KPMG

Thinking beyond borders: Management of extended business travelers - Canada

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Key message

Liability to Canadian tax is determined by an individual's residence status and by the type and source of income derived by an individual. Income tax is levied at progressive rates on a person's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income.

1 Key message

Business travelers are likely to be taxed on employment income relating to their Canadian workdays and will have an obligation to file a Canadian income tax return. In addition, employers have a payroll reporting and withholding obligation, even if the employee's income is exempt from tax in light of the provisions of a treaty.

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Income tax

2 Income Tax

2.1 Liability of Income tax

Liability for Canadian tax is determined by an individual's residence status. A person can be a resident or a non-resident for Canadian tax purposes.

Individuals resident in Canada are subject to Canadian income tax on their worldwide income and allowed a credit or deduction for foreign taxes paid on income derived from foreign sources. There are no specific Canadian tax rules for determining whether or not an individual is resident in Canada. The law is based on jurisprudence and administrative practice of the Federal tax authority, the Canada Revenue Agency (CRA). Each case is determined on its own merits.

By commencing long-term or permanent employment, acquiring a Canadian self-contained dwelling place, moving one's family into the country/jurisdiction, and establishing multiple secondary residential ties (such as acquiring bank accounts, club memberships, a provincial health card, social and professional memberships, and a provincial driver's license) in Canada, an individual may establish Canadian residency at a specific point in time. Residence is also established by virtue of the taxpayer's intent to remain in Canada. Where Canadian residency is established in a calendar year by the occurrence of particular events, individuals are taxed as residents for one part of the year and as non-residents for that part of the year that precedes the date when residency begins.

An individual may also be deemed to be a resident taxpayer for the entire calendar year if the individual is present in Canada for 183 days or more during that year. As a deemed resident, the individual is subject to tax on worldwide income for the entire year. Tax relief may be available if the individual is also a resident of another country/jurisdiction with which Canada has a tax treaty.

Non-resident individuals who are employed in Canada, who are carrying on business in Canada, or who have disposed of "Taxable Canadian Property" (a term which is defined in the tax legislation) are also subject to regular Canadian income taxes. Income earned in Canada from property and certain other sources, such as dividends, rents, and royalties, is subject to a federal tax imposed at a flat rate of 25 percent (which may be reduced under the terms of an applicable tax treaty) that is withheld, and remitted to the CRA, by the Canadian payer. There is no withholding required to be deducted and remitted in respect of Canadian interest income earned and received by non-residents from arm's length Canadian sources (e.g., a bank), except on "participating" interest (i.e., based on the Canadian debtor's profits). Non-residents who receive income from Canadian real property may also elect to file a Canadian tax return within a special time period and calculate Canadian tax using the same graduated rates as apply to a resident of Canada on their net Canadian source rental income (i.e., after deducting all eligible expenses) if the resulting tax will be less than the 25 percent tax that would otherwise apply on their gross rents received during the year.

Extended business travelers from countries/jurisdictions which have tax treaties with Canada are likely to be considered non-residents of Canada for tax purposes unless they enter Canada with the intention to remain for more than 6 months. Long-term business travelers may still be able to remain non-residents of Canada by applying the residency tie-breaker rules in the applicable tax convention between Canada and their home jurisdictions.

2.2 Definition of source

Employment income is generally treated as Canadian-source compensation where the individual performs the services being remunerated while physically located in Canada. Directors are considered officers of the employer and any remuneration received for their duties performed within Canada (e.g., by physically attending directors' meetings held in Canada) is considered Canadian source employment income.

2.3 Tax trigger points

There is no threshold or minimum number of days provided in Canadian domestic tax law that exempts an employee from the requirements to file and pay tax in Canada. To the extent that an individual qualifies for relief under the terms of income from the employment article of an applicable double tax treaty, there will be no Canadian tax liability. The treaty exemption will not apply if a Canadian entity is the individual's economic employer, except where the total amount paid in the calendar year does not exceed a specified amount under the provisions of some treaties (e.g., the Canada-US Tax Convention exempts employment income paid to a resident of one of country for working in the other country from income tax in the other country if the total amount paid does not exceed $10,000 in the currency of the host country).

It should be noted that a treaty exemption does not relieve a non-resident person from the obligation to file a Canadian income tax return in respect of employment income or self-employment income earned from working within Canada. Similarly, every employer, whether or not a Canadian resident, has a Canadian payroll reporting and tax withholding obligation for all payments made to an employee, regardless of whether that person is a resident or a non-resident of Canada, for services rendered by that person in Canada.

The withholding obligation can be eliminated if the employer or employee obtains a written withholding waiver from the CRA. In addition, a non-resident employer may register with the CRA as such under a waiver program that began in 2016 and will thereby be exempt from the normal Canadian withholding rules for its non-resident employees who meet all of the following conditions:

- they will be working in Canada for less than 45 days in any calendar year
- they will be physically present in Canada for less than 90 days during any 12-month period that includes the date they are paid for their employment services performed in Canada; and
- they qualify, under a tax treaty between their country/jurisdiction of residence and Canada, for exemption from Canadian tax on their employment income earned in Canada.

Under this program, the non-resident employer is required to track the number of days its non- resident employees are physically present in Canada and to provide certain information to the CRA on a regular basis. If it is expected that the employees will not satisfy all of the above requirements, or if their actual workdays in Canada wind up exceeding the relevant limit, a formal waiver must be obtained from the CRA before that time, otherwise the employer will be required to withhold and remit Canadian tax in regard to the employee's compensation earned from working within Canada from the first day its employees no longer meet all three requirements identified in the preceding paragraph.

2.4 Types of taxable income

If an extended business traveler is considered a non-resident, they will generally be taxed on income derived from certain specific sources in Canada, such as:

- Carrying on a business in Canada (generally, if carried on through a permanent establishment (PE) in Canada).
- Employment performed within Canada (including director's fees).
- Rental of real estate located in Canada.
- Royalty and other income from Canadian resource property.
- Dividends received from a corporation resident in Canada.
- Gains derived from the disposition of "taxable Canadian property". Examples of taxable Canadian property include, but are not limited to:
    - real estate in Canada

- capital property used in carrying on a business in Canada
- an interest in a private corporation that derives more than 50 percent of its fair market value from holding, directly or indirectly, interests in Canadian real property, Canadian resource property and/or Canadian timber property at any time during the 60-month period ending on the disposition date
- Canadian resource property
- Canadian timber resource property

Employment income is taxable when received, or when the individual is entitled to receive it, if earlier. Employment income is subject to tax to the extent that it was earned during a period of Canadian residence, or in the case of income earned while non-resident, to the extent it was earned in respect of duties physically performed within Canada.

2.5 Tax rates

Net taxable income is taxed at the federal level using graduated personal rates ranging from 15 percent to 33 percent based on income thresholds, with the same rates and thresholds applying to residents and non-residents. For the 2024 calendar year, the maximum federal tax rate is currently 33 percent on income earned over 246,752 Canadian dollars (CAD).

The provinces (except Québec) and territories use the same taxable income calculated for federal tax purposes but apply their own tax rates and tax brackets to that income figure. The provinces and territories also set their own non-refundable and refundable tax credits. Currently, the provincial and territorial personal tax rates range from a top rate of 11.50 percent (Nunavut) to 25.75 percent (Québec). In addition, two of the provinces (Ontario and Prince Edward Island) apply surtaxes, depending on the taxable income subject to provincial income tax. The maximum combined federal and provincial rates range from a low of 44.50 percent for Nunavut to a high of 54.80 percent for Newfoundland and Labrador.

Non-residents and part-year residents are subject to the same federal and provincial tax rates and income thresholds as full-year Canadian residents. An additional federal tax calculated at 48 percent of the regular graduated federal rates is applicable on employment or self-employment income that is not allocated, under federal tax regulation, to a province or a territory and thus is not subject to any provincial income tax.

The CRA administers both the federal and the various provincial and territorial personal tax systems, except Québec's, which is administered by Revenu Québec.

Most Canadian taxpayers, whether resident or non-resident in Canada, calculate their federal and provincial income taxes on one annual federal tax return, which is filed with and processed by the CRA. However, taxpayers who are subject to Québec income tax will be required to file both a federal tax return with the CRA and a separate Québec tax return with Revenu Québec for the relevant calendar year.

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Social Security

3 Social Security

3.1 Liability for social security

Canada has an extensive social security system that confers benefits for disability, death, family allowances, medical care, old age, sickness, and unemployment. These programs are funded mainly through wage and salary deductions and employer contributions.

An employee's responsibility is made up of two parts: Canada Pension Plan (CPP) and Employment Insurance (EI). Fifteen percent of the contributions made by an employee to CPP or EI are creditable against that individual's federal income tax liability. The contributions are also creditable for provincial tax purposes.

	Rates for 2024		
Type of Social Security Tax	**Employer percent)**	**Employee percent)**	**Total (percent)**
Canada Pension Plan	5.95%	5.95%	11.90%
Employment Insurance	2.32	1.66%	3.98%
Total percent	8.27%	7.61%	15.88%

3.2 Canada pension plan

CPP must be deducted from an individual's remuneration if the individual is employed in Canada (other than in the province of Québec), is aged 18 to 70 years (unless the individual has chosen to receive CPP benefits anytime from age 65 to 69) and receiving pensionable earnings. The employer is responsible for withholding and remitting the individual portion and the matching employer portion to the CRA. The maximum employee and employer contributions for 2024 is CAD 3867.50 for each.

Individuals working in Québec contribute to the Québec Pension Plan (QPP) instead of the CPP program. The QPP contribution rate is 6.4% for each of the employer and employee. The maximum employee and employer QPP contribution for 2024 are each CAD 4,348 and the QPP contributions are remitted to Revenu Québec.

If an employee is transferred from a country/jurisdiction that has a social security agreement with Canada or, if the assignment will be located there, Québec, the employer may request a certificate of coverage from the other country/jurisdiction to exempt the compensation from CPP or QPP and allow the employee to remain in the other country/jurisdiction's social security system for the lesser of the period of the assignment in Canada and the maximum period provided under the relevant agreement.

3.3 Employment insurance

Annual federal Employment Insurance ("EI") premiums must be deducted from an individual's remuneration if the individual is employed anywhere in Canada and is receiving insurable earnings. There is no age limit for deducting EI premiums.

Like the CPP contribution, the employer is responsible for withholding and remitting the individual's portion as well as remitting the employer portion (1.4 times the individual contribution) to the CRA. The maximum employee contribution limit for 2024 is CAD 1,049, with a corresponding employer contribution limit of CAD 1,469.

In Québec, the maximum employee contribution limit for EI in 2024 is CAD 834, with a corresponding employer contribution limit of CAD 1,168, and these EI contributions are also remitted to the CRA. In addition, employers must deduct premiums under the Québec Parental Insurance Premium program (QPIP) and remit them with the employer portion (also set at 1.4 times the employee amounts) to Revenu Québec. In 2024, the maximum employee QPIP is CAD 464, and the maximum employer contribution is CAD 650.

CPP and EI (and QPP and QPIP for Québec residents) are assessed on employment earnings, and the rates are adjusted each year based on actuarial calculations prepared by the federal government and, for QPP, the Québec government.

Canada has entered into formal social security totalization agreements with over 50 countries/jurisdictions to prevent double taxation and allow cooperation between Canada and overseas tax authorities in enforcing their respective tax laws. Québec has also entered into separate social security agreements with various countries/jurisdictions, although those are not as extensive as Canada’s agreements.

Care should be taken by employers to obtain certificates of coverage under the Social Security Agreement between an employee's country/jurisdiction of regular coverage and the relevant

Canadian government (i.e., federal or Québec) based on where the employee will be working in Canada before the commencement of any assignment in Canada

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Compliance obligations

4 Compliance obligations

4.1 Employees' compliance obligations

Individuals' Canadian and Québec tax returns are due by 30 April following the tax year-end, which is 31 December. There are no provisions that permit taxpayers to extend this deadline, although taxpayers who report self-employment income on their Canadian tax returns have until 15 June to file their tax returns. Late-filing penalties and interest are generally based upon unpaid taxes, although penalties can also be assessed on certain late-filed information forms.

The Canadian tax system is a self-assessment system. Individuals are required to determine their own liability for income taxes and file the required returns for any taxation year in which taxes are payable. Individuals file their own tax returns; spouses do not file jointly.

A non-resident employee is required to file a Canadian income tax return by 30 April (or 15 June if reporting self-employment income earned within Canada) following the tax year to report Canadian source compensation and self-employment income and compute the tax on this income or claim an exemption from Canadian tax pursuant to an income tax treaty. Any income taxes withheld are applied as a credit against the non-resident employee's final Canadian tax liability for the year calculated on the tax return and any excess withholding tax should be refunded to the non-resident employee by the CRA (or by Revenu Québec in respect of a Québec tax return) once the tax return has been assessed. Any income tax liability calculated on the tax return that is in excess of the employee's withholding taxes must be paid by 30 April to avoid late payment interest and penalties. If the non-resident taxpayer is reporting self-employment income earned in Canada, late-filing penalties will apply on any tax still owing after 15 June, although arrears interest will be applied to any tax owing after the regular payment deadline of 30 April. To facilitate filing a return, the employee must apply to Service Canada for a Canadian Social Insurance Number or, in the event of being ineligible for a Social Insurance Number (e.g., the employee has left Canada and no longer has a valid Canadian work visa), to the CRA for an Individual Tax Identification Number (this is a temporary tax number that is valid for three years and may be renewed).

The filing of a tax return is recommended for non-resident employees even if their employment income is exempt from Canadian taxation pursuant to the provisions of an income tax treaty, because it will ensure that the CRA (and Revenu Québec in the case of a non-resident who worked in the province of Québec) may not review and challenge the non-resident's exemption after 3 years have passed from the date the relevant Canadian tax authority issues a formal notice of assessment for the tax return. Certainty regarding the applicability of the tax treaty exemption is thereby achieved. Otherwise all years the non-resident employees worked in Canada remain open to possible review and reassessment at any time in the future, when records may no longer be available to support the treaty exemption.

4.2 Employers reporting and withholding requirements

Employers are required to report, withhold, and remit withholding tax for each of their non-resident employees unless a written waiver letter authorizing the reduction of, or the exemption from, Canadian withholding tax has been issued by CRA (and by Revenu Québec in respect of Québec tax withholdings), or the employer has registered with the CRA under the non-resident employer program and its non-resident employees meet the criteria for exemption from withholding described earlier.

Even short business trips to Canada are subject to Canadian payroll withholding using the same rates that apply to resident employees unless a waiver for the non-resident employee has first been obtained from the CRA (and from Revenue Québec in respect of any employment activities that will be exercised in Québec), or the employer has registered under the non-resident employer program. These requirements apply even if the employer is a foreign company that does not have a PE in Canada and the employee is

able to claim an exemption from Canadian tax under the tax treaty between the employee's country/jurisdiction of residence and Canada.

Should the CRA (and Revenu Québec in respect of employment activities performed within Québec) discover that a nonresident employer has failed to withhold and remit the required tax from its nonresident employees' remuneration earned from physically working in Canada, the nonresident employer will usually be assessed a tax liability equal to the total of:

- all of the Canadian withholding tax that should have been deducted;
- a penalty of 10 percent (20 percent in cases of repeated failure to follow and apply the Canadian withholding rules) of the total withholding tax; and
- arrears interest charged from the relevant dates the withholding taxes should have been remitted.

The usual practice of the CRA when it becomes aware that a nonresident employer has failed to meet its withholding and reporting obligations is to apply the assessed tax, penalties and interest to the current year when the omission is discovered plus the 3 preceding calendar years, although the CRA is legally entitled to go back even further into the past. The withholding tax remitted by a nonresident employer may only be recovered by having its relevant employees who worked in Canada during the assessed period file Canadian nonresident individual tax returns with the CRA (and Québec individual nonresident tax returns with Revenu Québec, if applicable) to formally report their Canadian source employment income and claim, if they qualify, an exemption from Canadian tax under the provisions of any bilateral tax treaty in force between Canada and their country of residence, and report the withholding tax remitted on their behalf by their employer on their nonresident tax returns and turn the resulting refunds, once they receive them, over to their employer (or former employer).

Depending on the number of years subject to assessment by the CRA (and by Revenu Québec, if applicable) and the number of employees who worked in Canada during those years, it is often a very onerous task for the employer to organize and prepare and submit the required Canadian tax returns needed for its employees and former employees to claim full or partial refunds of the Canadian withholding tax that was paid on their behalf to the CRA and recover those refunds from the various employees or former employees. It is also usually very difficult to obtain the necessary cooperation from the affected employees and former employees who often do not understand why they must retroactively file foreign tax returns for prior years and transfer any money received from the Canadian tax authorities to their employer or former employer. Also, if employees who worked in Canada have left their employer before the assessment is issued or before the recovery actions can be organized, it may be impossible for the employer to recover their share of the withholding taxes that have to be remitted on their behalf to the Canadian tax authorities.

The penalties and interest portion of the assessed tax liability are never recoverable,

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Immigration

5 Immigration

5.1 Entry Requirements

A foreign national requires a valid Temporary Resident Visa (TRV) to enter Canada unless their nationality is a visa-exempt country/jurisdiction. For example, nationals of China, India, Russia, and South Africa require a TRV, while British, Australian, French, and Japanese nationals are visa-exempt. A TRV is an entry document, separate from a status document such as a work permit. Visa-requiring foreign nationals – even if they have valid status documents – will not be granted entry to Canada unless they have a valid TRV.

Visa-exempt nationals, other than citizens of the United States, are required to obtain an Electronic Travel Authorization (eTA) prior to travelling to Canada by air. The eTA application is made online, and the approval is linked to a specific passport. Normally, the eTA is approved immediately, unless there are potential inadmissibility issues that require additional review.

In most cases, foreign nationals are also required to give biometrics if entering Canada to work, study or visit. Biometric data is used to confirm a foreign national's identity. Biometrics are required by visa-exempt and visa requiring nationals between the ages of 14 and 79. Biometrics are valid for a period of up to 10 years.

To be permitted entry to Canada, foreign nationals must not have criminal or medical inadmissibility issues. Foreign nationals in these circumstances may require a Temporary Resident Permit in order to enter Canada.

In order to enter Canada, foreign nationals must not have criminal or medical inadmissibility issues. Additionally, nationals of certain countries/territories are required to provide police clearance certificates. Police clearance certificates are a copy of a foreign national's criminal record, or a statement that the foreign national does not have a criminal record. Further, an immigration medical examination may be required if an individual has lived in certain countries/territories for more than six months in the past year and will be in Canada for more than six months or will be working in specific occupations, such as in the healthcare or education sectors.

5.2 Business Visitors

Generally, foreign nationals require work permits to undertake work activities in Canada. In limited circumstances, a foreign national may be granted entry as a business visitor and is authorized to work without a work permit. A business visitor is a foreign national who comes to Canada for international business activities without directly entering the Canadian labour market. A business visitor is not authorized to perform any "hands-on", productive activities while in Canada. For example, an individual can visit Canada temporarily, as a business visitor, to develop new business, negotiate contracts, attend conferences, or provide after-sales services, provided that their principal place of business and source of income are outside of Canada. A business visitor may enter Canada with an eTA or a TRV.

The analysis of business visitor activities is complex and business traveler compliance is a major consideration for most companies. Legal advice is highly recommended.

5.3 Work Permit

Canadian work permits are typically employer-specific, such that the foreign worker may only work for that particular employer in Canada under specific conditions. Typically, if the foreign national is visa-exempt, the work permit application can be made at the port of entry, e.g., the airport or land border. If the foreign national requires a TRV, the application must be submitted online to a Canadian visa office abroad. The

TRV will be issued together with a work permit approval letter. The actual work permit is printed at the port of entry.

Overview of Applying for a Work Permit in Canada

As a default rule, a Canadian employer seeking to hire a foreign national must first obtain a positive Labour Market Impact Assessment (LMIA) opinion from Employment and Social Development Canada (ESDC). A positive LMIA will show that there is a need for a foreign worker to fill the job, and that no Canadian or permanent resident worker is available to do the job. The employer, in most cases, needs to conduct rigorous recruitment efforts and demonstrate that there are no qualified and willing Canadians or permanent residents to fill the position. ESDC must be satisfied that the employment of the foreign national will have a positive or neutral impact on the Canadian labour market. Once ESDC issues a positive LMIA opinion to the employer, the foreign national can then apply for a work permit either at the port of entry or a visa office abroad. The LMIA application preparation and review process can be fairly lengthy and unpredictable.

In June 2017, EDSC and Immigration, Refugees and Citizenship Canada (IRCC) introduced a secondary stream of the LMIA program – the Global Talent Stream. This stream is intended to offer a responsive and predictable option for Canadian employers to access highly skilled global talent. Specifically, innovative companies can be referred to ESDC to make applications to hire “unique and specialized” foreign nationals. In addition, this stream facilitates employers with filling in-demand highly skilled positions that are on the Global Talent Occupations List. The current list primarily includes occupations in the IT sector, such as computer programmer, information systems analyst, and web developer. However, in December 2022, the list was updated to include additional occupations such as civil engineers, electrical and electronics engineers, mining engineers, etc. This list is amended from time to time, as the government engages in ongoing stakeholder discussions.

There are various exemption categories to the LMIA, which are administered under the International Mobility Program. The Canadian employer must first submit an offer of employment through its online Employer Portal and pay a compliance fee. Of particular relevance for multinational corporations are the intra-company transfer exemption categories.

For multinational corporations, the intra-company transfer categories are available for executives/senior managers and for workers who have specialized knowledge. To be eligible, the foreign and Canadian entities must have a qualifying corporate relationship and the employee must have been employed abroad for at least 1 year in the preceding 3 years and will be transferred to Canada in a similar position. In particular, to demonstrate specialized knowledge, the employee must have both proprietary knowledge and an advanced level of expertise. Proprietary knowledge generally refers to company-specific expertise related to a company’s product or services, or the enterprise’s processes and procedures such as its production, research, equipment, techniques, or management. An advanced level of expertise means that the specialized knowledge is gained through significant and recent experience with the organization and used by the individual to contribute significantly to the employer’s productivity.

There are certain LMIA-exempt work permit categories made available by Free Trade Agreements between Canada and various countries/jurisdictions. For example, under the Canada-United States-Mexico Agreement (CUSMA, formerly known as NAFTA), US and Mexican citizens can work temporarily in Canada if their occupation is on the specified Professionals list, and they meet the education requirements specified for the profession. Similarly, the Canada-South Korea Free Trade Agreement, Canada-Chile Free Trade Agreement, and others offer similar work permit categories. Furthermore, the Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA) provides for various options for EU nationals to work temporarily in Canada. Moreover, the latest Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) also includes professional mobility provisions and provides for work permit options to nationals of the CPTPP parties to work in Canada.

5.4 Short Term Work Permit Exemption

Under Canada's Global Skills Strategy, certain foreign nationals may be eligible for a short-term work permit exemption to work in Canada. Specifically, the foreign worker must be in a management level or a high-skilled professional occupation. The work duration must be less than 15 or 30 consecutive calendar days. The 15-day exemption is available to an individual once every 6 months, and the 30- day exemption once every 12 months.

A careful assessment of the foreign worker's intended work activities in Canada is required to ensure eligibility under the occupation requirement. Further, accurate travel tracking is necessary to determine subsequent eligibility and ensure compliance. Assistance from legal counsel is highly recommended.

5.5 Immigration Compliance

There have been a series of substantive amendments to the Immigration and Refugee Protection Regulations, which are intended to promote the integrity of Canada's immigration systems and impose greater compliance obligations on Canadian employers who hire foreign workers.

Immigration officials have been granted greater authority to investigate and penalize employers who are found to be non-compliant with immigration laws or regulations.

Employers are subject to inspections by immigration authorities to verify that they have complied with the conditions imposed by the immigration regulations. The inspections may be random or can be triggered by previous non-compliance, adverse publicity, or whistle-blowers.

The conditions under inspection include application information accuracy; document retention; foreign worker's wages, working conditions, and occupation; business legitimacy; and compliance with applicable employment and recruitment laws.

The consequences for non-compliance are serious. An employer may be subject to a system of Administrative Monetary Penalties for specific conducts that result in non-compliance. Moreover, a non-compliant employer may be banned from hiring foreign workers for a period of 1, 2, 5, or 10 years, or permanently. Employers can also be "black-listed" on the government's website which publicizes their violations and penalties.

Temporary Foreign Workers' Rights

IRCC released new requirements for employers to advise temporary foreign workers of their rights while working in Canada. Specifically, employers are now required to provide temporary foreign workers with current information regarding their rights in Canada. This information must be provided on or before their first day of work and be made available throughout their employment. Additionally, under the Additionally, under the International Mobility Program and Temporary Foreign Worker Program, employers must provide a signed employment agreement to the temporary foreign workers and ensure that employees are provided with access to healthcare services in the event of an injury or illness.

Specifically, going forward, employers must:

- On or before the first day of work, provide the Temporary Foreign Worker (TFW) with information about their rights in Canada
- During the period of employment, make available to the TFW information about their rights in Canada
- Provide a signed employment agreement to the TFW
- Provide a workplace that is free of abuse including reprisal
- Not charge or recover, directly or indirectly, from the TFW any fees related to recruitment either before or during the period of employment. Employers also must ensure that any person acting on their behalf has not and will not charge or recover such fees
- Provide access to health care services when the TFW is injured or becomes ill at the workplace

- Ensure that the IMP/TFWP Get to Know Your Rights Pamphlet was provided to temporary foreign works and is made available in the workplace.

The recent changes to employer's obligations are significant as IRCC is ensuring that employers understand their legal obligations when hiring a temporary foreign worker and remain compliant with Canadian immigration regulations. IRCC's goal is to enhance the employer compliance regime of the International Mobility Program and Temporary Foreign Worker Program, improve worker protections, and increase employer and temporary foreign workers' awareness about workers' rights in Canada.

5.6 Dependents

Generally, family members (spouse and minor children) may accompany a foreign worker in Canada. They are eligible to obtain visitor status for the duration of their stay in Canada. Entry requirements, such as a TRV or eTA and criminal and medical admissibility assessments, apply to all accompanying family members.

A dependent spouse is typically eligible for an open work permit and can work for any employer in any occupation. A medical exam is required if the work is in healthcare, childcare, or similar fields. A dependent minor child is eligible to attend primary and secondary school in Canada with a Visitor Record or a Study Permit. A dependent's status document will be valid for the same duration as the foreign worker's work permit.

Effective January 30, 2023, IRCC has issued a two-year temporary public policy that allows dependent children to also obtain an open work permit.

Open Work Permits for Spouses of Students

IRCC announced that it will be amending the eligibility for open spousal work permits for spouses of international students in 2024. Open work permits are expected to only be available to spouses of international students in master's and doctoral programs. The spouses of international students in other levels of study including undergraduate and college programs, will no longer be eligible for an open work permit. More information is expected to be released in 2024.

COVID-19 Considerations:

The Government of Canada has expanded the definition of an 'Immediate Family Member' to include the following:

- the spouse or common-law partner;
- the dependent children of the person or of the person's spouse or common-law partner; any
- dependent children of a dependent child;
- parents or stepparents;
- parents or stepparents of the spouse or common-law partner;
- guardians or tutors;
- Guardians and tutors are individuals who are responsible for caring for a foreign national minor who is living apart from a parent for an extended period of time, for example to attend a secondary school in

Canada. The guardian or tutor should be able to demonstrate that they habitually reside at the same address as the minor. Officers should be flexible in accepting documentary evidence.

05
Other issues

6 Other issues

6.1 Double taxation treaties

In addition to its domestic tax rules that provide relief from international double taxation, Canada has entered into bilateral tax treaties with approximately 90 countries/jurisdictions to prevent double taxation and allow cooperation between Canada and overseas tax authorities in enforcing their respective tax laws. All of the provinces and territories, including Québec, follow the employment income provisions in all of Canada's tax treaties.

6.2 Permanent establishment implications

A PE could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has exercised within Canada.

The Canada/US income tax treaty has a provision, which became effective in 2010, that may result in a deemed PE, even if a PE does not otherwise exist. Under this provision, a deemed PE may result if a company in one country/jurisdiction provides services in the other country/jurisdiction for an aggregate of 183 days or more in any 12-month period, with respect to the same project or connected projects for customers who are resident of that other country/jurisdiction or who maintain that other country/jurisdiction for which the services are performed.

6.3 Indirect taxes

The federal goods and services tax (GST) applies at a rate of 5 percent to most goods acquired and services rendered in Canada. Five provinces have a harmonized sales tax (HST) that is comprised of a 5 percent federal component and a provincial component that varies by province. In Ontario, the HST rate is 13 percent. In New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, the HST rate is 15 percent. Subject to few exceptions, the HST system is essentially the same as the GST system (e.g., tax base and mechanics).

In general, businesses (suppliers) that carry on business in Canada and make (e.g., sell, lease, barter) taxable supplies are required to register, collect and remit GST/HST on those taxable supplies. These businesses are generally entitled to claim offsetting input tax credits for GST/HST paid on their expenditures.

The word "supply" includes most forms of goods and services. The scope of the GST/HST is not restricted to the provision of goods and services by way of sale but also includes other types of transactions, such as leases and rentals, barter transactions, and the granting or assignment of a right.

Zero-rated supplies (e.g., qualifying basic groceries and most exports) are also taxable supplies but are taxed at a zero percent rate. Suppliers of zero-rated supplies are generally entitled to claim input tax credits for the GST/HST paid on their expenditures.

Taxable supplies do not include exempt supplies. Suppliers of exempt supplies (e.g., qualifying healthcare services, financial services, and residential rentals) are not entitled to claim input tax credits to recover the GST/HST paid on related expenditures.

Generally, the GST/HST applies to the value of the consideration for taxable supplies of goods or services made in Canada. While the consideration is usually expressed in money, the consideration, or part of the consideration, may be other than money, such as property or a service. In such cases, the value of the consideration, or part of the consideration, is the fair market value of the property or service.

The payment of money and the provision of an employee's services to an employer are not supplies. However, certain actions may, in some circumstances, cause GST/HST to be payable; for example, imports of services and intangibles by a Canadian branch from a foreign branch of the same financial institution, or benefits provided to employees.

There are many special rules for qualifying public sector entities (e.g., hospitals, universities, charities) and for financial institutions.

Registration – Canadian entities

Generally, if a person makes (e.g., sells, leases, barters) taxable supplies in Canada and the value of its taxable supplies made inside or outside Canada (including supplies made by any associated entities) exceeds CAD30,000 in the last four calendar quarters, the person is required to register, collect, and remit the GST/HST on its taxable supplies. If the value of taxable supplies made by the person and its associated entities is below this registration threshold, the person is considered a small supplier, but can still choose to register voluntarily for GST/HST purposes. A person who voluntarily registers is subject to the same obligations and rules as other GST/HST registered persons.

Other special registration rules apply to, among other entities, charities, taxi businesses and financial institutions.

New registration and collection obligations related to supplies of services, intangibles and goods for many non-resident businesses and platform operators apply effective July 1, 2021. The rules also include new GST/HST collection obligations for Canadian platform operators that facilitate certain supplies of services, intangibles, and goods through their platforms.

Registration – Non-Canadian entities

In general, the registration rules that apply to Canadian entities also apply to non-Canadian entities that make taxable supplies in Canada in the course of a business carried on in Canada. Among other factors, the presence in Canada of an employee of a non-Canadian entity may create an obligation for the non-Canadian entity to register for GST/HST.

Other specific registration rules may apply to some non-Canadian entities such as an entity that sells taxable admissions to an event.

Non-resident businesses registered under the normal GST/HST registration rules without a permanent establishment in Canada will generally be required to provide and maintain security with the CRA.

Many non-resident businesses and platform operators are subject to new registration and collection obligations related to supplies of services, intangibles, and goods effective July 1, 2021. The new rules include a new simplified GST/HST registration system for many non-resident businesses making supplies of services and intangibles to certain Canadian recipients. Some platform operators are also required to register under the new simplified GST/HST registration system. The new rules also require some non-resident businesses and platform operators to register under the normal GST/HST registration system and collect GST/HST on supplies of goods to Canadian recipients.

Provincial indirect taxes

The provinces of British Columbia, Saskatchewan, and Manitoba each levy provincial sales taxes (PST), also known as "retail sales taxes," on tangible personal property and certain intangibles and services. The rates vary from 6 percent to 7 percent (up to 20 percent on certain goods). The legislation and rules vary among the provinces. The province of Alberta currently does not have a provincial sales tax.

British Columbia has broadened the provincial sales tax (PST) registration and collection obligations for marketplace facilitators as of July 1, 2022, as well as for many businesses outside the province (Canadian and foreign businesses) effective April 1, 2021. Saskatchewan has PST registration and collection obligations for many businesses outside the province, including Canadian and foreign businesses, as well

as for marketplace facilitators and sellers. Manitoba has adopted new PST registration and collection obligations for marketplaces that apply effective December 1, 2021.

The province of Québec levies a 9.975 percent Québec sales tax (QST), a value added tax. In general, the QST rules are similar to the GST rules. However, Québec has implemented in 2019 new QST rules requiring many Canadian businesses located outside of Québec and non-resident businesses to register under a simplified QST registration system and collect QST. Many more non-resident businesses and platform operators are subject to new registration rules effective July 1, 2021.

In addition to the general GST/HST, PST or QST, the provinces of Saskatchewan, Manitoba, Ontario, Québec, Newfoundland, and Labrador also levy unrecoverable retail sales taxes on taxable insurance contracts at rates varying from 6 to 15 percent.

Most provinces also levy special taxes on commodities like fuel (in some cases as part of a broader carbon pricing scheme), alcohol, tobacco, and cannabis.

Housing – Specific Taxes

Effective January 1, 2022, Canada imposes a 1% tax on certain underused housing owned by various types of owners, including non-residents (e.g., individuals who are not citizens or permanent residents of Canada).

In addition, a few provinces and municipalities in Canada impose similar vacancy taxes and/or additional property transfer taxes for certain property purchased by non-residents.

6.4 Transfer Pricing

Canada generally follows the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“OECD Guidelines”). In recent years, OECD has undertaken strong initiatives to enhance transparency for tax administrations and curb tax avoidance.

The Income Tax Act Section 247 and the CRA provide the primary transfer pricing authority. CRA’s various transfer pricing memoranda along with the OECD Guidelines provide additional guidelines to regime. Canadian transfer pricing legislation and administrative policy generally require that transactions between Canadian taxpayers and non-arm’s length non-residents are priced according to the “arm’s length principle”

The arm’s length principle is, most simply, the terms to which unrelated parties would agree. These terms include the price as well as other elements of the transaction (for example, payment terms).

Canadian transfer pricing rules generally apply to all entities including corporations, partnerships, branches and trusts under common control in different jurisdictions that transact with each other or have a parent/subsidiary relationship. Common intercompany transactions where transfer pricing rules apply include provision of management and other services, sales and purchases of tangible goods and intangible goods (know-how, trademark, and patents), and financing arrangements such as intercompany loans.

An example of an intercompany service transaction is an employee of Company A, who performs services for the benefit of Company B, a non-arm’s length non-resident. This situation often gives rise to intercompany service transactions that should be priced according to the arm’s length principle (i.e., Company A would not allow its employee to provide services to a third party without charging appropriate compensation for those services).

Executive employees, employees of shared service centers or technical employees often perform functions that benefit more than one entity within a related group. Therefore, it is important to consider the

activities they perform in the context of whether or not an inter-company transaction exists (e.g., operating activities performed for the benefit of the recipient resident in another jurisdiction or stewardship activities performed for the benefit of the non-resident shareholder).

In determining whether a deduction is allowed for transfer pricing purposes, it must first be determined whether an intra-group service has in fact been provided (i.e., whether the activity provides a respective group member with economic or commercial value to enhance its commercial position). It must also be determined whether the intra-group charge for such services is in accordance with the arm's length principle. The costs must be specific, identifiable, and reasonable. Furthermore, the service should not be duplicative of the service provided by the company or a third party. Each case must be determined according to its own facts and circumstances. In all cases, proper documentation must be maintained to support the transfer pricing methodology used.

6.5 Local data privacy requirements

Canada has data privacy laws. The Personal Information and Protection Electronic Documents Act establishes 10 privacy principles and applies to all inter-provincial and international transactions. Businesses must generally obtain opt-out consent in order to collect, use, or disclose personal information. The law has received an 'adequacy' rating from the European Union. The Privacy Commissioner's Office has broad powers to ensure compliance. Various provinces have implemented separate data privacy rules that are largely similar to the federal la

6.6 Exchange control

No direct controls are in effect on the movement of capital or other payments either into or out of the country/jurisdiction. The government is in the process of actively strengthening its anti-money laundering regime to align with international best practices. There are some limitations on foreign investment in specific sectors, but these have been significantly liberalized since 1985.

Every individual entering or leaving Canada is required to report any importation or exportation of currency or monetary instruments in excess of CAD10,000 to the Canada Border Services Agency at the point of entry or departure. The currency or monetary instruments are subject to forfeiture or assessment of a penalty if not properly reported.

Currency refers to the currency of any country/jurisdiction. A monetary instrument refers to any financial instrument that is immediately negotiable; is a bearer instrument, such as a bearer bond; or is a security, government, or corporate note or bond.

Importation or exportation refers to carrying currency or monetary instruments on one's person or causing another person to do so, including a courier or mail delivery.

Electronic money transfers between financial institutions are subject to separate reporting procedures typically handled by the financial institutions.

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personal income tax rates and thresholds, payroll taxes, sales taxes and income tax treaties and social security tax agreements provided by the official websites of the Canada Revenue Agency, the Canadian Department of Finance, Immigration, Refugees and Citizenship Canada, the Ontario Ministry of Finance, the Québec Ministry of Revenue, the British Columbia Department of Finance, the Newfoundland and Labrador Department of Finance, the Nunavut Department of Finance, the Northwest Territories Department of Finance, and the Manitoba Department of Finance.

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