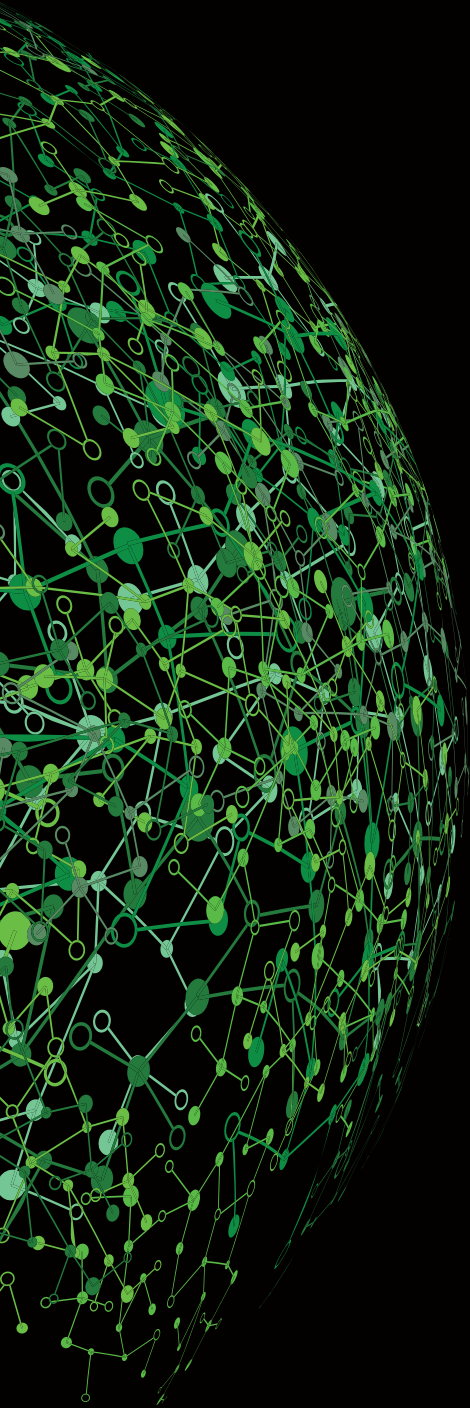


COVID-19

Tax considerations for helping employees



In an effort to control the COVID-19 pandemic, countries around the world are imposing travel restrictions and issuing health guidance. Many employers are also taking measures such as allowing employees to work from home or repatriating them back from foreign locations.

This communication addresses the Canadian employment tax issues associated with certain measures that may be taken by employers during this difficult time. The commentary is valid as of March 16, 2020, and is subject to change as we receive additional announcements from federal and provincial authorities.

Considerations related to home office expenses

In response to COVID-19, many companies are allowing employees to work from home. Those working from home may want to claim a deduction on their personal income tax return for home office expenses incurred.

In order for employees to deduct employment expenses from their income, including home office expenses, employees must be **required** to work from home and to bear the expenses. Under such circumstances, employers are advised to issue Form T2200 "Declaration of Conditions of Employment." Simply **permitting** employees to work from home may not meet the eligibility criteria and employers should not issue T2200 under this circumstance until the CRA issues administrative relief or other guidance.

Planning: Employers may consider requiring employees to work from home. This should be documented in writing. An email clearly laying out the terms—i.e., the home workspace is where the employees mainly (more than 50 percent of the time) do their work—could be considered sufficient.

Consideration: Employees can deduct expenses for the employment use of a workspace at home, as long as the expenses are incurred to earn employment income. Additional costs that are deductible include the prorated share of cost of electricity, heating, cleaning materials, and minor repairs. Mortgage interest, property taxes, home insurance, and depreciation are not deductible. Employees should retain and have readily available support of the claims being made. Please let us know if you need our assistance in drafting employee communication, FAQs, listing of expenses that may be deductible to the employee.

Financial support offered to employees working from home

Not every home is properly equipped as a home office. When employees transition to working remotely, companies may consider providing an allowance or stipend to the employees to purchase necessary office supplies. In lieu of a cash allowance, companies may also choose to reimburse employees for the cost of purchasing office equipment, such as monitors, desk, and office chair.

The tax treatment of such cash allowance or reimbursement is generally taxable. Under the current CRA legislation, regular employees are not allowed to deduct the cost of purchasing or leasing office equipment. Accordingly, allowance or reimbursement received by an employee for this purpose is considered a taxable benefit and is required to be included in income in the year of receipt.

Planning: Employers should consider not simply providing a cash allowance or reimbursement to employees, but instead purchasing or leasing equipment for them. While employees are working from home, there should be no taxable benefit to the employees as the employer is the primary benefactor. Any personal use may be considered incidental to business purposes and not considered taxable. In the case where the employer is purchasing the equipment for employees, if employees are allowed to keep the equipment after they are no longer required to work from home, the employer would not be considered the primary benefactor and the value of personal use of such equipment would be considered taxable.

Consideration: Where the benefit is considered taxable to employees, the employer should consider whether the company will bear the additional tax cost on the benefit or whether the employee will be responsible for the tax. In the event that the employer is bearing the tax cost, a tax gross up is required. In either case, this should be clearly communicated to employees to avoid surprises later on.

Considerations related to parking/mileage reimbursements

Where employees continue to work in the employer office space, they may choose private transportation over public transit to avoid possible exposure to COVID-19. Travel between an employee's home and his or her regular place of employment is generally considered personal travel. Accordingly, the reimbursement by the employer of any mileage and parking expenses incurred relating to travel to work is taxable to the employee.

Consideration: Where the benefit is considered taxable to employees, the employer should consider whether the company will bear the additional tax cost on the benefit or whether the employee will be responsible for the tax. In the event that the employer is bearing the tax cost, a tax gross up is required. In either case, this should be clearly communicated to employees to avoid surprises later.

Reporting of taxable benefits and related tax withholding obligations

In the case where the benefits noted above are subject to tax, income tax withholding and reporting is required. If the employer will be bearing the tax cost on behalf of its employees, and the employees are receiving the net benefit, the taxes paid by the employer would also be considered a taxable benefit. The employer should fund the income tax by remitting the income tax withholding (including the "tax on tax") to the CRA through payroll. The total benefit (including the "tax on tax") should be reported on Form T4 as wages.

If the employee will bear the tax cost, the employer is required to withhold income tax from the employee's regular pay in the period the employee receives the underlying benefit. Considerations should be given to the cash flow implications to the employee.

Eligibility for Employment Insurance (EI)

The Government of Canada has waived the one-week waiting period for the claim of EI sickness benefit due to COVID-19.

For employees who have no paid leave benefit but are eligible for Employment Insurance benefits, they can apply for EI sickness benefits if they are in medical quarantine or asked to self-isolate by their employers for 14 days. With the waiving of the waiting-period, employees can get EI benefits for the full 14 days.

For employees who fall sick beyond the 14-day period, they can receive an additional 13 weeks of EI sickness benefits (up to 15 weeks in total). The amount is calculated based on 55 percent of one's insurable earnings for the last 12 months (or since the last claim) up to a maximum of \$573 a week.¹

Consideration: Employers may consider providing "top-up" benefits to employees who are unable to work due to COVID-19 and are collecting EI benefits. Until further guidance from the CRA, any Supplementary Unemployment Benefit Plans need to be registered.

Both EI and supplemental payments are taxable to the employees in the year of receipt.

Considerations related to temporary relocations

If an employee is temporarily working in a foreign location and must evacuate to return to Canada, the reimbursement of travel expenses, including temporary board and lodging in Canada, could be considered employment-related and therefore not subject to income tax. Reimbursement of travel expenses for family members is taxable.

However, if an employee is in a foreign location for personal reasons (for example, on vacation) and must evacuate to return to Canada, any reimbursement of travel costs from the employer should be considered a taxable benefit and subject to income tax.

Planning: Where required, employers should consider reimbursing the travel expenses, including board and lodging, instead of providing a cash allowance. Any non-accountable allowance would be considered a taxable benefit.

Consideration: Where the benefit is considered taxable to employees, the employer should consider whether the company will bear the additional tax cost on the benefit or whether the employee will be responsible for the tax. In the event that the employer is bearing the tax cost, a tax gross up is required. In either case, this should be clearly communicated to employees to avoid surprises later.

Note that the tax treatment of any such "benefit" should be considered under the foreign country's tax rules.

¹In order to claim EI sickness benefits, employees must be losing 40 percent or more of their weekly income and have worked 600 hours or more during the last 52 weeks or since their last claim for EI benefits. The requirement for a medical certificate has been waived.



Potential impact for cross-border employees

Where an employer has any employees working on assignment or travelling for business outside Canada for employment reasons, any changes to their assignment set-up, including working remotely, could change the employee's personal and the employer's payroll obligations. In some cases, these changes could affect the availability of income tax treaty exemption and/or require revisiting the payroll set-up to accommodate the new travel pattern.

Consideration: In times such as these, it is critical for employers to put employee health and safety first. At the same time, clarity in communications is paramount. Foresight and planning could help employers mitigate potential exposure.

Considerations should COVID-19 be classified a disaster in Canada

Employers may provide direct financial assistance to employees (not shareholders or those with power to control company decisions) who are affected by a disaster. The assistance² provided shall not be treated as remuneration/ wages if the person is receiving the payment in his or her capacity as an individual instead of as an employee. The payment must be made for humanitarian reasons and is voluntary, reasonable, and not based on employment factors or in exchange for any future employment services. The payment is to compensate the individual for any losses or damages suffered during a disaster and is not a substitute for regular salary.

Consideration: If the financial assistance payment is not taxable to employees, it is likely that an employer is not able to claim a corporate tax deduction for such payments as business expenses.

²<https://www.canada.ca/en/revenue-agency/campaigns/about-canada-revenue-agency-cra/disasters-disaster-relief/financial-assistance-payments-your-employer-your-employee.html>

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