Wealth Management

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INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC FAMILY OFFICE SERVICES

Determining your tax residency status in Canada

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The Canadian income tax system is based on Canadian residency status. A common misunderstanding is that it's based on citizenship or immigration status. You may be considered a resident of Canada for income tax purposes even if you're not a Canadian citizen or landed immigrant. On the other hand, you may not be a resident of Canada for income tax purposes even if you're a Canadian citizen. This article discusses how tax residency is determined for Canadian tax purposes and the tax implications of your residency status.

Tax residency status in Canada

As an individual, your Canadian tax residency status falls into one of the following categories for federal tax purposes: Canadian resident or non-resident. If you are a Canadian resident, you may be factually or deemed to be a resident. If you are a non-resident, you may be factually or deemed not to be a resident. You may also be a resident for part of the year and a non-resident for the other part of the year.

Residential ties to Canada

The residential ties you maintain or establish in Canada are the most important factors the Canada Revenue Agency (CRA) considers in assessing factual residency. Residential ties are broken down into significant and secondary ties.

Significant residential ties to Canada

These ties provide a strong indication of factual residency status in Canada:

- A home available for use in Canada
- A spouse or common-law partner in Canada
- Dependants in Canada

Secondary residential ties to Canada

The CRA may also consider whether you have the following secondary residential ties collectively to determine factual residency status:

- Personal property held in Canada (e.g. furniture, clothing, car and recreational vehicles);
- Social ties in Canada (e.g. memberships in recreational or religious organizations);

- Economic ties in Canada (e.g. employment with Canadian employer, active involvement in Canadian business, bank account, retirement accounts, credit cards and investment accounts);
- Landed immigrant or appropriate work permits in Canada;
- A Canadian driver's licence;
- A Canadian passport;
- Seasonal dwelling place or leased dwelling place; and
- Medical and hospitalization insurance with a Canadian province or territory.

The secondary ties are reviewed together with all the other facts and circumstances to determine your factual residency status. It would be unusual for a single secondary residential tie to be sufficient by itself to establish residency in Canada, (especially in the absence of having significant residential ties to Canada).

There are other residential ties the CRA may consider to be relevant in particular circumstances. These residential ties may include retaining mailing address; post office box or safety deposit box, personal stationery with a Canadian address; Canadian telephone listings; and Canadian newspaper and magazine subscriptions.

Factual residency – leaving Canada

If you are a factual resident of Canada and you decide to move to another country, the CRA will consider whether you have maintained factual residency status in Canada. Generally, unless you have severed all significant residential ties, you maintain factual residency in Canada. As a result, you continue to be subject to Canadian income tax on the income you earn from anywhere in the world.

See the Appendix for some examples of how the CRA may assess your residency status if you leave Canada.

Tax implications

If you have severed sufficient residential ties to Canada during the year, you will be considered a factual resident for part of the year and a non-resident for the rest of the year. For the part of the year when you are a resident, you are subject to Canadian tax on your worldwide income. For the remainder of the year, you will generally be subject to Canadian tax on Canadian source income only. In the following year, if you are a non-resident the entire time, you are only subject to Canadian tax on Canadian source income.

Date you cease residency in Canada

The CRA generally considers the date you cease residency in Canada, and acquire non-resident status, as the date you have severed all residential ties with Canada. This date usually corresponds with the latest of the following dates:

If you are a factual resident of Canada and you decide to move to another country, the CRA will consider whether you have maintained factual residency status in Canada.

- You leave Canada;
- Your spouse or common-law partner and/or dependants leave Canada (if applicable); or
- You become a resident of the other country.

If you were a resident of another country prior to being a resident in Canada and are leaving to re-establish residency in that country, you will be considered a non-resident on the date you leave Canada, even if, your spouse or common-law partner or dependants remain in Canada temporarily.

Factual residency – moving to Canada

If you move to Canada, the CRA will consider whether you established residential ties in Canada in order to determine if you are a factual resident for tax purposes.

Specifically, the CRA has stated they will consider:

- Whether you have established significant residential ties such as having a dwelling place in Canada and a spouse or common-law partner that lives in Canada. (Note: If you don't relocate to Canada and simply acquire a dwelling place in Canada for your retirement in the future and in the meantime you lease the property to a non-arm's length third-party for the period between acquiring the property and residing in it, then unless you have other residential ties with Canada, the dwelling place, in and of itself, would not be a significant residential tie.)
- Whether you applied for and obtained landed immigrant status and provincial health coverage, which generally constitutes significant ties with Canada.
- Whether you establish or maintain residential ties in other countries. For example, if you are moving to Canada, the sale of a former residence in another country would support the establishment of residency in Canada.

The CRA says that there must also be a degree of permanence to an individual's stay in Canada or outside of Canada. Therefore, they will consider regularity and length of visits to Canada in addition to the residential ties you have inside and outside of Canada.

Tax implications

If you establish Canadian residency part way through the year, you are subject to Canadian income tax on your worldwide income during the period of time you are a resident of Canada. You are subject to Canadian

tax on Canadian source income only prior to becoming a Canadian resident. In the following year, provided you maintain Canadian residency, you will be a factual resident for the entire year and subject tax on your worldwide income for the entire year.

Date you acquire factual residency in Canada

When you move to Canada and become a factual resident of Canada, you will generally be considered to have become a resident of Canada for income tax purposes on the date you entered Canada.

Deemed resident

If you are not factually a resident in Canada, you may still be deemed a resident of Canada if you sojourn (is temporarily present) in Canada for a total of 183 days or more in a calendar year.

A part day is a day for purposes of determining the number of days you have sojourned in Canada in a calendar year. For example, the days (or part days) you spend vacationing in Canada may be considered days you sojourned in Canada.

However, an individual is not automatically considered to be sojourning in Canada for a day that they are present in Canada. The nature of each particular stay must be determined separately. For example, if you are commuting to Canada for employment and returning each night to your normal place of residence outside of Canada, you would not count those part days as sojourning in Canada.

If you are a factual resident of Canada, you cannot be a deemed resident of Canada under the sojourning rules. Therefore, the CRA will consider whether you are a factual resident of Canada first.

In addition to sojourners, in certain instances, other individuals may be deemed residents of Canada. For example, if you are a government employee working outside of Canada, which includes members of the Canadian Forces posted abroad, you're deemed a Canadian resident if you're not otherwise still a factual resident of Canada.

Tax implications

Deemed residents of Canada are subject to Canadian income tax on their worldwide income for the entire year, even if they weren't present in Canada on January 1.

Date you acquire deemed residency in Canada

You're considered a resident of Canada for income tax purposes for the entire calendar year if you're a deemed resident of Canada under the sojourning rules for that particular year.

You're considered a resident of Canada for income tax purposes for the entire calendar year if you're a deemed resident of Canada under the sojourning rules for that particular year.

Deemed non-resident – dual residents and tax treaties

It is possible to be a resident of Canada under the Canadian income tax rules and at the same time, a tax resident of another country under the other country's tax rules (i.e. you may be a dual resident).

If you're a dual resident and Canada has an income tax treaty with the other country, the treaty may provide "tie-breaker rules" so that you're deemed to be a resident of only one of the countries. The relevant tax treaty should be consulted to determine if tie-breaker rules are available.

Permanent home test

Usually, the tie-breaker rules found in a treaty rely first on a "permanent home test," which provides that an individual is a resident for purposes of the treaty, in the country in which the individual has a permanent home available. The home can be owned, rented or otherwise available for your permanent use. The permanence of the home is relevant, not the size or nature of ownership or tenancy. Note, that a home you own, which you lease out to a third party with arm's length terms and conditions is generally not considered a home available for your permanent use.

If you have a permanent home in only one country, you will be deemed to be a resident of that country and a non-resident of the other country.

Centre of vital interests test

If you have a permanent home available in both countries, the next test found in the treaty tie-breaker rules of most treaties is the "centre of vital interests" test. This test examines your personal and economic ties with each country. The ties examined are similar to those used in determining factual residency such as family and social relations, occupation or place of business and other activities. You would be deemed to be a resident in the country with which you have the most ties.

Other tests

Other tests apply if the "centre of vital interests test" is inconclusive. For example, some treaties may look at where you have a habitual abode (i.e. where you spend the majority of your time). If this test is also inconclusive, the tax authorities will consider which country you are a national.

If you are a national in both countries, the treaty may direct you to seek a resolution from the competent authorities in each country in determining your residency status.

U.S. citizens and green card holders

The treaty tie-breaker rules generally override domestic tax rules. However, there is an exception with respect to the U.S. since the U.S. taxes based on both citizenship and residency status. Therefore, a U.S. citizen will be subject to U.S. tax regardless of their residency and cannot use the tie-breaker rules to be treated as a non-resident for tax purposes. While a green card holder is also subject to U.S. income tax on their worldwide income no matter where they live, a green card holder is able to be treated as a non-resident of the U.S. for tax purposes by relying on the tie-breaker rules. However, doing so may potentially jeopardize their green card status, and there may be other U.S. tax issues to consider. A detailed discussion of the U.S. income tax rules is beyond the scope of this article. Speak to your cross-border tax advisor for more information.

Date you're deemed non-resident of Canada

The date you meet the treaty-tie breaker rules in a tax treaty and tie-break to another country is the date you cease residency in Canada under Canadian tax rules (i.e. the date you will be considered to be a non-resident of Canada for tax purposes). On this date, the Canadian tax rules applicable to individuals ceasing to be a resident in Canada will apply. More information is provided in an article discussing moving from Canada. Ask your RBC advisor for a copy.

Provincial or territorial tax residency

In general, you're considered a resident of a particular province or territory if you're a resident in that province or territory on December 31 in the calendar year. Similar criteria discussed earlier in determining an individual's residency status for federal income tax purposes are also used to determine residential ties with a province or territory.

It's possible to be considered a resident in more than one province or territory for a particular tax year (i.e. you are physically residing in a province on December 31 but ordinarily reside in another province.) In this case, you're considered a resident of the province or territory with which you have the most significant residential ties.

Federal, provincial or territorial tax

Factual and deemed residents of Canada are subject to Canadian federal income tax on their worldwide income. If you establish or sever Canadian residency part way through the year, worldwide taxation only applies to the period in the year you were a Canadian resident. Factual residents of Canada are subject to provincial or territorial tax depending on their province or territory of residence.

In general, you're considered a resident of a particular province or territory if you're a resident in that province or territory on December 31 in the calendar year.

Deemed residents are generally not a resident in a particular province or territory (except in certain cases under Quebec tax laws) and thus their income (e.g. capital gain on sale of real estate) is subject to a federal income tax and a federal surtax. However, if you earn specific types of income (e.g. income from a business) sourced to a particular province or territory that you have a permanent establishment in, the income may be subject to tax in that province or territory. A discussion of the concept of permanent establishment is beyond the scope of this article. Speak with a qualified tax advisor for more information.

If you are not a resident of Canada, you are subject to Canadian income tax on certain types of Canadian source income. The income you earn may be subject to Canadian withholding tax at source (e.g. Canadian dividend income). You may also have to file a Canadian tax return in certain cases, such as when you sell real property located in Canada. Where a Canadian non-resident income tax return is required, unless the income is subject to tax in a province or territory, a non-resident will be subject to federal income tax and the federal surtax. Generally, you will not have to file a Canadian tax return if you are simply earning passive investment income in Canada.

Avoiding double taxation

When the income you earn is subject to tax in Canada and in another country, it may be possible to claim foreign tax credits in Canada or the other country to minimize or avoid paying double tax.

For example, a foreign tax credit may be claimed on your Canadian income tax return for foreign taxes paid on rental income earned from property located in the other country or on dividends from corporations located in that country.

For U.S. citizens and residents that must file a U.S. income tax return, a foreign tax credit may be claimed on their U.S. income tax return for Canadian tax paid on income from Canadian sources such as rental income earned from a property located in Canada.

Obtaining a determination of your residency status from the CRA

If you plan to leave or have left Canada, either permanently or temporarily, or if you entered or sojourned in Canada, you should work with a qualified tax advisor to determine your residency status for Canadian income tax purposes.

If your situation is complex and the tax advisor is uncertain of your status, they may advise you to complete Form NR73 – *Determination of Residency Status (Leaving Canada)* or Form NR74 – *Determination of Residency Status (Entering Canada)* and will assist you with completing the forms. You can voluntarily use these forms to request that the CRA provide you with an opinion on your residency status, based exclusively on the information provided by you on the forms. Sometimes the CRA may ask you to complete these forms. The CRA may request additional information and supporting documentation upon review of the forms.

If you require more certainty with respect to your residency status on a proposed departure or arrival to Canada, it may be possible to apply to the Income Tax Rulings Directorate for an advance income tax ruling with respect to your residency status instead of filing Forms NR73/NR74 or Form NR74. A ruling is generally binding to the CRA, whereas Form NR73/NR74 is not. The CRA will not provide a ruling unless all the facts of the situation can be established prior to your departure or arrival in Canada.

The income tax laws in regard to residency status are complex and not always straight-forward. While the CRA can make a finding of residency status for a taxpayer, it is possible for the CRA to make an incorrect determination. The CRA's determinations are not always final and can be disputed. If you have been assessed by the CRA based on a residency finding that you feel may be incorrect, you should talk to a qualified tax advisor regarding your options.

Conclusion

Due to the complexity of this area of income tax law and case law in Canada, the determination of your residency status in Canada can be difficult and may not be straight-forward. It's important that you obtain advice from a qualified tax advisor with experience in this area.

This article may contain strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal and/or insurance advisor before acting on any of the information in this article.

Appendix: Residency status when leaving Canada

Here are some examples that demonstrate how the CRA may assess your residency status when you leave Canada:

- If you leave Canada and during your absence you have a home available for you to occupy (whether you own it or lease it), the home is considered a significant residential tie to Canada. However, if you lease the home to a third party on arm's length terms and conditions, the home may not be considered a significant residential tie except when taken together with other residential ties that you have.
- If your spouse or common-law partner (that you are not living separate or apart from) or your dependants remain in Canada while you're abroad, this will be considered a significant residential tie to Canada. Where your significant residential ties are maintained in Canada, you will continue to be a factual resident of Canada.
- In general, when you are physically absent from Canada for a considerable period of time (extending over several months or years) and you have not severed all of your significant residential ties to Canada, your absence, in and of itself, may not be sufficient to break your factual resident status. The CRA will consider evidence of your intention to permanently sever residential ties with Canada, the regularity and length of visits you make to Canada and residential ties established outside Canada. There is no particular length of stay abroad that would necessarily result in breaking factual residency.
- If it is your intention to maintain factual residency status in Canada, in the absence of having residential ties in Canada, your intention alone is generally not sufficient to lead to a determination that you have maintained factual residency in Canada while abroad.
- If you leave Canada and do not establish substantial residential ties in another country, the residential ties you have in Canada may be considered significant and you may be considered to have maintained factual residency in Canada. However, establishing residential ties in another country does not, on its own, mean that you are no longer a resident of Canada for income tax purposes.
- If you do not maintain significant residential ties to Canada and establish them in another country, then generally having secondary residential ties with Canada will not lead to a determination that you have maintained factual residency in Canada. For example, if you sold or rented out your home in Canada, purchased a home in another country and established other primary and secondary ties in that other country, you may no longer be considered a Canadian resident even if you maintain your investment accounts in Canada. In addition, if you have severed all your residential ties to Canada and are considered to have ceased Canadian residency, your residency status is generally not affected by occasional return visits to Canada, whether for personal or business reasons.
- If you are working temporarily outside Canada, vacationing or commuting back and forth to another country from Canada to your place of employment in that other country, teaching or attending school in another country, and you have maintained significant residential ties to Canada, you may continue to be a factual resident of Canada.

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