

Employer Health Tax

Information Bulletin

2-96

Remuneration

July 2006

This publication is provided as a guide for use by employers. It is not intended as a substitute for the *Employer Health Tax Act* and regulations.

Purpose

This bulletin will assist employers in determining what amounts are subject to Ontario Employer Health Tax (EHT).

EHT is payable by employers who pay remuneration:

- to employees and former employees who report for work at a permanent establishment in Ontario, and/or
- to employees who do not report for work at a permanent establishment of the employer but who are paid from or through a permanent establishment of the employer in Ontario.

Definition

Remuneration includes all payments, benefits or allowances which are required under sections 5, 6 or 7 of the *Income Tax Act* (ITA) (Canada), to be included in the income of the employee from an office or employment, or would be required to be included if the employee were a resident of Canada.

Taxable total Ontario remuneration means the remuneration after the employer's available exemption is deducted.

Employers are required to pay EHT based on taxable total Ontario remuneration paid to employees or former employees. For example, taxable benefits paid to retired employees are included in taxable total Ontario remuneration even though they are reported on a T4A.

Inclusions

Remuneration generally includes the following:

- salaries and wages
- bonuses, commissions and other similar payments
- advances of salaries and wages
- vacation pay
- gratuities paid through an employer
- taxable allowances and benefits
- directors' fees
- payments for casual labour
- amounts paid by an employer to top up benefits
- stock option benefits (refer to page 5 of this bulletin for further information).

Exclusions

Remuneration does not include the following:

- a pension, annuity or superannuation paid by an employer to a retired employee
- remuneration paid by employers who are native people carrying on business on a reserve
- remuneration paid to native people working for a corporation which is located on a reserve
- remuneration paid to employees by an embassy or a consulate.

To determine what is subject to EHT, an employer should determine whether the amount paid to the employee is required to be included in the employee's income under sections 5, 6, or 7 of the federal ITA. The commentary which follows is intended as a guideline only and is not meant to take the place of the legislation.

Income from an Office or Employment under Section 5 of the Federal Income Tax Act

Bonuses

Bonuses are taxable in the year they are paid, or deemed to be paid, to employees.

Advances

Advances paid on future earnings in respect of salaries, wages or commissions are subject to EHT at the time the advances are paid to employees.

A payment by an employer to an employee is usually considered to be an advance paid on future earnings when there are no provisions for interest to be paid on the amount, and the employer deducts all or part of the advance from the employee's earnings.

Vacation pay

Vacation pay is subject to EHT in the year it is paid to the employee.

Commissions

Although all commission income is subject to income tax, only commissions paid by an employer to its employees are subject to EHT.

Commissions paid to independent contractors or independent agents under a contract for service, are not subject to EHT.

Signing bonuses

An amount paid as a signing bonus is considered remuneration subject to EHT. In addition, any amount paid by an employer to an employee under an agreement that prohibits the individual from engaging in certain activities, either before or after employment, is considered remuneration for EHT purposes.

Gratuities

Gratuities paid to an employee through the employer are subject to EHT. However, gratuities paid to an individual directly by a customer are not subject to EHT since there is no employer-employee relationship between the individual and the customer.

Top-up payments

Some employers top up unemployment benefits (e.g., for maternity leave, temporary or indefinite layoffs, etc.) or workers' compensation benefits to the level of the employee's regular salary. These payments are considered to be employment income under the federal ITA and are subject to EHT.

However, a top-up payment made by an independent third-party trustee, under the terms of a supplementary unemployment benefit (SUB) plan, is not considered remuneration for EHT purposes.

Payments to clergy

Despite vows of perpetual poverty, members of religious orders are considered to receive payments or allowances from a source that is an office or employment. Therefore, although their income may be deducted in special circumstances under subsection 110(2) of the federal ITA, the remuneration paid to them is subject to EHT.

Income from an Office or Employment under Section 6 of the Federal Income Tax Act

Allowances

Amounts paid to employees as an allowance for personal or living expenses or for any other purpose, are taxable benefits and are subject to EHT. These do not include allowances paid to cover:

- reasonable travel expense while performing the duties of an office or employment
- reasonable travel expense while performing the duties of a clergy or minister
- travel, personal or living expense that is expressly fixed by an Act of the Parliament of Canada.

A flat rate car allowance (whether paid monthly, quarterly, annually, or on any other basis) is a taxable benefit included as remuneration subject to EHT.

A reimbursement based on a reasonable amount per kilometre is not considered a taxable benefit and is not subject to EHT.

Clergy's housing allowance

Clergy who are provided with free accommodation, or are paid an allowance for accommodation, are required to include the value of the benefit, or the amount of the allowance, in income for income tax purposes. Therefore, although a deduction may be allowed to the recipient under section 8 of the federal ITA, these amounts are subject to EHT.

Board and lodging

The value of free or subsidized board and lodging provided to an employee is a taxable benefit subject to EHT unless provided at a special work site or remote location.

Gifts

In general, a gift to an employee (in cash or in kind) is considered a taxable benefit and is subject to EHT. However, under an administrative concession granted by the Canada Revenue Agency, employers are able to give employees:

- a maximum of two tax-free, non-cash gifts per year provided the total cost of the gifts to the employer (including GST and PST) does not exceed \$500 and
- a maximum of two tax-free, non-cash achievement or incentive awards per year provided the total cost of the awards to the employer (including GST and PST) does not exceed \$500.

These non-taxable gifts and/or awards are not subject to EHT.

This policy on tax-free gifts does not apply to cash or near-cash gifts and awards such as gift certificates. The value of such gifts and awards is considered a taxable employment benefit and is subject to EHT.

Employee loans

An amount paid by an employer to an employee, with terms and conditions for repayment, is considered to be an employer loan and is not subject to EHT. However, if the interest rate charged on the loan is not at market value (i.e., is less than the rate prescribed under the federal ITA), a taxable benefit could arise and the value of this benefit would be subject to EHT.

Directors' fees	Directors' fees or other fees received in the year in respect of an office or employment (e.g., amounts received for filling the position of corporate director) are taxable benefits and are subject to EHT.
Management fees	<p>If an employee is paid a management fee, it is included in the employee's income. If a management fee is paid to a company or to a self-employed individual, it is generally not considered remuneration and is not subject to EHT.</p> <p>In the case of a one-person operation where the business is incorporated and that person is the sole shareholder and works for the corporation, that person is considered to be an employee of the corporation (not self-employed) and the remuneration paid by the corporation (excluding dividends) is subject to EHT.</p>
Employee profit sharing plans (EPSPs)	An EPSP is an arrangement under which an employer pays a portion of its business profits to a trustee to be held and invested for the benefit of its employees who are members of the plan. An employer's contribution to an EPSP is considered remuneration subject to EHT at the time the contribution is made to the plan.
Use of an employer's automobile	The value of the benefit derived by an employee from personal use of the employer's automobile is a taxable benefit. The calculated standby charge and operating benefit (if applicable) are subject to EHT.
Employee trusts	An employer's contribution to an employee trust plan is included in the employee's income when it is allocated by the trustee each year. It is considered remuneration subject to EHT at the time the employer makes the contribution to the plan.
Disability benefits	<p>A disability benefit paid directly by an employer to an employee is included in the income of the employee and is subject to EHT. Similarly, when a disability benefit is paid by a third-party administrator, acting as an agent of the employer under the terms of an administrative services only (ASO) arrangement, the benefit paid is also subject to EHT.</p> <p>However, disability benefits not subject to EHT include:</p> <ul style="list-style-type: none"> • those paid by an insurance company, under the terms of an insurance contract between the employer and the insurer and • those paid by an independent third-party trustee, where there is no employer-employee relationship between the trustee and the recipient.
Salary deferral arrangement payments	The amount that an employee has a right to under a salary deferral arrangement, as defined in the federal ITA, is considered remuneration paid during the year the amount is earned and is subject to EHT at that time.
Tuition fees	A tuition fee that is paid on behalf of an employee, or reimbursed to an employee, is considered a taxable benefit and is subject to EHT. However, if the tuition relates to a course usually taken during working hours, at the request of the employer, and for the benefit of the employer, EHT does not apply.

Scholarships	A scholarship or an award paid by an employer to the children of employees is not considered remuneration if the payments are made to a pre-determined number of children selected on the basis of scholastic records or other achievements. However, if the payment is available to all children of employees, with no merit criteria, the payment is subject to EHT. If a scholarship, or any education expense, is paid by an employer to an individual during employment, or immediately after employment, and an agreement exists that the individual will return to work for the employer after the courses are completed, the amount paid is considered a taxable benefit and is subject to EHT.
Life insurance policies	An employer-paid group term life insurance premium is considered a taxable benefit for income tax purposes and is subject to EHT.
Employer-paid premiums or contributions not subject to EHT	<p>The following types of employer-paid premiums or contributions are not included in an employee's income for federal ITA purposes and are not subject to EHT:</p> <ul style="list-style-type: none"> • registered pension plans (employer-paid contributions to a Registered Retirement Savings Plan (RRSP) are subject to EHT) • group sickness or accident insurance plans • private health services plans • supplementary unemployment benefit (SUB) plans • deferred profit sharing plans • retirement compensation arrangements.

Income from an Office or Employment under Section 7 of the Federal Income Tax Act

Stock option benefits	Employers are required to include stock option benefits received in the year by employees and former employees for shares of the employer or a connected corporation of the employer (i.e., a corporation with which the employer does not deal at arm's length).
Federal deferral does not apply to EHT	<p>For federal income tax purposes only, an employee can defer taxation of some or all of the benefit arising from exercising stock options to acquire publicly listed securities until the time the employee disposes of the securities.</p> <p>The federal deferral of taxation on stock option benefits is not applicable for EHT purposes. Employers are required to pay EHT on stock option benefits in the year that the employee exercises the stock option.</p>
Exemption for employers undertaking scientific research and experimental development	<p>For a limited time, employers who directly undertake scientific research and experimental development and meet the eligibility criteria are exempt from paying EHT on stock option benefits received by their employees.</p> <p>For Canadian controlled private corporations (CCPCs), the exemption is available on employee stock options granted before May 18, 2004, provided that the subject shares are disposed of or exchanged by the employee after May 2, 2000 and on or before December 31, 2009.</p> <p>For non-CCPCs, the exemption is available on employee stock options granted before May 18, 2004 provided that the options are exercised after May 2, 2000 and on or before December 31, 2009. All stock option benefits arising from employee stock options granted after May 17, 2004 are subject to EHT.</p>

Further Information

Requests for written interpretations

Binding interpretations concerning remuneration for EHT purposes can only be made by reviewing all the facts of the situation. Where all relevant facts are provided, requests for written interpretations may be sent to:

Ministry of Finance
Tax Advisory Services Branch
Employer Health Tax
33 King Street West
Oshawa ON L1H 8H5

Related publications

Other publications which provide further details on this topic include:

1-97 Permanent Establishment
1-96 How to Identify an Employer-Employee Relationship

Enquiries

For more information concerning this bulletin, or to obtain copies of other Ministry of Finance publications, please visit the ministry website at www.trd.fin.gov.on.ca

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