



February 21, 2012

Via email: PRPPtaxrules-RPACreglesfiscales@fin.gc.ca

Tax Policy Branch
Department of Finance
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Sir or Madam:

Re: Consultation on *Legislative Proposals Relating to Pooled Registered Pension Plans*

The Canadian Bar Association's National Pensions and Benefits Law Section (CBA Section) is pleased to provide comments on Finance Canada's consultation document *Legislative Proposals Relating to Pooled Registered Pension Plans* (Draft Tax Legislation).¹ The CBA Section comprises lawyers from across Canada who practice in the pensions and benefits area of law, including counsel to benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

This submission supplements the CBA Section's April 2011 submission, *Pooled Registered Pension Plans*,² and its August 2011 submission, *Tax Rules for Pooled Registered Pension Plans*.³

Generally speaking, the Draft Tax Legislation, like Bill C-25 *An Act relating to pooled registered pension plan and making related amendments to other Acts* (the PRPP Act), treats PRPPs as another type of group savings plan, rather than a type of pension plan. As stated in earlier submissions (referenced above), the CBA Section questions the need for a new savings-plan vehicle, analogous to Group RRSPs, that will not provide the pensions that it is widely agreed many Canadians will need.

¹ Department of Finance Canada, *Legislative Proposals Relating to Pooled Registered Pension Plans*, December 14, 2011.

² Canadian Bar Association, *Pooled Registered Pension Plans*, April 2011 at: <http://www.cba.org/CBA/submissions/pdf/11-22-eng.pdf>.

³ Canadian Bar Association, *Tax Rules for Pooled Registered Pension Plans*, August 2011 at: <http://www.cba.org/CBA/submissions/PDF/11-39-eng.pdf>.

Administrator – Jurisdictional Issues

The CBA Section recommends that the definition of “administrator” be clarified in proposed new subsection 147.5(1) to the *Income Tax Act* (ITA) to require that an administrator be recognized under any minimum PRPP standards in existence if it offers PRPPs in more than one jurisdiction (for example, if the administrator offers PRPPs to provincially regulated members and individuals employed in a federally regulated work, undertaking or business, or if it offers PRPPs in more than one province). Currently, proposed subsection 147.5(1) defines an administrator of a PRPP as:

- a) a corporation resident in Canada that is responsible for the administration of the plan and that is authorized under the Pooled Registered Pension Plans Act or a similar law of a province to act as an administrator for one or more pooled pension plans, or
- b) an entity designated in respect of the plan under section 21 of the Pooled Registered Pension Plans Act or any provision of a law of a province that is similar to that section.

The CBA Section recommends that this section be revised to require authorization or designation under the PRPP Act, and all similar provincial laws, if the administrator intends to offer PRPPs to individuals covered by the PRPP Act, as well as to individuals covered under a provincial equivalent to the PRPP Act. In the CBA Section’s view, authorization or designation as an administrator is necessary under the federal and all provincial minimum standards legislation because it is likely the minimum standards legislation in each province will materially differ from the federal minimum standards legislation such that an administrator must offer different PRPPs based on jurisdiction. For example, consider where a federally regulated employer, such as a bank, wishes to participate in a PRPP. The bank has federally regulated employees, as well as employees in a number of provinces. The CBA Section’s recommendation would require that the administrator of the PRPP in which the bank participates qualify as an administrator under the Draft Tax Legislation only if it meets the minimum PRPP standards federally and in all provinces in which it offers a PRPP. Thus, a multi-jurisdictional employer, such as a bank, could participate in one PRPP recognized in all jurisdictions. Without this, a multi-jurisdictional employer would have to sign up for a different PRPP in each jurisdiction.

On a similar jurisdictional question, the CBA Section wishes to clarify whether “administrators” are required to determine the jurisdiction in which a prospective PRPP member should be regulated. This situation may occur where, for example, an administrator offers both a federal PRPP for federally regulated employees and a provincial PRPP, and the individual interested in becoming a member of a PRPP is self-employed. Since individuals do not require an employment relationship to participate in a PRPP, the CBA Section recommends that the ITA proposals clarify whether the administrator is required to determine the jurisdiction of the self-employed prospective PRPP member, and if so, whether liability exists for an incorrect determination.

Investments

The proposed rules on the permitted investments of PRPPs are in some respects similar to those of other registered plans but are different in others. We assume that the marked differences were as a result of a policy decision. However, where the rules are similar, there are slight differences in the language used that may have unintended consequences. For example, proposed paragraph 147.5(3)(g) is slightly different than its registered pension plan equivalent in 8502(i) of the *Income Tax Regulations*. For consistency and to avoid any unintended consequences we suggest that the investment related provisions track, where intended, the exact wording used in the investment related provisions applicable to other registered plans.

Administrator – Standard of Care

Proposed subsection 147.5(9) of the ITA states that “The administrator of a PRPP shall exercise the care, diligence and skill of a reasonably prudent trustee to minimize the possibility that the

registration of the PRPP may be revoked other than at the request of the administrator.” In our view, this should not be included in the ITA, as it is a pension standards/administration concern. Subsection 22(2) of the PRPP Act provides for a standard of care that must be met in the administration of PRPPs and subsection 22(4) of the PRPP Act provides for a standard of care with respect to the investment of the funds held in members’ PRPP accounts.

No Funding for Periods of Leave

The Draft Tax Legislation treats PRPPs like retirement savings plans (and not pension plans), so that certain provisions in the ITA that apply to a pension plan are not extended to PRPPs. One provision is the ability to continue to earn pensions during an eligible period of absence from the workforce⁴ (e.g., parental leaves, periods of strike or lock-out, sabbaticals, etc). In our view, this benefit should be extended to PRPPs.

Drafting Points

- i. Subsections 10(1) and 10(3) of the Draft Tax Legislation refer to contributions “made by an employer.” Given that contributions may also be made by a plan member and remitted by an employer, it should be clarified in 10(1) and 10(3) that it includes remittances of contributions made by plan members.⁵
- ii. The definition of “pooled pension plan” in proposed subsection 147.5(1) of the ITA refers to the “*Pooled Registered Pension Plan Act.*” This should be amended to refer to the “*Pooled Registered Pension Plans Act.*”
- iii. In proposed subparagraph 147.5(2)(f)(i) of the ITA, the word “a” should be deleted in the second line.
- iv. The reference in proposed subparagraph 147.5(3)(a)(iii) of the ITA to subsection 146.3(14.1) should be to subsection 146.3(14) instead.

Retirement Savings Limits

As adequacy of retirement savings has been frequently cited as a significant concern among Canadians, the CBA Section supports an increase to the combined contribution limits for RRSPs and PRPPs or a new limit applicable to PRPP contributions.

The CBA Section trusts these comments will assist Finance Canada in its work. We would be pleased to respond to questions and to provide further information on any of the issues addressed in this submission or on proposed PRPPs in general.

Yours truly,

(original signed by Judy Hunter for Mitch Frazer)

Mitch Frazer
Chair, National Pensions and Benefits Law Section

⁴ See paragraph 8500(1), definition of “eligible period of temporary absence”, and subparagraph 8503(3)(a)(iii) of the regulations to the ITA.

⁵ In the definition of “participating employer” in proposed new subsection 147.5(1) of the ITA, employer contributions and remittances by an employer on behalf of a member are referenced.