

Keeping employer source deductions in order (May 2010)

When businesses, especially small businesses, run into difficulty with the Canada Revenue Agency (CRA), it's often over the issue of source deductions, and it's not hard to see why. Almost all businesses, except for the very smallest owner-managed operations, have employees from whose pay the employer is required to deduct income tax, Canada Pension Plan (CPP) contributions, and Employment Insurance (EI) premiums, and then remit those amounts (plus any required employer contribution) to the CRA on a regular basis, by specified deadlines. Those deadlines have been the subject of considerable revision over the past few years, and there are now no fewer than four different categories of "remitters", each with its own specific deadlines and remittance requirements. And, since the penalties for a failure to remit on a timely basis can be significant, it's worth knowing how the rules apply to one's own business in order to stay "on-side" with the CRA with respect to source deductions.

Generally speaking, the larger a business, and therefore generally the larger its payroll, the more frequently remittances will be required. At the other end of the spectrum, the smallest businesses may be able to remit withheld amounts on a quarterly basis, or only four times in each calendar year.

The question of what category your business falls into is determined by something called the "Annual Monthly Withholding Amount", or AMWA. The AMWA is determined by adding up all the CPP, EI, and income tax amounts your business had to remit to the CRA for its payroll accounts two calendar years previously. That amount is then divided by the total by the number of months (maximum 12) that the business had to make payments in that year. The resulting number determines which category of remitter the business falls into and the remittance deadlines which will apply. The various categories and their respective deadlines are as follows.

Where the AMWA of a business in either of the two previous calendar years is less than \$3,000 and the business has what the CRA terms a "perfect compliance record", remittances can be made on a quarterly basis. For these purposes, the CRA considers a compliance record to be perfect when all required remittances, including income tax, goods and services tax, CPP, and EI, as well as T4 filings for the previous 12 months have been made on a timely basis. Where those two requirements have been met, remittances of income tax, CPP, and EI can be made every three months throughout the calendar year.

Where a business's AMWA exceeds the \$3,000 threshold, but is less than \$15,000, the business becomes, in CRA terms, a "regular remitter", and is required to forward all source deductions to the CRA by the 15th of the month following the one in which the amounts were withheld. So, in other words, amounts withheld from employees during the month of May 2010 must be remitted to the CRA on or before June 15.

When the AMWA amount goes over the \$15,000 level, things start to get a little more complicated. For the group of employers who had an AMWA between \$15,000 and \$49,999.99 two calendar years previously, source deductions must be received by the CRA by the following dates:

- For remuneration paid before the 16th day of the month, by the 25th of the same month.
- For remuneration paid after the 15th day of the month but before the first day of the following month, by the 10th day of the following month

The very largest group of employers – those which had a total AMWA of \$50,000 or more two calendar years ago, must make remittances up to several times during each month, depending on their payroll schedule, as outlined below.

Amounts withheld from remuneration paid any time during the month are due by the third working day (not counting Saturdays, Sundays, or holidays) after the end of the following periods:

- from the 1st through the 7th day of the month;
- from the 8th through the 14th day of the month;
- from the 15th through the 21st day of the month;
- from the 22nd through the last day of the month.

It is relatively easy to see how an employer could run afoul of these rules, either through misunderstanding the rules or simply through inadvertence. Unfortunately, whatever the reason, the penalties which may be applied are the same and, since such penalties are calculated as a percentage of the amount owed, they can be significant. Where amounts are properly withheld from an employee's pay, but aren't remitted to the CRA on a timely basis, the following graduated penalty amounts are levied.

- 3% if the amount is one to three days late;
- 5% if it is four or five days late;
- 7% if it is six or seven days late; and
- 10% if it is more than seven days late or if no amount is remitted.

As an administrative concession, the CRA generally applies this penalty only to the part of the amount the employer failed to remit that is more than \$500. Even so, an employer who was required to remit \$8,000 by June 15 but was 8 days late in making that remittance will face a penalty of \$750.

Of course, as with any overdue payment to the CRA interest charges, on both the original remittance requirement and on any penalty assessed, will be levied. The current (until June 30, 2010) rate applied to such amounts is 5%.

While the requirement to withhold income tax, CPP, and EI amounts at source, and to remit those amounts at regular intervals to the CRA, can be a time-consuming administrative chore, the penalties which can otherwise be incurred make that effort a necessary one. And, should all else fail, an employer who has been assessed a penalty by the Agency but believes that that penalty should not have been levied can appeal to the Minister of National Revenue to have the penalty waived. The process for doing so

is outlined on the CRA Web site at <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/hwpyrllwrks/pnlty/frnss-eng.html>. The CRA also provides a wealth of information about employers' payroll responsibilities generally, and that information can be found at <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/menu-eng.html>.