New Rules for 2009 on Overtime Meal and Travel Allowances

Many employers provide employees who are required to work overtime with a meal or an allowance to enable the employee to purchase a meal, on the theory that, absent the need to work overtime, the employee wouldn't have had to incur such a cost. For its part, and for the same reasons, the Canada Revenue Agency has generally been prepared to treat the provision of a meal or a meal allowance as a non-taxable benefit to the employee. The rule has been that where an employee is required to work three or more hours of overtime immediately after his or her scheduled hours of work and that overtime was "infrequent and occasional" in nature, which was interpreted to mean fewer than three times a week, then any meal or meal allowance provided to the employee was a non-taxable benefit.

Recently, the CRA has become concerned that the somewhat flexible nature of the criteria that determine the taxable or non-taxable nature of the employee benefit when it comes to overtime meal allowances can lead to inconsistent and inequitable results. As a consequence, the Agency has determined that it is necessary to impose, for the 2009 and subsequent tax years, more-specific rules on what constitutes a reasonable overtime meal allowance and when and to what extent such allowances can be provided on a non-taxable basis.

Specifically, for 2009 and later years, the assessing policy of the CRA will be that no taxable benefit arises where:

• the value of the meal or meal allowance is reasonable, and for such purposes a value of up to $17 will generally be considered reasonable;

• the employee works two or more hours of overtime right before or after his or her scheduled hours of work; and

• the overtime worked is infrequent and occasional in nature. Fewer than three times a week will generally be considered infrequent or occasional. The CRA is also prepared to consider overtime worked to be infrequent or occasional where an allowance is provided three or more times a week on an occasional basis to meet workload demands. Such workload demands would include major repairs or periodic financial reporting.

Where employees are required to work overtime, the employer frequently provides, in addition to a meal allowance, transportation home for employees – for instance, an employer-paid cab chit. Also effective for 2009 and later years, the CRA will continue to treat such employer-paid travel as a non-taxable benefit where "allowances paid for travel within the municipality or metropolitan area are paid primarily for the benefit of the employer", in that the principal objective of the benefit is "to ensure that the employee's duties are undertaken in a more efficient manner during the course of a work shift, and where allowances paid are not indicative of an alternate form of remuneration".

While the CRA's objective in amending its assessing policy with respect to overtime meal and travel allowances was to bring more certainty and consistency to the area, it is not clear that that objective will be attained. While it will be relatively simple for the Agency to enforce the $17/meal allowance limit, monitoring and ensuring compliance with the other criteria, with respect to the number of hours and the frequency of overtime, as well as the criteria imposed for overtime travel allowances, seem likely to pose as many assessing difficulties as the current

rules do. Nevertheless, these are now the assessing criteria that the CRA will be using for 2009 and later years, and employers will need be cognizant of them in designing and administering their employee overtime-benefit policies.

The CRA's new policies in this are outlined in detail in its publication *Income Tax Technical News,* No. 40, available at http://www.cra-arc.gc.ca/E/pub/tp/itnews-40/itnews40-e.pdf.