

How to Determine an Employee's Province of Employment (POE)



✘ All provinces and territories have their own income tax. Four provinces have employer payroll taxes. And, of course, Québec has a provincial government pension plan (QPP) and employment insurance system (QPIP). All of this can be quite a headache when you need to do source deductions. To make the proper tax, EI, CPP and other withholdings, you first need to determine which laws do and don't apply. General rule: The "province of employment" determines which law to use to calculate withholdings. But figuring out the province of employment is anything but straightforward. This story will show you how to do it.

What the Law Requires

Province of employment refers to the province which, in addition to the federal government, has jurisdiction to tax the employer or require the employer to deduct at source on a person's employment. The first thing you need to understand about "province of employment" is that the term is something of a misnomer. That's because the "province of employment" can be *either* a province *or* a territory. "Jurisdiction of employment" would be a more accurate description.

The concept of a designated province of employment (POE) is used by both federal and provincial authorities for different purposes. The CRA uses POE to determine with regard to a particular employee:

- Which provincial income tax calculations apply;
- Whether federal or Québec EI premium rates and annual maximums apply; and
- Whether CPP or QPP applies.

Québec uses the concept of POE to determine if employers must remit provincial income tax, QPIP and QPP source deductions to the MRQ. Québec also uses POE to determine employer contributions to the Health Services Fund (HSF) and *Commission des normes du travail* (CNT), the payroll training tax and the compensation tax on financial institutions.

Three other provinces use POE to determine whether their provincial payroll taxes apply to particular employees, including:

- Manitoba for purposes of applying its Health and Post Secondary Education Tax Levy;

- Ontario for the Employer Health Tax; and
- Newfoundland for the Health and Post Secondary Education Tax.

What POE Is NOT Used For

To properly calculate withholdings, you also need to understand what the POE is *not* used for, including:

Determining ultimate personal income taxes. The amount of personal income tax an employee ultimately owes in a tax year gets determined when the employee files her T1 returns for the year. Although we use the term “T1 return” in the singular, the T1 return is actually a set of form packages containing province-specific forms. Employees complete one form package based on their province of residence as of December 31 in the tax year concerned.

Determining which ESA, workers’ compensation and/or human rights laws applies. Provinces and territories also have their own employment standards, workers’ comp and human rights laws. Accordingly, payroll, HR and other company officials have to figure out which jurisdiction’s rules apply. POE is *not* used for this purpose. Application of employment standards, workers’ comp and human rights is based not on POE but the following 2 criteria:

- Is the employment in a federally regulated industry? If so, federal law applies; and
- If the industry is not federally regulated, where is the employment physically located?

Determining NT Payroll Tax: POE is also not used to determine the wages subject to the 2% payroll tax levied on employees who work in the Northwest Territories. Whether the tax is payable is based on whether employees physically work in the NT.

HOW TO DETERMINE THE POE

Once you determine that you need to know the POE that applies, how do you figure out which province is the POE? The answer depends on the earnings you’re trying to withhold on.

1. When Withholding on Income from Employment

The first rule applies to calculating T4 reportable income from employment. This approach also works for figuring out the POE for purposes of determining if provincial payroll taxes apply (except in NT). To nail down the POE, there are 2 questions to ask:

Question 1: Does the employee report for work at an employer’s establishment? YES [] NO []

Instructions: If you answer YES, the location of the establishment is the POE. If you answer NO, proceed to **Question 2:**

[box]T4 Province of Employment Codes

The following are the codes required in T4 Box 10, Province of Employment, to indicate an employee’s province of employment:

- **BC:** British Columbia
- **AB:** Alberta
- **SK:** Saskatchewan
- **MB:** Manitoba
- **ON:** Ontario
- **QC:** Québec
- **NB:** New Brunswick
- **NS:** Nova Scotia
- **PE:** Prince Edward Island
- **NL:** Newfoundland and Labrador
- **YT:** Yukon
- **NT:** Northwest Territories
- **NU:** Nunavut
- **US:** United States
- **ZZ:** Other (Other countries or in Canada outside of any province or territory)

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Question 2: Where is the employer's establishment from which the employee is paid?

Instructions: *The province or territory where the establishment is located is the POE.*

While the questions seem pretty straightforward, there are certain things you need to understand before you can answer them:

What Does "Report for Work" Mean? You can't answer Question 1 unless you know what "report to work" means. The phrase means physically presenting oneself, ready to start work. It does *not* mean reporting in the sense of being accountable to a supervisor or higher-up.

Example: Prunella is a field support engineer for a high-tech firm. She works at a wide variety of client sites when customers need training or to answer questions about her employer's products. She lives in the Gatineau region of Québec, just north of the Ottawa River. She starts every work day by commuting to downtown Ottawa to pick-up her work assignments. Some of these assignments require travelling to Montréal, Kingston, Toronto or Halifax. Since Prunella reports for work in Ottawa, Ontario is her POE.

What Does "Employer's Establishment" Mean? The second key phrase in Question 1 is "employer's establishment." When people talk about an employer's establishment in everyday language, they're generally referring to a physical place of work, such as an office, a warehouse, factory or other facility that is leased or owned by the employer. The place must be fixed or permanent.

What does "employer's establishment" mean in tax language? Unfortunately, the *Income Tax Act* doesn't define the phrase. So, the CRA relies on the definition of "*permanent establishment*" listed in Part IV of the *Income Tax Regulations*. Thus, "employer establishment" is a place that meets the requirements to be considered a permanent establishment under Part IV, to wit a place where:

- An employee who has general authority to bind his employer in a contract works. This definition excludes sales people who don't have authority to commit their employer to client pricing; or
- Merchandise owned by an employer is kept, from which an employee regularly fills orders on behalf of the employer; or
- An employee uses substantial machinery or equipment.

Note that the employer doesn't have to lease, rent or own any of the places described in the 3 bullets above for them to be deemed a permanent establishment (and thus, of course, an "employer's establishment").

Example: Let's stick with the case of Prunella from the example above. Assume that she reports to work at an office building owned by her employer. Outside is a large sign prominently identifying the employer. No one would ever question that the building is an "employer's establishment."

However, things aren't always that simple. What happens, for example, when the employee works out of a home office? Does the home office constitute an "employer's establishment"? Unfortunately, neither the laws nor CRA guidance directly answer that question. But there are a couple of general principles that can help:

The first thing we know is that the more an employer formalizes or publicizes its use, the more likely it is that the home office will be treated as an "employer's establishment." Factors that would suggest a home office is an "employer's establishment" include the fact that the employer:

- Leases the space from the employee or pays rent for it;
- Promotes the address of the site on company web sites, business cards or stationary;
- Advertises the location's land line phone number as the employee's contact information; and
- Secures local licensing approvals for business use of the property.

The second general principle we know is that using machinery or equipment in the home office enhances the likelihood of its being found an "employer's establishment." The test is the significance of the machinery or equipment and its use. For example, a court has ruled that the baseball, hockey or football equipment used by professional sports teams in their "away games" don't constitute "substantial use" [*Toronto Blue Jays Baseball Club v. Ontario (Minister of Finance)*, [2005] ON CA 3324 (CanLII), Feb. 215, 2005].

Applying this reasoning, equipment would probably have to be physically large and significant. A simple laptop, telephone or fax machine wouldn't be enough to prove the place is an "employer's establishment." On the other hand, equipment and machinery that's physically small would still suggest "employer's establishment" to the extent it was used to derive significant revenue.

What Is the Establishment from Which an Employee Is Paid? If you get to Question 2, you need to figure out the establishment from which the employee is paid. This is normally the place from which payroll is run.

Example: Marty is a consulting engineer at an engineering firm that manages the development of hydro-electric projects all over the world. His employer's only office is in Montréal but Marty has never been required to work there. Instead, he has a small home office in Edmonton, which he uses to write reports when he's not in the field. His home office isn't considered an "employer's establishment." Nor are any of the field locations where he works. Marty is paid by direct deposit out of his employer's Montréal office even when he's in the field. Thus, Marty's POE is Québec.

2. When Withholding on Income Not From Employment

Some payments by employers are *not* considered "income from employment." Retiring allowances would be the most common example. While such allowances aren't "income from employment," they are subject to both federal and provincial income tax withholding. But you still need to know the POE to determine the federal or provincial income tax withholding rates that apply to these payments.

The rule: The POE for income not from employment is the province in which the employee is resident when the payment is made. In this context, "resident" means ordinarily living at the time.

Example: Our consulting engineer friend Marty from the example above is laid off as of September 1, 2012. Under his employment contract, since the termination is not for cause, the employer must pay him a retiring allowance of \$250,000. To reduce the income tax consequences, Marty is to be paid 50% of the allowance on termination and the rest on January 1, 2013. On the date of the layoff, Marty is a resident of AB; so AB is the POE for the first payment of the POE. On Dec. 1, Marty moves to Arizona and is resident there when the second payment is made on January 1, 2013. So the POE for the second payment is "US."

3. When the POE Is Not a Canadian Province or Territory

In most cases, the POE will be a Canadian province or territory. But as the example

above shows, this may not always be the case. While there will always be a POE, it just might not be one you'd recognize at first glance.

4. Where There's More than One POE in a Pay Period

Determining the POE from the location where employees report for work is based on the assumption that the employee reports for work at *only* one such place in a single pay period. That's not always the case.

Example: Joan is a regional sales manager for a large international Fortune 500 company who's responsible for clients in all of western Canada from Thunder Bay to Victoria. She's based out of Calgary and owns a home there; but her work involves supervising sales staff in Vancouver, Calgary, Saskatoon and Winnipeg. She spends an average of one week per month working at the company's offices in those cities. This is on top of any travel to meetings on client premises.

Unfortunately, there isn't any clear guidance on how to determine the POE for source deduction purposes in this situation. Most payroll managers would probably consider AB Joan's POE. Similarly, if an employee changes the employer location where she reports for work in the middle of a pay period, most payroll managers would probably treat the whole pay period as belonging to the province of the new work location.

Québec is the one jurisdiction that does have specific rules for this situation. But the rules don't apply to all withholdings. There are 2 sets of rules for different types of withholdings—one set of rules for QPP and another for QPIP, employer contributions to the HSF and CNT, the compensation tax on financial institutions and the payroll training tax.

QPP: The Québec employers guide, TP-1015.G-V, *Guide for Employers; Source Deductions and Contributions*, states that QPP source deductions are due on the entire pay period earnings of an employee who starts work at an employer's location in Québec during the middle of a pay period. Similarly, no QPP source deductions are owing for an employee who reports for work at an employer's location in Québec at the beginning of a pay period and then relocates to another employer establishment outside of Québec before the period ends. But the Guide is silent (as is the equivalent federal guide, T4001, *Employer's Guide; Payroll Deductions and Remittances*) on whether the same rule applies to personal income tax or to employees who otherwise work at employer locations in more than one jurisdiction.

Other Québec Payroll Taxes: The other Québec payroll taxes listed above are subject to 1 of 4 rules regardless of whether the employee moves or relocates or otherwise reports for work at employer locations both inside and outside of Québec. It's a little bit complicated so bear with me.

The first two rules are based on type of income involved. The best way of explaining this is to refer to the rules for CPP pensionable income that determine whether a CPP Basic Exemption applies. Remember that the CPP Basic Exemption applies only to pensionable income that's both earned in a single pay period and paid on the normal pay date for that same period. Thus, overtime worked in a pay period and paid on the regular pay day for that period is subject to the CPP Basic Exemption. By contrast, overtime earned in one pay period, banked and subsequently paid in cash in another isn't subject to a CPP Basic Exemption. If a CPP Basic Exemption applies the income is termed in the *Canada Pension Plan Regulations* as qualifying income. If no Basic Exemption applies, the income is termed non-qualifying.

Rule 1: For qualifying income, the Québec employer contributions to the HSF and CNT, the compensation tax on financial institutions and the payroll training tax apply

unless employees *mainly* report for work at employer establishments outside Québec. *Mainly* is usually understood as meaning 50% or more.

Example: Joseph is a senior executive responsible for his employer's intergovernmental affairs. His responsibilities include relations with the federal, Ontario and Québec governments. He gets paid on a semi-monthly basis, for a Monday to Friday work week. In the semi-monthly period September 1 to 15, 2013, there are 11 normal work days, excluding the statutory holiday. Over those 11 days, Joseph reports for work at the company's offices in Montréal for 2 days, Québec City for 2 days, Toronto for 4 days and Ottawa for 3. In this pay period, Joseph has mainly reported for work at his employer's establishments in Ontario (7 out of 11), so his regular wages for that pay period aren't subject to any of the above Québec payroll taxes.

Rule 2: For non-qualifying income, the above Québec payroll taxes apply to employees who *ordinarily* report for work at an employer's establishment in Québec. *Ordinarily* refers to regularity rather than frequency.

Example: In the second half of September, Joseph receives a performance bonus for meeting targets agreed to in his quarterly employee assessment. This bonus isn't tied to services performed in the current pay period. This pay period is also exceptional in that he doesn't actually report for work in the period to any of his employer's offices in Québec. However, since he ordinarily does so, Joseph's performance bonus is subject to all of the listed Québec payroll taxes.

Rule 3: The next rule applies to employers with establishments in Québec: Employees who don't report for work at any employer establishment and who aren't paid from an employer establishment in Québec may still be subject to the above Québec payroll taxes. Québec law allows the MRQ to impose these taxes, based on the following factors:

- The place employees mainly report for work;
- The place employees mainly perform their duties;
- Employees' principal places of residence;
- The establishments from where employees are supervised;
- The nature of the duties performed; and
- Any other similar criterion.

If the MRQ applies these factors and decides that it's reasonable to consider the POE to be Québec, the employment will be subject to the Québec payroll taxes listed above.

Rule 4: The MRQ may also consider Québec as the POE for Québec payroll taxes where Québec employers outsource some of their normal operations to companies based outside the province. A Québec employer may be subject to these Québec payroll taxes where:

- A firm based outside of Québec provides outsourcing services to a Québec employer;
- The services are performed in the normal course of their employment by employees of the outsourcing firm;
- The services provided are part of the Québec employer's normal business activities;
- The services are the same as those performed by other employees of other employers of the same type or industry; and
- The outsourcing reduces the Québec employer's wages otherwise subject to these Québec payroll taxes.

Example: Betty works for a call centre based in Welland, Ontario. Her employer

provides in-bound customer support services to telephone companies who wish to outsource these operations. Betty is dedicated to providing customer support services for a major Québec telephone company. When Betty's employer began providing services to this Québec telephone company, the telephone company laid off the internal staff who had previously been doing this work. The Québec telephone company **would be** assessed by the MRQ for Québec payroll taxes on the amount of Betty's wages. Under **Rule 4**, for these 4 payroll taxes it's as if Betty was an employee of the Québec telephone company itself and reported for work in Québec.

Conclusion

Determining the POE is pretty straightforward for most employees. But as this article shows, there are some pretty strange rules you need to watch out for, particularly where Québec is involved. The stakes are high. Using the wrong POE is bound to result in withholding incorrect income tax amounts from employees. If uncovered in a payroll audit, such mistakes could lead to a CRA assessment for failing to withhold enough income tax. Even worse, not getting the POE right could result in remitting employer payroll taxes to the wrong jurisdictions. That, of course, won't sit well with the jurisdiction where you *should have* remitted the tax. No matter how you slice it, POE errors can have serious consequences. The good news is that this article should go a long way to help you avoid them.