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Taxes For Canadians Going Offshore
by
George C Gonzalez, PhD, CPA, CA

Outline

- I. Framework for Discussion: Four Stages of Going Offshore
- II. Residency v. Non-residency: Tests
- III. Four Stages: Tax Ramifications of Each Stage
- IV. Tax Treaties
- V. Departure Tax (Deemed Dispositions)

Going Offshore: Four Stages

- Taxation as a Canadian resident
 1. 100% Canadian assets and income
 2. Combination of Canadian and foreign assets and income
- Taxation as a Canadian non-resident
 3. Combination of Canadian and foreign assets and income
 4. 100% foreign assets and income

Of course, not everyone goes through all four stages.

Residency v. Non-Residency

Canadian tax **residency** means:

- You pay tax on your world income, i.e., income from all sources, both Canadian and foreign.

Canadian tax **non-residency** means:

- You pay tax on Canadian source income only.

Residency: Tests

You know you're a Canadian resident if ...

You meet one of the tests under the two main residency categories:

- Factual resident
- Deemed resident

Each of the above categories has different tests.

Factual Resident

Someone who has a set of strong “residential ties” to Canada. Main types of ties:

1. Dwelling place (or places)
2. Spouse or common-law partner
3. Dependants

Factual Resident (cont'd)

Someone who has a set of strong “residential ties” to Canada. Main types of ties:

1. Dwelling place (or places)
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The Canada Revenue Agency (CRA) calls these three “significant residential ties”. Meeting one of these automatically makes you a resident for tax purposes. (Regardless of how much time you spend in Canada.)

Factual Resident (cont'd)

There are also “secondary residential ties”.
Some are:

- Personal property in Canada
- Economic Ties to Canada
- Canadian medical insurance coverage
- Canadian driver's license

Factual Resident (cont'd)

- Other secondary residential ties include social ties, Canadian passport, Canadian work permits, vehicle registered in Canada, seasonal dwelling place.
- Secondary residential ties are **examined collectively** rather than individually.

The CRA lists ten secondary residential ties in Income Tax Folio S5-F1-C1.

Deemed Resident

- The Factual Resident tests are the first tier used to determine residency.
- If all first tier tests are failed, the second tier of tests is examined: Deemed Resident tests.
- The CRA lists seven categories of deemed residents.

Deemed Resident (cont'd)

- Six of the seven Deemed Resident tests relate in some way to individuals in a governmental position.
- Examples: armed forces, officers in the federal or a provincial government, etc.
- The seventh one is the Sojourner test.

Deemed Resident (cont'd)

- To sojourn is to stay temporarily in a place.
- If an individual sojourns in Canada for a total of 183 days or more in any calendar year, they would be considered a Deemed Resident.

Residency Tests Summary

- **Factual Resident, significant residential ties:** if one of the three tests met, automatically considered a resident.
- **Factual Resident, secondary residential ties:** tests are looked at collectively, may or may not result in being considered a resident.
- **Deemed Resident:** Tests are looked at if all Factual Resident tests failed. If one or more Deemed Resident tests met, considered a resident.

Going Offshore: Four Stages

Stage 1

Taxation as a Canadian resident: 1. 100% domestic assets and income

- No major ramification.
- Continue filing income tax returns as you normally would (Form T1, etc.).

Going Offshore: Four Stages

Stage 2

Taxation as a Canadian resident: 2. Combination of Canadian and foreign assets and income:

- May need to file Form T1135.
- Income from foreign assets must be included in annual income tax return (Form T1).

Going Offshore: Four Stages

Stage 2 (cont'd)

Form T1135, Foreign Income Verification Statement:

- Reporting threshold is \$100,000
- Based on the total of all foreign property owned in your name.
- Determined on a year-by-year basis

Going Offshore: Four Stages

Stage 2 (cont'd)

Form T1135 Exclusions: some types of property excluded. Main ones:

- Property held in retirement accounts
- Foreign investments held in Canadian mutual funds
- Property used in a business
- Personal-use property

Going Offshore: Four Stages

Stage 2 (cont'd)

Special note on “personal-use property”:

- Vacation property used more than 50% for personal use: considered personal-use property
- Title must be in your name.
- Vacation property held through a foreign corporation or trust is different.
- The corporate shares or trust units are considered a foreign asset.

Going Offshore: Four Stages

Stage 3

Taxation as a Canadian non-resident: 3. Combination of Canadian and foreign assets and income:

- File an annual tax return with Canada (Form 5013-R)
- Depending on your foreign jurisdiction(s), you may also need to file foreign country tax return(s).

Going Offshore: Four Stages

Stage 4

Taxation as a Canadian non-resident: 4. 100% foreign assets and income:

- No tax returns need be filed with Canada.
- Depending on your foreign jurisdiction(s), you may need to file foreign country tax return(s).

Tax Treaties

- Canada has tax treaties with about 90 countries.
- A tax treaty overrides a country's tax laws.
- Accordingly, it is very important to determine if there is a tax treaty between Canada and the country in which you live or invest.

Departure Tax (Deemed Dispositions)

- “Deemed Dispositions” rules apply to Canadians who become non-residents.
- You are deemed to have disposed of certain types of property at their fair market value (FMV) when you left Canada...
- ... and to have immediately reacquired them for the same amount.

Departure Tax (cont'd)

There are four main exceptions. First two:

1. Canadian real or immovable property, Canadian resource property, and timber resource property
2. Canadian business property (including inventory) if the business is carried on through a permanent establishment in Canada

Departure Tax (cont'd)

There are four main exceptions. Second two are:

3. Pension plans and virtually all formal Canadian retirement plans
4. Property you owned when you last became a resident of Canada, or property you inherited after you last became a resident of Canada, if you were a resident of Canada for 60 months or less during the 10-year period before you emigrated

Departure Tax (cont'd)

Electing out of one or more exceptions:

- You can elect to declare the deemed disposition of properties listed in exceptions 1 or 2 above.
- Complete Form T2061A

Departure Tax (cont'd)

Election to defer payment of tax on deemed dispositions:

- You would pay the tax later, without interest, when you dispose of the property.
- Complete Form T1244
- If amount of tax from the deemed disposition is more than \$16,500*, you have to provide the CRA with adequate security to cover the amount.

* (\$13,777.50 for former residents of Québec)

Conclusion

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References

- Income Tax Folio S5-F1-C1 <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index.html>
- Form T1135 Foreign Income Verification Statement <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t1135.html>
- Form 5013-R Income Tax and Benefit Return for Non-Residents and Deemed Residents of Canada <https://www.canada.ca/en/revenue-agency/services/forms-publications/tax-packages-years/general-income-tax-benefit-package/non-residents/5013-r.html>
- Departure Tax (Deemed Dispositions of Property) <https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/individuals-leaving-entering-canada-non-residents/dispositions-property.html>

References (cont'd)

- Permanent Establishment: <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/provincial-territorial-corporation-tax/permanent-establishment.html>
- Form T2061A, Election by an Emigrant to Report Deemed Disposition of Property and any Resulting Capital Gain or Loss
<https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t2061a.html>
- Form T1244 Election, Under Subsection 220(4.5) of The Income Tax Act, to Defer the Payment of Tax on Income Relating to the Deemed Disposition of Property <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t1244.html>

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