



RULES AND GUIDELINES FOR CANADIANS TRAVELLING TO THE U.S. AND ABROAD

Although the snow seems far away, the winter season is approaching and many will seek haven in warmer climates south of the border. However, it is necessary that all Canadians who have travelled extensively to the United States or abroad evaluate their residency status. The Canada Revenue Agency has issued guidelines in this regard. In this newsletter, we provide some of the highlights.

If you believe you may be affected by these guidelines, you are advised to consult with your professional tax adviser.

If you spent part of the year in the United States (U.S.) for health reasons, to vacation, or for other reasons, and you still maintained residential ties with Canada, you may be affected by these rules. However, these rules do not apply to you if you are

- a U.S. citizen;
- have been granted permanent resident status by the U.S. Immigration and Naturalization Service; or
- have residential ties to a country other than the U.S. or Canada.

RESIDENCY STATUS

While you are outside Canada, it is important that you know your residency status. Before you complete your Canadian income tax return, you need to determine if you are:

- a **factual resident**,
- a **deemed resident**,
- a **non-resident**, or
- a **deemed non-resident** of Canada.

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FACTUAL RESIDENT

You are a factual resident of Canada if you maintain residential ties with Canada (see page 4) while living or travelling outside the country. The term factual resident means that, although you left Canada, you are considered, to be a resident of Canada for income tax purposes.

If you spend part of the year in the U.S. for health reasons, to vacation, or for other reasons, and you maintain residential ties in Canada, you would usually be considered a factual resident of Canada.

You may be a factual resident if you are:

- working temporarily outside Canada;
- teaching or attending school in another country;
- commuting (going back and forth daily or weekly) from Canada to your place of work in the United States; or
- vacationing outside Canada.

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FACTUAL RESIDENT (CONT'D)

As a factual resident, you are taxed on your income as if you never left Canada. You will continue to:

- report all income you receive from sources inside and outside Canada for the year, and claim all deductions that apply to you;
- claim federal and provincial or territorial refundable and non-refundable tax credits that apply to you;
- pay federal and provincial or territorial tax where you keep residential ties in Canada;
- be eligible to apply for the GST/HST credit.

NON-RESIDENT

To be considered a non-resident, there must be some permanence to your stay abroad. If you leave Canada to settle in another country and you sever significant residential ties with Canada, you are considered to be a non-resident for income tax purposes, unless you are a deemed resident.

If you become a non-resident, in the year you leave Canada you are considered to be an emigrant for income tax purposes.

For the following years, if your situation does not change, you will be considered a non-resident. As a non-resident, you will have to report certain types of Canadian-source income on your return.

The most common types include:

- income from employment in Canada;
- income from a business carried on in Canada;
- the taxable part of Canadian scholarships, fellowships, bursaries, and research grants; and
- taxable capital gains resulting from dispositions of taxable Canadian property.

DEEMED RESIDENT

You may be a deemed resident of Canada if you are:

- a member of the Canadian Forces;
- a member of the Canadian Forces overseas school staff who chooses to file a return as a resident of Canada;

- a federal or provincial government employee who was a resident of Canada just before being posted abroad or who received a representation allowance for the year;
- a person working under a Canadian International Development Agency (CIDA) assistance program who was a resident of Canada at any time during the three-month period just before starting duties abroad;
- a dependent child of one of the first four persons described above and your net income for the year was not more than the basic personal amount;
- A person who, under an agreement or convention (including a tax treaty) between Canada and another country, is exempt from tax on at least 90% of your world income in that other country because of your relationship to a resident (including a deemed resident) of Canada; or
- sojourned in Canada in the year for a period of, or periods the total of which is, 183 days or more.

As a deemed resident, you will continue to:

- ◇ report all income you receive from sources both inside and outside Canada for the year;
- ◇ claim all deductions, federal refundable & non-refundable tax credits that apply to you as if you resided in Canada for the year; and
- ◇ be eligible to apply for the goods and services tax/harmonized sales tax (GST/HST) credit.

You are subject to federal tax just like other residents of Canada. Instead of paying provincial or territorial tax, you pay a surtax for non-residents and deemed residents of Canada. You cannot claim provincial or territorial tax credits.

Quebec Medicare Eligibility

To maintain your Quebec Medicare eligibility, The total number of days of absence in a given calendar year must be less than 183 days.

However, absences of 21 days or less do not count towards the total number of days absent. Also, the date of departure and the date of arrival do not count.

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DEEMED RESIDENT (CONT'D)

However, if you have business income from a permanent establishment in a province or territory in Canada, you have to pay provincial or territorial tax on that income, and you may be entitled to certain provincial/territorial credits related to that income.

DID YOU LIVE IN QUEBEC JUST BEFORE YOU LEFT CANADA?

Even though you may be considered a deemed resident of Canada, under Quebec law you may also be considered a deemed resident of Quebec. If this is the case, you may have to pay Quebec income tax as well.

DEEMED NON-RESIDENT

Effective February 25, 1998, if you are a factual resident of Canada and a resident of another country, according to a tax treaty Canada has signed with that other country, you may be considered a deemed non-resident of Canada.

You become a deemed non-resident of Canada when your ties with the other country become such that, under the tax treaty, you would be considered a resident of that other country.

If on February 24, 1998, you were already a resident of a country with which Canada has a tax treaty, you are not a deemed non-resident of Canada. You will only be considered a deemed non-resident of Canada if after February 24, 1998:

- you ceased to be a resident of that treaty country and then became a resident of that country again; or
- you moved from that treaty country and became a resident of another country with which Canada has a tax treaty.

The ordinary effects of ceasing to be a resident of Canada will apply.

ARE YOU A RESIDENT ALIEN?

You are considered a resident alien if you meet the substantial presence test.

If you were in the U.S. for 183 days or more in 2019, you meet the substantial presence test.

If you were in the U.S. for less than 31 days in 2019, you do not meet the substantial presence test.

If you were in the U.S. for 31 to 182 days in 2019 you may meet the substantial presence test.

If this is your situation, you are considered a non-resident alien of the U.S. and should consult with your tax adviser to determine your obligations regarding the filing of a U.S. tax return.

WHAT IS THE SUBSTANTIAL PRESENCE TEST?

This test uses the number of days you were in the U.S. during a three-year period (the current and the two previous years) to determine if you are a resident alien or a non-resident alien.

To determine whether you meet the substantial presence test for 2019, calculate the number of days you were present in the U.S. during 2019, 2018, and 2017. The days do not have to be consecutive, and you are treated as being present in the U.S. on any day you were there for part or all of the day.

Each day:

- in 2019 counts as a full day;
- in 2018 counts as one-third of a day;
- in 2017 counts as one-sixth of a day.

If your total is **at least 183 days**, you have met the substantial presence test and you are considered a **resident alien** for 2019.

ARE YOU A NON-RESIDENT ALIEN

You are a non-resident alien if you **do not** meet the substantial presence test. If you have determined that you are a resident alien because you meet the substantial presence test, you can be considered a **non-resident alien** if:

- you were present in the U.S. for less than 183 days in 2019;
- your **tax home** is in Canada; and
- you had a **closer connection** to Canada than to the U.S. during 2019.

WHAT IS A TAX HOME?

If you are employed or self-employed, your tax home is the location of your principal place of business or employment, regardless of where you maintain your family home.

If you are not employed or self-employed, your tax home is where you regularly live. It can be a house, an apartment, or a furnished room, and you can rent or own it. It must have been available to you continuously and at all times throughout 2019, and not just for short stays during the year.

HOW DO YOU DETERMINE A CLOSER CONNECTION TO CANADA?

You are considered to have a closer connection to Canada than to the U.S. if you maintain more significant ties to Canada. Some important ties include the location of the following:

- your permanent home and business activities;
- your family;
- personal belongings, such as cars, furniture, clothing, and jewellery;
- social, political, cultural, or religious organizations to which you belong;
- the jurisdiction where you vote; and
- the jurisdiction where you hold a driver's licence.

If you have applied to the U.S. Citizenship and Immigration Services for Lawful Permanent Resident status in the U.S. (i.e., applied for a "green card"), or you have been granted permanent residency status (i.e., granted a "green card"), you will not be eligible to claim the closer connection exception.

If you are eligible to claim this exemption, you have to file IRS Form 8840, *Closer Connection Exception Statement for Aliens*, to advise the IRS that your tax home is in Canada and that you maintained more significant ties in Canada than in the U.S. during 2019.

Each year, you have to determine if you are a resident alien or a non-resident alien. In addition, each year, if you are a resident alien with closer ties to Canada than to the U.S., you have to file a new Form 8840.

RESIDENCE UNDER THE TREATY

If you are a resident alien because you met the substantial presence test and you cannot claim the closer connection exception, you may be able to determine your residency status under Article IV of the *Canada-United States Income Tax Convention*.

You may be treated as a non-resident alien under Article IV, for the purposes of calculating your U.S. income tax liability, if you meet the following conditions:

- you are considered a resident of both the U.S. and Canada under each country's tax laws (i.e., you are a Canadian resident and a U.S. resident alien); and
- your permanent home is in Canada.

If you also have a permanent home in the U.S., you may be treated as a non-resident alien if your personal and economic ties are closer to Canada than to the U.S.

HOW U.S. TAX LAWS APPLY

As a Canadian resident who spends part of the year in the U.S., you are considered to be either a **resident alien** or a **non-resident alien** of the U.S. for tax purposes.

Resident aliens are generally taxed in the U.S. on income from all sources worldwide, and non-resident aliens are generally taxed in the U.S. only on income from U.S. sources. Therefore, it is important for you to determine if you are a resident alien or a non-resident alien.

GIFTS TO YOUR US RESIDENT CHILDREN

Even though there is no gift tax in Canada, a gift to your child who is living in the US in excess of \$15,000 US could be subject to US gift tax, depending on the amount and nature of the gift.

DO YOU OWN US PROPERTY?

If you own U.S. property, such as a condominium or house, you should be aware of the tax consequences of renting out or selling U.S. real estate.

DID YOU DISPOSE OF U.S. REAL ESTATE

As a non-resident alien, gains or losses you realize from disposing of U.S. real property are considered to be effectively connected with a U.S. trade or business. If you sell or otherwise dispose of U.S. real estate, the purchaser, or his or her agent, is generally required to withhold 10% to 15% of the gross sale price at the point of sale. However, there are exceptions to this rule.

ARE YOU SUBJECT TO THE US ESTATE TAXES?

Even if you never go to the US, you could be subject to the US Estate taxes on all US assets that you own at the time of your death if:

- ◆ Your worldwide estate exceeds the exemption (approximately \$11,400,000 US in 2019) and
- ◆ You own US assets in excess of \$60,000

Included in your worldwide estate is the fair market value of all assets owned by you, worldwide — this includes your personal residence in Canada, your RRSP or RRIF, all life insurance proceeds that go into your estate, cash in banks (wherever they are) and any other asset of value, regardless of where it is.

Included in US assets are any shares of US companies that you own (including those in your RRIF or RRSP), any US real estate that you own (including your vacation property), your US golf club membership, interests in any US based business, debt from US individuals, and more.

Proper tax planning can help you minimize or even avoid the US Estate tax and we suggest you consult your professional advisor to review your exposure.

“Planning is bringing the future into the present so you can do something about it now”

ABOUT LEVI & LEVI

LEVI & LEVI is a firm of Chartered Professional Accountants that traces its origin in Montreal to 1970. We pride ourselves on being more than just an accounting firm. We offer an effective blend of personalized service, experience and technological leadership, coupled with a steadfast commitment to consistently deliver excellence.

The members of our firm possess unique talents, expertise and experience, giving our clients access to a knowledge base of considerable breadth and depth.

OUR SERVICES

Our firm takes pride in adding value to every client that we serve through our extensive expertise and proactive approach to your financial needs. We match our dedication to adding value with experience and expertise: we have experience in servicing virtually every type of industry and professional practice.

FORENSIC AUDITING AND LITIGATION SUPPORT SERVICES

Our firm has developed an expertise in both litigation support and international service. Our highly trained staff are licensed world-wide to perform investigative and forensic audits and have achieved international recognition for their innovations particularly in the field of computer forensics. Our forensic department has been called upon by law enforcement agencies as well as the public and private sectors for assistance in the most complex and difficult of situations in Canada, the United States and the Caribbean.

TAXATION

Our office has a strong basis in federal and provincial tax issues. Our accountants work hard to minimize your taxes, yet make sure that you fulfill your tax requirements ethically while working to add value. We can fill a variety of tax needs, both domestic and international as well as corporate and personal.

FINANCIAL

LEVI & LEVI can meet all of your basic financial needs with our exemplary Accounting Services Group that can truly add value whether it's your business or your personal finances that we are reviewing. We work with business entities as well as non-profits and foundations. Our accounting services include; auditing and compilation review of financial statements, budgets and forecasts, and government reporting. We won't simply process your financial statements, our mission is to add value. We will go the extra mile to help you forecast or locate opportunities that you may be missing.

BUSINESS CONSULTING

LEVI & LEVI's Business Consulting unit has proven itself as a valuable resource to businesses of all kinds. We can help you plan your future, whether you see it coming or not. We can help you bring seminal business events to life; like mergers and acquisitions, business valuation, leases and contracts, or business development plans, all of which take a huge amount of planning and attention to detail. If there are no big events on your horizon, we can still be of service by helping you to anticipate the unexpected through our forecasting, real estate projections, risk management assessments, or our feasibility studies. We look at your business and all of its many facets, to find both issues and opportunities and bring that valuable insight to you.

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