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Global Employment Solutions

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Canada:
Relief from payroll withholding obligations for business travelers: A step in the right direction

Overview

In his federal budget on April 21, 2015, the Honorable Joe Oliver, Minister of Finance, proposed a welcome legislative change that provides relief to non-resident employers in respect of their non-resident employees temporarily working in Canada.

Background

Currently, Canadian tax laws impose withholding obligations on any non-resident employer paying remuneration to a non-resident employee for 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 Canada Revenue Agency (CRA) and, if subject to Quebec withholdings, the Minister of Revenue of Quebec.

The waiver process is a burdensome task for multinational enterprises operating in an agile and competitive global market. Not obtaining a waiver creates compliance risks when employees are sent on business travel to Canada even for a very short duration.

Under the current mechanism, a waiver is granted only in respect of a specific employee and for a specific time period. It is extremely challenging for multinationals to comply with the CRA's administrative Reg 102 policies because of the significant degree of unpredictability associated with business travelers. If a waiver is not obtained, the employer must withhold taxes and the employees must file Canadian tax returns to obtain a refund of the taxes withheld. Where the employees are treaty-exempt, the withholding tax simply constitutes a "deposit" of tax that the CRA is required to refund after processing the relevant tax returns.

This existing waiver system has received much criticism from the business community for being inefficient and burdensome.

The proposed change

With the intent to reduce the administrative burden placed on businesses engaged in cross-border travel, the 2015 federal budget proposal exempts "qualifying non-resident employers" from the Reg 102 withholding requirements for payments made after 2015 to "qualifying non-resident employees."

An employee will be a qualifying non-resident employee in respect of a payment if the employee is exempt from Canadian income tax on the payment because of a tax treaty and is not present in Canada for 90 or more days (including not only workdays) in any 12-month period that covers the time of the payment.

To be a qualifying non-resident employer, an employer (other than a partnership) is required to:

- Be resident in a country with which Canada has a tax treaty;
- Not carry on business in Canada through a permanent establishment (PE) in its fiscal period that includes the time of the payment, and
- Be certified by the CRA at the time of the payment.

For an employer that is a partnership to qualify, in addition to the second and third conditions noted above, at least 90% of the partnership's income for the fiscal period that includes the time of the payment must be allocated to persons that are resident in a treaty country.

The proposed changes provide that the CRA can deny or revoke certification if the employer does not meet the above conditions or fails to comply with its Canadian tax obligations.

Employers will continue to be liable for any withholding in respect of non-resident employees found not to have met the conditions outlined above; however, no penalty will apply to a qualifying non-resident employer for failing to withhold in respect of a payment if, after "reasonable inquiry," the employer had no reason to believe, at the time of payment, that the employee did not meet the conditions set out above.

Although a qualifying non-resident employer will not be obligated to make Reg 102 withholdings under the circumstances noted above, the employer will continue to be responsible for its reporting requirements under the Income Tax Act with respect to amounts paid to its employees (e.g., issuing T4 slips).

Certification is not conclusive as to whether a non-resident employer has a taxable presence in Canada and, as such, is only relevant with respect to determining the "qualifying" status for withholding tax purposes.

Deloitte's view

This proposal is a welcome development as it provides relief to international businesses that employ frequent business travelers to Canada. The budget has acknowledged the business community's request for change to the withholding tax regime for non-resident employees. The proposal is in line with much-awaited policy regarding "trusted employers" and the broader effort to reduce administrative red tape relating to Reg 102 withholding.

We hope that the CRA will support this legislative intent with documented guidance, which evidences a risk-based approach to assist with expediency.

Some issues that should be addressed are:

1. Certification of the non-resident employer: One of the requirements for an employer to be certified as a qualified non-resident employer is that it does not have a PE in Canada "as defined by regulation." Further guidance is required regarding this requirement, especially the timing of the necessary PE analysis by the employer. Clarification is also necessary with respect to the regulations reference, as PE is a treaty concept and is only addressed in the regulations with respect to provincial income allocation.
2. The 90-day rule: It is unclear whether the non-resident employer will be required to remit catch-up withholdings in cases where the non-resident employee happens to be in Canada for greater than 90 days in a 12-month period. Further, would the preceding year be affected where the 90-day limit is surpassed in a subsequent tax year?
3. Services PE: It is unclear how the proposed rule would apply if a non-resident employer is considered to have a services PE in Canada due to the presence of non-resident employees in Canada, none of whom are individually present for greater than 90 days. It will be necessary for the employer to exercise diligence in respect of its internal tracking and monitoring processes to ensure that it does not inadvertently trigger a services PE.
4. Reporting requirements: The proposal does not eliminate reporting requirements. As such, the non-resident employer will still have the administrative burden of filing withholding tax slips for the qualified non-resident employees. Employers will still be required to set up payroll accounts in Canada and to make related T4 filings for employees who are exempt from Canadian tax and have waivers from withholding tax.
5. Tax ID numbers: Similarly, the proposal does not eliminate the need for a qualifying employee to obtain a tax ID number. The current process for obtaining ID numbers is cumbersome.
6. Canada Pension Plan and Employment Insurance rules: The CRA should consider simplifying the process of determining whether such contributions are required and obtaining certificates of coverage when international agreements apply.

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United Kingdom: Immigration: NHS surcharge 2015

Overview

This update provides a brief overview of the National Health Service (NHS) surcharge followed with frequently asked questions to assist with your understanding.

NHS surcharge explained

To remind you, the NHS surcharge was implemented from 6th April 2015 as follows:

- The NHS surcharge is £200 per person, per year and will be applicable to those applying for a Tier 2 General visa over 6 months. It will be paid upfront for the duration of the visa. For example, for a family of four applying for visas for three years, the health care surcharge payable at the time of application will be £2,400.
- The fee will also be applicable when extending leave to remain inside the UK.
- At present, Tier 2 Intra Company Transfer migrants will not be subject to the surcharge.

Frequently Asked Questions

Below we have set out some frequently asked questions and responses we received from the UK Visa and Immigration when liaising with them on the NHS surcharge:

Scenario – Migrant changes employment in the UK

Question: Would the NHS charge be reduced for the time they had left on their current leave and only pay the balance for the new leave? Otherwise, if the circumstances arise, there could be double payment for a part of the leave?

Answer: If someone makes a fresh application, for example to move to a new sponsor, they would be required to pay the immigration health surcharge alongside this immigration application, for the full duration of the leave for which they may be granted. In the event they are granted, they will be refunded the difference in the surcharge between the sum they paid with the first application and with the second (except for periods of less than 6 months). In practice this means that applicants in this situation will not be paying the surcharge twice for the same period of leave.

Scenario – Migrant doesn't manage to travel within the initial 30-day visa granted under the new Biometric Immigration Document (BID) process

Question: Presumably, when they apply for the initial 30-day visa, they will be required to pay the NHS charge. If the migrants don't use the initial 30-day visa, they will have to apply for a new 30-day visa, would the system recognise that this is a second 30-day visa and not ask for NHS payment again?

Answer: If someone is granted leave to enter the UK and they do not travel within the validity of their 30-day multientry vignette, they will be required to apply and pay a fee for a new 30-day vignette.

The vignette is proof of someone's permission to enter the UK and allows them to travel. If they have already paid the surcharge alongside their earlier entry clearance application, they will not be required to do so again.

Scenario – Individual(s) leave the UK earlier than expected and granted on their visa

Question: Could you please explain the rationale behind not allowing the NHS surcharge to be refunded?

Answer: The surcharge is a contribution to the NHS for services which someone may or may not use during their stay in the UK. It is not intended to cover an individual's specific treatment. In the event that someone decides to leave the UK earlier than expected, it is possible for them to reenter the UK during the validity of the visa, during which time they may access health services.

Scenario – Refund Process

Question: Is there a refund process in place and details on how this will work in practice? If so, are you able to share this with us?

Answer: This will be an automatic process and will be set out in published guidance. The applicant will not need to take any action. The only time when an applicant would initiate a refund is when they wish to withdraw an application.

Scenario – Accessing the NHS services during a grant of leave

Question: Would it be possible in practice given for an example for a Tier 2 migrant who leaves the UK early, the sponsor is required to report the end of employment within 10 working days and, therefore, the individual would not be able to reenter the UK on their Tier 2 visa as this would no longer be valid. Would they still be able to reenter the UK to access the NHS services only?

Answer: Someone is not permitted to enter the UK solely for the purpose of using the NHS. The published guidance will make clear that the surcharge will not be refunded where someone leaves the UK early, where the Home Office curtails their leave, or where they successfully obtain entry clearance but do not travel.

Deloitte's view

Deloitte reviewed the NHS surcharge process in great detail and took into account the practicalities on how the NHS surcharge will be issued and used on a day-to-day basis for both migrants and the sponsoring business. This brought about the above questions which the UK Visas and Immigration (UKVI) kindly responded to clarify, which we hope you and your businesses will find useful.

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Have a question?
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