Income Tax Folio S5-F1-C1, Determining an Individual's Residence Status

Series 5: International and Residency

Folio 1: Residency

Chapter 1: Determining an Individual's Residence Status

Summary

The purpose of this Chapter is to explain the position of the Canada Revenue Agency (CRA) concerning the determination of an individual's residence status for income tax purposes and the factors to be taken into account in making that determination.

Under the Canadian income tax system, an individual's liability for income tax is based on his or her status as a resident or a **non-resident** of Canada. An individual who is **resident** in Canada during a tax year is subject to Canadian income tax on his or her worldwide income from all sources. Generally, a **non-resident** individual is only subject to Canadian income tax on income from sources inside Canada.

An individual who is resident in Canada can be characterized as ordinarily resident or deemed resident. An individual who is ordinarily resident in Canada will be subject to Canadian tax on his or her worldwide income during the part of the year in which he or she is resident in Canada; during the other part of the year, the individual will be taxed as a non-resident. An individual who is deemed resident in Canada in a particular year will be subject to Canadian income tax on his or her worldwide income throughout that year. In certain situations, an individual who would otherwise be ordinarily resident or deemed resident in Canada may be deemed not to be resident in Canada pursuant to subsection 250(5) and the tie-breaker rules of an income tax treaty.

The factors to be considered in the determination of an individual's residence status are discussed throughout this Chapter. Many of the comments in this Chapter apply to determinations of residence status for provincial, as well as federal, tax purposes. Taxpayers seeking a less technical overview of these matters may prefer to first review Residency – Individuals on the CRA website.

The CRA issues income tax folios to provide technical interpretations and positions regarding certain provisions contained in income tax law. Due to their technical nature, folios are used primarily by tax specialists and other individuals who have an interest in tax matters. While the comments in a particular paragraph in a folio may relate to provisions of the law in force at the time they were made, such comments are not a substitute for the law. The reader should, therefore, consider such comments in light of the relevant provisions of the law in force for the particular tax year being considered.

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General Overview

1.1 Under the Canadian income tax system, an individual's liability for income tax is based on his or her status as a **resident** or a **non-resident** of Canada. An individual who is **resident** in Canada during a tax year is subject to Canadian income tax on his or her worldwide income from all sources. Generally, a **non-resident** individual is only subject to Canadian income tax on income from sources inside Canada. An individual may be resident in Canada for only part of a year, in which case the individual will only be subject to Canadian tax on his or her worldwide income during the part of the year in which he or she is resident; during the other part of the year, the individual will be taxed as a non-resident.

Provincial residence

1.2 Many of the comments in this Chapter apply to determinations of residence status for provincial, as well as federal, tax purposes. Generally, an individual is subject to provincial tax on his or her worldwide income from all sources if the individual is **resident** in a particular province **on December 31** of the particular tax year. An individual is considered to be resident in the province where he or she has significant residential ties.

1.3 In some cases, an individual will be considered to be resident in more than one province on December 31 of a particular tax year. This situation usually arises where an individual is physically residing in a province other than the province in which the individual ordinarily resides, on December 31 of the particular tax year. For example, an individual might be away from his or her usual home for a considerable length of time on a temporary job posting or in the course of obtaining a post-secondary education. An individual who is resident in more than one province on December 31 of a particular tax year will be considered to be resident **only** in the province in which the individual has the **most** significant residential ties, for purposes of computing his or her provincial tax payable.

1.4 Taxpayers who live in Canada throughout the year requiring assistance in determining their province of residence for provincial tax purposes should contact their local Tax Services Office. Taxpayers who live outside Canada for all or part of the year who require assistance in making this determination should contact International tax and non-resident enquiries. See also Tax Alert: Working away from home? and Tax Alert: Where you live matters!

Meaning of resident

1.5 The term **resident** is not defined in the Act, however, its meaning has been considered by the Courts. The leading decision on the meaning of **resident** is Thomson v Minister of National Revenue, [1946] SCR 209, 2 DTC 812. In this decision, Rand J. of Supreme Court of Canada held **residence** to be "a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question."

Meaning of ordinarily resident

1.6 In determining the residence status of an individual for purposes of the Act, it is also necessary to consider subsection 250(3), which provides that, in the Act, a reference to a person **resident** in Canada includes a person who is **ordinarily resident** in Canada. In Thomson, Estey J. held that, "one is "ordinarily resident" in the place where in the settled routine of his life he regularly, normally or customarily lives".

1.7 In the same decision, Rand J. stated that the expression **ordinarily resident** means, "residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to a question of its application." Justice Rand also went on to say that, "ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstances, but also accompanied by a sense of transitoriness and of return." The meaning given to the expressions **resident** and **ordinarily resident** as stated by the Supreme Court of Canada in Thomson, have generally been accepted by the Courts.

1.8 To determine residence status, all of the relevant facts in each case must be considered, including residential ties with Canada and length of time, object, intention and continuity with respect to stays in Canada and abroad.

1.9 An individual who is **ordinarily** resident in Canada as described in ¶1.6 – 1.7 is considered to be **factually** resident in Canada. Where an individual is determined not to be factually resident in Canada, the individual may still be **deemed** to be resident in Canada for tax purposes by virtue of subsection 250(1) (see ¶1.30 – 1.36). In certain situations, an individual who would otherwise be factually or deemed resident in Canada may be deemed not to be resident in Canada, pursuant to subsection 250(5) (see ¶1.37 - 1.39).

Factual residence – leaving Canada

Residential ties in Canada

1.10 The most important factor to be considered in determining whether an individual leaving Canada remains resident in Canada for tax purposes is whether the individual maintains residential ties with Canada while abroad. While the residence status of an individual can only be determined on a case by case basis after taking into consideration all of the relevant facts, generally, unless an individual severs all significant residential ties with Canada upon leaving Canada, the individual will continue to be a factual resident of Canada and subject to Canadian tax on his or her worldwide income.

Significant residential ties

1.11 The residential ties of an individual that will almost always be significant residential ties for the purpose of determining residence status are the individual's:

- dwelling place (or places);
- spouse or common-law partner; and
- dependants.

1.12 Where an individual who leaves Canada keeps a dwelling place in Canada (whether owned or leased), available for his or her occupation, that dwelling place will be considered to be a significant residential tie with Canada during the individual's stay abroad. However, if an individual leases a dwelling place located in Canada to a third party on arm's-length terms and conditions, the CRA will take into account all of the circumstances of the situation (including the relationship between the individual and the third party, the real estate market at the time of the individual's departure from Canada, and the purpose of the stay abroad), and may consider the dwelling place not to be a significant residential tie with Canada except when taken together with other residential ties (see ¶1.26 for an example of this situation and see ¶1.15 for a discussion of the significance of secondary residential ties).

1.13 If an individual who is married or cohabiting with a common-law partner leaves Canada, but his or her spouse or common-law partner remains in Canada, then that spouse or common-law partner will usually be a significant residential tie with Canada during the individual's absence from Canada. Similarly, if an individual with dependants leaves Canada, but his or her dependants remain behind, then those dependants will usually be considered to be a significant residential tie with Canada

while the individual is abroad. Where an individual was living separate and apart from his or her spouse or common-law partner prior to leaving Canada, by reason of a breakdown of their marriage or common-law partnership, that spouse or common-law partner will not be considered to be a significant tie with Canada.

Secondary residential ties

1.14 Generally, secondary residential ties must be looked at collectively in order to evaluate the significance of any one such tie. For this reason, it would be unusual for a single secondary residential tie with Canada to be sufficient on its own to lead to a determination that an individual is factually resident in Canada while abroad. Secondary residential ties that will be taken into account in determining the residence status of an individual while outside Canada are:

- personal property in Canada (such as furniture, clothing, automobiles, and recreational vehicles);
- social ties with Canada (such as memberships in Canadian recreational or religious organizations);
- economic ties with Canada (such as employment with a Canadian employer and active involvement in a Canadian business, and Canadian bank accounts, retirement savings plans, credit cards, and securities accounts);
- landed immigrant status or appropriate work permits in Canada;
- hospitalization and medical insurance coverage from a province or territory of Canada;
- a driver's license from a province or territory of Canada;
- a vehicle registered in a province or territory of Canada;
- a seasonal dwelling place in Canada or a leased dwelling place referred to in ¶1.12;
- a Canadian passport; and
- memberships in Canadian unions or professional organizations.

Other residential ties

1.15 Other residential ties that the Courts have considered in determining the residence status of an individual while outside Canada, and which may be taken into account by the CRA, include the retention of a Canadian mailing address, post office box, or safety deposit box, personal stationery (including business cards) showing a Canadian address, telephone listings in Canada, and local (Canadian) newspaper and magazine subscriptions. These residential ties are generally of limited importance except when taken together with other residential ties, or with other factors such as those described in ¶1.16.

Application of term ordinarily resident

1.16 Where an individual has not severed all of his or her residential ties with Canada, but is physically absent from Canada for a considerable period of time (that is, for a period of time extending over several months or years), the Courts have generally focused on the term **ordinarily resident** in determining the individual's residence status while abroad. The strong trend in decisions

of the Courts on this issue is to regard temporary absence from Canada, even on an extended basis, as insufficient to avoid Canadian residence for tax purposes. Accordingly, where an individual maintains residential ties with Canada while abroad, the following factors will be taken into account in evaluating the significance of those ties:

- evidence of intention to permanently sever residential ties with Canada;
- regularity and length of visits to Canada; and
- residential ties outside Canada.

For greater certainty, the CRA does not consider that intention to return to Canada, in and of itself and in the absence of any residential ties, is a factor whose presence is sufficient to lead to a determination that an individual is resident in Canada while abroad.

Evidence of intention to permanently sever residential ties

1.17 Whether an individual intended to permanently sever residential ties with Canada at the time of his or her departure from Canada is a question of fact to be determined with regard to all of the circumstances of each case. Although length of stay abroad is one factor to be considered in making this determination (that is, as evidence of the individual's intentions upon leaving Canada), the Courts have indicated that there is no particular length of stay abroad that necessarily results in an individual becoming a non-resident. Generally, if there is evidence that an individual's return to Canada was foreseen at the time of his or her departure, the CRA will attach more significance to the individual's remaining residential ties with Canada (see ¶1.11 – 1.15), in determining whether the individual continued to be a factual resident of Canada subsequent to his or her departure. For example, where, at the time of an individual's departure from Canada, there exists a contract for employment in Canada if and when the individual returns to Canada, the CRA will consider this to be evidence that the individual's return to Canada was foreseen at the time of departure. However, the CRA would have to review each individual's situation on a case-by-case basis to determine whether the individual's remaining residential ties with Canada, including the contract of employment, are sufficient to conclude that the individual continues to be resident in Canada.

Steps taken to comply with the Act

1.18 Another factor that the CRA will consider in determining whether an individual intended to permanently sever all residential ties with Canada at the time of his or her departure from Canada, is whether the individual took into account and complied with the provisions of the Act dealing with the taxation of:

- individuals ceasing to be resident in Canada; and
- individuals who are not resident in Canada.

For example, upon ceasing to be resident in Canada, an individual is required to either pay, or post acceptable security for, the Canadian tax payable with respect to capital gains arising from the deemed disposition of all of the individual's property (with the exception of certain types of property

that are listed in subsection 128.1(4)(*b*)). Where applicable, the CRA will look at whether this requirement has been met as an indication of the individual's intention to permanently sever his or her residential ties with Canada at the time the individual left Canada.

1.19 Similarly, the CRA will take into account whether the individual informed any Canadian residents making payments to the individual that the individual intended to become a non-resident upon leaving Canada, with the result that certain payments (including interest, dividend, rent and pension payments) made to the individual after that time might be subject to withholding tax under Part XIII. See ¶1.24 for more information relevant to individuals ceasing to be resident in Canada.

Regularity and length of visits to Canada

1.20 Where an individual leaves Canada and permanently severs all of his or her residential ties with Canada, the individual's residence status for tax purposes will not be affected by occasional return visits to Canada, whether for personal or business reasons. However, where such visits are more than occasional (particularly where the visits occur on a regular basis), and the individual has maintained some secondary residential ties with Canada, this factor will be taken into account in evaluating the significance of those remaining ties.

Residential ties elsewhere

1.21 Where an individual leaves Canada and purports to become a non-resident, but does not establish significant residential ties outside Canada, the individual's remaining residential ties with Canada, if any, may take on greater significance and the individual may continue to be resident in Canada. However, because the Courts have held that it is possible for an individual to be resident in more than one place at the same time for tax purposes (see ¶1.40 – 1.52), the fact that an individual establishes significant residential ties abroad will not, on its own, mean that the individual is no longer resident in Canada.

Date non-resident status acquired

1.22 The date upon which a Canadian resident individual leaving Canada will become a non-resident for tax purposes is a question of fact that can only be determined after reviewing all of the relevant facts and circumstances of a particular case. Generally, the CRA will consider the appropriate date to be the date on which the individual severs all residential ties with Canada, which will usually coincide with the latest of the dates on which:

- the individual leaves Canada;
- the individual's spouse or common law partner and/or dependants leave Canada (if applicable); or
- the individual becomes a resident of the country to which he or she is immigrating.

1.23 An exception to this will occur where the individual was resident in another country prior to entering Canada and is leaving to re-establish his or her residence in that country. In this case, the individual will generally become a non-resident on the date he or she leaves Canada, even if, for

example, the individual's spouse or common law partner remains temporarily behind in Canada to dispose of their dwelling place in Canada or so that their dependants may complete a school year already in progress.

More information

1.24 For general tax information as well as access to useful pamphlets and guides designed specifically for individuals emigrating from Canada, see Leaving Canada (emigrants) and Guide T4058, Non-Residents and Income Tax. If you are an individual leaving Canada to travel or live abroad you may also wish to refer to Individuals - Leaving or entering Canada and non-residents . If you are a federal or provincial government employee who is posted abroad, see Government employees outside Canada.

Factual residence – entering Canada

Establishing residential ties in Canada

1.25 The residence status of an individual is always a question of fact to be determined by taking into account all of the circumstances of the individual. The most important factor in determining whether an individual entering Canada becomes resident in Canada for tax purposes is whether the individual establishes residential ties with Canada. Generally, the comments found in ¶1.11 – 1.15 with respect to the residential ties of individuals leaving Canada are equally applicable to individuals entering Canada. As discussed in ¶1.11, an individual's spouse or common-law partner, dependants, and dwelling place, if located in Canada, will almost always constitute significant ties with Canada. In addition, the CRA considers that where an individual entering Canada applies for and obtains landed immigrant status and provincial health coverage, these ties will usually constitute significant residential ties with Canada. Thus, except in exceptional circumstances, where landed immigrant status and provincial health coverage have been acquired, the individual will be determined to be resident in Canada.

Dwelling leased to a third party

1.26 Although a dwelling place in Canada will usually be a significant residential tie with Canada, where an individual leases such a dwelling place to a third party, the dwelling place may be considered not to be a significant residential tie with Canada except when taken together with other residential ties (see ¶ 1.14). For example, a non-resident individual might acquire a dwelling place in Canada for the purpose of residing in that dwelling place upon his or her retirement at some point in the future. If the individual were to lease the dwelling place to a third party during the period of time between acquiring the dwelling place and residing there, then, unless the individual had other residential ties to Canada, the dwelling place would not be a significant residential tie with Canada during that period of time.

1.27 Generally, a lease to a third party would have to be on arm's length terms and conditions for a dwelling place located in Canada not to be considered a significant residential tie with Canada, as discussed in ¶1.12. However, in certain situations, particularly where the non-resident individual acquiring the dwelling place has never previously been resident in Canada, a dwelling place that is leased on non-arm's length terms and conditions to a third party (other than the individual's spouse, common-law partner, or dependant), may be considered not to be a significant residential tie with Canada. For example, where a non-resident individual with no existing residential ties with Canada acquires a dwelling place in Canada and leases that dwelling place to his or her sibling (or to some other relative other than a spouse, common-law partner, or dependant) for a rent that is substantially lower than the fair market rental value of the property, that dwelling place will usually not be a significant residential tie to Canada for that individual.

Date resident status acquired

1.28 Where an individual enters Canada and establishes residential ties with Canada as described in ¶1.25 and 1.26, the individual will generally be considered to have become a resident of Canada for tax purposes on the date the individual entered Canada (but see ¶1.32 for comments on sojourners).

More information

1.29 For general tax information as well as access to useful pamphlets and guides designed specifically for individuals immigrating to Canada, see Newcomers to Canada (immigrants) and Pamphlet T4055, Newcomers to Canada.

Deemed residents of Canada - subsection 250(1)

Subsection 250(1) - overview

1.30 An individual who is resident in Canada on the basis of the factors discussed in ¶1.10 – 1.15 or ¶1.25 – 1.27 -- that is, a factual resident of Canada -- cannot be a deemed resident of Canada under subsection 250(1). Thus, subsection 250(1) does not have any application until it has been determined that the individual is not factually resident in Canada. The distinction between factual resident status and deemed resident status carries with it varying, but significant, tax consequences, due to the importance of residence status for provincial tax purposes and the possible impact of section 114 (see ¶1.32 and Interpretation Bulletin IT-262R2, Losses of Non-Residents and Part-Year Residents). Among other things, because an individual who is deemed to be resident in Canada under subsection 250(1) is not factually resident in Canada, he or she will not be resident in a particular province for provincial tax purposes (but see the discussion in ¶1.31 regarding the situation of deemed residents of Quebec).

This means that:

- the individual will be required to pay the federal surtax in accordance with subsection 120(1), which may be higher or lower than what the individual would pay as provincial tax if he or she were resident in a particular province;
- the individual will not be entitled to any provincial tax credits (refundable or otherwise) that might otherwise be available to the individual (for example, some provinces provide tax credits with respect to property taxes or rental costs associated with an individual's primary dwelling place); and
- the individual will not be entitled to any direct, tax-based, provincial benefits (for example, provincial payments in respect of dependent children or infirm family members).

1.31 An individual who resides in the province of Quebec immediately prior to leaving Canada, and who is deemed to be resident in Canada under subsection 250(1), may be deemed to be a resident of Quebec while abroad under the laws of that province. An individual who is required to pay both the Quebec provincial tax and the federal surtax may apply to the CRA for relief from the federal surtax at the time of filing his or her return.

Sojourners as deemed residents

1.32 An individual who has not established sufficient residential ties with Canada to be considered factually resident in Canada, but who sojourns (that is, is temporarily present) in Canada for a total of 183 days or more in any calendar year, is deemed to be resident in Canada for the entire year, under paragraph 250(1)(*a*). As a result, an individual who sojourns in Canada for a total of 183 days (or more) is taxed differently under the Act than an individual who is factually resident in Canada throughout the same period of time and has subsequently become a non-resident. In particular, an individual who is factually resident in Canada for part of a year is only taxed on his or her worldwide income for that part of the year, in accordance with the rules under section 114. An individual who is deemed to be resident in Canada pursuant to paragraph 250(1)(*a*) is liable for tax on his or her worldwide income throughout the year.

1.33 The CRA considers any part of a day to be a **day** for the purpose of determining the number of days that an individual has sojourned in Canada in a calendar year. However, it is a question of fact whether an individual who is not resident in Canada is **sojourning** in Canada. An individual is not automatically considered to be sojourning in Canada for every day (or part day) that the individual is present in Canada; the nature of each particular stay must be determined separately. To sojourn means to make a temporary stay in the sense of establishing a temporary residence, although the stay may be of very short duration. For example, if an individual is commuting to Canada for his or her employment and returning each night to his or her normal place of residence outside of Canada, the individual is not sojourning in Canada. On the other hand, if the same individual were to vacation in Canada, then he or she would be sojourning in Canada and each day (or part day) of that particular time period (the length of the vacation) would be counted in determining the application of paragraph 250(1)(*a*). In distinguishing a **commuter** from a **sojourner**, relevance should be placed on the country in which an individual spends his or her time away from work. In other words, an individual who comes to Canada for work purposes may nevertheless be considered sojourning in Canada if that individual does not leave the country to spend his or her time away from work.

Other deemed residents

1.34 In addition to individuals sojourning in Canada for a total of 183 days (or more) in any calendar year (see ¶1.32 and 1.33), subsection 250(1) ensures that any individual (other than a factual resident of Canada) who is included in any one of the following categories, is deemed to be a resident of Canada:

a. individuals who were members of the Canadian Forces at any time in the year;
b. individuals who were officers or servants of Canada or a province, at any time in the year, who received representation allowances or who were factually or deemed resident in Canada **immediately prior to appointment or employment** (see ¶1.35) by Canada or the province;
c. individuals who performed services, at any time in the year, outside Canada under an international development assistance program of the Canadian International Development Agency described in section 3400 of the Regulations, provided they were either factually or deemed resident in Canada at any time in the three month period prior to the day the services commenced;
d. individuals who were, at any time in the year, members of the overseas Canadian Forces school staff who have filed their returns for the year on the basis that they were resident in Canada throughout the period during which they were such members;
e. individuals who were at any time in the year a child of, and dependent for support on, an individual described in (a) to (d), and whose income for the year did not exceed the basic personal amount for the year; and
f. individuals who at any time in the year were, under an agreement or a convention (including a tax treaty) between Canada and another country, entitled to an exemption from an income tax that would otherwise be payable in that other country in respect of income from any source, and:
    i. the exemption under the agreement or convention applies to all or substantially all of their income from all sources (that is, they are subject to tax in the other country on less than 10% of their income as a result of the exemption); and
    ii. the individuals were entitled to the exemption because they were related to, or a member of the family of, an individual (other than a trust) who was resident (including deemed resident) in Canada at the particular time.

1.35 For purposes of (b) above, it is the CRA's position that the phrase **immediately prior to appointment or employment** refers to the time immediately prior to the time at which the individual is hired. For greater certainty, it does not refer to the time immediately prior to the time the individual starts work.

1.36 An individual who is not factually resident in Canada, but who is referred to in (a) to (f) of ¶1.34, is deemed to be resident in Canada regardless of where that individual lives or performs services. An individual who ceases to be described in (a) to (e) of ¶1.34 at a particular date in the year will be deemed to be resident in Canada only to that date, pursuant to subsection 250(2). Thereafter, residence will depend on the factors outlined in ¶1.10 – 1.21.

Deemed non-residents – subsection 250(5)

Application of subsection 250(5)

1.37 Pursuant to subsection 250(5), an individual will be deemed to be a non-resident of Canada at a particular time if, at that time, although otherwise resident in Canada (either factual or deemed), the individual is considered to be resident in another country under an income tax treaty between Canada and that other country. In other words, subsection 250(5) will apply if the tie-breaker rules in a tax treaty between Canada and another country result in a determination that the individual is resident in the other country.

1.38 Where subsection 250(5) applies, an individual will be deemed to be a non-resident of Canada for all purposes of the Act (that is, the individual will cease to be a resident of Canada from that time). The rules applicable to individuals ceasing to be resident in Canada, including the provisions deeming an individual to dispose of certain property and the Part XIII withholding tax provisions, will apply from that date (see ¶1.39 for further information). Prior to a legislative amendment effective as of February 24, 1998, subsection 250(5) applied only to corporations. Accordingly, subsection 250(5) does not apply to an individual who was resident in another country for treaty purposes, but otherwise resident in Canada, on February 24, 1998, as long as the individual has maintained this **dual** residence status continuously since that time.

More information

1.39 For general tax information relevant to non-residents and deemed non-residents of Canada, see Guide T4058, Non-Residents and Income Tax. For information concerning the tax implications for individuals ceasing to be resident in Canada, refer to Leaving Canada (emigrants).

The tie-breaker rules in tax treaties

1.40 An individual who is a resident of Canada for purposes of the Act is also considered a resident of Canada for purposes of paragraph 1 of the **Residence article** of an income tax treaty between Canada and another country. In some treaties, it is referred to as the Resident, Fiscal Domicile or Fiscal Residence article. Such an individual may also be a resident of the other country for purposes of the same paragraph in the same treaty (a **dual** resident). Whether an individual is considered resident in a country for purposes of paragraph 1 of the Residence article of a particular tax treaty between Canada and another country generally depends on whether the individual is **liable to tax** in that country within the meaning of the particular treaty.

Meaning of liable to tax

1.41 It has been the long-standing position of the CRA that, to be considered **liable to tax** for the purposes of the Residence article of Canada's tax treaties, an individual must be subject to the most comprehensive form of taxation as exists in the relevant country. For Canada, this generally means

full tax liability on worldwide income. This is supported by the comments of the Supreme Court of Canada in The Queen v Crown Forest Industries Limited, [1995] 2 SCR 802, 95 DTC 5389, wherein the court stated:

> "the criteria for determining residence in Article IV, paragraph 1 involve more than simply being liable to taxation on some portion of income (source liability); they entail being subject to as comprehensive a tax liability as is imposed by a state. In the United States and Canada, such comprehensive taxation is taxation on world-wide income."

1.42 An individual does not necessarily have to pay tax to another country in order to be considered **liable to tax** in that country under paragraph 1 of the Residence article of the tax treaty with Canada. There may be situations where an individual's worldwide income is subject to another country's full taxing jurisdiction, however, the country's domestic laws do not levy tax on an individual's taxable income or taxes it at low rates. In these cases, the CRA will generally accept that an individual is a resident of the other country unless the arrangement is abusive (for example, treaty shopping where the individual is in fact only a **resident of convenience**). Such could be the case, for example, where an individual is placed within the taxing jurisdiction of a particular country in order to gain treaty benefits in a manner that does not create any material economic nexus to that country.

1.43 For purposes of paragraph 1 of the Residence article of a particular tax treaty, the onus rests on an individual to demonstrate that he or she is liable to tax in the other country. The CRA is entitled to rely on the assumption that an individual is not resident in the other country for purposes of the treaty unless the individual can establish otherwise. This position is based on the Supreme Court of Canada's decision in Johnston v MNR , [1948] SCR 486, 3 DTC 1182. It is also supported by McFadyen v The Queen, [2000] TCJ No. 589, 2000 DTC 2473, which was heard at the Tax Court of Canada and later affirmed by the Federal Court of Appeal (2002 FCA 496, 2003 DTC 5015).

1.44 The Courts have stated that holders of a United States Permanent Residence Card (otherwise referred to as a **Green Card**) are considered to be resident in the United States for purposes of paragraph 1 of the Residence article of the Canada-U.S. Tax Convention. For further information, see the Federal Court of Appeal's comments in Allchin v R, 2004 FCA 206, 2004 DTC 6468.

1.45 Where an individual is determined to be a dual resident, the Residence article in the tax treaty will provide **tie-breaker rules** to determine in which country the individual will be resident for purposes of the other provisions of the treaty. If such tie-breaker rules apply and it is determined that an individual is a resident of another country for purposes of a tax treaty between Canada and that country, then subsection 250(5) will deem the individual to be a non-resident of Canada for purposes of the Act (see ¶1.37 – 1.39).

Permanent home test

1.46 Tie-breaker rules are found in paragraph 2 of the Residence article of most of Canada's income tax treaties. Usually, these rules rely first on a **permanent home** test to resolve the residence issue. Generally, the **permanent home** test provides that an individual is resident for

purposes of the treaty in the country in which the individual has a permanent home available to him or her. A **permanent home** (as that term is used in income tax treaties) may be any kind of dwelling place that the individual retains for his or her permanent (as opposed to occasional) use, whether that dwelling place is rented (including a rented furnished room) or purchased or otherwise occupied on a permanent basis. It is the permanence of the home, rather than its size or the nature of ownership or tenancy, that is of relevance.

1.47 For further guidance on the application of the **permanent home test**, the Courts have referred to the commentary to paragraph 2 of the Residence article of the Organization for Economic Cooperation and Development Model Tax Convention on Income and on Capital, July 2010 . The OECD Model Tax Convention states in part, as follows:

> "…the permanence of the home is essential; this means that the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay which, owing to the reasons for it, is necessarily of short duration (travel for pleasure, business travel, educational travel, attending a course at a school, etc)."

1.48 In applying the **tie-breaker rules** (see ¶1.40 – 1.45), a dual resident individual who is determined to have a permanent home available to him or her in only one country, will be deemed to be a resident of that country for purposes of the treaty. In such cases, it is not necessary to apply the centre of vital interests test outlined in ¶1.50 – 1.51.

1.49 Where an individual has two permanent homes while living outside Canada (for example, a dwelling place rented by the individual abroad and a property owned by the individual in Canada that continues to be available for his or her use, such as a home that is not leased to a third party on arm's length terms and conditions as described in ¶1.12) the permanent home test will not result in a residency determination. Where this is the case, the tie-breaker rules of most treaties then refer to a centre of vital interests test.

Centre of vital interests test

1.50 The **centre of vital interests** test requires a close examination of the individual's personal and economic ties with each country in question, in order to determine with which country those ties are closer. The personal and economic ties to be examined are similar to those used in determining factual residence for purposes of Canadian income tax (see especially ¶1.10 – 1.15) . For further guidance on the application of the **centre of vital interests** test, the Courts have referred to the commentary to paragraph 2 of the Residence article of the OECD Model Tax Convention, which states in part, as follows:

> "If the individual has a permanent home in both Contracting States, it is necessary to look at the facts in order to ascertain with which of the two States his personal and economic relations are closer. Thus, regard will be had to his family and social relations, his occupations, his political, cultural or other activities, his place of business, the place from which he administers his property, etc. The circumstances must be examined as a whole, but it is nevertheless obvious that considerations based on the personal acts of the individual must receive special attention. If

> a person who has a home in one State sets up a second in the other State while retaining the first, the fact that he retains the first in the environment where he has always lived, where he has worked, and where he has his family and possessions, can, together with other elements, go to demonstrate that he has retained his centre of vital interests in the first State."

There are other tests that will apply if the **centre of vital interests** test is inconclusive and these will generally be outlined in the Residence article of the applicable tax treaty.

1.51 As confirmed by the Supreme Court of Canada in Crown Forest Industries, reviewing the intention of the parties to a tax treaty is a very important element in delineating the scope of the application of the treaty. Accordingly, the determination of residency for the purposes of a tax treaty remains a question of fact, and each case should be decided on its own facts with an eye to the intention of the parties of the particular convention and the purpose of international tax treaties.

More information

1.52 For more information concerning Canada's tax treaties with other countries, see the Tax Treaties page of the CRA website.

How to obtain a determination of residence status

International and Ottawa Tax Services Office

1.53 Taxpayers requiring further general information about how residence status is determined for purposes of Canadian income tax should contact International tax and non-resident enquiries at 1-800-959-8281 (toll free in Canada and the United States), or 613-940-8495 (for service in English), or 613-940-8496 (for service in French). Written enquiries should be addressed to:

> International and Ottawa Tax Services Office
> Post Office Box 9769, Station T
> Ottawa ON K1G 3Y4
> CANADA

1.54 Taxpayers who plan to leave or have left Canada, either permanently or temporarily, should consider completing Form NR73, Determination of Residency Status (Leaving Canada) and reviewing the information referred to in ¶1.24. Taxpayers who have entered or sojourned in Canada during the year should consider completing Form NR74, Determination of Residency Status (Entering Canada) and reviewing the information referred to in ¶1.29.

1.55 Once completed, Form NR73 or NR74, as applicable, should be mailed to the address given above or faxed to 613-941-2505. In most cases, the CRA will be able to provide an opinion regarding a taxpayer's residence status from the information recorded on the completed form. This opinion is based entirely on the facts provided by the taxpayer to the CRA in Form NR73 or NR74,

as applicable. Therefore, it is critical that the taxpayer provide all of the details concerning his or her residential ties with Canada and abroad. This opinion is not binding on the CRA and may be subject to a more detailed review at a later date and supporting documentation may be required at that time.

Income Tax Rulings Directorate

1.56 Where certainty is required in respect of the tax consequences of the proposed departure from or arrival in Canada of a particular individual taxpayer, the Income Tax Rulings Directorate may, in appropriate circumstances, be prepared to issue a binding advance income tax ruling with respect to the residency status of that taxpayer. Generally, such a ruling will only be available where all of the facts of the situation can be ascertained in advance of the proposed departure from or arrival in Canada of the taxpayer. For detailed information regarding applying for an advance income tax ruling, please see the current version of Information Circular IC 70-6R7, Advance Income Tax Rulings and Technical Interpretations or see Income tax rulings and interpretations.

Competent Authority Services

1.57 In limited situations it may be necessary for an individual to request the assistance of Competent Authority Services in order to resolve residency issues with treaty countries. To obtain more information, please refer to the current version of Information Circular IC 71-17R5, Guidance on Competent Authority Assistance Under Canada's Tax Conventions.

Application

This updated Chapter, which may be referenced as S5-F1-C1, is effective November 26, 2015.

When it was first published on March 28, 2013, this Chapter replaced and cancelled Interpretation Bulletin IT–221R3, *Determination of an Individual's Residence Status*.

The history of updates to this Chapter as well as any technical updates from the cancelled interpretation bulletin can be viewed in the Chapter History page.

Except as otherwise noted, all statutory references herein are references to the provisions of the *Income Tax Act* , R.S.C., 1985, c.1 (5th Supp.), as amended and all references to a Regulation are to the *Income Tax Regulations* , C.R.C., c. 945, as amended.

Links to jurisprudence are provided through CanLII.

Income tax folios are available in electronic format only.

Reference

Sections 2 and 250 (also sections 114, 115, 128.1 and 212 of the Act and section 2607 of the Regulations).

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