



**Live And Invest Overseas Conference**

**Canadian Taxation: Going Offshore**  
by  
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# Outline

- I. Residency v. Non-residency
- II. Departure Tax
- III. Taxation as Non-resident
- IV. Tax Treaties

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# 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 these two categories has different tests.

# Residency: Tests

- Factual resident
- Deemed resident

# Factual Resident

Someone who has a set of strong “residential ties” to Canada. These ties are:

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

## Factual Resident (cont'd)

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

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 of these 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.

# Residency Tests Are Two-Tiered

- The Factual Resident tests are the first tier used to determine residency.
- If all of these first tier tests are failed, the second tier of tests is examined: Deemed Resident tests.

# Residency: Tests

- Factual resident
- Deemed resident

## Deemed Resident (cont'd)

- The CRA lists seven categories of deemed residents.
- 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.

## Deemed Resident (cont'd)

- The seventh Deemed Resident Test is the Sojourner test.
- To “sojourn” is to stay temporarily in a place.
- If an individual stays in Canada for a total of 183 days or more in any calendar year, they meet the Sojourner test.

# Deemed Resident (cont'd)

- Importantly:
  - If you are deemed a sojourner, you are taxed as a resident for the full calendar year.

# 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.



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# Departure Tax

- Applies on your last day as a resident.
- You are deemed to have disposed of your property at fair market value (FMV)...
- ... and to have immediately reacquired the property for the same amount.

## Departure Tax (cont'd)

- The effect of the “deemed dispositions” is that you will have gains and/or losses in your final tax return as a resident.

## Departure Tax (cont'd)

- Depending on the cost base and the fair market value of your property, you could potentially have large gains resulting in a high tax bill.

## Departure Tax (cont'd)

- Not all property is subject to the departure tax.
- One exception is Canadian business property if the business is carried on through a permanent establishment in Canada.

# Departure Tax (cont'd)

- Other exceptions include:
  - pension plans and virtually all types of Canadian retirement plans
  - Canadian real property, immovable property, resource property, and timber property

# Departure Tax (cont'd)

- It is important to determine which property would be subject to the departure tax ...
- for tax planning purposes and ...
- to ensure you meet all required tax obligations.

# Departure Tax (cont'd)

Some elections are available.

- One election is to defer payment of tax that arises from the deemed disposition rule.
- Another election is to have the deemed disposition rule apply to property that is exempted from the departure tax.



# 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.

# Departure Tax (cont'd)

Election to defer payment of tax on deemed dispositions (cont'd):

- If amount of tax from deemed dispositions is more than \$16,500\*, you have to provide the CRA with adequate security to cover the amount.

\* \$13,777.50 for Québec residents

# Departure Tax (cont'd)

- Each election should be considered in light of your overall tax situation...
- ... to determine what is most beneficial from a tax standpoint.

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# Taxation as a Non-Resident

- Taxed on Canadian source income only.
- File an annual tax return with Canada (Form 5013-R).
- You may also need to file foreign country tax return(s), depending on the jurisdiction(s) where you spend time/invest/conduct business.

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# Tax Treaties

- Canada has tax treaties with about 90 countries.
- A tax treaty overrides Canada's and the other country's tax laws.

# Tax Treaties (cont'd)

Items that are typically covered under a tax treaty include:

- Definition of resident
- Types of income subject to tax by each country
- Tax withholding rates for different types of income paid out of country (e.g., dividends, rent, royalties, etc.)



# Tax Treaties (cont'd)

- Accordingly, it is important to determine if there is a tax treaty between Canada and the country in which you plan to live/invest/conduct business.

A high-angle photograph of a desk setup. A silver laptop is partially visible at the top. Below it, a black smartphone lies on a red, textured mat. To the right of the phone is a white spiral-bound notebook with a silver pen resting on it. The background features a white surface with grey geometric lines.

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