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Teleworking: What are the allowable expenses for employees and tax impacts for employers?

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The COVID-19 pandemic has changed Canadian workplaces. For many organizations, the pandemic and its containment measures have fast-tracked the shift to teleworking.

In this context, the Canada Revenue Agency (the “**CRA**”) and the Agence du Revenu du Québec (the“**ARQ**”) have published administrative positions regarding deductible expenses for employees working from home as well as for their employers.

Eligible expenses for an EMPLOYEE

The first condition for claiming employment expenses related to teleworking involves being obliged to work from home. The CRA has announced some flexibility in this regard, to the effect that if an employer did not require an employee to work from home but gave them the option to do so because of the COVID-19 pandemic, the CRA will consider the employee to have worked from home as a result of the pandemic.

Temporary flat rate method: Federal and Quebec deduction of $2 per day without Form T2200

On December 15, 2020, the Government of Canada announced that employees who worked from home **more than 50%** of the time for **at least four consecutive weeks** in 2020 will be able to deduct **$2** from their incomefor each day worked during that period and for each additional day worked outside that period, for a maximum of $400.

The temporary flat rate method only applies to the 2020 taxation year.

To qualify, the employee must only deduct only home office expenses and no other employment expenses.

Details of expenses incurred for with teleworking or Form T2200 will not be required to claim this deduction.

On December 16, 2020, the Government of Quebec followed the Government of Canada’s lead by announcing that taxpayers would be allowed to deduct $2 per day for each day worked from home, up to a maximum of $400, without supporting documents or a TP-64.3 form.

Detailed method

In general, an employee (whether a tenant or a homeowner) may deduct reasonable expenses directly related to the use of space in the home for work if and only if at least one of the following two conditions is met:

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(i) The space devoted to work in the home is “the place where the individual **principally** (interpreted by the courts to be more than 50% of the time) performs the office or employment duties”; **or**

(ii) The workspace in the home is “used exclusively [...] to earn income from the office or employment and, on a regular and continuous basis, for meeting customers or other persons in the ordinary course of performing the office or employment duties.”[1]

The period used to assess eligibility criteria for 2020 must be **at least four consecutive weeks**. This period may last more than a month.

If the workspace is part of a residence **rented** by the individual, a reasonable portion of the rent may be deductible.

However, an individual **may not claim any** deduction for the rental value of the workspace in a home **owned** by the individual or for amortization, taxes, insurance or mortgage interest in respect of that home. Notwithstanding the above restrictions, the *Income Tax Act* provides that **employees remunerated by commissions** may deduct a reasonable portion of the taxes and insurance paid for the home they own, if one of the above criteria is met.

It is important to note that these expenses are eligible only to the extent that they are not otherwise reimbursed by the employer.

In order to determine the amount that can be deducted in this way, it is important to use a **reasonable** basis for calculation.For example, the calculation can be based on the area of the workspace in proportion to the total area of the home. Other possible uses of space must also be considered. The use of 100% compared to 75% of the space by an employee is an important factor in the calculation. For example, a kitchen table used as office space by an employee will have mixed use, which will have a direct impact on the amount of deductible expenses.

Eligible expenses
(salaried employees and those remunerated by commission)

Electricity	✓
Heating	✓
Water	✓
Utility portion (electricity, heat and water) of the employee’s condominium fees	✓
Home internet service costs	✓
Maintenance and minor repair costs	✓
Rent paid for the house or apartment where the employee lives	✓

Eligible expenses
(employees remunerated by commission only)

Home insurance	✓
Property taxes	✓
Rental of a cell phone, computer, laptop, tablet, fax machine, etc. that is reasonably related to commission income	✓

Ineligible expenses
(salaried employees and those remunerated by commission)

Mortgage interest	✗
Mortgage payments	✗

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Internet connection fees	✗
Furniture	✗
Capital expenses (replacement of windows, floors, furnace, etc.)	✗
Wall decorations	✗

Note that if an employee can deduct an expense in calculating taxable income for income tax purposes, they may also qualify for a refund of the Goods and Services Tax / Quebec Sales Tax ("GST/QST") paid. GST and QST refunds are taxable and must be included in the employee's income tax return the following year.

It is also important for the employee to keep supporting documents.

The CRA recently developed an expense calculator to simplify calculating eligible expenses.

An employee will have to complete the following forms to deduct expenses and obtain GST and QST refunds:

a) T777 – Statement of Employment Expenses;

b) TP-59 – Employment Expenses of Salaried Employees;

c) GST370 – GST/HST Rebate Application; and

d) VD-358 – QST Rebate for Employees.

In order to deduct employment expenses from income, including certain expenses related to space devoted to working from home, the employee must have received two forms from the **employer**:

a) Form T2200 - Declaration of Conditions of Employment ("**T2200**"); and

b) Form TP-64.3 General Employment Conditions ("**TP-64.3**") (Quebec employee only).

Considerations for the employer

On December 15, 2020, the CRA announced the launch of a simplified process to claim home office expenses for the 2020 tax year. Accordingly, a simplified version of Form T2200 was made available as Form **T2200S**. The form may be found here.

In order for an employee to be able to deduct the expenses described above, Form T2200S must indicate:

1. If the employee worked at home because of the COVID-19 pandemic;
2. If the employer reimbursed or will reimburse the employee for some of the home office expenses; and
3. If the amount was included on the employee's T4 slip.

Finally, the employer will have to certify that "this employee worked from home in 2020 due to COVID-19, and was required to pay some or all their own home office expenses used directly in their work while carrying out their duties of employment during that period."

It is expected that a large number of employees will meet the criteria for this deduction, at least as long as the workplace access restrictions attributable to COVID-19 remain in place.

The ARQ, for its part, has announced that, exceptionally, an electronic signature of the employer on the TP-64.3 form would be permitted. In addition, on December 16, 2020, the Government of Quebec announced that it will launch, in early 2021, an online service for generating a large number of TP-64.3 forms to be sent to teleworkers. This service aims to reduce the administrative burden on medium and large companies. More information on the online platform is expected in 2021.

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Other eligible expenses for an employee

An employee will also be able to deduct certain expenses for supplies consumed directly in the course of their duties to the extent that they are not reimbursed by the employer, such as:

a) Paper, pencils and ink cartridges;

b) Internet costs, if they are charged based on usage. To this end, the CRA has announced that for the 2020 taxation year, it will exceptionally accept monthly residential internet service costs (the cost of the plan must be reasonable).

Expenses reimbursed by an employer

Normally, an amount received from an employer to reimburse an expense is considered a benefit to the employee and must be added to the employee's employment income, unless such expenses are necessary for the performance of the employee's duties.

Employees may not deduct reimbursed expenses.

In addition, in the current context, the CRA and the ARQ have announced that the reimbursement of **$500** by an employer to an employee to offset the cost of acquiring personal computer equipment or office equipment required for telework does **not** constitute a taxable benefit to the employee. For example, if the purchase is a $1,000 desk, the taxable benefit included in the employee's income will be $500.

The CRA has recently announced that this amount will not be increased.

Allowance paid by an employer

Some employers will prefer to pay an allowance directly to their employees who are teleworking to cover the additional costs they incur. In this context, the employer will be able to deduct this allowance in the calculation of its taxable income, provided that it is a reasonable amount.

Normally, the amount of this allowance will be treated as a taxable benefit to the employee and will have to be included in employment income for the taxation year in which the employee receives it, except in the situation covered by the exception mentioned above.

Other considerations for the employer

It is also important for the employer to consider the tax implications—particularly with respect to source deductions—of the location where the employee primarily works during the pandemic if it differs from the location of the employer's establishment where they normally report for work.

The CRA and the ARQ have announced relief in this respect for the 2020 taxation year. For example, the province of work will not change for employees who work from home because of the COVID-19 pandemic. The province for the purpose of calculating source deductions will continue to be the province of the normal place of work. However, if the employee performs their work in a foreign country, certain tax implications for both the employee and the employer should be considered.

Lavery's tax law team can guide you and answer your questions regarding your company's tax compliance.

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1. Technical interpretation IT-352R2.

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