



International Fiscal Association

Association fiscale internationale

YIN SESSION

IFA CANADA

CRA Q&A SESSION: CROSS-BORDER TAX ISSUES AND COVID-19

SPEAKERS: TED GALLIVAN, RANDY HEWLETT & ALEXANDRA MACLEAN (CANADA REVENUE AGENCY)

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OUTLINE

1. Topic 1: Questions regarding CRA's publication, "Guidance on international income tax issues raised by the COVID-19 crisis" (the "Guide")
2. Topic 2 – Questions about contacting CRA
3. Topic 3 – COVID-19 Tax Queries (unrelated to International Tax)
4. Topic 4 – Non-COVID-19 Related Questions

TOPIC 1

QUESTIONS REGARDING CRA'S PUBLICATION, "GUIDANCE ON INTERNATIONAL INCOME TAX ISSUES RAISED BY THE COVID-19 CRISIS" (THE "GUIDE")

TOPIC 1 – QUESTIONS CONCERNING INDIVIDUALS

Background

CRA has indicated that the relief provided by the Guide is applicable to situations in which there are Travel Restrictions, defined as follows:

The COVID-19 crisis has resulted in the imposition of safety measures by governments around the world, including the Canadian government, to protect the health of their citizens. Similarly, businesses have imposed safety measures to protect their employees. These measures include restrictions on travel (the "Travel Restrictions").

TOPIC 1 - QUESTIONS CONCERNING INDIVIDUALS

QUESTION 1

What qualifies as a "Travel Restriction" imposed by a business or a Government?

- Would recommendations without legal restrictions qualify (e.g., the recommendation of the Canadian government that every Canadian return home)?
- Would a mandatory quarantine period (imposed by the Canadian government or a foreign government) be considered a Travel Restriction?

TOPIC 1 - QUESTIONS CONCERNING INDIVIDUALS

QUESTION 2

The CRA's relief for individuals explicitly discusses only one type of situation: where individuals visiting Canada at the time of the Travel Restrictions were not able to return to their country of tax residence as they intended, and instead remained in Canada.

- When is an individual's presence in Canada considered to be "solely as a result" of Travel Restrictions?
 - As an example, consider a US-resident individual who is required to exercise their employment in Canada on a regular basis, and who is normally not present in Canada for 183 days or more in total in any 12-month period. The individual cannot practicably travel back and forth between the US and Canada due to mandatory quarantine periods in one or both countries, and so stays in Canada for an extended period of time. Would the CRA consider the mandatory quarantine periods to be Travel Restrictions? If so, would the CRA consider the individual to be in Canada solely as a result of the Travel Restrictions?
 - Would this change if the reason the individual was required to be present in Canada on a regular basis was personal?

TOPIC 1 - QUESTIONS CONCERNING INDIVIDUALS

QUESTION 2 (CONT.)

- Would the CRA's administrative relief continue to apply if an individual is impacted by Travel Restrictions but not the specific scenario considered by CRA?
 - For example, what if the individual was abroad and encouraged to return home to Canada?
- Would an individual be eligible for relief if they are *not* solely in Canada due to Travel Restrictions, but they are still in Canada either partly due to Travel Restrictions or because they are otherwise impacted by COVID-19?
- Is similar relief available to an individual who would otherwise be resident in Canada (and intends to be resident in Canada), but is prevented from travelling home as a result of the Travel Restrictions?

TOPIC 1 – QUESTIONS RELATING TO REMOTE WORK IN CANADA

QUESTION 3

If an individual is not ordinarily resident in Canada, but is in Canada due to Travel Restrictions or otherwise due to public safety concerns relating to COVID-19, and works remotely (for their non-resident employer) from Canada:

- Would such individuals now be considered Canadian residents and their foreign employment income be subject to tax in Canada?
- If the employer has no (other) Canadian ties, would it now have new withholding obligations in Canada?
- Would the presence of an employee in Canada – with or without the approval of their employer – be a situation in which the employer is considered to be carrying on business in Canada pursuant to paragraph 253(2)(b) of the ITA?

TOPIC 1 – QUESTIONS RELATING TO REMOTE WORK IN CANADA

QUESTION 4

How should non-resident employers deal with a situation in which they discover that employees are (without permission) working remotely from Canada due to the COVID-19 crisis?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 5

In the guide, CRA has considered the issue of corporate residency as it relates to directors who may be forced to travel to or remain in Canada. Administrative relief has been provided for corporations which would otherwise be potentially a dual resident of Canada and a country to which a tax treaty applies under such circumstances. Does this relief from common law residency rules broadly apply to companies in treaty-based countries, in situations where Travel Restrictions result in inadvertent Canadian residency?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 6

The CRA's residency guidance for corporations focuses particularly on the location of board meetings in situations where directors are in Canada due to Travel Restrictions. However, as noted in the guide, the location of board meetings is also only one element in determining the location of a corporation's place of effective management. Will the CRA take into account the Travel Restrictions and other circumstances related to COVID-19 more generally in determining whether the effective management of a corporation is in Canada (for example, in a situation where an individual officer or director typically exercises management activities outside of Canada but is in Canada due to Travel Restrictions or other COVID-19 related circumstances)?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 7

The CRA's guidance with respect to residency focuses largely on whether a foreign corporation will be resident in Canada. Will the CRA apply the same general principles in determining whether a foreign corporation is resident in a jurisdiction other than Canada where relevant for purposes of the ITA (for example, with respect to the computation of a foreign affiliate's surplus)?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 8

Is CRA's guidance on corporate residency and Covid-19 applicable to corporations residing in a treaty jurisdiction where the only tie-breaker rule in the treaty relating to corporate residency is a competent authority tie-breaker rule?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 9

The guide indicates on multiple occasions that CRA will consider administrative relief for non-resident entities which are resident in countries with which Canada has not entered into an income tax treaty “on a case-by-case basis”. What factors are likely to determine whether such relief will be provided?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 10

In light of commentary from the OECD to the effect that tax administrations should minimize or eliminate unduly burdensome compliance requirements for taxpayers during the COVID-19 crisis, has the CRA considered waiving the requirement to file a tax return for non-resident corporations resident in a non-treaty jurisdiction, which are considered to be carrying on business in Canada only because of the Travel Restrictions?

- Does the administrative relief applicable to such taxpayers as outlined in the CRA guidance include relief from filing a tax return?
- How do such taxpayers apply for the administrative relief outlined in the CRA guidance?

TOPIC 1 – QUESTIONS RELATING TO BUSINESSES

QUESTION 11

Is the expanded test for “carrying on business in Canada” (under paragraph 253(2)(b) of the ITA) different during the travel restrictions in place during COVID-19?

TOPIC 2 – QUESTIONS RELATING TO BUSINESSES

QUESTION 12

What are the CRA's views on the impact and treatment of the COVID-19 related government assistance programs in the context of Transfer Pricing Memorandum 17 (TPM-17), and whether CRA's position may in any way be different given the unprecedented business circumstances caused by the pandemic?

TOPIC 2

QUESTIONS ABOUT CONTACTING THE CRA

TOPIC 2 – QUESTIONS ABOUT CONTACTING THE CRA

QUESTION 13

How should tax practitioners and taxpayers contact CRA during periods impacted by COVID-19?

- **Telephone numbers**: Many CRA agents are not working at their ordinary offices and may have omitted to put on out-of-office replies during this time. Does CRA intend to publish a directory of telephone numbers so that taxpayers can continue to contact representatives at this time?
- **Correspondence**: At this time, sending documents by fax often does not work due to the volume of inquiries directed at CRA. In addition, many businesses' mailrooms have limited functionality at this time due to COVID-19 restrictions. My Account is not an option for many non-residents (or for taxpayer representatives who are not accountants). Is there a general inquiry e-mail box which taxpayers can use to submit correspondence? Will CRA consider permitting taxpayer submissions regarding international tax issues by e-mail?

TOPIC 2 – QUESTIONS ABOUT CONTACTING THE CRA

QUESTION 14

Waivers and Clearance Certificates: Can the CRA provide any update on current timelines for processing applications under Regulations 102 and 105 and section 116 clearance certificates?

TOPIC 3

COVID-19 TAX QUERIES (UNRELATED TO INTERNATIONAL TAX)

TOPIC 3 – COVID-19 TAX QUERIES (UNRELATED TO INTERNATIONAL TAX) QUESTION 15

New subparagraph 125.7(4)(e)(ii) of the *Income Tax Act* (added by Bill C-20) allows an eligible entity to use accrual accounting “in accordance with generally accepted accounting principles”. The ancillary documents indicate this targets a cash-basis taxpayer; what about one who uses accrual accounting, but deviates from GAAP in some other respect? For example, consider a taxpayer which does not net discounts against revenues, instead reporting them as an expense, or nets bad debts against revenues.

TOPIC 4

NON-COVID-19 RELATED QUESTIONS

TOPIC 4 – NON-COVID-19 RELATED QUESTIONS

QUESTION 16

CRA Update: Is there any update on the CRA's administrative position on convertible debt as expressed in 2013-0509061C6 Part XIII Tax & Standard Convertible Debentures?

TOPIC 4 – NON-COVID-19 RELATED QUESTIONS

QUESTION 17

Transfer pricing: Given the recent FCA decision in *Cameco* (and assuming that is a final decision), does CRA foresee modifying assessing practices relative to 247(2) recharacterizations?



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Thank you for attending.