2023 Federal Budget: Selected Pensions, Benefits and Executive Compensation Measures

On March 28, 2023, the federal government tabled its 2023 budget (2023 Budget), which included a number of provisions related to pensions, benefits and executive compensation, as summarized below.

Here is an overview of the key provisions in the 2023 Budget, which are discussed in further detail below:

- Retirement Compensation Arrangements
- Strengthening the Federal Pension Framework
- Protecting Canadians from the Risks of Crypto-Assets
- Reporting Requirements for Employer-Provided Dental Coverage
- Employee Ownership Trusts
- Previously Announced Measures

RETIREMENT COMPENSATION ARRANGEMENTS

A retirement compensation arrangement (RCA) is an employer-sponsored arrangement that can be used by employers to provide supplemental pension benefits to employees. RCAs can be funded through contributions to an RCA trust, in which case a refundable tax is imposed at a rate of 50 per cent on contributions to the RCA trust, as well as on income and gains earned or realized by the trust. The tax is generally refunded as the retirement benefits are paid from the RCA trust to the employees.

In some cases, employers may choose to pay the supplemental pension benefits directly to their employees as they become due and may also choose to provide security for the future payment of such benefits by, for example, arranging for a letter of credit (or a surety bond) issued by a financial institution to be held in an RCA trust in order to provide security to their employees. In such case, the employer arranges for a letter of credit or surety bond to be issued to the RCA trust, contributes to the RCA trust the amount required to cover the annual fee or premium charged by the issuer and the RCA trustee pays such amount to the issuer. In this example, these fees or premiums are in effect subject to the 50 per cent refundable tax. However, when retirement benefits become due from such an “unfunded” supplemental pension plan, the employer pays the benefits out of corporate revenues and there are no benefit payments from the RCA trust to trigger a 50 per cent refund of refundable tax, and thus employers are effectively required to fund escalating refundable tax balances with no practical mechanism for recovery.

The 2023 Budget proposes to amend the *Income Tax Act* (Canada) (ITA) so that fees or premiums paid for the purposes of securing or renewing a letter of credit (or a surety bond) for an RCA that is supplemental to a registered pension plan will not be subject to the refundable tax. This change would apply to fees or premiums paid on or after March 28, 2023. We note that by limiting this rule to RCAs that are supplemental to a registered pension plan, it would not appear to be available to RCAs established for other purposes, such as securing payments that become due upon a change of control.

The 2023 Budget also proposes to allow employers to request a refund of previously remitted refundable taxes in respect of fees or premiums paid for letters of credit (or surety bonds) by RCA trusts, based on the retirement benefits that are paid out of the employer's corporate revenues to employees that had RCA benefits secured by letters of credit (or surety bonds). Employers would be eligible for a refund of 50 per cent of the retirement benefits paid, up to the amount of refundable tax previously paid. This change would apply to retirement benefits paid after 2023.

STRENGTHENING THE FEDERAL PENSION FRAMEWORK

The 2023 Budget proposes to amend the *Pension Benefits Standards Act, 1985* and the *Pooled Registered Pension Plans Act* for new frameworks for variable payment life annuities (VPLAs) and technical housekeeping amendments. The federal government previously announced a new framework for VPLAs in the 2022 budget (Budget 2022), as discussed in our April 2022 *Blakes Bulletin: 2022 Federal Budget: Key Provisions Affecting Pensions, Benefits and Executive Compensation*.

PROTECTING CANADIANS FROM THE RISKS OF CRYPTO-ASSETS

The 2023 Budget announces that the federal government will require federally regulated pension funds to disclose their crypto-asset exposures to the Office of the Superintendent of Financial Institutions. It also notes that the federal government will work with the provinces and territories to discuss crypto-asset and related activities disclosures by Canada's largest pension plans. Further details are to be provided in the federal government's 2023 fall economic and fiscal update.

REPORTING REQUIREMENTS FOR EMPLOYER-PROVIDED DENTAL COVERAGE

The 2023 Budget proposes to introduce new legislation to support the implementation of the new Canadian Dental Care Plan, which would provide dental care to uninsured Canadians with family income less than C$90,000 annually, and with no co-pays for those with family incomes under C$70,000. The 2023 Budget indicates that the legislation would include a requirement for employers and employer pension plans to report dental coverage offered to their employees and plan members through T4/T4A reporting, which would assist in administering the new Canadian Dental Care Plan.

EMPLOYEE OWNERSHIP TRUSTS

The 2023 Budget proposes new rules to facilitate the use of Employee Ownership Trusts (EOTs), which is a form of employee ownership where a trust holds shares of a Canadian-controlled private corporation for the benefit of the corporation's employees. EOTs can be used to facilitate the purchase of a business by its employees without requiring them to pay directly to acquire the shares. For business owners, an EOT provides an additional option for succession planning. The amendments to facilitate EOTs would apply as of January 1, 2024, but the 2023 Budget invites stakeholder feedback on the new regime. For a more in-depth discussion of the EOT proposal, see our March 2023 *Blakes Bulletin: 2023 Federal Budget: Selected Tax Measures.*

PREVIOUSLY ANNOUNCED MEASURES

The 2023 Budget confirms the federal government's intention to proceed with several previously announced tax and related measures, as modified to take into account consultations and deliberations since their release. These measures include the following:

1. **Borrowing by Defined Benefit Pension Plans**: The 2022 Budget proposed to amend the borrowing rules in the *Income Tax Regulations* (ITR) to provide more borrowing flexibility to administrators of defined benefit registered pension plans (RPPs), other than individual pension plans. In particular, the 2022 Budget proposed to maintain the existing borrowing rule for real property acquisitions and replace the 90-day term limit with a limit on the total amount of additional borrowed money (for the purposes other than acquiring income-producing real property, for which the rules would remain the same), equal to the lesser of: (i) 20 per cent of the value of the RPP's assets (net of unpaid borrowed amounts); and, (ii) the amount, if any, by which 125 per cent of the RPP's actuarial liabilities exceeds the value of the RPP's assets (net of unpaid borrowed amounts). The borrowing provisions proposed in the 2022 Budget remained substantially unchanged in subsequent draft legislation released in August 2022. The federal government indicated in its 2022 Budget that this measure would be effective April 7, 2022. For further information on the borrowing changes proposed in the 2022 Budget, please see our April 2022 *Blakes Bulletin: 2022 Federal Budget: Key Provisions Affecting Pensions, Benefits and Executive Compensation*.
2. **Reporting Requirements for Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs):** The 2022 Budget proposed to revise the reporting requirements for RRSPs and RRIFs, which would apply to the 2023 and subsequent taxation years. The 2022 Budget proposed to require financial institutions to annually report to the Canada Revenue Agency (CRA) the total fair market value, determined at the end of each calendar year, of property held in each RRSP and RRIF that they administer. The 2022 Budget indicated that this information would assist CRA in its risk-assessment activities regarding qualified investments held by RRSPs and RRIFs. The August 2022 draft legislation included provisions relating to this measure.
3. **Fixing Contribution Errors in Defined Contribution Pension Plans (DCPPs)**: In its 2021 budget (2021 Budget), the federal government announced that it would provide more flexibility to plan administrators of DCPPs to correct both under- and over-contributions. The federal government released draft legislation in February 2022 and August 2022, which would amend the ITA and ITR in this respect. The federal government previously indicated that this measure would be effective retroactive to January 1, 2021 (except for the filing of prescribed information returns, which would not be required to be filed until after the applicable legislation receives Royal Assent). For a summary of the previously released draft legislation relating to the correction of contribution errors to DCPPs, see our February 2022 *Blakes Bulletin: Oops, I Did It Again: Proposed Amendments Relating to the Correction of Contribution Errors to Defined Contribution Pension Plans* and our August 2022 *Blakes Bulletin: Update on 2022 Budget and Proposed Amendments to the Correction of Contribution Errors to*

Defined Contribution Pension Plans.

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