FTR Now

Federal Budget 2015

Date: April 23, 2015

On April 21, 2015, the Minister of Finance tabled the 2015 Federal Budget, "Strong Leadership: A Balanced-Budget, Low-Tax Plan for Jobs, Growth and Security." This *FTR Now* focuses on some of the key proposals that are of particular interest to employers, human resources professionals and pension plan administrators. These include:

- changes to registered retirement income fund minimum withdrawal requirements and tax-free savings account contribution limits;
- registered pension plan initiatives in respect of the 30% ownership limitation on pension fund investments, pooled retirement pension plan harmonization and target benefit plans;
- income tax initiatives to reduce administrative burdens on businesses, including in respect of withholdings for non-resident employers and remittances for new employers;
- changes to Employment Insurance, including the extension of compassionate care benefits to six months and implementation of the new break-even rate-setting mechanism; and
- proposed amendments to the *Canada Labour Code* in respect of occupational health and safety, unpaid leaves of absence, bereavement leave and paid and unpaid internships, among other matters.

The following is a more detailed summary of these key Budget announcements, followed by a brief description of some additional initiatives of interest to employers.

TAX-DEFERRED RETIREMENT AND SAVINGS PLAN INITIATIVES

There has been much discussion in recent years about retirement savings levels and the danger that individuals will not have enough savings to provide them with income throughout their retirement years. Two proposals in the Budget are designed to address some of these concerns.

RRIF MINIMUM WITHDRAWAL REQUIREMENTS

Under the *Income Tax Act* ("ITA"), there is a minimum amount that must be withdrawn from a registered retirement income fund ("RRIF") each year. The Budget announced changes to the factors used to determine the minimum amounts required to be withdrawn annually from RRIFs. These changes will also affect withdrawals from life income funds ("LIFs"), variable benefit accounts under defined contribution registered pension plans, and pooled retirement savings plans ("PRPPs"). Beginning in 2015, individuals between age 71 and age 94 will be required to withdraw less from these accounts due to proposed reductions to the age-based minimum withdrawal factors. For example, in 2014, an individual who was aged 80 with a RRIF account balance of $100,000 would have been required to withdraw at least $8,750 based on her age. The minimum withdrawal for 2015 for a similarly-situated individual will be $6,820. The change permits seniors to preserve more capital in a tax-sheltered retirement savings vehicle and is designed to reduce the risk of outliving one's retirement savings. Age-based withdrawal factors will continue to be applied based on the age of the annuitant or his/her spouse or common-law partner, as elected at the time the RRIF account was established.

Some individuals may already have made withdrawals in 2015 based on the pre-2015 minimum withdrawal factors. To allow these individuals to take advantage of the new lower minimum withdrawal amounts, the Budget proposals would permit individuals to re-contribute amounts up to the difference between the old minimum withdrawal amount and the new, lower 2015 amount. Re-contributions would have to be made on or before February 29, 2016.

Minimum withdrawals from RRIFs, LIFs and other vehicles are permitted to be paid without tax withholding for Canadian residents. Under certain tax treaties, the minimum amount is also accorded preferential treatment for amounts paid to non-residents of Canada. As a transitional measure for 2015, the Budget allows for these favourable tax withholding rules to apply to the pre-2015 minimum withdrawal amounts despite the new lower minimum withdrawal amount.

TAX-FREE SAVINGS ACCOUNT CONTRIBUTION LIMITS

Tax-free savings accounts ("TFSAs") are savings vehicles used to tax-shelter investment income earned on after-tax savings. The government intends to increase the annual TFSA contribution limit from its current level of $5,500 to $10,000. The higher limit will not automatically be increased for inflation as was the case with the existing limit, which increased in increments of $500 when supported by inflation.

REGISTERED PENSION PLAN INITIATIVES

30% OWNERSHIP LIMITATION TO BE STUDIED

The federal government recently made changes to the pension investment rules for federally-registered pension plans, which are effective July 1, 2016 and will also affect plans registered in a number of other provinces which have adopted the federal investment rules. The Budget commits to continue the government's examination of the federal investment rules by undertaking a public consultation on the "30% Rule." The 30% Rule is one of the quantitative limits contained in Schedule III of the federal *Pension Benefits Standards Regulations, 1985*, and provides that a pension plan administrator cannot invest pension funds in the securities of a corporation to which are attached more than 30% of the votes that may be cast to elect the corporation's directors.

This consultation is consistent with the Ontario government's recently proposed amendment to the regulations under the Ontario *Pension Benefits Act* which would exempt pension plans from the 30% Rule for investments in infrastructure projects located in Ontario.

POOLED RETIREMENT PENSION PLAN HARMONIZATION INITIATIVE

In order to achieve lower administrative costs for employers wishing to implement PRPPs for employees in multiple jurisdictions, the Budget announced that the federal government is leading an initiative with the provinces to harmonize supervision of PRPPs across Canada through a multilateral agreement.

PRPPs are a new type of retirement savings plan introduced by the federal government effective in 2012, which hold assets pooled together from multiple participating employers and are administered by eligible licensed financial institutions (such as insurance companies and banks). The federal PRPP framework allows the Minister of Finance to enter into bilateral and multilateral agreements with the provinces to develop an efficient method of supervising PRPPs across the country. This is intended to result in lower administrative costs for administrators and regulators where a PRPP has members in more than one jurisdiction.

TARGET BENEFIT PLAN VIABILITY STUDY

The government announced that it continues to assess the viability of a target benefit plan ("TBP") option for Crown corporations and federally-regulated private sector pension plans. TBPs provide for fixed or capped contributions, a targeted "defined benefit type" pension formula, and flexibility to adjust benefits as necessary to ensure the plan remains sustainable for all participants. This announcement follows from the federal government consultation paper commenced in 2014.

Pension legislation recognizing TBPs has been introduced in some jurisdictions and consultations are underway in several others. Given the number of provinces moving ahead with the development and implementation of TBP frameworks, the Budget indicates that the government will consider modifications to the income tax rules to appropriately accommodate TBPs within the registered pension plan framework.

INCOME TAX INITIATIVES

The Budget contains a number of initiatives intended to reduce administrative burdens on businesses.

WITHHOLDING FOR NON-RESIDENT EMPLOYERS

Under section 102 of the *Income Tax Act Regulations*, a non-resident employer may be required to withhold and remit income tax from an employee working in Canada. This requirement applies even if the employee is a non-resident of Canada and will not be required to pay tax in Canada because the employee is exempt under a tax treaty (in which case the withholding tax is ultimately refunded). To avoid the withholding requirement, a waiver must be obtained from the Canada Revenue Agency, which can be a cumbersome process that is difficult to complete before the employee's scheduled travel date. For employers with frequent business travellers, the current waiver process and withholding requirement creates an administrative burden.

The Budget proposes an exemption from the withholding requirement for payments made after 2015 that will, in many cases, reduce some of the compliance burden faced by non-resident employers whose employees work in Canada temporarily. To qualify for the exemption, the non-resident employee must:

- be exempt from Canadian income tax under a tax treaty with respect to the payment; and
- not be in Canada for 90 or more days in any 12-month period that includes the time of the payment.

The non-resident employer must:

- be resident in a country with which Canada has a tax treaty, or if the employer is a partnership, have at least 90% of its income for the fiscal period, including the time of payment, allocated to persons resident in a treaty country;
- not carry on business through a Canadian permanent establishment in the fiscal period that includes the time of the payment; and
- be certified by the Minister of National Revenue at the time of the payment.

The Minister may certify an employer for a specified period of time if the employer has applied on the prescribed form and meets the conditions listed above as well as any other conditions established by the Minister.

No penalty for failing to withhold will be applied to the qualifying employer if, after reasonable inquiry, the employer had no reason to believe that at the time of payment, the employee did not meet the conditions to qualify for the withholding tax exemption.

Even if the exemption applies, non-resident employers will continue to be responsible for reporting on a T4 the income paid to the employees.

FREQUENCY OF SOURCE DEDUCTIONS REMITTANCES FOR NEW EMPLOYERS

Normally, new employers must remit source deductions for income tax, Canada Pension Plan contributions and Employment Insurance premiums on a monthly basis for at least one year and meet certain compliance criteria before becoming eligible to adopt a quarterly remittance schedule.

The Budget proposes to allow, starting in 2016, eligible new employers to remit on a quarterly basis instead of a monthly basis. Eligible employers are new employers with withholdings of less than $1,000 each month. This amount corresponds to the withholdings related to one employee at a salary of up to $43,500, depending on the employee's province of residence.

Small businesses and families who employ domestic caregivers are most likely to benefit from this change.

REPEATED FAILURE TO REPORT INCOME PENALTY

The Budget also proposes changes to the penalty for repeated failures to report income in order to address a disproportionality between the current penalty and the tax payable on the unreported income.

The repeated failure to report penalty will be changed for the 2015 and subsequent taxation years so that it applies only if the taxpayer fails to report at least $500 of income in the year and any of the three preceding taxation years. The penalty will be the lesser of 10% of the unreported income and 50% of the difference between the understated tax or overstated tax credits and the amount of tax paid in respect of the unreported amount (for example, through employer source deductions).

CHANGES TO EMPLOYMENT INSURANCE

The Budget contains several proposals relating to Employment Insurance ("EI"), which include:

- as of January 2016, extending compassionate care leave EI benefits from six weeks to six months for eligible employees who take a temporary leave from work to provide care or support to a family member who is gravely ill and has a significant risk of death within six months [1];
- a one-year renewal, to August 2016, of the current Employment Insurance Working While on Claim pilot project (which allows claimants to keep 50 cents of their EI benefits for every dollar earned up to 90% of weekly insurable earnings used to calculate the benefits); and
- effective January 1, 2017, implementing the new EI rate-setting mechanism designed to ensure that EI premiums are no higher than necessary to pay for the EI program over time. Any cumulative surplus recorded in the EI operating account is proposed to be returned to employers and employees in the form of lower EI premium rates once the new rate mechanism takes effect. As a result, the new EI rate for January 2017 is expected to reduce premiums from $1.88 per $100 of insurable earnings to $1.49 per $100 of insurable earnings, a 21% decrease in provinces other than Quebec.

PROPOSED AMENDMENTS TO THE *CANADA LABOUR CODE*

In addition to the initiatives summarized above, the Budget also addresses a number of other matters that are expected to impact employers in the federally-regulated sector, including a series of legislative reforms to enhance protections for federally-regulated workers and interns under the *Canada Labour Code* ("*Code"*). These include:

- extending occupational health and safety protections to all interns under federal jurisdiction, regardless of pay;
- clarifying the circumstances in which unpaid internships can be offered;
- establishing new short-term and long-term unpaid leaves of absence for employees in respect of their family responsibilities, and increasing bereavement leave from the current three-day maximum;
- addressing sexual harassment and violence in federally regulated private sector workplaces; and
- hiring an additional 10 health and safety officers to enhance compliance with the *Code*'s health and safety provisions.

MISCELLANEOUS EMPLOYMENT-RELATED PROPOSALS

FEDERAL PUBLIC SERVICE

The government has announced its intention to modernize the occupational illness and injury management system in the federal public service including reaching agreement with the federal public service bargaining agents on a new, formal short-term disability plan to replace the existing system of bankable sick days, and a focus on early and active case management, including rehabilitation and return to work supports. Bargaining began in 2014. The Budget states that the government will make every effort to negotiate reforms with collective bargaining agents within a reasonable timeframe, but if an agreement cannot be reached, the government intends to implement a new system.

TRAINING AND EMPLOYMENT INITIATIVES

Building on recent reforms to the skills training system, the government has proposed a one-time $65 million investment over four years to support partnerships with employer groups and industry associations, allowing them to work with interested post-secondary institutions on the development of programs and curricula reflecting the specific skills needs of employers, and the labour market. The first phase of this initiative would commence in 2016-17 and target advanced manufacturing skills certification through a partnership between Canadian Manufacturers & Exporters, Siemens Canada and several post-secondary institutions. This initiative would subsequently be expanded to other industries, such as forestry and mining.

The government has also announced a number of measures to support the harmonization of apprenticeship training and certification requirements.

FOREIGN CREDENTIAL RECOGNITION SUPPORT

The Budget proposes funding to make the current Foreign Credential Recognition Loans pilot project permanent, providing financial support for internationally-trained skilled workers seeking to have their foreign accreditation recognized in Canada.

TEMPORARY FOREIGN WORKER PROGRAM REFORMS

The Budget reaffirms the government's commitment to implement further reforms to the Temporary Foreign Worker program.

ABORIGINAL LABOUR MARKET PROGRAMMING INVESTMENT

The Budget announced significant investment in the Skills and Partnership Fund, and administrative support for Aboriginal labour market programs.

CONCLUSION

We will continue to monitor these Budget initiatives and keep you informed of program details as they emerge and the introduction of implementation legislation.

Should you have any questions about the Budget and how it might impact your organization, please contact your regular Hicks Morley lawyer.

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[1] A compassionate care leave may not qualify as a job-protected leave under the *Canada Labour Code* or the *Ontario Employment Standards Act, 2000* (or other provincial employment standards legislation). However, we often see that changes to EI benefits coverage will pressure governments to increase the length of the corresponding job-protected leave.
