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Canadian tax alert – GES

Relief from payroll withholding obligations for certain non-resident employees attending conferences in Canada

January 4, 2013

On December 21, 2012, The Canada Revenue Agency (CRA) issued administrative relief from withholding taxes in respect of non-resident employees attending conferences in Canada as part of their duties of employment. Such employees could be attending in order to make presentations and/or lead a workshop, or they may be attending for learning purposes. As the employees are paid their regular salaries while at the conferences and such attendance is considered employment services performed in Canada, employers are normally required to withhold Canadian tax from their employees' remuneration unless an employee has applied for and received a waiver of the withholding tax.

The relief generally provides that if there is an income tax treaty between Canada and an employee's country of residence, and the employee is only in Canada for the purpose of attending a conference, the employee would be exempt from tax in Canada under the treaty. Employers would not be subject to the stringent withholding and reporting obligations.

Background

Under the Canadian Income Tax Act, 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). An employer may only be relieved of this withholding obligation when a formal waiver is obtained from the CRA and, if subject to Quebec withholdings, the Minister of Revenue of Quebec. In many cases, these non-resident employees ultimately are not taxable in Canada due to the provisions of one of Canada's income tax treaties, but both they as individuals and their employers face very complex and burdensome procedures in order to comply with Canadian tax law. Waivers may be obtained for a number of reasons, including where non-resident employee income would be exempt from Canadian taxation under a treaty.

The new exception for conferences

Where a non-resident employer sends its non-resident employee to attend a conference in Canada, and the employee will be present in Canada for the conference **for 10 days or less**, including travel time in Canada, and will earn less than:

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- \$10,000 in the year from employment services in Canada, if the employee is resident in the United States, including the amount earned during the period of the conference, or
- \$5,000 if the employee is resident in another country with which Canada has an income tax treaty, including the amount earned during the period of the conference,

the employee will not be required to obtain a waiver of withholding tax and the CRA will not assess the employer for the related withholding tax, interest and/or penalty.

When the employee is working in Canada immediately before or after the conference, only the days (maximum of 10) spent at the conference will fall under the above exception. Therefore, the employee will still be required to obtain a waiver of the withholding tax for the days spent working in Canada immediately before or after the conference.

The CRA has also provided relief from an employer's T4 reporting obligations in respect of this employment income unless:

- tax is withheld by the payer; or
- the employee is working in Canada for the employer immediately before or after the conference.

In addition, an employee will only be required to file an income tax return in Canada if he or she has a Canadian income tax liability for the year.

The CRA has defined a conference somewhat narrowly, as follows: "*a conference is a formal meeting attended by a minimum of 30 participants for professional purposes. The participants may work for the same employer or different employers. The participants are not providing any services for which their employer is receiving a fee from another person. In addition, the participants are not: soliciting business on behalf of their employer; providing services to a parent, subsidiary, or partnership related to their employer; marketing their employer's services or products; or meeting with clients regarding their employer's business.*"

The new policy will not apply and no relief will be allowed in circumstances that the CRA considers to be abusive. The CRA has noted that "when an employee participates in numerous conferences in Canada during the year, the policy will not apply".

Issues to consider

In order to ensure that they can comply with the Canadian tax withholding and reporting obligations, employers are now expected to have a process in place to track employment income attributable to the employees' conference-related time spent in Canada. The CRA has included both a days and a dollar threshold; hence, treaty exempt income earned above the stipulated thresholds is still subject to Canada's burdensome compliance procedures. The definition of a conference is narrow and does not appear to include work-related business meetings or what the CRA considers to be an abusive practice. Employers should also be aware that they may be required to deal with several different Tax Services Offices where employees work or attend conferences in different parts of Canada, which may become cumbersome, confusing and may, on occasion, result in inconsistencies in the application of the new policy.

Foreign organizations endeavor to comply with their tax compliance obligations in Canada. Most organizations assume (as the rules are not intuitive) that the applicable tax treaty provides relief from their payroll withholding obligations. It must be acknowledged that the cost of complying with the Canadian tax rules, both for a business and for an employee, could be substantial if proper administrative processes are not put in place.

Deloitte's view

The business community was encouraged by the October 1, 2012 announcement by Gail Shea, Minister of National Revenue, related to the reduction of tax red tape. Government is working hard to improve employee mobility across the Canada-United States border as part of the Beyond the Border Action Plan and the business community applauds this initiative.

The relief announced with respect to conference attendance is viewed positively as a step in the right direction. The CRA has gone on record that they are working towards a more comprehensive policy which will address the Reg 102 withholdings issues beyond this narrow situation. Broader administrative changes should make it easier for employers to comply with their Canadian withholding and reporting obligations.

Areas where further simplification and administrative relief from the CRA would be appreciated by the business community include:

- **Simplify the waiver process** - Eliminate the requirement that waivers be obtained on an individual-by-individual basis and make the process more employer-focused (vs. employee-focused). A system that is self-administered by employers would be preferred.
- **Eliminate the requirement for non-taxable employees to obtain ID numbers** - The cumbersome process of applying for and obtaining individual tax numbers should not be necessary where an employee is not taxable in Canada.
- **Waive the payroll account requirement** - Free employers from being required to set up payroll accounts in Canada and make related T4 filings for employees that are exempt from Canadian tax and have waivers from withholding tax.
- **Streamline Canada Pension Plan and Employment Insurance rules** - Simplify the process of determining whether such contributions must be paid. Reduce the need for obtaining certificates of coverage when international agreements apply.

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