



**Corporate Policy, Agency
Governance and Open
Government Division |**
Public Appointments Secretariat

**Qs/As - Canada Revenue
Agency (CRA) requirements
for per diem payments to
part-time appointees whose
payroll is administered by a
ministry**

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Introduction

This document is developed for part-time per diem appointees whose payroll is administered by the ministry on behalf of the agency and is for information purposes only and cannot be relied upon as tax advice to appointees. Ministry/agency staff are not authorized to provide tax advice. Appointees are advised to review the CRA's publications and/or seek advice from their personal tax consultant.

Changes are being made to the payroll processes applied to part-time per diem appointees and judicial office-holders to comply with federal statutory requirements. These changes are being made as a result of a decision of the Federal Court of Appeal regarding Canada Pension Plan (CPP) contribution requirements related to the tax treatment of per diem payments and subsequent discussions between the Ontario Ministry of Finance and the Canada Revenue Agency about compliance with that decision. These discussions were held to reach a consistent approach to the tax treatment of per diem payments to part-time appointees following the decision by the Federal Court of Appeal. Specifically, this decision determined that a legal entitlement to a *per diem* rate of remuneration established in advance is sufficiently fixed or ascertainable to be income from an office or employment and overturned an earlier decision of the Tax Court of Canada.

Consequently, for tax purposes, the per diem payments made to part-time Ontario appointees, is considered remuneration from an office or employment. By implementing these changes to payroll processes the Government is taking the necessary administrative steps to comply with the law.

- Effective December 6, 2013, the federal government approved an amendment to the Canada Pension Plan (CPP) Regulations which exempts part-time per diem appointees' remuneration from Canada Pension Plan contribution requirements. The exemption is consistent with the approach that the CRA applies to virtually every other province. Such appointees' remuneration is now exempt from pensionable income for CPP purposes. This means the CRA will not permit contributions to the CPP by the payer or the part-time appointee.

- Income tax will be withheld at source starting in 2015. If a ministry administers appointees' remuneration on the agency's behalf, income tax deductions at source are expected to start in May 2015.
- Appointees will receive T4 slips rather than T4As starting with the 2014 tax year.
- Appointee services are not taxable supplies, so appointees should not charge Harmonized Sales Tax (HST) for their services.
- Employment insurance may be deducted in respect of appointees to provincial agencies, depending on whether or not the particular agency is a Crown Agent. Appointees will be advised by their ministry or agency only if this applies to them.
- Appointees continue to be entitled to reimbursement for appointment-related expenses in accordance with the Travel, Meal and Hospitality Expenses Directive and any other Treasury Board/Management Board of Cabinet directives. An appointee's ministry or agency will continue to reimburse appointment-related expenses using current processes.

General

Where can I find a copy of the CPP Regulations amendment?

The amendment was posted on the Canada Gazette on December 18, 2013: <http://www.gazette.gc.ca/rp-pr/p2/2013/2013-12-18/html/sor-dors233-eng.php>

Who do the changes apply to?

The changes apply to Ontario part-time appointees who receive per diem remuneration.

The government occasionally appoints individuals as special advisors or to a short-term panel for three years or less. When appointees' services are temporary or short-term in this way, these federal statutory requirements do not apply.

Can per diem remuneration be paid to an appointee's registered charity or business?

No. Remuneration can only be paid to an appointee – not an incorporated company or charity. This is not new. The government appoints individuals, so remuneration must be made to the individual.

Can per diem appointees participate in benefits and pension plans, etc.?

Part-time per diem appointees are not entitled to pension, benefits, vacation pay or termination pay. This is not a change.

Where should appointees call to ask questions about their T4 slip?

If appointees have any questions about their remuneration, they should contact the Ontario Shared Services Contact Centre at:

Phone: 416-212-2345 or 1-866-320-1756

TTY (Teletypewriter): 416-327-3851, 705-755-5544 or 1-866-310-7259

Do appointees need to provide their Social Insurance Numbers?

Yes, the CRA requires the payer to disclose the payee's Social Insurance Number (SIN) on T4 slips as part of the T4 reporting requirements for an individual. Under subsection 237(1) of the Income Tax Act (Canada), individuals are required to give their SIN, upon request, to the organization issuing the information slip. The Province needs an appointee's SIN in order to comply with CRA requirements. If appointees have not already done so, they should provide their SIN in writing together with their name and address as reported on their T4 slip and send it to:

Ministry of Government and Consumer Services
Ontario Shared Services
Expenditure Management FSS-A4
77 Wellesley Street West
Box 875
Toronto, ON M7A 1N3

Why did appointees only receive communication in December 2014?

These changes are being made as a result of a decision of the Federal Court of Appeal (FCA) about CPP requirements related to per diem payments and subsequent discussions between Ontario and the Canada Revenue Agency about compliance with that decision. Specifically, the Court determined that a legal entitlement to a per diem rate of remuneration established in advance is sufficiently fixed or ascertainable to be income from an office or employment and overturned an earlier decision of the Tax Court of Canada. As a result of the FCA decision, the Province wrote to the Federal Minister of National Revenue and formally requested an amendment to the federal Canada Pension Plan Regulations to exempt part-time per diem appointees from coverage under the CPP. The exemption is consistent with the approach that the CRA applies to virtually every other province. In February 2012, the federal Department of Finance agreed to put forward Ontario's request. The request was approved by the federal government

effective December 6, 2013 and was announced in the Canada Gazette on December 18, 2013. The then Ministry of Government Services communicated this information to all ministries to share with their agencies and appointees on December 19, 2013.

The FCA decision also had implications for income tax withholdings, employment insurance, deduction of expenses, and HST. TBS and MOF staff met with CRA staff in January 2014 to discuss Ontario's proposed approach to the application of the federal statutory requirements. CRA confirmed Ontario's proposed approach on May 12, 2014. The government then needed to address the complex issues of adjusting business processes across 23 ministries for 2,500 part-time per diem appointees in a consistent way enterprise-wide.

CRA Assessments

What should an appointee do if he or she is assessed by the CRA?

If an appointee is contacted by the Canada Revenue Agency about an assessment or ruling, he or she should comply with CRA requests for information. If the Canada Revenue Agency requires Canada Pension Plan, income tax or other payments as a result of an audit, appointees are advised to comply with the CRA requirements.

If an appointee has any questions about CRA assessments, he or she should consult with his or her tax advisor and/or the CRA.

If an appointee made CPP contributions for tax years before December 6, 2013, will he or she receive a refund for those contributions?

If an appointee has any questions about CPP contributions, he or she should consult with his or her tax advisor and/or the CRA.

Income Tax

Why is income tax now being deducted from per diem appointee remuneration?

Under subsection 5(1) of the Income Tax Act (Canada) (ITA), income from an office or employment includes salary, wages or other remuneration. The per diem payments made to part-time appointees are generally considered “other remuneration” from an office.

As a result, the payer is required to withhold income tax from these payments and to report the income tax withholdings and other applicable source deductions on T4 slips.

Starting in May 2015, income tax will be deducted from per diem remuneration payments.

When will income tax be deducted and at what rate?

Income tax will be deducted at source in May 2015 for appointees where the ministry administers payroll on behalf of the agency. The Province will determine the income tax withholding rate that will be used, based on the appointee’s 2014 earnings and any personal tax credits claimed on TD1 forms. Appointees may ask to have more or less tax deducted using the CRA’s TD1 forms. Appointees may want to do this if they have more than one employer or receive income from other sources.

Any tax balance owing by an individual at the end of a particular tax year is generally due by the T1 General – Income Tax and Benefit Return filing deadline of April 30th the following year. As long as the individual files his or her T1 return on time and pays the balance owing by the April 30th deadline, there should be no penalties or interest.

CRA’s website has tax deduction tables to calculate how much tax to deduct. These are available at <http://www.cra-arc.gc.ca/E/pub/tg/t4032on/README.html>.

Federal TD1 - <http://www.cra-arc.gc.ca/E/pbg/tf/td1/README.html>

Provincial TD1 - <http://www.cra-arc.gc.ca/E/pbg/tf/td1on/README.html>

Where can I find more information about the tax calculations?

The CRA's website provides payroll deductions tables to help calculate payroll deductions.

These are available at: <http://www.cra-arc.gc.ca/E/pub/tg/t4032on/README.html>.

Why have taxes not been deducted from 2015 per diems paid?

The Province has been exploring various options on how to automate this process. Due to the complexity involved, these changes are taking some time to implement in a consistent, enterprise-wide approach.

Income tax will be taken off at source for appointees where the ministry administers payroll on behalf of the agency beginning May 2015. How should appointees address the income tax they owe from January 1, 2015 – the beginning of the tax year?

The income tax that is deducted at source starting in May will not include income tax owed from January 1, 2015. This means that, depending on the appointees' personal income tax situation, some appointees may have a tax balance owing to the CRA when they file their 2015 tax returns in 2016.

If an appointee has any questions, he or she should consult with his or her tax advisor and/or the CRA.

What happens if an appointee pays income tax in instalments?

Based on CRA's requirements, a person has to pay income tax by instalments for 2015 if the net tax owing is more than \$3,000. Net tax owing is tax payable minus tax paid or withheld. If the person received an instalment reminder from CRA and is required to pay instalments but

did not comply, the person may be subject to interest and penalty charges.

Whether a per diem appointee should make quarterly installments or not depends on his or her net tax owing for 2015. If an appointee has sources of income other than his or her per diem remuneration, instalments may still be required.

It is up to an appointee to estimate his or her net tax owing for 2015 and to decide whether or not to continue to make instalments, based on their individual situation. Appointees can contact the CRA at 1-800-959-8281 or <http://www.cra-arc.gc.ca> to discuss their situation.

Here are some links to the CRA website regarding tax instalments:

[Do you have to pay tax by instalments?](#)

[Instalment interest and penalty charges](#)

Example

Hugh, a resident of Alberta, pays his tax in instalments. He decides to have more tax withheld from his income in 2015. His net tax owing has been \$3,500 for several years, and he expects it will stay the same in 2015. In January 2015, Hugh gave his pension plan administrator a completed Form TD1 that stated he wants an extra \$250 withheld each month from his pension income.

Hugh now estimates his net tax owing will be \$500 for 2015. Based on his estimate, he does not have to make instalment payments in 2015 because his net tax owing will not be over \$3,000 for 2015. Hugh would disregard the instalment reminders he gets for 2015.

Are income tax deductions retroactive to 2014?

To ensure compliance with federal statutory requirements, T4 slips were issued to all part-time per diem appointees for remuneration received in 2014. Income tax for 2014 was not deducted, and will not be deducted retroactively. Income tax will be deducted starting in May 2015.

Harmonized Sales Tax (HST)

Can part-time per diem appointees still charge HST?

Appointee services are not considered to be taxable supplies.
Appointees should not charge HST on their services.

How should an appointee treat any HST received from the Province?

The Province is not seeking to recover the HST amounts previously paid to appointees. If an appointee has any questions about HST, he or she should consult with his or her tax advisor and/or the CRA.

Form T2200 Expenses

Can appointees deduct Form T2200 expenses, and how is this done?

- Under section 8 of the Income Tax Act (Canada), office holders may be able to claim employment expenses against their remuneration from that office if they are required to incur expenses related to the performance of their duties.
- Appointees should seek their own independent tax advice or contact the CRA for further information.
- Where the appointee believes some expenses may be claimed, they should ask their agency (as the employer for tax purposes) to complete [Form T2200- Declaration of Conditions of Employment](#) to certify the conditions of employment that require the office holder to incur the expenses.
- Employment expenses that are reimbursed by an employer cannot generally be deducted by the employee.
- For example, in order to deduct eligible motor vehicle expenses, an employee is required to meet all of the following conditions as outlined on page 8 of CRA publication [T4044](#) - Employee Expenses 2014:
 - The employee was normally required to work away from the employer's place of business or in different places;
 - Under the contract of employment, the employee had to pay his or her own motor vehicle expenses;
 - The employee did not receive a non-taxable allowance for motor vehicle expenses; and
 - The employee is required to keep a copy of Form T2200 Declaration of Conditions of Employment, which has been completed and signed by the employer.

- The above requirements are in paragraph 8(1)(h.1) and subsection 8(10) of the Income Tax Act (Canada).

What is the T2200 Declaration of Conditions of Employment form used for?

The T2200 Declaration of Conditions of Employment form is for eligible expenses that the “employment contract” requires the employee/appointee to pay for him/herself and they wish to deduct these “employment expenses” from his or her income.

Where can I find a copy of the T2200 Declaration of Conditions of Employment form?

The T2200 form is available on the CRA website: <http://www.cra-arc.gc.ca/E/pbg/tf/t2200/README.html>

Where can I get advice about using the T2200 Declaration of Conditions of Employment form?

Appointees should seek advice from an independent tax expert or the CRA about how to use a T2200 form.

Can the T2200 Declaration of Conditions of Employment form be standardized for all appointees?

The T2200 form is a CRA form. It cannot be standardized since each declaration is unique.

The wording on the T2200 Declaration of Conditions of Employment form suggests that there is an “employment contract.” What is the employment contract for appointees?

- There is no employment contract for appointees. An appointee may wish to use his or her Order in Council appointment/remuneration letter in lieu of an employment contract. However, the Canada Revenue Agency will decide whether or not it is acceptable for

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income tax purposes. Appointees should seek their own independent tax advice or contact the CRA for further information.

Employment Insurance (EI)

Will EI be deducted from an appointee's remuneration?

In general, part-time appointees paid on a per diem basis are not appointed and remunerated under the authority of the *Public Service of Ontario Act, 2006*. Hence, EI premiums would not be deducted unless an appointee is determined to hold an office in or under a corporation, commission or other body that is an agent of Her Majesty in right of Ontario. Please discuss with your agency whether it is considered to be an agent of Her Majesty in right of Ontario.