

FineAnswers

Answers to questions on Tax, Finance and Management

Taxes & Doing Business in Canada— Vol. 6 Issue 5 – September 2008

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We are a CORPORATION resident OUTSIDE Canada and wish to sell our products and services in Canada, would we be liable for taxes in Canada?

This depends on whether you are conducting business in Canada or not. If you are selling products in Canada and the sales contract is made OUT of Canada, in most cases, you are NOT doing business in Canada. However, having an agent in Canada, may cloud the picture and you may be held to be carrying business in Canada. If you are performing a service and the service is performed in Canada you are conducting business in Canada. But, if the service is ancillary to the sale of products which qualifies as doing business NOT in Canada the services also will qualify as doing business NOT in Canada. An example of such services would be installation services provided for equipment imported into Canada by the same non-resident importer whose importation business is performed OUTSIDE Canada.

If we are conducting business in Canada are we subject to tax in Canada?

It depends on whether the country of your residence has a treaty with Canada. Most tax treaties with Canada will give non-residents of Canada exemption from Canadian income taxes, but only, if they do not have a PERMANENT ESTABLISHMENT in Canada.

What is a PERMANENT ESTABLISHMENT?

This term is usually defined in the tax treaties. Most tax treaties have a standard definition for PERMANENT ESTABLISHMENT. Generally any fixed place of business constitutes a permanent establishment.

Article V of the Canada US tax convention defines permanent establishment as follows:

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1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment if, but only if, it lasts more than 12 months.

4. The use of an installation or drilling rig or ship in a Contracting State to explore for or exploit natural resources constitutes a permanent establishment if, but only if, such use is for more than three months in any twelve-month period.

5. A person acting in a Contracting State on behalf of a resident of the other Contracting State—other than an agent of an independent status to whom paragraph 7 applies—shall be deemed to be a permanent establishment in the first-mentioned State if such person has, and habitually exercises in that State, an authority to conclude contracts in the name of the resident.

6. Notwithstanding the provisions of paragraphs 1, 2 and 5, the term "permanent establishment" shall be deemed not to include a fixed place of business used solely for, or a person referred to in paragraph 5 engaged solely in, one or more of the following activities:

- (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;
- (b) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;
- (d) the purchase of goods or merchandise, or the collection of information, for the resident; and
- (e) advertising, the supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the resident.

If we are doing business through a permanent establishment in Canada, what would be the rate of taxation?

The rate would be the same for a non resident owned private corporation which is about 33% for corporations with fiscal year ending 31st of December 2008 and having doing business through a permanent establishment in Ontario.

Is there any other income taxes specifically, when the Canadian branch closes or remits it's after tax income to its non-resident head office?

Yes if the head office is a non-resident CORPORATION there is another tax under

Part XIV of the income tax act that more or less mimics the withholding tax paid on dividends paid to foreign shareholders.

What is the rate of this Part XIV tax?

The rate is 25% unless the tax treaty with the non-resident company provides for a lower rate or exempts part of the remittance.

We have a tax treaty with Canada and according to the definition of a permanent establishment we do NOT have one in Canada, does that mean we are exempt from all taxes in Canada?

No. You are only exempt from income tax. You could be subject to Canadian Goods and Services Taxes (GST) which is an indirect tax levied on your sales.

What is GST?

Goods and Services Tax (GST) is a value added tax that should be collected by the person supplying goods and services in Canada; unless the goods and services are exempt, zero rated or the value of such goods and services do not exceed \$30,000 per annum.

What is the GST rate?

Effective 1st January 2008 the rate has been 5%.

We have a tax treaty with Canada that exempts our business income in Canada from income taxes because we do NOT have a permanent establishment in Canada, therefore not liable to corporate taxes, does that mean we do not have to file corporate tax returns in Canada?

No. You have to file corporate tax returns and complete schedule 91 claiming your treaty exemption.

What is the deadline for filing corporate tax returns?

The filing deadline is six months from the fiscal year end of the corporation. However, taxes due should be paid within two months of your fiscal year end.

What if we did not file on time? What is the penalty?

The penalty, if there is any tax due, will be the greater of:

- 5% of the taxes due plus one 1% per month of taxes remaining unpaid up to a maximum of 12 months. So the maximum penalty could be 17% of taxes unpaid.
- \$25 per day to a maximum of \$2,500 and a minimum of \$100.

What determines our net income from business carried out in Canada?

It will be your sales in Canada (if you have a tax treaty with Canada sales attributable to your permanent establishment) less cost of sales and other expenses related to your business in Canada.

Would the cost of goods sold in Canada be the cost to our company or could we mark it up?

The determination of the cost brings us to the complex discussion of [TRANSFER PRICING](#). In short if the cost is more or less the same as an arms length competitor or the mark up is reasonable then it is likely that it will be not challenged by Canadian tax authorities.

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