

## Income Tax

RRQ. 7-2 Pensionable Employment and Employment Outside Canada  
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Reference(s): *An Act respecting the Québec Pension Plan* (R.S.Q., c. R-9), sections 2, 4, 7, 50, 52, 55 and 215  
*Regulation respecting pensionable employment* (R.R.Q., 1981, c. R-9, r.8, as amended), sections 8, 9 and 21

The purpose of this bulletin is to determine if employment outside of Canada (except for employment in a transportation enterprise) is pensionable employment for the purposes of the *Act respecting the Québec Pension Plan* (the “Act”).

### APPLICATION OF THE ACT

1. For a compulsory employee contribution under sections 50 and 52 of the Act or an optional employee contribution under section 55 of the Act to exist, pensionable salary and wages must be paid to an employee. Section 45 of the Act provides, in particular, that the amount of the pensionable salary and wages of a worker for a year is his income for the year from pensionable employment; hence, the importance of determining whether or not the work is pensionable under the Act.
2. Any employment in Québec is, in accordance with section 2 of the Act, pensionable under the Act, unless it is excepted by law or by a regulation.
3. When employment is outside Québec, it is nonetheless deemed to be in Québec, according to section 7 of the Act, when the establishment of the employer to which the employee reports for work is situated therein, and, where the employee is not required to report for work at any establishment of his employer, when the establishment of his employer from which his remuneration is paid is situated in Québec.
4. Moreover, paragraph *a* of section 4 of the Act provides that the Régie des rentes du Québec (the “Board”) may make regulations for including in pensionable employment any employment outside Québec that would be pensionable if it were in Québec.
5. Pursuant to the third paragraph of section 8 of the *Regulation respecting Pensionable Employment* (the “Regulation”), employment outside Canada that would be pensionable employment if it were performed in Québec shall also be considered as pensionable employment

as long as it is performed by a person subject to the Act under an agreement entered into under section 215 of the Act.

Employment outside Québec of a Canadian citizen as an agent-general, officer or servant of Québec is also pensionable employment, according to section 9 of the Regulation.

**6.** When the employment outside Canada is not pensionable employment for the purposes of the sections of the above Act or Regulation, the employer may make a voluntary arrangement with the Board in order for the employment of his employees to become pensionable employment for the purposes of the Act.

Thus, employment outside Canada that would be pensionable employment if it were performed in Québec, shall, in accordance with the first paragraph of section 8 of the Regulation, be included in pensionable employment if performed for an employer having an establishment in Québec and if the employer, in respect of his employees who were assigned outside Canada at a time they were resident in Québec, makes an arrangement with the Board for the payment of contributions in respect of such employment.

According to the second paragraph of section 8 of the Regulation, employment that would be pensionable employment if it were performed in Québec and that is performed outside Canada by a Canadian citizen for the account of a foreign affiliate of an employer having an establishment in Québec shall also be considered as pensionable employment for a period of not more than 5 years from the time of the assignment, if such employer makes on behalf of his employees who resided in Québec at the time they were assigned to his foreign affiliate outside Canada an arrangement with the Board for the payment of contributions in respect of such employment.

**7.** Furthermore, section 21 of the Regulation prescribes, in particular, that for the purposes of section 55 of the Act, employment described in the first paragraph of section 8 of the Regulation is pensionable employment, where the employer has not signed any arrangement, where the employee who performs it resides in Québec within the meaning of section 8 of the Act, or is deemed to be employed in Québec in accordance with the *Taxation Act*.

**8.** The expression “at any establishment of his employer” used in section 7 of the Act refers to any establishment of the employer, whether it be in Canada or outside Canada.

**9.** For example, employment in France by an employee who is not required to report for work at an establishment of his employer will be pensionable for the purposes of the Act if the establishment of the employer from which the employee’s remuneration is paid is situated in Québec. If the employer has an establishment in France and the employee is required to report for work at that establishment, the employment will not be pensionable employment for the purposes of the Act.

However, if the employment outside Canada is not pensionable employment in accordance with section 2 or 7 of the Act, it may still be pensionable pursuant to the Regulation enacted in accordance with paragraph a of section 4 of the Act (see 4 to 7 above).

**10.** Where Québec has signed a social security agreement with the country in which the employment is performed, the contents of that agreement must be examined. To the extent that an employee is subject to the Act under a social security agreement, his foreign employment shall be

pensionable for the purposes of the Act without the necessity of making an arrangement under the first or second paragraph of section 8 of the Regulation.

**11.** The third paragraph of section 8 of the Regulation, however, only came into force on May 12, 1988 (G.O. II 88-04-27, p. 1940) and only applies in respect of employment outside Canada after May 11, 1988. Consequently, the signing of an arrangement provided for in the first or second paragraph of section 8 of the Regulation could be necessary for the employment of an employee assigned outside Canada before that date to be considered as pensionable employment, even if Québec has signed a social security agreement with the country involved.

**12.** In general, social security agreements provide that a person is only subject to the legislation of the Party on whose territory that person is employed. However, a person subject to the legislation of Québec and temporarily assigned by his employer to the territory of a foreign country, is only subject, with respect to his employment, to the legislation of Québec throughout his assignment. The latter rule applies for a period of 24 to 60 months, according to the country with which the agreement was signed. However, if the duration of the employment exceeds the period covered by the agreement, Québec's legislation still applies, provided that the competent institutions of the two Parties agree thereto.

**13.** For example, in the Social Security Understanding between the Government of Québec and the Government of the United States of America, subparagraph *a* of paragraph 2 of article V provides that 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. This rule shall apply provided that the period of work in the territory of the other Party does not exceed 60 months. In addition, subparagraph *ii* of subparagraph *c* of paragraph 2 of article V of that Understanding provides that with the prior mutual consent of the Competent Authorities of the Parties, the provisions of subparagraph *a* also apply where the period of work in the other Party exceeds or is expected to exceed 60 months.

**14.** The agreements signed by Québec which are presently in force concern the following countries: Barbados, Denmark, Dominica, the United States, Finland, France, Greece, Italy, Jamaica, Luxemburg, Norway, Portugal, West Germany, Saint Lucia and Sweden.

**15.** Lastly, where an employer wishes to make an arrangement referred to in the first or second paragraph of section 8 of the Regulation, he must apply therefor to the Ministère du Revenu. The Ministère then sends him a copy of the arrangement which he must complete. When the arrangement is returned to the Ministère, the latter has it approved by the Board and sends the reply to the employer. The effective date of that arrangement, though, cannot predate by more than forty-eight (48) months the date on which the Board receives the employer's signed request.