



CCH

a Wolters Kluwer business

PaySource®

2009 BUDGET SEASON – THE BUDGET SEASON THAT WON'T QUIT

September 2009
Number 171

By: Theo Anne Opie, LL.B. © CCH Canadian Limited.

In the June issue of PAYSOURCE, No. 168, we reported that the 2009 Budget season was complete. However, it would appear that 2009 is the year that Budget season won't quit!

British Columbia

In the case of British Columbia, a second 2009 Budget dated September 1, 2009 was presented by Finance Minister Colin Hanse. The Budget contained the following measures related to payroll.

Personal Tax Credits

The B.C. government intends to introduce a harmonized sales tax (HST) on July 1, 2010. At a rate of 12 per cent, B.C.'s HST will be the lowest in Canada. With the September Budget Update, the B.C. government is taking steps to help consumers make the transition to the new harmonized sales tax.

Effective January 1, 2010, the basic personal amount tax credit is increased to \$11,000 from the 2009 amount of \$9,373, an increase of \$1,627. In addition, the spouse and equivalent-to-spouse credit is increased to \$9,653 from the 2009 amount of \$8,026, also an increase of \$1,627.

See Commentary at ¶25,164.

Inside

Hot News Items

2010 WCB Maximum Assessable Earnings	3
Que. Parental Insurance Premiums . . .	3
EI Benefits Extended . . .	3
Reservists Leave Extended to 2010 Olympics	4

Need To Know

Fourth Quarter Interest Rates	5
Min. Wage Increases: Man. and P.E.I.	5

Recent Cases/Rulings

Employer Location Destroyed by Fire	5
Unilateral Bonus Reduction	5
Commission Earnings on T4A	6
Post-Retirement Benefit Assistance Plan	6
Mixed Motor Vehicle Allowance	6
Volunteer Firefighter . . .	7
Life Insurance and Disability Top-Up	7

Medical Services Plan Premium Rates

Effective January 1, 2010, Medical Services Plan premiums are increased by about six per cent and the Medical Services Plan premium assistance program is enhanced to reduce or eliminate monthly premiums for about 180,000 people.

Maximum monthly premium rates will increase by \$3 per month for single persons and \$6 per month for families. Effective January 1, 2010 the premium rates are expected to be as follows:

- Single person – \$57/month
- Family of two – \$102/month
- Family of three or more – \$114/month

By 2009/10, health care costs are projected to have risen 45 per cent since Medical Services Plan premiums were last increased in 2002. This year health care spending will increase by six per cent. The government intends to increase premiums annually by the percentage increase in health care spending.

Premium assistance is enhanced by increasing the adjusted net family income thresholds by \$2,000 each.

With the changes to premium assistance lower income individuals and families will pay less in premiums than they currently pay.

Effective January 1, 2010, the five assistance levels will be 100, 80, 60, 40 and 20 per cent of premiums payable for the respective adjusted income thresholds of \$22,000, \$24,000, \$26,000, \$28,000 and \$30,000.

See Commentary at ¶70,059.

Corporate Tax Rates

The maximum amount of taxable income to which the small business corporate income tax rate may be applied, or the “business limit”, is increased to \$500,000 from \$400,000 effective January 1, 2010. Corporations will pro-rate their business limits based on the number of days in the taxation year before and after January 1, 2010.

In 2008, the small business corporate income tax rate was reduced from 4.5 per cent to 2.5 per cent – a reduction of 44 per cent. The government intends to reduce the rate to zero by April 1, 2012. B.C.’s general corporate income tax rate has been reduced from 16.5 per cent to 11 per cent, with further reductions to 10.5 per cent planned for 2010 and to 10 per cent in 2011.

The September 1, 2009 British Columbia Budget is reproduced in the “Budgets & New Developments” section at ¶180,168.

Nova Scotia

In the case of Nova Scotia, the Conservative Government that presented the Budget of May 4, 2009 was defeated in the provincial election held on June 9, 2009. The new government introduced a new Budget on September 24, 2009.

The Budget, presented by Finance Minister Graham Steele, contained the following measures related to payroll.

Honouring Previous Commitments

This Budget is substantially the same as the budget introduced on May 4, 2009.

With almost half the fiscal year gone, a major portion of costs fixed in salaries, and an economy needing a measured dose of stimulus spending to spur growth, there was little room to alter the course that had already been set for this fiscal year.

PAYSOURCE

Published monthly as the newsletter complement to PAYSOURCE, by CCH Canadian Limited. For subscription information, see your CCH Account Manager or call 1-800-268-4522 or (416) 224-2248 (Toronto).

For CCH Canadian Limited

RICHARD BROWNE, Editor
(416) 224-2224, ext. 6441
e-mail: Richard.Browne@wolterskluwer.com

CHERYL FINCH, B.A., LL.B., Director of Editorial
Legal and Business Markets
(416) 228-6128
e-mail: Cheryl.Finch@wolterskluwer.com

JIM ITSOU, B.Com., Marketing Manager
(416) 228-6158
e-mail: jim.itsou@wolterskluwer.com

Editorial Board

THEO ANNE OPIE, LL.B.,
Member, Canadian Payroll Association’s
Federal Government Relations Advisory Council
e-mail: Teddy.Opie@wolterskluwer.com

PUBLICATIONS MAIL AGREEMENT NO. 40064546
RETURN UNDELIVERABLE CANADIAN ADDRESSES TO
CIRCULATION DEPT.
330-123 MAIN ST
TORONTO ON M5W 1A1
email circdept@publisher.com

© 2009, CCH Canadian Limited
90 Sheppard Ave. East, Suite 300
Toronto, Ontario M2N 6X1

To do so would have introduced uncertainty and instability in the midst of a recession. The government stated that it would honour the commitments of the former government and it will.

The province of Nova Scotia is maintaining personal income, corporate income and sales tax rates for Nova Scotians in 2009 and 2010.

Tax relief from changes to the Basic Personal Amount and other non-refundable personal tax credits will proceed in 2009 and 2010 as planned. Previously announced reductions in the large corporations tax will also continue as legislated.

The details of the September 24, 2009 Nova Scotia Budget are located in the "Budgets & New Developments" section at ¶180,168.

New Brunswick

Finally, in the case of New Brunswick, the 2010-2011 Budget will be presented early. On September 2, 2009, Premier Shawn Graham announced that a full Budget will be tabled in the New Brunswick legislative assembly on Tuesday, December 1, 2009. Finance Minister Greg Byrne also announced details of pre-budget consultations. Five public and six stakeholder meetings will take place during the week of October 5, 2009. Finance Minister Byrne will be joined by Post-Secondary Education, Training and Labour Minister Donald Arseneault. Online submissions may be made beginning Monday, September 28 2009.

Details of the Budget will be reported when it is released.

Hot News Items

2010 WCB Maximum Assessable Earnings

As of this update, we have received confirmation of the following 2010 WCB maximum assessable earnings figures.

- Alberta* – 77,000;
- British Columbia – \$71,200;
- Manitoba – \$89,000;
- New Brunswick – \$56,300;

- Ontario – \$77,600;
- Prince Edward Island – \$47,500;
- Quebec* – \$63,000;
- Saskatchewan – \$55,000.

* The Alberta and Quebec rates are preliminary and may be subject to change.

The new maximum assessable earnings figures have been incorporated into PAYSOURCE in the "Workers' Compensation" tab division at ¶80,005.

Quebec Parental Insurance Premiums To Increase

On September 9, 2009 Quebec issued a Regulation to increase parental insurance premiums effective January 1, 2010.

The Regulation modifies the premium rates applicable to employees, employers and self-employed workers.

The 2010 rates are as follows:

- Employers – 0.708%
- Employees – 0.506%
- Self-employed persons – 0.899%

The new 2010 parental insurance premium rates have been incorporated into PAYSOURCE in the "Employer Taxes and Levies" tab division at ¶50,908.

Employment Insurance Benefits To Be Extended

The government has introduced legislation to temporarily provide additional Employment Insurance (EI) regular benefits to unemployed long-tenured workers. These are individuals who have worked and paid EI premiums for a significant period of time and have previously made limited use of EI regular benefits. The amendments are contained in Bill C-50, *An Act to amend the Employment Insurance Act and to increase benefits*, which received first reading September 18, 2009.

This new measure has been designed to provide additional support through extended EI regular benefits to Canadians who have worked and paid EI premiums for a significant period of time and have previously made limited use of EI regular benefits.

More specifically, a long-tenured worker is someone who meets these criteria:

- has contributed to the EI program (paid at least 30 percent of the annual maximum EI premiums) for at least seven out of ten calendar years; and
- has received regular EI benefits for no more than 35 weeks in the last five years.

The proposed legislation would extend regular benefits for eligible long-tenured workers by between 5 and 20 weeks, depending on the number of years they have worked and paid EI premiums.

It is estimated that this temporary measure would benefit approximately 190,000 long-tenured workers. The start date would be linked to the coming into force of the Bill, and payments of the extended benefits would continue until fall 2011.

Subscribers will be notified of the progress of the Bill.

Reservists Leave Extended to Operations Related to 2010 Olympic and Paralympic Winter Games

British Columbia

Effective September 2, 2009, the Reservists' Leave Regulation has extended the entitlement to job-protected reservist leave to those Canadian Forces reservists deployed to operations that are or will be providing support to the 2010 Olympic and Paralympic Winter Games or who are engaged in pre-deployment or post-deployment activities required by the Canadian Forces in connection with such operations. British Columbia's *Employment Standards Act* was amended in 2008 to provide reservists with job-protected leave from their civilian employment when

deployed to a Canadian Forces operation outside of Canada, or to assist with an emergency in Canada. (For a detailed discussion of the general requirements pertaining to reservist leave, see the "Employment Standards" section of PAYSOURCE at ¶6760.)

A request for leave for Games-related Canadian Forces operations must be given to the civilian employer as soon as is practicable after the reservist receives notice of the deployment, and must include the date the employee proposes to begin leave and the date the employee proposes to return to work. Similarly, notice of any need to extend the leave beyond the date given in the original notice must be provided to the employer as soon as is practicable after the reservist receives notice of the extended deployment.

As with other statutory leaves, employers will not be required to pay wages while the employee is on leave. In this case, reservists will receive compensation from the Canadian Forces for their services. When the reservist returns to his or her civilian employment, the employer must reinstate the employee to the same position he or she held prior to the leave, or to a comparable position.

Approximately 1,000 reservists are expected to be deployed to the Games, with half coming from within British Columbia. Many will begin their work in September, and will serve up until the completion of post-Games activities in March or April 2010.

Federal

The *Canada Labour Code* covers employment in federally-regulated industries such as banks, telecommunications and interprovincial transportation. If an employee works in a federally regulated workplace or the federal public service, the employee is allowed to take a leave of absence without pay from his or her civilian employment to take part in annual training or in certain military operations in Canada or abroad that are designated by the Minister of National Defence.

The 2010 Olympic Games have been designated as an operation under the *Canada Labour Code* to which entitlement to reservist leave applies.

Need To Know

CRA Announces Fourth Quarter Interest Rates

The fourth quarter interest rates were recently confirmed by the Canada Revenue Agency (CRA). Effective October 1, 2009 through December 31, 2009, the rates will be:

- 5% for interest on unremitted employee income tax source deductions, unremitted CPP and EI contributions, unpaid penalties, overdue personal income tax payments and insufficient income tax instalment payments;
- 3% for interest payable on income tax refunds and overpayments; and
- 1% for deemed interest when computing the taxable benefits on employee or shareholder loan provisions.

The fourth quarter interest rates have been incorporated into PAYSOURCE in the “Employee Benefits” section at ¶20,155 and ¶20,600, the “Statutory Deductions – Employer Remittances” section at ¶24,304, the “Statutory Deductions – Tax” section at ¶27,020 and the “Year-End Reporting” section at ¶65,686.

Minimum Wage Increase Reminders

Manitoba

Effective October 1, 2009, the hourly minimum wage will increase to \$9.00 per hour, up from the current level of \$8.75 per hour.

Prince Edward Island

Effective October 1, 2009, the hourly minimum wage will increase to \$8.40 per hour, up from the current level of \$8.20 per hour.

The new minimum wage rates are located in the “Employment Standards” section of PAYSOURCE at ¶5710, ¶5751 and ¶5801.

Recent Cases and Rulings

Destruction of Employer Location by Fire: No Frustration of Contract

••• **New Brunswick** ••• Craig Manufacturing’s plant was destroyed by fire. Despite the fire, 23 employees were kept on the payroll, while the others were paid benefits owing and provided the documents to apply for employment insurance benefits until they were recalled to work in the new plant. No employee was informed that his or her employment was at an end and they all initially expected to be recalled when the new plant opened. Most of the employees resumed their prior work functions, but Davidson was not recalled. He was informed that his services would no longer be required. Davidson managed to secure a comparable position a number of months later, but incurred relocation expenses. Davidson brought an application for wrongful dismissal and breach of contract, as well as for special damages for loss of salary, bonus, benefits, pension and relocation costs. The trial judge found that the employment contract was not frustrated by the fire, and that Craig Manufacturing owed Davidson 17 months’ notice of termination, as well as \$15,000 for realtor, legal, traveling and moving expenses. Craig Manufacturing appealed, only with respect to the damage award.

The appeal was allowed and the award of damages and costs was set aside. It was reasonable for the trial judge to find that the destruction of the plant by fire was not a frustrating event that put an end to the employer’s obligations under the employment contract, since the employer’s business was still a going concern after the fire. The employer’s implied obligation to give reasonable notice of termination was not affected by the plant’s destruction. Davidson was entitled to claim damages for failing to receive notice. However, the claim for relocation damages was not particularized in any pleading, and it was abandoned prior to trial. The claim associated with relocation expenses was neither properly pleaded nor litigated. Therefore, the award of damages was an error of law.

Craig Manufacturing Ltd. v. Davidson, (N.B.C.A.), 2009 CLLC ¶210-034.

Unilateral Reduction in Bonus Constituted Constructive Dismissal

••• **Quebec** ••• McBrearty became president of Cerescorp in 1993. During his years as president, the revenues of the company rose from nothing to over \$59 million. When the company was sold, McBrearty received a bonus of \$3 million. Three years later, McBrearty was told that his bonus would be \$25,000, less than the amount allotted for

the vice-president. He demanded a larger bonus, at which point his employment was terminated. McBrearty had worked for Cerescorp for 39 years, and was 69 years old at the time of his termination. McBrearty brought an action claiming amounts owing, along with damages for constructive dismissal.

The action was allowed. McBrearty was constructively dismissed without notice when he was offered a substantially smaller bonus. His annual employment remuneration in the past had included a bonus of between one-third to two-thirds of his salary. By offering such a small bonus, the company had reduced McBrearty's salary substantially and without reason, in a unilateral and retroactive way. McBrearty was not dismissed for cause, as alleged by Cerescorp. There was no abuse of authority in his asking for financial information to calculate the bonus he thought he was due. The information was all available to him as a trusted employee. Given McBrearty's age and the number of years that he worked for Cerescorp, he was awarded 24 months' reasonable notice, along with his bonus owed, and fringe benefits.

McBrearty v. Cerescorp Company and CL Ceres Company, (Q.S.C.), 2009 CLC ¶210-036.

Reporting of Commission Earnings on Form T4A

Persons paying commission earnings to independent workers must report them in Box 20 of a Form T4A. This is the case even when the commissions are paid to a company or a partnership, in which case the company's or partnership's business number ("BN") must be reported in Box 13. The payer's BN must also be reported in Box 61. For more details on this topic, refer to the CRA Guide RC4157 – "Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary".

Technical Interpretation, Business and Partnerships Division, June 26, 2009, Document No. 2009-0323711E5.

Post-Retirement Benefit Assistance Plan

The CRA was asked to comment on a proposal by an employer to offer an early retirement plan (the "Plan") that would provide that once retired, individuals would con-

tinue to have all health benefits paid up to a limit of \$20,000 of expenses incurred. This would include a medical and dental plan, and also a group term life insurance plan.

Assuming the medical and dental benefits to be offered through the Plan are offered through a private health services plan ("PHSP"), the exception provided under s. 6(1)(a)(i) would generally apply. It states that contributions paid by an employer in respect of a PHSP or a group term life insurance policy on behalf of an employee are excluded from the employee's income from an office or employment. The CRA stated that its general position is that where an employer extends benefits to former employees that would be non-taxable to current employees pursuant to s. 6(1)(a)(i), the benefits will also be non-taxable to the former employees.

With respect to the portion that relates to a group term life insurance policy s. 6(4) could apply to include a prescribed benefit in computing the employee or former employee's income. In addition, any other payments made by the employer to a former employee could qualify as a retiring allowance (included in income pursuant to s. 56(1)(a)(ii)).

Income Tax Rulings Directorate, June 29, 2009, Document No. 2008-0299611E5.

Taxability of a Mixed Motor Vehicle Allowance

The situation considered by the CRA involved an employer who required his employees to have a motor vehicle at their disposition to perform their duties and who paid them a motor vehicle allowance of \$0.40/km for the first 8,000 km driven during the year and one of \$0.325/km for any kilometres driven in excess of that limit. Employees driving their vehicle for less than 8,000 km during the year were entitled under their collective agreement to receive a \$0.40/km allowance for the kilometres actually driven and one of \$0.08 for the difference between those kilometres and the 8,000 km limit. The CRA was asked if the amounts received by the employees driving less than 8,000 km per year would be taxable and if the employer would have to complete a Form T2200. The employer was the Quebec government and the employees were nurses.

The CRA confirmed that the employees were considered to have received two separate motor vehicle allowances from their employer: one calculated on the basis of a rate of \$0.40/km driven which was considered to be reasonable and thus excluded from their income; and one calculated on the basis of a rate of \$0.08/km between the actual kilometres driven and the 8,000 km limit considered not to be reasonable and thus included in their income. The second allowance was not reasonable since it was not calculated on the basis of the kilometres driven by the employees in the course of performing their employment duties. The CRA noted that, because the two allowances did not cover the same use of the vehicle, the fact that one allowance (\$0.08/km) was considered not reasonable and taxable did not cause the other one (\$0.40/km) to be considered reasonable and not taxable to become tainted and also be considered not reasonable. If both allowances had covered the same use of the vehicle, the combined or mixed allowance would have been considered not reasonable and taxable.

Regarding the preparation of a Form T2200, the CRA noted that the employer had to complete it to allow the employees to deduct their motor vehicle expenses. Provided the employees could demonstrate that their motor vehicle expenses incurred in the course of performing their employment duties exceeded the allowances received from the employer and were included in their income, the CRA would normally allow them to deduct the expenses from their income. For more details on this topic, see Chapter 2 in the CRA Guide T4130 "Taxable Benefits and Allowances".

Technical Interpretation, Business and Partnerships Division, July 20, 2009, Document No. 2009-0312541E5.

\$1,000 Volunteer Exemption – Meaning of the Term Volunteer Firefighter

The issue the CRA was asked to review involved volunteer firefighters employed by a government, municipality, or public authority who were authorized, under s. 81(4) of the Act, to claim an exemption not exceeding \$1,000 in respect of the income earned from the performance of their duties. The CRA was asked how the employer of the volunteer firefighters should determine if they were volunteer "firefighters" within the meaning of this expression in s. 81(4) of the Act.

The CRA confirmed it would rely on the determination by the employer (i.e., the government, municipality, or public authority) of whether a firefighter was a volunteer firefighter or not in order to allow or deny the exemption. The employer should rely on the definitions of volunteer firefighters contained in certain provincial laws and publi-

cations to determine what is a volunteer firefighter. For example, such definitions are contained in the Ontario Fire Protection and Prevention Act (1997) and the Quebec "Guide du recensement des mesures et des ressources municipales en sécurité incendie (2001)". A review of such definitions will give a better idea of what provincial governments and municipalities mean by volunteer firefighters. Note that, in practical terms, volunteer firefighters are not true volunteers rendering firefighting services for no remuneration and several of them receive more than \$1,000 annually. Therefore, it is not simply a matter of combining the words "volunteer" and "firefighter" to come up with an acceptable definition describing their situation. This interpretation would also apply to volunteer ambulance technicians or persons assisting in the search or rescue of individuals or in other emergency situations.

On a connected issue, the CRA also indicated that the remuneration paid to volunteers was not taxable if it was not representative of the quantity or quality of their services, and was not considered to be a sufficient motivating factor to obtain their involvement. For example, a ski or golf annual pass issued to a volunteer ski or golf patroller would not be taxable. However, if the amount or form of remuneration influenced the participation, involvement or availability of a volunteer, it would likely be taxable as employment income under s. 5 or s. 6 of the Act, or as business income under s. 9.

Technical Interpretation, Business and Partnerships Division, July 7, 2009, Document No. 2008-0267941E5.

Top-Up Life Insurance and Disability Payments

The taxpayer's employer was required to pay the cost of life insurance premiums, extended health, dental benefits, and long-term disability pursuant to a contract with an insurer. Additionally, a union collective agreement provided that the employer was required to top up the life insurance, long-term disability benefits, and provide health benefits to retirees; to do this, the employer is required to self-insure. The CRA was asked whether the payments received under this collective agreement are taxable to the employees.

With respect to the top-up of life insurance, where the amount paid on the death of an employee comes out of the employer's own funds and not under a group term life insurance policy, the benefit may constitute a death benefit which is included in the income of the beneficiary pursuant to s. 56(1)(a)(iii). However, where an employer makes contributions to a plan to fund these benefits payable on the death of an employee, the plan may constitute an employment benefit plan ("EBP"). Under an EBP, no

amount is included in the employee's income at the time the employer makes the contributions by virtue of s. 6(1)(a)(ii), but amounts received under an EBP are included as income from an office or employment unless the amount is a death benefit, which is excluded under s. 6(1)(g). The CRA stated that while the proper treatment is a question of fact, generally where an employer self-insures, the benefit paid upon the death of an employee is likely a death benefit which is included in the income of the beneficiary pursuant to s. 56(1)(a)(iii).

With respect to the top-up of long-term disability, where the self insurance arrangement is funded on a "pay-as-you-go" basis, the CRA stated that an amount paid to an employee will be included in the employee's income under ss. 5(1) or 6(1)(a). Where the employer funds the top-up by making contributions to a trust, and the benefits administered by the trust are limited to a group sickness or accident insurance plan, a private health services plan, a group term life insurance policy, or a combination of the foregoing, the trust may constitute a health and welfare

trust ("HWT"). To be a group sickness or accident insurance plan, the plan must be an insurance plan or one based on insurance principles. The CRA stated that if a trust qualifies as an HWT because it administers a group sickness or accident insurance plan, the employee is not to be taxed on the contributions to the plan by virtue of the exclusion in s. 6(1)(f). If a trust is not a qualifying HWT, the trust will generally be an EBP such that no amount will be subject to tax when the employer makes a contribution pursuant to s. 6(1)(a)(ii), but the amounts received out of the EBP will be subject to tax pursuant to s. 6(1)(g). With respect to the premiums for retirees' health benefits, the CRA noted that the amounts will be excluded from income pursuant to s. 6(1)(a)(i) if they are derived from the employer's contributions to a private health services plan ("PHSP"). A PHSP must be in respect of medical expenses that would otherwise have qualified for the medical expense tax credit under s. 118.2(2).

Technical Interpretation, Ontario Corporate Tax Division, July 21, 2009, Document No. 2008-0265651E5.