

FTR Now

Federal Government Proposes Legislative Amendments to Address Salary Overpayments

Date: January 18, 2019

On January 15, 2019, the federal government announced proposed amendments to the *Income Tax Act* (ITA), *Employment Insurance Act* (EI Act) and *Canada Pension Plan* (CPP) that would more readily facilitate the correction of salary overpayments made to employees. Learn more in this *FTR Now*.

Salary overpayments are a common problem that can arise with respect to employee remuneration. Correcting salary overpayments can be burdensome for employees, making them difficult to remedy. In fact, the government is proposing these legislative amendments in conjunction with the need to correct many overpayments received by federal government employees as a result of issues with the Phoenix pay system. The proposed amendments will provide, if passed, a more streamlined approach to correcting overpayments that occurred in a previous tax year.

Correcting Overpayments – Current Process

Repayment to Employer: When an employee salary overpayment is discovered in respect of a previous tax year, the employee is required to repay the gross overpayment to their employer. The gross amount includes:

- The excess pay the employee actually received; and
- Any related source deductions that were withheld by the employer in respect of income tax, CPP contributions and employment insurance (EI) premiums and remitted to the government.

Reimbursement from Government: The employee must then take steps to recover any related excess source deductions from the government that were withheld and remitted to the Canada Revenue Agency (CRA) by their employer in respect of income tax, CPP and EI. An employer cannot seek reimbursement of source deductions that were withheld and remitted on behalf of an employee.

As a result, an employee may be required to repay their employer a larger amount than the overpayment they received (i.e. the net payment).

Proposed Amendments

The amendments, if passed, would permit employees to repay to their employer only the net amount (the gross overpayment less any excess income tax, EI and CPP withholdings associated with the overpayment) made in a previous calendar year, where certain conditions are met. Employers would similarly be permitted to request recovery of the related excess income tax, EI premiums and CPP contributions directly from the CRA.

The following requirements would need to be met in order for the proposed provisions to apply:

- The overpayment occurred after 2015;
- The overpayment was due to an administrative, clerical or system error;
- The employer has not previously issued a T4 with the employee's correct earnings (i.e. with the overpayment removed); and
- The overpayment has been repaid by the employee, or an arrangement to repay the net amount has been made

between the employer and employee, within three calendar years of the year in which the overpayment occurred.

The proposed amendments would apply to employees in both the private and public sectors.

The government is not proposing changes to the rules applicable when an overpayment is discovered and corrected in the same tax year. In these circumstances, the employee can repay the net amount to the employer, provided that:

- The employee repays or enters into an agreement to repay the amount in the same year as the overpayment; and
- The employer is still able to adjust the next payroll remittance to the CRA accordingly before the last remittance for the year.

Implementation of Amendments

The government has indicated that employers may begin taking steps to resolve prior year overpayments in accordance with the proposed amendments to the ITA and EI Act prior to the amendments coming into force, where the new requirements are met. The proposed amendments to the CPP are subject to formal provincial consent and cannot be relied upon until they receive provincial approval and enter into force. More detailed guidance is expected from CRA in early 2019.

Comments on the Proposed Amendments

The government has invited comments on the [proposed amendments](#) to be submitted by February 15, 2019.

Should you have any questions, require further information, or require assistance with a submission to the government regarding the proposals, please contact [Natasha Monkman](#) at 416.864.7302 or [your regular Hicks Morley lawyer](#).