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Vern Krishna says that timing is the key element in determining when an individual should become, or give up being, a Canadian resident for tax purposes. Immigrants and emigrants are subject to special tax rules that have hidden traps for unplanned arrivals and departures.

Resident or not, timing is everything

Date: 2012-05-02

Vern Krishna

Timing is the key element in determining when an individual should become, or give up being, a Canadian resident for tax purposes. Immigrants and emigrants are subject to special tax rules that have hidden traps for unplanned arrivals and departures.

Canada taxes individuals primarily on the basis of residence and secondarily on the source of income. Residents are taxable on their worldwide income, and nonresidents on their Canadian source income. Part-year residents are taxable on their global income during their residency in Canada, and cease to be taxable upon giving up residence. Hence, it is critical to determine exactly when an individual ceases to be a resident of Canada.

One is a part-year resident if he gives up, or lakes up, Canadian residence part way through the year. For example, a resident may emigrate on May 30. In these circumstances, he would be a resident of Canada until his departure on May 30 and a non-resident for the remainder of the year. As a resident, he would be taxable on his global income. As a non-resident, he would be taxable in Canada only if he was employed or carrying on a business in Canada, or if he realized a capital gain from taxable Canadian property.

One who gives up residence during a taxation year may claim deductions for that year, but only on a proportional basis. We determine an individual’s non-refundable tax credits for the period of residency based on reasonableness—such as, the number of days of residency.

For example, one who becomes a Canadian resident on Sept. 1 of a year is liable for Canadian tax on his global income between Sept. 1 and Dec. 31. His personal exemptions would be 122/365 (122 being the number of days spent in Canada) of the annual deductions otherwise available. He may also claim—subject to annual maximums—additional tax credits for the period of non-residency if he earns at least 90 per cent of his income for the period of non-residency in Canada.

It is not easy to relinquish residence. Canada likes its taxpayers. An individual must produce convincing evidence of severed ties on a fairly permanent basis in order to cease residence. To give up Canadian residence, the taxpayer should minimize (preferably eliminate) his or her economic ties with Canada.

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The Canada Revenue Agency looks at four principal factors to determine whether an individual has given up Canadian residence: Permanence and purpose of stay abroad; residential ties within Canada; residential ties elsewhere; and regularity and length of visits to Canada.

Thus, at the very least, an individual giving up residence should: Sell or long-term lease their dwelling in Canada; sell their motor vehicle; cancel any lease in respect of a dwelling in Canada that they occupy, or sublease the dwelling for the period of their absence; cancel bank accounts, club memberships and similar social and business connections within Canada; and stay out of Canada. However, there is no bright-line factual test for the minimum length of time that an individual should be out of Canada to claim non-resident status.

It is much easier for an individual to become a Canadian resident than to relinquish residence. An individual who takes up residence in Canada is taxed as a part-year resident for the portion of the year after their arrival and as a nonresident prior to arrival.

Residence for immigration purposes is different from residence for tax purposes. An individual can establish permanent residence status for immigration purposes without becoming a resident for tax purposes. Landed immigrant status is determined on the basis of selection standards that are quite different from those used to determine residence for tax purposes.

A landed immigrant must spend 183 days in Canada in a 12-month period. For tax purposes, an individual is a resident if he spends more than 182 days in Canada in a calendar year. Thus, one can arrange to take up landed immigrant status in Canada in a particular year and maintain non-resident status for income tax purposes.

It is generally advantageous for one to deliberately establish residence rather than be deemed a "sojourner" in Canada in the year of arrival. A sojourner is a Canadian resident for the entire year and taxable on their worldwide income.

In contrast, an incoming resident is taxable on his or her worldwide income only after arrival in Canada. Thus, timing immigration is important. An immigrant can minimize tax by splitting income between Canada and the country of departure.

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