

Income Tax Regulations 105 and 102

Tax Implications for Services Rendered in Canada by Non-Residents

For the past few decades, globalization has been the driving force behind Canada's economic development and prosperity. An important part of this movement relates to increased changes in labour force compositions such that geographic, political and legal jurisdictions are no longer barriers to cross border employment. As such, specialized non resident professionals can conveniently work in Canada at all times.

Pursuant to all this activity, various income tax implications ensue. Of particular interest are regulations 105 and 102 of the *Income Tax Act* which oversee labour relations between resident and non-resident businesses and non-resident workers for services rendered in Canada.

Regulation 105: Withholdings by Canadian individuals on payments to non-residents

Regulation 105 subsection (1) requires that every individual paying fees, commissions or other lump sums to a non-resident (individual, corporation or trust) for services rendered in Canada must withhold 15% of payments to the non-resident. Withheld amounts represent a deposit against the non-resident's final tax liability. In case of excess withholdings, the non resident may retrieve the balance by filing a Canadian income tax return by the applicable deadline, and claiming treaty exemption when applicable.

The payor must remit withheld payments to the Receiver General by the 15th of the following month. A T4A-NR reporting all amounts paid to the non-resident must also be filed with the CRA by the last day of February of the year following the year when remuneration was made. Failure to comply will render the payor liable for any and all unpaid amounts including penalties and interest.

Waivers:

A non-resident worker can waive or reduce the amount of withholdings by filing an R105 waiver application at least 30 days prior to commencing work or before the first payment is made. Non-residents can apply for either of two waivers: a treaty-based waiver or an income and expense waiver.

The first can be claimed on the basis of the non-resident's lack of a permanent or fixed establishment in Canada, on the non-resident's length of stay, or on income earned not exceeding \$5,000 (higher in some treaties) for the current calendar year.

The second waiver can be claimed based on estimated future income to be earned and related business expenses to be incurred. In this case, a graduated tax rate is applied on the non-resident's net income after expenses, such that if graduated taxes are lower than regulation 105 withholdings, a lower withholding rate is used.

Regulation 102: Withholdings by a non-resident individual for payments to non-residents

Regulation 102 requires that non-resident payors withhold, report and remit Canadian payroll deductions for a non-resident performing services in Canada, regardless of the individual's length of stay. Canada Pension Plan (CPP) contributions, Employment Insurance (EI) Premiums and withholding taxes must be withheld and remitted to the CRA, along with the applicable employer portion, unless an agreement on social services exists between Canada and the foreign country. In addition, the payor must also file a T4 information return reporting amounts paid to the non-resident.

Waivers:

Either non-resident payor or the non-resident worker (with the payor's authorization) can file for a waiver to reduce regulation 102 withholdings. However, it should be noted that **only residents of a treaty country can file for this waiver**. For example, a regulation 102 treaty-based waiver will be granted to a US resident employee if their total remuneration from services rendered in Canada does not exceed \$10,000 for the calendar year and their overall stay was less than 183 days.

Non-residents are encouraged to apply for the waiver as soon as plans for an abroad work term become concrete. Additionally, the non-resident employee must generally file a Canadian tax return by April 30th of the subsequent year.



The essentials

Canadian individuals should always consider withholding requirements for payments made to non-residents prior to engaging their services. They should also enquire about waivers filed by the non-resident and the consequences on total amounts withheld. The same considerations apply for non-resident payors for whom non-resident workers are performing services in Canada. They must also be knowledgeable of the impact of treaty agreements with Canada and their impact on withholding and waiver matters. Overall compliance with both regulations 105 and 102 is sure to avoid unnecessary complications and frustration over unpaid balances to the CRA.

For more information, visit <http://www.cra-arc.gc.ca/tx/nnrstdnts/cmmn/rndr/menu-eng.html>.

This'n That at Logan Katz

Erratum— 2013 RRSP Contribution Deadline

An email sent January 15th on Filing Deadlines 2013 noted the wrong date for the RRSP Contribution deadline. The correct date is March 1st not February 28th.

Breakfast Seminars

We hope to see you at our breakfast seminar to be held on February 21. Logan Katz is pleased to welcome Rick Tachuk, Chairman of the American Chamber of Commerce and Glen MacMillan, Tax Partner at Adam & Miles LLP. Both will address the fundamentals of investing and setting up a business in the United States. To register visit our Events page at www.logankatz.com/seminars.shtml or contact Angelita at 613-228-8282 ext. 0. We look forward to seeing you!

New and Returning Faces

Logan Katz welcomes Chantal Bergeron, Christina Yee, Marie-Soleil Lee and Wilson Li, students of the University of Ottawa co-operative program. They will be with us for their first co-op term until April 30th, 2013. We also celebrate the return of Joshua Schram and Taylor Servais for a second co-op term until August 30th. We are pleased to welcome Ashley Lemieux to the Admin team and Daniel Duval to the FRS group.

Logan Katz in the Community

On January 14th Stacy Glenn and Jason Valente spoke to a group of individuals from the Institute of Professional Bookkeepers of Canada on Preparing the Corporate T2—Tips & Traps.

December On-Line Poll

The Logan Katz December on-line poll asked "What do you think will be the outcome of the current NHL lockout". Our non-scientific results were: 6% A settlement before the holidays; 12% A settlement shortly after the holidays; 18% A settlement at the 11th hour allowing for a severely shortened season to be played and 65% The cancellation of the entire season once again. Visit our website to participate in our monthly polls.

We're Throwing a Party!

Join us on Sunday, February 3rd for our second *Super Bowl Bash* at Dooly's Ottawa.

Please contact us by Friday, February 1st if you'd like complimentary tickets.