FTR Now

Federal Budget 2009

Date: January 28, 2009

INTRODUCTION

Acknowledging that Canada is “passing through an extraordinary time”, including the twin threats of a global financial crisis and deepening economic recession, the federal Government tabled its 2009 budget (the “Budget”), “Canada’s Economic Action Plan”, in the House of Commons yesterday.

The Budget is designed to improve access to financing, strengthen Canada’s financial system, establish a Canadian securities regulator, help consumers of financial products, address issues facing federally-regulated private pension plans, and take immediate action to help Canadians and stimulate spending. The proposed action includes extending employment insurance benefits, personal income tax relief, measures to promote home ownership, and massive investments in infrastructure.

This update highlights select Budget measures that are of particular interest to employers, human resources professionals and pension plan administrators.

RELIEF FOR SPONSORS OF FEDERALLY-REGULATED PENSION PLANS

The Budget contains several measures regarding the funding and regulation of registered pension plans. Most importantly, the Budget confirms the federal Government’s commitment in its November 27, 2008 *Economic and Fiscal Statement* to temporarily grant solvency funding relief to federally-regulated pension plans in respect of solvency deficiencies as at December 31, 2008. That relief would give pension plans under federal jurisdiction ten years to fund a solvency deficiency instead of the standard five years. This is consistent with measures being taken in other jurisdictions to combat the effect of the economic downturn on the funding of pension plans.

To access this relief, employers must either: (1) obtain the consent of both members and retirees; or (2) secure the difference between the 5-year payments and the 10-year payments with a letter of credit. A plan sponsor must either obtain the consent of members or have a letter of credit in place before December 31, 2009. If not, the deficiency must be funded over the following 5 years in accordance with the federal Pension Benefits Standards Regulations.

The Budget also announced that the Government will permit federally-regulated pension plans to take advantage of more flexible asset value smoothing over a period of not more than 5 years, in order to stabilize short-term asset value fluctuations and potentially defer solvency funding obligations.

The current federal asset smoothing rules prohibit the use of asset values in excess of 110% of an asset’s market value. The Government proposes to increase that 110% limit in order to allow the federal pension regulator, the Office of the Superintendent of Financial Institutions (OSFI), to provide sponsors with additional funding flexibility.

However, in exchange for this added flexibility, the Government proposes to protect the security of members’ benefits by making the amount of any deferral of funding that results from the use of an asset value in excess of 110% subject to a deemed trust. OSFI is expected to issue further details with respect to this measure in the near future.

The Department of Finance will expedite its consultation process, launched on January 9, 2009 under a consultation paper

entitled *Strengthening the Legislative and Regulatory Framework for Private Pension Plans Subject to the Pension Benefits Standards Act, 1985*. The consultation paper proposes a number of structural changes to the *Pension Benefits Standards Act, 1985* and invites public comment. The possible changes range from the introduction of full funding on plan termination to the elimination of partial wind ups. The consultation paper also proposes reforms with respect to the regulation of defined contribution pension plans.

Recognizing the need for pension reform in this economic climate, the Budget calls for an end to the consultation process within 90 days. Consultations were initially scheduled to occur through Spring, with regulations expected to follow in the Fall.

The Budget does not address solvency funding for provincially-regulated pension plans. However, it is still possible that changes that will affect provincially registered pension plan will follow the consultation process, as the consultation paper addresses some issues (such as the current investment rules and the existing excess surplus limit) that would apply to registered pension plans in all jurisdictions.

EMPLOYMENT INSURANCE (EI) ENHANCEMENTS

The Budget proposes the following enhancements to the EI program:

- **Extra Five Weeks of EI Benefits** – Canadians who are eligible to receive EI benefits are currently only allowed to receive benefits for a maximum of 45 weeks (depending on the geographical region of the worker). The Budget proposes to temporarily increase the benefit entitlement period by 5 weeks, for a period of two years, increasing the maximum duration from 45 weeks to 50 weeks.
- **Extension of EI Benefits for Training Purposes** – For workers facing the prospect of having to re-train for a new career after years in one industry, the Budget pledges $500 million over two years to extend EI benefits for up to 10,000 long-tenured workers to enable them to participate in longer-term skills training. The Budget also proposes to allow earlier access to EI benefits for those workers who receive a severance package if they use a portion of the severance to purchase training. The Budget pledges a further $1 billion over two years to expand the availability of training delivered in each province and territory through the EI program, with a view to enabling 100,000 more workers to receive skills training over the next 2 years.
- **Expanded Work Sharing EI Benefits** – The Work Sharing Program (WSP) provides EI benefits to qualifying workers willing to work a reduced work week on a temporary basis, with the aim of avoiding lay-offs. Currently, the WSP only provides EI benefits up to a maximum of 38 weeks. The Budget proposes to temporarily extend, for the next two years, work sharing arrangements by 14 weeks to a maximum duration of 52 weeks. The Budget also proposes more flexible qualifying criteria for WSP benefits.
- **Maternity and Parental Benefits for the Self-employed** – The Budget proposes to establish an Expert Panel to be tasked with determining the best way to provide self-employed workers with access to EI maternity and parental benefits.
- **EI Premium Rate Freeze** – The Budget proposes to freeze the current EI premium rates ($1.73 per $100 of insurable earnings) for 2009 and 2010.

EXPANSION OF THE WAGE EARNER PROTECTION PROGRAM

The Wage Earner Protection Program (WEPP) currently reimburses eligible employees for unpaid wages and vacation pay owed to them in the six months preceding the date that their employer declares bankruptcy or becomes subject to a receivership. An employee can receive from the WEPP up to four times the maximum weekly insurable earnings under the *Employment Insurance Act* (currently, $3,254), less applicable deductions. The Budget proposes to permanently extend the WEPP to cover severance and termination pay owing to employees of an insolvent or bankrupt business, subject to the current maximum of four weeks of insurable earnings.

RELIEF FOR REGISTERED RETIREMENT INCOME FUND (RRIF) HOLDERS AND

VARIABLE BENEFIT RECIPIENTS

The markets' poor performance in 2008 reduced the asset values of many seniors' RRIFs. Under tax rules, RRIF holders are required to withdraw a minimum amount from their account each year, in order to prevent excessive tax deferral.

The Budget reiterates a proposal announced in the Government's November 2008 *Economic and Fiscal Statement* to reduce the RRIF minimum withdrawal for 2008 by 25%. The same relief is extended to recipients of "variable benefits" under a money purchase provisions of a registered pension plan.

RRIF holders/variable benefit recipients that withdrew more than the revised minimum withdrawal amount in 2008 can re-contribute the excess to their RRIF/variable benefit account (and receive an offsetting deduction for the 2008 tax year) up to March 1, 2009, or 30 days after the proposed legislative changes are passed by Parliament, whichever is later.

TAX-FREE SAVINGS ACCOUNTS TO BE INSURABLE

The Budget proposes the designation of tax-free savings accounts (TFSAs) as a separate category of deposits insurable by the Canadian Deposit Insurance Corporation (CDIC). This change would put TFSAs on a similar footing with registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) under CDIC rules.

CONTINUED SUPPORT FOR A COMMON SECURITIES REGULATOR

On January 12, 2009, the Expert Panel on Securities Regulation released its final report, entitled *Creating an Advantage in Global Capital Markets*, and draft securities legislation. The panel's central recommendation is the establishment of a single Canadian securities regulator administering a single federal securities act.

The Budget reiterates the federal Government's commitment to work with willing provinces to establish a common securities regulator, and expresses the Government's intention to table a securities act this year to allow willing provinces and territories to participate in the Canadian securities regulator.

QUESTIONS?

If you have any questions arising out of this FTR Now, please contact one of the members of our Pension & Benefits Group or your regular Hicks Morley lawyer.

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