



DOING BUSINESS WITH OUR NORTHERN NEIGHBORS?

Canada's Regulation 105 Mandates Withholding Tax on Non-Resident Service Providers

QUICK TAKE

- Canada's Income Tax Act requires 15% withholding
- The regulation applies to non-resident service providers
- Non-resident workers should factor in the cost when setting fees

In today's global marketplace, services are often rendered across borders, without much consideration for tax implications. That would be a mistake.

Some businesses that have engaged non-residents to perform services in Canada have learned the hard way that ignorance is not bliss when it comes to their withholding tax obligations under Regulation 105.

Part of Canada's Income Tax Act, Regulation 105 requires a business to withhold 15% of any fee, commission, or wage paid to a non-resident for services rendered in Canada, and to remit that payment to the Canada Revenue Agency (CRA). The law applies whether the business is Canadian or not. And it applies even if the non-resident service provider is not liable to pay taxes in Canada.

There are, of course, some exceptions.

A non-resident, or the business engaging that non-resident, may apply to the CRA for a waiver—although the CRA is reluctant to issue them. Even if a waiver is provided, the non-resident is still obligated to file a tax return in Canada for all Canadian-source income.

If a waiver is not obtained, a non-resident may apply to the CRA for a refund if the income earned in Canada falls under a treaty-based exemption. In some cases, non-resident employees under temporary assignment may be exempt from Regulation 105—although, in such cases, withholding is required at the statutory rate set forth in the Income Tax Act, Regulation 102.



The important point: Businesses that engage non-residents to perform services in Canada must be aware of their Regulation 105 obligations, and those obligations should be addressed in all service agreements. Likewise, non-resident service providers should consider withholding

obligations and the delay in receiving full payment for their services when setting their fees—possibly factoring in any additional costs that may result from having to file tax returns in Canada.

If you are doing business in Canada and would like more information on Regulation 105, or any of Canada's Income Tax Regulations, please call us for some help.

Tax
Marco Dolfi 519.790.7468