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New Canada Revenue Agency Policy for Fully Remote Work Arrangements
Frequently Asked Questions

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Effective January 1, 2024, the Canada Revenue Agency ("CRA") implemented a new administrative payroll policy with respect to an employee with a fully remote work arrangement (the "New Policy"). The New Policy sets out how an employer is to determine an employee's "Province of Employment" for purposes of certain required payroll deductions.[1] Now that the New Policy has been in place for more than a month, the following are frequently asked questions we have received from clients.

Why must an employer determine the Province of Employment?

When an employer pays employment income, such as salary, wages, or commission, the Province of Employment determines the deductions that must be made for purposes of income tax, Employment Insurance, Canada Pension Plan, Quebec Pension Plan and Quebec Parental Insurance Plan (if applicable).

To which employees does the New Policy apply?

The New Policy applies only to an employee who works 100% remotely under a "**full-time remote work agreement**" with the employer. An employee who works partially from home, but on occasion reports to a physical workplace, is not impacted by the New Policy.

What is a full-time remote work agreement?

A full-time remote work agreement is an agreement by which the employer either directs or allows an employee to perform their employment duties 100% remotely at a location(s) that is not an "**establishment of the employer**." The agreement can be either temporary or permanent.

What is an "establishment of the employer"?

An establishment of the employer is any place or premise in Canada where employees report to work or from which employees are paid. The establishment can be owned, leased or rented by an employer and does not need to be a permanent physical location. For example, a temporary physical location such as a field office on a construction site or a pop-up shop for a retail store, is an establishment of the employer.

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[1] While the New Policy provides guidance for certain CRA deductions, this is not determinative of an employee's province of employment for other purposes such as applicable employment standards legislation, occupational health and safety requirements, and more.

How does an employer determine the Province of Employment?

An employer must consider whether the employee is "**attached to an establishment of the employer.**" If so, that location is the employee's Province of Employment. The CRA has set out primary and secondary indicators to help make this assessment, on a case-by-case basis.

What is the Primary Indicator?

The primary indicator is, "whether the employee would physically come to work to carry out the functions related to their employment duties at that establishment, if it was not for the full-time remote work agreement." If an employee physically reported to an establishment of the employer immediately *before* entering into a full-time remote work agreement, that location is the establishment to which the employee is attached (unless the employee's circumstances or the nature of their duties have changed).

What are the Secondary Indicators?

The secondary indicators are:

- The establishment where the employee attends or would attend in-person meetings, through any type of communication.
- The establishment where the employee receives or would receive work-related material or equipment or associated instructions and assistance.
- The establishment where the employee comes or would come in-person to receive instructions from their employer regarding their duties, through any type of communication.
- The establishment that is responsible for or supervises the employee, as indicated in contractual agreements between the employer and the employee.
- The establishment to which the employee would report based on the nature of the duties performed by the employee.

If an employee can be reasonably considered attached to more than one establishment, the same indicators should be assessed to determine to which establishment the employee is *more closely* attached.

How does an employer determine the Province of Employment for a fully remote employee without a full-time remote work agreement?

If an employee is fully remote but does not have a full-time remote work agreement, the New Policy *does not* apply. Instead, the Province of Employment will be the location of the establishment of the employer from which the employee is paid. Generally, this is one of the following:

1. The location of the employer's payroll department or payroll records; OR
2. The establishment which actually incurs the expense for T2 reporting purposes.

To learn more and for assistance, contact your Sherrard Kuzz lawyer or info@sherrardkuzz.com.