

---

# Canada: Good news for foreign employers with frequent business travellers to Canada

April 24, 2015

---

## ***In brief***

Foreign employers with non-resident employees temporarily working in Canada will welcome a 2015 federal budget proposal that provides relief from payroll withholding requirements.

The changes, effective January 1, 2016, will help many multinational companies that:

- employ frequent business travellers into Canada, or
- have non-resident employees who work in Canada on short-term projects.

To prepare, employers should review their global mobility policies with respect to business travel into Canada. They should also establish processes for complying with the new proposal and any additional guidance that may be provided by the Canada Revenue Agency (CRA) or the Department of Finance in the coming months.

---

## ***In detail***

### ***Background***

Employers that have non-resident employees performing employment duties in Canada currently face the same Canadian payroll requirements as those that employ Canadian resident employees – even if the non-resident employees ultimately are exempt from Canadian taxation under an income tax treaty.

Complying is time-consuming and administratively burdensome, and often results in no net revenue for the CRA.

Businesses have been asking for changes in this area for many years.

### ***What Regulation 102 requires***

Section 102 of the Income Tax Regulations (Reg. 102) requires every employer (whether resident or non-resident in Canada) that pays remuneration to a non-resident employee for employment duties rendered in Canada to withhold Canadian taxes on the remuneration.

There is no *de minimus* exception and, while a tax treaty may ultimately provide an exemption from tax, it does not

exempt the employer from the initial withholding requirement.

A Reg. 102 waiver process is available, but it is often administratively burdensome and impractical to obtain waivers for affected employees. When no waiver is obtained, the employee must file a Canadian return to claim a treaty-based refund.

This situation creates risk for multinational companies doing business in Canada.

### ***Budget proposes relief***

The 2015 federal budget proposes legislative changes to

Reg. 102 that will alleviate much of the burden for certain non-resident employers and their non-resident employees working in Canada.

PwC participated in the consultation process and was instrumental in getting relief for businesses.

### *Qualifying employers and employees*

The budget proposes to provide an exemption from the Reg. 102 withholding requirement on an amount paid by a “qualifying non-resident employer” to a “qualifying non-resident employee.”

A “qualifying non-resident employer” must meet all of the following conditions:

- is resident in a country with which Canada has a tax treaty (“treaty country”). When the employer is a partnership, 90% or more of the income or loss of the partnership for the fiscal period that includes the time of the payment must be allocated to partners who are resident in a treaty country.
- does not carry on business through a permanent establishment in Canada
- is at that time certified by the Minister.

A “qualifying non-resident employee” must meet all of the following conditions:

- is resident in a treaty country
- is exempt from Canadian income tax under a tax treaty
- is not present in Canada for 90 days or more in any 12-month period that includes the time of the payment.

To become certified, a non-resident employer must file an application

form containing “prescribed information” and must meet certain (unstated) conditions. The certification will be effective for a specified period of time, subject to revocation if the employer fails to meet the conditions or to comply with its Canadian tax obligations.

When all the above conditions are met, the employer will be exempt from Reg. 102 withholding and remittance requirements. However, the employer will continue to be responsible for reporting requirements, such as filing a T4 information return annually.

Employers will remain liable for any withholding in respect of non-resident employees found not to have met all the conditions above. However, no penalty will be applied if, after reasonable inquiry, the employer had no reason to believe that the employee did not meet the conditions.

The budget proposals do not provide any relief in cases when all of the above conditions are not met – in these cases the current requirements will continue to apply.

The budget changes will apply to payments made after December 31, 2015.

### *Practical impacts*

The current process of applying for Reg. 102 waivers is burdensome and impractical for most businesses. In particular, employees often must travel to Canada on short notice, making it difficult for companies to submit complete Reg. 102 tax waiver applications early enough for the CRA to grant waivers before the Canadian source compensation is paid.

Employees frequently travel to and from Canada for business meetings and short projects, so the proposed changes could eliminate the Reg. 102 remittance requirement, and the need

to file ‘refund claim’ personal income tax returns, for a large percentage of a company’s business travellers. This should significantly reduce the time and resources currently spent on Reg. 102 compliance.

A non-resident employer must be certified before it can become a “qualifying non-resident employer.” It remains to be seen what information the CRA will require, and what additional conditions will be imposed, for a non-resident employer to become certified.

Employers must continue to withhold and remit taxes for employees who are taxable in Canada (due to the lack of a treaty benefit). These employees will still be required to file Canadian tax returns and pay applicable taxes – employers will typically provide assistance to the employee in this regard, pursuant to their business traveller policy.

Given the proposed new requirements, affected employers will need to identify the residency status of their employees and track the number of days each employee is present in Canada. Note that the 90 day test is based on total days present in Canada, rather than only working days.

If a non-resident employer’s certification under the proposed rules is revoked, it can no longer benefit from the Reg. 102 exemption. Therefore, affected non-resident employers should take the necessary steps to ensure ongoing compliance with their Canadian tax obligations.

The budget proposals provide relief only from the Reg. 102 withholding requirements. As is currently the case, each non-resident employer must complete and file T4 slips and a T4 Summary for employees who performed any employment duties in Canada (there is no *de minimus* exception).

## The takeaway

Overall, the budget's proposed changes to the Canadian payroll compliance requirements will make it easier for companies to comply with Reg. 102 when their employees travel in and out of Canada.

The proposed budget changes will become effective January 1, 2016. To prepare, employers should now review their global mobility policies with respect to business travel into Canada and establish processes for complying with the new legislative framework for Reg. 102 and any additional guidance provided by the CRA or the

Department of Finance in the coming months.

For 2015, the existing processes and requirements relating to Reg. 102 will continue to apply. It remains to be seen whether the CRA will continue to aggressively audit and assess companies under the existing rules for 2015 and prior years.

### How can PwC help?

PwC was at the table with businesses and industry associations, explaining the challenges faced under the existing Reg. 102 regime to government officials.

Our specialists in this area can help companies of all sizes to:

- understand the proposals and new administrative requirements
- design and implement new policies and processes
- communicate with senior leadership and affected employees
- deal with compliance requirements and CRA audits for 2015 and prior years.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact your regular Global Mobility Services engagement team or one of the following professionals from PwC Canada:

### Global Mobility Services - Canada

Anne Kestenbaum  
+1 (416) 365 8169  
[anne.kestebaum@ca.pwc.com](mailto:anne.kestebaum@ca.pwc.com)

Chris Chan  
+1 (416) 815 5258  
[chris.m.chan@ca.pwc.com](mailto:chris.m.chan@ca.pwc.com)

Dan Fontaine  
+1 (905) 815 6408  
[dan.g.fontaine@ca.pwc.com](mailto:dan.g.fontaine@ca.pwc.com)

### Global Mobility Services – United States

Peter Clarke, *Global Leader*  
+1 (203) 539-3826  
[peter.clarke@us.pwc.com](mailto:peter.clarke@us.pwc.com)

**Stay current and connected.** Our timely news insights, periodicals, thought leadership, and webcasts help you anticipate and adapt in today's evolving business environment. Subscribe or manage your subscriptions at:

[pwc.com/us/subscriptions](http://pwc.com/us/subscriptions)

#### SOLICITATION

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwC does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2015 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.