



## GES NewsFlash

### Canada – New Waiver Procedures Related to Employer Withholdings

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#### Summary

Under the Income Tax Act (Canada), employers are required to withhold income tax at source in respect of their non-resident employees' Canadian source compensation related to services rendered in Canada. The amount of withholding is determined in accordance with section 102 of the Income Tax Regulations (commonly referred to as "Reg 102" withholdings). The employer may only be relieved of this withholding obligation when a formal waiver is obtained from the Canada Revenue Agency (CRA) and, if services were rendered in the province of Quebec, the Minister of Revenue of Quebec. Waivers may be obtained for a number of reasons, including the instance where non-resident employee income would be exempt from Canadian taxation under a treaty.

The CRA recently announced revised procedures for obtaining waivers for non-resident employees who will be exempt from tax in Canada under a treaty. The revised procedures are intended to facilitate employer compliance in connection with employees who are required to travel to Canada on short notice by allowing more time to provide information to the CRA.

#### The new rules for Reg 102 waivers

The CRA will now permit the waiver application to be made jointly by the non-resident employee and employer by completing Form R102-J, *Regulation 102 Waiver Application – Joint Employer/Employee*. Form R102-J is to be used when it's not practical to apply for a waiver or the required Individual Tax Number (ITN) before the start of services due to the nature of the services performed, such as:

- equipment servicing, as needed;
- consulting;
- services for which the dates and names of employees coming to Canada cannot be determined until the last minute.

Form R102-J may only be used when employees are:

- resident in the United States and expected to earn less than C\$10,000 in the year (and therefore exempt under paragraph 2(a) of Article XV of the Canada-U.S. treaty); or
- resident in another treaty country and expected to earn less than C\$5,000 in the year.

Form R102-J should be completed and submitted as soon as it is known that a non-resident employee will be temporarily working in Canada. Form R102-J will provide the following information:

- employee name, address and country of residence;
- information on the services being provided in Canada; and
- employee authorization allowing the employer to act on his/her behalf regarding the waiver and ITN applications, and for the CRA to provide the ITN to the employer.

If the waiver application is approved, the CRA will issue a letter to the employer and non-resident employee authorizing the employer not to withhold tax on payments made to the employee. The authorization will be effective on the later of:

- the start date of services provided by the employee in Canada that year; or
- 60 days before the date that a complete waiver application (i.e., complete except for the ITN portion) has been received by the CRA.

For waiver applications received on or before June 15, 2010, the CRA, at its discretion, may issue the letter effective as of an earlier date in the calendar year.

### **Issues to Consider**

An employer is expected to have a process in place to track, record and report employment income attributable to the employees' work in Canada.

If the employer fails to provide ITNs for 90% of all employees for whom Form R102-J waivers were granted, for future requests, the CRA will require ITNs (or Social Insurance Numbers if applicable) at the time of the waiver application.

In some cases, an employee's work in Canada may be prolonged, causing the employee's Canadian source compensation to exceed C\$10,000 in the case of a U.S. resident and C\$5,000 for a resident of another treaty country. Furthermore, an employee may return to work in Canada at a later date not covered by the initial waiver application. In both cases, a new waiver must be applied for, which will be effective as of the date of its approval. The change in circumstances will not taint the initial waiver as long as the information provided at the time of the waiver application was complete and accurate. However, in the first case, remittances will be required from the date of the change in circumstances. If there is a misrepresentation of information, remittances will be required for the full period that the employee worked

in Canada.

If an employer is audited for non-compliance with respect to its Reg 102 withholding obligations, relief may be granted where the employer can demonstrate that it was in the process of applying for a waiver.

The new process does not provide relief with respect to the employer's reporting obligations. The employer is required to issue a T4 slip to report the non-resident employee's wages earned in Canada.

#### **Deloitte's View**

These changes should make it easier for employers to comply with their Canadian withholding obligations.

- Previously, the waiver application had to be made by the individual employee and the waiver had to be in place before the services were rendered in Canada. Retroactive waivers were not granted. As a result, it was often not practical to apply for a waiver, particularly where the non-resident employee was required to work temporarily in Canada on short notice.

Employers will require certain information from employees in order to make use of the joint waiver application.

- Employers should educate their non-resident employees about the requirement to apply for an ITN and the importance of obtaining a waiver from withholding.

Employers must have a process for tracking their non-resident employees in order to ensure that they can comply with their Canadian tax withholding and reporting obligations.

### **People to Contact**

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