Payment of Taxes

By
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Depending upon the source of income, there are two ways of paying income taxes: (1) through withholding at source[1] and (2) in installments.[2] Regardless of the method used, taxpayers must pay forthwith the full amount of their assessed taxes, together with any interest and penalties thereon.

If the taxpayer still owes tax at the end of a taxation year after withholdings and installments, the remainder is due on or before his balance-due day, which for individuals is usually April 30 of the following year. The balance-due day for an individual who carries on business in a year is June 15 of the following year [ITA s. 150(1)(d)(ii)].

A corporation's balance-due day is usually two months after the end of its taxation year or three months for a Canadian-controlled private corporation.

An employer (or other payor) who fails to withhold taxes is liable for penalties under and interest.[3] An employer who fails to remit withheld amounts become liable for the amount and, in the case of corporations, makes the directors liable.[4]

Where the Minister assesses a taxpayer, he must pay the amount assessed "forthwith". This is so regardless of whether or not the taxpayer files a Notice of Objection to the assessment.[5] However, except for large corporations and taxpayers claiming donation shelters, (both of which must immediately pay half of the assessed amount), the Notice effectively stops collection of the assessed tax during the 90-day objection period or while the matter is under appeal to the Tax Court.[6] Taxpayers should, however, pay their outstanding assessments as the interest on any unpaid amount continues to accrue on a daily compounded basis at 5% (2021). The accrued interest is not deductible for tax purposes, which can raise its effective rate to 10%.

The Minister may accept security for payment of taxes or any other amount payable under the Act.[7]

The Minister can demand payment of taxes even before they are due if she suspects that the

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[1] Subs. 153(1); Regs. 100-110.
[2] Sections 155 and 156.
[3] Ss. 227(8) and (8.3).
[4] Ss. 227(4).
[5] S. 158; see also *Interpretation Act*, R.S.C. 1985, c. I-21, subs. 27(2) (number of days calculated by excluding first day of notice and including last day).
[6] S. 225.1.
[7] Subs. 220(4).

taxpayer is about to leave Canada.[8] The Minister may not commence collection procedures, however, until 90 days after the assessment is issued.

Withholding Taxes

Withholding taxes (also known as pay-as-you-earn "PAYE") are essentially a form of advance payment of taxes for certain types of income. There are different forms and rates of withholding depending upon the source of income, status of the payee, and tax treaty provisions. In the case of withholding on residents, the tax is an advance payment toward the taxpayer's ultimate liability, which will be finalized upon filing of the tax return. For non-resident withholdings, the tax is final, and the non-resident is not required to file a Canadian tax return.

In each case, the payor withholds tax in advance from payments to certain payees on account of their potential tax liability on certain sources of income. The mechanism promotes tax compliance and collection in an efficient manner. Hence, taxes subject to withholding are usually well collected and have substantially lower tax delinquencies.

Withholding taxes can be classified into two broad categories: domestic and non-resident. The rates and rules vary for each of these groups.

Domestic Withholding

Employment Income

Every person who pays salary or wages or various related payments is required to withhold tax and remit it to the Receiver General on account of the payee's Part I or Part XI.3 tax for the year.[9] The tax is essentially an advance instalment payment. The payor must remit the tax to the government, which holds it to the credit of the payee. The amount is credited to the taxpayer's account and awaits his final return for the year. Any surplus or deficiency of tax is adjusted at that time.

The primary sources of employment income are salary, wages or other remuneration, such as commissions. All of these are subject to withholding tax.[10] The withholding rate is determined without reference to deductions and credits available when the taxpayer files her T1 individual return. The employer must register for a payroll program account.

Salary and wages include all fees for services not rendered in the course of the taxpayer's

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[8] Subs. 226(1); IC 98-1R, "Collections Policies" (September 15, 2000).
[9] See, T4001 -- Employers' Guide—Payroll Deductions and Remittances (2020).
[10] Para. 153(1)(a).

business, the value of board and lodging, and all other fringe benefits of a taxable nature.[11] All of these are subject to withholding. Salary and wages do not include superannuation, pension benefits or retiring allowances.[12]

In theory, the withholding tax is simply an advance payment of tax. If properly calculated, the tax withheld from employees should make filing of their returns redundant. In practice, however, many employees have other financial considerations in calculating their final income and the amount withheld is merely one of the elements in determining the taxpayer's ultimate liability. Hence, the tax is a payment on account that is subject to final adjustments upon tax filing.

An employee can file Form TD1, (Personal Tax Credits Return) with her employer to reduce the tax withheld at source. Conversely, taxpayers who prefer to receive a refund when they file their tax returns can use the same form and ask their employers to withhold more taxes.

An individual's tax liability is not reduced because his employer fails to make the appropriate withholding deduction. The taxpayer who earns the income is liable to pay tax on that income.[13] The Tax Court cannot correct employer or CRA errors or grant equitable relief on grounds of equity or fairness. The fact that the employer makes a mistake in handling its source deduction obligations are not grounds that the Court can take into account in considering an appeal.[14]

[In response to Covid-19, the government enacted certain income tax measures to provide relief to employers. The 10% Temporary Wage Subsidy (TWS) allowed allow eligible employers to reduce the amount of their payroll deductions remittances to the Canada Revenue Agency. The subsidy was equal to 10% of the remuneration paid from March 18 to June 19, 2020, up to $1,375 for each eligible employee to a maximum total is $25,000 for each eligible employer. See: canada.ca/temporary-wage-subsidy].

Other Income

In addition to traditional salary and wages, the following payments to resident individuals also require the payor to withhold tax at source:[15]

(b) superannuation or pension benefits,

(c) retiring allowances,

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[11] See sections 5 and 6.
[12] Para. 248(1) "salary and wages".
[13] *Kristin J. Stein* v. *Her Majesty the Queen*, 2013 CarswellNat 4040, 2013 TCC 345, 2013 D.T.C. 1258 (Eng.), 2013 CCI 345.
[14] *Chaya v. R.*, 2004 FCA 327 (F.C.A.)
[15] Para. 153(1).

(d) death benefits,

(d.1) amounts in subparagraph 56(1)(a)(iv) or (vii),

(d.2) amounts in paragraph 56(1)(a.3),

(e) supplementary unemployment plan benefits

(f) annuity payments or a payment in full or partial commutation of an annuity,

(g) fees, commissions or other amounts for services, other than amounts described in subsection 115(2.3) or 212(5.1),

(h) payments under a deferred profit sharing plan or a plan referred to in section 147 as a revoked plan,

(i) payments from registered disability savings plans,

(j) payments out of registered retirement savings plans or an amended plan,

(k) amounts on account proceeds of the surrender, cancellation or redemption of an income-averaging annuity contract,

(l) payments out of a registered retirement income fund or an amended fund,

(m) prescribed benefits under a government assistance program,

(n) amounts that an individual elects for the year in prescribed form in respect of all such amounts,

(o) an amount described in paragraph 115(2)(c.1),

(p) contributions under a retirement compensation arrangement,

(q) amounts distributed out of a retirement compensation arrangement,

(r) amounts on account of the purchase price of an interest in a retirement compensation arrangement,

(s) an amount described in paragraph 56(1)(r) , (z.2) or (z.4),

(t) payments under a registered education savings plan, or

(u) payments out of advanced life deferred annuities (section 146(5)).

In each of these situations, the payor must remit the tax withheld to the Receiver General of Canada.

Non-residents

Paragraph 153(1)(g) and Regulation 105 require every person paying fees, commissions or other amounts for services in Canada to a non-resident to withhold and remit 15% tax from the payments.

Payments to non-residents for services rendered outside Canada are not subject to withholdings even if the services relate to a Canadian business.

The tax applies even if the non-resident is exempt from tax and has no tax liability because of a treaty with Canada. The CRA can waive the tax upon application.[16] To obtain a refund, the payee must file a Part I return under section 150 and claim the treaty exemption.[17]

Treaty Provisions

Bilateral tax treaties can limit a country's jurisdiction to withhold taxes from non-resident employees in the State of source. Although each bilateral treaty is independently negotiated between countries, Canada generally follows the OECD Model Convention, which restrict withholding taxes on short term employees in Canada.

OECD Model Convention

Imposing source deduction requirements for short-term employments in a given State would constitute an excessive administrative burden where the employer neither resides nor has a permanent establishment (PE) in that State. Hence, the OECD Model exempts income from employment in the State of source from withholding tax if the non-resident employee works there for less than 183 days in any twelve-month period and the employer cannot deduct the expense in the State of source.

[16] ITA 153(1.1) and Form R105; Information Circular 75-6R2 A.

[17] For a corporation, a non-resident T2.

Article 15(1) of the *OECD Model* states the general rule.

"Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State".

Article 15(2) provides an exception to the general rule if the employment relationship satisfies three conditions.

> "… remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable *only* in the first-mentioned State *if*:
>
> *a)* the recipient is present in the other State for a period or periods *not exceeding* in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
>
> *b)* the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
>
> *c)* the remuneration is not borne by a permanent establishment which the employer has in the other State.

The first condition limits the exemption to a period of employment that does not exceed 183 days in any twelve-month period. Second, the employer (payor) paying the remuneration is not a resident of the State in which the employee works. Third, if the employer has a PE in the State in which the employment is exercised, the PE does not bear the cost of the remuneration.

These provisions avoid source taxation of short-term employment to the extent that the employer is not allowed to deduct the expense in the State of source because it is not taxable in that State as it is neither a resident nor has a PE therein.

Example

Aco, a company resident in State A, specializes in training people in using computer software. It concludes a contract with Bco, a company resident in State B, to provide services to train its personnel to use recently acquired software. X, an employee of Aco, who is a resident of State A, goes to Bco's offices in State B to provide training courses as part of the contract.

X renders his services to Bco on behalf of Aco under the contract between the two enterprises.

There will be no withholding tax on X's compensation in State B provided that:

he is not present in State B for more than 183 days during any relevant twelve-month period, and

Aco does not have a PE in State B that bears the cost of his remuneration.

The Canada-U.S. Tax Convention

A notable variation from the *OECD Model* is Canada's treaty with the United States. Article XV (1) of the *Canada-U.S. Tax Convention* uses a monetary threshold and exempts from tax non-residents employed in Canada if their income from each employment does not exceed $10,000. However, the State of source may tax a non-resident's remuneration if:

- it exceeds $10,000 in the State's currency; or
- he is present in the State for more than 183 days in any twelve-month period, and
- a PE in, or a resident of, the State bears the cost of his compensation.

The $10,000 limit is calculated in respect of each employment and does not aggregate employment compensation from different sources.[18] For the purposes of the 183 test, a "day" includes any day or part day.[19]

Actors

There is a special tax of 23 per cent under Part XIII for payments to non-resident actors for acting services.[20] This tax is a final tax and not merely a payment on account. However, the actor (or corporation) can elect under section 216.1 to file a return under Part I of the Act on "taxable income earned in Canada", in which case the amount withheld is considered a payment on account of Part I tax liability.

The tax does not apply to income that the non-resident provides for other services in Canada such as, for example, services as a producer or director. It also does not apply to other non-residents who perform services in the movie industry, for example, to directors, producers or screenwriters or other sectors of the entertainment industry, including musicians or international speakers. These non-residents who perform services in Canada are subject only to the 15 per cent withholding tax under Part XIII.

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[18] P*rescott v. The Queen* (1995) 96 DTC 1372 (TCC).
[19] Technical Interpretation, International and Trusts Division 9224525 (Dec 1, 1995); IT-298, para. 1.
[20] Ss. 212(5.1).

Passive Income to Non-residents

Canadian residents and certain other payers who pay or "credit" Canadian-source passive income to non-residents must withhold 25% tax. Subsection 212(1) provides that a tax Under Part XIII of the Act, the tax is payable whenever:

- a person resident in Canada,
- pays or credits, or
- is deemed by Part I of the Act to pay or credit,
- to a non-resident person,
- an amount,
- as, on account or in lieu of payment of, or in satisfaction of, one of specified types of income.

Passive income typically includes interest, dividends, royalties, pensions and annuities. There are two distinct features of the Part XIII withholding tax: (1) the tax is on the *gross* amount paid or credited; and (2) the tax withheld on behalf of the non-resident is a *final* tax and the non-resident is not required to file a Canadian tax return. However, subsection 227(6) provides that the CRA shall refund any excess tax that the person was not liable to pay.

The term "credit" requires something more than a book entry in an account and implies that the Canadian resident has set aside and made unconditionally available to the non-resident an amount due to the non-resident.[21]

Onus on Payer

The onus to withhold at the rate of 25 per cent is on the payer unless he has evidence that the beneficial owner is subject to a lesser rate by reason of a tax treaty. This is a heavy onus because of the penalties for failure to deduct.[22] The law has always been clear that the Canadian payer is responsible to see that the proper tax is withheld. For example, an employer who fails to withhold tax in respect of its employees who were resident in the United States, in the mistaken but honest belief that they would not be in Canada more than 183 days or earn more than the

[21] Para 5 of IC 77-16R4 , ITTN-14 (1998), and CRA Views Doc 2013-0499621E5.
[22] Section 227.

maximum amount permitted would be liable for tax and interest.[23]

Administrative Procedures

See: Information Circulars 77-16R4 and 75-6R2 . See also CRA Guide T4061 : *NR4—Non-Resident Tax Withholding, Remitting, and Reporting* , Form NR95 : *Authorizing or Cancelling a Representative for a Non-Resident Tax Account* , and canada.ca/crarepresentatives.

Part XIII Assessments

The CRA can assess a person for various amounts, including penalties and other amounts payable by the person in respect of the failure to comply with the various provisions of the Act. Divisions I and J of Part I of the Act apply to assessments under Part XIII.

Subsection 227(1) refers to a person's obligation to deduct or withhold taxes and *subsection 227(4)* provides that the amounts deducted are held in trust for "Her Majesty the Queen for payment to Her Majesty in the manner and at the time provided for under the Act."

A director is liable for monies collected from third parties and held in trust in respect of third parties' obligations.

No Limitation Period

There is no limitation period for 227(10) assessments on Part XIII tax.[24] The words "at any time" in the subsection mean just that and the CRA is not obliged to act "with all due dispatch". Hence, there is no limitation period for the issuance of a notice of assessment against a director.

Tax Treaties

Tax treaties generally provide for rate exemptions and reductions for payments of passive income to non-residents. The rates are bilaterally negotiated in each treaty. Canada usually follows the OECD Model. For example, Article 10 of the OECD Model in respect of dividends is as follows:

1. "Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, dividends paid by a company which is a resident of a Contracting State may

[23] *Banister Construction Ltd v MNR,* 15 Tax A.B.C. 426 (CTAB)
[24] *Dagenais,* 2006 TCC 209 ; *McKesson Canada,* 2013 TCC 404; para. 396 (FCA appeal discontinued A-48-14); VIEWS doc 2013-0481581I7 .

also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividend);

b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident”.

The concept of beneficial ownership in paragraph 2 of Article 10 clarifies the meaning of the words “paid ... to a resident” in paragraph 1 of the Article. The State of source does not have to give up its taxing rights over dividend income merely because the payor pays the income directly to a resident of a State with which the State of source has a convention.

The term “beneficial owner” is intended to prevent treaty shopping by sending the dividend to a nominal owner through a corporate chain that is a resident in a treaty country. Similar provisions apply to the Interest and Royalties provisions in Articles 11 and 12 of OECD Model treaties.

For the purposes of treaty interpretation, the term “beneficial owner” has a broader meaning than its understanding in trust law in common law countries. It is interpreted in the context of the object and purposes of the Convention, which is to avoid double taxation and the prevent fiscal evasion and avoidance.

Income tax treaties between Canada and most countries typically either exempt or reduce the Part XIII tax on passive income payments to persons who beneficially own the amounts paid. See, for example:

Non-Resident Withholding Tax Rates for Treaty Countries (May 2021)

Country	Interest	Dividends	Royalties	Pensions/ Annuities
Australia	10	5/15	10	15/25
Austria	10	5/15	0/10	25
Barbados	15	15	0/10	15/25
Belgium	10	5/15	0/10	25
Brazil	15	15/25	15/25	25
Chile	15	10/15	15	15/25
China, People's Republic	10	10/15	10	25
Colombia	10	5/15	10	15/25
Croatia	10	5/15	10	10/15/25
Cyprus	15	15	0/10	15/25
Czech Republic	10	5/15	10	15/25
Denmark	10	5/15	0/10	25
Dominican Republic	18	18	0/18	18/25
Ecuador	15	5/15	10/15	15/25
Egypt	15	15	15	25
Finland	10	5/15	0/10	15/20/25
France	10	5/15	0/10	25
Germany	10	5/15	0/10	15/25
Greece	10	5/15	0/10	15/25
Guyana	15	15	10	25
Hong Kong	10	5/15	10	25
Hungary	10	5/15	0/10	10/15/25
Iceland	10	5/15	0/10	15/25

Country	Interest	Dividends	Royalties	Pensions/ Annuities
India	15	15/25	10/15/20	25
Indonesia	10	10/15	10	15/25
Ireland	10	5/15	0/10	15/25
Israel	10	5/15	0/10	15/25
Italy	10	5/15	0/5/10	15/25
Japan	10	5/15	10	25
Jordan	10	10/15	10	25
Kazakhstan	10	5/15	10	15/25
Kenya	15	15/25	15	15/25
Korea, Republic of	10	5/15	10	10/15/25
Kuwait	10	5/15	10	15/25
Latvia	10	5/15	10	10/15/25
Luxembourg	10	5/15	0/10	25
Malaysia	15	15	15	15/25
Malta	15	15	0/10	15/25
Mexico	10	5/15	0/10	15/25
Netherlands	10	5/15	0/10	15/25
New Zealand	10	5/15	5/10	15/25
Nigeria	12.5	12.5/15	12.5	25
Norway	10	5/15	0/10	15/25
Oman	10	5/15	0/10	15/25
Pakistan	15	15	0/15	25
Papua New Guinea	10	15	10	15/25
Peru	15	10/15	15	15/25
Philippines	15	15	10	25

Country	Interest	Dividends	Royalties	Pensions/ Annuities
Poland	10	5/15	5/10	15/25
Portugal	10	10/15	10	15/25
Romania	10	5/15	5/10	15/25
Russian Federation	10	10/15	0/10	25
Senegal	15	15	15	15/25
Serbia	10	5/15	10	15/25
Singapore	15	15	15	25
Slovak Republic	10	5/15	0/10	15/25
Slovenia	10	5/15	10	10/15/25
South Africa	10	5/15	6/10	25
Spain	10	5/15	0/10	15/25
Sri Lanka	15	15	0/10	15/25
Sweden	10	5/15	0/10	25
Switzerland	10	5/15	0/10	15/25
Taiwan	10	10/15	10	15/25
Tanzania	15	20/25	20	15/25
Thailand	15	15	5/15	25
Trinidad & Tobago	10	5/15	0/10	15/25
Tunisia	15	15	0/15/20	25
Turkey	15	15/20	10	15/25
Ukraine	10	5/15	0/10	25
United Arab Emirates	10	5/15	0/10	25
United Kingdom	10	5/15	0/10	0/10/25
United States	0	5/15	0/10	15/25
Uzbekistan	10	5/15	5/10	25

Country	Interest	Dividends	Royalties	Pensions/ Annuities
Venezuela	10	10/15	5/10	25
Vietnam	10	5/10/15	7.5/10	15/25
Zambia	15	15	15	15/25
Zimbabwe	15	10/15	10	15/25

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