



# **Purpose of this Guide**

- Standardize procedures for payments made by the University of Lethbridge community
- Communicate our Regulatory Environment (legislation)
- Communicate roles and responsibilities by transaction
- <u>Non-Canadians will be referred to in this guide as a Non-Resident</u>. A non-resident is any organization who invoices from a location outside of Canada or an individual who is not a resident of Canada.

# **Regulatory Environment**

The **Federal Government** through the Canada Revenue Agency (herein CRA) requires all entities to follow specific guidelines regarding tax and GST. Non compliance of these regulations could include penalties, interest, tax charged to the University of Lethbridge (herein 'University') instead of the vendor, and being subject to having our charitable status revoked.

This guide is not all inclusive and does not replace legislation or the need to review legislation as it relates to payments. The guide will continue to evolve as new issues arise.

# **Overall Responsibilities**

The Departments/Faculties and Financial Services have a shared responsibility in expelling these obligations imposed on the University.

## **Departments/ Faculties**

- WHO Financial officers, those responsible for a budget or account series, those who make purchases, payments or negotiate contracts on behalf the University, including those individuals designated by the responsible person.
- RESPONSIBILITY to follow this guide for all transactions, and to identify grey areas, concerns and possible improvements to ensure this guide works for them

## **Financial Services**

- WHO All members (various roles)
- RESPONSIBILITY -to regularly review regulations to understand the rules imposed on our institution, update the guide and assist Departments/Faculties with grey areas. All members of Financial Services to provide standardized policies, processes, and procedures and assist departments with questions by directing them to the guide.

# **Cooperative:**

This guide is a group effort of Financial Services, Payroll and the University's Financial Officers.

# Tax Guidelines for Paying Non-Canadians Individuals and Companies Services

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# **Step 1: Determination of Residency**

Legislation:

- The term "resident" is not defined in the Income Tax Act, however the courts have held a. residence to be the degree to which a person in mind and fact settles into, or maintains an ordinary mode of living with social relations, interest and conveniences.
- b. A resident in Canada is a person who 'ordinarily resides', where Canada is the place where the individual in their settled routines normally or customarily resides.
- c. Residential ties normally include the Country where you:
  - Owning a dwelling i.
  - ii. Your spouse or common law partner, or dependents reside
  - iii. Have personal property such as furniture, clothing and automobiles
  - iv. Have economic ties such as employment, bank accounts, credit cards
  - Have landed immigrant status or work permits ٧.
  - vi. Have medical insurance coverage
  - vii. Have a driver's license
  - Have vehicle registration viii.
- d. You can be a deemed resident of Canada if you spend more than 183 days in Canada, do not have residential ties with Canada and are not considered a resident of another country under the terms of a tax treaty.
- e. An individual's tax liability in Canada depends on their residency status. Canadian residents are taxed on their worldwide income and Non-residents are taxed on their Canadian source income.

- f. Departments / faculties to:
  - Ensure compliance with this guide and other University policies i.
  - ii. Determine residency status prior to processing payments
    - If residency is determined to be Canadian, use "Tax Guidelines for Paying Canadians"
    - If residency is determined to be Non-Canadian, use this guide.
    - If you are unsure, contact Financial Services or advise the vendor to seek tax advice to determine their status prior to initiating payments.

# Non Resident Vendors

## **Purchase of goods**

The purchases of goods, whether they are shipped or downloaded, require proper import procedures where GST and duties are evaluated. See Materials Management for the property procedures for making purchases of Foreign Goods and Services.

## **Purchase of Services**

## Step 2: Determine the location where Services are provided

Tax implications for non-resident services result from where the services were provided:

- a. Vendor is physically in Canada when the work was carried out,
  - i. Employees (use the Employee vs. Contractor form to determine), see **Employment Nature Services section below**
  - ii. Contractors (use the Employee vs. Contractor form to determine), see Non-**Employment Services section below**
- b. Vendor is physically outside of Canada when the work is carried out,
  - i. Virtual employees providing employment services (based on the Employee vs. Contractor form may result in foreign tax withholdings. Discuss with Financial Services due to legislative grey areas.
  - ii. All other services provided outside of Canada, no withholding tax or payroll deductions

## Step 3: Determine Employee vs. Contracted Services relationship

Legislation:

- a. The status of employee vs. non employee determines the treatment under legislation for payroll deductions and income taxes that are required to be taken on payments.
- b. One must understand the intent of the arrangement to determine the status.
- c. The University is responsible to ensure non-employees have appropriate WCB coverage.
- d. Note: Financial Services has created a form that includes the guidance and rulings advice to determining if an individual or company is deemed an employee or contractor, called Employee vs. Contractor form.

- e. Departments / faculties to:
  - Ensure compliance with this guide and other University policies i.
  - Honorariums for seminars and workshops (guest lecturers or speakers) go to ii. Employment Nature Services section of this guide.

#### **Tax Guidelines for Paying Non-Canadians** Financial Individuals and Companies **Services**

- Complete the "Employee vs. Contractor Evaluation Form" for each individual, iii. non incorporated company or small corporation to determine the vendors status prior to signing contracts or approving payments
  - Status = Employee go to Employment Nature Services below
  - Status = Non Employee go to <u>Non-employment Services</u> below
- f. Financial Services to:
  - i. Maintain and communicate "Employee vs. Contractor Evaluation Form"
  - ii. Assist departments with determining employment status as required

**References:** 

- g. RC4110 Employee or Self-Employed? http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-08e.pdf
- h. CAUBO (Canadian Association of University Business Officers) Tax and GST Guide -Chapter 7 – contact Financial Services for this guide
- CICA "Employee vs. Contractor" contact Financial Services for this guide i.

**Employee Status examples:** 

- j. A term academic appointment where the individual maintains residence in their foreign country, and their family stays in the foreign country.
- k. Artistic performance by an individual from another country where the University determines the nature of the performance
- Duties performed by an individual that are the normal course of operations for the Ι. University (time is purchased and duties are assigned)
- m. Research that forms a part of an individual's regular academic appointment with the University of Lethbridge
- n. Guest speaker receiving an honorarium (no negotiation of price)

Non-employee Status examples:

- o. Instruction of non-credit courses, where the course is not recurring (not more than once per year), or the course is recurring and the individual teaches 20 hours or less
- p. Guest lecturers or speakers for seminars and workshops that negotiated their price
- q. Duties performed by an individual where the outcome is purchased (i.e. number of pages completed, produce a specific product or end result), are completed away from the University, and the person is expected to pay for their own expenses.

## **Employment nature Services - individuals or non incorporated companies only**

### Legislation:

- a. Non-residents providing employment services are subject to certain payroll deductions or withholding taxes.
  - i. Standard Canadian payroll taxes are withheld in the same manner as for Canadian resident employees, regardless if there is a treaty exempting them. Employee must apply for SIN number. (Regulation 102 Tax)
  - ii. El not applicable for employment outside of Canada if the employee normally resides outside of Canada
  - iii. Withhold income taxes if the remuneration is reasonably attributable to services performed or to be performed in Canada, or if the individual is or ever was a Canadian resident.
  - iv. Amounts subject to 105 withholding tax (15% withholding T4A-NR) applies to represent income earned and not reimbursements or disbursements.
  - v. Vendor may have an approved tax waiver from CRA to limit tax liability (http://www.cra-arc.gc.ca/E/pbg/tf/r105/r105-08e.pdf)
- b. Canadian residents providing services out of country issues:
  - i. Agreements with foreign social security agencies may permit the University to request that an employee on temporary assignment outside of Canada continue to be covered under CPP rather than under social security regime of the other country (countries: http://www.hrsdc.gc.ca/en/isp/ibfa/summarytoc.shtml)
- c. The above regulation does not apply to full time students at a post secondary institution.

Info for the Foreign Individual:

- d. An individual's tax liability in Canada depends on their residency status. Canadian residents are taxed on their worldwide income and Non-residents are taxed on their Canadian source income.
- e. Canadian source income that is employment or business income the non-resident must file a tax return to determine their final Canadian tax liability. The income is less any applicable deductions and payments for services made in Canada and for those outside of Canada should be prorated to determine the Canadian Tax liability. If 40% of the invoice is for services rendered in Canada, the tax liability should be derived on 40% of the invoice cost and less expenses such as travel.

## **Tax Guidelines for Paying Non-Canadians** Individuals and Companies Services

**University Process:** 

- f. Departments / faculties to:
  - i. Ensure compliance with this guide and other University policies
  - ii. Inquire if non-resident has a waiver from CRA
  - iii. Complete PAF if the payment is for employment services per the Employee vs. independent Contactor checklist.
  - iv. Abide by payroll deadlines to ensure payments are made when needed
  - v. Written confirmation of the following needed to fill out yearend slips:
    - 1. Individuals full name
    - 2. SIN number and/or foreign tax ID #
    - 3. Foreign residential address
    - 4. Written statement that the individual is not currently a resident of Canada and was not a resident of Canada at any time in which the remuneration relates, including # days in Canada
    - 5. Written statement that the individual was at no previous time a resident of Canada
    - 6. Country of residence
    - 7. Confirmation that they understand the payment received from the U of L will be subject to Canadian tax.
- g. Payroll to:
  - i. Ensure SIN numbers have not expired
  - ii. Withhold appropriate deductions (section 102 or 105 tax) and submit appropriate CRA forms

#### **References:**

- h. CAUBO Income Tax Guide Chapter 9 contact Financial Services for this guide
- T4A-NR Statement of Amounts Paid to Non Residents for Services Rendered in Canada i.
- T4058 Non-Residents and Income Tax j.
- Information Circular 75-6 "Required Withholding from Amounts paid to Non-Residents k. for Services rendered in Canada"

**Examples:** 

- b. Hire a foreign individual to provide service outside of Canada no withholding
- Hire a foreign employee to perform duties inside Canada -payroll deductions C.
- d. Current or past Canadian resident working abroad -payroll deductions

Services

## Seconded Employees

### Legislation:

- a. Seconded employees result from the temporary assignment of an employee from an entity in a foreign country to an entity in Canada that is supported by the existence of an employer/employee relationship between the individual and the Canadian entity.
- b. A secondment can result whether or not the employee remains on the payroll of the lending employer or is transferred to the payroll of the receiving employer.
- c. Determination if the seconded employee is an employee of the Canadian institution essential in determining the tax status of the individual.
- d. Factors indicating there may be a secondment:
  - i. The secondment and employment agreements are in writing and signed by the lending and receiving institutions
  - ii. The legal terms of the secondment such as duration, responsibilities of the both entities, job description, rate of pay and benefits are specified
  - iii. The receiving employer is responsible for the salary, benefits, possible tax payments and travel and relocation
  - iv. There is no element of profit included in the charges between the receiving and lending entities
  - v. Note: If these are not met, the individual is an employee; please proceed to the <u>Employment Nature Services</u> section.
- e. If the factors supporting a secondment are met:
  - i. The employee remains on the foreign entity's payroll
  - ii. No withholding (Regulation 105 15%) results on reasonable reimbursements
  - iii. Reasonable reimbursements are remuneration, travel, accommodation and per diem costs that were incurred on behalf of the seconded employee in respect of the employment services provided in Canada
  - iv. If they are a factual employee of the Canadian entity
  - v. If the Foreign employer is carrying on business in Canada in its own right
- f. Taxable payments include:
  - Payments to the lending institution are withheld (Regulation 105 15%) if there is an element of profit or markup on what is charged on behalf of the seconded employee (deemed carrying on business in Canada). This excludes an administrative overhead charged of up to \$250 per month per employee.
  - ii. Payments for non reasonable reimbursements (example spouse travel)

Services

# Tax Guidelines for Paying Non-Canadians Individuals and Companies

**University Process:** 

- g. Departments / Faculties to:
  - i. Ensure compliance with this guide and other University policies
  - ii. Coordinate with the International Centre for Students for all secondments
- h. International Centre for Students
  - i. Complete and organize agreements for seconded employees
  - ii. Offer support to seconded employees as needed
- i. Financial Services to:
  - i. Process travel reimbursements for seconded employees
  - ii. Provided amount of taxable travel reimbursements to payroll
- j. Payroll to:
  - i. Process monthly per diems for seconded employees
  - ii. Process taxable portions of travel

**References:** 

k. <u>IC 75-6R2</u> Required Withholding from Amounts paid to Non-Residents Providing Service in Canada

Examples:

- I. Seconded employee is provided some or all of the travel funding for their spouse to travel to Canada, regardless of receipts provided –taxable to the employee
- m. Seconded employee receives a daily per diem, and accommodations not taxable
- n. Seconded employee receives travel allowance without providing receipts taxable
- o. Seconded employee receives travel allowance and provides receipts not taxable

### **Non-Employment Services - individuals or corporations**

Repairs, maintenance, other services, athletic events, consulting, presentations, seminar or lecturing, honorariums

Legislation:

- a. Regulation 105 payments to non-residents for services rendered in Canada are subject to 15% withholding. The tax could be refunded by CRA if the non-resident can establish qualification under a Canadian tax treaty for exemption of Canadian tax.
- Per court interpretation, "services rendered" is very broad and includes "in respect of, with References to, in relation with and in connection with". Our interpretation of this is that even inputs to a service supplied in Canada are considered services by CRA. Vendors connected to a service that was rendered are considered to provide service.

#### Tax Guidelines for Paying Non-Canadians Financial Individuals and Companies Services

- c. Unless the vendor has applied for and received the CRA waiver of withholding tax, withholding tax must be held from their payment, regardless if there is a treaty exempting the service. The waiver is applied for on the basis of a tax treaty exemption between Canada and their country, or an income and expense waiver.
- d. Online services are currently treated as services rendered outside of Canada, but this is under review. For bundled services where a portion of the work is done in Canada, an allocation with appropriate backup is required.
- e. The only 'full discount' CRA will allow is a vendor doing a free demonstration in Canada for promotional purposes where no withholding tax is required.
- If a reasonable estimate cannot be made, withholding tax on the full payment. f.
- US exempt organizations religious, scientific, literary, educational or charitable nature g. are EXEMPT from paying Canadian tax. (See T4016) but we need to be presented with a current copy of an exemption letter they have received from CRA.
- Allowable non-withholding expenses travel, transportation, accommodation and h. meal costs. These costs must be based on actual expenses, meals cannot exceed \$45 per day per person and accommodation cannot exceed \$100 per day per individual. The payer does not require receipts for meals and accommodation but transportation and travel costs must be supported by appropriate documentation to be considered exempt.
- i. Amounts subject to 105 withholding tax need to represent income earned and not reimbursements or disbursements.
- Payments to a partnership all partners must be Canadian residents for the partnership j. to be deemed a Canadian resident company.
- k. 105 Reduction per US/CAN tax treaty, Article XVII, only 10% withholding on the first \$5,000 paid to a US individual providing service in Canada as an independent contractor per year is allowed.
- CRA has not stipulated a minimum earning that is not subject to withholding, therefore, Ι. all earnings will be subject to withholding as required.
- m. Non-resident required to file Canadian Tax Return

Info for the Foreign Individual:

- n. An individual's tax liability in Canada depends on their residency status. Canadian residents are taxed on their worldwide income and Non-residents are taxed on their Canadian source income.
- o. Canadian source income that is employment or business income the non-resident must file a tax return to determine their final Canadian tax liability. The income is less any applicable deductions and payments for services made in Canada and for those outside of Canada should be prorated to determine the Canadian Tax liability. If 40% of the invoice is for services rendered in Canada, the tax liability should be derived on 40% of the invoice cost and less expenses such as travel.

p. We are required to withhold tax per our government regulation for services rendered in Canada. Their invoice may be withheld by up to 15% of the amount.

- q. Department or faculty to:
  - i. Ensure compliance with this guide and other University policies
  - ii. Specify who is paying the tax (is invoice gross or net of the tax, i.e. should finance take the tax off the invoice amount or pay the invoice amount and charge the tax to the department on top of the invoice). If the invoice is net and the University is paying the tax, the vendor may still apply for a waiver or tax exemption and be refunded some of the funds the University paid on their behalf, thus it is not recommended. If we are paying net, every effort should be made to obtain vouchers for support travel expenses and other administration costs to reduce the amount of the fee portion that is in respect of services, such as allocating what service was supplied in Canada and what wasn't, reducing amounts for reimbursements, but amounts MUST be supported.
  - iii. Question when a payment is made to or care of a post office box, payment requested in foreign currency, services provided by non-resident employees, foreign address on the contract or PO. If there is any doubt as to the residency, withholding tax should occur.
  - iv. Inquire if non-resident has a waiver from CRA
  - v. Inquire if non-resident has a GST number in Canada
  - vi. Obtain written confirmation of the following for yearend tax slips:
    - 1. Individuals/corporations full name
    - 2. SIN number and/or foreign tax ID #
    - 3. Foreign residential address
    - 4. Written statement that the individual is not currently a resident of Canada and was not a resident of Canada at any time in which the remuneration relates, including # days in Canada
    - 5. Written statement that the individual was at no previous time a resident of Canada
    - 6. Country of residence
    - 7. Confirmation that they understand the payment received from the U of L will be subject to Canadian tax.
- r. Finance to:
  - withhold tax and remit to CRA if no GST number of waiver is presented i.
  - Net invoices are applied withholding tax on the tax portion as well as it is ii. remuneration (formula =  $\sin v = \frac{15}{(1-.15)}$  where .15 is the tax rate)
  - iii. Report, remit and record taxes withheld on a T4A-NR form

## **References:**

- s. CAUBO Tax Guide Chapter 9
- IC 75-6R2 Required Withholding from Amounts paid to Non-Residents Providing Service t. in Canada
- u. IC76-12R6 Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention
- T4016 Exempt US organizations ۷.

**Examples:** 

- w. Taxable:
  - i. Non-resident guest lecturer from England – 15% withholding
  - ii. Non-resident guest lecturer from US – 10% withholding on first \$5,000
  - Conference registration fees paid to a non-resident 15% withholding iii.
  - Software support provided by non-resident, or non-resident contracts most of iv. the work to a Canadian company –15% withholding.
  - Honorariums for services rendered in Canada 15% withholding (only 10% ٧. withholding if US resident on the first \$5,000 paid)
  - Expense allowances to non-resident companies or individuals 15% withholding vi.
  - US guest lecturer or speaker receives \$5,000 for travel and accommodation vii. costs, no receipts – Withholding Tax at 10% for 1<sup>st</sup> \$5,000 paid to him per tax treaty, 15% afterwards
  - British guest lecturer or speaker receives \$5,000 for travel and accommodation viii. costs, no receipts – Withholding Tax at 15%
- Non Taxable: х.
  - i. Foreign guest lecturer travel and accommodation reimbursement, receipts provided
- Mixed: у.
  - US guest lecturer receives \$500 allowance for meals, accommodation and i. incidentals and \$2,510 for travel based on receipts - \$500 allowance has 15% withholding tax, \$2,510 travel no withholding
  - ii. British guest lecturer receives \$5,250 for travel costs based on receipts for himself and his spouse - his portion is not taxable, the spouses portion is taxable at 15% withholding

Services

# Passive Income (i.e., rental, mgt fees, interest, dividends, licenses)

## Legislation:

- a. Payments for: pensions, royalties, retiring allowances, rents, royalties and other payments are subject to 25% withholding tax under Part XIII of the Income Tax Act. We could apply a reduced rate if there is a tax treaty allowance, without CRA authorization.
  - i. Payments for, or the right to use, in Canada any property, invention, trade name, patent, trademark, design or model, plan secret formula, processor similar thing
  - Payments for information concerning industrial, commercial or scientific experience if the amount to be paid depends on the use or benefit derived, production or sales of goods and services or profits
  - Charge for services in computer software agreements are services and subject to 15% withholding if they occur in Canada (debugging, training or computer maintenance)
  - iv. Equipment rental fees 25% withholding but look at tax conventions for reductions
  - v. Real property rents Canadian property but payments made to non-resident are subject to 25% withholding
  - vi. Withholding tax under Part XIII tax = final tax liability and they don't have to file a Canadian Income tax return. NR4 filing. The non-resident can apply for a refund by filling out the NR7-R form within two calendar years from when the payment was made
- b. Exceptions
  - Payment relating to a copyright in respect of the production of literary, dramatic, musical or artistic work is exempt of the 25% withholding IF we have the right to produce or reproduce the literary work. This includes software programs.
  - ii. Our share of research and development costs under a bona fide cost sharing arrangement with a foreign entity.
  - iii. Canada-US tax treaty 0% withholding for
    - Production or reproduction of any literary, dramatic, musical or artistic work, other than motion picture, works on film, videotape or other means or reproduction for use in connection with television
    - 9. Payments for the use or right to use computer software
    - 10. Right to use any patent or information concerning industrial, commercial or scientific experience (not rental or franchise)
- c. Vendor could apply for a reduced rate(NR7-R form)
- d. Vendor not required to file Canadian Tax Return

Services

# Tax Guidelines for Paying Non-Canadians Individuals and Companies

**University Process:** 

- e. Departments or faculties to:
  - i. Inform non-resident individuals or companies of the tax consequences
  - ii. Confirm with financial services on grey areas
  - iii. Written confirmation of:
    - 1. Individuals full name
    - 2. SIN number and/or foreign tax ID #
    - 3. Foreign residential address
    - 4. Written statement that the individual is not currently a resident of Canada and was not a resident of Canada at any time in which the remuneration relates, including # days in Canada
    - 5. Written statement that the individual was at no previous time a resident of Canada
    - 6. Country of residence
    - Confirmation that they understand the payment received from the U of L will be subject to Canadian tax.
- f. Financial services to:
  - i. Remit tax to CRA NR4 form
  - ii. Monthly and yearly reporting to CRA
  - Apply Part X111 tax for rents, royalties, management fees, interest and dividends (rental costs etc). See IC76-12R6 for withholding rates per country.
  - iv. Review tax treaties for exemptions
  - v. Produce a letter to accompany foreign payments that have been withheld from, if they have not been notified in advance.

#### **References:**

- g. T4061 NR4 Non Resident Tax Withholding, remitting and reporting
- h. <u>IC76-12R6</u> Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention
- i. <u>T4058</u> Non-Residents and Income Tax

### Examples:

- j. Software licenses no withholding
- k. Our portion of research costs no withholding
- I. Rent of Canadian property to a foreign company 25% withholding
- m. Software maintenance that occurred in Canada 25% withholding

# Awards, Research Grants, Scholarships, Prizes, Fellowships

Legislation:

- a. These payments are not subject to withholding tax at the source (by the University)
- b. Reported on T4A-NR Statement of Fees, Commissions or other amounts paid to Non residents for services rendered in Canada
- c. Canadian source income that is scholarship, bursaries or fellowships- the non-resident must file a tax return to determine their final Canadian tax liability

**University Process:** 

- d. Department / faculty to:
  - Submit payment terms to Payroll i.
- e. Payroll to:
  - i. Pay awards, grants and scholarships to individual
  - ii. Complete T4A for payments and send to recipients

**References:** 

f. T4A-NR Statement of Fees, Commissions or other amounts paid to Non residents for services rendered in Canada

Services

## **GST Self Assess:**

Legislation:

- a. Assess GST applicability on foreign goods and services for each transaction.
- b. GST that is assessed is paid to CRA with normal monthly GST returns.
- c. GST is not paid to the vendor as they are not GST applicable, but is split out of the payment based on what is GST 'able for Canadian vendors.
- d. Typical payments subject to GST are registration fees for conferences, workshops and training sessions, licenses and maintenance contracts for equipment and software, consulting fees, royalties paid for performing rights to plays, fees paid for use of external databases
- e. Do not assess GST on services and goods purchased from US companies with a Canadian remittance address, or on deposits, memberships, subscriptions and accommodations

- f. Financial Services will:
  - i. Self assess GST on payments through accounts payable
- g. Customs broker will:
  - i. Self assess GST on goods shipped to the University