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chapter R-9, r. 27

Regulation respecting the implementation of an amendment to the Agreement on Social Security between the Gouvernement du Québec and the Government of the Grand Duchy of Luxembourg

An Act respecting the Québec Pension Plan

(chapter R-9, s. 215)

Tax Administration Act

(chapter A-6.002, s. 96)

An Act respecting the Ministère de l'Emploi et de la Solidarité sociale and the Commission des partenaires du marché du travail

(chapter M-15.001, s. 10)

An Act respecting the Ministère de la Santé et des Services sociaux

(chapter M-19.2, s. 10)

1. The following Acts and the Regulations made thereunder apply to any person referred to in the Amendment to the Agreement on Social Security between the Gouvernement du Québec and the Government of the Grand Duchy of Luxembourg, dated 22 September 1987, signed on 2 April 1992, appearing in Schedule I:

- (1) the Hospital Insurance Act (chapter A-28);
- (2) the Health Insurance Act (chapter A-29);
- (3) the Act respecting the Québec Pension Plan (chapter R-9);
- (4) the Act respecting health services and social services for Cree and Inuit Native persons (chapter S-5); and
- (5) the Act respecting health services and social services (chapter S-4.2).

O.C. 1670-92, s. 1.

2. Those Acts and the Regulations made thereunder apply in the manner provided for in the Amendment.

O.C. 1670-92, s. 2.

3. *(Omitted).*

SCHEDULE I

(s. 1)

The Gouvernement du Québec

and

the Government of the Grand Duchy of Luxembourg

Considering that it is expedient to adapt the Agreement on Social Security between Québec and Luxembourg to the legislative amendments made since it came into force;

Considering their common desire to facilitate the application of the Agreement;

Agree to the following:

ARTICLE 1

The Agreement on Social Security between Québec and Luxembourg, signed at Québec on 22 September 1987, is amended as follows:

1. In Article 2, the words «including supplementary insurance for mine workers, metal workers and professional drivers» are struck out in Paragraph *b* of Paragraph 1.

2. In Article 3, Paragraph *d* of Paragraph 1 is amended as follows:

«*(d)* any person who is or has been subject to the legislation of one or both Parties or who has acquired rights under their legislation.».

3. In Article 3, Paragraph 2 is struck out.

4. The following Article 5.1 is inserted after Article 5:

«Article 5.1

Anti-combinatory provisions

1. The clauses governing reduction, suspension or discontinuation and provided for in Luxembourg legislation in the case of the combination of benefits with other social security benefits or with occupational income, or as a result of the carrying out of a professional activity, apply to the beneficiary even where the benefits are acquired under the legislation of the other Party or where occupational income is earned or a professional activity is carried out in the territory of the other Party.

2. For the purposes of Paragraph 1, the benefits that are provided for in legislation applicable to Québec and that are dependent on an examination of income are not taken into consideration.».

5. In Article 7, Paragraph 3 is struck out.

6. In Article 8, the last sentence of Paragraph 2 is amended as follows:

«Where applicable, Paragraph 2 of Article 7 applies by analogy.».

7. The following is substituted for Article 14:

«Article 14

Entitlement to benefits under Luxembourg legislation

1. Where a person is not entitled to benefits under Luxembourg legislation solely on the basis of insurance periods completed under that legislation, entitlement to the said benefits is determined by totalizing the said periods with the periods completed in Québec, as long as those periods do not overlap.

2. *(a)* for the purposes of entitlement to an old age pension under Luxembourg legislation, the eligible periods under the Old Age Security Act that applies in the territory of Québec, expressed in months and occurring prior to 1 January 1966, and the eligible periods under the Québec Pension Plan, expressed in years, as well as the eligible periods under the Old Age Security Act that applies in the territory of Québec, expressed in months, not taken into account under the Québec Pension Plan and occurring

after 31 December 1965, are considered periods validly covered by contributions under Luxembourg legislation;

(b) for the purposes of entitlement to an early old age pension between ages 57 and 60 and to a disability or survivor's pension under Luxembourg legislation, the eligible periods under the Old Age Security Act that applies in the territory of Québec, expressed in months and occurring prior to 1 January 1966, and the eligible periods under the Québec Pension Plan, expressed in years and occurring after 31 December 1965, are considered periods validly covered by contributions under Luxembourg legislation.

3. For the purpose of calculating periods completed in Québec, an insurance year corresponds to 12 months under Luxembourg legislation.

4. Periods that, under Luxembourg legislation, have the effect of prolonging the reference period during which the work period required for entitlement to disability and survivor's pensions must have been completed are also taken into consideration where those periods are completed in the territory of the other Party.

5. Paragraph 1 applies by analogy for the inclusion, in accordance with Luxembourg legislation, of an insurance period following the birth of a child to an insured who sees to the child's upbringing. The application of the preceding provision is subordinate to the condition that the insured has completed, lastly, insurance periods under Luxembourg legislation.».

8. The following Article 14.1 is inserted after Article 14:

«Article 14.1

Settlement of benefits under Luxembourg legislation

1. Where a person may claim a pension under Luxembourg legislation without it being necessary to apply Paragraphs 1 to 4 of Article 14, the Luxembourg institution calculates, in accordance with the provisions of the legislation it is applying, the pension corresponding to the total duration of the insurance periods to be taken into account under that legislation.

That institution also calculates the pension that would be due under the provisions of Paragraph 2 below.

Only the highest amount is used.

2. Where a person may claim a pension under Luxembourg legislation and is entitled thereto only by virtue of totalizing the periods provided for in Paragraphs 1 to 4 of Article 14, the following rules apply:

(a) the Luxembourg institution calculates the theoretical amount of the pension to which the applicant would have been entitled if all the periods completed under the legislation of the two Parties had been completed exclusively under its own legislation;

(b) on the basis of that theoretical amount, the Luxembourg institution then sets the actual amount of the pension on a prorata basis to the duration of the insurance periods completed under the legislation it is applying, in relation to the duration of the periods completed under the legislation of the two Parties;

(c) for the purpose of determining the theoretical amount referred to in Paragraph a above, the Luxembourg institution takes into account, for the periods completed under the legislation of the other Party:

(i) as far as calculation of the proportional and special proportional increases is concerned, the average of the pensionable wages, salaries and income for the insurance periods completed under the legislation it is applying;

(ii) as far as calculation of the lump-sum and special lump-sum increases is concerned, a lump-sum amount equal to the amount that would be due if those periods had been completed under the legislation it is applying.

3. Where the person may claim a pension under Luxembourg legislation only under the provisions of

Article 15, the insurance periods completed under the legislation of a third State are taken into consideration for the purposes of Paragraph 2 above.».

9. In Article 26, the title and Paragraph 1 are amended as follows:

«Benefits for a self-employed person and for a person on assignment

1. When he is subject to the legislation of one Party and works in the territory of the other Party, a person referred to in Article 7 or 8 benefits, as do his accompanying family members, from:

(a) benefits in kind granted by the institution of the host territory, according to the provisions of the legislation applied by that institution, from the day of arrival in the host territory;

(b) cash benefits granted by the competent institution in accordance with the provisions of the legislation it is applying.».

10. In Article 31, the following sentence is added to Paragraph 2:

«As far as Québec is concerned, the competent institution furnishes information relative to benefits payable by that Party with the express authorization of the person submitting an application.».

11. The following Paragraph *h* is added to Paragraph 2 of Article 38:

«(h) For the awarding of transitional lump-sum increases in Luxembourg pensions, the insurance periods completed under Luxembourg legislation prior to 1 January 1988 by insureds that have not resided in the territory of Luxembourg are combined with periods of residence.».

ARTICLE 2

1. Each contracting Party shall notify the other Party of the completion of the internal procedures required for the coming into force of this amendment.

2. This amendment comes into force on the first day of the third month following completion of the notification procedure provided for in Paragraph 1.

Drawn up at Québec, on 2 April 1992, in duplicate.

JOHN CIACCIA,

For the Gouvernement du Québec

ALPHONSE BERNIS,

For the Government of the Grand Duchy of Luxembourg

O.C. 1670-92, Sch. I.

REFERENCES

1992 G.O. 2, 2849

O.C. 1670-92, 1992 G.O. 2, 5152

S.Q. 2010, c. 31, s. 91