

Guidance

Interpretation

Approach

Information

Decision



Effective Date: November 16, 2022

Identifier: No. PE0302INT

*(replacing PE0273ORG, formerly, A400-500)

Actions to avoid deregistration of a pension plan under the Federal Income Tax Act

1. Purpose

1.1 To support plan administrators and sponsors, and to protect the rights of pension plan members, this Guidance provides an interpretation of the notice and evidence requirements set out in sections 47(11) to 47(16) of Regulation 909:General (General Regulation) under the *Pension Benefits Act (PBA)*.

2. Scope

2.1 This Guidance applies to the following entities regulated by FSRA:

- Pension plans that are subject to the *PBA*

3. Rationale and background

3.1 *The Income Tax Act (Canada) (ITA)* permits deferral of taxation of income through registered savings vehicles, including pension plans. Registration of a pension plan with the Canada

Revenue Agency (CRA) and compliance with the *ITA* is required and necessary to maintain this tax deferral. Separately, pension plans in Canada must also be registered with the appropriate provincial or federal pension standards regulator under the applicable pension standards legislation. In Ontario, FSRA is the pension standards regulator, and the legislation is the *PBA*.

3.2 The *ITA* sets limits on benefits and contributions to limit tax sheltering. The *PBA* sets minimum standards, protects benefits and restricts payments out of a plan to specific situations. The requirements of these two regimes sometimes conflict. For example, the *ITA* may require an employer to refund a contribution that exceeds the *ITA* limits – contrary to *PBA* prohibitions on such refunds.

3.3 The Federal Minister of National Revenue may revoke the registration of a pension plan under the *ITA* if the plan permits or provides for contributions or benefits that are not permitted under the *ITA* and its regulations. In recognition of the need to maintain registration under the *ITA*, the General Regulation provides exemptions from certain *PBA* requirements which are required to avoid revocation of registration of the pension plan under the *ITA*^[1]:

- filing an amendment which reduces the amount or commuted value of a benefit that has already been earned^[2]
- refunding members', former members' or retired members' contributions from a pension fund^[3]
- paying an amount from a pension fund to the employer without FSRA's prior consent^[4]

Where these exemptions apply, the administrator must provide evidence to that effect to FSRA in order to avoid revocation of the registration of the pension plan under the *ITA*, at least sixty (60) days before the amendment is effective.^[5]

3.4 In the past, and unlike the case with all other registered pension plans, the *ITA* permitted specified multi-employer plans to continue to accept contributions beyond the *ITA* limits with respect to individuals who had already commenced receipt of a pension from the plan or who had already turned age 71 in a previous calendar year – even though those individuals would not be earning a benefit with respect to those contributions. In recent years, the *ITA* was revised to provide that these plans could no longer accept such contributions. As a result, these specified multi-employer plans must either implement processes that will keep such contributions from

being made in the first place or they must remove such contributions from the plan in order for the plan to remain registrable under the *ITA*. FSRA has set out a special approach for MEPPs in section 4.3 of this Guidance to help them address these new *ITA* requirements.

3.5 In supervising and regulating the pension sector, FSRA must administer and enforce the *PBA* and its regulations to carry out FSRA's objects to:

- promote good administration of pension plans
- protect and safeguard the pensions benefits and rights of pension plan beneficiaries

Maintaining *ITA* registration is key to good pension plan administration and for a pension plan to be able to provide pension benefits.

3.6 FSRA's [Pension Sector Guiding Principles](#) and the above objects have guided FSRA in developing this Interpretation Guidance.

4.1 Interpretation

4.1 To support administrators' compliance with the Regulation, this Guidance interprets in section 4.2 below, the exemptions set out in sections 47(11) to 47(16) of the General Regulation, to identify the manner in which administrators can meet the requirements under the General Regulation to provide the requisite notice and evidence to FSRA. The Guidance also provides an interpretation of the administrators' fiduciary obligations in the context of communicating such matters to plan members.

4.2 Notice to FSRA – information and evidence

The requisite notice to FSRA under the General Regulation must be in writing and should include all information necessary for FSRA to understand the proposed action and the provisions under the *ITA* and the General Regulation that it would address, as well as to verify that the proposed action is necessary in order to avoid revocation of the plan's registration under the *ITA*. As a result, plan administrators should include the following information in their notice to FSRA:

1. a description of the action proposed to avoid revocation of the plan's registration under the *ITA*, including identification of:

- the requirement(s) of the *ITA* being addressed;
- the provision(s) of section 47 of the General Regulation that apply; and
- any section(s) of the plan text that provide for, or support, the action proposed

2. certification that the action(s) proposed is(are) required to avoid revocation of registration of the plan under the *ITA*, and complies with the relevant provisions of section 47 of the General Regulation, and

3. confirmation that any plan amendment for which an exemption under subsection 47(11) of the General Regulation is sought, or that may be adopted to provide for a refund of contributions to members or former members and/or a payment to an employer (as applicable), is attached / enclosed with the notice or has already been filed with FSRA.

Additionally, for exemptions under subsection 47(11) of the General Regulation,

- identification of the provision(s) of the plan which do not comply with the *ITA*; and
- confirmation that the administrator has or will notify members whose accrued benefits will be immediately affected by the amendment, explaining the impact of the amendment on their benefit.

Additionally, for exemptions under subsections 47(13) or (15) of the General Regulation,

- a brief description of how the amount of refund or payment of contributions will be determined, the number of members affected and an estimate of the total amount to be refunded or paid out, including any interest payable; and
- confirmation that the administrator has or will notify members in accordance with section 4.4 of this Guidance.

4.3 Special approach for MEPPs

4.3.1 FSRA recognizes that the unique nature of MEPP administration may benefit from a different approach. FSRA will monitor this approach for effectiveness, and may modify, expand or restrict it as FSRA determines is appropriate.

4.3.2 The notice required to FSRA under the General Regulation should address intended refunds or payments with respect to contributions made before the notice is given to FSRA. The notice may also address refunds or payments with respect to contributions that have not yet been made but that are expected to be made later in the same calendar year. For clarification, contributions cannot be paid out or refunded unless and until the amounts have actually been received by the pension plan. In any case, the notice to FSRA should separately identify the actual and estimated number of affected members and total amount to be refunded or paid out.

4.3.3 Where an estimate of refunds or payments with respect to contributions that have not yet been made are included in the notice to FSRA, the administrator must inform FSRA during the next calendar year, of the total amount that was in fact refunded or paid during the previous year and the number of members with respect to whom those refunds or payments were made.

4.4 Member communication

Administrators may have a fiduciary duty to communicate with members affected by an exemption under subsections 47(11), (13) or (15) of the General Regulation. In particular, there should be advance communication to members for whom there will be tax implications, or whose benefit (or the benefit's value or account balance) will be reduced as a result of the proposed action(s).

If an amendment is filed in connection with the proposed exemption under the General Regulation, then notices under 26(1) and 26(3)⁽⁶⁾ of the *PBA* may be required, in accordance with those provisions.

4.5 Other considerations

- a. As noted in section 3.4, maintaining a plan's registration under the *ITA* is central to the purpose of the plan. Administrators have a fiduciary duty to administer their plan such that it remains registered under the *ITA*, while also remaining compliant with the *PBA*.
- b. A certification or statement described in section 4.2, can be made by a person who has sufficient relevant knowledge and has been authorized by the plan administrator to make such a certification or statement. This person may be an employee of the administrator or of a service provider engaged by the administrator. The certification must include the name of the person signing and their role.

- c. A letter from CRA confirming the items set out in section 4.2 is not required, but such a letter can be provided to FSRA as evidence of any or all of the items otherwise required to be certified and such items would then not need to be included in the certification.
- d. FSRA may from time-to-time request additional information or additional evidence and may take further steps to audit the use of sections 47(11) to (16) of the General Regulation.
- e. A payment pursuant to section 47(15) of the General Regulation is a payment to an employer. The payment may be used or directed as the employer chooses, subject to any applicable requirements (e.g., *ITA* requirements for income reporting and tax deductions and remittances, as well as any treatment agreed upon with a collective bargaining agent).
- f. FSRA may acknowledge receipt of a notice provided pursuant to section 47(12), (14) or (16) of the General Regulation. FSRA's consent or approval of an exemption under those sections is not required if the administrator is acting in compliance with the *PBA* and regulations. Administrators are entitled to act upon an exemption after at least sixty (60) days have passed since notice is given to FSRA, assuming FSRA has not identified any concerns which have been communicated to the administrator.
- g. There may be other ways, in certain situations, that administrators can address contributions that would otherwise make a plan's registration be revocable under the *ITA*. These include:
 - A pension plan that holds additional voluntary contributions (AVC's) as defined under the *PBA*,^[7] may, subject to plan terms, pay out those AVC's at any time without notification to or approval by FSRA. In those situations, acting in accordance with sections 47(13) and (14) is not necessary, although fiduciary obligations of the administrator would continue to call for advance notice to affected individuals.
 - Section 62.1^[8] of the *PBA* provides a process by which certain errant payments or over-contributions made by an employer to a pension fund may be paid back to the employer. Under this section there is no requirement that the payment out of the pension fund be required to avoid the plan's registration from being revoked under the *ITA*. The section 62.1 process requires prior consent by FSRA. The facts and circumstances surrounding any given situation will dictate whether an administrator can proceed using section 62.1 or regulation sections 47(15) and (16). In some cases, both approaches may be available, and the administrator may choose.

5. Effective date and future review

This Interpretation guidance became effective on November 16, 2022, and will be reviewed no later than November 30, 2027.

6. About this guidance

This document is consistent with [FSRA's Guidance Framework](#). As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e., legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

Effective date: November 16, 2022

^[1]See subsection 11 of section 47 of the General Regulation.

^[2]The Chief Executive Officer (CEO) of FSRA receives the notification under subsection 47(11) the General Regulation. However, for the purposes of this Guidance, reference will only be made to FSRA as the CEO may delegate regulatory authority to FSRA staff, as permitted by Section 10(2.3) of the FSRA Act.

^[3]*PBA* section 63(1).

^[4]*PBA* section 78(1).

^[5]Regulation 909 sections 12, 14, 16.

^[6]See section 26(1) and 26(3) of the *PBA* re amendments which reduce or adversely affect benefits.

^[7] A member contribution that is voluntary, but which attracts an employer contribution to the same plan is not an AVC under the *PBA* and cannot be paid out as described in this paragraph.

^[8]See section 62.1 of the *PBA* for information on overpayments. A Guidance document is available on FSRA's website concerning applications under section 62.1.