



# TAX EXECUTIVES INSTITUTE, INC.

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12 October 2015

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Via FedEx and Email: [Alexandra.Maclean@fin.gc.ca](mailto:Alexandra.Maclean@fin.gc.ca)

**Re: July 31, 2015 Regulation 102 Proposals**

Dear Ms. MacLean:

On July 31, 2015, as a follow-up to certain proposals announced in Budget 2015, the Government released for consultation draft legislative proposals to provide relief from the withholding and remittance requirements that otherwise apply to certain non-resident employers of certain non-resident employees who perform work in Canada. We are writing on behalf of Tax Executives Institute (“TEI”) to express our comments regarding the Government’s Budget 2015 proposals on Regulation 102 in the form of amendments to subsections 153(1) and 153(6), and proposed new subsection 153(7) of the Income Tax Act (Canada) (collectively hereinafter “the Proposals”).

### **About Tax Executives Institute**

TEI is the preeminent international association of business tax executives. The Institute's approximately 7,000 professionals manage the tax affairs of more than 2,800 of the leading companies in North and South America, Europe, and Asia. Canadians constitute nearly 15 percent of TEI's membership, with our Canadian members belonging to chapters in Calgary, Montreal, Toronto, and Vancouver. TEI members must contend daily with the planning and compliance aspects of Canada's business tax laws. Many of our non-Canadian members (including those in Europe and Asia) work for companies with substantial activities and investments in Canada. These comments reflect the views of TEI as a whole, but more particularly those of our Canadian constituency.

TEI gets involved in important issues of tax policy and administration, and is dedicated to working with government agencies to reduce the costs and burdens of tax compliance and administration to our common benefit. In furtherance of this goal, TEI supports efforts to improve Canadian tax laws and their administration at all levels of government. The diversity, professional training, and global viewpoint of our members enable us to bring a balanced and practical perspective to the issues raised by the draft legislation discussed herein.

### **Progression of the Proposals**

TEI acknowledges and appreciates the improvements made to the Proposals since they were announced in Budget 2015. Those improvements are consistent with some of the recommendations TEI made to the Department of Finance in our submission of June 12, 2015 ("the June Submission"). Elimination of the "no permanent establishment" requirement, removal of T4 reporting requirements for qualifying employees with less than \$10,000 of taxable income attributable to work performed in Canada, and the added threshold of 45 working days in Canada are all positive steps. However, to achieve the Government's objective of "reducing the administrative burden of businesses engaged in cross-border trade and commerce," as stated in Budget 2015, we believe Finance should make two additional important changes to the Proposals: (i) remove the requirement to obtain certification from CRA, instead allowing for self-certification; and (ii) eliminate the \$10,000 threshold for a T4 reporting exemption.

## Recommendations

### 1. Self-Certification

Under the Proposals, non-resident employers must obtain advance certification from the CRA to be a “qualifying non-resident employer.” TEI believes this requirement should be eliminated, and the legislation should permit employers meeting the criteria set out in paragraph (a) of the definition of “qualifying non-resident employer” to self-certify, provided they notify the CRA in writing within a reasonable period following the end of their tax year. Such notification should simply require the qualifying non-resident employer to indicate its name, address, a contact person, and a list of the employer’s qualifying non-resident employees along with their countries of residence and number of days worked or present in Canada during the relevant year or period, as applicable. CRA should not require employers to provide this information on a prescribed form, because a self-certification would provide CRA with enough detail to request additional information if necessary and would reduce the compliance burden for both the CRA and qualifying non-resident employers.

As we stated in the June Submission, this approach would be consistent with the recommendations made to the Government in the Final Report of the Advisory Panel on Canada’s System of International Taxation and would dramatically reduce the administrative burdens for both the Government and taxpayers alike. Without this modification, the Government risks failing in its efficiency objectives because the advance CRA certification requirement may fail to attract a significant number of taxpayers.

### 2. Eliminate the \$10,000 Threshold for T4 Reporting Exemption

Under the Proposals, an employer that is a “qualifying non-resident employer” would have to determine which of its employees qualify as “qualifying non-resident employee[s]” for the employer to be exempt from Regulation 102’s withholding and remitting requirements for those employees. However, to be exempt from T4 reporting of such employees, the employer must also determine whether each employee’s taxable income earned in Canada exceeds \$10,000. We emphasize that an employer can pay an employee many forms of remuneration beyond simply salary and wages, such as pensions and medical benefits, all of which must be factored into determining whether an employee earned more than \$10,000 in taxable income. Additionally, employers might have to make this calculation several times throughout a year. This additional \$10,000-threshold test seems unwarranted in light of the proposed legislation’s objectives. To reduce the administrative burden associated with these non-resident employees, TEI believes

Finance should streamline the Proposals so the T4 reporting exemption automatically applies for any qualifying non-resident employee. Otherwise the Proposals will, in our view, place an inordinate burden on taxpayers in light of the objective they are designed to achieve.

### **Conclusion**

The Proposals have progressed closer to achieving the Government's stated objective of reducing "the administrative burden of businesses engaged in cross-border trade and commerce" than when first announced in Budget 2015. However, without the important modifications noted above, TEI strongly believes that the Government will not meet its objectives, and a significant opportunity will be lost.

TEI's comments herein were prepared by its Canadian Income Tax Committee, whose chair is Grant Lee of HSBC Bank Canada. Should you have any questions about TEI's comments, please feel free to contact Mr. Lee at 604.641.2502 (or [grant\\_lee@hsbc.ca](mailto:grant_lee@hsbc.ca)) or Lynn Moen, TEI's Vice President for Canadian Affairs, at 403.750.2278 (or [lmoen@walton.com](mailto:lmoen@walton.com)).

Respectfully submitted,

**Tax Executives Institute, Inc.**



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