

# Ministry of Finance

## *Employer Health Tax Notice*



ISSUED: July 2018

Notice 2018-001

[gov.bc.ca/employerhealthtax](http://gov.bc.ca/employerhealthtax)

## Employer Health Tax

**The information in this notice is for your convenience and guidance and is not a replacement for the legislation. The precise language in the legislation to be introduced in the fall will establish your employer health tax liability.**

This notice provides information about the proposed employer health tax (EHT) that was announced in Budget 2018. This information is subject to change and complete details will be provided after the legislation is enacted in the fall of 2018.

### What is the Employer Health Tax?

The employer health tax will be an annual payroll tax that will apply to employers beginning January 2019. An employer is an entity that has payroll.

Payroll (also known as remuneration) is employment income and taxable benefits under the *Income Tax Act* (Canada) and includes:

- Salary and wages
- Advances of salary and wages
- Payments for casual labour
- Bonuses, commissions and other similar payments
- Vacation payments
- Gratuities or tips paid through an employer
- Taxable allowances and benefits
- Directors' fees paid to directors of corporations
- Amounts paid by an employer to top up benefits (e.g. top up for maternity or paternity leave)
- Stock option benefits
- Employer-paid contributions to an employee's Registered Retirement Savings Plan
- Employer-paid group life insurance premiums

Employer paid contributions or premiums that are not subject to the employer health tax:

- Registered pension plan contributions
- Private health services plan (i.e., extended health) contributions
- Supplementary unemployment benefit plan contributions
- Deferred profit sharing plan contributions
- Retirement compensation arrangement contributions

Additionally, pension, annuity or superannuation payments paid by an employer to a retired employee are not included within payroll.

For a definitive determination of items that are included in employment income, consult the *Income Tax Act* (Canada). The Canada Revenue Agency's [Employer's Guide – Payroll Deductions and Remittances](#) is a good source of information.

## **B.C. Payroll**

The employer health tax will only apply to employers with B.C. payroll which includes the total of the following:

- any payment to employees who report to work at a permanent establishment of the employer in B.C., and
- any payment to employees who do not report to work at a permanent establishment of the employer, but are paid from or through a permanent establishment in B.C.

B.C. payroll does not include any payment to employees who report for work at a permanent establishment of an employer that is outside B.C.

The phrase “report for work at a permanent establishment” connects the employee to a location in B.C. In most cases, the employee reports for work at the location they go to in person on workdays. For example, a retail worker reports for work at the store and a server reports for work at the restaurant.

Generally, a permanent establishment of an employer is a fixed place of business for the employer, such as the following:

- An agency
- A branch
- Factory
- Farm
- Gas well
- Mine

- Office
- Oil well
- Retail store
- Timberland
- Warehouse
- Workshop

**Note:** This is a partial list. Complete details on whether your business has a permanent establishment in B.C. will be provided after the legislation is enacted in the fall of 2018.

## **Employers with payroll in more than one province**

### **Example:**

A national retailer has stores across Canada but pays its employees from a central paymaster in Vancouver, B.C. The salaries and benefit payments paid to employees that report for work at the B.C. stores are subject to the EHT but the salaries and benefit payments to the employees at the stores outside of B.C. are not subject to the EHT.

For employers with payroll in more than one province, more details will be available after the legislation is enacted in the fall of 2018.

## **Tax Rates**

Employers with B.C. payroll:

- Of \$500,000 or less will not pay EHT

Between \$500,000.01 and \$1,500,000 will pay the tax as calculated:

- $2.925\% \times (\text{Payroll} - \$500,000)$

Greater than \$1,500,000 will pay 1.95% on their total payroll:

- $1.95\% \times \text{Payroll}$

## EHT Calculation Examples for Employers

Annual B.C. Payroll	Tax Calculation	Tax Payable	Tax as a Percentage of Payroll
\$500,000 or less	\$0	\$0	0%
\$750,000	$2.925\% \times (\$750,000 - \$500,000)$	\$7,313	0.98%
\$1,000,000	$2.925\% \times (\$1,000,000 - \$500,000)$	\$14,625	1.46%
\$1,250,000	$2.925\% \times (\$1,250,000 - \$500,000)$	\$21,938	1.76%
\$1,500,000	$2.925\% \times (\$1,500,000 - \$500,000)$	\$29,250	1.95%
\$1,500,100	$1.95\% \times (\$1,500,100)$	\$29,252	1.95%
\$2,000,000	$1.95\% \times (\$2,000,000)$	\$39,000	1.95%

### Charity and Non-Profit Employers

A charity is a registered charity with the Canada Revenue Agency.

A non-profit is a club, society or association that is not a charity and is organized and operated solely for:

- Social welfare
- Civic improvement
- Pleasure or recreation
- Any other purpose other than profit

In addition to the having one of the above purposes, the organization must also ensure that no part of its income (donations, membership fees, or service charges etc.) is distributed to members, proprietors or shareholders of the organization. Failure to do so will result in the loss of its non-profit status.

Charitable and non-profit employers with B.C. payroll calculate the EHT for each of their locations and pay the total of each location's EHT. For each location with B.C. payroll:

- Of \$1,500,000 or less, the EHT for the location will be zero
- Between \$1,500,000.01 and \$4,500,000, the EHT for the location will be calculated as:
  - $2.925\% \times (\text{Payroll for the location} - \$1,500,000)$
- Greater than \$4,500,000, the EHT for the location will be calculated as 1.95% of the location's payroll:
  - $1.95\% \times \text{Payroll for the location}$

## EHT Calculation Examples for Charity and Non-Profit Employers

Annual B.C. Payroll at the Location	Tax Calculation for the Location	Tax Payable for the Location	Tax as a Percentage of Payroll
\$1,500,000 or less	\$0	\$0	0%
\$1,750,000	$2.925\% \times (\$1,750,000 - \$1,500,000)$	\$7,313	0.42%
\$2,000,000	$2.925\% \times (\$2,000,000 - \$1,500,000)$	\$14,625	0.73%
\$2,500,000	$2.925\% \times (\$2,500,000 - \$1,500,000)$	\$29,250	1.17%
\$3,000,000	$2.925\% \times (\$3,000,000 - \$1,500,000)$	\$43,875	1.46%
\$3,500,000	$2.925\% \times (\$3,500,000 - \$1,500,000)$	\$58,500	1.67%
\$4,000,000	$2.925\% \times (\$4,000,000 - \$1,500,000)$	\$73,125	1.83%
\$4,500,000	$2.925\% \times (\$4,500,000 - \$1,500,000)$	\$87,750	1.95%
\$4,500,100	$1.95\% \times (\$4,500,100)$	\$87,752	1.95%
\$5,000,000	$1.95\% \times (\$5,000,000)$	\$97,500	1.95%

### Example:

Children 'R Us is a non-profit childcare provider with four locations across the province of different sizes. The payroll at each location is follows:

	Location 1	Location 2	Location 3	Location 4
Payroll	\$900,000	\$400,000	\$450,000	\$1,600,000

Locations 1, 2 and 3 all have payroll less than \$1.5 million and therefore no employer health tax is payable in respect of those locations. Location 4, however, will be subject to the employer health tax since that location has payroll greater than \$1.5 million. The employer health tax for location 4 is \$2,925.

Children 'R Us will file a single tax return aggregating the employer health tax calculated for each location. In this case, Children 'R Us's total employer health tax liability will be \$2,925 for the year.

### Will I Need to File an EHT Return?

The employer health tax does not impose tax on employers with payroll of \$500,000 or less. That means 85% of businesses in B.C. will pay no employer health tax. As a result,

only employers with tax owing (generally remuneration greater than \$500,000 in the year) will be required to file an annual employer health tax return.

## **Special Circumstances**

### **Timing Considerations**

#### **Bonuses**

Bonuses are a form of compensation received by virtue of an employment relationship. Bonuses are therefore subject to the employer health tax in the year they are paid to employees.

#### **Signing Bonuses**

Notwithstanding the fact that a signing bonus might be paid prior to the commencement of an employment relationship, it is nonetheless a form of remuneration that arises from an employment relationship. Therefore, signing bonuses will be subject to the employer health tax in the year they are paid.

#### **Non-Compete Payments**

Some employers require their employees to sign non-compete agreements requiring the employee or former employee to not take a job with the employer's competitor for a period of time. Any payment as a result of such a non-compete agreement will be subject to the employer health tax in the year it is paid.

#### **Commissions**

As commissions are a form of employee compensation, any commissions paid to the employee are subject to the employer health tax in the year they are paid.

#### **Gratuities**

Whether a gratuity (tip) is subject to the employer health tax is dependent upon who facilitates the payment. If the gratuity is paid to the employee through the employer, it is subject to the employer health tax. On the other hand, gratuities paid directly from the customer to the employee are not subject to the employer health tax as there is no employer-employee relationship between the customer and the employee.

#### **Director's Fees**

As the members of a corporation's board of directors hold the "office" of director, any fees they receive are equivalent to employment income. Accordingly, directors' fees are subject to the employer health tax.

## **Advances**

An advance is a payment by an employer to an employee that is in respect of future salary, wages or commissions with no provision for interest payable and will be deducted from the employee's future paycheques. As an advance takes the place of salary, wages or commissions, any advances paid to employees are subject to the employer health tax in the year of the advance.

## **Vacation Pay**

Vacation pay is a form of employee compensation that is either paid out as earned, paid out when used by employee, or paid out when unused according to rules established by the employer. Due to the different timing scenarios, vacation pay is subject to the employer health tax in the year it is paid to the employee.

## **Top-Up Payments**

If you top up unemployment or workers' compensation benefits up to the employee's regular salary, (such as for maternity leave, temporary or indefinite layoffs, etc.) these payments are subject to the employer health tax.

However, if the employee receives a top-up payment from an independent third-party trustee under the terms of a supplementary unemployment benefit plan, those payments are not subject to the employer health tax.

## **Payments to clergy**

Members of religious orders receiving payments or allowances are considered to receive these payments through an employment relationship. As a result, these payments are subject to the employer health tax.

## **Taxable Benefits**

### **Allowances**

An allowance is a periodic or lump-sum amount that is paid to employees to cover expenses of the employee. Unlike a reimbursement, the employee is under no obligation to provide the employer with receipts; it is used as the employee chooses.

Generally, an allowance paid to an employee for personal or living expense or most other purposes will be subject to the employer health tax.

### **Employee Loans**

Unlike an allowance or reimbursement, with an employee loan, the employee is expected to repay the amount. The principal of the loan itself will not be subject to the employer health tax. Typically though, the recipient of a loan is required to pay interest on the outstanding principal. Unless certain conditions apply, if the employee is

charged interest on the loan at less than market rate, the difference will be subject to the employer health tax.

However, if the employee loan is subsequently forgiven by the employer, the forgiven amount will be subject to the employer health tax in the year it is forgiven.

### **Reimbursements**

Unlike an allowance, an employee is required to supply the employer with receipts in order to be reimbursed. As the funds paid by the employer are simply repaying the employee in respect of the employer's expense, reimbursements will not be subject to the employer health tax.

### **Board and Lodging**

Except in cases where the employer provides board and lodging at a special work site or a remote location, the value of any subsidized or free board and lodging to an employee will be subject to the employer health tax.

### **Tuition Fees**

Generally, tuition that is paid on behalf of an employee (including any reimbursed tuition fees) will be subject to the employer health tax. The exception is when tuition is in respect of a course taken for the benefit of the employer; if this is the case, the employer health tax will not apply.

### **Stock Option Benefits – Further Details to Come**

Stock option benefits represent a benefit received by the employee by virtue of his or her employment relationship and will therefore be subject to the employer health tax. However, the timing of stock option benefits is complex. Further details will be provided with the legislation in the fall.

## **Application to Business Arrangements**

### **Self-Employed Individuals**

Self-employment refers to the practice of "working for oneself" and can be accomplished through different legal structures. The most straight forward scenario is when an individual operates as a sole proprietor offering his or her services directly to customers.

Notwithstanding the fact the proprietor may considers himself or herself to be "self-employed", from a legal standpoint the proprietor is not an employee. Any profit the proprietor receives through his or her operations is business income and not subject to the employer health tax.



On the other hand, some self-employed individuals incorporate and operate their business through a corporation. In this case, it is possible for the individual to be both an employee of the corporation and a shareholder of the corporation. The employer health tax liability depends on how the corporation compensates the individual:

- If the corporation pays a salary (including bonuses) to the shareholder, that salary will be subject to the employer health tax
- If the corporation pays dividends out of the corporation's after-tax profits to the shareholder, those dividends will not be subject to the employer health tax

If the corporation or sole proprietor employs other individuals as employees, then the remuneration paid to these employees during the year will be subject to the employer health tax.

### **Partnerships**

A partnership is analogous to two or more sole proprietors that have agreed to operate their business together. Accordingly, any profit the partners receive is business income and not subject to the employer health tax.

When a partnership employs employees, the partnership will be required to pay employer health tax in respect of the remuneration paid to employees during the year.

### **Employees vs Independent Contractors**

The employer health tax is only applied to payroll that is paid to employees.

Independent contractors that are hired by a business to perform a certain service are not in an employment relationship with the business and therefore amounts paid for the rendered services will not be subject to the employer health tax.

Whether the people providing services to your business are employees or independent contractors is a factual determination based on principles established in the common-law. In particular, the common-law has identified the following factors to be considered when determining the employment status of a worker:

- Intention of the parties
- Who has control over the worker's activities
- Who owns the tools used by the worker
- Whether the worker has a chance for profit
- Whether the worker faces a risk of loss

The particular weight given to each factor depends on the situation. In some cases, intention is the most relevant whereas in others, control may be the determinative factor.

## How to Pay the Employer Health Tax

Employers with B.C. payroll greater than \$500,000 and charity and non-profit employers with B.C. payroll over \$1,500,000 at one location in the year will be required to file and pay employer health tax online. Registration for filing and paying employer health tax will start in January 2019.

Employers with B.C. payroll over \$600,000 and charity and non-profit employers with B.C. payroll over \$1,600,000 at one location will be required to make quarterly instalment payments.

The instalment payment due dates are:

- June 15
- September 15
- December 15
- March 31 – Final payment with return

More details on how to register to pay employer health tax online will be available after the legislation is enacted in the fall of 2018.

## Further Information

At this time we are unable to provide any further information about the employer health tax.

We suggest that you [subscribe to receive email updates](#) when new information becomes available about the employer health tax.

**Reminder: The information in this notice is for your convenience and guidance and is not a replacement for the legislation.**