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Tax Executives Institute, Inc. (“TEI”) appreciates the opportunity to share our members’ feedback with the Canada Revenue Agency (“CRA”) concerning the CRA’s draft of a new, simplified version of Form T2200, *Declaration of Conditions of Employment*. The following comments summarize some of the most significant issues raised by a large and diverse group of TEI members working for companies in different industries across Canada, but they do not necessarily represent the official views or positions of TEI as an organization. TEI’s Canadian Income Tax Committee facilitated the compilation of our members’ feedback under the leadership of its Chair, Kurtis L. Bond.¹ Principal responsibility for preparing these comments was exercised by Watson M. McLeish, TEI Tax Counsel.² TEI members would welcome an opportunity to engage with CRA officials to discuss these comments in further detail and answer any questions they may have.

Background

Under existing law, an employee generally may deduct the cost of his or her home office expenses, including work-space-in-the-home expenses and the cost of supplies consumed directly in the performance of employment duties, if such outlays are required by the employee’s contract of employment and certain other requirements are met. One of those other requirements is that the employer complete and sign Form T2200 for the employee, who must retain the signed form in his or her records.

Given the unprecedented number of employees working from home during the COVID-19 pandemic, the CRA is undertaking an initiative to clarify and clearly communicate whether those employees can claim home office expense deductions. A significant part of this initiative will be the introduction of a new, simplified version of Form T2200. To make it easier for employers to complete this form for their employees working from home during the COVID-19 pandemic, the CRA has drafted a simplified Form T2200, *Declaration of Conditions of Employment for Working at Home During COVID-19* (“Form T2200 Short”), which is the subject of these comments.

Discussion

TEI members commend the CRA for undertaking this important initiative to reduce employers’ income tax compliance and reporting burdens in respect of their employees who are working from home during the COVID-19 pandemic. The draft Form T2200 Short is approximately one page in length and contains five questions, which would appear to represent a modest improvement over the existing Form T2200’s three pages and 13 questions. TEI members welcomed a number of the draft form’s refinements, including the confirmations in Part B that a formal contract is not required and that a

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verbal agreement between the employer and employee will be accepted. At the same time, however, our members were troubled to see that the draft Form T2200 Short would require many employers to compile and report additional information beyond what is required by the existing form, which would have the counterproductive effect of *increasing* the compliance burden on those employers. It was also unclear to many of our members why an employer would be required to report information on Form T2200 Short that is not required by the Income Tax Act.³

Considering the unprecedented number of employees who traditionally work in an office environment but are now working from home due to COVID-19, TEI members would urge the CRA to take additional steps to streamline and clarify the information required to be reported on Form T2200 Short. A number of those steps are discussed below.

Clarifying the Application of Current Rules in the COVID-19 Context

Under paragraph 8(1)(i) of the Act, an employee generally may deduct the cost of his or her home office expenses, including:

(ii) office rent, or salary to an assistant or substitute, the payment of which by the . . . employee was required by the contract of employment,

(iii) the cost of supplies that were consumed directly in the performance of the duties of . . . employment and that the . . . employee was required by the contract of employment to supply and pay for[.]⁴

A common element of both subparagraphs 8(1)(i)(ii) and (iii) is that the employee must have been “required by the contact of employment” to pay for the home office expense. This requirement is reflected in questions 1, 2, and 3 of Part B of the draft Form T2200 Short. The draft form also includes two critical clarifications at the outset of Part B—that a formal contract is not required, and that a verbal agreement between the employer and employee will be accepted.

TEI members applaud the CRA for including these explicit clarifications on the face of draft form. At the same time, however, many of our members remain concerned about the true scope and practical application of this standard, especially in the disruptive context of the ongoing COVID-19 pandemic. As a threshold matter, the CRA should consider substituting the term “oral” for “verbal” in the statement that “[a] verbal agreement between the employer and employee will be accepted.” Doing so

³ Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), as amended (the “Act”). Unless otherwise indicated, all references to “section,” “subsection,” “paragraph,” or “subparagraph” herein are to a section, subsection, paragraph, or subparagraph of the Act.

⁴ Subparagraph 8(1)(i)(ii), (iii).



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would remove any doubt that the requisite agreement need not be reduced to writing.⁵ From there, our members would urge the CRA to issue expansive guidance—including illustrative, real-world examples—interpreting and applying this standard in the contemporary COVID-19 business environment. Such guidance could appear in the instructions for Form T2200 Short, the forthcoming Guide T4044, *Employment Expenses 2020*, or both.

Feedback on the Draft Form T2200 Short

The purpose of the draft Form T2200 Short, like the existing Form T2200, is to implement the requirement of subsection 8(10) of the Act, which provides:

Certificate of employer

(10) An amount otherwise deductible for a taxation year under paragraph (1)(c), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form, signed by the taxpayer’s employer certifying that the conditions set out in the applicable provision were met in the year in respect of the taxpayer, is filed with the taxpayer’s return of income for the year.

Here, the relevant “applicable provision” would be subparagraph 8(1)(i)(ii) or (iii), the requirements of which are discussed above. Conspicuously absent from subsection 8(10), however, is any reference to subsection 8(13), which provides additional requirements for employee deduction of work-space-in-the-home expenses. One of those requirements is that the employee’s work space in the home must be “the place where the individual principally performs the duties of employment.”⁶ The CRA’s view is that, in this context, the term “principally” means more than 50 percent of the time.⁷

Part B – Question 2

TEI members are concerned that the second portion of question 2 in Part B of the draft form would require employers to certify that the conditions set out in subparagraph 8(13)(a)(i) of the Act were met in respect of each employee for whom they complete the form. Specifically, our members are deeply concerned about the prospect of having to certify, in respect of each employee, “the period or periods this employee worked from home and whether [the] employee mainly (more than 50% of the time) worked from the work space in their home during each period.” This requirement would be highly problematic for two reasons. First, it would require employers to compile, track, and report additional

⁵ *Compare oral*, Black’s Law Dictionary (11th ed. 2019) (“Spoken or uttered; not expressed in writing.”) *with verbal*, Black’s Law Dictionary (11th ed. 2019) (“Of, relating to, or expressed in words.”).

⁶ Subparagraph 8(13)(a)(i).

⁷ See, e.g., CRA, Interpretation Bulletin IT-352R2, *Employee’s Expenses, Including Work Space in Home Expenses* (Aug. 26, 1994).



information beyond what is currently required by the existing Form T2200. That would directly contravene the CRA’s stated purpose for introducing a new, simplified form in the first place—to make it easier for employers to complete the form for their employees working from home during the COVID-19 pandemic. Furthermore, our members indicate it would be impracticable—if not impossible—for their companies to certify the period or periods that each of their hundreds or thousands of employees worked from home during the COVID-19 pandemic. The reason for this is simple: most companies’ HR or payroll systems do not currently track this information, meaning the period dates for each employee would have to be determined retroactively and completed manually—an untenable prospect given the sheer number of employees involved.

The second reason TEI members are deeply troubled by this question on the draft form is that it would require employers to make a certification that the Act does not require them to make. As set forth above, subsection 8(10) of the Act requires only that the prescribed form is signed by the employer certifying that the conditions set out in the applicable provision were met in respect of the employee. Neither subsection 8(13) nor any of its constituent paragraphs (or subparagraphs) is an “applicable provision” for this purpose. The CRA’s Income Tax Rulings Directorate reached the same conclusion in interpreting the scope of subsection 8(10):

[S]ubsection 8(10) provides that an otherwise deductible claim is not permitted unless a prescribed form (T2200), signed by the employer, accompanies the claim certifying that the requirements of paragraph 8(1)(i) of the Act have been met. The T2200 simply asks the employer whether the employee was required under a contract of employment to use a portion of his or her home. If there is, in fact, a contract or agreement between the employer and the employee which sets out the use of the home work space as one of the conditions of employment (whether part of the main contract or a separate agreement), then the employer may so certify. The Act does not require the employer to consider whether an employee performs the duties of the office or employment “principally” in that [home] office for the purposes of completing a T2200.⁸

Consistent with the CRA’s analysis, it follows that the existing Form T2200 does not require employers to certify whether an employee’s work space in the home is the place where he or she “principally” (or “mainly”) performs the duties of employment.⁹ A similar analysis should apply in designing the simplified version of that form, especially given the CRA’s stated goal of making it easier for employers to complete this form for their employees working from home during the COVID-19 pandemic. Accordingly, TEI members strongly recommend that the CRA remove the second portion of question 2

⁸ CRA, Views Doc. 9620507 (Sept. 20, 1996).

⁹ Question 10 of the existing Form T2200 does, however, ask the employer “approximately what percentage of the employee’s duties of employment were performed at their home office?” TEI members expressed similar concerns about the appropriateness of this question.



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from the final version of Form T2200 Short. In its place, the CRA could further its aim of clearly communicating the application of the rules by reintroducing the explanatory statement that appeared in many prior-year versions of Form T2200, which reminded the employee of the additional requirements for employee deduction of work-space-in-the-home expenses in subsection 8(13).¹⁰

Part B – Question 3

In question 3 of Part B, the draft form asks the employer whether “th[e] employee’s contract of employment requires them to pay for supplies that they used directly in their work.” The employer is then prompted to certify whether the answer to this question is yes or no in respect of two bulleted categories of supplies: “stationary, ink cartridge, postage, etc.” and “use of a cell phone.”

Several TEI members observed that, to a less sophisticated employer, the formulation of the first bullet could have the unintended consequence of narrowing the perceived meaning of “supplies” for this purpose to include only the three listed items. To mitigate this risk, the CRA could reorder and reformulate the two bulleted categories as follows: “use of a cell phone” and “other supplies.”

Part B – Question 4

In question 4 of Part B, the draft form asks the employer to certify whether it did or will reimburse the employee for any home office expense. If the answer is yes, the employer is prompted to certify the amount and type of each such expense, along with whether it is or will be included on the employee’s T4 slip.

TEI members raised significant concerns with the level of detail required to complete the second portion of question 4. In particular, the requirement to determine how much was paid to every employee as a reimbursement or allowance would require a substantial amount of administrative burden, and having to certify the amount and type of each reimbursed expense would be impracticable for many employers. And in many cases, the cost of compliance could exceed the benefit to employees. Accordingly, our members recommend that the CRA revise the second portion of question 4 to require employer certification of reimbursed home office expenses only to the extent that such expenses exceed a de minimis threshold of \$500 for the year.

¹⁰ For example, the 2007 version of Form T2200 included the following restatement of the alternative requirements in paragraph 8(13)(a): “The work space **must** be where the employee mainly (more than 50% of the time) does his or her work **OR** used only to earn the employment income and also used on a regular and continuous basis for meeting clients or customers.”



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Exploring Opportunities to Partner, Communicate, and Amplify Messaging With TEI Members

In addition to promulgating the expansive guidance and illustrative examples requested above, the CRA should consider hosting another series of interactive question-and-answer sessions in which employers and employees could participate. TEI members who participated in the CRA's recent question-and-answer sessions on the Canada Emergency Wage Subsidy program found those sessions very instructive, and TEI would welcome the opportunity to work with the CRA to facilitate a new series of question-and-answer sessions on this important topic. Furthermore, TEI members strongly support the CRA's concurrent efforts to make COVID-19-related revisions to other forms and publications to make employment expense calculations as simple as possible for employees who are working from home during this turbulent time.