



ADM (HR Mil)



**Aide Memoire
International Taxation**

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Prepared by Directorate Pay Policy Development
for members of the Canadian Forces

PART 1-OVERVIEW

Disclaimer Taxation is a matter between the individual taxpayer and Canada Revenue Agency (CRA) and/or provincial governments as applicable. This aide memoire is prepared for information purposes only and is not an authoritative document.

Background Members of the Canadian Forces posted outside Canada may be subject to different taxation criteria as compared to members posted within Canada. Within the Department of National Defence, international taxation comes under the purview of the Director General Compensation and Benefits (DGCB). As such, DGCB's mandate is to keep current with taxation policy and make presentation to governmental authorities when tax policy changes are considered to result in adverse consequences for members. DGCB does not intervene or provide advise on individual cases.

This aide memoire is presented in lieu of a CANFORGEN.

In this aide memoire This aide memoire will provide general information on the following topics:

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General The purpose of this aide memoire is to provide you with a starting point for gathering information regarding international taxation issues. Prior to your departure on an outside-Canada posting there are several issues that you should consider:

- The residency status of yourself and dependents
 - The tax implications associated with different types of residency
 - Filing of tax returns while outside Canada
 - What will happen when you return to Canada
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Taxation Concepts Canadians are permitted to “tax plan,” structuring their affairs to reduce the amount of tax payable by ways that are within the law in a manner that is genuine and open. They should not attempt tax evasion or avoidance:

- **Tax Evasion** knowingly reporting tax that is less than the tax payable under law by fraudulently omitting income, claiming deductions or failing to use all the facts of a situation.
- **Tax Avoidance** legally circumventing the law through a scheme that does not truly reflect the facts. While not illegal, CRA will challenge tax avoidance.

Tax Equity Taxation comes under both federal and provincial jurisdiction. With the exception of the province of Quebec, the federal government collects and remits tax on behalf of the provinces. What this means is that members are subject to both federal and provincial tax laws. Because of the variation in provincial tax laws, and the individual facts and circumstances of each taxpayer, absolute equality in taxation is not possible, nor is it desirable.

Contact Information

CRA – website The CRA website provides useful information including a section for Non-residents and Deemed residents: <http://www.cra-adrc.gc.ca/E/pub/tg/t4131> Most reference material, forms and guides, including provincial, may be downloaded or printed directly off the website.

CRA - phone Staff in the International Taxation Office will deal with you on an individual basis. You may call one of these numbers:

- 1-800-267-5177 – from Canada or USA
- (613) 952-3741 – from outside Canada or USA

Revenu Québec - website Information, tax forms and guides for individuals resident in Québec are available on the following Ministère du Revenu Québec website: <http://www.revenu.gouv.qc.ca/eng/particulier/index.asp> . Interpretation bulletins are not directly available on the website. They must be ordered for a fee from the Gazette Associate du Québec at (418) 659-6299.

Revenu Québec - phone Staff at the Revenu Québec Call Centre will deal with you on an individual basis. You may call an outside Canada expert at one of these numbers:

- (819) 779-6039 – from inside Canada
- 1-877-841-7505 – from outside Canada

Definitions

Term	What it means
Member	Means only a member of the Canadian Forces and includes both officers and non-commissioned members
Spouse	The term spouse includes a common-law partner or married partner of a member
Dependent	Spouse and dependents of CF members
Taxpayer	A taxpayer includes any person whether or not liable to pay tax under the ITA
Province	Any reference to province is assumed to also apply to the Yukon, North West Territories and Nunavut.
Remission	This may apply to the release from the obligation to pay tax or the return of money paid as tax, depending on the circumstance
CRA	Canada Revenue Agency
RQ	Revenu Québec
ITA	<i>Income Tax Act</i>
NR73	CRA Form – <i>Determination of Residency Status (Leaving Canada)</i>
IMP 22-4	RQ Interpretation Bulletin – The Tax Liability of Members of the Canadian Armed Forces
IT-221R3(C)	CRA Interpretation Bulletin – <i>Determination of an Individual's Residence Status</i>

PART 2- RESIDENCY DETERMINATION

Caution

- Residency, *not* citizenship is the major determinate of where and how much tax is paid
 - Residency is *not* about picking a province with a low tax rate
 - Deemed residency is *not* about avoiding a high-tax rate province
 - Non-residency is *not* an arbitrary matter
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General

Residency is a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests, and conveniences at or in the place in question.¹

Individuals are “ordinarily resident” in Canada for tax purposes if Canada is the place where the individual, in the settled routine of his or her life, regularly, normally or customarily lives. CF members normally consider their out-of-Canada posting as a temporary absence from Canada.

Types of Resident

In the Canadian tax system, the amount of income tax payable depends on where a taxpayer has ties of residency.

There are four basic categories of residency:

- Factual Resident
 - Deemed Resident
 - Non-Resident
 - Deemed Non-Resident
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Hierarchy of residency

An individual who is “ordinarily resident” in Canada is considered a factual resident. Where an individual is determined not to be a factual resident, he or she may be considered a deemed resident. Only when an individual is neither a factual nor a deemed resident of Canada, is he or she considered a non-resident of Canada. In certain instances, when an individual is considered a resident of both Canada and another country, an individual may be considered a deemed non-resident of Canada.

¹ CRA interpretation bulletin 221R3 as determined by the courts

Determination The next sections will help you identify the residency status for yourself and your dependants. If you meet the criteria for factual resident, you cannot be considered a deemed resident or non-resident. CF members must be either a factual resident or a deemed resident. .

Are you a Factual Resident?

General In determining a factual resident, all of the relevant facts in each case must be considered, including residential ties with Canada and length of time, object, and intention and continuity with respect to stays in Canada and abroad.²

Significant ties The most important factor to be considered in determining a factual resident is whether or not the individual maintains residential ties with Canada while abroad. Unless an individual severs all significant residential ties with Canada, the individual will continue to be a factual resident and subject to Canadian tax on all worldwide income.

Primary residential ties to consider include the following:

- *Location*- where is your home or permanent dwelling
 - *Ownership*-is your home owned, leased to a relative, or leased at arm's length
 - *Dependants*-where are your spouse and dependants living
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Secondary ties Secondary residential ties may also be considered relevant facts but must be looked at collectively in order to evaluate the significance of any one such tie, therefore, it would be unusual for a single secondary tie to be sufficient to lead to a determination of residency.

The secondary ties to consider, include, but are not limited to, the following:

- *Property*- the location of your personal property (cars, RVs, furniture, seasonal dwelling, etc)
- *Social*-social/community ties (memberships in organizations)
- *Economic*-economic ties (your employer, banking arrangements, credit cards, RRSPs)

[IT 221R3](#) provides a complete list of secondary ties.

² IT-221R3

- Other factors** In addition to primary and secondary residential ties in Canada, CRA may consider:
- the purpose and permanence of your stay abroad
 - they will look for evidence that your return to Canada was foreseen at the time of your departure
 - your residential ties elsewhere
 - you may have ties to more than one province, or country. If this is the case, you need to determine where you have the strongest ties
 - of note, renting is generally considered temporary, whereas owning a home generally conveys permanence or intent to reside in a particular location
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Application Canadian Forces members are normally considered factual residents because in the majority of cases, they are employed outside of Canada on a temporary basis and have maintained significant and secondary ties to Canada.

Dependents, including spouses of CF members, normally share the same facts as CF members, i.e. the member and spouse likely retain the same residential, social, and economic ties to Canada. Therefore, it would be expected that most dependents would be considered factual residents.

Are you a Deemed Resident?

General Certain persons meet the definition of non-resident but are deemed to be residents of Canada and therefore are liable to Canadian tax on their world income.

Deemed residents Section 250 (1) of the Income Tax Act states that the following persons shall be considered a deemed resident if they were at any time of the year a:

- Canadian Forces member
- Ambassador, minister, high commissioner, officer or servant of Canada (ie Federal Government employee)
- Agent-general, officer or servant of a province (provincial government employee)
- Member of the overseas Canadian Forces school staff
- Child of, and dependent for support on any of the above, and the person's income did not exceed the basic personal amount

[IT 221R3](#) provides a complete list of categories of deemed residents.

Application Subsection 250 (1) of the Act does not have any application until it has been determined that the individual is not a factual resident. Therefore, although specifically listed, CF members would not normally be considered deemed residents unless they did not meet the criteria for factual resident.

Dependents, including spouses, of CF members, unless specifically listed in subsection 250 (1) would not be considered deemed residents.

In 1998, a category “spouses of CF members” was removed from the list of deemed residents because it was considered to contravene individual rights. Residency status for spouses is now determined on their own facts rather than being tied to the status of the CF member.

Are you a Deemed Non-Resident?

General An individual may be considered a resident in both Canada and another country. In such cases, tie breaker rules (similar to the Canadian residency rules), established under international tax treaties, are used to determine which country will claim the individual as a resident of their country.

If the tie breaker rules determine that the individual is resident of the other country, the individual is considered a deemed non-resident of Canada.

Application CF members cannot be considered deemed non-resident.

Dependents of CF members will not normally be determined to be a deemed non-resident.

Then....You are a Non- Resident

General By default, if you do not meet the conditions for any of the above residency statuses, you are considered a non-resident.

Application CF members cannot be considered a non-resident

Dependents of CF members will not normally be considered a non-resident.

NR 73 – Determination of Residency

What is an NR73

An NR73 is the form that CRA uses to assess your residency status for you, if you so wish. It is not a legal document, and the opinion of CRA is just that: an opinion. An NR73 is not required to be submitted in order to determine residency, since it is the basic right of the taxpayer to self-assess, unless CRA specifically asks you to submit one. However, if you are in doubt, submit one.

How to complete an NR73

The form is available on the CRA website at this address: <http://www.cra-adrc.gc.ca/E/pbg/tf/nr73/README.html>. You will note that the form is not inclusive of all the possible factors that may pertain to an individual. As a result, some particulars of your case may not be given due consideration.

This is especially true if you ask for an advance ruling, and subsequently change some of the residential ties upon which the ruling was based. In the end, CRA will assess according to the actual facts and circumstances as they exist at the time of filing your return.

PART 3- TAX PROCEDURES

General Your self-assessed category of residency determines how you should be taxed, and how you should file your tax returns. The information that follows is only a general guideline. Consult with CRA/RQ for the details of your particular case

Factual Residents

General A factual resident is a taxpayer who has physically left Canada but who keeps significant residential ties in Canada. You will be a factual resident of the province where you have your strongest residential ties, and where you have set up your ordinary mode of living.. In other than exceptional circumstances this is the province of departure.

Filing As a factual resident, complete your taxes as though you have never left Canada. That is, you

- file both a federal and provincial return for the province of your strongest residential ties
- do not fill in the ‘date of departure’ in the personal information block
- pay federal tax and provincial tax at the prevailing rate
- claim all applicable deductions and tax credits
- continue to be eligible for GST and child tax benefits, if these applied to you before you left Canada
- use the guide available at this site: <http://www.cra-arc.gc.ca/formspubs/t1general/2003/menu-e.html> with links to RQ

Filing Date The normal filing date of April 30th should be observed. Where a member is on operations, a filing extension may be approved. See this CANFORGEN for details:
http://vcds.mil.ca/vcds-exec/pubs/canforgen/2004/032-04_e.asp

Postal Code CRA uses automated process to send tax returns and guides to residents. The system relies on postal codes. Factual residents should use the CF PO Box number (Belleville for most) instead of the postal code of their actual out-of-country residence, otherwise, you will get a non-resident return mailed to you for next year.

Withholding rates DAPPP withholds tax as though you are employed outside Canada. That is they withhold the 48% federal surtax. In order to ensure that they withhold at your provincial rate instead, you may submit a request for an adjustment by completing this form and giving it to your pay office:
http://admfincs.dwan.dnd.ca/dgappp/forms/Application_for_change_of_tax_education_e.doc

Deemed Resident

General A deemed resident is not considered to be resident in a particular province for provincial tax purposes.

Filing As a deemed resident, you

- file the *General Income Tax and Benefit Guide for Non-Residents and Deemed Residents of Canada – 2002* available at this site:
<http://www.cra-adrc.gc.ca/E/pub/tg/5013-g/README.html>
- pay federal taxes, and a 48% federal surtax, in lieu of provincial taxes
- may claim most federal deductions and credits, but are generally not able to claim provincial tax credits
- continue to be eligible for GST and child tax benefits, if these applied to you before you left Canada
- may be able to claim child care expenses paid to a person who is not a resident of Canada, or education expenses paid to an institution outside Canada

Filing Date The normal filing date of April 30th should be observed. Where a member is on operations, a filing extension may be approved. See [CANFORGEN 032](#) for details.

Non-resident

General The tax implications for non-residents are numerous and complex. Only a tax lawyer or similar professional can truly guide you through the process of becoming a non-resident. However, some of the more important implications are provided here.

For the year of departure, a person who has severed all residential ties will be considered an emigrant. For future years, they will be considered a non-resident.

Some positive	<p>There are some positive implications. As a non-resident you may:</p> <ul style="list-style-type: none"> • withdraw RRSPs at a lower withholding rate of 25% (this may vary according to tax treaty provisions) • pay a lower tax rate on income earned in the country of residence • be eligible for foreign tax credits to offset double taxation on income earned from Canadian sources
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Some negative	<p>There appear to be more negative implications than positive ones for persons who will eventually re-establish residency in Canada anyway.</p>
Departure Tax	<p>If you emigrate from Canada and become non-resident, you have to pay departure tax in the year you leave. This is a process of</p> <ul style="list-style-type: none"> • evaluating your capital assets (moveable property, jewelry, motor home, car, investments) • doing a ‘deemed disposition’ which involves assessing the value to determine if there were any capital gains since the property was purchased. To do this, you will be deemed to have disposed of and reacquired all property owned prior to departure • determining if the departure tax is within the CRA assumed security level, and if not, providing additional security, or pay the tax <p>If you do not assess your departure tax and you are re-assessed when you return to Canada, you may be determined not to have acted in good faith: you did not demonstrate a valid intent of not returning to Canada. In other words, pay up or be prepared.</p>
Cash flow	<p>Although you are deemed to have disposed of your assets, you may not have. This may put you in the position of a cash-crunch in order to pay the departure tax.</p>
Change in use	<p>If your residence undergoes a change in use (from being a primary residence to being rented) while you are out of the country, it is deemed disposed of unless you remember to elect otherwise. In future years, when you eventually sell the house, your years of non-residency will not qualify under the formula for determining the eventual capital gain on the home: more tax will be paid on the eventual sale.</p>
GST credit	<p>You will lose that portion of the GST credit that is applied to a spouse that becomes non-resident.</p>

RRSP/LLP	If you have used some of your savings to finance your home under the Home Buyers Plan, or withdrawn money from a Lifelong Learning Plan, you must pay the total amount outstanding within 60 days or you will be taxed on the balance owing.
Withholding tax	You will be responsible to advise banks and individuals to withhold a 25% tax on income you receive from certain sources, <i>including rent</i> , interest and dividend. If you haven't advised them, and it is not withheld, and you are reassessed on return to Canada, CRA may determine that you have not demonstrated in good faith your intent not to be a resident of Canada.
What does all this mean	Consult a tax professional if you intend to categorize yourself as non-resident.