Marriage breakdown in Canada

CAA/ IPEBLA Workshop

A presentation to CAA/ IPEBLA Members
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TOWERS WATSON

Agenda

Background

- Common law and case law have often recognized that
  - Pensions were part of deferred compensation
  - Pensions were part of family assets
- Tax and pension laws did not allow for attribution of assets to someone other than a member or the sponsor
- Pension and tax Legislation “updated” across Canada in mid-1980’s and 1990’s, namely to
  - Widen of the definition of spouse for survivor benefits
  - Allow attributions of assets to a former spouse on dissolution of marital relationship

Background

- Unless and until provinces changed their laws over the years, members and spouses were forced to get information from external consultants
- Quebec Pension Law changed 90.01.01 with regulatory changes 91.07.01
  - Partition of benefits allowed – lump sum
  - Prescribed – valuation and disclosure
- Many other provinces followed, with the latest being Ontario changes effective 12.01.01
  - Prescribed rules for valuation and disclosure
  - Partition – immediate lump sum or pension division

General Rule of Thumb

- New rules deal with:
  - Prescribed disclosure
  - Prescribed method of valuing pension benefits
  - Prescribed partition
- Not all spouses are created equal
  - Extension of pension property rights to common-law spouses in Ontario

Principles

- Who gets what?
- Prescribed valuation
  - clarifies the provisions for common law (and civil union, Québec) spouses
  - valuation date is set or agreed upon
  - Assumptions are set
- Partition rules
  - How benefits are paid
  - How the offset is done
  - Plan is not to gain or lose because of partition
  - Member cannot “reclaim” lost amounts

Principles - formula

- Québec: formula is V multiplied by P/X = E where,

  V = value at 'institution' date (or transaction date for civil union spouses)

  P = number of months of service between entry date and valuation date

  X = number of months of service between entry date and valuation date of V

  E = member's total benefits

- Total benefits include phased retirement as well lump-sums with interest (or benefits derived from these amounts)
  - Voluntary contributions, optional ancillary contributions, etc.
  - Excess contributions
  - Additional pension benefits
  - Transferred amounts

Principles - formula

- Québec: formula no presumption of a deferred pension if active member is terminated
  - Pension benefit to be valued, therefore, is in accordance with the plan (immediate vs deferred pension)
  - for a deferred pension, formula is: $\frac{O + P}{2}$
  - Applies with a modified version of additional benefits and the excess benefit, except for phased retirements
- Other provinces have variations

Implications

- ***Administrators***
  - Different rules to apply in each jurisdiction
  - Different forms to be completed, if any
  - Different requirements
  - Decisions to be made:
    - Fees, if applicable
    - Spousal pension within plan, where permitted
    - Disclosure when not required

- ***Members / spouses***
  - Different rules may mean different amounts
  - Generally, cannot « pick and choose » date on which valuation based
  - In some cases cannot exclude interest
  - Does not take into consideration amounts that may have been paid in the interim

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