GLOBAL ASSET MANAGEMENT | Tax, Retirement and Estate Planning

# EMIGRATING FROM CANADA

## This article discusses the tax consequences for individuals leaving Canada.[i]

Whether you are a retiree seeking a warmer climate, a professional moving for work or someone like me, for whom happiness is a synonym for sunny blue skies and moving to an island, you must plan ahead and prepare for the financial impacts of leaving Canada permanently.

If you are planning to emigrate, you are not alone. A recent study from Statistics Canada estimates that from April 2019 to March 2020, roughly 50,000 people emigrated from Canada, just down slightly from 62,000 the year before.

For income tax purposes, it's important to note that Canada taxes individuals based on residency, not citizenship. Almost daily I receive questions regarding tax residency issues, as many people confuse citizenship and residency. For the purposes of the Income Tax Act, an individual pays taxes on worldwide income if they are a resident of Canada; if the individual is considered as a non-resident, then they are taxed only on certain Canadian-sourced income.

So, if you decide to leave Canada, it's important to keep in mind that there are tax consequences.

### ARE YOU AN EMIGRANT FOR INCOME TAX PURPOSES?[ii]

Generally, you become a non-resident if you meet the following conditions:

- You leave Canada to live in another country.
- You sever your residential ties with Canada.

Severing residential ties means that:

- You dispose of or rent your home in Canada and establish a permanent home in another country.
- Your spouse or common-law partner or dependents leave Canada.
- You dispose of personal property in Canada and break social ties.

If you left Canada but did not sever residential ties, you are usually considered a **factual resident**; this is often seen when people leave for temporary work, for an extended vacation, to commute for work from Canada to the United States, or to attend school in another country.

If you establish ties in a country where Canada has a tax treaty, although you haven't severed ties with Canada, you may be considered a resident of that country and therefore a **deemed non-resident** for Canadian tax purposes.

If you do not have significant residential ties with Canada, but spend more than 183 days in the country, you may be considered a **deemed resident** of Canada.

Factual and deemed residents must file a Canadian tax return to report worldwide income. Factual residents may access both federal and provincial tax credits, however, deemed residents may only claim federal tax credits. Factual and deemed residents alike may continue to accrue RRSP and TFSA room annually and contribute to these plans.

To obtain the Canada Revenue Agency's (CRA) opinion about your residency status, you may complete and send **Form NR73, Determination of Residency Status** to the CRA when you leave Canada. It is recommended to obtain tax advice prior to doing so.

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i Tax consequences of emigration of corporations and trusts are behind the scope of this article.

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

## WHAT HAPPENS WHEN YOU DECIDE TO LEAVE?

Once you make the decision to leave Canada, you are required to inform the CRA (or Revenu Québec if you are a Québec resident); you can also do this by filing a tax return. You should also inform your financial institutions and any other government bodies about your change in residency and date of departure.

You are also required to file a departure tax return if you have properties or goods in Canada, even if you didn't earn income in the year you left Canada. You may have capital gains. You'll be deemed disposed of certain types of property at their fair market value.[iii]

There are some exceptions to this rule as it relates to:

- Canadian real or immovable property
- Canadian resource property or timber resource property
- Canadian business property
- pension plans, annuities, RRSPs, TFSAs and RESPs

**Form T1243, Deemed Disposition of Property by an Emigrant of Canada** must be filed to calculate the capital gain from the disposition. Also, if the fair market value of all the property owned upon emigrating from Canada was more than $25,000, **Form T1161, List of Properties by an Emigrant of Canada** must be filed as well.

## DO YOU HAVE TO PAY TAXES ON THE DEEMED DISPOSITION OF YOUR ASSETS?

You can elect to defer the payment of tax on income relating to the deemed disposition of property, regardless of the amount. You would then pay the tax later, without interest, when you sell (or otherwise dispose of) the property.[iv]

To make this election, complete **Form T1244, Election to Defer the Payment of Tax on Income Relating to the Deemed Disposition of Property,** and file this with your tax return.

For the 2020 tax year, if the amount of federal tax owing on income from the deemed disposition of property is more than $16,500 ($13,777.50 for former residents of Québec), a security deposit needs to be provided to the CRA to cover the amount.[v] This basically means that no security is required for the first $100,000 of capital gains. A security deposit may be required to cover any applicable provincial or territorial tax payable.

## WHAT IF YOU SELL YOUR HOME AFTER YOUR DEPARTURE?

If you sell a taxable Canadian property after you become a non-resident of Canada, you must inform the CRA of the proposed disposition or the completed disposition of your home 10 days after the sale closes at the latest. You can notify the CRA using **Form T2062, Request by a Non-Resident of Canada for a Certificate of Compliance Related to the Disposition of Taxable Canadian Property** (and T2062A, if the property is depreciable property, such as a rental property) to avoid a penalty of up to $2,500 (C$).

When completing the form, calculate the estimated capital gain or loss on the sale along with any depreciation recapture and/or terminal loss (if you are selling a rental property). At the time of sale, the CRA will require you to pay 25 per cent of the estimated capital gain and federal taxes due on any recapture. The buyer of the property assists in this process by withholding the tax from the gross proceeds due back to you. The CRA will issue you a certificate of compliance once the buyer has remitted the correct amount of tax.

The withholding amount is not your final Canadian tax liability. You will also need to file a Canadian non-resident income tax return to report the sale and calculate your actual income tax. This return is due by April 30th of the year, following the year of the sale. You may get a refund, or you may have a payment due if your final Canadian tax liability is more than the amount withheld.

## PRINCIPAL RESIDENCE EXEMPTION

As I mentioned earlier, a principal residence is not subject to deemed disposition rules at departure, nor any other real estate property. In this situation, you have two options:

1. Elect to trigger the deemed disposition on the property and use your principal residence exemption in the year of emigration to exempt the accrued gain from inclusion in your taxable income. The proceeds on the deemed

iii Income Tax Act paragraph 128.1(4)(b)
iv Income Tax Act subsection 220(4.5)
v Income Tax Act subsection 220(4.51)

disposition will be your new cost base against which any future gain on the ultimate disposition will be calculated for Canadian tax purposes.

2. Doing nothing at the time of emigration as the property is exempt from the deemed disposition rule. When you sell the property in the future — as a non-resident — the gain will be calculated from the historical purchase price, and you may use your principal residence exemption at that time. Note that the principal residence exemption is only available to non-residents for the years during which they owned the property as a resident of Canada.

Deciding which option is better for you depends on the accrued gain up to the point of emigration and expected future gains after emigration.

## HOW IS INCOME FROM CANADA TAXED AFTER YOUR DEPARTURE?

Canadian-sourced income is normally subject to Canadian taxation. Non-residents are subject to Canadian income tax on income from employment in Canada, income from carrying on a business in Canada and capital gains from the disposition of taxable Canadian property. Depending on the type of income, different source deductions (e.g. payroll deduction for employment income) or some treaty-based waiver applications are necessary.

Generally, interest and dividends paid to non-residents are subject to Canadian withholding taxes. Also, payments from RRSPs and RRIFs and public pension payments from CPP, QPP and OAS are subject to 25 per cent of flat withholding tax unless a tax treaty reduces the rate.

In conclusion, the tax rules that deal with emigration are complex, and penalties may apply if you do not comply with these rules. Keeping your documents in order is very important to prove that you are no longer a Canadian resident; careful planning in advance is suggested, especially if you have assets when you leave Canada.

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Published February 3, 2020

21-01-23068_E (01/21)