

## Human Resources Legislative Update

### Employee Discounts: To Tax, or Not to Tax? That is Indeed the Question

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The Canada Revenue Agency (CRA)'s recently revised position on employee discounts is attracting significant media coverage.

In 2016, the CRA published an updated technical document on "Benefits and Allowances Received from Employment" ([Income Tax Folio S2-F3-C2\\*](#)), which provides that employee discounts on merchandise for less than fair market value are considered taxable benefits under the *Income Tax Act*. As revised, the CRA's stated position is that these employee discounts, which are common in the retail industry, should generally be included in an employee's income. The taxable benefit is the [difference between fair market value and the price the employee pays](#). Exceptions are made for discounts that are also available to members of the public.

This appears to represent a departure from the CRA's long-standing historical position (as reflected in the prior bulletin IT-470R, "Employees' Fringe Benefits") that benefits derived from exercising employee discount privileges are "not normally regarded as taxable benefits," as long as the items are not sold below cost (see para. ¶ 27), and the [CRA's existing Employer Guide](#), which provides employers with practical guidance on the applicable tax rules, continues to state that selling merchandise to employees at a discount is "not usually considered taxable."

Given that employee discounts are a common practice in the retail industry, a change in the CRA's position will have a major impact on employers within that sector. However, after the CRA initially confirmed the correctness of the position expressed in its 2016 Income Tax Folio, more recent statements from National Revenue Minister Diane Lebouthillier and the federal government suggest that the government does not intend to treat regular employee discounts as taxable income. These statements indicate that any change in the CRA's historical position on employee discounts is not fully settled.

The CRA is expected to provide further clarification on this issue. We will continue to monitor developments and provide you with updates.

*\*Editor's Note: At the time of publication, the CRA's website was updated to provide as follows: "Please note that Folio S2-F3-C2, Benefits and Allowances Received from Employment, is currently under review. Employers should continue to follow current practices consistent with the information available in [Guide T4130, Employers' Guide – Taxable Benefits and Allowances](#)."*