Canada Revenue Agency | Agence du revenu du Canada

SCHEDULE 91

INFORMATION CONCERNING CLAIMS FOR TREATY-BASED EXEMPTIONS

Corporation's name	Business Number	Taxation year-end Year Month Day

- This schedule is applicable for taxation years that begin after 1998.
- For use by a non-resident corporation if it carried on a **treaty-protected business** in Canada, had a taxable capital gain, or disposed of a **taxable Canadian property** that was a **treaty-protected property** at any time in the year (or a previous year, if a liability for Part I tax would result in the current year but for the provisions of a tax treaty). The definitions of treaty-protected business, taxable Canadian property, treaty-protected property, and the **extended meaning of carrying on business** in Canada are included at the end of the attached instructions.
- Where there is not enough space, attach additional sheets to provide full explanations.
- Regulations, sections, subsections, subparagraphs, and clauses referred to on this schedule are from the federal *Income Tax Act* and Regulations.

Country of residence . . . . 100 ____________

Taxpayer identification number in country of residence . . . . 105 ____________

Taxation year-end in country of residence (yyyy/mm/dd) . . . . 110 ____________

(report all amounts in Canadian funds)

Section A – Carrying on business in Canada

1. Gross revenues derived from:

   Sale of goods . . . . 115 ____________

   Provision of services, (if any, complete items 5 to 8) . . . . 116 ____________

   Financing activities . . . . 117 ____________

   Other . . . . 118 ____________

   Total Canadian revenues . . . . 125 ____________

2. Detailed description of business activities carried on in Canada: 130 ____________

3. Did you rent, lease, or own any physical facilities in Canada during the taxation year? . . . . . 135 1 Yes ☐ 2 No ☐

   If *yes*, please provide the full address: 140 ____________

4. a) Identify the treaty, article, and paragraph under which an exemption is claimed:

   Treaty: 145 ____________ Article and paragraph: 146 ____________

   b) Explain how this provision exempts the income from Part I tax: 150 ____________

Information about services rendered in Canada.

5. Main customers to whom services were rendered in Canada (including non-residents) during the taxation year (attach copies of all T4A-NR slips):

	Name 155	Address 156	Amount earned 157
1.			
2.			
3.			
4.			
5.			

Section A – Carrying on business in Canada — continued from page 1

6. Employee services rendered in Canada during the taxation year:

a) Salary, wages, and remuneration paid to:

		Number of employees		Amount paid
Canadian resident employees	160		161	
Non-resident employees	165		166	

		Commenced		Completed
b) Dates of employee engagement in Canada (yyyy/mm/dd):	170		171	

c) Number of calendar days, or part days, during the taxation year, that any non-resident employee was physically present in Canada to provide services to, or on behalf of, the corporation: 175 ____

7. Services rendered in Canada by subcontractors during the taxation year:

a) Fees, charges, reimbursements of expenses, or other payments made to:

		Number of subcontractors		Amount paid
Canadian resident subcontractors	180		181	
Non-resident subcontractors	185		186	

		Commenced		Completed
b) Dates of subcontractor engagement in Canada (yyyy/mm/dd):	190		191	

8. Has the corporation applied for a waiver of the withholding requirement under Regulation 105? 195 1 Yes ☐ 2 No ☐

If *yes*, was a waiver or reduction of withholding provided by the CCRA? 196 1 Yes ☐ 2 No ☐

Section B – Disposing of taxable Canadian property (TCP) (other than real property) and taxable capital gains

1.

	Paragraph reference of section 248 definition of TCP 200	Description of TCP or other property disposed of 201
1.		
2.		
3.		
4.		
5.		

	Proceeds 202	Cost or adjusted cost base 203	Income, gain or loss 204
1.			
2.			
3.			
4.			
5.			

2. a) Identify the treaty, article, and paragraph under which an exemption is claimed:

Treaty: 210 ____ Article and paragraph: 211 ____

b) Explain how this provision exempts the income or gain from Part I tax: 215 ____

3. Has a certificate of compliance (T2064 or T2068) been obtained according to section 116 of the *Income Tax Act*? 220 1 Yes ☐ 2 No ☐

If *yes*, please provide a copy of the certificate.

INFORMATION CONCERNING CLAIMS FOR TREATY-BASED EXEMPTIONS

Schedule 91 Instructions

Schedule 91 must be prepared by non-resident corporations for **treaty-protected businesses** carried on in Canada (including businesses carried on through a partnership or other entity), taxable capital gains, and dispositions of **taxable Canadian properties** that are **treaty-protected properties**. Any income or loss from a business other than a treaty-protected business and any income, gain, or loss from the disposition of taxable Canadian property that is not treaty-protected property must be included in the company's calculation of taxable income earned in Canada. The definitions of treaty-protected business, taxable Canadian property, treaty-protected property, and the **extended meaning of carrying on business** in Canada are included at the end of these instructions. For the purpose of this schedule, the reference to taxable capital gain does not include any gain resulting from the disposition of shares that are listed on a prescribed stock exchange (other than taxable Canadian property).

The meaning of terms used on Schedule 91 and further details about the information requirements are outlined below. All dollar amounts requested on this schedule refer to amounts in Canadian currency applicable to the Canadian taxation year.

General identification information

Business Number (BN): A non-resident corporation that does not have a BN has to apply for one by completing Form RC1, *Request for a Business Number (BN)*. The completed RC1 and T2 return should then be sent to the International Tax Services Office with a copy of the certificate of incorporation. For more information, see the pamphlet called *The Business Number and Your Revenue Canada Accounts*. You can get Form RC1 and the pamphlet on the Internet at http://www.ccra-adrc.gc.ca
The non-resident corporation may have a BN for:

- import/export;
- payroll deductions; or
- goods and services tax/harmonized sales tax (GST/HST).

If so, insert the BN in the applicable block on page 1 of Schedule 91.

Taxation year-end: Enter the year-end of the fiscal period used by the corporation for its Canadian business. At line 110, enter the year-end of the corporation for tax purposes in its country of residence. (The corporation may select a different fiscal period for its Canadian business from that used in its country of residence.)

Country of residence and taxpayer's identification number: Indicate the country of residence and the income tax account number assigned to the corporation in its country of residence. If the corporation is resident in more than one country, please provide additional details on a separate sheet.

Section A – Carrying on business in Canada

1. **Gross revenues:** Include all revenues derived from the sale of goods, the rendering of services, and the completion of financing or other transactions in the course of the non-resident corporation's carrying on of business in Canada for the applicable taxation year. The amounts should reflect revenue recognized during the taxation year determined under the provisions of the *Income Tax Act*.

2. **Business activities carried on in Canada:**
   This should include, where applicable:
   - a description of the nature of goods sold or delivered in Canada, the method of delivery, and the role of other persons in Canada in the sale or delivery of goods;
   - whether the corporation is a manufacturer, wholesaler, or retailer of the goods;
   - identification of the country(s) where the goods are manufactured or produced;
   - identification (including mailing address) of any agents or wholesalers involved in connection with Canadian deliveries;
   - a description of the nature of services rendered, financing activities, or other business undertaken in Canada; and
   - indication of whether the services are provided on client premises or at some other site.

3. **Address of physical facilities:** Indicate the nature and address of any owned, leased, or rented physical facilities situated in Canada which are used by the non-resident corporation in carrying on its business activities in Canada. Examples of such facilities include an administrative or sales office, a warehouse, or a mine.

4. **Treaty, article, and paragraph under which an exemption is claimed:** Identify the treaty under which exemption is being claimed and explain why the income from carrying on business in Canada is exempt from tax in Canada under that tax treaty, including reference to the applicable treaty article and paragraph.

5. **Main customers:** Indicate the five largest customers (including the mailing address) in terms of gross revenues earned during the taxation year for services rendered in Canada. Attach copies of all T4A-NR slips received for any calendar year that ended in the taxation year.

Section A – Carrying on business in Canada — continued from page 3

6. **Employee services:**
   a) **Salary, wages, and remuneration:** Include the total of all salaries, wages, or other remuneration paid during the Canadian taxation year to resident and non-resident employees for the rendering of services in Canada by those persons. Attach copies of T4 Summary forms prepared for any calendar year that ended during the taxation year. (for information about completing T4 slips, please see the *Employer's Guide to Payroll Deductions*)
   b) **Dates of employee engagement:** Indicate the first and last date that any of the corporation's employees (either resident or non-resident) were engaged in providing services in Canada to, or on behalf of, the corporation during the year. Where there were multiple projects or assignments in progress during the year, enter the date of the start of work by employees related to the first project or assignment, and the date of completion of work by employees on the final project of the year. If a project or engagement was in progress at the start or end of the year, enter the first or last date of the taxation year, as applicable.
   c) **Number of days physically present:** Indicate the number of days during the taxation year that any of the corporation's non-resident employees were physically present in Canada to provide services to, or on behalf of, the corporation. Include days in Canada during which no services were rendered, such as weekends and national holidays. This number should equal 365 less the number of days that there were no non-resident employees physically present in Canada.

7. **Subcontractor services:**
   a) **Payments to subcontractors:** Include the total of all fees, charges, reimbursements of expenses, or other payments made during the taxation year to resident and non-resident subcontractors (including consultants, agents, or other third parties) for services rendered in Canada for the corporation's business carried on in Canada. Attach a copy of the T4A-NR Summary prepared for payments made to non-residents in any calendar year that ended during the taxation year. (information about T4A-NR slips is contained in the *Non-Resident Withholding Tax Guide*)
   b) **Dates of subcontractor engagement in Canada during the taxation year:** Indicate the first and last date that any resident or non-resident subcontractor was engaged in providing services in Canada to, or on behalf of, the corporation during the year. Where there were multiple projects or assignments in progress during the year, enter the date that any subcontractor(s) started work related to the first project or assignment and the date of completion of work by any subcontractor(s) on the final project of the year. If a project or engagement was in progress at the start or end of the year, enter the first or last date of the taxation year, as applicable.

8. **Has the corporation applied for a waiver of the withholding requirement under Regulation 105?**
   Answer yes or no on line 195. If *yes,* indicate on line 196 whether a waiver or reduction of withholding under Regulation 105 was approved by the CCRA.

Section B – Disposing of taxable Canadian property (TCP)

1. **Section 248 reference and description of TCP:** Indicate the applicable paragraph from the definition of TCP contained in section 248 (reproduced at the end of this schedule) for each property disposed of in the year, and provide a brief description of each property.

   A disposition of TCP should only be reported on this schedule if it is treaty-protected property. The disposition of TCP that is not treaty-protected property should be reported on Schedule 6 of the T2 unless income treatment is required, in which case any income or loss is included in income as discussed below. Details of **taxable capital gains** (TCG) derived otherwise than from dispositions of

   Real property: Canada's tax treaties provide that gains derived by a non-resident from the disposition of real property may be taxed in the country where the property is situated and therefore dispositions of TCP which are real property in Canada are not treaty-exempt. Such dispositions should not be reflected on Schedule 91. Instead, if they are capital property, they should be reported on Schedule 6 (and Schedule 4, if applicable). If they are other than capital property, any income or loss should be reported as income or loss from carrying on a business in Canada and included in the calculation of taxable income earned in Canada for the year. In Canada's treaties, real property generally includes shares, as well as partnership and trust interests the value of which is derived principally from real property.

   Dispositions of TCP treated as income: Canada's tax treaties do not generally contain provisions allowing non-residents to claim exemption for income relating to the disposing of TCP which is treated as income rather than capital gains under the *Income Tax Act*, including dispositions of:
   i) an income interest in a trust resident in Canada;
   ii) a retired partner's right to a share of the income or loss of a partnership;
   iii) a life insurance policy in Canada; and
   iv) Canadian resource property and timber resource property as described in paragraphs 253(c)(i) and (ii) (reproduced at the end of these instructions).

   Accordingly, the income from the disposition of these kinds of property is subject to tax in Canada and has to be included as other income in the non-resident corporation's T2 calculation of taxable income for the year in which the disposition occurred.

2. **Treaty, article and paragraph under which an exemption is claimed:** Identify the treaty under which exemption is being claimed and explain how the treaty exempts the income or gain from the disposition of TCP or taxable capital gain from tax in Canada. Include reference to the applicable treaty article and paragraph which governs such exemption.

3. **Certificate of compliance under section 116:** Non-resident vendors who dispose of certain types of TCP have to notify the CCRA either before or after the disposition of each such property. A vendor claiming treaty protection on any disposition must make such claim when filing the notice of disposition with the CCRA. If approved, a certificate of compliance will be granted. For more details, please see Information Circular 72-17, *Procedures Concerning the Disposition of Taxable Canadian Property by Non-Residents of Canada*.

Subsection 248 (1) Definitions

taxable Canadian property – The following definition of taxable Canadian property (TCP) is contained in the document entitled *Revised Legislative Proposals and Explanatory Notes on Taxpayer Migration* which was issued by the Department of Finance in December of 1999 (Release #99-112). When these proposals become law, this definition will replace the current definition of TCP in paragraph 115(1)(b) of the *Income Tax Act* and the extended meaning of TCP in section 248.

Taxable Canadian property of a taxpayer at any time in a taxation year means a property of the taxpayer that is

a) real property situated in Canada,
b) property used or held by the taxpayer in, eligible capital property in respect of, or property described in an inventory of, a business carried on in Canada, other than
   i) property used in carrying on an insurance business, and
   ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the taxpayer is resident does not impose tax on gains of persons resident in Canada from dispositions of such property,
c) if the taxpayer is an insurer, its designated insurance property for the year,
d) a share of the capital stock of a corporation resident in Canada (other than a non-resident-owned investment corporation if, on the first day of the year, the corporation owns neither taxable Canadian property nor property referred to in any of subparagraphs (m)(i) to (iii), or a mutual fund corporation) that is not listed on a prescribed stock exchange,
e) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange if, at any particular time during the 60-month period that ends at that time,
   i) the fair market value of all of the properties of the corporation each of which was
      A) a taxable Canadian property,
      B) a Canadian resource property,
      C) a timber resource property,
      D) an income interest in a trust resident in Canada, or
      E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not the property exists,

   was greater than 50% of the fair market value of all of its properties, and
   ii) more than 50% of the fair market value of the share was derived directly or indirectly from one or any combination of
      A) real property situated in Canada,
      B) Canadian resource properties, and
      C) timber resource properties,
f) a share that is listed on a prescribed stock exchange and that would be described in paragraph (d) or (e) if those paragraphs were read without reference to the words "that is not listed on a prescribed stock exchange", or a share of the capital stock of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer, persons with whom the taxpayer did not deal at arm's length, or the taxpayer together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,
g) an interest in a partnership if, at any particular time during the 60-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was
   i) a taxable Canadian property,
   ii) a Canadian resource property,
   iii) a timber resource property,
   iv) an income interest in a trust resident in Canada, or
   v) an interest in or option in respect of a property described in any of subparagraphs (ii) to (iv), whether or not that property exists,

was greater than 50% of the fair market value of all of its properties,

Subsection 248 (1) Definitions – continued from page 5

h) a capital interest in a trust (other than a unit trust) resident in Canada,
i) a unit of a unit trust (other than a mutual fund trust) resident in Canada,
j) a unit of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the issued units of the trust belonged to the taxpayer, to persons with whom the taxpayer did not deal at arm's length, or to the taxpayer and persons with whom the taxpayer did not deal at arm's length,
k) an interest in a non-resident trust if, at any particular time during the 60-month period that ends at that time,
   i) the fair market value of all of the properties of the trust each of which was
      A) a taxable Canadian property,
      B) a Canadian resource property,
      C) a timber resource property,
      D) an income interest in a trust resident in Canada, or
      E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not that property exists,

   was greater than 50% of the fair market value of all of its properties, and
   ii) more than 50% of the fair market value of the interest was derived directly or indirectly from one or any combination of
      A) real property situated in Canada,
      B) Canadian resource properties, and
      C) timber resource properties, or
l) an interest in or option in respect of a property described in any of paragraphs (a) to (k), whether or not that property exists,

and

m) for the purposes of section 2, subsection 107(2.001) and sections 128.1 and 150, and for the purpose of applying paragraphs 85(1)(i) and 97(2)(c) to a disposition by a non-resident person, includes
   i) a Canadian resource property,
   ii) a timber resource property,
   iii) an income interest in a trust resident in Canada,
   iv) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a), and
   v) a life insurance policy in Canada.

treaty-protected business – of a taxpayer at any time means a business in respect of which any income of the taxpayer for a period that includes that time would, because of a tax treaty with another country, be exempt from tax under Part I.

treaty-protected property – of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because of a tax treaty with another country, be exempt from tax under Part I.

Section 253
Extended meaning of carrying on business (in Canada)

For the purposes of this Act, where in a taxation year a person who is a non-resident person or a trust to which Part XII.2 applies

a) produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything in Canada whether or not the person exports that thing without selling it before exportation,
b) solicits orders or offers anything for sale in Canada through an agent or servant, whether the contract or transaction is to be completed inside or outside Canada or partly in and partly outside Canada, or
c) disposes of
   i) Canadian resource property, except where an amount in respect of the disposition is included under paragraph 66.2(1)(a) or 66.4(1)(a),
   ii) property (other than depreciable property) that is a timber resource property or an interest therein or option in respect thereof, or
   iii) property (other than capital property) that is real property situated in Canada, including an interest therein or option in respect thereof, whether or not the property is in existence,

the person shall be deemed, in respect of the activity or disposition, to have been carrying on business in Canada in the year.