Coming January 2024: Employer payroll deductions and updated CRA guidance for remote work arrangements

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Due to the increased number of employees working on a full time remote basis following COVID-19, the Canada Revenue Agency (CRA) has updated its guidance to employers with respect to determining which provincial payroll withholding rate applies for a remote employee (see here), effective January 1, 2024.[1]

All employers must remit payroll source deductions (in particular, CPP/QPP, EI, QPIP and income tax deductions) for employees based on the employee's province of employment (POE). For a Canadian resident employee earning salary, wages or commission, the POE is determined by where the employee "reports for work".

The employee "reports for work" at the following location pursuant to Regulation 100(4) to the *Income Tax Act*:

1. At an establishment of the employer (which is any place or premise in Canada that is owned, leased or rented by the employer where employees report to work and which does not need to be a permanent location);[2] or
2. If the employee does not report for work at an establishment of the employer, the employee is deemed to report for work at the establishment of the employer from which salary, wages or commissions are paid.

The new policy expands the interpretation of when an employee is considered to be reporting for work at an establishment of the employer to include the situation where a "full-time remote work agreement" is in place for the employee and the employee can reasonably be considered to be "attached to an establishment of the employer".

In particular, an employee is attached to an establishment of the employer if:

1. A temporary or permanent work agreement allows the employee to work full-time remotely from a location that is not an establishment of the employer (the employer and employee must be able to justify that such an agreement was made); and

2. The employee is reasonably considered to be attached to an establishment of the employer. The CRA has provided “primary indicators” and “secondary indicators” to help with this assessment.

The primary indicator of POE is the province where, if not for the full-time remote work agreement, an employee physically reported to an establishment of the employer to carry out their work-related duties.

If the primary indicator is not useful for determining whether an employee is attached to an establishment of their employer, the following indicators must be used to determine whether they can reasonably be considered to be attached to that establishment:

1. The employee attends or would attend in-person meetings at the establishment, through any type of communication.
2. The employee receives or would receive work-related material or equipment or associated instructions and assistance at the establishment.
3. The employee comes or would go in-person to the establishment to receive instructions from their employer regarding their duties, through any type of communication.
4. The employee is supervised from the establishment, as indicated in their employment contract.
5. The employee would report for work at the establishment based on the nature of their duties.

Generally, all the indicators need to be reviewed together in order to determine whether the employee is reasonably considered to be “attached to an establishment of the employer.” Where an employer has more than one location, they need to consider, based on the same factors, to which of the employer’s establishments the employee is more closely attached.

Takeaway

As the lingering effects of COVID-19 have resulted in moving away from the traditional office-based employment, the guidance from CRA and Revenu Québec on the POE for remote work arrangements is a welcomed aid to both Canadian resident and non-resident employers in understanding their payroll deduction obligations in Canada.

In some cases, the new administrative policy addition may change the provincial payroll table being applied to employees who are already in a full-time remote work arrangements and whose province of employment is determined based on where they are paid from, if that differs from the establishment the employee is attached to based on the indicators identified by the CRA.

If you have questions about the CRA’s guidance for remote work arrangements please reach out to the authors of this piece or a member of BLG’s tax team.

[1] Revenu Québec announced on November 14, 2023 that it would also harmonize with CRA: Administrative Policy on Determining the Province of Employment for Québec Source Deductions and Employer Contributions | Revenu Québec (revenuquebec.ca)

[2] Generally, an employee’s home office is not considered to be an establishment of the employer.

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