

# Canadian Tax Planners Newsletter

**July/August 2007**

In this issue of the Canadian Tax Planners Newsletter, we shall review tax issues related to cross border moves. Due to the complexity of the subject matter, we shall provide an overview of potential tax traps and planning opportunities. Since our review is general in nature, it is important that a tax professional be involved with cross border moves. Many issues can be resolved if the appropriate tax strategy is implemented prior to the move. We shall cover the following topics related to cross border moves:

- determining an individual's residence
- immigrating to Canada
- permanent moves from Canada
- transfer of employees on foreign assignments
- election/return under Section 217 of the income tax act
- taxation of temporary non-residents, such as snowbirds
- filing a U.S. return
- tax relief to Canadians working abroad
- business travelers

## **Determining an Individual's Residence**

To determine if an individual has a tax liability in a specific country, the factors to be considered are residency, time spent in the country and in certain jurisdictions, such as the United States, citizenship is also a factor. If individuals are resident of Canada, they are subject to Canadian income tax on their world income. Whereas, non-residents are normally subject to Canadian taxes if they were employed, carried on a business in Canada, or disposed of taxable Canadian property. CRA is concerned about two issues concerning residency. Is the individual a Canadian resident and if residency changed during the year, what is the exact date of the change? CRA examines various factors to determine an individual's residence, but the most important tests are

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- residential ties elsewhere
- purpose of stay abroad
- residential ties within Canada

**Residential Ties Elsewhere** - The courts have ruled that everyone must be a resident somewhere and it is possible for an individual to be a resident in more than one country at the same time for tax purposes. Accordingly, where a resident of Canada goes abroad, but does not establish a permanent residence elsewhere, CRA presumes the individual is still a resident of Canada. If an individual wishes to avoid Canadian taxes, they must cease being a resident of Canada and establish residency elsewhere.

**Purpose of Stay Abroad** - In order to become a non-resident of Canada, there must be a degree of permanence to the stay abroad. When individuals are absent from Canada (for any reason) for a short period of time, they will be presumed to have retained their residence status while outside of Canada. The onus is on taxpayers to establish that they have severed their ties upon leaving Canada. If there is evidence that a return to Canada was foreseen at the time of the departure, CRA will presume the individual was a Canadian resident throughout the period. A few years back, when individuals were absent from Canada for 2 years or longer, they were presumed to have become a non-resident of Canada, provided they satisfy the other non-residency requirements. The two year requirement has been dropped from CRA's interpretation bulletin IT-221R3.

**Residential Ties Within Canada** - The primary residential ties of individuals are their home, location of spouse and dependants, plus social ties. Assume an individual leaves Canada, but ensures that a home is kept available in Canada by maintaining it vacant, leasing it at non-arm's length or renting it at arm's length with the right to terminate the lease on short notice. In these cases, the individual will generally be considered not to have severed residential ties with Canada.

**Sojourners** – Individual who has not established residential ties with Canada may still be considered to be a Canadian resident, if they have spent a total of 183 or more days in Canada in a calendar year.

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