



GMS Flash Alert

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Canada - CRA Guidance Offers Relief from Travel Restrictions' Tax-Related Issues

Multinational entities and individuals affected by recent international travel restrictions may find relief in new Canada Revenue Agency (CRA) guidance to address cross-border tax issues caused by these restrictions.¹ In its new guidance, the CRA clarifies that prolonged stays in Canada that solely result from travel restrictions will not necessarily affect the tax residency or permanent establishment of a nonresident entity.

The CRA also clarifies that such travel restrictions may not affect the tax residency of a nonresident individual, or the ability of a cross-border employee to qualify for treaty benefits on employment income. In addition, the CRA provides administrative relief to reflect delays in its processing of certain withholding tax waiver requests and Section 116 Certificates, due to COVID-19.

The CRA clarifies that its guidance applies from March 16, 2020 to June 29, 2020. The CRA advises that, after this period, it will either extend the guidance or rescind it if it is no longer required.

In this *GMS Flash Alert* we provide highlights of the CRA's recent guidance. For a full report, see *TaxNewsFlash-Canada* 2020-50, "[COVID-19 – New CRA Relief Addresses Travel Restrictions](#)," a publication of the KPMG International member firm in Canada.

WHY THIS MATTERS

Many taxpayers and their employers are concerned about the impact that additional unplanned days spent in Canada, due to the coronavirus crisis, may have on their Canadian tax residency status and exposure to potential permanent establishment. There are also concerns about extended presence in Canada causing individuals to become taxable as residents of the country where they are "stuck" and losing the expected benefits of an income tax treaty between Canada and another country.

CRA's additional guidance provides some welcome clarity on cases where individuals have needed to spend additional days in Canada due to coronavirus-related restrictions.

Highlights

Residency

The CRA states that individuals visiting Canada at the time that travel restrictions were imposed, and who have remained in Canada solely because of these restrictions, will not be deemed to be resident in Canada for tax purposes solely for that reason, under the common-law factual test of residency.

Further, the CRA advises that it will not consider days that an individual in Canada is unable to return to their country of residence, solely because of these restrictions, to count towards the 183-day limit for deemed residency. The CRA says its administrative position applies where an individual intends to return to the country he or she usually resides in, and does return as soon as he or she is able to do so.

In certain cases, the CRA advises that, administratively, it will not consider a corporation to become resident in Canada solely because a director of the corporation must participate in a board meeting from Canada because of travel restrictions. For a corporation that is tax resident in a non-treaty country, the CRA states that it will determine corporate residency in dual-residency situations on a case-by-case basis. The CRA notes that its position also applies to entities established in foreign jurisdictions that are considered corporations under Canadian law (such as limited liability companies).

Permanent Establishment

Similarly, the CRA says it will not consider certain nonresident entities that carry on a business in Canada and reside in a jurisdiction that Canada has a tax treaty with, to have a permanent establishment in Canada solely because their employees perform their employment duties in Canada solely as a result of travel restrictions. The CRA says it will also not consider a nonresident entity to create an "agency" permanent establishment solely because a dependent agent concludes contracts in Canada on behalf of the nonresident entity while the travel restrictions are in force, provided that such activities are limited to that period, and were only performed in Canada because of the restrictions.

Cross-Border Employment Income

Foreign-resident employees

The CRA advises that U.S. residents who are present in Canada for more than 183 days solely due to travel restrictions will not have those days counted towards the 183-day test to determine whether they are taxable in Canada on their employment income.

Canadian resident employees

The CRA also notes that there will be no changes to the Canadian withholding obligations of a nonresident entity for certain eligible Canadian-resident employees who are forced to perform their employment duties in Canada on an exceptional and temporary basis as a result of travel restrictions.

Waiver Requests

The CRA says it will provide additional relief measures for nonresident persons seeking requests to waive certain withholding requirements under Regulations 102 and 105 of the Income Tax Act, as the processing of these waiver requests was disrupted and processing times have increased. In particular, where the CRA was unable to process a request within 30 days due to the disruption, it will not assess a person who fails to deduct, withhold, or remit any amount as required for an amount paid to a nonresident person covered by the request.

Where a waiver request could not be submitted to the CRA due to travel restrictions or other consequences of COVID-19, and no amounts were withheld, the CRA states that it will review these situations on a case-by-case basis.

Disposition of Taxable Canadian Property by Nonresidents

Similarly, the CRA says it will provide relief for a nonresident vendor who disposed of certain taxable Canadian property but has not yet received a Section 116 Certificate because processing of these requests was disrupted due to COVID-19.

CRA Process Update — Clearance Certificates and International Waivers

The CRA has introduced temporary electronic submission processes to expedite urgent requests for certain international waivers, Section 116 Certificates of compliance, and clearance certificates.

KPMG NOTE

Affected taxpayers who have made submissions after March 12, 2020, should review these new processes to determine whether they should resubmit requests or documentation, or follow any additional procedures. The CRA has generally implemented these temporary processes following COVID-19 related restrictions affecting CRA access to previous submissions sent by mail or fax.

The CRA's new procedures, which allow taxpayers to submit requests and documentation to new dedicated CRA e-mail accounts, will be of interest to those seeking Regulation 102 and Regulation 105 waivers, nonresident employer certification, or Section 116 Compliance certificates.² Similarly, legal representatives will be interested in the CRA's new dedicated e-mail submission process to request clearance certificates.

FOOTNOTES:

1 The CRA's guidance is available on this CRA [webpage](#).

2 For more information, including details of how to use the new e-mail submission process, see the following CRA webpages: <https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/international-waiver-compliance-certificate.html> and <https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/clearance-certificates.html> .

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Contact us

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