Financial Services Commission of Ontario
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Note: Due to legislative changes, the references to "Revenue Canada" should now read the "Canada Customs and Revenue Agency", the references to the PBA, 1987 should now read the PBA, R.S.O. 1990 and the reference to the "PCO" should now read "FSCO".

Companies are often interested in additional methods to compensate senior executives or to assist them in sheltering income from tax. A variety of approaches has been tried in recent years. One [such approach] uses pension plans and involves several jurisdictions from a regulatory point of view.

This particular approach is under recent scrutiny from Revenue Canada. It is commonly referred to as "buying back past service"; and is used by executives who have not been covered by a pension with their employer or previous employer. These executives allow their employer to divert a portion of salary into a pension plan.

The object is to make up the amount that could have been contributed over the years if a pension plan had existed. The employee's savings might be used to make up the total contribution amount necessary to buy back past service. Contributions take place at the employee's current salary level and include interest that would have accrued if contributions were taking place over a period of years.

Revenue Canada's position appears to be that the employee is contributing more than the amount allowed for tax sheltered retirement savings for that year because the plan has been funded solely by employee contributions.

If Revenue Canada does not allow a particular plan to receive tax sheltered status on the above basis, the Superintendent takes the position that the plan does not qualify for registration, as defined in section 1 of the PBA, 1987:

> "pension plan" means a plan organized and administered to provide pensions for employees, but does not include, ...
>
> (c) a plan under which all pension benefits are provided by contributions made by members, ...

Some one-person plans contain a proviso that they will become effective only upon acceptance by regulatory authorities including Revenue Canada. Even if a plan does not have this proviso, if it has already been registered, the Superintendent will allow an application to cancel the registration, on the basis it was improperly granted.

If the application for registration of a pension plan has been filed but not yet approved by the PCO it may be withdrawn. In this case the Superintendent will regard the plan as never having been in effect under the PBA, 1987 provided:

1. The plan documents set out acceptability for registration with Revenue Canada as a conditions for establishment of the plan. Proof of Revenue Canada's rejection must be provided; or

2. The plan's beneficiary agrees in writing to the cancellation and proof of Revenue Canada's rejection is provided.

If a Certificate of Registration was issued for a plan meeting these conditions, it must also be returned for cancellation.

To withdraw or cancel the registration of a plan, a letter should be submitted to the PCO, along with the Revenue Canada rejection notice. Fees paid to the PCO for registration of the plan will not be refundable in such a circumstance.