

2017 Issue No. 46  
3 October 2017

## Tax Alert – Canada

### CRA issues updated Regulation 102-R waiver form for nonresident employees working in Canada

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 28 September 2017, the Canada Revenue Agency (CRA) issued updated Form R102-R, *Regulation 102-R Waiver Application* (R102-R) to simplify the application form.

Nonresident employees that are working in Canada are subject to tax in Canada, unless exempt under a tax treaty. Employers are required to withhold and remit tax, unless a tax waiver is in effect. Updated Form R102-R provides a simpler process to obtain a waiver for employees who were previously qualifying nonresident employees working for a certified nonresident employer.

The CRA is encouraging foreign employers with nonresident employees who work in Canada to become certified qualifying employers through streamlined processes. Employers should develop internal policies and procedures to mitigate risk exposure and fulfill compliance requirements in Canada.

### Background

Remuneration paid to a nonresident employee for work performed in Canada is subject to tax in Canada, unless the employee is exempt pursuant to an income tax treaty. Employers have the same withholding, remitting and reporting obligations as those that apply to Canadian resident employees, unless a tax withholding waiver is obtained. Without an approved waiver, tax must be remitted to the CRA on the income earned for work performed in Canada. An

employee would need to file a personal income tax return claiming treaty relief to obtain a refund of the taxes remitted.

Prior to 2017, the CRA offered two types of waiver applications. Form R102-J, *Regulation 102 Waiver Application - Joint Employer/Employee* (R102-J) was applicable to residents of the US who expected to earn no more than CAN \$10,000 or residents of another tax treaty country who expected to earn no more than CAN \$5,000. Form R102-R applied to employees who did not meet the Form R102-J requirements but were still exempt from Canadian tax pursuant to a tax treaty. As of 1 January 2017, Form R102-J is no longer available.

In 2016, the CRA issued the long-anticipated employer certification Form RC473, *Application for Nonresident Employer Certification* (RC473). An approved Form RC473 removes the requirement for the foreign employer to withhold Canadian income tax at source from compensation paid to qualifying nonresident employees. When employees are exempt from tax under an income tax treaty, employer certification will eliminate the need for qualifying nonresident employees to obtain individual tax withholding waivers. This employer-level certification covers all qualifying nonresident employees.

For more information on the employer certification process, see our [Tax Alert 2016 Issue No. 1](#).

## Highlights of updated Form R102-R

The CRA has addressed some concerns that were raised in regards to the previous version of Form R102-R. A simple waiver process has been added within this form for previously qualifying nonresident employees who exceed the days threshold provided by the employer certification process but continue to be exempt from Canadian tax pursuant to an income tax treaty.

The updated form is a consolidated waiver application for a foreign employee who:

- ▶ Is nonresident, providing employment services in Canada, and will be exempt from Canadian tax based on a tax treaty;
- ▶ No longer meets the definition of a qualifying nonresident employee; yet
  - ▶ Still works for the same qualifying nonresident employer; and
  - ▶ Who continues to work in Canada and is still exempt under a tax treaty;
- ▶ Is working at a Canadian embassy or similar organization located outside Canada; or
- ▶ Is a nonresident, providing employment services that relate to the film and television industry.

Employees who were previously qualifying nonresident employees, but have since spent 45 working days or more in Canada in a calendar year and have been present in Canada 90 days or more in any 12-month period that includes the time of payment only need to provide limited information on the updated Form R102-R.

## Details of the updated Form R102-R

[Attached is a link to the updated Form R102-R](#), which includes additional guidance from the CRA.

Individuals who no longer meet the definition of a qualifying nonresident employee are only required to complete the Applicant Identification section and Appendix A, which requests details on employment dates in Canada within the preceding calendar year, current year and following year. The guidance does not indicate whether this request is limited to dates in Canada during the period covered by the certification process, or whether information must also be provided on travel to Canada before employer certification. Further, the form instructions do not specifically indicate whether information is to be provided on past or future travel to Canada for a different employer. We will continue to monitor for added guidance on this section of the application.

An individual requires either a Canadian Social Insurance Number (SIN) or an Individual Tax Number (ITN) to make application for a waiver on Form R102-R. If an applicant does not yet have a SIN or ITN, application for a SIN should be made in advance of filing Form R102-R; however, if the individual does not qualify for a SIN, the ITN application on Form T1261 can be submitted along with the R102-R application.

### Our perspective

It is unfortunate that former Form R102-J was withdrawn, as it provided a relatively straightforward application process for employees performing limited work in Canada, where employer certification was not obtained.

However, by providing a revised tax waiver application process, the CRA is making it easier for certain nonresident employees to apply for relief from withholding tax requirements. The updated waiver application also lends support to the employer certification process as it provides relief to employees who will cross over the days thresholds and cease to be qualifying nonresident employees.

The updated form shows evidence of the CRA's continued focus on nonresident employees who work in Canada. We expect that the CRA will continue to direct audit efforts at reviewing payroll compliance of nonresident employers.

### Next steps

Companies that have not become certified should review the status of their short-term business travellers into Canada. They should develop processes to either meet the requirements of certification or become compliant with the withholding, remitting and reporting obligations.

Certified employers should review the updated Form R102-R and ensure that those employees who exceed the relevant days thresholds make application for withholding tax relief where appropriate.

## Learn more

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