

Short-term business travellers to Canada

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Short-term business travel to the Canada

Short-term business travellers (STBTs) often are comprised of foreign employees travelling to Canada for employment purposes and are usually only staying in Canada for very short periods of time. These STBTs will be subject to Canadian income tax on their Canadian source employment income and will be required to file a Canadian personal income tax return. In addition, there will also be Canadian payroll obligations for the employer. Employers and employees should be aware of these Canadian tax implications to assist in minimizing costs associated with working and conducting business in Canada.

Tax residency

Canadian tax residency rules are not based on citizenship and are actually based on a review of the primary and secondary ties as follows:

- i. Primary residential ties can create Canadian tax residency even if only one of them are present. They include the following:
 - Home in Canada
 - Spouse or common-law partner in Canada
 - Dependents in Canada
- ii. Secondary residential ties can create Canadian tax residency if there are enough of them present, and can include any of the following:
 - Personal property in Canada, such as a car or furniture
 - Social ties in Canada, such as memberships in Canadian recreational or religious organizations

Maintaining documentation for STBTs

We advise employers to maintain records of employee travel and be able to show Canadian tax authorities that they are compliant with all tax obligations regarding business travellers.

Immigration

Internal immigration controls should be in place to ensure that STBTs are only carrying out business activities permitted by their visa or work permit status in order to avoid putting the business at risk. Border controls globally are becoming more stringent, which engenders a greater risk of noncompliance.

Transfer pricing

In situations where STBTs are generating profit through the activities being undertaken on short-term travel in Canada, the organization may need to apply a transfer pricing methodology to recognize any attributable revenue and expenses.

- Economic ties in Canada, such as Canadian bank accounts or credit cards
- A Canadian driver's license
- A Canadian passport
- Health insurance with a Canadian province or territory

If STBTs exceed 183 physical days in Canada, there is a risk that they will be considered a "deemed resident" of Canada, which will cause them to be taxed in the same manner as Canadian residents. However, Canada has income tax treaties with many countries that provide relief from double-tax residency. The treaty rules override the domestic rules.

Most tax treaties with Canada follow the Organisation for Economic Co-operation and Development (OECD) model for a residency test. Under the general principle, a STBT who is treated as a resident of two countries under their domestic laws can be treated as a resident of only one country under the income tax treaty if they have a closer connection to that country.

Closer connection is based on the country in which the STBT maintains the following:

- i. Permanent home available to them
- ii. Centre of vital interests (personal and economic relations)
- iii. Habitual abode
- iv. Citizenship

If the STBT has the above items in both countries, they can apply to get a ruling by the Competent Authorities of Canada and the foreign country.

Income tax

Residents of Canada are subject to Canadian personal income tax on their worldwide income.

Non-residents of Canada are subject to Canadian personal income tax only on their income derived from Canadian sources in the following manner:

- i. Employment income – Canadian marginal tax rates for the income allocated to the days physically worked in Canada. This applies even if the employment income is paid in a later year (e.g., a bonus).
- ii. Investment/pension income – Canadian non-resident tax at a rate of 25 per cent under Part XIII of the Canadian Income Tax Act. This rate may be reduced if there is a tax treaty between Canada and their foreign home country.
- iii. Rental income – Canadian non-resident tax at a rate of 25 per cent on gross rental income. However, the withholding can be applied to net rental income if Form NR6 is filed for the tax year.

Alternatively, the net rental income would be taxable at marginal tax rates upon filing a Canadian return as an election under section 216 of the Canadian Income Tax Act. The withholding tax acts as an instalment payment.

The STBT will be subject to Canadian individual taxation on employment income they received while they were physically working in Canada and will be required to file a Canadian individual income tax return.

Canadian corporate and sales tax

Depending on the business activities carried out by the STBT, it is possible for the individual to create entity-level Canadian corporate and sales tax filing and payment obligations for the employer. This could occur if the employee's activities deem the employer to be carrying on business in Canada.

For Canadian corporate tax, the company will be taxed on the profits that are generated through the activities in Canada if they have a permanent establishment (PE). There may not be relief from Canadian taxation for the STBT under the Dependent Personal Services article of the relevant income tax treaty. This creates a potential exposure to tax audits focused on determining the revenues associated with the activities conducted in said jurisdiction. While treaties may provide relief where the employee's activities do not constitute a PE, companies must check the facts and circumstances of each situation against local laws, and employers should develop a mitigation or compliance strategy as appropriate.

For Canadian sales tax, there are separate rules for determining whether it would be applicable, and it does not follow the same guidelines for a PE nor is there any treaty relief application. A Canadian sales tax expert should be consulted.

The Canadian individual tax return is due April 30 and there are no extensions. However, if they are self-employed, the return is due June 15. The Section 216 non-resident rental return is due June 30.

The STBT may be exempt from Canadian taxation depending on the conditions set forth in the income tax treaty between Canada and their foreign home country. However, the STBT will still have to file a Canadian individual income tax return to claim this exemption.

The STBT will require a Canadian Social Insurance Number (SIN) or an individual tax number (ITN) to facilitate the Canadian individual tax return.

Payroll considerations

The STBT will need to be set up on a Canadian payroll, and be subject to Canadian payroll source deductions. The Canadian payroll requirements apply regardless on the amount of time the STBT is physically working in Canada.

Canadian payroll source deductions consist of Canadian income tax (federal and provincial), Canada Pension Plan (CPP), and Employment Insurance (EI). The employer is also responsible for certain direct payroll costs, which includes the employer's share of the CPP and EI, provincial health tax, workers compensation, etc.

The employer must issue a T4 form to the STBT at the end of the year to report the Canadian source employment income, and the Canadian payroll source deductions.

There may be an exemption from some of the Canadian payroll requirements if the STBT is exempt from Canadian taxation under an income tax treaty with the foreign country. These Canadian payroll exemptions can be utilized by applying for a payroll waiver from the Canada Revenue Agency.

The employer will have to register for a Canadian Business Number including a Canadian payroll account number to facilitate the payroll withholding and/or the payroll waiver.

Quebec taxation

All of the provinces and territories in Canada have harmonized their provincial tax systems with the federal tax system, which allows the payroll and personal tax return to cover both federal and provincial tax. However, the province of Quebec administers their own provincial tax system including separate payroll and personal tax obligations.

All of the provinces and territories including Quebec follow the income tax treaties Canada may have with the foreign country.

Social security and certificates of coverage

Canada has a social security program that consists of the CPP and EI. Social security coverage is required for all STBTs performing services in Canada, regardless of the duration of their physical presence. However, Canada has totalization agreements in place with certain foreign countries that allow for both the STBT and employer to be exempt from the CPP. If such a totalization agreement were in place, the foreign employer would apply for a certificate of coverage from the foreign home country in order to document the exemption from the CPP.

After obtaining a copy of the certificate, the employer should maintain this document in the company's files in the event that Canada requests to review it to confirm the exemption.

Quebec has their own social security program (Quebec Pension Plan – QPP) for STBTs working in Quebec based on whether the employer has a presence in Quebec. It is based on the same system as the CPP and Quebec has their own totalization agreements with the foreign countries as well.

These totalization agreements do not relieve withholding obligations for EI. However, if there is a requirement to pay unemployment insurance in the foreign home country, the employer and STBT can be exempt from EI.

Housing allowance—special work site

Most amounts paid by an employer to a STBT in Canada are considered taxable benefits, including amounts paid for housing and travel. However, housing allowances/payments can be treated as a “non-taxable benefit” if the STBT maintained their own home or other residence in their foreign home country while working at a special work site in Canada. A special work site is an area where temporary duties are performed (less than two years) by an employee who keeps a self-contained domestic establishment at another location as their principal place of residence. Because of the distance between the two areas, the STBT is not expected to return daily from the work site to their principal place of residence.

If all of the special work site conditions are met, the STBT and the employer should complete Form TD4, Declaration of Exemption – Employment at a Special Work Site to report the exemption. Form TD4 does not need to be filed with the Canada Revenue Agency, but should be kept with the employer's records in case it is requested.

How can RSM help?

Non-compliance with local requirements may lead to financial and reputational risks and exposures that could put business objectives and projects at risk if international jurisdictions refuse an employee's entry. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organization to legal challenges from employees and authorities.

The reporting obligations described above need to be carefully managed to ensure that all requirements are met and that tax liabilities are minimized. Organizations may want to establish a compliance checklist in connection with their short-term business travellers.

RSM offers a senior professional-led service that can advise on the data collation, recordkeeping and risk management surrounding your STBTs in Canada.

We utilize bespoke software to manage large populations of visitors and proactively advise on thresholds. We also utilize more practical reporting methods with clients who only need to manage a handful of globally mobile employees. Our international professionals will provide clarity regarding the complex tax compliance requirements that your business travellers face globally.

Other jurisdictions

While this document focuses on travellers to Canada, RSM has the international presence and experience to provide clarity on the complex tax requirements involved with business travellers around the world.

Checklist for managing risks of non-compliance

- Payroll tax exposure:** Payroll compliance should be monitored by the company as payroll audits have become increasingly common. It is advisable to have an employee agreement in place documenting the length of the STBT's Canadian short-term travel.
- Immigration risks:** It is imperative that STBTs adhere to Canadian immigration laws. Any visa/work permit requirements should be identified prior to traveling to Canada.
- Corporate tax risks:** The STBT's activities in Canada can create tax filing and payment obligations at the corporate level. The applicable income tax treaty should be reviewed, as a mitigation strategy may need to be put in place.
- Regulatory risks:** Canadian requirements must be considered to reduce the possibility of triggering any regulatory issues in Canada.
- Reputational risks:** There is increased pressure on multinationals to show that they have a process in place for monitoring STBTs and managing risks of non-compliance.

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