
Canada: Regulation 102 processes - what has changed?

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In brief

Employers who send employees to work in Canada must comply with Canadian payroll regulations. This can involve various processes, such as applying for Canadian tax identification numbers and for tax withholding waivers, remitting taxes and issuing T4 slips. Employers trying to correct past payroll withholding deficiencies may also consider the submission of a voluntary disclosure (VD).

Recent discussions with the Canada Revenue Agency (CRA) indicate that 'cashless' VD submissions are no longer allowed. Employers must remit taxes for all their employees who worked in Canada in prior years for which the company has filed a VD with the CRA.

Also, a recent CRA update states that non-residents who perform services in Canada should send most Individual Tax Number (ITN) applications to the International Tax Services Office (ITSO) in Ottawa. However, ITN applications related to a Regulation 102 waiver application should be sent to the local Tax Services Office (TSO).

In detail

Regulation 102

Every employer that pays remuneration to an employee, in respect of employment duties rendered physically in Canada, must withhold Canadian taxes on the remuneration. This requirement, which is in Section 102 of the Income Tax Regulations (Reg. 102), applies whether or not the employer is a resident of Canada. [Click here for our related alert](#) that provides a general overview on the implications of Reg. 102.

Regulation 102 voluntary disclosure process

Background

In prior years, when VD submissions were reviewed and handled by local TSOs, multi-national employers may have had an opportunity to negotiate a settlement with the CRA regarding Canadian payroll withholding deficiencies under Reg. 102.

Specifically, employers who were able to demonstrate that they did not have a corporate permanent establishment in Canada (and that their employees were exempt from

Canadian taxation under a tax treaty) may have been able to negotiate that the payroll taxes that should have been withheld from employees' remuneration did not have to be remitted to the CRA.

In other cases, US employers were not requested to remit the taxes for employees who earned less than CDN \$10,000 of compensation attributable to Canadian workdays.

As a result, employers could reduce the administrative and financial burden of having to remit all taxes and requesting

employees to file Canadian non-resident tax returns in order to claim a refund of the tax remittances.

Recent change: Remitting taxes

Based on recent experiences and discussions with the CRA and subsequent to the centralization of the VD Program services in the Shawinigan-Sud Tax Centre in Quebec, any employer making a VD submission with respect to Reg. 102 personal income tax withholding deficiencies will have to remit all taxes on behalf of its employees who rendered services in Canada.

As a result, to the extent the employees are exempt from Canadian taxation pursuant to a tax treaty between Canada and the employee's home country, the employer can recover the tax remittances only if it has these employees file Canadian non-resident personal income tax returns.

Although the CRA has acknowledged the administrative burden for both employers and employees, no changes to this process are expected soon.

ITN application process

Background

Previously, the CRA required ITN applications to be sent with Reg. 102 waiver applications to the local TSO closest to the location in which employees worked in Canada. However, during 2013, the CRA centralized the ITN process: All applicants had to send their ITN applications to the ITSO in Ottawa.

Recent change: Filing location for Reg. 102 waivers

Another change became effective on June 9, 2014. Now, all ITN applications for the purposes of filing Reg. 102 waiver applications must be sent to a local TSO; not to the ITSO in Ottawa. The individual must attach the completed ITN application, Form T1261, along with certified copies (containing original signatures in blue ink) of the required identification documents to the back of the application.

If employment duties will be rendered by an employee in multiple locations in Canada, the complete waiver application can be submitted to any local TSO that serves one of those locations.

ITN applications not in respect of Reg. 102 waiver applications should continue to be sent to the ITSO.

The takeaway

Multi-national employers who have employees working in Canada are required to withhold Canadian taxes on their remuneration. Employers that did not withhold and remit taxes in prior years may choose to submit a VD to mitigate the payroll tax exposure. There is no statute of limitations on the failure to withhold and remit payroll taxes.

When submitting a Reg. 102 VD, employers will be required to remit taxes for all of their employees who worked in Canada.

If employees are exempt from Canadian taxation under a tax treaty, the employer must have them file non-resident tax returns to claim a refund of the tax remittances.

In the course of complying with Reg. 102 (including VD submissions), employers and employees should take note of the recent changes to the ITN application process in order to mitigate any processing delay.

Let's talk

For a deeper discussion of these changes, please contact your Global Mobility services team or any of the following:

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