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Application

This circular cancels and replaces Information Circular 72-5R, *Registration of Supplementary Unemployment Benefit Plans*, dated July 8, 1974.

General

¶ 1. This circular informs employers, trustees, benefit consultants, and other interested parties about the provisions of the *Income Tax Act* (the Act) and the Canada Customs and Revenue Agency's (CCRA) administrative rules that apply when registering a supplementary unemployment benefit plan (SUBP). Information is also included on deducting contributions, filing plan amendments, winding up a plan, and reporting requirements for a plan trust.

¶ 2. A SUBP is a plan established by an employer or group of participating employers to top up employees' employment insurance (EI) benefits during a period of unemployment because of training, sickness, accident or disability, maternity or parental leave, or a temporary stoppage of work.

¶ 3. This circular has two parts:

Part I – Conditions for Application and Registration
(§§ 4 to 6)

Part II – General Information
(§§ 7 to 15)

Part I – Conditions for Application and Registration

Authority – Section 145 of the *Income Tax Act*

¶ 4. To register a plan, you need to send us the following documents:

- (a) a letter signed by each employer participating in the plan, requesting that the plan be registered;
- (b) for a plan with more than one employer, a list giving the full name and address of each participating employer and the effective date of each employer's participation in the plan;
- (c) a copy of the rules or terms of the plan;
- (d) a certified copy of the trust agreement or deed—the copy of the trust agreement must contain the signatures of all employers participating in the trust;

Notes

The trustee of a trust governed by a SUBP may be an individual, a group of individuals, or a corporation licensed or otherwise authorized to offer its services as a trustee.

For points (c) and (d) above, we will accept one plan document that contains both the plan rules and the trust agreement.

- (e) if the plan provides for benefits to be paid during a period of unemployment because of training, sickness, accident, disability, or a temporary stoppage of work, a copy of the letter of acceptance from the Employment Insurance Commission under the *Employment Insurance Regulations*;

Note

If the plan only provides for benefits to be paid for maternity or parental leave, we do not need a letter of acceptance from the Employment Insurance Commission.

- (f) a copy of any collective agreements or part of such agreements that state the conditions that apply to the plan rules and trust agreement;
- (g) written confirmation from each employer participating in the plan, at the time the application is made, of employees eligible to participate in the plan (eligible employees); and

- (h) if the plan was operating in the year before the year you applied for registration, a copy of the financial statements of the trust for the preceding year.

Send your application for registration to:

Registered Plans Directorate
Canada Customs and Revenue Agency
3rd floor
45 Sacré-Cœur Boulevard
Hull QC K1A 0L5

¶ 5. For purposes of section 145 of the Act, a SUBP can be accepted for registration by the Minister of National Revenue if the plan satisfies the following conditions:

- (a) The employer's contributions must be made to, and the benefits must be paid out of, or under a trust. The trust has to be a trust in Canada with a fiscal period ending on December 31.

The following plans do **not** qualify for registration:

- a plan that provides for payments to be made out of an operational revenue fund, or out of the general operating revenues of a public or private entity, to employees or former employees; or
- a plan that provides for contributions to be made to, and benefits to be paid from or under a contract for insurance.

- (b) The plan must not be, in nature or by operation, a superannuation, pension, retirement savings, deferred profit-sharing, or an employees' profit-sharing plan.
- (c) The funds of the trust must be used only for paying periodic amounts (benefits) to eligible employees who are, or may be, laid off for a temporary or indefinite period for:

- sickness, accident, or a disability;
- temporary lay-off caused by a stoppage of work;
- training; or
- maternity or parental leave.

The benefits listed above must also comply with the *Employment Insurance Regulations* administered by the Employment Insurance Commission. Further information on the Employment Insurance Commission and the *Employment Insurance Regulations* can be found on the Internet at www.hrdc.gc.ca/sub-pse.

Benefits must **not** be paid:

- for vacation leave;
- for separation or the end of employment;
- on or after retirement; or
- to keep, in whole or in part, the former level of remuneration of an employee who has, for technological reasons, been transferred to new employment at a lower level of remuneration.

Benefits paid to eligible employees are to be included in calculating the income of the eligible employee in the year the benefit is received.

- (d) Amounts paid out of the trust as a result of an amendment to wind up the plan must be paid to the employer or participating employers, as appropriate. The amounts received must be included in the calculation of the employer's income for the year in which the amount was received.

- ¶ 6. (a) The plan has to state the class or classes of eligible employees to be covered and the eligibility requirements. The eligible employees must be employees who are eligible to receive EI benefits.

The plans must **not** give benefits to:

- (i) a partner or proprietor;
- (ii) a person who, individually or as one of a group of related persons, directly or indirectly controls the employer; or
- (iii) a parent, spouse, common-law partner, or child of such a person identified in (i) or (ii) above.

Note

In the case of a corporation, "control" means the right in ownership of the number of shares necessary to provide a majority of the votes in the election of the Board of Directors of the corporation or to authorize the wind-up of the corporation. If there is no share capital, a person who has the ability to appoint the Board of Directors of the corporation will be considered to control the corporation.

- (b) The method for determining the benefits payable to eligible employees must be stated clearly in the plan rules and the benefits payable must be reasonable. We consider "reasonable" to be a combined weekly benefit, representing the eligible employee's weekly EI benefits plus any benefits paid under a registered SUBP. This amount must not be more than 95% of the weekly amount paid to the eligible employee, based on annual remuneration, received in the year preceding the lay-off or leave.

Example

In the following situation, the maximum weekly amount payable from the SUBP is:

pre-lay-off remuneration	\$300 per week
maximum benefit (95%)	\$285 per week
less EI benefits	<u>\$170 per week</u>
amount to be paid from the SUBP	\$115 per week

- (c) The plan must establish:
- (i) the amount and timing of employers' contributions; and
 - (ii) the maximum funding level of the trust.

Contributions and the maximum funding level have to be reasonable for the number of eligible employees, their levels of remuneration, and the benefit provisions of the plan.

We consider the following formula for determining the maximum funding level to be reasonable:

one third of the amount of weekly SUBP benefits payable \times the number of weeks benefits are payable (to a maximum of 52 weeks) \times the number of eligible employees.

- (d) The plan must provide that all eligible employees will be informed promptly, in writing, of the terms of the plan, and will be told periodically of their contingently accrued credits, or given access to such information on request.
- (e) The plan must provide for the disbursement of funds on wind-up of the plan. The acceptable methods for settlement are stated in ¶s 10 and 11.
- (f) The plan must not provide for the transfer of amounts to an employees' welfare fund during the operation of the plan or at plan wind-up. The term "employees' welfare fund" refers to any fund that is kept for the general welfare of the employees. Examples of welfare funds are:
 - a wage loss replacement plan (other than a SUBP)
 - a private health service plan
 - an income maintenance plan
 - a supplementary health care plan
 - a sick leave plan
 - a health and welfare trust
 - a sickness or accident plan
 - an emergency medical care plan
 - a disability insurance plan

Part II – General Information

Amendments

¶ 7. Plan amendments, changes in trustees, changes in employer information, and additions to or deletions from the list of participating employers must be sent to the Registered Plans Directorate at the address listed in ¶ 4.

If there is a change in trustee, you have to send us a certified copy of the new trust agreement, which includes the signature of all parties to the trust.

Plan amendments or changes in trustee or employer information must be submitted within 30 days of their effective date.

Deductibility of Contributions

¶ 8. Employer contributions made to the trustee of the plan are tax deductible. There are no contribution limits stated in the Act. However, the maximum funding level (see 6(c)) stated in the plan rules will limit the amounts that can be contributed.

After the maximum funding level is reached, employer contributions can no longer be made.

¶ 9. Although the *Income Tax Act* does not prevent employees from making contributions, paragraph 37(2)(e) of the *Employment Insurance Regulations* prohibits employee contributions.

Winding Up a Plan

¶ 10. We have to be notified when a plan is terminated or wound up, and the following documents must be submitted:

- (a) a letter, plan amendment, or board resolution telling us that the plan has been wound up and giving the date of the wind-up;
- (b) a copy of the financial statements of the trust on the date of wind-up; and
- (c) after all funds have been paid out, a statement from the trustee giving the date the last of the plan funds were paid out and the method of settlement (see ¶ 11).

Acceptable Methods of Settlement on Plan Wind-Up

¶ 11. The following forms of settlement are acceptable:

- (a) prior to wind-up, continued payment of benefits to eligible employees until all funds of the plan have been paid out; and
- (b) refund of amounts to employer or participating employers as appropriate.

Note

If you wish to settle in another way, you must send us a written request before paying any amounts out of the plan. Send the request to the address noted in ¶ 4.

Tax on a Trust

¶ 12. The earnings of a trust governed by a SUBP are not subject to tax while the plan is registered under section 145 of the Act.

Tax Year of a Trust

¶ 13. The tax year of a trust governed by a SUBP is the calendar year or part-year in which the trust existed.

Annual Return of a Trust

¶ 14. The trustee of a SUBP must complete Form T3S, *Supplementary Unemployment Benefit Plan Income Tax Return*, and file it within 90 days of the end of each calendar year for which the trust is in effect. Copies of the return are available at your local tax services office or from our Web site at www.cra.gc.ca.

Send the completed return to:

Ottawa Technology Centre
875 Heron Road
Ottawa, ON K1A 1A2

Help and More Information

¶ 15. You can get help and more information by contacting the Registered Plans Directorate:

General Enquiries: 1-800-267-3100 or
(613) 954-0419 (English)
1-800-267-5565 or
(613) 954-0930 (French)

Facsimile: (613) 952-0199

You can also visit the CCRA Web site at **www.ccra.gc.ca**.

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