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**RYAN
MORRIS**
416.947.5001
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Tax Measures Impacting Employers Canadian Federal Budget 2015

Yesterday afternoon, the Canadian government tabled the 2015 Canadian Federal Budget. Two measures are particularly relevant to certain employers.

Withholding Relief for Non-Resident Employers and Employees

To take effect next year (if the measure is enacted), Budget 2015 proposes an exemption from certain withholding requirements on payments from “qualifying non-resident employers” to “qualifying non-resident employees” in respect of employment income earned in Canada. At a high-level, this means that non-Canadian resident employers that are resident in a country with which Canada has a tax treaty will not have to make withholdings on account of Canadian income tax on payments made to a non-resident employee in respect of employment services performed in Canada if the employee (i) is exempt from Canadian income tax in respect of the payment because of a tax treaty, and (ii) is not in Canada for 90 or more days in any 12-month period that includes the time of the applicable payment.

This is a long-overdue measure that will save us the embarrassment of telling our non-resident and multinational clients that they are technically required to make the aforementioned withholdings regardless of how briefly the non-resident employee is in Canada and regardless that the employee will be exempt from Canadian tax because of a tax treaty. More importantly, the measure will ease the administrative burden on non-resident businesses (or eliminate the unease of intentional non-compliance with the current technical withholding requirements) and will avoid the prospect of “double deductions” (home and source country) from an employee’s pay.

To qualify for the exemption, the non-resident employer must (i) not carry on business through a Canadian permanent establishment of the employer in the relevant fiscal period, and (ii) must make certain filings to become certified and be so certified at the time of the applicable payment. Further, non-resident employers will continue to have reporting obligations with respect to amounts paid to its employees and, subject to a due diligence defence, will be liable for

WeirFoulds LLP
66 Wellington Street West
Suite 4100, P.O. Box 35
Toronto-Dominion Centre
Toronto, Ontario, Canada
M5K 1B7
Office 416.365.1110
Facsimile 416.365.1876
www.weirfoulds.com

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withholdings to the extent that the non-resident employees were not in fact qualifying non-resident employees.

If these measures are enacted, multinational groups may wish to rethink putting a non-resident employee of a foreign member of the group onto the payroll of a Canadian member for the period in which the employee is working in Canada (as is often done to avoid Canadian filing obligations for the foreign member).

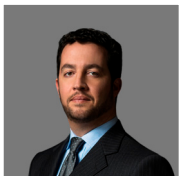
Quarterly Remitter Category for New Employers

Again taking effect next year (if the measure is enacted), Budget 2015 proposes to decrease the required frequency of remittances for the smallest new employers by allowing such employers to immediately remit on a quarterly basis.

Currently, new employers must remit on a monthly basis for at least one year, after which time they may be eligible to apply for quarterly remitting if they have an average monthly withholding amount of less than \$3,000 and a perfect compliance record over the preceding 12 months.

Under the proposed rules, quarterly remittances will be permitted for new employers with withholdings of less than \$1,000 in respect of each month and who maintain a perfect compliance record in respect of its Canadian tax obligations. The \$1,000 withholding threshold corresponds to the withholdings related to one employee at a salary of up to \$43,500, depending on the province of residence.

AUTHOR RYAN MORRIS



Ryan is Co-Chair of the Tax Group at WeirFoulds LLP. He regularly advises clients on various areas of domestic and international taxation, including advising on mergers and acquisitions, financings, withholding tax, employment issues and a broad range of corporate tax matters. Ryan also represents clients with audits, voluntary disclosures and appeals and has represented clients as lead counsel at every level of court, including Canada’s highest court, the Supreme Court of Canada. Ryan is also the co-editor and a frequent contributor to the Current Cases feature of the *Canadian Tax Journal*, the flagship research publication of the Canadian Tax Foundation.

Contact Ryan at 416.947.5001 or rmorris@weirfoulds.com

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