

Where Tax & Employment
Law Cross Paths

EP 50

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10:30 a.m. E.S.T.



Meet Your Presenters

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&

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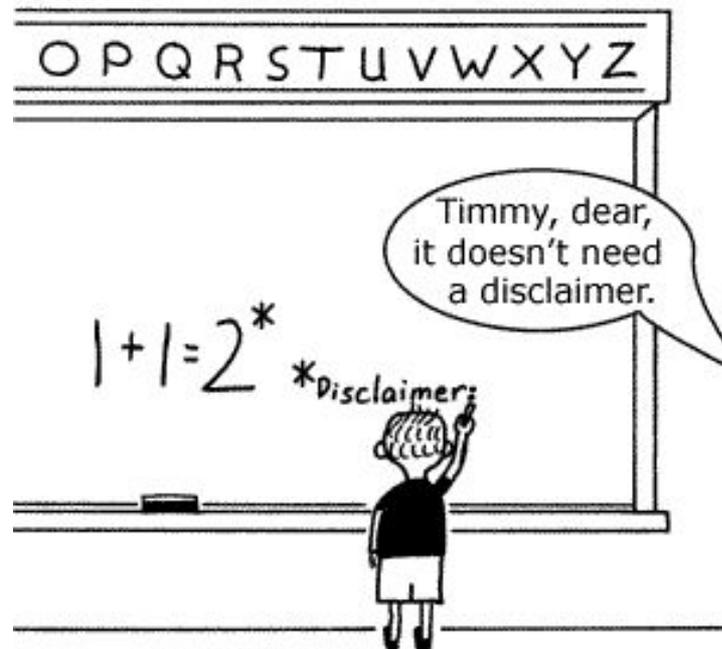


Land Acknowledgement

We acknowledge that we are on the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and that this territory is now home to many diverse First Nations, Inuit and Métis peoples.

Legal Disclaimers

Timmy
doesn't need
a disclaimer
but we do...



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Presentation Roadmap

Focus: *Employers in Canada with Remote Workers in and out of Canada*

- 1) Tax law issues for remote workers working in Canada
- 2) Tax law issues for Canadian companies hiring people to work remotely in other countries

1) Remote Workers Working in Canada



Remote Workers Working INSIDE Canada

Employment Law

- Contract Terms to Include (may vary whether employee or contractor)
 - Remote Worker Policy
 - Location of Work
 - Confidentiality
 - Hours of Work / Availability / Communication Expectations
 - Timekeeping System (to avoid OT claims and ensure employment standards met)
 - Logistics: equipment, home wifi, house/renters insurance, paperless (e.g. digital signature software, etc)
 - Governing province or territory

Tax Law Case Study:

Resident worker in a different Canadian province

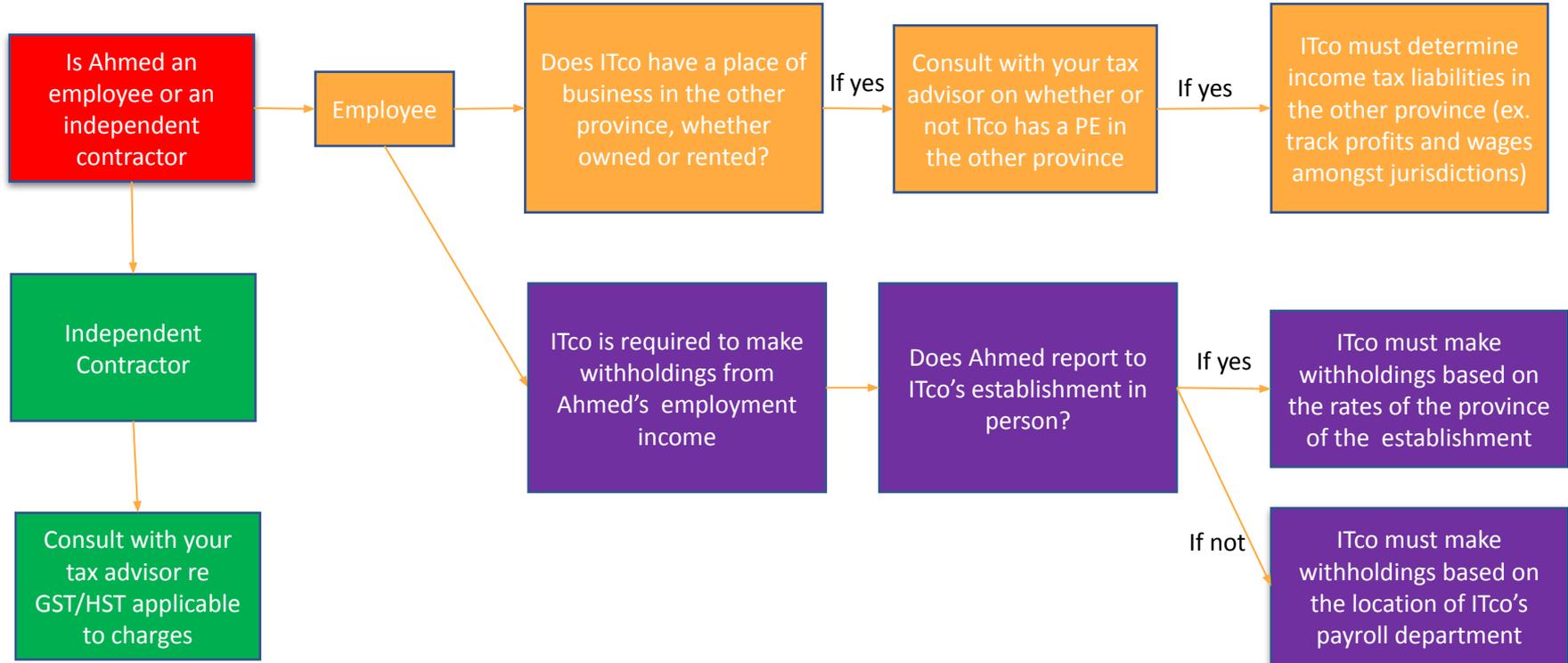
	Workplace HQ Location	Employee Status	Employee Location
Ahmed	Ontario	Canadian/PR	Alberta

- **ITco** is a Canadian IT development corporation with an office in Toronto, ON.
- **Ahmed** is a highly skilled IT developer who lives in Calgary, AB. Ahmed refused to relocate to Toronto, but agreed to a remote arrangement where he works from Calgary. He currently works from his condo, which is less than ideal because he is frequently interrupted by his young children. Ahmed asks IT to rent a small office/workspace for \$1,500/month.

Remote Workers Working in Canada

Tax Law Case Study:

Cdn/PR Worker in Alberta, Company in Ontario



2) Remote Workers Working Outside Canada



Remote Workers Working OUTSIDE Canada: *Employment Law*

- Contract Terms to Include (may vary whether employee or contractor)
 - Remote Worker Policy
 - Location of Work - *will pay for moving costs? COLA differences?*
 - Confidentiality
 - Hours of Work / Availability / Communication Expectations
 - Timekeeping System (to avoid OT claims and ensure employment standards met)
 - Logistics: equipment, home wifi, house/renters insurance, paperless (e.g. digital signature software, etc)
 - Governing province or territory - *& seek your own tax advice*

Permanent Establishment (“PE”) under the Canada-US Tax Treaty (Note! Treaties with different countries may contain different PE tests)

“Fixed Place of Business” PE test:

A Canadian business will have a PE in the US if it has a fixed place of business in the US, including: a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, as well as, in certain cases, a construction site, a drilling rigs or a ship.

Deemed PE test:

A Canadian business will have a deemed PE in US if a Canadian business has a person working in the US and has and habitually exercises in US, an authority to conclude contracts in the name of the Canadian entity (brokers excluded).

Services PE test:

- **The Single Individual Test:** the individual present in the US for 183 days or more in any 12 months period AND during the period more than 50% of gross income derived from services in the US by the individual or
- **The Enterprise Test:** services are provided in the US for an aggregate of 183 days or more in any 12 months period with respect to the same or connected projects for customers who are residents of the US or who maintain a PE in US

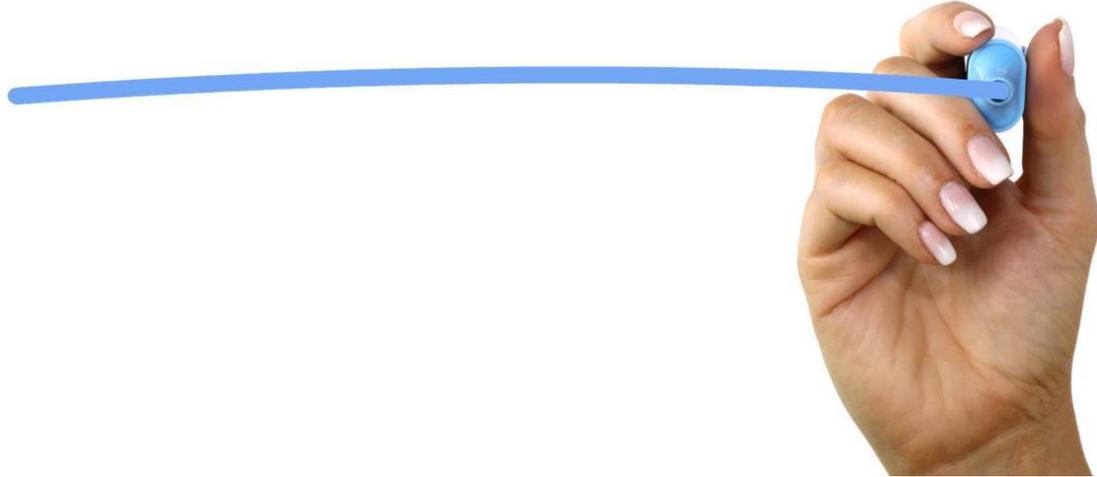
Case Study # 2

A Canadian/PR worker in the US for a Canadian employer

	Workplace HQ Location	Employee Status	Employee Location
Barb in California	Ontario	Canadian/PR	US

- What if Barb worked from her beach house in California for her Canadian employer?
- *For tax purposes, Barb's *tax residency* status is important (rather than immigration/citizenship status)

QUESTIONS



Key Takeaways

- Start with the Employee v IC analysis
- Know when you are establishing a PE
- Follow the movement of money across borders – there will usually be a tax impact

- Talk to a tax lawyer early in the process!
Anna Malazhavaya at
<https://www.advotaxlaw.ca>

2024 Compliance Program



Thank you!

To learn more about our team:
springlaw.ca/team/

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THANK YOU!