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chapter R-9, r. 17

Regulation respecting the Understanding on Social Security between the Gouvernement du Québec and the Government of United States of America

Act respecting the Québec Pension Plan

(chapter R-9, ss. 215 and 228)

Tax Administration Act

(chapter A-6.002, s. 96)

1. The benefits arising out of the Act respecting the Québec Pension Plan (chapter R-9) and the regulations under that Act are extended to any person covered by the Understanding between the Gouvernement du Québec and the Government of the United States of America on Social Security made in French and English and signed on 30 March 1983, reproduced in Schedule 1.

O.C. 1555-84, s. 1.

2. Those benefits shall apply in the manner prescribed by the Understanding and by the Administrative Arrangement for the implementation of the Understanding between the Gouvernement du Québec and the Government of the United States of America on Social Security, reproduced in Schedule 2.

O.C. 1555-84, s. 2.

3. *(Omitted).*

O.C. 1555-84, s. 3.

SCHEDULE 1

THE GOVERNMENT OF QUÉBEC

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Resolved to cooperate in the field of social security,

Desirous of concluding an Understanding to facilitate the application of a mutually beneficial arrangement in this field,

In view of the Social Security Agreement between Canada and the United States signed on March 11, 1981,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article I

For the purpose of this Understanding:

(1) «Territory» means,

as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and

as regards Québec, the territory of Québec;

(2) «National» means,

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Québec, a citizen of Canada residing in Québec or, if not residing therein, who is subject or has been subject to the laws specified in Article II 1*b*;

(3) «Laws» means,

the laws and regulations specified in Article II;

(4) «Competent Authority» means,

as regards the United States, the Secretary of Health and Human Services, and

as regards Québec, the Minister or Ministers responsible for the application or the administration of the laws specified in Article II 1*b*;

(5) «Agency» means,

as regards the United States, the Social Security Administration, and as regards Québec, for matters related to the collection of contributions, the ministère du Revenu du Québec; for all other matters, the Régie des rentes du Québec;

(6) «Period of coverage» means,

a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(7) «Benefit» means,

any benefit provided for in the laws of either Party;

(8) «Stateless person» means,

a person defined as a stateless person in Article I of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;

(9) «Refugee» means,

a person defined as a refugee in Article I of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

Article II

(1) For the purpose of this Understanding, the applicable laws are:

(a) as regards the United States, the laws governing the Federal Old Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

(b) as regards Québec:

The Act concerning the Québec Pension Plan.

(2) Unless otherwise provided in this Understanding, the applicable laws referred to in paragraph 1 of this Article do not include undertakings entered into by the United States or Québec with third parties, or laws and regulations promulgated for the implementation of such undertakings.

(3) This Understanding shall also apply to laws amending the laws specified in paragraph 1 of this Article and to agreements between the Government of Québec and the Government of Canada concluded for purposes of coordinating their respective pension plans.

Article III

Unless otherwise provided, this Understanding shall apply to:

- (a) nationals,
- (b) refugees,
- (c) stateless persons,
- (d) other persons with respect to the rights they derive from a national, a refugee, or a stateless person, and
- (e) nationals of a third party not included among the persons mentioned in paragraph *d* of this Article.

ARTICLE IV

(1) Unless otherwise provided in this Understanding, the persons designated in Article III *a*, *b*, *c* or *d* who reside in the territory of either Party shall, in the application of the laws of a Party, receive equal treatment, with respect to the payment of benefits, with the nationals of that Party.

(2) Nationals of a Party who reside outside the territories of both Parties shall receive benefits provided by the laws of the other Party under the same conditions which the other Party applies to its own nationals who reside outside the territories of both Parties.

(3) Unless otherwise provided in this Understanding, the laws of a Party under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Party shall not be applicable to the persons designated in Article III who reside in the territory of the other Party.

(4) As regards the laws of Québec, paragraph 1 of this Article is extended to persons designated in Article III *e*.

PART II

PROVISIONS ON COVERAGE

Article V

(1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Parties shall, in respect of that work, be subject to the laws of only that Party.

(2)

(a) Where an employed person is subject to the laws of one of the Parties in respect of work performed for an employer having a place of business in the territory of that Party and is then required by that employer to work in the territory of the other Party, the person shall be subject to the laws of only the first Party in respect of that work, as if it were performed in the territory of the first Party. The preceding sentence shall apply provided that the period of work in the territory of the other Party does not exceed 60 months.

(b) For the purpose of subparagraph a, where a person is required to work in the territory of the other Party for intermittent periods of short duration, each such period shall be considered a separate period of work.

(c) With the prior mutual consent of the Competent Authorities of the Parties, subparagraph a shall also apply:

(i) where the employer does not have a place of business in the territory of the first Party, or

(ii) where the period of work in the other Party exceeds or is expected to exceed 60 months.

(3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963, unless the immunities and privileges with respect to the payment of Social Security contributions of such persons have been waived, or such persons are among the persons mentioned in subparagraph 4 b ii of this Article.

(4)

(a) Except as provided in subparagraph b, this Article shall not apply to a person employed in the Government service of one of the Parties.

(b) Where a person is employed in the Government service of one of the Parties, the following rules shall apply:

(i) a person in the Government service of one Party who is sent to work within the territory of the other Party shall be subject to the laws of only the first Party in respect of that service;

(ii) a person hired locally to work for the United States Government in Québec shall be subject to the laws of Québec unless the person is a national of the United States or, since before entry into force of the Understanding, participated in the Civil Service Retirement System of the United States or other United States Government-financed pension plan and has elected not to participate in the Québec Pension Plan.

(c) For the purposes of this paragraph, «Government service» means,

(i) as regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;

(ii) as regards Québec, service in the employ of the Government of Québec.

(5) Where, but for this Article, a person would be covered under United States laws as well as under the Act concerning the Québec Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of that employment, be subject only to the Act concerning the Québec Pension Plan if that person is a resident of Québec or contributes to the Québec Pension Plan while residing elsewhere in Canada, and only to United States laws in any other case.

(6) Where, but for this Article, a person would be covered under the laws of both Parties in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Québec if that person is considered to be resident in Québec for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.

(7) Where, but for this Article, a person would be covered under the laws of both Parties in respect of

an activity that is considered to be self-employment by one of the Parties and employment by the other Party, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Party and according to the provisions of this Article respecting employment in any other case.

(8) Where, by virtue of this Article, a person would be subject to the laws of Québec but coverage is not effected under those laws, the person shall be subject to United States laws.

(9) The Understanding shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article V 1 shall apply when Article V 2 is not applicable as a result of the preceding sentence.

(10) Where a person covered under the laws of a Party in accordance with this Understanding is also covered under the laws of the other Party or a third Party in accordance with the provisions of an undertaking entered into by the United States or by Québec with a third Party, the Competent Authorities of the two Parties may agree to exclude the person from the application of this Understanding.

(11) The Competent Authorities of the two Parties may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.

PART III

PROVISIONS ON BENEFITS

CHAPTER I

PROVISIONS APPLICABLE TO THE UNITED STATES

Article VI

(1) Where a person has completed at least 6 quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Act concerning the Québec Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

(2) In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit 4 quarters of coverage for every year of contributions under the Act concerning the Québec Pension Plan certified as creditable by the agency of Québec; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed 4.

(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1 of this Article, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of a worker's periods of coverage completed under United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

(4) Entitlement to a benefit from the United States which results from paragraph 1 of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1 of this Article.

CHAPTER 2

PROVISIONS APPLICABLE TO QUÉBEC

Article VII

(1) In this Article, «benefit» means,

- (a) a retirement pension,
- (b) an orphan's benefit or a disabled contributor's child's benefit,
- (c) a death benefit,
- (d) a disability pension, or
- (e) a survivor's pension

payable under the Act concerning the Québec Pension Plan.

(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Québec Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Parties in accordance with paragraph 3 of this Article, to the extent that they do not coincide.

(3) Subject to the provisions governing the contributory period under the Act concerning the Québec Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under the laws of the United States shall be deemed to be a year in which contributions were made under the Act concerning the Québec Pension Plan.

(4) The agency of Québec shall calculate the benefit payable under the provisions of paragraph 2 preceding in the following manner:

(a) Compute the amount of the earnings-related benefit under the Act concerning the Québec Pension Plan;

(b) Add to this benefit, the amount of the flat rate benefit under the Act concerning the Québec Pension Plan adjusted by the ratio that the periods of coverage under the Act concerning the Québec Pension Plan represent in relation to the contributory period, subject to the provisions governing such period under the Act concerning the Québec Pension Plan.

PART IV

MISCELLANEOUS PROVISIONS

Article VIII

The Competent Authorities of the two Parties shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Understanding;

(b) Communicate to each other information concerning the measures taken for the application of this Understanding; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Understanding.

Article IX

The Competent Authorities and agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Understanding.

Article X

(1) Where the laws of a Party provide that any document which is submitted to the Competent Authority or an agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Party in accordance with its laws.

(2) Copies of documents which are certified as true and exact copies by the agency of one Party shall be accepted as true and exact copies by the agency of the other Party, without further certification. The agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article XI

Benefits shall be payable without any deductions for administrative costs, transfer fees or any other expenses incurred for the payment of such benefits.

Article XII

(1) The Competent Authorities and agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Understanding. The correspondence may be in the official languages of either Party.

(2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in the official language of the other Party.

Article XIII

(1) A written application for benefits filed with an agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant:

- (a) requests that it be considered an application under the laws of the other Party, or
- (b) provides information, at the time of application, indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Party.

(2) An application for benefits under the laws of one Party, which is filed with the agency of the other Party in accordance with paragraph 1 of this Article, shall be adjudicated by the agency of the first Party under the applicable provisions of its laws.

(3) An applicant may request that an application filed with an agency of one Party be effective on a different date in the other Party within the limitations of and in conformity with the laws of the other Party.

(4) The provisions of Part III of this Understanding shall apply only to an application for benefits which is filed on or after the date this Understanding enters into force.

Article XIV

(1) A written appeal of a determination made by the agency of one Party may be validly filed with an agency of either Party. The appeal shall be dealt with according to the appeal procedure of the laws of the Party whose decision is being appealed.

(2) Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the agency of that Party, but which is instead filed within the same prescribed period with the agency of the other Party, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Party.

Article XV

Unless disclosure is required under the statutes of a Party, information about an individual which is transmitted, in accordance with the Understanding, to that Party by the other Party is confidential and shall be used exclusively for the purposes of implementing this Understanding. Such information received by a Party shall be governed by the statutes of that Party for the protection of privacy and confidentiality of personal data.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article XVI

(1) No provision of this Understanding shall confer any right:

(a) to receive a pension, allowance or benefit for a period before the date of the entry into force of the Understanding, or

(b) to receive a lump-sum death benefit if the person died before the entry into force of the Understanding.

(2) In the implementation of this Understanding, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Understanding, except that neither Party shall take into account periods of coverage occurring prior to the effective date of its laws.

(3) Determinations made before the entry into force of this Understanding shall not affect rights arising under it.

(4) This Understanding shall not result in the reduction of the amounts of benefits already established because of its entry into force.

(5) The period of work referred to in the last sentence of Article V 2 a shall be measured beginning on or after the date on which this Understanding enters into force.

Article XVII

(1) This Understanding shall remain in force and effect until the first of the following dates:

December 31 of the calendar year following the year in which written notice of its denunciation is given by one of the Parties to the other Party;

or the date the Social Security Agreement between Canada and the United States signed on March 11, 1981 ceases to remain in force and effect.

(2) If this Understanding is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Parties shall make arrangements dealing with rights in the process of being acquired.

Article XVIII

This Understanding shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Understanding.

In witness whereof, the undersigned representatives of the Parties being duly authorized thereto, have signed the present Understanding.

Done at Québec on March 30 in duplicate in the English and French languages, both texts being equally authentic.

For the Government

of Québec

JACQUES-YVAN MORIN

For the Government of the

United States of America