

Payroll Compliance

- **“Every person paying salary...”**
- Person -Rules applicable to a resident corporation or non-resident corporation
- Generally, responsibility belongs to employer
- Consider practical approach –local entity to make remittances on behalf of the employer

Payroll Withholding Requirements

- Every person paying remuneration to employees working in Canada must withhold Canadian income tax at source in respect of their employees' Canadian source compensation. Withholding obligation applies to non-resident employers.
- Withholding obligation applies even if the employee ultimately is exempt from Canadian taxation under the Treaty.
- Only exception is where a waiver is obtained authorizing no withholding.
- Must also report Canadian source compensation and tax withholdings at source on annual information returns (T4 slip and T4 summary).
- Requires the non-resident employer to register and open up payroll accounts with CRA.

Employee Risks

- Penalties and interest charges for failing to file return (if taxed owed to Canada)
- Personal returns not filed - never go statute-barred
- Potential denial of entry into Canada
- Heightened risk of scrutiny by CRA

Shadow Payroll - Canada

- **What is a shadow payroll?**
 - **Payroll setup in the host (Canada) country that “shadows” the home country payroll for employees who work in Canada but paid via home country payroll**
 - **The objective is to be compliant for payroll purposes in both the home and the host country**
 - **Ensures that all taxable items are captured**
 - **Ensures that any payroll tax obligations are met**

Shadow Payroll – Canada Cont'd

- **What are Canadian payroll requirements on international assignees?**
- All employees are required to withhold and remit Canadian payroll taxes if their employees exercise their employment in Canada
- These obligations apply to both resident and non-resident employees/assignees
- Penalty and interest charges are imposed on later remittances

Shadow Payroll – Canada Employer Obligations

Employers sending assignees to Canada should:

- **Identify the payroll obligations**
- **Register with the CRA to obtain a Canadian payroll account/number**
- **Determine the Canadian residency status of assignee**
- **Obtain the SIN/ITN for the assignee**
- **Determine whether the income is treaty exempt**
- **Submit waiver request(s), if applicable**
- **Report Canadian source income and withholding amounts and remit the appropriate Canadian income tax amounts**

Canadian Inbound Assignees

Business Traveler (Non-resident of CA)

- **Canadian sourced income may be exempt from Canadian tax under treaty**
- **If treaty exempt, should consider submitting a waiver request**
- **Determine if the income is subject to Canada Pension Plan contributions (CPP)**
- **Determine if the income is subject to Employment Insurance Premiums (EI)**

Canadian Inbound Assignees Cont'd

Short-Term/Long-Term Assignees (Resident of CA)

- **File Form T1213 which reduces tax deduction at source for the assignee**
- **Determine if the income is subject to Canada Pension Plan contributions (CPP)**
- **Determine if the income is subject to Employment Insurance Premiums (EI)**

When is T4 reporting required for NRs?

Employees from foreign countries who remain non-resident in Canada:

- **Scenario 1:** Foreign Employer sends employee to Canada for a 1 year assignment with Canadian subsidiary who pays all salary and assignment benefits.
- **Scenario 2:** Foreign Employer sends employee to Canada for a 1 year assignment with Canadian subsidiary who pays only assignment benefits. Base Salary is paid by the foreign employer.
- **Scenario 3:** Foreign Employer sends employee to Canada for a 1 year assignment with Canadian subsidiary but all remuneration is paid by the foreign employer.

When is T4 reporting required for Residents?

Employees from Canada on assignment abroad but maintain Canadian residency:

- **Scenario 1:** Canadian employer sends employee to foreign country for a 1 year assignment with foreign country subsidiary who pays all salary and assignment benefits.
- **Scenario 2:** Canadian Employer sends employee to foreign country for a 1 year assignment with foreign country subsidiary who pays only assignment benefits. Base Salary is paid by the Canadian employer.
- **Scenario 3:** Canadian Employer sends employee to Canada for a 1 year assignment with foreign country subsidiary but all remuneration is paid by the Canadian employer.

What is included in T4?

T4 reporting should include:

- 1) All employment income earned in Canada

PLUS

- 2) Income that is paid by a Canadian employer
- Issue T4-PROVINCE for amount of income earned within a Canadian province or territory
- Issue T4-US for amount of income earned in the United States that is paid by the Canadian employer
- Issue a T4-ZZ for amount of income earned in other foreign countries that is paid by the Canadian employer

Costs of Non-Compliance

- **Interest and Penalties**
- **Reputational Risk**
- **Cost to compensate employees for inadequate social security coverage or retirement benefits**
- **Potential disallowance of corporate tax deduction for salary expense**

Compensation items - Taxability

Compensation Item	Taxable -Yes/No
• Foreign Service Premium	Yes -Taxable
• Hardship Differential	Yes -Taxable
• Cost of Living Allowance (COLA)	Yes -Taxable
• Board and Lodging/Housing Allowance	Yes —Taxable unless exempt
• Home Leave	Yes -Taxable unless exempt
• Relocation Allowance	Yes —Relocation is Taxable
• Hypothetical Tax	No —Reduction to Compensation
• Tax Reimbursements	Yes -Taxable

Employment at a Special Work Site

Benefits of board, lodging and transportation would be exempt per ITA 6(6) if all of the following are met:

- Employee's duties required him/her to be away from the principal place of residence to be at the special work site
- Duties at a special work site were of a temporary nature
- Employee kept a self-contained domestic establishment at principal place of residence throughout and its available
- Benefits of board and lodging were provided for at least 36 hours

TD-4 needs to be done

Social Security Taxes and Cross Border Payroll

Canada Pension Plan (“CPP”)

- **Employers are required to deduct CPP contributions from salary, wages, bonuses, commissions or other remuneration**
- **If not reporting to a PE in Canada, no CPP required**
- **Totalization agreements – usually a max. of 60 months**
- **If an assignee wishes to remain covered under home country system then the following form needs to be completed:**

Social Security Taxes and Cross Border Payroll

Employment Insurance (“EI”)

- **Residents must pay EI even when on foreign payroll**

- Employment outside Canada is insurable employment for Canadian purposes if:
 - Employer is resident of Canada
 - Insured person normally resides in Canada
 - Employment is not insured in country where employed
 - The employment is not insurable employment under the other country laws
- **☐ Payments are not subject to EI premiums if a non-resident assignee is covered under the unemployment insurance laws of home country**
- **☐ If contributing to USFUTA, EI will be exempt, for example**

Article XV(2) –Income From Employment

...Remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- Such remuneration does not exceed ten thousand dollars (\$10,000) in the currency of that other State; or
- The recipient is present in that other State for periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and the remuneration is not paid by, or on behalf of, a person who is a resident
- **IMPORTANT to note that an employee may be exempt from Canadian tax on the employment income above but it does not relieve employer from withholding, remitting and reporting requirements;**

Waivers

Reg 102 Treaty Waiver

- **Available to employees from treaty countries only**
- **Should apply 30 days before the start of employment or the initial payment**
- **Provide the CRA with a copy of the employment contract**
- **Written submission to nearest Tax Services Office**
- **Employee must still file annual income tax return; if not filed, it may impact waiver in future years**

FTC Waiver

FTC Waiver Process –Form T1213

- Estimate employee's foreign income tax liability-FTC
- Prepare two pro-forma income tax returns, one with the anticipated overseas employment deduction and one without
- Prepare a schedule to show the impact of FTC with Form T2209 "*Federal Foreign Tax Credit*"
 - T2036 "*Provincial or Territorial Foreign Tax Credit*" if applicable
 - Schedule 1
 - Complete Form T1213
 - Send the package to CRA for an authorization

Health Tax

Depends on Province but typically you would have:

- Employer portion of CPP and EI
- Workers Compensation payments (i.e., WSIB for ON)
- Employer health related payroll taxes (i.e., EHT for ON and HST for QC)