



Government of Canada

Gouvernement du Canada

Canada Revenue Agency

Home → Income tax → Folios → Series 5 - International and residency

→ Folio 1: Residency

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

Income Tax Folio

S5-F1-C1, Determining an Individual's Residence Status

Series 5: International and Residency

Folio 1: Residency

Chapter 1: Determining an Individual's Residence Status

my suggestion

① *owner ≈ applicant*

② *permanent residents only*

Summary

The purpose of this Chapter is to explain the position of the Canada Revenue Agency (CRA) concerning the determination of an individual's residence status for income tax purposes and the factors to be taken into account in making that determination.

Under the Canadian income tax system, an individual's liability for income tax is based on his or her status as a resident or a **non-resident** of Canada. An individual who is **resident** in Canada during a tax year is subject to Canadian income tax on his or her worldwide income from all sources. Generally, a **non-resident** individual is only subject to Canadian income tax on income from sources inside Canada.

An individual who is resident in Canada can be characterized as ordinarily resident or deemed resident. An individual who is ordinarily resident in Canada will be subject to Canadian tax on his or her worldwide income during the part of the year in which he or she is resident in Canada; during the other part of the year, the individual will be taxed as a non-resident. An individual who is deemed resident in Canada in a particular year will be subject to Canadian income tax on his or her worldwide income throughout that year. In certain situations, an individual who would otherwise be ordinarily resident or deemed resident in Canada may be deemed not to be resident in Canada pursuant to subsection 250(5) and the tie-breaker rules of an income tax treaty.

the CRA will generally accept that an individual is a resident of the other country unless the arrangement is abusive (for example, treaty shopping where the individual is in fact only a **resident of convenience**). Such could be the case, for example, where an individual is placed within the taxing jurisdiction of a particular country in order to gain treaty benefits in a manner that does not create any material economic nexus to that country.

1.43 For purposes of paragraph 1 of the Residence article of a particular tax treaty, the onus rests on an individual to demonstrate that he or she is liable to tax in the other country. The CRA is entitled to rely on the assumption that an individual is not resident in the other country for purposes of the treaty unless the individual can establish otherwise. This position is based on the Supreme Court of Canada's decision in Johnston v MNR, [1948] SCR 486, 3 DTC 1182. It is also supported by McFadyen v The Queen, [2000] TCJ No. 589, 2000 DTC 2473, which was heard at the Tax Court of Canada and later affirmed by the Federal Court of Appeal (2002 FCA 496, 2003 DTC 5015).

1.44 The Courts have stated that holders of a United States Permanent Residence Card (otherwise referred to as a **Green Card**) are considered to be resident in the United States for purposes of paragraph 1 of the Residence article of the Canada-U.S. Tax Convention. For further information, see the Federal Court of Appeal's comments in Allchin v R, 2004 FCA 206, 2004 DTC 6468.

1.45 Where an individual is determined to be a dual resident, the Residence article in the tax treaty will provide **tie-breaker rules** to determine in which country the individual will be resident for purposes of the other provisions of the treaty. If such tie-breaker rules apply and it is determined that an individual is a resident of another country for purposes of a tax treaty between Canada and that country, then subsection 250(5) will deem the individual to be a non-resident of Canada for purposes of the Act (see ¶1.37 – 1.39).

Permanent home test

— for "home based" business

1.46 Tie-breaker rules are found in paragraph 2 of the Residence article of most of Canada's income tax treaties. Usually, these rules rely first on a **permanent home** test to resolve the residence issue. Generally, the **permanent home** test provides that an individual is resident for purposes of the treaty in the country in which the individual has a permanent home available to him or her. A **permanent home** (as that term is used in income tax treaties) may be any kind of dwelling place that the individual retains for his or her permanent (as opposed to occasional) use, whether that dwelling place is rented (including a rented furnished room) or purchased or otherwise occupied on a permanent basis. It is the permanence of the home, rather than its size or the nature of ownership or tenancy, that is of relevance.