

Non-Resident Employer Certification

Is this form for you?

This form is for employers who want to be certified by the Minister of National Revenue as a qualifying non-resident employer who has qualifying non-resident employees working in Canada.

What is Non-Resident Employer Certification?

A non-resident employer certification removes the requirement to withhold tax from the salary, wages, and other remuneration the employer pays to non-resident employees. A qualifying non-resident employer will be able to pay qualifying non-resident employees who are exempt from paying income tax in Canada under a tax treaty without withholding and remitting tax, eliminating the need for non-resident employees to request waivers of withholding. Non-resident employer certification will be valid for up to two calendar years.

Definitions

A Qualifying Non-Resident Employer:

In the case of an employer that is not a partnership:

- A qualifying non-resident employer at any time means an employer that is at the time of the payment
 - Certified by the Minister of National Revenue under subsection 153(7) of the *Income Tax Act* (ITA) and is either
 - resident in a country that Canada has a tax treaty* with; or
 - would be considered resident in a country that Canada has a tax treaty with, if that country treated the employer as a corporation for tax purposes (e.g., a limited liability company formed in the U.S. that has not elected to be treated as a corporation for U.S. tax purposes).

In the case of an employer that is a partnership:

- A qualifying non-resident employer at any time means an employer that is at the time of the payment a partnership where at least 90% of the partnership's income or loss for the fiscal period that includes the time of the payment is allocated to members that are resident in a country that Canada has a tax treaty* with. If the income of the partnership is nil for the fiscal period, the income for the period is deemed to be \$1,000,000 for the purpose of determining a member's share of the partnership income.

*Canada's tax treaties can be found on the Department of Finance Canada website at fin.gc.ca/treaties-conventions/in_force-eng.asp.

A Qualifying Non-Resident Employee:

- is resident in a country with which Canada has a tax treaty at the time of the payment;
- is not liable to income tax under Part I of the Canadian *Income Tax Act* on the payment because of the tax treaty** under which the employee is resident; and
- either works in Canada for less than 45 days in the calendar year that includes the time of the payment, or is present in Canada for less than 90 days in any 12-month period that includes the time of the payment.

** A qualifying non-resident employer must refer to the applicable tax treaty between Canada and the non-resident employee's country of residence to determine the existence of a tax exemption and the criteria that must be met for it to apply.

How do you become a Qualifying Non-Resident Employer?

To become a qualifying non-resident employer, you must complete this form and send it to the Canada Revenue Agency (CRA) for approval. Applications should be received at least 30 days before a qualifying non-resident employee starts providing services in Canada.

Upon review of the completed form, the CRA will issue a letter approving or denying the request. Once you receive an approval letter, you are considered a certified qualifying non-resident employer and you do not have to withhold tax on remuneration paid to qualifying non-resident employees during the period of certification. It is important to note that until you receive an approval letter, you must continue to withhold and remit tax on payments made to your employees unless an employee-specific waiver has been provided to you by the employee.

Non-resident employees who are not qualifying non-resident employees or whose employer does not become certified can still apply to the CRA for a waiver of withholding using Forms R102-R, *Regulation 102 Waiver Application* or R106 *Regulation 102 Waiver Application – Film Industry*.

Obligations of a Qualifying Non-Resident Employer

Upon certification the non-resident employer must:

- track and record the number of days each qualifying non-resident employee is either working in Canada, or is present in Canada, and the income attributable to these days (or any other criteria relevant to applying the treaty exemption) on a proactive basis;
- determine if the employee is resident in a country with which Canada has a tax treaty;
- evaluate and document if the qualifying non-resident employee's remuneration is expected to be exempt from tax in Canada under a tax treaty between Canada and the employee's country of residence;
- determine if the qualifying non-resident employee either works in Canada for less than 45 days in the calendar year that includes the time of the payment, or is present in Canada for less than 90 days in any 12-month period that includes the time of payment;
- complete and file a T4 Summary and Information Return for those employees who have provided employment services in Canada that are not excluded by subsection 200(1.1) of the *Income Tax Regulations*. For more information, see Guide RC4120, *Employers' Guide – Filing the T4 Slip and Summary*;

- file Canadian income tax returns as required by the *Income Tax Act* for the calendar years covered by the certification period; and
- upon request, make your books and records available in Canada for inspection by the CRA for the purpose of administering the employer certification agreement and the withholding requirements in accordance with paragraph 153(1)(a) of the *Income Tax Act* and Regulation 102.

Although qualifying non-resident employers do not have to withhold income tax on remuneration paid to qualifying non-resident employees during the period of certification, they may still have to withhold Canada Pension Plan (CPP) contributions and/or Employment Insurance (EI) premiums. However, there are exceptions:

- CPP contributions are not required if the employer does not have an establishment in Canada or if the employee has a certificate of coverage under a Social Security Agreement between Canada and the country of residence of the employer (a certificate is not required for an employee residing in the United States if they will be in Canada for less than 183 days). For more information about Canada's international social security agreements, go to esdc.gc.ca/en/reports/pension/agreements.page; and
- EI premiums are not required if the employee is covered under a similar program in his or her country, while working in Canada.

Employers who do not withhold and remit these required amounts without authorization from the CRA may be held liable for the whole amount with interest and penalties. For more information, read Guide T4001, *Employers' Guide – Payroll Deductions and Remittances*. Note that if you are required to withhold and remit CPP contributions or EI premiums then, under the CPP/EI legislation, you will have to report the deductions on a T4 information return even if subsection 200(1.1) of the *Income Tax Regulations* does not require the information return for tax purposes.

Revocation of certification

The CRA can revoke the certification at any time if the obligations of the non-resident employer certification agreement are not met, or if the facts presented at the time of the request for certification were not correct. Should certification be revoked, the CRA will issue a revocation letter to the employer. It is important to note that the employer may become liable to withhold and remit tax and be subject to any related penalties when the employer no longer meets the conditions to be considered a qualifying non-resident employer, or fails to make reasonable enquiry to determine if a payment is being made to a qualifying non-resident employee.

How and where to apply

Send the completed form to the Pacific International Waivers Centre of Expertise located at the Vancouver Tax Services Office at:

Regular Mail

Canada Revenue Agency – International Waivers
PO Box 470, STN MAIN
Surrey BC V3T 5B7

Certified/Registered Mail

Pacific International Waivers Centre of Expertise – VTSO
C/O International Waiver Program – Sec 445-15
9755 King George Blvd.
Surrey BC V3T 5E1

Need help?

If you need help completing this form, call the International tax and non-resident enquiries line at **1-800-959-5525** (Canada and the US) or **613-940-8497** (outside Canada and the US), or visit the CRA non-resident webpage at cra.gc.ca/tx/nnrstdnts/bsnss/menu-eng.html for more information.



Non-Resident Employer Certification

Section 1 – Employer Identification

1. Name		
2. Address		3. Mailing address
4. Country of residence		5. Business number
6. Calendar years for which employer certification is being requested (maximum 2).		
Year	Month	Day
Start date	End date	
7. Contact name		8. Telephone number
		9. Fax number
10. Employer type (Check the applicable box to indicate the type of applicant who will be providing services in Canada under the current contract.)		
<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Joint Venture <input type="checkbox"/> Traveling Corporation***		
<input type="checkbox"/> Other (specify) _____		
<small>*** A personal services corporation through which services are provided by an entertainer such as an actor (other than film and video services income), a musician, or an athlete to a third party.</small>		

Section 2 – Prior Year's Certification

11. Did any employees earn more than \$10,000 in Canada in one calendar year during the previous certification period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Were you carrying on business in Canada during the previous certification period?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Section 3 – Employer Information

13. Are you sending employees to Canada with respect to a contract you have to provide services in Canada?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, and if you will be submitting a Regulation 105 waiver, please submit both to the Pacific International Waivers Centre of Expertise – VTSO.		
14. Estimated date first employee to arrive in Canada		15. Estimated number of employees to come to Canada during certification period
16. Employer's industry:		
<input type="checkbox"/> Mining, Oil, Gas Extraction <input type="checkbox"/> Construction/Installation <input type="checkbox"/> Transportation <input type="checkbox"/> Warehousing <input type="checkbox"/> Informational, Cultural Industries		
<input type="checkbox"/> Professional, Scientific and Technical Services <input type="checkbox"/> Educational Services <input type="checkbox"/> Health Care <input type="checkbox"/> Arts, Entertainment, Recreation <input type="checkbox"/> Public Administration		
<input type="checkbox"/> Other Services (specify) _____		
17. What type(s) of services will your employee(s) be providing in Canada:		
<input type="checkbox"/> Installation projects <input type="checkbox"/> Project/Site supervision <input type="checkbox"/> Attending meetings <input type="checkbox"/> Providing training		
<input type="checkbox"/> Consulting services <input type="checkbox"/> Music/Tour/Theatre Productions		
<input type="checkbox"/> Other (provide brief description) _____		

Section 4 – Employer Residency Declaration

18. For employers other than partnerships:

I, _____ hereby declare that, _____, is a resident of,
 Name of authorizing officer (Print) Employer
 _____, under the tax treaty between Canada and that country at the time of the non-resident employer certification and
 Country of residence
 throughout the certification period.

19. For partnerships:

I, _____, hereby declare that at least 90% of the partnership's income or loss for the fiscal period that
 Name of authorizing officer (Print)
 includes this non-resident employer certification, and throughout the certification period, will be allocated to partners that are resident in a country (listed below) with which Canada has a tax treaty.

Country of residence	Percentage Partnership Allocation
_____	_____
_____	_____
_____	_____

Section 5 – Certification

- I certify that the information provided on this form and any attachments is correct and complete.
- I agree that the employer listed above will comply with all obligations and requirements of a qualifying non-resident employer.
- I understand that I must inform the CRA immediately of any changes to the information presented in this application or if the employer no longer meets the conditions of a qualifying non-resident employer.
- I understand that the employer may only exempt payments from withholding upon receipt of an approval letter from the CRA certifying the employer as a qualifying non-resident employer.
- I understand that failure to fulfill the obligations listed above for a qualifying non-resident employer may result in the revocation of the certification.

 Name of authorized signing officer (print)

 Position/title of authorized signing officer

I am an authorized signing officer of the employer. I certify that the information given on this form is, to the best of my knowledge, correct and complete.

 Signature of authorized signing officer

 Date (YYYY-MM-DD)

We collect your personal information under the authority of Subsection 153(1.1) of the *Income Tax Act* (ITA) and use it to process the application for a waiver of withholding taxes. Information may be shared with other federal government institutions in accordance with income tax legislation. The SIN is collected pursuant to section 237 of the ITA and is used for identification purposes.

Personal information is described in information bank number CRA-PPU 421 (Small and Medium Enterprises) and is protected under the *Privacy Act*. Individuals have a right of protection, access to and correction or notation of their personal information. Please be advised that you are entitled to complain to the Privacy Commissioner of Canada regarding our handling of your information.