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HARMONIZATION WITH NEWS RELEASE 2019-004 OF THE DEPARTMENT OF FINANCE CANADA

On January 15, 2019, the Department of Finance Canada presented, in a news release,¹ various legislative proposals aimed at helping employees who must reimburse to their employer a payment because of an administrative, system or clerical error. The proposals seek to alleviate, in particular, financial difficulties that employees who must reimburse the overpayment of salary or wages received from their employer may encounter in the wake of such an error.

At present, pursuant to federal and Québec legislative provisions, an employee who has received during a previous year as a result of such an error the overpayment of salary or wages that the employee must reimburse during a subsequent year is obliged to:

- repay to the employer the gross amount of the overpayment of salary or wages;
- recover from the Canada Revenue Agency the federal tax, Canada Pension Plan (CPP) contributions, where applicable, and employment insurance contributions deducted by the employer on the overpayment of salary or wages;
- recover from Revenu Québec the Québec income tax, and, where applicable, the Québec Pension Plan (QPP) contributions and the Québec Parental Insurance Plan (QPIP) contributions deducted by the employer on the overpayment of salary or wages.

The proposed federal measures mean that an employee, in certain conditions, which would require the employer to make a choice in this respect, might reimburse only the overpayment of salary or wages actually received during a previous year instead of the gross amount, which includes federal tax, CPP contributions and employment insurance contributions, provided that the overpayment resulted from an administrative, system or clerical error.

Given that the Québec taxation system and the QPP are harmonized, regarding these situations, respectively with the federal taxation system and the CPP, Québec tax legislation² and the *Act respecting the Québec Pension Plan*³ will be amended to incorporate therein, with adaptations on the basis of their general principles, the proposed federal measures regarding salary overpayments.

¹ Department of Finance Canada, News Release 2019-004, “Department of Finance Canada Consulting Canadians on Draft Tax Legislation Regarding Salary Overpayments, Including Those Made Through Phoenix Pay System”, January 15, 2019, <https://www.fin.gc.ca/n19/19-004-eng.asp>.

² In particular the *Tax Administration Act* (CQLR, chapter A-6.002).

³ CQLR, chapter R-9.

Moreover, the legislative provisions governing the QPIP will be amended so that an employee who has received such a salary overpayment may also, under certain conditions, repay his or her employer the overpayment received during a previous year net of contributions to this plan. More specifically, the Québec tax legislation governing this plan will be amended to incorporate therein, with adaptations on the basis of its general principles, the proposed federal measure regarding salary overpayments from the standpoint of employment insurance contributions.⁴

The changes will be adopted only following assent to any federal statute giving effect to these federal measures, taking into account technical amendments that may be made prior to the assent. They will be applicable on the same dates as those retained for the purposes of the federal measures with which they harmonize, except as regards the QPP. The changes that concern this plan will apply on the same date as the one used for the purposes of the tax-related federal measure. For greater clarity, an employer who chooses to allow the repayment of such a salary overpayment net of tax will not be obliged to make an equivalent choice for the application of the QPP.

Employers will be permitted to immediately rely on the proposed amendments to the Quebec tax legislation⁵ in processing overpayments to their employees, in advance of the legislation coming into force. The terms on how these changes will be implemented will be issued in the near future on Revenu Québec website.

For information concerning this information bulletin, contact the Secteur du droit fiscal et des politiques locales et autochtones at 418 691-2236.

The English and French versions of this bulletin are available on the Ministère des Finances website at www.finances.gouv.qc.ca.

⁴ The impending amendments, in particular to the *Tax Administration Act*, will allow for the extension of the scope of such relief to the QPIP.

⁵ Including the tax provisions governing the QPP and the QPIP.