Wealth Management

RBC Wealth Management Services

Moving from Canada — to another country

Before you pack your bags, consider the tax and estate planning issues

There are various reasons why many Canadians consider moving to another country, including enticing employment prospects, retirement destinations, potentially lower taxes and sunny weather. This article summarizes some of the tax and estate planning issues to consider before you decide to pack your bags and leave Canada. Some of the questions it will address:

What are the tax implications of ceasing Canadian residency?

- What should I do with my registered and non-registered accounts in Canada?
- Are my Canadian Will and power of attorney valid in the other country?

If you are moving to the U.S., please ask your advisor for the article "Moving from Canada to the U.S.," which contains a more focused discussion of the tax and estate planning issues for moves to the U.S.

It is important that you and your family consult your own lawyer, accountant or other professional advisor when planning to implement any strategy or idea contained herein. In many cases, this will mean consulting one or more professional advisors with cross-border planning experience and expertise who can properly advise you on both the Canadian and other country's planning issues.

Please contact us for more information about the topics discussed in this article.

Ceasing Canadian residency

The Canada Revenue Agency (CRA) taxes Canadian residents on worldwide income and non-Canadian residents only on certain types of income derived from Canadian sources (e.g., Canadian dividends, Canadian employment income and sale of real estate in Canada). Canadian residency should not be confused with Canadian citizenship. Generally, Canadian citizenship has no bearing on your liability for Canadian tax. Therefore, Canadian citizens moving to another country are not considered to maintain residency in Canada for tax purposes simply because they have Canadian citizenship.

To become a non-resident of Canada, you must sever most if not all of your primary residential ties with Canada.

Often, the goal of many Canadians moving to another country is to become a non-resident of Canada to avoid paying Canadian tax on their worldwide income. The Canadian Income Tax Act (the "Act") does not specifically define the term residence. Instead, residency is determined based on relevant facts and circumstances that must support that sufficient ties to Canada have been severed. Generally, to become a non-resident of Canada, you must sever most if not all of your primary residential ties with Canada. Severing primary residential ties with Canada generally involves the following:

- Disposing of or renting your personal residence in Canada to non-related individuals and establishing a permanent home in another country; and
- Having your spouse and dependants leave Canada with you or soon after.

In addition to primary residential ties, certain secondary residential ties should be severed. Severing secondary residential ties with Canada involves disposing of personal property and breaking social ties in Canada and acquiring or establishing these in the other country. These ties are collectively evaluated (i.e., no single secondary residential tie is sufficient in and of itself to result in a determination that an individual is resident in Canada). Therefore, provided you have severed primary residential ties to Canada, it is possible to maintain certain secondary ties to Canada such as maintaining a bank account, investment account or credit card.

The CRA has indicated that the date you become a non-resident of Canada is the **latest** of:

- The date you physically leave Canada;
- The date your spouse and dependants leave Canada; or
- The date you become a resident of the new country you are immigrating to.

Final Canadian Part-Year Resident Tax Return

If you depart Canada and become a non-resident part way through the calendar year, you must file a resident Canadian tax return reporting your worldwide income for the portion of the year that you were resident in Canada. This return is often referred to as a "part-year tax return." For example, if you cease Canadian residency on November 1, 2010, you will be required to file a part-year Canadian tax return to report your worldwide income from January 1, 2010 to November 1, 2010.

Certain personal tax credits such as the basic personal amount and spousal amount will be prorated based on the number of days that you were a resident of Canada.

The deadline to file your part-year Canadian tax return and pay your tax liability is April 30 of the following year. If you or your spouse are self employed, the filing deadline is extended to June 15 of the following year; however, the tax liability is still due by April 30 of the following year.

Deemed disposition

One of the major drawbacks of ceasing Canadian residency is that you are deemed to dispose of your non-registered assets (with certain exceptions) on the date you officially become a non-resident of Canada for tax purposes. The deemed disposition rules require that you report the capital gain/loss equal to the fair market value of your assets minus your adjusted cost base on the date you cease Canadian residency. The increase in tax liability that may result from the requirement to include this deemed disposition on your tax return is often referred to as "departure tax."

If you will be subject to deemed disposition tax, it is possible to defer paying this tax until the assets are actually disposed of, provided an election is filed and adequate security is posted with the CRA.

Depending on the tax rules in the country you are moving to, you may be double taxed when you eventually dispose of an asset that was subject to Canadian departure tax. This may result, for example, if the country you are moving to requires that you use the original cost basis of the asset to determine the capital gain on the sale and does not permit you to claim a foreign tax credit for the departure tax that was incurred for Canadian tax purposes when you became a non-resident. If there is no relief under the tax laws of the other country and there is no tax treaty between the two countries to provide relief, you should consider whether it makes sense to dispose of the asset before you leave Canada to avoid the double taxation.

There are certain types of property that are exempt from the Canadian deemed disposition rules including:

- Canadian real estate
- Assets in registered plans (e.g., RRSP, RRIF, RESP, registered pension plans)
- Assets in a Tax-Free Savings Account (TFSA)
- Employee stock options
- Interest in life insurance policies other than segregated funds
- If you were a resident of Canada for five years or less during any 10-year period, assets that you either owned before you became a Canadian resident or inherited after you became a Canadian resident, so long as you did not dispose of these assets before your Canadian residency ended

Note that shares you own in a Canadian Controlled Private Corporation (CCPC) are subject to the deemed disposition rules. Furthermore, when a corporation that was controlled by Canadian residents is now controlled by non-residents of Canada there are tax implications. For example, the corporation loses its CCPC status and will not qualify for certain benefits such as the small business deduction and the reduction in corporate tax rates levied by provinces for active business income. You should discuss the tax implications for your CCPC with your accountant if you are leaving Canada and you are the controlling shareholder of your CCPC.

If the fair market value of all the property you own on the day you cease Canadian residency is greater than $25,000, you must include a listing of your worldwide property holdings on CRA Form T1161 — List of Properties by an Emigrant of Canada when you file your part-year Canadian tax return. The total fair market value calculation includes property such as shares (including both public and private), bonds, debentures, promissory notes, treasury bills, interests in trusts, interests in partnerships, business property (including inventory), real property (including your home), personal-use property and security options. However, the calculation excludes any personal-use property such as clothing, household goods and cars valued at less than $10,000, registered plan assets and cash.

If you will be subject to deemed disposition tax, it is possible to defer paying this tax until the assets are actually disposed of, provided an election is filed and adequate security is posted with the CRA.

Sale of Canadian real estate after leaving Canada

Will you continue to own Canadian real estate? Keep in mind that although real estate located in Canada is not subject to the deemed disposition rules, when non-residents eventually sell their property, they will be subject to a 25% Canadian non-resident withholding tax on the gross proceeds of the sale. However, if you advise the CRA of the sale in advance or within 10 days of the sale, the CRA may provide

Ask your tax advisor to confirm the taxation of employee stock option plans in Canada as a non-resident and the country you will move to and whether there is relief from double taxation.

approval to levy the 25% Canadian non-resident withholding tax on the capital gain as opposed to the gross proceeds of the sale. If this property qualified as your principal residence during the time you were a resident of Canada, it may be possible to request that the CRA reduce the withholding amount by the portion of the capital gain that would be excluded by the principal residence exemption.

The sale of Canadian real estate requires the filing of a non-resident Canadian income tax return to report the taxable capital gain or loss on the sale. Any overpayment of withholding tax will be refunded and any underpayment of tax must be paid by April 30 of the year following the sale. The sale of your Canadian real estate may also be subject to tax in the country you are moving to. However, you may be able to claim a foreign tax credit in the other country to reduce or eliminate double taxation.

In advance of a sale of real estate located in Canada, you should ask your tax advisor to discuss the options available to reduce the Canadian non-resident withholding tax and tax that may apply in the other country.

Canadian stock options

Many individuals mistakenly believe that if they exercise employee stock options as a non-resident of Canada, they will avoid liability for Canadian tax. However, this may not be the case if employee stock options were granted while you were a Canadian resident. Employee stock options may be subject to Canadian tax even if you are a Canadian non-resident at the time of exercise. You are required to file a Canadian non-resident tax return to report the stock option benefit. If you are a resident of another country when the employee stock option is exercised, you may be subject to income tax in the other country as well.

When employee stock option income is taxed in both Canada and another country, you may be entitled to relief in the form of foreign tax credits to avoid or minimize double taxation. Also, there may be relief provided from double taxation if a tax treaty exists between Canada and the other country. For example, a tax treaty may provide that when an employee has worked in both countries, each country is limited to taxing only the portion of the benefit that accumulated while the employee's principal place of employment was in that country. This would be calculated by dividing the number of days the employee's employment was in the country during the period between the date of grant and the date of exercise by the total number of days in that period.

Ask your tax advisor to confirm the taxation of employee stock option plans in Canada as a non-resident and the country you will move to and whether there is relief from double taxation. This information may influence your decision regarding whether you should exercise your employee stock options before or after you cease Canadian residency. Taxation of employee stock options can be complex, and you should consult with a qualified cross-border tax advisor for advice.

Non-registered accounts held in Canada

If you are moving to another country, you should contact your Investment Advisor to discuss the status of your accounts, including any trading restrictions and documentation requirements.

Canadian mutual funds held in non-registered accounts

Due to Canadian securities law, Canadian mutual fund companies will not sell their domestic mutual funds to residents of a foreign country. If you already own Canadian-based mutual funds before you leave Canada, Canadian mutual fund companies generally will not require you to dispose of them and may allow only reinvestment of distributions. However, certain fund companies may require that you redeem your mutual fund. Even if you are not required to redeem your mutual funds, you will be subject to a deemed disposition for Canadian tax purposes. Refer to the previous "Deemed disposition" section. You should also ask your cross-border tax advisor about the tax implications in the country you are moving to with respect to holding Canadian mutual funds or any other Canadian investment.

Tax-Free Savings Account (TFSA)

If you become a non-resident of Canada, you are allowed to keep your TFSA. Assets in a TFSA are not subject to the deemed disposition rules. Earnings in the account or withdrawals made from the account will continue to be exempt from Canadian tax. However, no contributions will be allowed and no contribution room will accrue while you are a non-resident of Canada. Any withdrawals made during the period that you are a non-resident will be added to your unused TFSA contribution room in the following year, but will only be available if you re-establish residency in Canada. You can contribute to a TFSA up to the date that you become a non-resident of Canada.

Although the investment income earned in a TFSA is tax-free for Canadian tax purposes, it may be taxable in the country you are moving to. You should ask a cross-border tax accountant to confirm taxation of a TFSA in the other country.

Registered retirement plans – RRSPs/RRIFs

Many individuals departing Canada are uncertain of the options available for their RRSPs/RRIFs. Can I keep my RRSP/RRIF intact or must I deregister it? Can I roll my RRSP/RRIF into a retirement plan in the other country?

A tax-free rollover of your RRSP/RRIF to a retirement plan in another country is not permitted. Therefore, any transfer will be considered a distribution under Canadian tax law and subject to Canadian non-resident withholding tax.

Contrary to popular belief, you are not required to deregister your RRSP/RRIF upon ceasing Canadian residency. You have the option to keep your RRSP/RRIF intact and have the income continue to grow tax-deferred for Canadian tax purposes. However, a tax deferral may not be available in the country you are moving to. The tax laws in the other country may require the taxation of income earned annually in your registered plan. If this is the case, you should consider whether it makes sense to keep the RRSP intact or deregister it.

Although you can continue to contribute to an RRSP once you are a non-resident (provided you have RRSP contribution room), it may not make sense to do so. For example, if you no longer have a Canadian tax return filing requirement in Canada, you will not be able to make use of the RRSP deduction as a result of the contribution to your RRSP. Also, the country you move to may not allow a deduction in determining your liability for income tax. An RRSP contribution can be carried forward for Canadian tax purposes, but you will only be able to use it in the future if you re-establish residency in Canada.

In the year you cease to be a resident of Canada, you must make an RRSP contribution no later than 60 days after the end of the year to be able to claim an RRSP deduction on your part-year Canadian tax return.

Lump sum withdrawals from your RRSP/RRIF as a non-resident of Canada are typically subject to Canadian non-resident withholding tax of 25%. However, if a tax treaty exists with the country you move to, withdrawals may be subject to a reduced withholding tax rate.

For many countries that have a tax treaty with Canada, withdrawals from a RRIF may be subject to a reduced 15% non-resident withholding tax only if payments from the RRIF during a calendar year are less than the greater of:

1. Twice the minimum withdrawal required for the year; and
2. 10% of the fair market value of the RRIF at the beginning of the year.

One notable exception is RRIF payments made to residents of the United Kingdom (UK). There will be no withholding tax on the payments made from a RRIF during a calendar year to a resident of the UK, provided the payments meet the conditions just mentioned.

The CRA deems the value of the RRIF at the beginning of the first year to equal the value of the RRSP at the time of conversion to a RRIF for non-residents only. This will allow the non-resident to receive the reduced treaty rate on RRIF withdrawals in the first year.

There may be other conditions that may need to be met in order to qualify for a reduced non-resident withholding tax. As it may be difficult for financial institutions in Canada to confirm that all requirements have been met, they may not take the reduced treaty rates into account and thus withhold a larger amount. However, as a non-resident of Canada, you can apply to the CRA for a refund of excess tax withheld by filing a CRA Form NR7-R — Application for Refund of Non-Resident Part XIII Tax Withheld. This form must be filed within the two years following the year in which the tax was withheld.

For many countries that have a tax treaty with Canada, withdrawals from a RRIF may be subject to a reduced 15% non-resident withholding tax.

Note that withdrawals from your RRSP/RRIF may also be subject to tax in the country you move to. However, you may be entitled to relief in the form of foreign tax credits to avoid or minimize double taxation.

Ask your cross-border tax advisor to explain how Canada and the other country will treat your registered account for tax purposes during the time you are earning income in the account and when future withdrawals are made. You should also speak to your Investment Advisor about any trading restrictions that may exist due to the change in residency status and confirm whether RBC can apply a reduced withholding tax rate on future withdrawals.

Locked-in registered plans

The Canadian tax implications of locked-in registered plans (such as LIRAs, LIFs, LRIFs) are similar to the previous discussion regarding taxation of non-locked-in registered plans, including the discussion regarding withholding tax rates. Your locked-in registered plan must generally remain as a locked-in plan even if you become a non-resident. However, you may be entitled to unlocking relief under the applicable federal or provincial pension legislation for non-residents, small locked-in plan balance, financial hardship or terminal illness.

Under federal and most provincial pension legislation, the requirement to convert a LIF to an annuity at the age of 80 has been eliminated. For New Brunswick LIFs, assets must be exhausted by age 90. However, for Newfoundland and Labrador LIFs, all funds remaining in the LIF must be transferred to a life annuity by the end of the year in which the plan holder turns 80. If you have a plan regulated under Newfoundland and Labrador pension legislation, this may present a dilemma if you are in the U.S. at this time because Canadian insurance companies cannot sell annuities to a U.S. resident. A solution for you may be to convert your LIF to an LRIF prior to age 80. An LRIF can continue past age 80; however, the LRIF maximums are based on a different formula than the LIF maximums.

You may be able to completely unlock your LIF if you are a resident of those provinces that allow unlocking due to non-residency (e.g., B.C., Alberta, Ontario, Quebec). Federally-regulated LIFs also allow unlocking due to non-residency. Note that New Brunswick allows unlocking due to non-residency as well; however, the unlocking will not apply to you if you are a non-resident individual who is also a Canadian citizen.

RESP when a beneficiary becomes a non-resident

Under Canadian tax rules, you do not need to collapse an RESP when the beneficiary becomes a non-resident. The income earned in the RESP continues to be tax-deferred for Canadian tax purposes until withdrawals are made. The income in the RESP may be paid to a beneficiary attending a post-secondary educational institution outside of Canada, provided certain criteria are met. However, any Canada Education Savings Grant (CESG) received in the plan prior to becoming a non-resident of Canada cannot be paid to a non-resident beneficiary. No further contributions can be made to an RESP once the beneficiary becomes a non-resident of Canada, and you may need to pay the CESG back to the Canadian government.

There may be a different tax treatment for the RESP in the country you are moving to. For example, in that country, the income earned in an RESP may not be tax-deferred, and separate tax filing may be required. Depending on the tax implications in the country you move to, you may want to decide if it makes sense to deregister your RESP before your move.

You may be able to completely unlock your LIF if you are a resident of those provinces that allow unlocking due to non-residency (e.g., B.C., Alberta, Ontario, Quebec).

If you are the subscriber of an RESP, you should confirm the tax treatment and reporting requirements in the country you are moving to with a qualified cross-border tax advisor. There may be education savings plans in the country you are moving to that your qualified cross-border tax advisor can discuss with you. You should also confirm with your Investment Advisor any investment restrictions that may apply as a result of the non-resident status of the beneficiary.

Life insurance policies

If you leave Canada, any interest you hold in a life insurance policy is excluded from the deemed disposition rules. However, an interest in a segregated fund life insurance policy in Canada is not exempt — you will be deemed to have disposed of this policy at fair market value and will be taxed on any gain that results.

A qualified cross-border tax accountant can advise you of the taxation of your Canadian insurance policy in the country you are moving to. You should also review your insurance needs as a result of your move to another country.

Home Buyer's Plan (HBP)/Life Long Learning Plan (LLP)

If you make an LLP or HBP withdrawal and then subsequently become a non-resident of Canada, your whole HBP or LLP balance will be payable. If you do not repay the outstanding balance by the required due date that applies to you, the unpaid amount must be included in calculating your tax liability for the year in which you became a non-resident.

Foreign income verification statement

Canada imposes certain requirements to disclose information on foreign assets. For example, a Canadian tax resident who at any time in the calendar year owned or held a beneficial interest in certain foreign property with the total cost of more than $100,000 is required to file form T1135 — Foreign Income Verification Statement.

If you own assets in Canada or any other foreign country, ask a tax advisor in your country of residence to discuss any reporting requirements regarding these assets.

Qualifying for social benefits in Canada and the other country

Canada has a number of social security agreements with various countries. If you have lived or worked in another country, or you are the surviving spouse or common-law partner of someone who has lived or worked in another country, you may be eligible for benefits from Canada or the other country under a social security agreement. For example, if you do not otherwise qualify for CPP benefits, Canada may consider periods of contribution to the pension program of the other country. Also, if you do not qualify for the Canadian Old Age Security (OAS) pension because you have not lived in Canada for the minimum number of years, Canada may consider periods of contribution to the pension program of the other country as periods of residence in Canada. The other country may also consider periods of contribution in Canada to determine eligibility for benefits in that country.

You should confirm whether there is a social security agreement in place with the country you are moving to and determine if this agreement will help you qualify for benefits. You may qualify for a benefit from Canada or the other country, or both. Social security legislation and the agreements are complex. For information regarding applying for benefits from Canada or the other country, please call Service Canada at 1-800-4548731 (if you live inside Canada or the U.S.) or 1-613-957-1954 (if you live outside Canada; collect calls accepted) or visit their website: **http://www.servicecanada.gc.ca/eng/isp/ibfa/intlben.shtml**

Wills and power of attorney

Moving to another country presents an excellent opportunity to review and update your estate planning arrangements such as your Wills and power of attorney.

Wills

It is important to ensure that you have a valid Will as a result of your move to another country that properly addresses your wishes. You should confirm with a lawyer in the country you are moving to whether your Canadian Will is valid. You may run the risk that the provisions of your Canadian Will are unclear or missing, or they violate the other country's laws, even if the Canadian Will is valid; and thus the provisions may not be executable in the other country. You should also review your current choice of executors and trustees, and determine whether these choices are still recommended for tax and estate planning purposes under the laws in the other country. A professional legal advisor in the other country may suggest that you have your Canadian Will replaced with a Will in that country or create a separate Will to deal with the assets located in each country.

Power of attorney

It is important to ensure you have a valid power of attorney as a result of your move to another country that properly outlines your wishes in managing your financial affairs in the event of your incapacity. Power of attorney documents may be unique to the region in the country you are moving to, so you may need to replace your Canadian power of attorney with properly drafted documents in that country's specific region.

Estate and gift tax

Canada does not impose gift taxes; however, if you gift appreciated assets, you may trigger a capital gain or loss on the disposition under capital gains rules in Canada's Income Tax Act. Canada's death tax system is an extension of its income tax system. On death, Canadian residents (subject to certain rollover provisions) are deemed to have disposed of all property owned at the date of death at fair market value.

It is important to determine whether the country you are moving to has an estate and gift tax system and discuss your exposure with your cross-border tax professional before your move so you can implement appropriate strategies for minimizing or avoiding them.

Conclusion

If you are contemplating leaving Canada, we strongly encourage you to contact your Investment Advisor as well as a cross-border tax or legal professional well in advance of your departure. They can discuss the various income tax and estate planning issues that may apply to you and help you decide on the appropriate tax and estate planning strategies that can be implemented.