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**RYAN
MORRIS**
416.947.5001
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Notable International Tax Measures Canadian Federal Budget 2015

Yesterday afternoon, the Canadian government tabled the 2015 Canadian Federal Budget. This publication is intended to provide our busy international clients and friends with a high level overview of international tax measures announced in the Budget that may be of interest.

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 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 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).

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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Update on Tax Planning by Multinational Enterprises

Budget 2015 indicated that the Canadian government continues to work with other members of the Organisation for Economic Co-operation and Development (OECD) and the G-20 on the issues identified in the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS). BEPS refers to legal tax planning arrangements undertaken by multinational enterprises that exploit the interaction between domestic and international tax rules to shift profits away from the countries where income-producing activities take place.

The Government indicated that it will proceed in this area in a manner that balances tax integrity and fairness with the competitiveness of Canada's tax system, underscoring its commitment to keep Canada an attractive destination for business investment.

Update on the Automatic Exchange of Information for Tax Purposes

Canada is in continued negotiation with foreign countries to enter into or amend Tax Information Exchange Agreements and Tax Treaties with exchange-of-information provisions to permit, and in some cases require, the sharing of information between Canada and foreign jurisdictions for purposes of verifying tax compliance.

In this connection, the *Canada-United States Enhanced Tax Information Exchange Agreement* was brought into law in Canada as of June 27, 2014 and, among other things, requires the U.S. to provide the Canada Revenue Agency (CRA) with information on Canadian residents who hold accounts at U.S. financial institutions.

In November 2014, Canada and the other G-20 countries endorsed a new common reporting standard for automatic information exchange developed by the OECD. Under the new standard, participating foreign tax authorities will provide information to the CRA relating to financial accounts in their jurisdictions held by Canadian residents, and the CRA will provide corresponding information to such foreign tax authorities on accounts in Canada held by residents of their jurisdictions. The new standard will require financial institutions in participating countries to implement due diligence procedures (to the extent that they are not already in place) to identify accounts held by non-residents and report certain information relating to these accounts to the applicable tax authority.

Following through on its international commitments, Budget 2015 indicated that the Canadian government intends to implement the common reporting standard starting on July 1, 2017, allowing a first exchange of information in 2018. The Budget indicated that draft legislative proposals will be released for comment in the coming months.

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, transfer pricing, non-resident withholding tax 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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