

FTR Now

Federal Government Tables 2019 Budget Bill

Date: April 23, 2019

On April 8, 2019, the federal government introduced Bill C-97, [Budget Implementation Act, 2019, No. 1](#), for first reading. Bill C-97 is omnibus legislation enacting certain measures outlined in the 2019 Federal Budget. Below are some of the key amendments of interest to employers, pension plan administrators and human resources professionals.

Retirement, Compensation and Tax Measures

Salary Overpayments

[As previously reported](#), the federal government promised in early 2019 to support employees who must reimburse a salary overpayment to their employers due to a system, administrative or clerical error. Bill C-97 contains amendments to the federal *Income Tax Act* (ITA), *Canada Pension Plan* (CPP), and *Employment Insurance Act* (EI Act) to implement these previously announced measures. If passed, the amendments contained in Bill C-97 will permit employees to repay to their employer only the net excess amount (i.e., the gross overpayment less any income tax, EI and CPP withholdings associated with the overpayment) received in a previous calendar year, if the following conditions are met:

- 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.

Employers would similarly be permitted to request recovery of the related excess income tax, EI premiums and CPP overcontributions directly from the Canada Revenue Agency rather than the employee being required to make this request.

If passed, these amendments will come into force at a later date by order in council. The amendments to the CPP are also subject to provincial consent.

Canada Pension Plan (CPP)

- **Automatic Enrolment:** The 2019 Budget announced a proposal to amend the CPP to allow CPP pensions to start automatically for workers who are age 70 or older. To implement this, Bill C-97 contains an amendment to the CPP to waive the requirement to make an application for the commencement of a CPP pension. The waiver would apply starting in January 1, 2020 in respect of CPP contributors who are over age 70 and who have either filed a tax return in the year prior to the year of waiver or are already in receipt of a CPP, Old Age Security (OAS), or a provincial pension plan benefit.
- **Recognizing Enhanced CPP for PA Reporting:** Bill C-97 also contains an amendment to the calculation of Pension Adjustments or “PAs” under the ITA to take the CPP enhancement into account. The adjusted calculation applies to certain types of defined benefit plans whose benefit formulas are directly integrated with the CPP. These amendments, if passed, will be deemed to be effective January 1, 2019 to coincide with the first phase of the enhanced CPP being implemented.

Federal Pension Standards – Amendments to the *Pension Benefits Standards Act, 1985 (PBSA)*

Annuity Discharges

The 2019 Budget stated that the PBSA would be amended to provide a full or partial discharge to pension plan administrators when the benefits of a former member or a surviving spouse of a member are fully or partially settled, as applicable, through the purchase of annuities from a regulated life insurance company. Amendments to the PBSA, which were initially proposed in a 2016 Budget bill (Bill C-27), are included in Bill C-97 to implement this change and provide that the discharge will be available where:

- the pension plan authorizes the purchase of the life annuity in satisfaction of the obligation towards a former member or surviving spouse;
- the life annuity is of the prescribed type;
- in respect of an immediate life annuity, the annuity provides the former member or surviving spouse with payments in the same amount and form as the pension benefit otherwise payable to the former member or surviving spouse under the terms of the pension plan, as of the date of the purchase;
- in respect of a deferred life annuity, the annuity provides the former member or surviving spouse with payments in the same amount of the pension benefit, including the value of any vested early retirement entitlements or options, to which the former member or survivor would otherwise be entitled to under the terms of the pension plan, as of the date of the purchase; and
- the administrator complies with prescribed notice requirements.

The prescribed requirements regarding notice and the life annuity types described above have not yet been published.

If an individual's benefit has been settled through the purchase of an annuity that complies with the prescribed requirements, the individual will no longer be considered a former member of the pension plan. As a result, many requirements applying to former members, such as those related to surplus sharing and annual statements, will likely no longer apply to individuals for whom the discharge has been obtained.

These amendments to the PBSA, if passed, will align the federal pension legislation with the pension legislation of British Columbia, Ontario and Quebec, which were previously amended to provide for an administrator's discharge on the purchase of a qualifying annuity.

Plan Terms Addressing Benefits on Wind-Up

Budget 2019 indicated that the PBSA would also be amended to require a pension plan that is being wound-up to provide the same pension benefits as when the pension plan was ongoing. Bill C-97 contains a brief amendment to the PBSA that would explicitly prohibit a pension plan text from providing that vested pension benefits will be "affected" when a plan is terminated. It is unclear how this would operate in the event that the plan is wound-up and the plan's sponsor is insolvent.

The amendments to the PBSA in Bill C-97 also clarify that membership in a pension plan ceases upon plan termination and wind-up. This is consistent with recent [changes](#) to the annual assessment invoicing and calculation process that came into effect on April 1, 2019.

Federal Public Sector Pensions

Bill C-97 includes amendments to three pieces of federal legislation, the *Public Service Superannuation Act*, the *Canadian Forces Superannuation Act* and the *Royal Canadian Mounted Police Superannuation Act*, to increase the maximum surplus limits applicable to the pension plans provided under these statutes from 10% to 25% of each plan's liabilities. Once the maximum surplus limit is reached, no further employer contributions can be made.

Retirement Security and Corporate Governance Measures

- **Canada Business Corporations Act (CBCA):** Bill C-97 contains the amendments to the CBCA announced in the 2019 Budget that would explicitly enable corporations to consider the interests of employees, retirees and pensioners when making decisions in the best interests of the corporation. Bill C-97 also contains amendments that will require directors to present information related to diversity, remuneration, and the well-being of employees, retirees, and pensioners at shareholder meetings. The Governor in Council is empowered to define the terms "retirees" and "pensioners" at a later date by regulation.
- **Bankruptcy and Insolvency Act (BIA) and Companies' Creditors Arrangement Act (CCAA):** Both the BIA and CCAA are amended by Bill C-97 to impose an explicit statutory duty of good faith on all parties involved in a proceeding under the BIA or the CCAA. The

BIA is being amended to provide courts with the authority to further inquire into certain payments made to directors and officers of a corporation (i.e., termination pay, severance pay, or incentive benefits) within the year preceding an insolvency, and impose liability on directors for improper payments.

Miscellaneous Tax Measures

- ***Introduction of the Canada Training Credit:*** Bill C-97 contains amendments to the ITA to recognize the previously announced Canada Training Benefit, and specifically, to implement a refundable tax credit in respect of eligible training/tuition fees incurred by individuals who are at least 26 years of age but under 66 years of age (note that the ages to qualify for the credit are slightly different than those originally announced in the 2019 Budget). Bill C-97 does not include the previously announced amendments to the *Employment Insurance Act* to recognize the Employment Insurance Training Support Benefit that is expected to be launched in late 2020.
- ***Medical Expense Tax Credit (METC) for Medical Cannabis:*** Bill C-97 contains an amendment to the ITA to recognize that, since October 17, 2019, access to medical cannabis is regulated under the federal *Cannabis Regulations*.

Employment Equity Act (Act)

This Act currently requires private sector employers to file a report with the Minister setting out prescribed information relating to its employees, including, among other things, the industrial sector and occupational groups in which they are employed as well as their salary ranges. If passed, Bill C-97 would amend this requirement to require additional information relating to the salary of employees, as may be prescribed.

For more information about initiatives contained in the Federal Budget, see our [FTR Now](#) of March 22, 2019.

We will continue to monitor the progress of Bill C-97 and provide further updates. Should you have any questions about this legislation, please contact any member of our [Pension, Benefits and Executive Compensation practice group](#).