

Income Tax

ADM. 7-1 **Reduction in source deductions of income tax in respect of a payment for services rendered in Québec by a person not resident in Canada**

Date of publication: **November 30, 2004**

Reference(s): *Taxation Act* (R.S.Q., c. I-3), sections 1015 and 1016
Regulation respecting the Taxation Act (R.R.Q., 1981, c. I-3, r.1, as amended),
section 1015R8

This bulletin deals with the treatment of an application for a reduction in source deductions of income tax in respect of a payment for services rendered in Québec by a person not resident in Canada, otherwise than in the course of regular and continuous employment.

GENERAL

1. This bulletin applies where a person not resident in Canada files an application for a reduction in source deductions of income tax in respect of a payment for services rendered in Québec, otherwise than in the course of regular and continuous employment.
2. Specifically, subparagraph *g* of the second paragraph of section 1015 of the *Taxation Act* (TA) provides that every person who, at any time during a taxation year, pays, allocates, grants or awards fees, commissions or other amounts for services must deduct or withhold therefrom the prescribed amount and pay to the Minister, on the dates, for the periods and according to terms and conditions prescribed, an amount equal to the amount deducted or withheld, on account of the tax payable by the payee.
3. Pursuant to section 1015R8 of the *Regulation respecting the Taxation Act* (RTA), every person who makes a payment for services rendered in Québec by a person who is not resident in Canada, otherwise than in the course of regular and continuous employment, must deduct 9% from the payment.
4. Pursuant to section 1086R1 of the RTA, the person in question must also file an information return in respect of payments made to the person not resident in Canada.
5. Pursuant to section 23 of the *Act respecting the Ministère du Revenu* (R.S.Q., c. M-31), where a person fails to withhold the amount prescribed in section 1015R8 of the RTA, that person becomes a debtor in respect of that amount. However, where the Minister is satisfied that the 9% deduction or withholding at the time of payment of an amount provided for in subparagraph *g* of the second paragraph of section 1015 of the TA would impose undue hardship on the taxpayer, the Minister

may, as provided for in section 1016 of the TA, determine a lesser amount, which will be deemed to be the amount required to be deducted or withheld under that section.

6. The Minister is aware that such hardship may exist where an individual not resident in Canada receives a payment for services the individual rendered in Québec in the course of carrying on a business and the payment is not income attributable to an establishment of the individual located in Québec.

7. Such hardship may also exist where a corporation not resident in Canada is not subject to the TA, despite the fact that it carries on a business in Québec.

8. Nevertheless, a detailed analysis of the specific circumstances is necessary in each case in order to determine whether a payment to a person not resident in Canada for services rendered in Québec entails undue hardship.

9. Where an application for a reduction in source deductions of income tax is filed by or on behalf of a person not resident in Canada, the Minister does not have access to all the facts required for the judicious exercise of ministerial discretion, given that the services are underway, or will soon be, and the circumstances are subject to change.

10. Consequently, the granting of an application for a reduction in source deductions of income tax is problematic in cases where the applicant claims that the TA does not apply to the applicant or where income is not attributable to an establishment located in Québec.

11. To overcome this difficulty, the Minister considers that a reduction in source deductions of income tax should be granted where it can be determined that the application for the reduction meets one of the following criteria, and provided none of the exceptions set forth in point 13 of this bulletin apply. It is understood that these criteria cannot be used to determine whether the TA applies to the person in question. Nor can they be used to determine whether the income derived from the carrying on of a business in Québec at a time in the year is attributable to an establishment located in Québec.

12. Consequently, the Minister will grant a reduction in source deductions of income tax in respect of a payment for services rendered in Québec by a person not resident in Canada, otherwise than in the course of regular and continuous employment, where

- (a) the non-resident individual earns less than CAN\$5,000 in the current calendar year (including expenses refunded to, or paid on behalf of, the individual);
- (b) the non-resident person's presence in Québec is non-recurrent and the person renders services in Québec for one or more periods totalling less than 183 days under the current contract or engagement; or
- (c) the non-resident person's presence in Québec is recurrent, but its total duration is less than 240 days during the period and the person renders services in Québec for one or more periods totalling less than 183 days under the current contract or engagement.

13. By way of an exception to the criteria set forth in point 12 of this bulletin, the Minister will not grant a reduction in source deductions of income tax where

- (a) the person has failed to file a return required by fiscal legislation;
- (b) the person is a debtor under a fiscal law;
- (c) the person is required to render services under a contract extending over more than 24 months. In calculating a period of more than 24 months, any clause extending the contract will be considered to have been implemented;
- (d) the Minister previously determined that the person owned an establishment in Québec and the person has been continuously present in Québec for at least two calendar years;
- (e) pursuant to the TA, the person has an establishment in Québec;
- (f) pursuant to paragraph a of section 8 of the TA, the person is deemed to have been resident in Québec throughout a taxation year.

14. To obtain more detailed particulars, the Minister will analyze an application for a reduction in source deductions of income tax in cases where the criteria set forth in point 12 of this bulletin cannot be applied to the non-resident person and the person's application is based on the fact that the amount the person is to be paid is an amount exempt from Québec or Canadian income tax because of a provision of a tax agreement.

DEFINITIONS

15. The following is a brief explanation of certain terms and expressions used in this bulletin:

- (a) **“183 days”** and **“240 days”**

In the expressions “183 days” and “240 days”, any period of less than 24 hours during which a person not resident in Canada is present in Québec (including the person's arrival in or departure from Québec) is counted as one day. Consequently, where a non-resident is present in Québec for only a portion of a day in order to execute a contract or perform a service, that day is considered to be a full day.

The Minister will initially determine the number of days a person is present in Québec based on the obligations in that respect set forth in the contract. A clause extending the contract will be considered to have been implemented by the non-resident person. The days present in Québec may extend over two calendar years.

A period of absence from Québec may reduce the period of service in Québec. However, a period of absence from Québec for the purpose of executing the contract will reduce the period of service only if, on each such occasion, the time spent outside Québec is five or more consecutive days.

- (b) **“recurrent”**

The term “recurrent” applies where the non-resident person undertakes to render services in Québec in the case of a second or subsequent contract or engagement during a period.

- (c) **“period”**

Unless otherwise indicated by the context, the term “period” means a period of seven years, including the current calendar year, the three preceding calendar years and the three subsequent calendar years, during which the non-resident person was or will be required to render services in Québec.

Where an application for a reduction in source deductions of income tax pertains to services that extend over two calendar years, the current year is the year in which the services began.

PROCEDURE FOR APPLYING FOR A REDUCTION IN SOURCE DEDUCTIONS OF INCOME TAX

16. As a rule, an application for a reduction in source deductions of income tax must be filed with the regional office located nearest the payer 30 days before the date on which the services begin or the first payment is made. The letter of authorization will be transmitted to the payer.

17. The application may be filed by means of form TP-1016-V, duly completed and accompanied by a copy of the contract for services in Québec. It may be sent by mail, courier or fax.

18. In place of form TP-1016-V, the applicant may submit a written application accompanied by the contract for services in Québec.

19. The following information, at a minimum, must be provided on form TP-1016-V or the written application:

- (a) full identification of the parties involved;
- (b) the dates and duration of the contract;
- (c) the type of service to be rendered and the anticipated amounts.

In certain cases, an officer of the Ministère may contact the applicant to obtain additional information, such as particulars concerning the relationship between the parties, the supply of equipment or future services anticipated.

APPLICATION OF THE GUIDELINES: EXAMPLES

Example 1

20. A non-resident person provides services in Québec for fewer than 183 days under the current contract and for fewer than 240 days during the period.

- Facts:
 - The present date is December 10, 2003.
 - The person in question is a non-resident who provides services in Québec as an actor.
 - The period specified in the contract extends from January 15, 2004, to June 16, 2004 (154 days).
 - The amount specified in the contract is US\$125,000.
 - The person provided the same service in Québec for a period of 70 days in 2002 under another contract.

- Criteria for analyzing the application:
 - (a) Number of days in Québec:
 - January 15 to June 16, 2004 = 154 days
 - (b) Previous or subsequent services provided in Québec during the period:
 - Previous services provided in Québec within the three preceding calendar years = 70 days
 - Recurrent presence in Québec up until the present
- Decision respecting the application for a reduction in source deductions of income tax:
 - The applicant is a non-resident who provides recurrent services in Québec and whose total number of days of service in Québec during the period is 224.
 - The applicant meets the criteria of being present in Québec for fewer than 240 days during the period and for fewer than 183 days during the current engagement.
 - Provided all the documentation is sent within the prescribed deadlines, the application will be approved.

Example 2

21. A non-resident person provides services in Québec for fewer than 183 days under a contract.

- Facts:
 - The present date is December 26, 2003.
 - The person in question is a non-resident who provides services in Québec as an actor via a personal service corporation.
 - The current contract extends from February 16, 2004, to March 28, 2004 (42 days).
 - The amount specified in the contract is US\$75,000.
 - The person provided no services in Québec during the three preceding years, and does not anticipate providing any services in Québec in the future.
- Criteria for analyzing the application:
 - (a) Number of days in Québec:
 - February 16 to March 28, 2004 = 42 days
 - (b) No previous services performed in Québec, or subsequent services anticipated in Québec, during the period.
- Decision respecting the application for a reduction in source deductions of income tax:
 - The applicant is a non-resident who provides non-recurrent services in Québec, and does not anticipate providing any services in Québec in the future. The total number of days of service in Québec during the period is 42.

- The applicant’s corporation meets the criteria of being present in Québec for fewer than 183 days during the current engagement.
- Provided all the documentation is sent within the prescribed deadlines, the application will be approved.

Example 3

22. A non-resident person provides recurrent services in Québec for fewer than 183 days under the current contract, but for more than 240 days during the period.

- Facts:

- The present date is March 27, 2004.
- The person in question is a non-resident who provides services in Québec as a professional make-up artist.
- The current contract extends from July 1, 2004, to December 6, 2004 (159 days).
- The amount specified in the contract is US\$155,000.
- The person previously provided make-up services in Québec from January 7, 2003, to April 4, 2003 (88 days).
- No future contract in Québec is anticipated.

- Criteria for analyzing the application:

Number of days in Québec:

- Current contract (July 1 to December 6, 2004) = 159 days
- Previous contract (January 7 to April 4, 2003)= 88 days
- Total days during the period = 247 days

- Decision respecting the application for a reduction in source deductions of income tax:

- The services under the current contract are to be rendered for fewer than 183 days.
- The total number of days of service in Québec during the period is more than 240.
- Given the fact that the person was or will be present in Québec for more than 240 days in 2003 and 2004, the application will be denied, unless the person can show that the amount the person is to be paid is an amount exempt from Québec or Canadian income tax because of a provision of a tax agreement.

Example 4

23. A non-resident person is present in Québec two consecutive times under two separate contracts and provides services for fewer than 183 days under the current contract. The total number of days the person was or will be present in Québec under the two contracts is fewer than 240 during the period.

- Facts:

- The present date is July 10, 2003.
- The person in question is a non-resident who provides services in Québec as a professional consultant.
- The current contract extends from August 1, 2003, to October 1, 2003 (62 days).
- The amount specified in the contract is US\$40,000.
- The person provided the same type of service in Québec under a different contract from March 1, 2003, to July 2, 2003 (124 days). An application for a reduction in source deductions of income tax was approved in respect of the previous contract, since it could not be foreseen at that time that the consultant would subsequently be called on to provide services in Québec.

- Criteria for analyzing the application:

Number of days in Québec:

- Current contract (August 1 to October 1, 2003) = 62 days
- Previous contract (March 1 to July 2, 2003) = 124 days
- Total days during the period = 186 days

- Decision respecting the application for a reduction in source deductions of income tax:

- The services under the current contract are to be rendered for fewer than 183 days.
- The total number of days of service in Québec during the period is less than 240.
- However, the person will be present in Québec for more than 183 days during the year. Because of the exception set forth in paragraph (f) of point 13 of this bulletin, the application for a reduction in source deductions of income tax will be denied, unless the person can show that the amount the person is to be paid is an amount exempt from Québec or Canadian income tax because of a provision of a tax agreement.