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Tax Alert – Canada

British Columbia introduces employer health tax legislation

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 16 October 2018, Bill 44, *Budget Measures Implementation (Employer Health Tax) Act, 2018* received first reading in the British Columbia legislative assembly. If enacted, Bill 44 will introduce an employer health tax (EHT) or “payroll” tax on employers’ payrolls commencing in the 2019 calendar year. More specifically, the EHT will apply to remuneration paid to employees who report to work at a BC permanent establishment or who receive remuneration through a BC permanent establishment. The EHT will not apply to employers with payroll in BC under \$500,000. In general, employers with payroll over \$1.5 million will pay the maximum rate of 1.95% on their total BC payroll. For employers with BC payroll between \$500,000 and \$1.5 million, the tax rate will be 2.925% calculated on their total BC payroll after deducting an initial \$500,000 exemption.

The EHT was introduced to help offset the loss in revenues resulting from the elimination of the Medical Services Plan (MSP) premiums currently paid by individuals resident in British Columbia. The BC government reduced MSP premiums by 50% effective 1 January 2018, and plans to fully eliminate them effective 1 January 2020.

Bill 45, *Budget Measures Implementation (Speculation and Vacancy Tax) Act, 2018* also received first reading in the British Columbia legislative assembly on 16 October 2018. If enacted, Bill 45 would impose an annual speculation and vacancy tax (SVT), payable by owners of residential property in designated taxable regions of British Columbia. Refer to EY Tax Alert 2018-37 for a summary of the proposed SVT.

Overview

The EHT will be imposed under the authority of the *Employer Health Tax Act* (EHTA). The tax is paid by employers who have a permanent establishment in BC, and who:

- ▶ Have employees who report for work at a BC permanent establishment of the employer, or have employees who do not report for work at a permanent establishment of the employer but who are paid from or through a BC permanent establishment of the employer; and
- ▶ Have total *BC remuneration* for the year (paid to employees or former employees) that exceeds the exemption threshold of \$500,000, or \$1,500,000 in the case of not-for-profit organizations and charities.

BC remuneration does not include remuneration paid to employees who report for work at a permanent establishment of the employer outside BC for all or substantially all of the calendar year.

Permanent establishment

A *permanent establishment* is defined to mean any fixed place of business, including, without limitation, an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse or a workshop. In accordance with the deeming provisions in section 4 of the EHTA, a permanent establishment also includes:

- ▶ The place designated by a corporation's charter or by-laws as its head or registered office
- ▶ A place where business is carried on through an employee or agent who has general authority to contract for the employer
- ▶ A place where an employer has a stock of merchandise and an employee or agent fills orders from the employer's merchandise
- ▶ A place where the employer uses substantial machinery or equipment
- ▶ Each jurisdiction in which an insurance corporation is registered or licensed to do business
- ▶ Land or premises owned or leased by the employer
- ▶ Any place where an employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs anything (in whole or in part), if the employer does not otherwise carry on business in Canada in a year, whether or not the item is exported prior to sale
- ▶ The principal place where the employer conducts business and each place where the employer carries on or transacts a substantial portion of the business, where the employer has no fixed place of business

As discussed above, EHT will apply to remuneration paid to employees who report to work at a BC permanent establishment or who receive remuneration through a BC permanent establishment. Section 5 of the EHTA provides that “an employee reports for work at a permanent establishment of the employee's employer if the employee comes to the permanent establishment in person to work or otherwise can reasonably be considered to be attached to the permanent establishment”.

To determine whether an employee is attached to a permanent establishment, British Columbia has indicated that an employer should consider the following factors:

- ▶ The nature of the duties performed by the employee
- ▶ The place where the employee regularly performs his or her duties
- ▶ The place from which the employee is hired
- ▶ The place from which the employee regularly receives instructions or directions from the employer through any type of communication
- ▶ The place from which the employee is supervised
- ▶ The place to which the employee submits attendance records and expense claims
- ▶ The place from which the employee receives equipment, uniforms, etc.

If an employee reports for work at permanent establishments of the employer in BC and also outside the province during a year, all of the remuneration paid to the employee is generally subject to EHT. However, remuneration paid to employees who report for work at a permanent establishment of the employer outside BC for all or substantially all of the calendar year is not subject to EHT.

What payments are considered remuneration?

In determining the amount of remuneration subject to EHT, the same payroll amounts used to calculate source deductions under the *Income Tax Act* (Canada) (the ITA) are generally included (i.e., all payments, benefits and allowances that qualify as employment income under sections 5, 6, and 7 of the ITA). Remuneration includes salaries and wages, bonuses, commissions, advances of salary and wages, vacation pay, gratuities, taxable allowances, directors' fees, top-up benefits, stock option benefits and employer-paid RRSP contributions, group life insurance premiums and contributions to employee trusts and profit sharing plans. Employer-paid contributions to registered pension plans, private health services plans, supplementary unemployment benefit plans, deferred profit sharing plans and retirement compensation arrangements are excluded.

EHT rates

Employers other than charities and not-for-profit organizations

The following EHT rates apply:

Employers with BC remuneration of \$500,000 or less

EHT does not apply.

Note that in the case of associated employers, the \$500,000 exemption applies to the whole group and the associated employers in the group must share the exemption. The EHT applies section 256 of the ITA to determine whether or not employers are associated. In addition, the association rules are extended to include individuals, partnerships and trusts.

Employers with BC remuneration between \$500,001 and \$1,500,000 (notch rate amount)

$2.925\% \times (\text{BC remuneration} - \$500,000)$.

Employers with BC remuneration greater than \$1,500,000

$1.95\% \times \text{total BC remuneration}$.

The \$500,000 exemption is eliminated for employers in this category, including those employers who are members of a group of associated employers with combined BC remuneration of more than \$1,500,000 for the calendar year.

Non-profit organizations and charities

Charitable and non-profit employers must determine the EHT liability based on a location-by-location basis. Each location qualifies for the \$1,500,000 exemption.

Location with BC remuneration of \$1,500,000 or less

EHT does not apply.

Location with BC remuneration between \$1,500,000.01 and \$4,500,000 (notch rate amount)

$2.925\% \times (\text{BC remuneration for the location} - \$1,500,000)$

Location with BC remuneration greater than \$4,500,000

$1.95\% \times \text{total BC Remuneration for the location}$

The exemption and the notch rate are prorated in the case of employers who do not have a permanent establishment in BC throughout a full calendar year.

Actions for employers

Register for EHT if BC remuneration exceeds \$500,000 in the 2019 calendar year

The registration for EHT begins 7 January 2019. Employers who are required to pay instalments (i.e., employers owing more than \$2,925 annually) in the 2019 calendar year must register by 15 May 2019 and pay the first instalment by 15 June 2019. All other employers must register by 31 December 2019. The first EHT return must be filed and paid by 31 March 2020. The EHTA imposes various penalties (e.g., failure to file, gross negligence, failure to provide information) and interest on outstanding balances and instalment payments. The assessment period is six years after the original notice of assessment was issued.

Determine payroll amounts subject to EHT

Nonresident businesses sending employees to British Columbia as well as BC-based businesses sending employees to work outside the province should review whether remuneration paid to such employees is subject to EHT. Rulings or interpretations may be sought from the BC Ministry of Finance in situations where it is not clear whether certain remuneration will be subject to EHT. Until additional publications are issued by the BC Ministry of Finance, interpretations published by other provinces could be used as high-level guidelines (e.g., Ontario has a very similar EHT in place and has numerous publications and interpretations available).

Consider EHT as it relates to employees versus independent contractors

In addition to the current payroll taxes (i.e., CPP and EI), BC employers should consider the EHT in deciding the relevant costs and benefits of using independent contractors vs. employees. Unlike CPP and EI contributions, which are capped at certain amounts by employee, there is no employee-based cap on EHT when total remuneration paid by the employer exceeds \$500,000.

Learn more

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