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**Explanatory Notes relating to the Proposed  
amendments to the *Income Tax Act, Canada*  
*Pension Plan and Employment Insurance Act***

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## **Preface**

These explanatory notes describe proposed amendments to the *Income Tax Act*, *Canada Pension Plan* and *Employment Insurance Act*. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

## **Clause 1**

### **Amounts paid in error**

#### *Income Tax Act*

##### 153(3.1)

Section 153 of the *Income Tax Act* (the “Act”) requires the withholding of income tax from certain payments described in paragraphs 153(1)(a) to (t). The person making such a payment is required to remit the amount withheld to the Receiver General on behalf of the payee. Paragraph (a) requires withholdings with respect to salary, wages and other remuneration paid to an employee. Subsection (3) provides that when an amount is deducted or withheld under subsection (1), it is deemed to have been received at that time by the person to whom the remuneration, benefit, payment, fees, commissions or other amounts were paid.

Where salary, wages or other remuneration is erroneously overpaid by an employer to an employee, the Minister of National Revenue would, under the current income tax rules, reimburse withholdings in respect of the overpayment to the employee who would, in turn, be responsible for reimbursing the employer.

New subsection (3.1) will, if its conditions are met, allow the Minister to directly reimburse an employer for amounts of income tax that have been withheld and remitted by the employer in respect of an erroneous overpayment of salary, wages or other remuneration to an employee. In particular, it provides that an amount (referred to as the “excess amount”) is deemed to not have been deducted or withheld under subsection (1) by a person if the conditions in paragraphs (a) to (e) are met. This effectively overrides subsection (3), which provides that if an amount has been deducted or withheld under subsection (1), the amount is deemed to have been received at that time by the person to whom the remuneration, benefit, etc. were paid. Where subsection (3.1) applies, since the employee will not be deemed to have received the withheld amount, the Minister will be able to return the withheld amount to the employer.

For subsection (3.1) to apply, there must be an excess payment by a person (generally, the employer) to an individual of salary, wages or other remuneration that was paid as a result of a clerical, administrative or system error. This is referred to as the “total excess payment.” A portion of this total excess payment (referred to as the “excess amount”) must have been deducted or withheld by the employer under subsection (1). At this point, the individual is assumed to have received the total excess payment, less the excess amount (which was withheld by the employer).

The individual must then repay (or make an arrangement to repay) the total excess payment, less the excess amount, to the employer. In addition, the employer must elect in prescribed form to have subsection (3.1) apply in respect of the excess amount. These two conditions must be met before the end of the third year after the calendar year in which the excess amount is deducted or withheld. In addition, an information return correcting for the excess payment cannot have been issued prior to making the election, because the Minister would reassess the employee and make corrective refunds (if any) to the employee upon the issuance of the information return.

Lastly, paragraph (e) provides that the Minister may specify additional conditions that must be met in order for subsection (3.1) to apply.

*Example: In 2018, XCo overpays Joan's salary by \$10,000. On this \$10,000, XCo withheld and remitted \$2,000 in respect of income taxes on behalf of Joan. In 2020, XCo discovers the error and elects to have new subsection 153(3.1) apply. Joan makes arrangements to return \$8,000 to XCo and new subsection 153(3.1) will allow the Minister to reimburse the excess withholding of \$2,000 directly to XCo.*

This amendment applies in respect of excess payments of salary, wages or other remuneration made after 2015.

## **Clause 2**

### **Excess payment – amount deemed not deducted**

#### *Canada Pension Plan*

##### 21.01(1)

Subsection 21(1) of the *Canada Pension Plan* requires an employer paying remuneration to an employee to withhold and remit prescribed amounts in respect of the employee's pensionable employment. Subsection (5) provides that an amount deducted under subsection (1) is deemed to have been received by the employee.

New subsection 21.01(1) provides that, subject to new subsection 21.01(2), an amount that was deducted by an employer under subsection 21(1), for a year after 2015, in respect of an excess payment that was paid as a result of a clerical, administrative or system error to an employee as remuneration in respect of pensionable employment, is deemed not to have been deducted if the following conditions are met:

- Before the end of the third year after the calendar year in which the amount was deducted,
  - The employer elects to have new subsection 21.01(1) apply in respect of the amount, and
  - The employee has repaid, or made arrangements to repay, the employer.
- The employer has not filed an information return correcting for the total excess payment prior to the making of the above referenced election.
- Any additional conditions specified by the Minister have been met.

New subsection 21.01(1) operates in conjunction with new subsections 21.01(2) and 38(3.3).

New subsection 21.01(1) will, subject to the limitation set out in new subsection 21.01(2), allow the Minister of National Revenue to directly reimburse an employer (under new subsection 38(3.3)) for amounts of an employee's contribution that have been deducted and remitted by the employer in respect of an erroneous overpayment of remuneration to the employee. In the absence of this new subsection (and new subsection 38(3.3)), the Minister would reimburse such excess deducted and remitted amounts to the employee who would, in turn, be responsible for reimbursing the employer.

This amendment will come into force by Order in Council.

## Determination of amount

### CPP

#### 21.01(2)

New subsection 21.01(2) of the *Canada Pension Plan* operates in conjunction with new subsection 21.01(1).

New subsection 21.01(2) accounts for the fact that CPP contributions are paid in respect of earnings up to a maximum amount. Consequently, not all excess payments of remuneration will result in an overpayment of an employee's contribution. This new subsection provides that the amount deemed not to have been deducted under new subsection (1) is the amount that was deducted by the employer, or the amount determined by the formula (A – B), if that amount is less.

Variable A of the formula is the aggregate of all amounts that were deducted by the employer as the employee's contributions for the year. Variable B of the formula is the aggregate of all amounts that would have been deducted by the employer as the employee's contributions for the year had the employer not made the excess payment.

*Example 1: Joan is an employee of XCo. Her annual salary for 2018 was \$100,000. In February of 2018, XCo made a clerical error and overpaid Joan \$1,000 in a pay period. This resulted in Joan being paid \$101,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 21.01(1) apply.*

*XCo deducted and remitted \$49.50 in respect of the \$1,000 overpayment as Joan's employee's contribution. The maximum pensionable earnings for 2018 was \$55,900. XCo deducted and remitted \$2,593.80 in total in respect of Joan's employee's contribution for 2018. This is the same amount that XCo would have deducted and remitted in the absence of the February overpayment error. As such, new subsection (2) will result in the amount determined for new subsection 21.01(1) being zero.*

*Example 2: Joan is an employee of XCo. Her annual salary for 2018 was \$50,000. In February of 2018, XCo made a clerical error and overpaid Joan \$1,000 in a pay period. This resulted in Joan being paid \$51,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 21.01(1) apply.*

*XCo deducted and remitted \$49.50 in respect of the \$1,000 overpayment as Joan's employee's contribution. The maximum pensionable earnings for 2018 was \$55,900. XCo deducted and remitted \$2,351.25 in total in respect of Joan's employee's contribution for 2018. In the absence of the February error, XCo would have deducted and remitted in total \$2,301.75 in respect of Joan's employee's contribution for 2018. As such, new subsection (2) will result in the amount determined for new subsection 21.01(1) being \$49.50.*

*New subsection 38(3.3) will allow the Minister to reimburse the excess deduction and remittance of \$49.50 directly to XCo.*

*Example 3: Joan is an employee of XCo. Her annual salary for 2018 was \$50,000. In February 2018, because of a system error, XCo overpaid Joan by \$10,000 in one pay period. With the excess \$10,000, Joan was paid \$60,000 which is higher than the maximum pensionable earnings, which was \$55,900 in 2018. In 2020, XCo discovers the error and elects to have new subsection 21.01(1) apply.*

*XCo deducted and remitted \$495.00 in respect of the \$10,000 overpayment as Joan's employee contribution. XCo deducted and remitted \$2,593.80 in total in respect of Joan's employee's contribution for 2018. In the absence of the February system error, XCo would have deducted \$2,301.75 in total, in respect of Joan's employee's contribution for 2018. As such, new subsection (2) will result in the amount determined for new subsection 21.01(1) being \$292.05.*

*New subsection 38(3.3) will allow the Minister to reimburse the excess deduction and remittance of \$292.05 directly to XCo.*

This amendment will come into force by Order in Council.

### **Clause 3**

#### **Refund – section 21.01 amounts**

CPP

38(3.3)

New subsection 38(3.3) of the *Canada Pension Plan* operates in conjunction with new subsections 21.01(1) and (2).

New subsection 38(3.3) allows the Minister to refund an amount to an employer if the amount has been remitted and subsection 21.01(1) deems the amount to not have been deducted. The employer must apply for the refund no later than four years from the end of the year in which the amount has been remitted.

This amendment will come into force by Order in Council.

#### **Non-application – subsection (7)**

CPP

38(8)

New subsection 38(8) of the *Canada Pension Plan* provides that interest is not payable on amounts refunded pursuant to new subsection 38(3.3)

This amendment will come into force by Order in Council.

### **Clause 4**

#### **Excess payment – amount deemed not deducted**

*Employment Insurance Act*

82.01(1)

Subsection 82(1) of the *Employment Insurance Act* requires an employer paying remuneration to an employee to deduct and remit prescribed amounts in respect of the employee's insurable employment. Subsection (7) provides that an amount deducted under subsection (1) is deemed to have been received by the insured person.

New subsection 82.01(1) provides that, subject to new subsection 82.01(2), an amount that was deducted by an employer under subsection 82(1) for a year after 2015 in respect of an excess payment that was paid, as a result of a clerical, administrative or system error to an insured person as remuneration, is deemed not to have been deducted if the following conditions are met:

- Before the end of the third year after the calendar year in which the amount was deducted,
  - The employer elects to have new subsection 82.01(1) apply in respect of the amount, and
  - The insured person has repaid, or made arrangements to repay, the employer.
- The employer has not filed an information return correcting for the total excess payment prior to the making of the above referenced election.
- Any additional criteria specified by the Minister have been met.

This new subsection operates in conjunction with new subsections 82.01(2) and 96(3.1).

This new subsection will, subject to new subsection 82.01(2), allow the Minister to directly reimburse an employer (under new subsection 96(3.1)) for amounts of employee's premiums that have been deducted and remitted by the employer in respect of an erroneous overpayment of remuneration to an insured person. In the absence of this new subsection (and new subsection 96(3.1)), the Minister of National Revenue would reimburse such excess deducted and remitted amounts to the employee who would, in turn, be responsible for reimbursing the employer.

This amendment will come into force on Royal Assent.

### **Determination of amount**

EIA

82.01(2)

New subsection 82.01(2) of the *Employment Insurance Act* operates in conjunction with new subsection 82.01(1).

New subsection 82.01(2) accounts for the fact that EI premiums are paid in respect of earnings up to a maximum amount. Consequently, not all excess payments of remuneration will result in an overpayment of an employee's premiums. This new subsection provides that the amount deemed not to have been deducted under new subsection (1) is the lesser of the amount that was deducted by the employer and the amount determined by the formula (A – B).

Variable A of the formula is the aggregate of all amounts that were deducted by the employer as the employee's premiums for the year. Variable B of the formula is the aggregate of all amounts that would have been deducted by the employer as the employee's premiums for the year had the employer not made the excess payment.

*Example 1: Joan is an employee of XCo. Her annual salary for 2018 was \$100,000. In February of 2018, XCo made a clerical error and overpaid Joan \$1,000 in a pay period. This resulted in Joan being paid \$101,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 82.01(1) apply.*

*XCo deducted and remitted \$16.60 in respect of the \$1,000 overpayment as Joan's employee's premium. The maximum yearly insurable earnings for 2018 was \$51,700. XCo deducted and remitted \$858.22 in respect of Joan's employee's premiums for 2018. This is the same amount that XCo would have deducted and remitted in the absence of the February error. As such, new subsection (2) will result in the amount determined for new subsection 82.01(1) being zero.*

*Example 2: Joan is an employee of XCo. Her annual salary for 2018 was \$50,000. In February of 2018, XCo made a clerical error and overpaid Joan \$1,000 in a pay period. This resulted in*

*Joan being paid \$51,000 in 2018. In 2020, XCo discovers the error and elects to have new subsection 82.01(1) apply.*

*XCo deducted and remitted \$16.60 in respect of the \$1,000 overpayment as Joan's employee's premium. The maximum yearly insurable earnings for 2018 was \$51,700. XCo deducted and remitted \$846.60 in respect of Joan's employee's premium for 2018. In the absence of the February error, XCo would have deducted and remitted in total \$830.00 in respect of Joan's employee's premium for 2018. As such, new subsection (2) will result in the amount determined for new subsection 82.01(1) being \$16.60.*

*New subsection 96(3.1) will allow the Minister to reimburse the excess deduction and remittance of \$16.60 directly to XCo.*

*Example 3: Joan is an employee of XCo. Her annual salary for 2018 was \$50,000. In February of 2018, because of a system error, XCo overpaid Joan by \$10,000 in one pay period. With the excess \$10,000, Joan was paid \$60,000, which was higher than the maximum insurable earnings of \$51,700 in 2018. In 2020, XCo discovers the error and elects to have new subsection 82.01(1) apply.*

*XCo deducted and remitted \$166.00 in respect of the \$10,000 overpayment as Joan's employee contribution. XCo deducted and remitted \$858.22 in total in respect of Joan's employee's premium for 2018. In the absence of the February system error, XCo would have deducted \$830.00 in respect of Joan's employee's premium for 2018. As such, new subsection (2) will result in the amount determined for new subsection 82.01(1) being \$28.22.*

*New subsection 96(3.1) will allow the Minister to reimburse the excess deduction and remittance of \$28.22 directly to XCo.*

This amendment will come into force on Royal Assent.

## **Clause 5**

### **Refund – section 82.01 amounts**

EIA

96(3.1)

New subsection 96(3.1) of the *Employment Insurance Act* operates in conjunction with new subsections 82.01(1) and (2).

New subsection 96(3.1) allows the Minister of National Revenue to refund an amount to an employer if the amount has been remitted and subsection 82.01(1) deems the amount to not have been deducted. The employer must apply for the refund no longer than three years from the end of the year in which the amount has been remitted.

This amendment will come into force on Royal Assent.

**Non-application – subsection (13)**

EIA

96(13.01)

New subsection 96(13.01) of the *Employment Insurance Act* provides that interest is not payable on amounts refunded pursuant to new subsection 96(3.1).

This amendment will come into force on Royal Assent.