

Pensions on Marriage Breakdown 2017 Update

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New Mortality Table for Ontario Pension Family Law Value

- The Canadian Institute of Actuaries adopted a new mortality table effective October 1, 2015.
- The new mortality table is based on Canadian mortality experience, versus the prior tables which were based on US mortality experience.
- The new table has increased pension values by approx. 5%-10% due to the better Canadian mortality experience.
- Ontario only changed the pension family law value regulations to adopt the new mortality table on December 10, 2015.
- Uncertainty of application of correct mortality table since December 10, 2015.

New Mortality Table for Ontario Pension Family Law Value

- FSCO released guidance in August 2016:
 - For applications for FLV received before December 10, 2015, continue to use same mortality tables in effect since 2012;
 - For applications for FLV received from December 10, 2015, use new mortality table for dates of separation from December 10, 2015 and an updated mortality table for dates of separation prior to February 1, 2011.
- Under FSCO's view, the mortality table for pre-February 1, 2011 dates of separation changes depending on when the family law value is requested.
- This is inconsistent with family law principles – date of separation value of pension changes depending on when valuation is requested.

Income Tax Gross-Ups

- Receiving an increasing amount of attention.
- Used to increase an after-tax equalization payment which is paid from registered retirement assets (i.e. pension plan, RRSP).
- The intention of the gross-up is to compensate the spouse for the tax consequences of the transfer.
- There are several ways the gross-up can be done.
- This is not addressed in the law and there is not much case law.
- Recent case, 2016 *Fawcett v. Fawcett*, confirming need for gross-up of transfer from pension plan.
- Judge used former spouse's average income tax rate in retirement as determined by the actuary.

Income Tax Gross-Ups

- Judge confirmed this is not the correct tax rate, since it does not correctly reflect the former spouse's increased tax payable on the transfer amount from the pension plan, but no evidence was submitted to the courts on the correct gross-up rate.
- I perform the gross-up calculation using three approaches:
 - Member's contingent tax rate used to reduce the value of the pension/RRSP in the NFP (i.e. reverse this deduction);
 - Former spouse's projected marginal tax rate payable on the additional pension/RRSP in retirement;
 - Iterative calculation to ensure the NFP of both spouses is equal after gross transfer of assets, taking into consideration both spouse's changing tax liabilities.
- If these three approaches are similar, I only provide the results under the simplest approach. Otherwise, I provide results under alternate approaches.

Spouses vs. Beneficiary

- An pension plan member's eligible spouse is determined based on applicable legislation and the pension plan text and is not the member's decision.
- Eligible spouse for survivor pension in retirement:
 - Ontario: determined at date of pension commencement;
 - Federal PBSA: determined at date of pension commencement;
 - Federal government (civil servant, forces, RCMP): determined at date of death.
- The plan member can specify their beneficiary, which receives any death benefit if there is no eligible spouse.
- Recently, I have had several cases where former spouse thought their survivor pension had been lost since the plan member changed their beneficiary – not true!

Leaves Without Pay – Federal Civil Servants

- Service buybacks not addressed in the regulations.
- FSCO's view is that only service paid for during marriage should be included in the FLV, regardless of when the service occurred or when the election to purchase the service was made.
- Leave without pay very common with federal civil servants.
- For federal civil servants, members cannot make required contributions during any periods of leave without pay (i.e. maternity leave, unpaid leave, etc.)
- Federal civil servants must make outstanding contributions for their first 3 months of leave without pay.
- Federal civil servants must elect to not make outstanding contributions for any leave without pay longer than 3 months, or they will be required to make the contributions.

Leaves Without Pay – Federal Civil Servants

- Consistent with FSCO's view on service buybacks, the FLV would only include the portion of a leave without pay for which outstanding contributions were made during marriage.
- In most cases, the outstanding contributions for leaves without pay for federal civil servants are substantially less than the actuarial value.
- Since the default option is to purchase the leave without pay for federal civil servants, should a different approach be used?
 - Include all leaves without pay which occurred during marriage in the FLV and deduct outstanding contributions?
- I include both methods – can be a very significant issue.

Post-Separation Service Buyback

- In a recent case, a member purchased pre-marriage past service in a large public service pension plan after separation.
- Service election and purchase for approximately 6 months of service occurred several years after separation.
- After service purchase was complete, member requested SFLV.
- The plan administrator excluded the purchased service from the member's service earned during marriage (which is correct).
- However, the purchased service reduced the member's earliest unreduced retirement age by 6 months.

Post-Separation Service Buyback

- The plan administrator based the FLV calculation on the 6 month earlier unreduced retirement date resulting from the post-separation service purchase.
- But service purchased occurred after separation - why would it be factored into the member's FLV at separation?
- The 6 month earlier unreduced retirement age increased the member's FLV by over \$50,000.
- Currently being appealed with the plan administrator.
- Illustrates how subtle FLV calculation issues can have a significant impact on the FLV.

Questions?

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