



June 2009

Public comments invited—proposed declaration process for applying treaty benefits to income paid to non-residents

Since there have been recent changes to the Canada-United States Income Tax Convention, the Canada Revenue Agency (CRA) is proposing a new declaration process to support the administration of withholding tax requirements in Part XIII of the *Income Tax Act*. The CRA would like to receive public comments on the forms, as well as insight into what would be considered a reasonable transition period.

Part XIII tax is a withholding tax that applies to certain amounts paid or credited to non-residents of Canada—such as pensions, annuities, interest, dividends, royalties, and estate or trust income. The new process would apply to all non-resident recipients of such amounts. For information about types of income that are subject to Part XIII tax, see **Information Circular 77-16, *Non-Resident Income Tax***.

The rate of Part XIII tax is generally 25%. However, the provisions of an income tax treaty between Canada and another country may provide for either a complete exemption or a reduced rate of Part XIII tax. If a payer does not withhold enough tax, the CRA may issue an assessment of tax, penalty, and interest, where applicable, to the payer or to the non-resident recipient.

New forms

The CRA has developed new forms to help Canadian payers determine if it is appropriate to apply a reduced rate of withholding for payments made to non-resident recipients. The non-resident recipient will complete and provide the form to the payer.

A payer will not have to receive a form from a non-resident before reducing Part XIII tax withholdings according to the applicable tax treaty. However, the forms provide important guidance and assistance in terms of the CRA's expectations of payers. The CRA plans to update Information Circular 76-12R6, *Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention*, and other publications to reflect the new forms and their purpose.

Form **NR301, *Declaration of Benefits Under a Tax Treaty for a Non-Resident Taxpayer***, is for non-residents who are not partnerships or hybrid entities.

Form **NR302, *Declaration of Benefits Under a Tax Treaty for a Partnership With Non-Resident Partners***, is for non-resident partnerships.

Form **NR303**, *Declaration of Benefits Under a Tax Treaty for a Hybrid Entity*, is for hybrid entities. An example of a hybrid entity is a U.S. limited-liability company that is disregarded for U.S. tax purposes.

Forms NR302 and NR303 address the complexities associated with “looking through” partnerships and hybrid entities to determine the tax treaty rate that applies.

Forms NR302 and NR303 will also be used for claiming treaty benefits that apply to business profits and disposition gains. Also, a person deriving such income, or income subject to Part XIII tax, through a partnership or hybrid entity may be asked by the partnership or hybrid entity to complete one of these forms.

Comments

Please send your comments on the proposed certification process by September 30, 2009. You can send your comments, in the official language of your choice, to:

Email: comments_commentaires@cra-arc.gc.ca

Comments by telephone will not be accepted.

Related documents

- **News Release – Canada Enacts Important Updates to the Canada U.S Tax Treaty (December 14, 2007)**
- **News Release – Canada’s New Government Signs Protocol to the Canada-U.S Tax Treaty for the Benefit of Canadians (September 21, 2007)**
- **Information Circular 76-12R6, *Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention***



DECLARATION OF BENEFITS UNDER A TAX TREATY FOR A NON-RESIDENT TAXPAYER

(NOTE: Partnerships should use Form NR302 and hybrid entities should use Form NR303)

Use this form if you are a non-resident taxpayer and you are subject to Part XIII tax

Part XIII tax is a withholding tax imposed on certain amounts paid or credited to non-residents of Canada. These amounts include pensions, annuities, investments income, interest, dividends, rents, royalties, and estate or trust income. For information about specific types of income that are subject to Part XIII tax, see Information Circular 77-16R, *Non-Resident Income Tax*.

Subject to certain exceptions specified in the law, the rate of Part XIII tax is generally 25 per cent. However, the provisions of an income tax treaty between Canada and another country may provide for either complete exemption from, or a reduced rate of, Part XIII tax.

It is the payer's responsibility to withhold and remit Part XIII tax at the appropriate rate and the payer is liable for any deficiency. For this reason, a completed Form NR301 or equivalent information may be requested by the payer before applying a reduced rate of withholding.

Without Form NR301, the payer may not be satisfied of your entitlement to treaty benefits for the application of less than the full 25 per cent Part XIII tax rate.

Note: If you will derive income through a partnership or hybrid entity (see reverse for a description of a hybrid entity) you may be requested by the partnership or hybrid entity to complete Form NR301 for the purposes of supporting a declaration by the partnership or hybrid entity.

1. Legal name of non-resident taxpayer (for individuals: First name, last name)			
2. Mailing address: Apt No. – Street No. Street Name and City			State, Province or Territory
Postal or zip code	Country	Foreign tax identification number	
3. Type of non-resident taxpayer			
<input type="checkbox"/> Individual Enter your social insurance number or individual identification number: - -	<input type="checkbox"/> Corporation Enter the corporation's Business number: R C		<input type="checkbox"/> Trust Enter the trust's account number: T - -
4. Country of residence for treaty purposes			
5. Limitation on benefits (Do not complete this section if you are entitled to full treaty benefits.)			
If the non-resident taxpayer is only entitled to benefits in relation to certain types of income under the tax treaty between Canada and the country indicated in box 4, identify the income types:			
<input type="checkbox"/> Dividends <input type="checkbox"/> Interest <input type="checkbox"/> Royalties			
6. Certification			
<ul style="list-style-type: none"> I certify that the information given on this form is correct and complete. I certify that the non-resident taxpayer is the beneficial owner of all income to which this form relates. Unless otherwise indicated in section 5, I certify that the non-resident taxpayer is entitled to all the benefits of the tax treaty between Canada and the country indicated in section 4. 			
_____ Signature of non-resident taxpayer or authorized person		_____ Position	_____ Date (YYYY/MM/DD)

Expiry date – For Part XIII tax withholding purposes, the validity period of this declaration expires on the earlier of a change in the taxpayer's eligibility for treaty benefits or two years from the date of signature.

DECLARATION OF BENEFITS UNDER A TAX TREATY FOR A NON-RESIDENT TAXPAYER

Instructions for the non-resident taxpayer

Type of non-resident taxpayer

Tick the appropriate type of non-resident taxpayer and provide the Canadian tax number, if available.

Note: Partnerships should use Form NR302 and hybrid entities (see below) should use Form NR303.

Country of residence

Indicate your country of residence. You must be a resident of the country within the meaning of the tax treaty between Canada and that country. For more information, consult the Income Tax Technical News No. 35 dated February 26, 2007 on the Canada Revenue Agency (CRA) website at www.cra-arc.gc.ca/E/pub/tp/itnews-35/.

Limitation on benefits

Limitation on benefits (LOB) provisions prevent the unintended use of treaties by residents of a third country (for example, see Article XXIX-A of the Canada-U.S. tax treaty).

Although full treaty benefits will be denied if any applicable LOB provision is not completely satisfied, the non-resident taxpayer may still be eligible for treaty benefits on certain types of income (for example, see paragraph 4 of Article XXIX-A of the Canada-U.S. tax treaty). If this is the case, identify the types of income that are eligible for treaty benefits.

Note: It is normally expected that an individual resident of a particular country for treaty purposes will fully satisfy the requirements of an applicable LOB provision.

Certification

This form relates to all income subject to Part XIII tax paid or credited to the non-resident taxpayer. Do not complete this form if you are an agent, nominee or otherwise not the beneficial owner of income paid or credited to you.

Note: A person who is an agent or nominee providing financial intermediary service as a part of a business should continue to refer to instructions in subparagraph 5(a) of Information Circular 76-12R, *Applicable rate of part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention*.

A taxpayer will not be entitled to all the benefits of a tax treaty if they fail to satisfy the requirements of any limitation on benefits (LOB) provision contained in the treaty.

Change in circumstances:

If a change in circumstances makes any information on the form incorrect, you are to notify the payer immediately and complete new forms, as appropriate.

Hybrid entities

A hybrid entity is a foreign entity (other than a partnership) that is not entitled to Canadian tax treaty benefits in its own right, but its members/owners are entitled to treaty benefits by virtue of a "look through" rule contained in a Canadian tax treaty (e.g., the members/owners of a U.S. Limited Liability Company may be entitled to treaty benefits by virtue of paragraph 6 of Article IV of the Canada-U.S. tax treaty).

Instructions for payers

To determine the appropriate reduced rate of withholding, refer to Information Circular 76-12R or the relevant Canadian tax treaty. For ease of reference, refer to the following web page for the current status of Canadian tax treaties:

www.fin.gc.ca/treaties-conventions/treatystatus_-eng.asp.

Do not apply a reduced rate of withholding in the following circumstances:

- the non-resident taxpayer has not provided Form NR301 or equivalent information and you are unsure that the reduced rate applies;
- the form has not been duly completed;
- a tax treaty is not in effect with the taxpayer's country of residence; or
- you have any reason to believe that the information provided in this declaration is incorrect or misleading.

If you need more information, consult the CRA Web site at www.cra.gc.ca.

Expiry date

For Part XIII tax withholding purposes, the validity period of this declaration expires on the earlier of a change in the taxpayer's eligibility for the declared treaty benefits or two years from the date of signature. For example, if the taxpayer's mailing address has changed to a different country, we recommend that a revised Form NR301 be requested from the taxpayer.