Proposed Amendments to Taxation of Benefit Plans

Retail Sales Tax Act, Corporations Tax Act - Information Notice
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I. Introduction

Ontario recognizes the importance of employer-sponsored benefits plans to employees, retirees and their families. Benefits plans that hold sufficient funds to pay benefits over a longer period offer greater security for the recipients of health and welfare benefits. Proposed amendments to the Retail Sales Tax Act (RSTA) and Corporations Tax Act (CTA) would allow planholders that provide significant pre-funding to a qualifying trust to pay tax when benefits are paid out to plan members instead of at the time the funds are contributed to the trust.

This Backgrounder is not intended as a substitute for any relevant legislation or regulations. Subject to approval of the legislature, the proposed enhancements described in this Backgrounder would be implemented through amendments to the RSTA and CTA.

II. Retail Sales Tax Act

Current rules

Under the current rules in the RSTA, benefits plans are classified as either funded or unfunded. There are some differences between a funded benefits plan and an unfunded benefits plan which determine the timing of the RST liability.

A funded benefits plan is a plan that comes into existence when the amounts paid into a fund out of which benefits will be paid exceeds amounts required for payment of benefits foreseeable and payable within 30 days after the payment of such amounts into the fund. The amounts paid into the fund, other than amounts that are included in the total Ontario remuneration subject to Employer Health Tax (EHT) when paid out of the fund as benefits to members, are considered taxable premiums. RST is collected at the time the planholder pays amounts into a funded plan.

For unfunded benefit plans, RST applies to the claims paid by the planholder other than amounts subject to EHT. For example, where there is an Administrative Services Only (ASO) agreement, the taxable premiums are the amounts paid by the planholder to the administrator upon the occurrence of a risk. The payments are made to cover actual benefit claims from members. RST is collected at the time that the payments, other than amounts that would be included in the total Ontario remuneration of the planholder subject to EHT, are made to the administrator.

Proposed amendments

Qualifying trust

The proposed amendments to the RSTA provide for a new form of benefits plan, to be called a "qualifying trust". A qualifying trust would be required to satisfy the criteria prescribed by the Minister of Finance. The definition of "qualifying trust" would include conditions similar to the definition of "employee life and health trust" contained in federal Bill C-47, Sustaining Canada's Economic Recovery Act. Under the proposed amendments, a qualifying trust would come into existence when it contained contributions that exceeded 3 years worth of benefits payable to its members, unless otherwise prescribed.

The planholder of a qualifying trust would pay tax in respect of benefits paid to the members or, if applicable, in respect of contributions made by members of the plan to receive benefits from the plan.

The definition of "planholder" would be amended to include the trustees of a qualifying trust.

A qualifying trust could not be designated under the Act as a funded benefits plan or an unfunded benefits plan.

Other technical amendments

Proposed technical amendments to the RSTA would provide for the tax consequences when planholders advise the Minister of a change to a benefits plan and change the designation of the plan as funded or unfunded. If a funded benefits plan is re-designated as an unfunded benefits plan, no tax would be payable in respect of benefits paid to members out of contributions on which tax was previously paid. If an unfunded benefits plan is redesignated as a funded benefits plan, tax would be payable in respect of the total amount in the plan as of the date of the change.

III. Corporations Tax Act

Current rules

The CTA applies a 2% benefit tax on an employer-provided benefit plan. The CTA classifies a benefit plan as either funded or unfunded in a similar manner to the RSTA.

A funded benefit plan is a plan that comes into existence when the amount of contributions paid into a plan out of which benefits will be paid exceeds the amounts required for the payment of benefits foreseeable and payable within 30 days. Benefit tax is paid when contributions are made to a funded benefits plan.

Any plan that is not a funded plan is an unfunded plan. Benefit tax is payable when an unfunded benefit plan pays benefits to members of the plan.

Proposed amendments

Qualifying trust

The proposed amendments to the CTA would encourage employers to make large contributions to independent benefit plans by allowing certain plans to elect to pay tax as benefits are paid instead of when the contributions are received. These amendments would permit a plan that would otherwise be treated as a funded benefit plan to elect in certain circumstances to be treated as an unfunded plan.

The proposed legislation would permit a funded benefit plan that is a qualifying trust to make the election. A qualifying trust would be a trust that meets the conditions prescribed by regulation. The definition of "qualifying trust" would include conditions similar to the definition of "employee life and health trust" contained in federal Bill C-47, Sustaining Canada's Economic Recovery Act. The legislation, if enacted, would permit a qualifying trust to elect to be treated as an unfunded benefit plan where the funds in the plan exceed the amount required for the payment of benefits foreseeable and payable within three years.

Other technical amendments

Proposed amendments to the CTA would clarify the tax treatment when a benefit plan changes status. The proposed legislation, if enacted, would provide for the tax consequences when a funded plan becomes an unfunded plan or an unfunded plan becomes a funded plan.

Where an unfunded plan becomes funded, the proposed legislation provides that tax would be

payable on funds in the plan at the time of the change in status.

Where a funded plan becomes unfunded, the proposed legislation provides that a deduction would be allowed to reduce tax that may otherwise become payable by the unfunded plan after the change in status. The amount of the deduction would be equal to the benefit tax paid on the contributions held by the plan at the time of the change in status. The unfunded benefit plan would be able to apply the deduction to tax payable by the unfunded benefit plan on benefits paid to members from the contributions held by the plan at the time of the change in status.