

FYI[®]

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Unclaimed property transfers: Quebec interest moratorium

Quebec's Unclaimed Property Act (Act) requires the transfer of unclaimed financial assets (UFAs) to Revenu Québec (RQ), including those from pension and other retirement savings plans. These rules apply to all vehicles with Quebec-resident account or rights holders, with unremitted amounts subject to significant interest and other penalties.

RQ has announced a temporary incentive program waiving interest and other penalties for eligible UFAs remitted between June 1, 2022 and November 30, 2023. Organizations and plan sponsors have an opportunity to review their processes for identifying and remitting UFAs to RQ and ensure their remittances are current, while avoiding fees and penalties.

To assist impacted organizations, this *FYI* provides:

- An overview of unclaimed property rules across Canada;
- Details about Quebec's UFA regime, impacted plans/vehicles, and penalties;
- Details on the current temporary incentive program; and
- Information on the steps plan sponsors and other fundholders need to take to ensure compliance with the Quebec rules during the temporary incentive program and beyond.

Unclaimed property primer

Amounts in financial products are considered unclaimed if there is no account activity for a specific period of time, which is determined by the type of product and applicable legislation. The rules and requirements applicable to various types of unclaimed financial property depend on the source of the amount and/or where the owner is located. For example, unclaimed bank balances, along with unclaimed amounts from Canada Savings Bonds, Government of Canada bonds, The Canada RSP

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and The Canada RIF, must be transferred to the Bank of Canada's Unclaimed Properties Office (UPO).

For pension and other retirement savings plans, a number of jurisdictions have, or are in the process of developing, optional rules for unclaimed property.

- **Federal:** In the 2021 Federal Budget, the government announced plans to expand the Bank of Canada's unclaimed asset regime to include unclaimed balances from federally regulated pension plans.
- **Alberta:** Pursuant to the *Employment Pension Plans Act*, *Employment Pension Plans Regulation*, and Alberta Superintendent of Pensions Interpretive Guideline #14, Missing Members, unclaimed pension funds can be transferred from a plan to an account with Alberta Unclaimed Property under the *Unclaimed Personal Property and Vested Property Act* in certain circumstances, either on wind-up or while the plan is ongoing.
- **British Columbia:** The *Unclaimed Property Act* requires that companies and organizations holding property for individuals, including pension amounts, make reasonable efforts to locate and notify the owners of the funds after that property becomes unclaimed. Holders of unclaimed property must either maintain a database of unclaimed property or provide the information to the British Columbia Unclaimed Property Society (BCUPS). Mandatory holders must transfer unclaimed amounts to BCUPS, while voluntary holders (including pension plan administrators) are encouraged — but not required — to make such transfers.
- **New Brunswick:** Pursuant to the *Unclaimed Property Act*, Rule UP-001 and Rule UP-002 from the New Brunswick Financial and Consumer Services Commission (FCNB), commuted values of pension benefits not claimed three years after a plan's wind-up report has been approved become unclaimed property. Administrators, and other holders of unclaimed property, must file a report where they are relieved from the expense and liability of carrying the property on their books. The amounts are then held by FCNB until they are claimed by the rightful owner or someone acting on their behalf.

Quebec's unclaimed property regime is unique in that it not only requires the transfer of unclaimed assets to RQ but imposes significant financial penalties for non-compliance.

Quebec unclaimed property rules

Under Quebec's Act, financial assets generally become unclaimed three years after the date they can be legally claimed by a Quebec-resident owner or right-holder (Client), provided no "eligible activities" (i.e., certain claims, instructions or transactions) occurred after that date.

Six months before remitting the UFAs to RQ, the account holder gives Clients at least three months' notice of the pending transfer to impacted Clients, describing the pending transfer and the property involved, to give Clients time to claim their amounts. Note that such notice is not required for UFAs of less than \$100, or where the account holder cannot find the Client's address by reasonable means.

Once a year, any UFAs remaining unclaimed after the above notices were sent, along with any UFAs for which notices were not required, must be remitted to RQ. Account holders must maintain a register of transferred UFAs for ten years.

Not only is the transfer of UFAs to RQ mandatory, but there are significant penalties for non-compliance. Failure to comply with the Act constitutes an offence subject to a fine of up to \$5,000 for a first offence, and \$15,000 for a subsequent offence. In addition, RQ charges interest penalties on unremitted UFAs at the rate applicable to debts owed to the government under the *Tax Administration Act* — revised each quarter and currently six percent (6%) — compounded daily. The cost to account holders of not remitting UFAs as required is therefore significant.

Note that the application of these rules is based on the location of the Client — not the location or jurisdiction of registration of the employer, plan sponsor, or fundholder.

Application to pension plans and other vehicles

In the case of amounts payable from a pension, retirement or similar contract or plan, but not amounts due under the Quebec Pension Plan, they become UFAs if there has been no claim, transaction or instruction by the Client (in this case, a former or retired member, annuitant, etc.) for three years after the date the amount becomes due or payable. Pension or retirement plan amounts are considered to become due or payable by the earlier of: (a) the year provided in the plan, contract or applicable legislation; or (b) December 31st of the year the Client turns 71.

In the event of the death of a Client entitled to a benefit from a pension/retirement plan, the benefit becomes a UFA three years after the earliest of: (a) December 31st of the year the Client turned 71, (b) the date set out in the contract or legislation, or (c) the date of the Client's death. If the plan administrator finds out that a member died more than three years before the current fiscal year, the benefit becomes a UFA in the fiscal year that the administrator learned of the Client's death.

The unclaimed property rules also apply in cases where a pension committee requires that members withdraw amounts falling under the small benefit threshold in the *Supplemental Pension Plans Act* (i.e., 20% of the maximum pensionable earnings under the Quebec Pension Plan in the year active membership ceases). Such amounts become UFAs three years after the withdrawal notice was, or should have been, sent. Small amounts not subject to mandatory transfer become UFAs under the general rules set out above (i.e., the earlier of the year set out in the plan/contract/legislation, or December 31st of the year the Client turns 71).

Finally, the benefits payable to any missing members upon plan termination must be remitted to RQ as unclaimed property. Note that the remittance of these funds can only occur once the administrator is allowed to pay benefits to members and other beneficiaries on termination pursuant to the *Supplemental Pension Plans Act*. In this case, there is no need to wait three years before remitting the funds to RQ.

In addition to pension plans, Quebec's unclaimed property rules apply to UFAs from a wide range of other accounts and savings vehicles, including but not limited to:

- Annuities,
- Registered Retirement Savings Plans,
- Registered Retirement Income Funds (RRIFs),
- Employee stock ownership plans (ESOPs),
- Tax-free Savings Accounts (TFSA's), and
- Registered and unregistered self-directed accounts.

Temporary incentive program

In order to encourage holders of UFAs to remit them in accordance with the Act, RQ has announced a temporary incentive program, which runs from June 1, 2022 to November 30, 2023. Under the program, RQ will not charge interest on late remittances, levy any fines, or institute proceedings against holders in respect of UFAs that became unclaimed in fiscal years ending on or before December 31, 2021 (or December 31, 2022 in certain cases).

In order to qualify for the program, UFA holders must:

- Submit a complete and accurate *Statement Concerning Unclaimed Property Remitted Under the Remittance Incentive: Unclaimed Financial Assets (Form BD-81.5.A-V)*, along with the UFAs, no later than November 30, 2023; and
- Not already be subject to legal proceedings instituted by RQ under the Act.

If the above requirements are not met, or if the UFAs do not fall within the specified period, the holder is not eligible for relief. Once RQ receives the required remittance(s) and form(s), it will notify the holder in writing of whether they are eligible for the incentive.

Next steps

Well in advance of the November 30, 2023 deadline, all plan sponsors and account administrators should take the following steps:

Update/create robust procedures to ensure member contact information is updated
All plan sponsors and administrators should take steps to ensure that they have current contact information for Clients (e.g., members, beneficiaries, account holders, etc.). Periodic reviews, including "alive and well" audits, should also be conducted consistent with administrator best practices and applicable fiduciary duties to plan members and beneficiaries. In addition to conducting a search for missing members or beneficiaries revealed by an audit, pension plan administrators are

also obligated by the SPPA to submit a request to Retraite Québec. The regulator will then conduct its own attempts to trace missing members and beneficiaries.

Identify members from Quebec that are at risk of becoming a UFA

Sponsors and administrators of plans/vehicles with Clients located in Quebec should have monitoring in place to identify amounts at risk for becoming UFAs and have procedures in place to remit those amounts to RQ as and when required. This can either be done solely for Quebec Clients, or as part of a plan-wide review.

Take advantage of the temporary incentive program

Any impacted plan without such procedures should implement them immediately, and use the opportunity provided by the temporary incentive program to remit identified UFAs, which will otherwise be subject to significant interest and potentially other penalties.

In closing

The incentive program is an excellent opportunity to review these monitoring programs to ensure they are working, and to remit any UFAs that may have fallen through the cracks. Organizations with Clients located in Quebec who do not have a monitoring and remittance program in place are advised to implement one as soon as possible, and use the window provided by the incentive program to avoid what may otherwise be costly interest penalties.

For more information on Quebec's unclaimed property requirements, how they impact your organization, and how to ensure compliance while minimizing penalties, talk to your Buck consultant or contact the Knowledge Resource Centre at talktocanada@buck.com or +1 866 355 6647.