Income Tax Folio S2-F1-C3, Pension Benefits

Series 2: Employers and Employees

Folio 1: Specific Plans offered by Employers to Employees

Chapter 3: Pension Benefits

Summary

This Chapter discusses the income tax treatment of amounts received from a **pension plan**. It considers Canadian and foreign plans, as well as registered and unregistered plans. The discussion includes an outline of the income tax rules for salary deferral arrangements, retirement compensation arrangements, and employee benefit plans as they relate to pension plans. This Chapter also provides information on a number of related topics, including: foreign retirement plans that are not pension plans; constructive receipt of pension benefits; pension plan transfers; and annuity contracts acquired in satisfaction of pension benefits.

Information on **RRSPs, RRIFs** and **PRPPs** is not provided in this Chapter but is available in Guide T4040, RRSPs and Other Registered Plans for Retirement.

The Canada Revenue Agency (CRA) issues income tax folios to provide a summary of technical interpretations and positions regarding certain provisions contained in income tax law. Due to their technical nature, folios are used primarily by tax specialists and other individuals who have an interest in tax matters. While each paragraph in a chapter of a folio may relate to provisions of the law in force at the time it was written (see the Application section), the information is not a substitute for the law. The reader should, therefore, consider the Chapter's information in light of the relevant provisions of the law in force for the particular tax year being considered.

The CRA may have published additional guidance and detailed filing instructions on matters discussed in this Chapter. See the CRA's Forms and publications web page for this information and other topics that may be of interest.

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Discussion and interpretation

Abbreviations

3.1 The following abbreviations are used in this Chapter:

CPP – Canada Pension Plan

EBP – Employee benefit plan

PRPP – Pooled registered pension plan

QPP – Quebec Pension Plan

RCA – Retirement compensation arrangement

RPP – Registered pension plan

RRIF – Registered retirement income fund

RRSP – Registered retirement savings plan

SDA – Salary deferral arrangement

Pension plans

Meaning of pension plan

3.2 This Chapter will use the term **pension plan**, instead of what is formally referred to in the Act as superannuation or pension fund or plan. The determination of whether a plan is a pension plan is a question of fact, as there is no definition in the Act.

3.3 The CRA generally considers a pension plan to exist where contributions are:

- made to the plan by or on behalf of an employer or former employer of an employee;
- made in consideration for the employee's employment services; and
- used to provide an annuity or other periodic payment on or after the employee's retirement.

Where an employee transfers their lump sum pension entitlement to another plan (such as an individual retirement plan), the fact that the original source of funds was a pension plan is not relevant in determining whether the other plan is considered a pension plan for the purposes of the Act.

3.4 A plan can be a pension plan regardless of whether:

- the plan is registered under the Act;
- the plan is established in Canada or in a foreign jurisdiction; or
- the benefits are financed by the employer on a pay-as-you-go basis (rather than on a funding basis as is typically the case).

Foreign social security plans

3.5 Social security plans established by foreign governments that are similar to the Old Age Security program or the CPP or QPP in Canada are also considered to be pension plans for the purposes of the Act.

Registered pension plans

3.6 A pension plan that satisfies various conditions under the Act and Regulations and has been registered by the Minister of National Revenue, qualifies for favourable income tax treatment. RPP contributions by participating employers and members are generally deductible, investment income earned by the RPP is exempt from current taxation, and taxation of benefits is deferred until paid from the RPP. Not all pension plans established in Canada are registered under the Act. Foreign pension plans do not qualify for registration. For information about RPPs, see Guide T4040, RRSPs and Other Registered Plans for Retirement and the Registered Pension Plans (RPPs) web page.

Taxation of pension benefits

Definition of pension benefit

3.7 A **pension benefit**, which the Act formally refers to as a superannuation or pension benefit, is broadly defined in subsection 248(1). In addition to its ordinary meaning, pension benefit includes any amount received out of or under a pension plan. It also includes any payment made to a beneficiary of the plan or to an employer or former employer of a plan beneficiary in accordance with the terms of the plan, resulting from a modification to the plan, or resulting from termination of the plan. In effect, once it is determined that a plan is a pension plan, most payments from the plan are considered pension benefits. However, a pension benefit does not include a payment of plan expenses, such as expenses for plan administration, investment management, or trustee services. The definition applies regardless of whether the benefits are:

- paid in a lump sum or on a periodic basis;
- paid in cash or in kind; or
- tax-free in whole or in part in a foreign jurisdiction.

Inclusion in income

3.8 Subject to the exceptions noted in ¶3.15 to 3.17, subparagraph 56(1)(a)(i) includes any amount received as, on account or in lieu of payment of, or in satisfaction of, a pension benefit in the income of the recipient in the year it is received. The full amount will be included in income even if the employee’s contributions to the pension plan were not deductible under the Act. For additional information specific to payments received by a resident of Canada under a foreign pension plan, see ¶3.40. For information about the taxation of pension benefits paid to non-residents, see ¶3.18.

3.9 In addition, the following payments are expressly included in income of the recipient under subparagraph 56(1)(a)(i) regardless of whether they fall within the definition of pension benefit:

- a pension, supplement, or spouse's or common-law partner’s allowance under the Old Age Security Act, or a similar payment under a law of a province (see ¶3.10);
- a benefit under the CPP or QPP (but see ¶3.11), other than a death benefit (see ¶3.12);
- a payment out of or under a specified pension plan (the Saskatchewan Pension Plan is currently the only such plan); and
- a payment out of or under a foreign retirement arrangement (**FRA**), to the extent the payment would be subject to income taxation under the laws of the country in which the FRA is established if the recipient were resident in that country.

3.10 An offsetting deduction is available under paragraph 110(1)(f) for a supplement or allowance paid under the Old Age Security Act (or a similar provincial payment) if it is a social assistance payment made on the basis of a means, needs, or income test. An example of such a payment would be the federal Guaranteed Income Supplement.

3.11 When a member of a pension plan dies and the plan provides for benefits to continue to be made to a beneficiary of the member, the beneficiary is required to include the amount received in their income under subparagraph 56(1)(a)(i) or paragraph 6(1)(g), as the case may be (see ¶3.8 and 3.35). The beneficiary could for example, be the member’s surviving spouse or common-law partner, a dependent child, or the member’s estate. Note that the term **estate** is defined in subsection 248(1) to have the meaning assigned in subsection 104(1), and to include civil law successions. Where a benefit for a minor child is paid to the surviving parent or some other person or agency having custody of the child (for example, the CPP or QPP child benefit), the benefit so received on the child’s behalf is income of the child, not that of the actual recipient.

3.12 The CPP or QPP death benefit is generally paid to the deceased’s estate, in which case it is included in the estate’s income for the year received under paragraph 56(1)(a.1). If the death benefit is paid or made payable to a beneficiary of the estate in the same tax year in which it is received by the estate, the estate is entitled to an offsetting deduction under subsection 104(6) and the beneficiary is required to include the amount in their income under subsection 104(13).

3.13 In certain cases, retroactive lump sum payments of CPP, QPP, or other pension benefits that relate to prior tax years, have income-averaging treatment under the Act. For more information, see Form T1198 Statement of Qualifying Retroactive Lump-Sum Payment.

3.14 A pension benefit that is included in income under subparagraph 56(1)(a)(i) cannot be recharacterized, by will or otherwise, into a capital receipt. The full amount of the payment is always characterized as a pension benefit and not as an annuity payment. Consequently, a deduction is not allowed for what might otherwise be considered to be the capital element of the payment.

Exceptions

3.15 Subparagraph 56(1)(a)(i) does not include certain pension benefits (and similar amounts) whose tax treatment is determined under other provisions of the Act. Among the amounts excluded are the following:

- the portion of a pension benefit received out of or under an EBP that is attributable to services rendered by an employee in a period throughout which the employee was resident in Canada (see ¶3.34);
- the portion of an amount received out of or under an RCA that is included in income under paragraphs 56(1)(x) or (z); and
- an amount received from a PRPP (PRPP amounts are generally included in income under paragraph 56(1)(z.3) and section 147.5).

3.16 If a pension plan is an SDA, its tax treatment will be determined by the SDA rules.

3.17 The following amounts are pension benefits but are not included in income under any provision of the Act:

- An amount received out of an RPP as a return of all or a portion of a contribution to the RPP, to the extent that the amount
  - is a payment made under subsection 147.1(19) (reasonable error) or subparagraph 8502(d)(iii) of the Regulations (to avoid revocation of the RPP’s registration), and
  - is not deducted in computing the recipient’s income for the year or a preceding tax year.
- An amount transferred from an RPP or a PRPP to another plan, to the extent that the amount is excluded from income by subsection 147.3(9) or 147.5(22).
- An amount paid from an RPP to purchase an annuity contract on behalf of an individual in satisfaction of their right to benefits under the plan, where the conditions in subsection 147.4(1) are met (see ¶3.58).
- Pensions that are expressly exempt from tax under subsection 81(1) (see Interpretation Bulletin IT-397R, Amounts Excluded from Income – Statutory Exemptions and Certain Service or RCMP Pensions, Allowances and Compensation).

Payments to non-residents

3.18 Subject to certain exceptions, a pension benefit paid by a Canadian resident to a non-resident is subject to a 25% withholding tax under paragraph 212(1)(h) of Part XIII. The non-resident withholding tax represents the final Canadian tax obligation on this type of income. The rate of withholding tax may be reduced, or the withholding tax may be eliminated, by an income tax treaty between Canada and the recipient’s country of residence. Additional information is available in Information Circular IC76-12R8, Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention.

3.19 Among the exceptions to paragraph 212(1)(h) is the portion of a pension benefit paid to a non-resident that may reasonably be regarded as attributable to services rendered by an individual in tax years:

- during which the individual was at no time resident in Canada, and
- throughout which the individual was not employed in Canada (or was only occasionally employed in Canada).

The exception typically applies to pension benefits paid to a retired employee. However, it can also apply to pension benefits paid to a non-resident beneficiary of a deceased employee, in which case eligibility for the exception is determined on the same basis that applied when the employee was alive.

3.20 The payer must obtain satisfactory evidence that the conditions for the exception are met. Where only a portion of a pension payment qualifies for the exception, the payer must determine the taxable portion of each payment. The CRA considers the formula described in ¶3.21 to be a reasonable basis to allocate the pension payment between the resident and non-resident tax years. The CRA may accept other reasonable allocation methods established by the payer.

3.21 The portion of the pension payment in respect of an employee that is subject to non-resident withholding tax is determined by the formula:

A × [(B − C + D) ÷ B]

where:

A is the full amount of the pension payment;

B is:

a. in the case of a defined benefit plan, the number of years (including fractions of years) of pensionable service of the employee under the plan,
b. in the case of a defined contribution plan, the number of years (including fractions of years) for which contributions were made by or on behalf of the employee under the plan, or
c. in the case of a combination defined benefit and defined contribution plan, the total number of years (including fractions of years) that would be included in paragraphs (a) and (b) for the employee if the benefit provisions were in separate plans and no period were counted more than once;

C is the number of carved-out tax years of the employee; and

D is the total of all fractions of carved-out tax years of the employee that were not included in B for the employee.

For the purposes of this formula, a **carved-out tax year** of the employee is a tax year

- any part of which is included in B for the employee, and
- during which the employee was at no time resident in Canada or employed in Canada (unless only occasionally employed).

3.22 Unless the specific facts support a different conclusion, the CRA will consider a non-resident employee to be **only occasionally employed in Canada** throughout a tax year for the purposes of paragraph 212(1)(h) if their regular place of employment was outside Canada and they were employed in Canada for less than 5% of their total duty days in the year. The 5% threshold equates to approximately 11.5 days per year for a typical full-time employee performing 230 duty days per year. The determination of the number of duty days is a question of fact and may vary depending on the circumstances.

Example 1

Facts:

Victor accrued benefits in a defined benefit RPP over his 30-year career with Canco. After working in Canada for 25 years, Victor took a five-year assignment in the United States (U.S.) with a subsidiary of Canco. During the assignment, which began on July 1, 2017, he was a resident of the U.S., but continued to accrue benefits in Canco's RPP. Victor also attended meetings and performed other duties at Canco's head office for 10 days in each of 2018 to 2021 and 5 days in 2022. At the end of the assignment, on June 30, 2022, he retired and remained in the U.S. Victor is entitled to a gross pension of $8,000 per month (less withholding tax) under Canco's RPP.

Discussion:

The administrator of the RPP needs to know how much tax must be withheld.

The administrator must determine whether Victor was employed in Canada for less than 5% of his total duty days in the fully non-resident years in question.

For each of 2018 to 2021:

10 days ÷ 230 days = 4.3%

For 2022:

5 days ÷ 115 days = 4.3%

Accordingly, the RPP administrator concludes that Victor was employed only occasionally in Canada in each fully non-resident tax year during his U.S. assignment.

Further, 2017 is not a carved-out tax year because Victor was resident in Canada for part of that year. As such, only five of the six tax years during which the U.S assignment took place are taken into account in applying variable C of the formula in ¶3.21.

Victor's June 30 retirement date means that the second half of 2022 was not pensionable service. As a result, the value of variable D of the formula is 0.5.

Therefore, the RPP administrator calculates the portion of the pension that is subject to non-resident withholding tax as follows:

A × [(B – C + D) ÷ B]

= $8,000 × [(30 – 5 + 0.5) ÷ 30]

= $6,800

Article XVIII of the Canada-United States Tax Convention reduces the rate of withholding tax for periodic payments from 25% to 15%. This means that the amount the RPP administrator must withhold and remit to the CRA is calculated as follows:

Pension benefit × withholding rate

= $6,800 × 15%

= $1,020

3.23 Under section 217, a non-resident may elect to file a Canadian income tax return to report pension benefits and similar types of income received from Canada (Canadian benefits). This allows the non-resident to claim non-refundable tax credits, and to pay tax on that income at the same rates that apply to residents of Canada. The non-resident tax withheld on the Canadian benefits may be claimed as a tax credit on the return. If the tax calculated on the Canadian return is less than the tax withheld, the excess will be refunded. For more information, see T4145 – Electing Under Section 217 of the Act.

Withholding, remitting, and reporting requirements

3.24 For information about withholding, remitting, and reporting requirements for pension benefits, see Guide RC4157, Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary and Guide T4061, NR4 – Non-Resident Tax Withholding, Remitting and Reporting.

Related provisions of the Act

3.25 There are several provisions of the Act that can apply to unregistered pension plans and similar arrangements.

Salary deferral arrangements

3.26 In general, under the definition in subsection 248(1), an SDA is a plan or arrangement under which an individual has a right in a tax year to receive an amount after that year if:

- it can be reasonably considered that one of the main purposes for the creation or existence of the right is to postpone tax payable by the individual, and
- the right is in respect of an amount that is, or is on account of, or in lieu of, salary and wages for services rendered in the current tax year or a preceding tax year.

3.27 Although the SDA definition excludes a number of types of plans, such as RPPs and PRPPs, there is no exclusion for unregistered pension plans (whether funded or not). If an unregistered pension plan is determined to be an SDA, participants are generally taxable on a current basis on the value of the benefits that accrue to them each year under the plan, rather than when those benefits are received. In particular, where at the end of a tax year a taxpayer has a right to eventually receive a deferred amount under an SDA, subsection 6(11) deems the taxpayer to have received that amount as an employment benefit in the year for purposes of paragraph 6(1)(a).

3.28 Pension benefits are excluded from the definition of the expression **salary or wages** in subsection 248(1). Nonetheless, the accrual in a tax year of pension benefits provided for under an unregistered pension plan can be considered to be **in lieu** of salary or wages for services rendered in the year for purposes of the SDA definition. This is because it would be reasonable to expect that the employee would have received a higher salary had the plan not been in place.

3.29 The determination of whether an unregistered pension plan is an SDA is a question of fact that requires a review of the terms of the plan and the factors related to its use in a particular situation. It is the CRA’s view that an unregistered pension plan will not be an SDA where the amounts that may be paid out of or under the plan can be considered reasonable pension benefits. In this case, the primary purpose of the plan is to provide a retirement income to employees. In contrast, where a plan provides benefits that are not reasonable pension benefits, the CRA considers that one of the main purposes of the plan is to defer tax and an SDA will exist.

3.30 The following are examples of unregistered pension plans (whether funded or not) that provide pension benefits that the CRA generally considers to be reasonable.

- A defined benefit or defined contribution plan that is supplemental to an RPP of the same type, the purpose of which is to provide benefits for members of the RPP on the portion of the member's earnings that is not pensionable under the RPP because of the RPP dollar limit. The benefits must be substantially the same as those that could be provided under the RPP but for the RPP dollar limit. For this purpose, the RPP dollar limit is the defined benefit limit (as defined in subsection 8500(1) of the Regulations) or the money purchase limit (as defined in subsection 147.1(1)), as applicable.
- A defined contribution plan that is supplemental to a defined benefit or defined contribution RPP and provides for a fixed contribution rate (not exceeding 18%) on the portion of the member's earnings that is not pensionable under the RPP because of the RPP dollar limit.
- A defined contribution plan that is supplemental to a group RRSP and provides for a fixed contribution rate (not exceeding 18%) on the portion of the member's earnings that is not pensionable under the group RRSP because of the RRSP dollar limit (as defined in subsection 146(1)).

3.31 An unregistered pension plan might provide for benefits that do not fit within any of the examples described in ¶3.30. In order to ensure that the plan is not an SDA, the terms of the plan and any other relevant information must be considered to determine if the benefits are reasonable. While not exhaustive, some of the factors that the CRA would consider are:

- the reasonableness of the benefits provided under the plan in comparison to the member's remuneration from the employer and to the provisions of any other plan (registered or unregistered) in which the member participates;
- the history of the employer in providing pension benefits;
- the comparability of the benefits provided to other employees of the employer or related employers; and
- the history of the member's remuneration and any variations in that remuneration as a consequence of the provision for benefits under the plan.

Retirement compensation arrangements

3.32 An unregistered pension plan that is funded or otherwise secured may be an RCA. If so, any amount received out of or under the plan is required to be included in income in accordance with paragraph 12(1)(n.3), 56(1)(x) or 56(1)(z), as applicable. In addition, the plan is subject to the special refundable tax regime described in Part XI.3.

3.33 Generally, an RCA is an arrangement under which an employer makes contributions to a third-party custodian in connection with benefits that are payable to employees after retirement or termination of employment. The definition of RCA in subsection 248(1) excludes a number of plans or arrangements, including SDAs and RPPs. A foreign pension plan is generally not an RCA, as the RCA definition also excludes plans that are maintained primarily for the benefit of non-residents in respect of services rendered outside of Canada. However, if a foreign plan otherwise meets the RCA definition and employer contributions have been made in connection with services rendered by Canadian-resident employees and certain other conditions are met, the RCA residents' arrangement rules in subsections 207.6(5) and (5.1) may apply to treat the Canadian portion of the plan as an RCA. For more information on RCAs, refer to the Canada.ca web page Retirement Compensation Arrangements.

Employee benefit plans

3.34 An unregistered pension plan that is funded may be an EBP. Generally, an EBP is an arrangement under which:

- an employer or someone not dealing at arm's length with the employer makes contributions to a third-party custodian; and
- one or more payments will be made to or for the benefit of employees, former employees, or persons with whom the employees and former employees do not deal at arm's length.

The definition of EBP in subsection 248(1) excludes a number of plans or arrangements, including SDAs, RCAs, and RPPs. If employer contributions have been made to a third-party custodian under an unregistered pension plan that is neither an SDA nor an RCA, it will generally be an EBP as well as being a pension plan for the purposes of the Act.

3.35 The income tax treatment of payments received out of or under an unregistered pension plan that is an EBP depends on the residency status of the plan member. If the payments are attributable to services rendered by the member in a period throughout which they were not resident in Canada, the payments are fully included in income of the recipient under subparagraph 56(1)(a)(i) (see ¶3.8). However, if the payments are attributable to services rendered by the member in a period throughout which they were resident in Canada, the payments are included in income of the recipient under paragraph 6(1)(g) in the year received, other than any portion that represents a return of undeducted employee contributions to the plan. If the amounts received are a combination of both types of payments, it is necessary to apportion each such combined amount accordingly.

3.36 For more information on EBPs, see Interpretation Bulletin IT-502, Employee Benefit Plans and Employee Trusts.

Death benefits

3.37 Subsection 248(1) defines **death benefit** as the total of all payments received by a taxpayer (such as a surviving spouse or common-law partner, an heir, or an estate) on or after the death of an employee in recognition of their employment service minus a total exemption of up to $10,000. A death benefit is included in the taxpayer's income under subparagraph 56(1)(a)(iii). Several types of payments do not fall under this definition, including CPP or QPP death benefits and payments made under an RPP or unregistered pension plan to a beneficiary of a deceased plan member.

3.38 If an employer has a fund or plan that is separate from a pension or other retirement plan and that only provides for payments to a surviving spouse or common-law partner, or a surviving dependant, of a deceased employee for their employment service, the payments will be characterized as death benefits. This will be the case regardless of whether:

- the payments continue for a long time on a periodic basis or for the lifetime of the recipient; or
- the fund or plan comes within the EBP definition.

3.39 For more information on death benefits, refer to Interpretation Bulletin IT-508R – Death Benefits.

Foreign pension plans and other foreign retirement plans

Benefits from a foreign pension plan

3.40 The tax treatment of a payment received by a resident of Canada under a foreign pension plan depends on the terms of the plan and the employee's residency status during the period of employment to which the payment relates. For more detail, see ¶3.8, 3.41, and 3.42, and the discussion of the SDA, RCA, and EBP rules at ¶3.26 to 3.36.

3.41 An income tax treaty between Canada and the foreign country in which the plan is located may provide for an exemption from tax in Canada for foreign pension income received by a resident of Canada. For more information, see web page Line 11500 – Other pensions and superannuation, under the heading **Pensions from a foreign country**. As well, for information about U.S. Social Security benefits, see web page Line 25600 – Additional deductions, under the heading **Exempt foreign income**.

3.42 If foreign pension income is not exempt from tax in Canada under a tax treaty, any foreign taxes paid on the foreign pension income may be eligible for a foreign tax credit. For more information, refer to Income Tax Folio S5-F2-C1, Foreign Tax Credit.

Benefits from a foreign retirement arrangement

3.43 Certain foreign retirement plans that are not pension plans may be a **foreign retirement arrangement** (FRA), as defined in subsection 248(1) and section 6803 of the Regulations. Currently, only traditional individual retirement arrangements (IRAs) established in the United States (U.S.), which are referred to in subsection 408(a), (b), or (h) of the U.S. Internal Revenue Code of 1986, qualify as an FRA. A Roth IRA is not an FRA (see Income Tax Folio S5-F3-C1, Taxation of a Roth IRA).

3.44 An amount received by an individual resident in Canada out of or under an FRA is included in the individual's income under clause 56(1)(a)(i)(C.1), but only to the extent that the amount would be subject to tax in the country in which the FRA is established if the individual were a resident of that country. In addition, any amount that is treated under the laws of that country as a distribution from the FRA to the individual is deemed by subsection 56(12) to be received by the individual as a payment out of the FRA for the purpose of paragraph 56(1)(a). For example, certain conversions of traditional IRAs into Roth IRAs do not involve an actual receipt of funds, but are nevertheless treated as a distribution for U.S. income tax purposes and therefore the full conversion amount would generally be included in income in Canada.

Benefits from other types of foreign retirement plans

3.45 The income tax treatment in Canada of a foreign retirement plan that is not a pension plan or an FRA, nor an SDA, RCA, or EBP, depends on the legal characterization of the plan. This is fact-specific and will depend on the terms of the plan. Amounts received from the plan or investment income and capital gains earned in the plan may be taxable. A tax professional may provide assistance in this regard.

Obligations to file foreign reporting information returns

3.46 A member of a foreign pension plan or a foreign retirement plan may be required to file certain foreign reporting information returns under the Act. See the Foreign reporting web page for information.

Constructive receipt and attribution rules

3.47 The CRA considers an amount to have been received by a taxpayer out of or under a pension plan upon the earlier of the date on which payment is made and the date on which the taxpayer has constructively received a payment. Constructive receipt is considered to apply in situations where an amount is credited to a taxpayer's debt or account, set apart for the taxpayer, or otherwise made available to the taxpayer without being subject to any restriction concerning its use. Where a taxpayer has constructively received an amount from a pension plan, the taxpayer must include the amount in income as a pension benefit.

3.48 In circumstances where constructive receipt is found not to apply, the attribution rule in subsection 56(2) or the attribution rule in subsection 56(4) could nonetheless apply. These two attribution rules are generally designed to prevent income splitting. They operate to include amounts of income or loss in computing the transferor's income rather than the recipient's income. In general terms, subsection 56(2) provides that where a taxpayer directs or concurs in the payment of an amount to a third party and the amount, if it had been paid to the taxpayer, would have been included in the taxpayer's income, that amount is required to be included in the taxpayer's income. Similarly, subsection 56(4) provides that where a taxpayer transfers a right to receive income to a person with whom the taxpayer does not deal at arm's length, income received under that right is income of the taxpayer. See ¶3.53 for a discussion of exceptions from these attribution rules in the context of pensions.

Transfers from a pension plan to another plan

3.49 The Act contains specific rules that allow for a tax-deferred transfer of a lump sum amount from an RPP or PRPP to another RPP or PRPP or to an RRSP or RRIF. In addition, provided the conditions in paragraph 60(j) are met, an individual can make a tax-deferred transfer of a pension benefit (that is not part of a series of periodic payments) from an unregistered pension plan to their RPP, RRSP, or PRPP. One of these conditions is that the pension benefit must be attributable to services rendered by a particular person who is the individual, or the individual's spouse or common-law partner or former spouse or common-law partner, in a period throughout which the particular person was not resident in Canada. For more information, see Interpretation Bulletin IT-528 Transfers of Funds between Registered Plans.

Proposed legislative change

On August 4, 2023, the government announced a proposed legislative amendment that may apply when a taxpayer transfers an amount from an unregistered pension plan to their RRIF. To the extent the transferred amount is included in the taxpayer's income, it may be eligible for an offsetting deduction under paragraph 60(j) (if not otherwise deducted under paragraph 60(l)). If passed as proposed, the amendment will be deemed to come into force on the announcement date of August 4, 2023.

3.50 If pension assets and liabilities are transferred between unregistered pension plans and the transfer occurs outside the control or direction of the plan members (for example, upon the reorganization of the plan by the employer), neither constructive receipt nor subsection 56(2) will apply as a result of the transfer. Therefore, such a transfer would not, in and of itself, result in a Canadian resident member having an income inclusion under subparagraph 56(1)(a)(i) or paragraph 6(1)(g). However, if the receiving plan is an RCA in whole or in part, the transfer could create a liability for RCA refundable tax.

3.51 A taxpayer who is a member of a pension plan established outside Canada might direct that their pension entitlement be transferred to a foreign retirement plan established for the benefit of and controlled by the taxpayer (such as an RRSP-like foreign plan). It is the CRA's view that the taxpayer would be considered to have constructively received a benefit from the transferor plan equal to the value of the pension entitlement at the time of the transfer on the basis that the value has been set apart for the taxpayer. This would be the case even if, at the time of the transfer, the taxpayer has not reached the age at which they could generally withdraw funds from either plan. Therefore, the taxpayer would be considered to have received the benefit in the year of the transfer and would be required to include the amount of the benefit in income. Furthermore, even if constructive receipt were found not to apply, subsection 56(2) would apply to include the transferred amount in the taxpayer's income.

3.52 There are no specific rules in the Act that allow for a tax-deferred transfer in a situation described in ¶3.51. However, relief may be available under a tax treaty that Canada has with another country. For example, the transfer by an individual of an amount from a U.S. pension plan to a U.S. traditional IRA would be treated in Canada as a tax-deferred transfer by virtue of paragraph 1 of Article XVIII of the Canada-United States Tax Convention. On the other hand, for example, there is nothing in the Canada-United Kingdom Tax Convention that would provide for tax-deferred treatment in Canada of a transfer by an individual from a U.K. pension plan to a U.K. self-invested personal pension or SIPP.

Exceptions from attribution rules

3.53 There are three circumstances where the attribution rules in subsections 56(2) and 56(4) do not apply in the context of pensions. These exceptions are discussed in ¶3.54 to 3.56.

Sharing of CPP and QPP benefits

3.54 If certain conditions are satisfied, section 65.1 of the Canada Pension Plan allows an individual who is a plan contributor to assign a portion of their CPP to their spouse or common-law partner. A similar provision exists for the QPP. Where the relevant conditions are satisfied, clause 56(1)(a)(i)(B) includes the amount so assigned in the income of the spouse or common-law partner for the tax year in which the payment is received. In these circumstances, subsections 56(2) and 56(4) will not apply to include that amount in the income of the individual.

Breakdown of a marriage or common-law partnership

3.55 Upon the breakdown of a marriage or common-law partnership, it is common for part of the rights of a plan member to benefits under an RPP to be transferred to a spouse or common-law partner or former spouse or common-law partner (**transferee**) of the plan member. Generally, provincial, territorial, or federal law governing the division of property upon such a breakdown will determine how the pension benefits are to be divided. Where the applicable law is followed and, as a result, the transferee becomes legally entitled to a portion of the pension benefit payments, neither subsection 56(2) nor subsection 56(4) will apply to include the transferee's share of each pension benefit payment in the plan member's income. Instead, the amount will be included in the transferee's income as a pension benefit under subparagraph 56(1)(a)(i). This tax treatment applies even in cases where the plan administrator issues one cheque to the plan member who is required to apportion the payments.

3.56 Subsection 147.3(5) permits a tax-deferred transfer of a lump sum amount from one RPP to another, or to an RRSP, RRIF, or PRPP, for the benefit of the plan member's spouse or common-law partner or former spouse or common-law partner (**transferee**). Subsection 147.3(5) applies where the transferee is entitled to an amount under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to the division of property between the plan member and the transferee arising out of, or on a breakdown of, their marriage or common-law partnership. Subsections 147.5(21) to (23) contain a similar transfer rule for PRPPs. When the transferee subsequently receives an amount from the RPP, RRSP, RRIF, or PRPP, subsections 56(2) and 56(4) will not apply to include the amount in the income of the plan member.

Annuity contracts acquired in satisfaction of pension benefits

3.57 An individual might acquire an interest in an annuity contract in full or partial satisfaction of their right to pension benefits under a pension plan. At the time the interest in the annuity contract is acquired, the individual is considered to have received a pension benefit equal to the fair market value of the annuity contract at that time. Subject to the comments in ¶3.58 or possible relief under an income tax treaty, the individual must include that amount in income under subparagraph 56(1)(a)(i) or paragraph 6(1)(g), as the case may be. Subsequently, the interest component of the annuity contract will be subject to annual taxation, under either section 12.2 or paragraphs 56(1)(d) and 60(a), depending on the type and structure of the annuity contract.

3.58 If the pension plan is an RPP and the annuity acquisition satisfies the conditions in subsection 147.4(1), there is no immediate taxation to the individual, as the individual is deemed under that subsection not to have received an amount out of or under the RPP. Instead, any amount subsequently received by any individual under the annuity contract is deemed to be received under an RPP (except for the purposes of applying sections 147.1 and 147.3). Therefore, the amount is included in the recipient's income under subparagraph 56(1)(a)(i) as a pension benefit in the year it is received. For more information on section 147.4, refer to Newsletter 20-1, Registered Pension Plan Annuity Contracts. Subsections 147.5(21) to (23) contain a similar mechanism for PRPPs.

Pension income amount and pension income splitting

3.59 The pension income amount in subsection 118(3) gives rise to a non-refundable tax credit. An individual can claim a pension income amount of up to $2,000 in a tax year for eligible pension income received in the year. For more information, see web page Line 31400 – Pension income amount.

3.60 Under the pension income splitting rules in section 60.03, an individual can allocate up to one-half of their eligible pension income for a tax year to their spouse or common-law partner. The amount so allocated is included in the spouse or common-law partner's income for the year under paragraph 56(1)(a.2), and a corresponding deduction is allowed to the individual for the year under paragraph 60(c). **Eligible pension income** is generally the same for both pension income splitting and the pension income amount, subject to certain limited differences. For more information, see the Pension income splitting web page.

Application

This updated Chapter, which may be referenced as S2-F1-C3, is effective May 21, 2024.

When it was first published on February 8, 2024, this Chapter replaced and cancelled Interpretation Bulletins IT-499R, Superannuation or Pension Benefits and IT-76R2 Exempt Portion of Pension when Employee has been a Non-resident. The history of update to this Chapter as well as any technical updates from the cancelled Interpretation Bulletins can be viewed in the Chapter History page.

Except as otherwise noted, all statutory references herein are references to the provisions of the Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.), as amended and all references to a Regulation are to the Income Tax Regulations, C.R.C., c. 945, as amended.

Links to jurisprudence are provided through CanLII.

Income tax folios are available in electronic format only.

Reference

Paragraph 6(1)(g), subparagraph 56(1)(a)(i), paragraph 212(1)(h), and the definition of **superannuation or pension benefit** in subsection 248(1).

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