

Office of the President and
Chief Executive Officer

Cabinet du président
et chef de la direction

November 15, 2012

The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance
Department of Finance Canada
L'Esplanade Laurier
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Dear Minister:

Re: Withholding obligations under Regulation 102

Over the past year, the Canadian Chamber of Commerce has consulted its members across the country to identify the key barriers hindering their competitiveness. Many of our members told us that finding staff with the right expertise and training is their greatest challenge.

In many cases, the service providers Canadian businesses are seeking for short-term assignments reside in the U.S. or abroad. These non-resident employees and their employers often face significant and burdensome tax compliance requirements.

- Employers are required to withhold and remit income tax and payroll taxes for each of their non-resident employees¹ – regardless of how little time the individuals spend in Canada – unless a foreign-service provider can show, before performing the services in Canada, that the amount to be withheld is more than the ultimate Canadian income tax liability.
- Remuneration paid to non-resident employees may be exempt from income tax in Canada if the individuals are residents of a country with which Canada has negotiated a tax treaty, and in certain situations – income earned in Canada must be less than C\$10,000 in the year for U.S. residents and less

¹ An exemption from CPP contributions may be available based on a reciprocal agreement on social security between Canada and the employee's home country. An exemption from EI premiums may be available if the unemployment laws of the employee's home country require payment of premiums on the same employment income.

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than C\$5,000 for residents of other treaty countries. However, the employer and/or employee must still apply for a formal waiver from the CRA.

- Even when non-resident employees are exempt from Canadian tax and a waiver has been granted, non-resident employers must still maintain a payroll system in Canada for their non-resident employees and make timely T4 filings.
- To facilitate payroll reporting, non-residents working in Canada must apply for a Canadian Social Insurance Number or an Individual Tax Number (as applicable), both of which require separate applications together with supporting documentation.
- If waivers cannot be obtained, non-resident employers face significant payroll issues where two countries require tax to be withheld on the same salary. For example, since the employer will often need to advance the funds necessary to remit such withholding, the employee must file a Canadian income tax return to obtain a refund of the withholding tax and then turn that money over to the employer to reimburse the initial remittance.
- Finally, employers and employees have to deal with potentially several different CRA Tax Services Offices as non-resident employees may work in different areas of the country. This is cumbersome, confusing and often results in inconsistency.

Minister, we are aware that the government is working hard to improve employee mobility across the Canada-U.S. border as part of the Beyond the Border Action Plan and we applaud the government for this initiative. We also congratulate the government and, in particular the CRA, for its renewed and enhanced focus on cutting red tape for businesses, including the aspects that relate to tax compliance reporting, as announced on October 1, 2012 by the Honourable Gail Shea, Minister of National Revenue. However, non-resident employees who come to Canada to work for short periods, as well as their employers (whether they are non-resident or Canadian corporations who carry out the administrative duties on behalf of related non-resident employers), remain entangled in tax-related red tape. The very onerous tax withholding and reporting requirements, which result in high administration and compliance costs, make them think twice before sending people to Canada, even when there is a strong business need for them.

At the Canadian Chamber's Annual General Meeting in Hamilton in September, delegates passed a resolution calling on the federal government to:

1. Introduce legislation to permit all non-resident employers to administer a Regulation 102 blanket waiver process for employees working in Canada below a specified number of days.
2. In the alternative, introduce legislation to permit a non-resident employer with non-resident employees working in Canada during a particular year to make a single Regulation 102 filing within [90] days following the end of the year, together with Regulation 102 remittances (including interest but not penalties) for any of its employees who were ultimately taxable in Canada for the year.

Minister, I urge you to champion appropriate changes to the *Income Tax Act* in Budget 2013 and for the CRA to streamline its administrative practices accordingly to further reduce the tax compliance burden for businesses. This would further enhance Canada's position as a business-friendly tax jurisdiction and would help facilitate the cross-border movement of skilled workers.

I hope our comments have been helpful. I, along with our members, would be pleased to work with you to offer any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Perrin Beatty". The signature is written in a cursive style with a large initial "P".

Perrin Beatty
President and Chief Executive Officer

cc: The Honourable Gail Shea, P.C., M.P., Minister of National Revenue
The Honourable Jason Kenney, P.C., M.P., Minister of Citizenship,
Immigration and Multiculturalism
Mr. Phil Harwood, Policy Advisor, Prime Minister's Office
Mr. Jonathan Finkelstein, Policy Advisor, Minister's Office, Finance Canada