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August 19, 2011

Tax Policy Branch
Department of Finance Canada
Ottawa, Ontario
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Sent via email: PRPPtaxrules-RPACreglesfiscales@fin.gc.ca

Dear Sir or Madam,

Re: Tax Rules for Pooled Registered Pension Plans (PRPPs)

Advocis, the Financial Advisors Association of Canada, is pleased to provide comments in response to the Department of Finance's request with respect to the Pooled Registered Pension Plans Framework (PRPP).

Advocis is Canada's oldest and largest voluntary professional membership association of financial advisors and planners. We represent life and health insurance licensees and mutual funds and securities registrants across the country. Advocis members pride themselves on the service and advice delivered to individuals and the business community, particularly small and medium sized companies through the provision of comprehensive professional financial advice and insurance and financial services products. This includes group RRSPs, deferred profit sharing plans and defined contribution (DC) plans and defined benefits (DB) plans.

Advocis has established a Retirement Income Adequacy Committee whose mandate is to identify retirement and pension issues that are of concern to Canadians and to promote a sound retirement income system in Canada including reforms to improve retirement income adequacy for Canadians now and in the future.

General Comments

Pension coverage and retirement income adequacy are major public policy issues. We commend the federal government for making it a priority to strengthen the retirement income system. Reforms should be implemented to improve pension coverage and retirement income adequacy so that more Canadians can retire with adequate retirement income now and in the future.

Retirement planning is a priority for most Canadians and our 11,000 members work with individuals, families, and businesses to reach their financial goals. Our members provide comprehensive financial advice to Canadians through all stages of their lives including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, critical illness and disability insurance. Our members provide retirement planning and investment advice to employees with Capital Accumulation Plans (CAP Plans), RRSPs and

TFSAs, and establish and administer CAP Plans and DB plans for small and medium sized businesses.

The governments identified policy objective and outcome for the PRPP is clearly articulated and necessary, and that is to ensure that Canadians save adequately for their retirement. Demographic trends illustrate that the birth rate in Canada is not sufficient to replace those workers who are currently retiring and those who are soon to be retiring, the 'baby boomers'. This, along with increasing life expectancies, is resulting in increased pressure on already stretched social services, particularly healthcare, and the Canadian Pension Plan. Private sector defined benefits plans are increasingly scarce, and Canadians are generally unprepared financially for their retirement. As a consequence, the federal government's PRPP initiative represents a very positive step in providing Canadian workers and their employers with a private sector vehicle and incentive to prepare for their financial needs later in life. This is an opportunity not to be missed, and may potentially represent a legacy program that the current government can provide to all Canadians.

If the purpose of the PRPP is to lessen the financial burden on government resulting from Canadians not being fully prepared for their retirement, then it is equally important that the structure of the PRPP ensure that the private sector assume the responsibility of helping Canadians prepare for retirement. Accordingly the structure put in place must ensure that the unavoidable risks of inadequate returns or losses inherent in any investment are not inadvertently transferred back onto the government. To achieve this goal we must ensure that only private sector firms participate in the program.

In general, Advocis is of the view that funds in a pension plan should be preserved for use during a person's retirement and not used for other purposes. Nevertheless, Advocis believes that there should be unlocking of funds from a locked-in retirement account in the following situations: in cases of low income; if there is risk of eviction from a principal residence or rental premises; to access the funds for medical treatment for the person, their spouse or dependents; and if needed for residential renovations, alterations or construction to accommodate the use of a wheelchair, or other needs related to a disability or illness. Advocis also supports the harmonization of unlocking rules amongst provinces and federally.

To be successful and achieve the desired outcomes the PRPP must have a high level of participation, be easily accessible, uncomplicated, and low cost. Advocis supports the concept of auto-enrollment in the PRPP as studies appear to indicate that participation rates with auto-enrollment are significantly higher than requiring active consent before entering an employee into the plan.

It is also critical to the success of the program that every effort is made to make participation in the PRPP attractive to both employer and employees. We believe that vesting rules based on a sliding scale would be an inducement for greater employer participation in the program.

As with any program, making the benefits of participating in the PRPP well known to consumers will enhance participation numbers. We believe that the government should commit to properly promote the PRPP once launched through radio, television and social media. Advertising the PRPP should not be a one-time event, rather it should be part of a broader annual program that promotes greater saving and investing among Canadians.

To meet the policy objectives of enhancing the retirement income of employees and the self-employed it is best to design the rules for the PRPP that follow the rules of the RRSP tax regime.

In responding to your questions we have assumed the same headings as set out in the consultation document.

Administrator

The PRPP should be a strictly private sector initiative. Accordingly, participation as an administrator should exclude such entities as Teachers Pension Fund, CPP Investment Board and OMERs as their inclusion exposes the government to potential risk. A stated purpose of the PRPP is to lessen the burden on government that results from inadequate savings by Canadians for their future retirement. Despite the fact that the PRPP should offer only low to medium risk investment products, as with any investment, the risk of a poor return or loss cannot be removed. Accordingly, if entities that are in any way tied to government participate in the program, government must ultimately assume the risk. Accordingly, the idea of lessening the financial burden on government through the institution of the PRPP would be defeated.

Currently, a number of firms outside of regulated financial institutions (for example a number of National Consulting Houses) act as administrators of pension plans. We are of the view that these types of organizations should be permitted as the administrator of a PRPP. It is important to distinguish between the administration of the plan and who can act as depository and manager of those funds. However, it should be clear that neither the employer nor any related party can be the administrator to avoid conflicts of interest or improper transactions. Also, it is appropriate to ensure that the organization is in the business of pension management and administration, which typically excludes small corporations and non-corporate entities. In order to protect the interest of plan members, the administrator should be held to a fiduciary standard.

Primary Purpose Requirement

Due to the nature of a PRPP, the primary purpose test in Reg 8502(a) should not apply to a PRPP. We would recommend that the suggested primary purpose of the PRPP be, to accept contributions from the members and employers for the purpose of capital accumulation. We feel this more clearly identifies the objective of the PRPP. Absent capital accumulation there can be no periodic payments. We would identify the primary purpose as capital accumulation so as to not mislead investors. Any investment, regardless of how conservative it may be, comes with some level of risk of loss. We believe that highlighting that the purpose is capital accumulation ensures that investors realize that while minimal, there remains some limited risk that simply cannot be ignored. This also reinforces to consumers that they should not rely on any one investment vehicle to secure their retirement income and should be speaking with their financial advisor about what other options, in addition to the PRPP, should be considered.

As also noted, the requirement in Reg 8506(2) for an employee to make contributions to a DC RPP should not apply to a PRPP.

Contributions/Limits

We favour option two in the Consultation Document that permits contributions to PRPPs under the RRSP limits. We believe that for the PRPP to be successful, every effort must be made to keep the program simple and uncomplicated. In keeping it simple the program is more likely to achieve its goal of encouraging Canadians to save for their retirement.

With respect to contribution limits, the vast majority of Canadians will not understand the contribution limit rules established by Canadian Revenue Agency (CRA). In supporting the adoption of RSP rules we are ensuring that a level of complication that may discourage employers and employees from participating is removed.

As the Consultation Document points out the "dual system" carries with it the risk of over-contributions:

> Given the nature of PRPPs (i.e., that they would be administered by a third party and allow participation by any employer), allowing contributions under the defined contribution RPP regime would carry with it a risk of over-contributions that may be difficult to prevent under the current RPP rules. That is, an individual participating in multiple PRPPs could, either intentionally (through the same employer) or inadvertently (through more than one employer), contribute more than the maximum PA amount. The only existing sanction for non-compliance in the case of excessive PAs based on participation in multiple RPPs is plan revocation, which may not be an appropriate penalty for PRPPs in the case of a small number of over-contribution situations.
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> It would therefore be necessary to develop reasonable provisions and penalties to prevent over-contributions by or on behalf of an individual through participation in multiple PRPPs. This could be achieved by:
>
> – Limiting an employer to participating in only one PRPP in respect of a particular employee for a particular year;
> – Developing a penalty tax regime for contributions to PRPPs in excess of the maximum PA limit; and
> – Requiring PRPPs to report all participating employers to the Canada Revenue Agency (CRA) on an annual basis.

The success of the PRPP will in large be linked to its simplicity. The dual option adds a level of complication that is not consistent with this objective.

Leaves of Absence and Periods of Reduced Pay or Disability

Advocis is of the opinion that the RPP rules which allow prescribed compensation for the purposes of permitting RPP contributions during leaves of absence and periods of reduced pay or disability, should not be extended to PRPPs.

Transfers

For simplicity and harmonized purposes, transfers of surplus amounts from a defined benefit RPP to a defined contribution RPP should not be allowed.

Qualified/Prohibited Investments

We recommend the adoption of the RRSP qualified investment rules and prohibited investment rules. As well, to prevent "self-dealing", the rules should not permit investing in shares of a private corporation which is currently permitted under the RRSP rules. For pooled funds, they must be capable of daily valuation for ease of reporting and access by plan members.

Minimum Employer/Membership Requirements

PRPPs are intended to provide employees who are without DB or DC plans an investment vehicle that will allow them to save for their future retirement needs. Therefore it is critical that participation in the program be made simple and available to as many disengaged investors as possible. It would therefore be counterintuitive to set a minimum employer requirement for the purposes of offering a PRPP. The rules should be structured to remove barriers to participation.

We believe that rules preventing the employer or related parties from being an Administrator, and the rules governing qualified and prohibited investments, should deal with concerns about "tax planning and self-dealing". Also, we don't understand the need for all PRPP Administrators to be "large scale" as long as they provide the appropriate value proposition to members (i.e. service, advice, product choice etc.). However, it is reasonable to assume that most administrators would be financial institutions or large corporations who currently provide administrative services to pension funds. We therefore do not feel it is appropriate to put a minimum membership requirement on PRPPs.

Some consideration should be given to the costs associated with administering a PRPP which is intended to capture the disengaged investors who would be providing small contribution by investment standards. Reporting costs for the administrators will remain the same regardless of the contribution level of the individual investor. Some flexibility should be contemplated to address this reality.

We believe the regular pension rules should apply to contributions by the employer that are subject to forfeiture.

Other Issues

Pension Income - While the consultation paper does not address the question of the application of pension income credits and pension splitting, we are of the view that required employer contributions that are subject to a PA which are received as a life annuity should be treated as "qualified pension income" under subsection 118(7). All other retirement benefits from a PRPP shall be treated as "pension income" for purposes of the definition of "eligible pension income" in subsection 118(7). It should be noted that PRPPs highlight the discrepancy in tax treatment between RPP retirement benefits and RRSP retirement benefits. We believe the rules should be harmonized perhaps by selecting a common age such as age 60 for both RPP, RRSP and PRPP retirement income payments.

To simplify administration and encourage long-term savings, we do not believe employee contributions to a PRPP should qualify for the various RRSP withdrawal programs (i.e. Home Buyer's Plan, Lifelong Learning Plan). We also do not feel these plans should be able to accept payments from RESPs upon termination, again to simplify administration.

We are concerned that the PRPP may provide a more attractive pension model for those employers that are currently providing their employees with a pension, rather than those employers that are currently not providing any pension. It would be an unfortunate result if the introduction of the PRPP were to lead to more employers opting out of providing a pension plan themselves, leaving increasing numbers of employees having to wholly fund their own retirement savings. Employees currently enrolled in a defined contribution RPP typically also enjoy investment advice and support provided by the employers to assist employees to make smart investment choices within the plan. The focus on the PRPP as a "large scale – low cost" pension alternative may lead to employees enrolled in a PRPP that are not provided with the same level of support for their investment decisions relating on their PRPP funds as they receive in respect of their employer-sponsored defined contribution RPP funds.

We believe in providing a wide range of investor choice. To that end we believe that investors should be able to transfer the money in their PRPP to active management through their financial advisor. This would allow investors to take advantage of the expertise that only a professional financial advisor can provide in crafting a long-term strategy that is tailored to the individual needs of the client. We believe that investors should be able to transfer all or part of the accumulated capital in their PRPP account to a registered account to be overseen by the financial advisor of their choice. We believe this will enhance the options available to consumers who may want to participate in a PRPP, but also want to maintain the flexibility to take advantage of other investment options as their capital grows. There may be undesirable tax implications when transferring funds from the PRPP to an alternative investment vehicle so appropriate steps should be taken to address unintended tax consequences. As an example, consider that many participants in the PRPP are what we consider to be disengaged investors (people who need to be investing for their future needs but have neither a financial advisor assisting them, nor an employer sponsored program). Often such disengaged investors fall into the lower income brackets. If they keep all of their investments within the PRPP, then when the time comes to access this money they will pay taxes at a higher rate than they would if they invested some of their money in a TFSA. It is only through working with a professional financial advisor, who may encourage a transfer of some funds out of their PRPP and into another saving or investment vehicle, like the TFSA, that the investor would minimize their tax exposure.

If we can be of any further assistance or answer any questions please do not hesitate to contact the undersigned, or Ed Skwarek at eskwarek@advocis.ca or by calling 416-342-9837.

Sincerely,

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