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GMS Flash Alert

Canada – CRA Further Extends COVID-19 Travel Restrictions Tax-Related Relief

Individuals affected by international travel restrictions may benefit from updated Canada Revenue Agency (CRA) filing guidance and extended relief measures. The new CRA guidance, which was released April 1, 2021, provides details for certain cross-border employees on how to properly complete and submit their 2020 Canadian income tax filings.[1]

In addition, the CRA also extends its previous administrative relief for U.S. resident employees working in Canada, and for individuals who may otherwise meet Canada's individual residency test. While the CRA's past guidance on these issues generally expired on September 30, 2020, the new guidance extends certain aspects of the previous relief. (For prior coverage, see *GMS Flash Alert* 2020-395, September 9, 2020.)

In this *GMS Flash Alert* we focus on the main measures impacting individuals – including those on international assignment – and their employers.

For the full report, see "CRA Offers Additional COVID-19 Travel Restriction Relief" in *TaxNewsFlash-Canada* (April 12, 2021 No. 2021-18), a publication of the KPMG International member firm in Canada.

WHY THIS MATTERS

This new guidance provides clarity for taxpayers in Canada concerning their residency status in light of their extended stays in Canada due to COVID-19-related restrictions.

This guidance also clarifies that these travel restrictions may not affect the ability of a Canada-U.S. cross-border employee to qualify for treaty benefits on employment income and provides suggested approaches for Canadian residents who normally work in the U.S. to claim a foreign tax credit on their Canadian tax returns.

Canadian Resident Employees

In its latest guidance, the CRA advises that it will provide reporting relief for Canadian-resident individuals that performed their employment duties from their home in Canada instead of at the office of their United States employer because of the travel restrictions. Specifically, the CRA states that these individuals may file their 2020 Canadian tax returns as in prior years and claim a foreign tax credit for amounts paid in the United States or file in accordance with the income sourcing rules in the Canada-United States income tax treaty, depending on the facts and circumstances. The CRA advises that, while it will soon provide additional guidance for affected individuals' 2021 tax years, affected individuals should expect to apply the income sourcing rules in the Canada-U.S. income tax treaty if their working arrangements change to allow them to work permanently from Canada.

Previous-Year Approach

Individuals whose taxes continued to be withheld in the U.S. as if the income was earned in the United States, may file their 2020 Canadian tax returns as in prior years and claim a foreign tax credit for the U.S. taxes withheld, and the CRA says it will consider that individual's employment income to be sourced from the United States for 2020. The CRA advises that these individuals must maintain records to confirm the amounts paid to the United States, and report income that was not subject to withholding in the United States as if it was sourced in Canada. Further, where these individuals receive refunds of amounts paid to the United States at a later time, they must file an amended return to adjust the amount of the foreign tax credit they claimed in Canada.

KPMG NOTE

In its previous guidance for the relief period ending September 30, 2020, the CRA specified that a CRA letter of authority to a nonresident employer allowing it to not remit Canadian withholdings would continue to apply. As a result, a nonresident employer's withholding obligations would not change in Canada, as long as there were no changes to the withholding obligation in the other jurisdiction. The CRA's new supplemental guidance does not address whether a U.S. employer needs to have a letter of authority in place for an employee to use the "previous-year approach." The new guidance also does not specify if the relief is intended for Canadian-resident employees who were forced to perform their employment duties from their home in Canada instead of at the office of a location outside of Canada other than the United States.

Treaty-based Approach

If the previous-year approach is not available, individuals must report their employment income as sourced from Canada in accordance with the Canada-U.S. treaty's income sourcing rules. The CRA provides additional guidance for claiming a foreign tax credit on the Canadian tax return for U.S. income taxes, FICA contributions, and state income taxes paid. The CRA acknowledges that individuals who use the treaty-based approach may have a larger-than-usual Canadian income tax payable for 2020. Where individuals are unable to pay the full Canadian tax amount owing until after they receive a refund of U.S. withholdings, the CRA indicates it will cancel all or part of the resulting interest or late-payment penalties that arise as a result. The CRA says it will also cancel instalment penalties and interest for individuals who are notified that they must remit income tax instalments in 2021 due to this amount. Individuals can request penalty and interest relief through "CRA My Account" or by filing Form RC4288, *Request for Taxpayer Relief – Cancel or Waive Penalties or Interest*.

U.S. Resident Employees Working in Canada

The CRA guidance also extends relief from Canadian taxation and certain Canadian compliance for U.S.-resident individuals who continued to exercise their employment duties in Canada because of the travel restrictions until the end of 2020. The CRA says it will not consider days that these individuals are unable to return to their country of residence, solely because of travel restrictions, to count towards the 183-day test for employment income in the Canada-U.S. income tax treaty until December 31, 2020 (previously September 30, 2020). However, according to the CRA, where individuals in this situation remain in Canada after December 31, 2020, they must include each subsequent day present in Canada in calculating whether they meet the 183-day test for 2021.

Although nonresident employers will not be required to submit a T4 slip for the 2020 taxation year for these nonresident individuals, the CRA expects these nonresident employers to track and document, among other things:

- the days during which the nonresident employee is working or present in Canada and cannot return to his or her country of residence, due to travel restrictions, and
- the employment income that corresponds to these days of work in Canada.

The CRA also clarifies that an employer of an individual who continues to work remotely from Canada as of January 1, 2021, must meet its Canadian withholding and remittance obligations for 2021.

KPMG NOTE

What About Employees from Countries Other Than the United States?

The new CRA guidance does not directly address employees who are resident in countries other than the United States. Therefore, it is not yet clear whether resident employees of other countries may benefit from the extension of this guidance past September 30, 2020.

Individual Residency Test Relief Extended

Individual Canadian Income Tax Residence

In its guidance, the CRA says it will extend its administrative position whereby it will not consider days that an individual in Canada is unable to return to his or her country of residence, solely because of travel restrictions, to count towards the 183-day limit for deemed individual residency for Canadian domestic tax purposes. As a result, the CRA's position will now apply until the travel restrictions are lifted or December 31, 2021, whichever comes first (extended from September 30, 2020).

The CRA notes that an individual may still be determined to be factually resident in Canada. In particular, the individual may be considered to be resident in Canada if he or she has a permanent home in Canada or enrolls in government programs intended for Canadian residents. Further, the CRA states that its extension applies only for individuals, and does not apply to its initial relief for corporate residency, which expired September 30, 2020.

FOOTNOTE:

1 For information on these issues and related matters, see the following CRA webpage: https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/guidance-international-income-tax-issues.html . Also see: https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update.html .

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