Wealth Management

the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC WEALTH MANAGEMENT SERVICES

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Moving to Canada from the U.S.

An overview of the Canadian tax system and tax planning

Are you a U.S. citizen or green-card holder who is a newcomer to Canada or have you returned to Canada after an extended absence?

As a U.S citizen or green-card holder living in Canada, you are subject to both the Canadian and the U.S. tax system, which makes tax planning for you much more complex. There is often a disparity between the U.S. and Canadian income tax laws which may affect the effectiveness of certain tax planning strategies. Therefore, it is important that each country's tax laws be considered when determining whether a particular tax planning strategy is appropriate for you.

This article provides an overview of the Canadian tax system and tax planning considerations for U.S. citizens and U.S. green-card holders who have moved to Canada and have established Canadian residency for income tax purposes. You may also want to ask your RBC advisor for separate articles that discuss tax planning for U.S. citizens living in Canada.

Overview of the Canadian income tax system

Canada has a comprehensive personal income tax system. The taxes that are collected are used to fund, among other things, infrastructure, education, healthcare and numerous other services across the country.

Income tax is imposed at the both the federal and provincial or territorial levels of government on an individual basis. In addition, the federal government has entered into tax treaties with a majority of countries in the world (including the U.S.) that impose income tax in the interest of avoiding double taxation and facilitate the administration and enforcement of tax laws of both Canada and its international partners.

While the Departments of Finance for the federal, provincial and territorial

governments determine personal income tax legislation, this legislation is administered by the Canada Revenue Agency (CRA), with the exception of the province of Quebec where Revenu Quebec administers personal income tax. Personal income tax is collected by the CRA for the federal, provincial and territorial governments and by Revenu Quebec for the province of Quebec.

In Canada, income tax is imposed based upon your residency, not your citizenship. Residents of Canada who earn income are required, under the Income Tax Act (the "Act"), to pay tax based upon their worldwide income. That being said, non-residents also have an obligation to pay tax on their Canadian source income. The majority of this article will focus on taxation related to a Canadian resident.

For Canadian residents, the amount of income tax owing is calculated on an individual basis and is based on their net income for tax purposes, the associated amount of tax owing, net of certain tax credits and any tax previously remitted in the year.

If your move to Canada is the result of an international employment assignment and you have entered into a special agreement with your employer (e.g. a tax equalization or tax protection agreement), the calculation of your ultimate liability for income tax under the agreement must be considered and it may affect the type of planning strategies that may be appropriate for you.

Canadian residency status

Your residency status in Canada is either resident or non-resident. This status is relevant with respect to determining your exposure to Canadian income tax and your filing requirements. A resident of Canada may be either a factual or deemed resident of Canada.

The date you become a resident of Canada for Canadian income tax purposes may differ from the date you become a resident for immigration purposes or obtain Canadian citizenship.

Determining your Canadian residency status can be complicated. A more detailed discussion regarding the determination of Canadian residency status is provided in a separate article titled, "Determining your Tax Residency Status in Canada". Your RBC advisor can provide you with a copy of the article. As well, it is important to speak with a qualified tax advisor to determine your residency status for tax purposes.

Canada-U.S. treaty tie-breaker rules

Under the Canadian and the U.S. income tax laws, you may be considered to be a resident of both Canada and the U.S. for income tax purposes. The tax treaty (the "Treaty") between Canada and the U.S. contains "treaty tie-breaker" rules that may deem you to be a non-resident of one country. However, U.S. citizens cannot use the treaty tie-breaker rules to claim non-residency in the U.S. To cease U.S. residency, you must formally take steps to give up your U.S. citizenship.

The date you become a resident of Canada for Canadian income tax purposes may differ from the date you become a resident for immigration purposes or obtain Canadian citizenship.

U.S. green-cardholders who have a closer connection to Canada may be able to use the treaty-tie breaker rules to be reclassified as non-residents of the U.S. for income tax purposes. However, there are various factors and considerations that should be taken into account before doing so. For example, using the tie-breaker rules may result in loss of green-card status and certain green-card holders may be subject to the U.S. expatriation rules. A discussion of the U.S. expatriation rules is beyond the scope of this article and unless otherwise stated, further references in this article to U.S. green-card holders will refer to those who have not used the Treaty to claim non-residency for U.S income tax purposes.

Canadian residents who are U.S. citizens or U.S. green-card holders are taxed on their worldwide income in both countries. However, double taxation may be eliminated or reduced, in part, with the ability to claimed foreign tax credits, which is discussed later in the article.

Deemed acquisition rules

On the date it is determined that you have attained Canadian residency status, you are deemed to have acquired all of the assets (worldwide) you already own, for Canadian income tax purposes, with the exception of certain assets. The assets to which the deemed acquisition rules apply include foreign currency, securities (such as stocks, bonds, rights, options) and real estate located outside of Canada but excludes real estate located in Canada. This deeming rule applies whether or not you physically move the assets to Canada.

You are deemed to have acquired your assets at their fair market value (FMV) on that date and that value becomes the adjusted cost base (ACB) of your assets for Canadian tax purposes. The ACB is relevant because when you subsequently dispose of these assets, this ACB is used to determine your capital gains and losses for Canadian income purposes.

The deemed acquisition rules serve to ensure that any gains or losses accrued before your Canadian residency are not included in determining your future Canadian tax liability.

As a U.S. citizen or green-card holder, you continue to be subject to the U.S. tax system even if you move to Canada. As such, there is no adjustment to the ACB of your assets for U.S. income tax purposes when you move to Canada. As a result, the accrued gains and losses on your assets will be subject to U.S. income tax when the assets are sold. Further, there are differences in the Canadian and U.S. tax treatment of capital gains and losses so the capital gain or loss you will report for Canadian and U.S. income tax purposes is usually different.

In some instances, if you are a U.S. citizen that relinquishes your U.S. citizenship or a U.S. green-card holder that gives up your green-card or use the Treaty to claim non-residency for U.S. tax purposes, you may not be subject to U.S. income tax on the accrued gains for these assets.[1] In these cases, there is a tax windfall since the deemed acquisition rules in Canada do not tax accrued gains on assets owned on your Canadian residency date. This tax windfall may be realized on a number of assets with accrued gains you continue to own after moving to Canada. However, this windfall will not be available on certain assets such as real estate located in the U.S., since real estate continues to be subject to tax in the U.S. even after you are no longer a U.S. citizen or green-card holder.

Moving foreign assets to Canada

After you have attained Canadian residency status for income tax purposes, there are no Canadian income tax implications associated with physically moving foreign currency or securities in-kind to Canada. However, when you convert the foreign denominated cash to Canadian dollars or use it to purchase another asset or investment, you are disposing of that foreign currency, which is a taxable event and may result in a foreign currency exchange gain or loss. The gain or loss is calculated as the difference between the value of the foreign denominated cash converted to Canadian dollars on the date you establish Canadian residency and the value of the cash converted to Canadian dollars on the date it is converted or used to purchase another asset. For individuals, the total annual gain or loss that is in excess of $200 on converting foreign denominated cash is subject to Canadian tax.

That being said, an exchange gain or loss is not triggered if foreign denominated currency is used to invest in assets or accounts that are considered to be "cash on deposit" provided the investments are denominated in the same foreign currency. For example, a gain or loss is generally not triggered if you use the foreign currency to purchase a term deposit in the same foreign currency or if you transfer the foreign currency to a high interest savings account denominated in the same foreign currency. However, if you purchase investments such as bonds or stocks, even if these investments are denominated in the same foreign currency, you will trigger a foreign exchange gain or loss on the currency.

1) This is not the case for U.S. citizens and long-term U.S. green-card holders who are covered expatriates under the expatriation rules and are subject to U.S. taxation as a result of a deemed disposition of their assets. A detailed discussion of the expatriation rules is beyond the scope of this article.

The deemed acquisition rules serve to ensure that any gains or losses accrued before your Canadian residency are not included in determining your future Canadian tax liability.

If you own securities in an investment account in the U.S. or in another foreign country and you are able to transfer them to a Canadian investment account in-kind, you may wish to provide the Canadian financial institution with the ACB of those assets determined after the application of the deemed acquisition rules, as outlined above. Keep in mind that you should also maintain records of the ACB of those assets for U.S. income tax purposes.

For assets that you decide to maintain outside Canada, you should keep records of their ACB for Canadian tax purposes. For those investments that you decide to consolidate with a Canadian financial institution, but it is determined that they cannot be transferred in-kind and are disposed of, the disposition is reportable for Canadian income tax purposes (subject to the deemed acquisition rules) and for U.S. income tax purposes.

Unwinding a deemed disposition

If you were previously a resident of Canada for Canadian income tax purposes, gave up your Canadian residency status and have now returned to Canada and have re-established Canadian residency, there is some tax planning that may benefit you. You may be able to elect to unwind the original deemed disposition and associated taxation that occurred when you left Canada provided you still own the same assets that you owned at the time of your departure from Canada. This planning does not affect your tax obligations under U.S. income tax laws.

For more information regarding this planning, ask your RBC advisor for a separate article titled, "Unwinding the Deemed Disposition for Returning Canadian Residents".

Net income for tax purposes

Your net income for Canadian tax purposes is basically your income earned in the year on a worldwide basis less certain permitted deductions.

Permitted deductions include expenditures such as child care expenses, investment interest expenses and contributions to certain registered pension plans, provided that certain criteria are met.

Income includes both employment and investment income. Investment income can take the form of interest, dividends or net capital gains following from the disposition of capital property. The income tax treatment for each form of investment income is different. For example, 100% of interest income is included in income for tax purposes, while only 50% of net capital gains are included. Dividends received from a Canadian corporation are grossed-up and receive a dividend tax credit, which results in a favourable tax treatment over interest income, while dividends received from a foreign corporation are included in income at an inclusion rate of 100%, which is the same as interest income. For more information regarding the Canadian tax system and the taxation of investment income in Canada, ask your RBC advisor for a separate article titled, “Tax Planning Basics”.

For U.S. citizens and green-card holders, certain Canadian tax-efficient investments may be also be tax-efficient for U.S. income tax purposes. For example, dividends from Canadian publicly traded corporations may be treated as qualified dividends for U.S. tax purposes, which are subject to a favourable maximum U.S. federal income tax rate of 20% instead of regular graduated tax rates that have a maximum tax rate of 37%. These rates do not include an additional 3.8% U.S. net investment tax (NIIT) that may apply to net investment income.

The same favourable maximum 20% U.S. tax rate also applies to capital gains triggered on property held for over a year including Canadian property. However, there are certain Canadian and other non-U.S. based investments that may result in negative U.S. tax implications and thus, may not be appropriate for U.S. citizens and green-card holders. For example, investments in non-U.S. based mutual funds, exchange-traded funds and real estate investment trusts may be subject to punitive U.S. taxation due to the Passive Foreign Investment Company (PFIC) rules. For more information, ask your advisor for a separate article titled, “Passive Foreign Investment Company (PFIC) Rules”.

Amount of tax owing

Canada has adopted a graduated tax system, whereby as more income is earned, more tax is owed on that income.

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Each level of government has set out a number of tax brackets and each bracket is assigned a specific income tax rate. For those taxpayers with low levels of income, a low rate of tax is owed, while individuals with higher levels of income will pay tax at a higher rate on income in the higher tax brackets. A surtax may also apply depending on the province of residence.

In determining the amount of tax owing, certain credits may apply to reduce this amount. Non-refundable credits can be applied to reduce the amount of tax owing to zero and if these credits are greater than your taxes owing, the credits may be lost. On the other hand, certain refundable tax credits may be paid to you (if you are eligible), even if these credits exceed your taxes owning.

The first non-refundable credit, which is available to all individual resident taxpayers, is the basic amount. Any income earned up to this amount is not subject to tax. You may also be entitled to other non-refundable tax credits, some examples are the donation tax credit if you make a donation to a qualified charity, the medical expense tax credit if you paid certain medical expenses and the tuition tax credit if you paid certain tuition fees, to name a few. Examples of some of the additional credits, which may reduce the tax owning to zero and are not refundable, include the foreign tax credit for tax paid to a foreign country on foreign income taxed in Canada and the federal dividend tax credit for Canadian dividend income that was included in your income. Examples of refundable tax credits are the employee and partner goods and services tax/ harmonized sales tax rebate, eligible educator school supply credit and the working income tax credit.

Factual residents of Canada are subject to income tax at the federal and provincial or territorial levels. In the first year of filing their Canadian income tax return, factual residents may be restricted to claiming a prorated portion of certain non-refundable tax credits, based on their residency start date.

Deemed residents of Canada are generally not resident in a particular province or territory (except in certain cases under Quebec tax laws) and thus are subject to federal income tax and a federal surtax. However, specific types of income sourced to a particular province may be subject to tax in that province. Deemed residents are not entitled to any provincial tax credits.

Federal, provincial and territorial taxes may be collected through initial withholding tax, such as income tax deducted at source from employment income and taxes on dividends paid, as well as tax instalment payments made on a quarterly basis. These are considered when determining the amount of tax owing upon filing your Canadian income tax return.

Foreign tax credits

Foreign tax credits can help minimize the effects of double taxation for U.S. citizens and green-card holders living in Canada who are taxed on their worldwide income in both Canada and the U.S.

For certain types of income, such as Canadian employment income, U.S. tax laws may allow you to claim certain deductions and exclusions from your taxable income. However, claiming a foreign tax credit instead may result in a more favourable tax outcome. Speak with a qualified tax advisor to determine whether it makes more sense to claim deductions and exclusions or foreign tax credits in your particular situation.

The Treaty dictates which types of income a particular country has the first right to tax. For foreign tax credit purposes, the country that does not have the first right to tax allows the taxpayer to claim a foreign tax credit for some or all of the foreign tax paid in the other country. Generally, foreign tax credits eliminate or minimize the risk of double taxation. However, there is an exception for Canadian source investment income that is subject to the 3.8% U.S. net investment income tax (NIIT) such as Canadian dividend income. For these types of income, the U.S. tax laws do not permit foreign tax credits for the Canadian income tax incurred, which may result in a double tax.

The foreign tax credit rules are complex. You should speak with a qualified tax advisor to determine how to report your income and any deductions, exclusions or foreign tax credits you may claim.

Canadian income attribution rules

As a resident of Canada it is important to be aware of the Canadian income attribution rules that restrict certain types of tax planning in Canada. It is important to keep these rules in mind as these rules may affect planning that you've done for U.S. tax purposes and your future tax planning in Canada. A discussion of the types of tax planning affected and the income attribution rules that apply is beyond the scope of this article. However, you can ask your RBC advisor for a separate article that discusses these rules titled, "Income Splitting and the Income Attribution Rules".

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U.S. income received before Canadian residency

Since as a resident of Canada you are taxed on your worldwide income, if you receive income from the U.S., the income is generally subject to Canadian tax. This is the case even if the income is not from Canadian sources and relates to a period when you were not a resident of Canada. For U.S. citizens and green-card holders the income will also be subject to U.S. income tax.

You may be able to claim a foreign tax credit on your Canadian return to reduce your Canadian tax liability. For example, a foreign tax credit is available for U.S. income tax incurred in the same year on U.S. source income. If the Canadian tax you are liable for is higher than the U.S. tax incurred, there will be an excess of Canadian tax you will need to pay on your Canadian income tax return. Basically, you are paying taxes at the higher of the two country's tax rates. If the U.S. tax was incurred in a different tax year, a foreign tax credit will generally not be permitted on your Canadian return. As a result, you will be subject to double tax (both Canadian and U.S. tax) on the income.

Examples of the types of U.S. income that you may receive after settling in Canada that could be affected include a bonus paid from your previous employer in the U.S. or income from employee stock options exercised in Canada that were granted while you were living in the U.S. and not a Canadian resident.

If you were paid the bonus or exercised the employee stock options before you moved to Canada, you would not be exposed to the potential excess Canadian tax or double tax.

Canadian taxation of trusts established outside Canada

If you are the settlor, trustee or beneficiary of a trust that was created outside of Canada, you should talk to a cross-border tax professional about the potential tax implications (in Canada or in the foreign country) that may apply as a consequence of your move to Canada.

For example, if you are the sole trustee of a trust that was created outside Canada, the trust may now be considered resident in Canada. As a result, the deemed acquisition rules, discussed earlier, will apply to the assets in the trust and the trust will be subject to Canadian income tax, as

a resident in Canada. It is also possible that the taxation of the trust under Canadian and the foreign country's tax rules may not coincide resulting in unfavourable tax consequences such as double taxation.

For example, in the U.S., it is common for U.S. citizens and green-card holders to use a U.S. revocable trust as an estate planning tool to avoid probate. However, this type of trust may not be appropriate when a U.S. citizen or green-card holder moves to Canada.

A U.S. revocable trust is treated as a disregarded entity for U.S. income tax purposes (the owner is taxed on income earned in the trust as if they owned the assets of the trust). However, for Canadian tax purposes, a revocable trust is treated as a separate entity for income tax purposes and the trust may be subject to Canadian income tax. Sometimes, the differences in the U.S, and Canadian tax treatment results in double taxation and may offset the benefits of a U.S. revocable trust. In some cases, it may make sense to unwind a U.S. revocable trust before moving to Canada.

Contributing to a foreign pension plan while in Canada

If as a resident of Canada you continue to contribute to a foreign retirement plan, there are a few matters which you should be aware of for Canadian income tax purposes.

Firstly, contributions made to the foreign plan are generally not deductible. However, a tax treaty between Canada and the foreign country (e.g. U.S., Germany, UK, and France) may provide circumstances where you can deduct them.

Secondly, the foreign plan will usually be treated as an employee benefit plan (EBP) for Canadian tax purposes during the first 60 months you are resident in Canada. Once you have lived in Canada beyond 60 months, contributions to the plan may be considered to be made to a separate plan that is taxed as a retirement compensation arrangement (RCA).

An employer contribution to an EBP or an RCA and the income earned within such a plan is not included in your income for Canadian tax purposes. These amounts will be subject to taxation in Canada when you make a withdrawal from the plan. In addition, for RCAs, 50% of the contributions and earnings must be transferred to a non-interest bearing refundable tax account with the CRA. When withdrawals are made from the RCA, the associate balance within the refundable tax account is paid to the RCA by the CRA. For more information on the taxation of RCAs, ask your RBC advisor for a separate article titled, "Retirement Compensation Arrangement".

For Canadian tax purposes, a revocable trust is treated as a separate entity for income tax purposes and the trust may be subject to Canadian income tax.

The RCA tax treatment will not apply if your employer makes an election with the CRA within a specified period, to request that the CRA continue to treat the plan as an EBP. If you are a resident of Canada at the time of receipt of amounts from an EBP, including any allocation of income earned by the plan the amounts received may be taxable as employment income. Contributions made during the year to an EBP by your employer may impact the amount that you can contribute to a RRSP in the following year.

U.S. citizens who move to Canada from the U.S. with US retirement plans (e.g. IRA and 401k) should seek advice from their tax advisor regarding the Canadian tax implications.

Transferring a foreign retirement plan to Canada

Canadian tax laws generally allow a tax-deferral on income earned from foreign pension plans until payments are received from these plans. A foreign tax credit for income taxes paid to a foreign jurisdiction may be claimed to minimize or eliminate double taxation.

There are also special tax provisions in the Act that may allow you to move the gross value of the assets from a foreign pension plan to an RRSP on a tax neutral basis. These provisions apply to certain U.S. retirement plans (e.g. 401K and IRA plans) that are taxable in Canada as foreign pension plans or foreign retirement arrangements provided certain conditions are met. These provisions do not apply to Roth IRA plans.

For more information, ask your RBC advisor for a copy of a separate article titled, "Transferring a Foreign-Based Retirement Plan to an RRSP".

Moving to canada with a U.S. Roth IRA

If you moved to Canada with a U.S. Roth IRA, you can elect to defer Canadian tax on the income accrued in the plan until it is withdrawn. The election is a one-time election that must be filed by the due date of your personal income tax return for the first year you become a resident of Canada. You must also not contribute to the Roth IRA while you are a resident of Canada.

Ask your RBC advisor for a separate article titled, "Moving to Canada with a U.S. Roth IRA", for more information.

Contributing to registered plans in Canada

The government offers a number of savings vehicles designed to provide Canadians options to plan for retirement and save for various other purposes. These savings vehicles are registered plans, which provide different tax advantages and benefits. Some of the common types of registered plans are registered retirement savings plan (RRSP), tax-free savings account (TFSA), registered education savings plan (RESP) and registered disability savings plan (RDSP).

A discussion of these plans is beyond the scope of this article; however, your RBC advisor can provide you with articles on the following topics for more information:

- Registered Retirement Savings Plans
- Tax-Free Savings Accounts
- Registered Education Savings Plans
- Registered Disability Savings Plans

As a U.S. citizen and green-card holder living in Canada, it is important to consider how the U.S. income tax laws apply to these plans. You may be subject to punitive U.S. income tax if you save within some of these plans. Some plans, such as an RRSP will generally not result in negative U.S. tax implications. Therefore, it is important to confirm with a cross-border tax advisor whether it is appropriate to invest in a particular plan.

Pension income splitting with foreign plans

In Canada, there are special tax rules that allow for pension income splitting. Spouses can elect to allocate up to 50% of qualified pension income received by one spouse to the other spouse for Canadian income tax reporting purposes. This allocation may result in tax savings to the couple overall. In addition to Canadian pension income, foreign pension income you receive may qualify for pension income splitting.

For U.S. income tax purposes, pension income earned is taxable to the spouse who earned it and the U.S. tax laws do not recognize pension income splitting. However, a U.S. couple filing a joint U.S. income tax return that has elected to use pension income splitting to reduce their Canadian taxes generally avoids the potential of a mismatch between the U.S. and Canadian tax reporting requirements. If one spouse is a U.S. person and the other is not, certain tax elections may be filed in certain cases in order to be eligible to file jointly. However, it is not always beneficial to file joint returns when one spouse is not a U.S. person. Where filing jointly in the U.S. is not feasible, it may still make sense to elect for pension income splitting for Canadian tax purposes where the pensioner has

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sufficient excess foreign tax credits that can be claimed on their U.S. return. You should speak to your tax advisor regarding whether the pension income splitting strategy is appropriate for you.

For more information about pension income splitting rules in Canada, ask your RBC advisor for a separate article titled, “Pension Income Splitting”.

Income tax return filing requirements

If you move to Canada and establish factual residency partway through a calendar year, you must file a “part-year return” reporting your worldwide income from the date you established residency for tax purposes until December 31 of that year.

If you are a deemed resident of Canada, you are considered a Canadian resident starting January 1 and you must file a “full-year return” and report worldwide income for the entire year.

Canadian residents file individual tax returns on a calendar year basis. The deadline to file a part-year or full-year individual Canadian income tax return and pay your Canadian tax liability is April 30th of the following taxation year. If you or your spouse are self-employed, the filing deadline for your individual Canadian tax returns is June 15th of the following taxation year; however, the tax liability is still due by April 30th of the following taxation year. If you do not file your income tax return or pay your tax liability by these deadlines, you may be subject to interest and penalties. In addition to filing an individual income tax return, you may need to complete other tax filings such as an information return to disclose foreign income and assets.

As a U.S. citizen or green-card holder living in Canada, you must continue to file U.S. individual income tax returns in addition to Canadian ones.

Disclosure of foreign income and assets

Canadian residents who at any time in the calendar year own or have a beneficial interest in certain foreign properties with a total cost greater than C$100,000 are required to file an annual information return, CRA Form T1135 — Foreign Income Verification Statement.

A Canadian resident individual does not have to file this form for the year they first become a resident of Canada. However, this exception does not apply if you are returning to Canada and re-establish Canadian residency. Additional foreign reporting may be required under Canadian tax rules if you have an interest in a foreign corporation or a foreign trust. For more information on Form T1135, ask your RBC advisor for a copy of a separate article titled, “Foreign Reporting Requirements in Canada.”

U.S. citizens and U.S. green-card holders living in Canada with assets and financial accounts located outside the U.S., may be required under U.S. tax laws to disclose information about these assets and accounts on certain U.S. forms such as Form 8938 — Statement of Specified Foreign Financial Assets and FinCen Report 114 — Report of Foreign Bank and Financial Accounts (FBAR). Speak with a qualified tax advisor for more information about your filing requirements.

Social security benefits

Working in Canada

Individuals employed in Canada and their employers must contribute to the Canada Pension Plan (CPP) (or the Quebec Pension Plan (QPP) for employees in Quebec) as well as Employment Insurance (EI). Your Canadian employer will deduct these contributions at source from your wages.

You may be able to waive your requirement to contribute to CPP/QPP if you qualify under a social security agreement (or totalization agreement) and you are an employee of a company that transferred you to Canada to work for a limited period and you continue to be covered by a comparable plan in your home country.

Canada has entered into a number of agreements with various countries including the U.S. Quebec has entered into similar agreements regarding QPP. A social security agreement is an international agreement between Canada and another country. One of the main objectives of these agreements is to ensure that the pension programs for people who have lived or worked in both countries are coordinated. The social security agreements vary from agreement to agreement.

Under the social security agreement between Canada and the U.S., a U.S. citizen or green-card holder employed by a U.S. employer on a temporary work assignment in Canada may be exempt from having to contribute to CPP if they remain on the social security system of the U.S.

Retiring in Canada

If you have lived or worked in Canada and in another country, or you are the surviving spouse or common-law partner of someone who lived or worked in Canada and in another country, you may be eligible for pensions and benefits from Canada and/or from the other country under a social security agreement between Canada and the other country. If you do not qualify for benefits from Canada and/or the other country, a social security agreement may help you qualify for some benefits.

Individuals employed in Canada and their employers must contribute to the Canada Pension Plan (CPP) (or the Quebec Pension Plan (QPP) for employees in Quebec) as well as Employment Insurance (EI).

To receive Canadian benefits, you will need to meet certain contributory or residency requirements. If you have lived and/or worked in Canada and in another country and do not meet the requirements for CPP or Old Age Security benefits, a social security agreement may help you qualify.

If you worked in the U.S. and is now retiring in Canada, you may be entitled to social security benefits in Canada and/ or the U.S.

For more information, contact Service Canada at 1-800-454-8731 (if you live in Canada or the U.S.) or 1-613-957-1954 (if you live outside Canada; collect calls accepted) or visit their website.

Gift, estate or inheritance taxes

The U.S. has a gift, estate and generation skipping transfer tax (GSTT) system referred to as the U.S. transfer tax system. Gift tax may apply when gifts are made during your lifetime and estate tax may apply to the value of all your estate when you die. GSTT can apply to gifts or bequests made to skip individuals, including grandchildren and great grandchildren.

Canada does not have gift or estate tax, however, if you make a gift of appreciated assets to someone other than a spouse, you are deemed to have disposed of these assets at their FMV and will be taxable on the accrued gains and losses realized on the transfer in the year the gift is made. In addition, the income attribution rules referenced earlier may serve to attribute future income earned on the gifted property back to you. Upon your death, you are deemed to have disposed of your assets at FMV, unless the assets are left to your surviving spouse. As such, income tax on the accrued gains on your assets may be payable at that time.

As a U.S. citizen living in Canada, you continue to be exposed to the U.S. transfer tax system. A U.S. green-card

holder may also be exposed. While, Canada generally does not allow foreign tax credits for gift or estate tax incurred in a foreign country, under the tax treaty with the U.S., Canada will allow foreign tax credits for U.S. estate tax only. The foreign tax credit can be claimed against Canadian capital gains tax triggered on death on U.S. situs assets. For more information, ask your RBC advisor for a separate article on the topic of U.S. gift, estate and generation skipping transfer tax.

Will and Powers of Attorney

You may have moved to Canada with a Will and Powers of Attorney that were drafted and executed in the U.S. The laws in a U.S. state where your documents were prepared and executed may differ from the provincial or territorial jurisdiction within which you reside presently. As a result, the validity of these documents may be uncertain.

Your Will

It is important to ensure that you have a valid Will after you move to Canada that properly addresses your wishes for how your assets are to be distributed on your death. You should review your current Will with a qualified legal advisor to determine whether your Will is valid in accordance with the laws of the province or territory in which you are now living. You may need to update or draft a new Will. You may also wish to consider who you have named as executor(s) or trustee(s) in your Will. If they are non-residents of Canada, they may no longer be suitable candidates for a number of reasons, including tax, legal and compliance issues.

If you have assets located in different parts of the world, such as real property, you should review the laws in each country to determine whether it makes sense to have a separate Will in each country, or whether an international Will (where possible) is more appropriate. It is important when you have separate Wills that they are drafted properly so that one does not revoke the other and they deal with Canadian and foreign estate assets separately as coexisting legal documents.

Your power of attorney

You may want to consider having a power of attorney after your move to Canada that appoints someone to manage your financial and personal affairs should you become incapable. With the legal requirements for a valid power of attorney documents differing from country to country, if you already have a power of attorney, you may need to draft new one that is valid in accordance with the laws of your province or territory of residence.

If you own property in other countries, such as real estate, it may be prudent to have a separate power of attorney for the jurisdiction where the property is located to ensure these properties can be properly managed. Similar to your Will, it is important when you require a separate power of attorney for assets located in Canada and in a foreign country that one does not revoke the other and they deal with Canadian and foreign estate assets separately as coexisting legal documents.

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Ceasing Canadian residency

If your stay in Canada is not permanent and later you decide to move from Canada, it will be important to consider the tax implications of ceasing Canadian residency. When you cease Canadian residency, you are deemed to dispose of your assets at FMV (with certain exceptions). This will trigger the accrued gains and losses on your assets, which will be subject to Canadian tax. If you are resident in Canada for not more than 60 months out of the prior 10 years, any assets you owned when you became a Canadian resident will not be deemed disposed of when you cease residence.

You made your move

When you move to another country, it is important to understand the tax system of that country and the effects it may have on your income tax and estate planning. There may be Canadian tax planning strategies used by residents of Canada that may not work for U.S. citizens and green-card holders due to differences in the U.S. and Canadian tax treatment. Before you implement a Canadian tax planning strategy you should confirm with your tax advisor that the strategy is appropriate in light of the U.S. tax treatment that will apply.

Also, speak with a qualified tax and legal advisor to help you ensure that your estate planning wishes can still be executed now that you are a resident of Canada.

This article may contain several 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.

Wealth Management

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