

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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A PUBLICATION FROM THE BDO CANADA/US TAX DESK



## SUBJECT

### CANADA REVENUE AGENCY ANNOUNCES EFFECTIVE DATE OF JANUARY 1, 2016, FOR NON-RESIDENT EMPLOYER CERTIFICATION PROGRAM

## AFFECTING

Non-Canadian employers with non-Canadian employees conducting business travel in Canada.

## DETAILS

On January 12, 2016, the Canada Revenue Agency (CRA) announced the launch of the Non-Resident Employer Certification Program, as originally announced in the 2015 Federal Budget. The program will become operative on January 1, 2016, for certification applications received by the CRA by February 1, 2016. This is welcome news for non-resident employers who send employees, who are exempt from Canadian tax because of provisions of a tax treaty, to Canada for short periods of time. This new program will greatly reduce the administrative burden associated with these short-term stays.

Employers must register with the CRA to be part of this program, and the registration form, with instructions on how to apply, is now available on the CRA website: [www.cra-arc.gc.ca/E/pbg/tf/rc473/README.html](http://www.cra-arc.gc.ca/E/pbg/tf/rc473/README.html).

To qualify for the program, a non-resident employer must meet the following conditions:

- ▶ Be resident in a country with which Canada has a tax treaty (special rules apply for employers who are partnerships); and
- ▶ Be certified by the Minister of National Revenue (which is done through the registration process which is now available).

It is anticipated that the approval process will take about 30 days and will be granted for a two-year period.

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### *Prior and current legislation*

Under prior tax legislation, non-resident employers were required to obtain employee-specific waivers from the CRA in order to be relieved from their obligation to withhold income tax on wages paid. In addition, the employer had to comply with reporting requirements such as obtaining Canadian tax numbers and Form T4 reporting, for all employees who spent time in Canada, even if they ultimately were not subject to Canadian tax.

Now, non-resident employers, who are certified under this program, will get relief from the requirement to obtain a waiver for qualifying non-resident employees and the obligation to do reporting for these employees if they make less than \$10,000 in a year related to their Canadian activities.

A qualifying non-resident employee is defined as one whom:

- ▶ Is resident in a country with which Canada has a tax treaty at the time of payment;
- ▶ Is exempt from Canadian tax in respect of the payment because of a tax treaty; and
- ▶ Either works in Canada for less than 45 days in the calendar year that includes the time of the payment or is present in Canada for less than 90 days in any 12-month period that includes the time of the payment.

Note that this program only applies to income tax withholdings on employee remuneration; and it is possible that withholding of Canada Pension Plan (CPP) and/or Employment Insurance (EI) premiums will continue to be required. CPP premiums are not required, however, for non-resident employees if they have a certificate of coverage under a Social Security Agreement between Canada and the country of residence of the employer; and EI premiums are not required if the employee is covered under a similar program in his or her country, while working in Canada. Most United States resident employees, for example, should meet these conditions.

A qualifying non-resident employer will have a number of obligations under the program. Such employers must, first, track the number of days each qualifying non-resident employee is either working in Canada or is present in Canada. Non-resident employers must also account for the income attributable to such days on a proactive basis. Qualifying non-resident employers are also required to make certain that employees are resident in a country which has a tax treaty with Canada and that the wages attributable to time spent in Canada is, in fact, treaty exempt.

## **BDO INSIGHTS**

This announcement is seen as a positive development for employers that have employees traveling and conducting business activities in Canada. Employee activities may also create other tax filing obligations in Canada. BDO can assist employers with applying for and complying with the Non-Resident Employer Certification Program and other tax filing obligations.

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