Home Office Deduction – When Is A Meeting Not A Meeting?

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In December the CRA announced new guidance for employees deducting home office expenses. These changes are likely to be welcomed by thousands of Canadian workers who suddenly find themselves commuting to their kitchen tables. However, certain workers are not able to take advantage of the new procedure, either because they worked from home before the pandemic, or because they do not meet a threshold of working from home at least 50% of the time over a 4-week period. Additionally, the new guidance applies only to employees. Workers who are self-employed, including independent contractors, are still subject to the prior rules for deducting home office expenses. (Unsure whether someone is an employee or an independent contractor’ Blue J’s Worker Classification tool can help.)

The old rules, found in subparagraphs 8(13)(a)(i) and (ii) of the Income Tax Act, provide that expenses from a home-based work space are only deductible from income if the workspace is the place where the individual “principally performs” the duties of the office or employment. In the case of a home-based business, the home must be the principal place of business. The CRA has interpreted “principal” to mean the individual’s chief or main place of business. Even if this test is not met, the worker may still be able to deduct home office expenses if the workspace is used exclusively to earn income from office or employment, *and* is used on a regular and continuous basis for meeting clients, customers or patients.

The second half of this test is where the potential problem arises. The CRA has previously taken the position that “meet” means “come face to face with or to come into the presence or company of (someone) by chance or arrangement”. The implication is that virtual or telephone meetings do not count.

It should be obvious, in the age of Google Classroom and Zoom birthday parties, that this traditional interpretation of meeting as requiring two or more people to be in the same physical space is both outdated and contrary to public health guidelines. As an example, imagine the situation of a therapist who, prior to the pandemic, regularly met with patients in a dedicated home office, but has since switched to conducting appointments over video. Provided all the other requirements are met, there should be no policy reason to deny the therapist a tax deduction simply because they no longer see clients in person.

Note that this interpretation is consistent with the holding of the Tax Court in *Landry v. The Queen*, which found that meetings by telephone were sufficient for the purposes of subparagraph 8(13)(a)(ii). It would provide a great deal of clarity if the CRA were to issue a statement confirming that it will follow the approach in *Landry* and consider meetings that are held virtually because of COVID-19 to be a meeting for the purposes of the home office deduction.

Blue J’s Home Office module can help determine whether you may be eligible to deduct home office expenses for the 2020 taxation year. Blue J Tax is an advanced AI tool that uses machine learning to predict legal outcomes. Blue J is committed to incorporating the latest guidance from the CRA in order to provide the most accurate predictions.

Footnotes

1. Income Tax Folio S4-F2-C2, Business Use of Home Expenses. See also: 2013-0481171E5-Home office expenses and 2009-0337751I7-Work space in home.

2. 2007 TCC 383.

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