

Consultation Questions

Section 2.2 – Application to Terminated versus Ongoing Plans

Question 1: *Do unclaimed pension balances and/or unlocatable beneficiaries pose other issues for terminated and ongoing plans than those identified above?*

Comment: Plan members who are entitled to a pension but die prior to pension commencement can be problematic for pension plan administrators. A pension plan administrator will typically be made aware of the member's death when trying to locate the member because a) the pension plan is being terminated b) the member has reached the pension plan's unreduced retirement age or c) the member has attained age 71. In these situations, finding an estate representative or a next-of-kin can be very difficult, especially if the member died many years prior to the plan administrator finding out about the death.

Question 2: *Can any plan sponsors or administrators of ongoing plans provide an estimate of the number of unclaimed pension balances and unlocatable beneficiaries in their plan?*

Comment: We believe that pension plan administrators should be in a position to provide an estimate of the number of unclaimed pension balances and un-locatable beneficiaries for their pension plans.

Section 2.3 – Transfers to the Designated Entity

Question 1: *What are examples of effective search methods/techniques?*

Comment: In our experience, "active" search methods are generally much more efficient and successful than "passive" search methods. Active search methods require that the beneficiary be contacted personally whereas passive search methods require that the beneficiary initiate contact with the pension plan administrator. Examples of active search methods include Internet searches (e.g. social media searches, such as Facebook and LinkedIn) and hiring private tracing agencies including credit bureau search firms and private investigative firms. Passive search methods include setting up an online registry and publishing search ads in newspapers or on websites.

Question 2: *What seems like a reasonable minimum time period to make appropriate efforts to search for a plan beneficiary?*

Comment: Searching for missing plan beneficiaries is a process that can require a certain period of time. We say that a minimum period of six (6) months to locate missing plan beneficiaries would be reasonable.

Question 3: *Should there be a minimum time period before eligible unclaimed pension balances may be transferred to the designated entity?*

Comment: In the context of a pension plan termination, we believe that allowing a minimum time period before UPBs can be transferred to a designated entity is unnecessary. The pension plan administrator should be permitted to simply remit the UPBs identified in the termination report approved by the Superintendent, provided of course that the pension plan administrator has obtained OSFI's authorization with regards to the payment of UPBs.

In the context of an ongoing plan, as a general rule, we say that a) it should not be permissible to transfer UPBs to the designated entity before a given beneficiary's unreduced payment is due and b) as a result of benefit distribution requirements under the Income Tax Act, UPBs should be transferred to the designated entity by age 71 at the latest. However, as an exception to the foregoing, we submit that if the un-locatable beneficiary is entitled to a non-locked-in lump sum (for instance, as a result of a small benefit commutation or a death benefit), a transfer to the designated entity should be permissible after a prescribed number of years following the termination of employment have elapsed (e.g. three (3) years) but in no event after attaining age 71. The introduction of transitional provisions will be necessary for pension plans that currently have un-locatable beneficiaries who have already attained age 71.

Question 4: *What necessary criteria, if any, should be required to obtain OSFI's authorization?*

Comment: As stated in the Proposed Framework, the required search effort should be proportional to the amount of the UPB and, accordingly, OSFI's authorization should take into account that principle. For instance, for any UPB below a certain threshold, OSFI's authorization should be granted if the pension plan administrator certifies that basic active search methods were performed (i.e. Internet searches, including social media searches) and the UPB's beneficiary could not be found. For UPBs above the threshold, the pension plan administrator would have to a) certify that basic active search methods were performed and b) confirm that an independent tracing agency was hired and that despite these efforts, the UPB's beneficiary could not be found. OSFI's authorization should also be granted in cases where the pension plan administrator certifies that it does not have sufficient information on file to properly identify the UPB's beneficiary (see question 2 in section 2.4 below for practical examples). We feel that a \$5,000 threshold would currently be appropriate.

Section 2.4 – Information Provision

Question 1: *What are your views on plan administrators having to provide the proposed information to the designated entity, and having the proposed information posted publicly?*

Comment: The information transmitted by the pension plan administrator must be sufficient to allow the designated entity to properly identify the UPB beneficiary, so that it may properly process claims. We believe that the information outlined in the Proposed Framework is necessary to achieve this.

In addition, we submit that the Proposed Framework should require pension plan administrators to retain such information for a minimum period of time after a UPB has been transferred to the designated entity (for example 10 years). Any beneficiary who contacts the pension plan administrator after the transfer of the UPB could simply be redirected to the designated entity.

Question 2: *Do plan administrators have access to all the proposed information to provide to the designated entity?*

Comment: In general, pension plan administrators should have access to all of the proposed information. However, for pension plans that were established many decades ago, there may be legacy circumstances under which the proposed information is only partially available. For example, this could be the case for beneficiaries who terminated their employment before electronic databases were widely used (e.g. the paper file holding the information may have been lost or damaged before the information could be entered into a database). This might also be the case where plan sponsors were involved in corporate transactions (e.g. sales, acquisitions, restructurings) and the proposed information was transmitted to a successor plan administrator. However, in our experience, such cases are rare.

Section 2.5 – Claiming Funds from the Designated Entity

Question 1: *Are there others who should be eligible to claim funds from the designated entity?*

Comment: We have nothing to add to the list of eligible claimants described in the Proposed Framework.

Question 2: *What are your views on the proposed prescription periods, including views on what would be an appropriate prescription period and threshold for small balances, and the appropriateness of full alignment with the framework for unclaimed bank balances?*

Comment: We note that the proposed prescription periods differ from the requirements in other jurisdictions¹. We do not have an opinion on a preferable approach. It would appear reasonable that claims filed with the designated entity for UPBs under a minimum threshold (e.g. below \$100) should be barred (i.e. when such amounts are remitted by the pension plan to the designated entity, the beneficiary no longer has any entitlement to same).

Section 2.6 – Interest and Fees

Question 1: *Are there other reasons to support crediting a reasonable rate of interest on amounts claimed from the designated entity, or charging a cost-recovery administration fee?*

Comment: We have no further suggestion in this respect.

Section 2.7 – Tax Obligations

Question 1: *Do you agree that remitting a pre-paid tax is a simple, efficient and practical approach to the taxation of unclaimed pension benefits?*

Comment: We support this approach. However, the Pension Benefits Standards Act, 1985 and/or the Pension Benefits Standards Regulations would have to be amended to remove locking-in provisions in the case of UPBs.

Question 2: *Do you agree that the pension plan administrator is in the best position to report, withhold and remit the pre-paid tax to the CRA?*

Comment: Yes, we agree that in the context of UPBs, the pension plan administrator has the capacity to report, withhold and remit pre-paid taxes to the CRA. Please note that under this approach, the Canada Income Tax Act and the Quebec Taxation Act will likely have to be amended to provide, among other things, that a UPB is deemed to be paid to the beneficiary when it is remitted to the designated entity, so as to make it subject to income tax withholding.

Question 3: *What would be an appropriate rate of tax to apply on payments of unclaimed pension balances to a designated entity?*

Comment: We believe that the withholding tax rates applicable to lump-sum payments from registered pension plans made to residents of Canada should apply. Once again, this approach may require

¹ In Alberta, 10-year prescription; in Quebec, 10-year prescription for UPBs below \$500, no prescription for UPBs above \$500; in British-Columbia, no prescription

amendments to the Canada Income Tax Act and the Quebec Taxation Act. While this withholding tax rate will not necessarily correspond to the actual tax that will be paid by the beneficiary in the event of a claim with the designated entity, it is a reasonable approach.

Question 4: *Should the account held by the designated entity (net of the taxes paid) be an unregistered account?*

Comment: Yes, considering that the amount remitted to the designated entity would be net of tax. In addition, this would simplify the administration of UPBs by the designated entity.