**U.S. Individuals and Taxation in Canada**

**705.01 Why is residency significant in Canadian taxation, and how is Canadian residency determined for tax purposes?**

Canada's jurisdiction to tax an individual is generally established based on one of two ways: one way is applicable to residents of Canada, and the other is applicable to non-residents.[[1]](#footnote-1) Unlike the U.S., residency is the basis for taxation in Canada. The rationale for the distinction in taxation treatment between resident and non-resident individuals is based on the significance of the individual's connection to Canada. A resident of Canada is considered to have significantly stronger ties to Canada than that of a non-resident, and thus is more likely to avail himself of the benefits of Canadian resources. Accordingly, a resident of Canada is taxed on worldwide income, as distinct from a non-resident of Canada who is taxed only on Canadian sourced income.

Given the significance of residency , it is surprising that the term "resident" is not defined in the Income Tax Act ("ITA"), nor is there a "bright line test" that can be used as a guide to determine if one is a resident of Canada or not. Other than the “deeming” provisions in the ITA, an individual is required to evaluate a number of factual considerations, in their totality, to determine whether the individual is a resident or non-resident of Canada.

In most situations the determination of residency is relatively clear. However, in situations where a U.S. resident spends significant amounts of time in, or has significant ties to Canada, the determination is much more difficult to make. In addition, the fact that an individual is a U.S. resident does not preclude a finding that the same individual can also be considered a Canadian resident. An individual can be resident of more than one country in any given taxation year.

See Q 705.02 for a discussion of when an individual is considered a resident of Canada for tax purposes. See Q 705.03 for a discussion of part-time residents of Canada and Q 705.04 for the treatment of non-residents.

**705.02 When is an individual considered a “resident” of Canada for tax purposes?**

The Canada Revenue Agency ("CRA") provides guidance on residency and taxation in *Folio S5-F1-C1: Determining an Individual’s Residence Status*. The concept of residence, and whether one is considered to be a Canadian resident, involves an assessment of a combination of factual indicators, some factors of which are considered as being more significant (the primary factors) compared to others (the secondary factors). That said, no one factor is determinative. An assessment of all the factors guides the eventual determination of residency.

Primary factors include:

* Having a Canadian residence that is ordinarily inhabited; that is to say having a residence in the normal course as compared to special, occasional or casual use (house, cottage, condo, etc.);
* Having a spouse or partner who is resident in Canada; and
* Having dependents, such as minor children, who are resident in Canada.

Secondary factors include, but are not limited to:

* Health coverage in a province;
* Personal property in Canada such as cars, recreational vehicles, or personal effects;
* Possessing a driver's license in one of the provinces, or holding a Canadian passport, or work/immigration status in Canada;
* Economic ties, such as employment or business in Canada;
* Having active bank accounts, investments, or Canadian based credit cards;
* Having a seasonal dwelling place in Canada; and
* Affiliations with religious, social or business related organizations or entities, such as a church, social or golf club, or membership in a Canadian business or professional organization.

A U.S. individual can also be deemed to be a Canadian resident by operation of statute (the deeming provisions of the ITA),[[2]](#footnote-2) even if an assessment of the factors would result in a different determination. In most instances, however, the deeming provisions of the ITA are typically engaged if the individual is not resident in Canada throughout the year, and thus fails to meet the factual threshold.

The most common of the statutory deeming provisions applies to a sojourner.[[3]](#footnote-3) Where a US resident sojourns in Canada for a collective of 183 or more days in any given calendar year, that individual will be deemed by operation of subsection 250(1)(a) of the ITA to be a resident of Canada, whether or not the individual has a permanent residence in Canada, and whether or not the individual has any other significant ties to Canada. The deeming provision deems an individual who is present in Canada for more than 183 days to be a resident of Canada for that year, for taxation purposes, regardless of the reason for the stay in Canada. Examples of situations where this may affect an unsuspecting U.S. resident include U.S. individuals who vacation in vacation homes in Canada, or individuals that work in Canada (depending on the hours of work).

There is some discrepancy as to how part of a day is treated for the purposes of the sojourning rule. The general approach to a part day is that any stay in Canada that exceeds a half-day in length is considered to be a full day for the purposes of the sojourning rule. The CRA, however, can take a different approach in different contexts.

There are other situations in which an individual is deemed to be a Canadian resident by operation of statute for tax purposes even though the individual does not reside in Canada, although most of these situations do not affect U.S. residents. For example, individuals that are members of the Canadian armed forces, and federal or provincial civil servants stationed outside of Canada in a given taxation year, are deemed to be Canadian residents for tax purposes.

Since it is possible to be resident of both Canada and the U.S. simultaneously, a U.S. citizen who is resident of Canada will still have U.S. tax filing obligations and potential U.S. tax liabilities that are not mitigated by Canadian federal tax credits (FTCs) or the Canada- U.S. tax treaty. However, it is possible with proper tax planning to minimize double taxation.

The primary consequence of being a Canadian resident for tax purposes to U.S. individuals is that they become responsible for filing a return on their worldwide income in both countries. Non-residents of Canada are only liable for tax on Canadian source income. Section 115(1) of the ITA determines taxable income in Canada for non-residents."Passive income" from Canadian sources will generally be subject to Part XIII withholding tax, although the rate of withholding tax may be reduced or eliminated by virtue of the Canada- U.S. Tax Treaty.

**705.03 What is a part-year resident of Canada for tax purposes?**

A part-year resident typically applies to an individual who enters Canada for the first time as a resident, or who leaves Canada permanently. A U.S. resident who becomes a Canadian resident for tax purposes in any given year (because of factual considerations such as moving to a permanent residence in Canada), or a U.S. resident who is also a Canadian resident but decides to permanently leave Canada will likely be considered a part-time resident of Canada in both the year of entry and in the year of departure. Part-time residency status applies to individuals who have ties in Canada that have been severed mid-year.

In these situations, the ITA alters the "taxation year" of the individual to be the part of the year that the individual was in Canada prior to departure, or the part of the year that starts when the individual entered Canada and ends at the end of that calendar year. For the part-year that the individual is a resident of Canada, he or she is subject to taxation on worldwide income. For the part-year that the individual is a non-resident of Canada, he or she is only subject to taxation on Canadian sourced income.

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**705.04 When is an individual considered to be a non-resident of Canada for tax purposes?**

If an individual is not considered a resident of Canada by fact, or is not deemed to be a resident of Canada by statute, , then the individual will be considered a non-resident. Non-residents are not taxed on their worldwide income, but rather only on income that is derived from a source in Canada. This would include, for example, business or employment income in Canada or monies generated from a disposition of taxable Canadian property. A non-resident is also subject to Part XIII withholding tax on income earned from property held in Canada, otherwise known as "passive" income. Examples of passive income include the payment of dividends, royalties or interest.

U.S. citizens who are non-residents of Canada but have Canadian source income must file a T1-NR Individual Tax Return with the CRA.[[4]](#footnote-4) U.S. residents who are non-residents of Canada and earn only passive income need not file a Canadian tax return. Instead, a withholding tax is withheld by the payor and remitted directly to the CRA on behalf of the non-resident. This requirement imposed on payers of monies going to non-residents simplifies the CRA tax collection efforts as against non-residents.

**705.05 When does a U.S. individual establish permanent residency in Canada?**

The term “permanent resident” has a specific meaning in the immigration context that is beyond the scope of this article. For this discussion, a "permanent" resident of Canada is treated as a resident of Canada for tax purposes, as detailed in Q 705.01 – 705.04.

U.S. individuals are most likely to acquire Canadian residency for tax purposes by fact; that is, they will be determined to be a Canadian resident based on their ties to Canada, or, more simply, because he or she ordinarily resides in Canada. The length of time the individual spends in Canada is not a factor; rather, it is the ties to Canada that are determinative.

U.S. individuals can also sojourn in Canada for more than 183 days in a calendar year, in which case the individual is treated as a Canadian resident for tax purposes, whether or not their primary "living" connection is with Canada. In this case, the length of time in Canada is the only factor, and the reason for the individual's stay in Canada is irrelevant.

Interestingly, it is possible to be a resident of Canada as determined by fact, and yet spend less than 183 days in Canada per year.

**705.06 What are the general filing requirements for U.S. citizens living in Canada on a full-time basis?**

The U.S. bases taxation on both residency and citizenship. U.S. citizens are taxed on their worldwide income (income from all sources derived from inside and outside of the U.S.), whether they are resident in the U.S. or not; that is, they do not need to be physically in the U.S. for this liability to arise. U.S. citizens must file Form 1040, U.S. Individual Tax Return with the IRS annually.[[5]](#footnote-5)

U.S. citizens that reside in Canada are also taxed in Canada on their worldwide income. Canadian resident taxpayers – including any U.S. citizens resident in Canada – must file a T1 Individual return with the CRA annually.[[6]](#footnote-6) The deadline for filing a T1 income tax return is April 30th of the following year, unless the individual earns business, professional or self-employment income, in which case the individual has until June 15th to file his or her T1 tax return. It is important to note that payment of any tax owing to the Canadian government is due on or before April 30th of the year following the tax year, regardless of when the individual's tax return is due.

Part-year residents, which include U.S. citizens who become Canadian residents for tax purposes during the year, will have part-year tax returns to file in both Canada and the U.S.. In Canada, the part-year tax return has the same filing deadlines as the general T1 income tax return applicable to Canadian residents.

**705.07 Can U.S. citizens living in Canada be subject to double taxation?**

Yes, it can happen, but the double taxation effects can be diminished or eliminated in most circumstances.

Although U.S. citizens have U.S. tax-filing requirements by virtue of their citizenship rather than only residency,[[7]](#footnote-7) the residence status of a U.S. citizen in Canada may affect their ultimate U.S. tax liability in dollar terms. Ultimately, U.S. citizens residing in Canada on a full-time basis will likely be responsible for filing tax returns in both jurisdictions and must declare their worldwide income, all of which is subject to taxation. This, of course, can create a situation where the individual is subject to double taxation - tax owed in Canada and tax owed in the U.S. for the same monies earned. Fortunately, the operation of the Canada- U.S. Tax Treaty,[[8]](#footnote-8) and the Foreign Tax Credit system in Canada and in the United States should mitigate if not avoid double taxation.

The Canada- U.S. Tax Treaty operates to alleviate double taxation based on a system of rules that determines which jurisdiction should be the "primary taxing jurisdiction," even when both jurisdictions may claim the right to tax the same income. These rules are found in Article XXIV of the Canada- U.S. Tax Treaty.

Article XXIV of the Canada-U.S. Tax Treaty provides that an individual should pay tax to the jurisdiction where he or she resides, unless there is a "fixed base" in the other country. A fixed base is usually a permanent home (it can also be an office). The effect of this would have a U.S. citizen that lives in Canada (and having his or her permanent home there) report his or her worldwide income on his or her Canadian tax return and pay tax in Canada accordingly. Of course, the fact that Canada is the primary taxing jurisdiction does not alleviate the burden that lies on the U.S. citizen to also have to report that same income in the U.S. What alleviates the double taxation that would result is the Foreign Tax Credit[[9]](#footnote-9) regime that allows the individual, who, for example, has paid Canadian income tax on Canadian-source income (which is subject to U.S. reporting and potentially tax obligations) to reduce the amount of U.S. income tax on the income that has already been taxed in Canada. See Q 690 for a discussion of the foreign earned income exclusion.

Take, for example, Taxpayer A, who is a U.S. citizen and lives in Canada, and is therefore considered a resident of Canada for tax purposes. Taxpayer A must declare worldwide income and pay tax in Canada, and must also declare all worldwide income in his or her U.S. income tax return. However, as Canada is the primary taxing jurisdiction, Taxpayer A will likely receive foreign tax credits on certain income in the U.S. to the extent that taxes are paid in Canada. In this manner, most, if not all, income is only taxed once, and Canada has the primary claim to the tax. However, where there is more tax owed in the U.S. than in Canada, then Taxpayer A may owe an additional tax liability in the U.S.

Although Article XXIV gives basic treaty protection from double taxation to a U.S. citizen working in Canada, an individual can elect out of treaty protection. Such an election is made commonly in the case of a U.S. citizen living in Canada but wants to be taxed exclusively as a U.S. citizen for either tax or non-tax reasons. In this case, the U.S. is the primary taxing jurisdiction, but double taxation may be eliminated as the individual could claim a foreign tax credit for taxes paid in the U.S. on income reported in Canada. However, a tax liability may arise in the circumstance where the total of Canadian tax exceeds the amount of tax paid in the U.S. The difference between the amount of tax paid in the U.S. and the amount of tax owed in Canada is generally what the individual would be required to pay in Canada, but of course the result will vary in different situations.

**705.08 Are U.S. citizens that receive income from property situated in Canada, such as dividends or interest, subject to tax in Canada, and if so, are there withholding requirements?**

Yes, there is tax payable on income from property, but a U.S. citizen who is not a resident of Canada is not required to file a Canadian tax return if their only income from Canada is from certain types of "passive income." Common examples of Canadian "passive" income include:

1. royalties;
2. interest;
3. dividends;
4. rental income; and
5. pension income.

When royalties or interest, for example, are owed to a U.S. citizen who is not resident of Canada, the payer withholds tax at the time of payment to the non- resident. Thus, the U.S. citizen receives the balance of the funds owed . The general rate of withholding tax is 25 percent, but this may be reduced to a lower rate pursuant to the Canada- U.S. Tax Treaty. Given that the U.S. citizen must also report this income on their U.S. income tax return, there may be relief from double taxation under the Canada- U.S. Tax Treaty and the foreign tax credits available in the U.S. to offset the Canadian taxes paid. The payer of rental income earned by a non- resident must also withhold 25 percent of the gross rents received and remit that payment to the CRA, although there maybe an option to reduce the withholding tax by calculating the amount relative to net income earned from the property in the case of real property rentals.

**705.09 Are U.S. citizens employed or carrying on business in Canada subject to tax in Canada, and if so, are there withholding requirements?**

The determination of whether an individual is resident in Canada has been refined by common law and is primarily a factual inquiry as outlined in Q 705.01 – 705.04 -.[[10]](#footnote-10) Liability for tax in Canada will generally arise on those resident in Canada under section 2(1) of the ITA.

U.S. citizens resident in Canada who are employed in Canada will be subject to Canadian tax on their employment income in Canada and on their worldwide income as Canadian resident taxpayers. They will also be subject to U.S. taxation on the same tax base; however, they will get protection from double taxation under the Canada- U.S. Tax Treaty and the Foreign Tax Credit regime to mitigate most, if not all, double taxation. Individuals that relocate to Canada for work on a full time basis are likely to acquire Canadian resident status under the ITA.

U.S. citizens who are not resident in Canada for tax purposes but receive Canadian source income will only be subject to Part 1 tax on the Canadian source income rather than worldwide income. [[11]](#footnote-11) Examples of Canadian source income include:

(i) employment income in Canada; and

(ii) business or self-employment income earned in Canada.

A non-resident of Canada is required to file a special income tax return (a T1-NR Individual Tax Return) in order to report the above sources of income. A non-resident who doesn’t have a Canadian social insurance number is required to obtain an individual tax number (ITN), which is a necessity for the filing of a tax return. The ITN can be obtained by completing Form T1261 through the CRA.

In the employment context, typically the employer will withhold and remit tax on the U.S. citizen’s behalf, and there is no withholding by the individual. Employers making payments made to non-resident individuals for services provided in Canada must report all such payments to the CRA in a T4A-NR summary, which summary is due by the last day of February of the year following the payment. The employer-payer is also under an obligation to issue a T4A-NR to the individual recipient of the payment (the U.S. citizen). The U.S. citizen will be responsible to file a T1-NR Individual return with the CRA, which would report the information contained in the T4A-NR, and pay any balance owing at that time.[[12]](#footnote-12)

In the case of a business situation, such as a U.S. citizen carrying on self-employed business in Canada or providing services in Canada as a sole proprietor, the individual will also be subject to Part 1 tax on his or her business income. The U.S. citizen will also be required to file a T1-NR Individual Tax Return that requires an ITN. The extent to which there is relief of double taxation under the Canada- U.S. Tax Treaty is dependent on where the permanent establishment of the business is as defined under the Treaty, and the amount of activity carried on through the permanent establishment.

**705.10 What is FATCA, and do I need to be concerned with it as a U.S. citizen living in Canada?**

The Foreign Account Tax Compliance Act (“FATCA”) is an effort by the U.S. to detect tax non-compliance by U.S. taxpayers with foreign assets, specifically foreign accounts. U.S. citizens living abroad, including in Canada, should be concerned about FATCA if they have not been filing U.S. tax returns annually, even if they have no U.S. sourced income or accounts. This is because U.S. citizens are taxed on their worldwide income regardless of residency.

Effective July 1, 2014, Canadian financial institutions will report to the CRA most bank accounts, mutual funds, brokerage accounts, annuity contracts and some life insurance policies with a cash value. What will not be reported to the CRA are most registered plans such as RRSPs, TFSAs, and RESPs.

U.S. citizens with these accounts or who hold such assets may be contacted by their financial institution to verify their tax residency and U.S. citizenship. This will be done because it is the responsibility of the financial institution to undertake any reporting obligations to the CRA.[[13]](#footnote-13) The CRA can then potentially exchange the information gathered in accordance with the existing provisions of the Canada- U.S. Tax Treaty, which will permit U.S. tax authorities to ensure reporting compliance.

U.S. citizens who are not compliant with U.S. filing requirements may want to consider becoming compliant by means of the IRS Offshore Voluntary Disclosure Program.[[14]](#footnote-14)

**705.11 What is FBAR and do I need to be concerned by FBAR requirements as a U.S. citizen living in Canada?**

An “FBAR” is a Report of Foreign Bank and Financial Accounts (“FBAR”) that is prepared by a taxpayer and accompanies a tax return. In addition to having to file a U.S. tax return, U.S. citizens with a financial interest in a foreign bank account or brokerage account, for example, that has an aggregate value of over $10,000 during the calendar year is likely responsible for filing an FBAR FinCEN Form 114 with the IRS.[[15]](#footnote-15) FBAR disclosure includes registered Canadian accounts such as RRSPs.

The fact that a U.S. citizen resides in Canada does not alleviate the responsibility of an individual to have to file an FBAR if the individual has a Canadian bank account or other Canadian financial accounts. Thus, U.S. citizens who are not compliant with U.S. filing requirements may want to consider becoming compliant by means of the IRS Offshore Voluntary Disclosure Program.[[16]](#footnote-16)

**705.12 What is the effect of a disposition of Canadian real property?**

1. **In respect of a U.S. citizen that is a Canadian resident for tax purposes:**

Canadian resident taxpayers will be subject to tax on half of the realized capital gains arising from the disposition of Canadian real property (assuming the property is held on capital account as opposed to on income account). That is, only half of the realized capital gains will be subject to tax at the individual’s marginal rate.[[17]](#footnote-17) If a loss is realized, then such losses are deductible, but only as against other capital gains.

1. **In respect of a U.S. individual that is not a Canadian resident for tax purposes:**

Real property is generally considered taxable Canadian property.[[18]](#footnote-18) The disposition of taxable Canadian property may lead to a tax liability under the ITA where a capital gain results from the disposition. A non-resident may be liable to pay tax on the capital gain notwithstanding the application of the Canada- U.S. Tax Treaty. In the first instance, there is a requirement under the Canada- U.S. Tax Treaty for the purchaser (who is purchasing property from a non-resident) to withhold taxes from the sale proceeds and deliver only the balance of the sale proceeds to the vendor. However, under Article XIII(3) of the Canada- U.S. Tax Treaty, a capital gain on the disposition of real property will likely be exempt from Canadian tax but subject to U.S. taxation if:

1. The Canada- U.S. Tax Treaty applies to the parties of the transaction;
2. At the time of the disposition, the property is subject to the Canada- U.S. Tax Treaty, and the property disposed of qualifies as treaty-protected (generally this is property that is not a resource property); and
3. The purchaser files with the CRA the appropriate notice. The non-resident will need to complete CRA Form T2062: Request by a non-resident of Canada for a certificate of compliance related to the disposition of taxable Canadian property.[[19]](#footnote-19)

**705.13 Does Canada have estate taxes?**

Canada does not have estate taxes. However, the provinces in Canada levy probate taxes. Canadian probate taxes are narrower in application than U.S. estate tax.[[20]](#footnote-20) For example, Ontario probate taxes will apply on assets that are the subject of a will probated in Ontario, but will not apply to real property situated outside Ontario.

U.S. Individuals residing in Canada will need to do their estate planning to consider both U.S. and Canadian tax.

Special care needs to be taken in developing succession plans for U.S. citizens resident in Canada due to the potential for mismatch in tax treatment of individuals in Canada versus the U.S. As these individuals are potentially subject to both the ITA and Internal Revenue Code, care must be taken to ensure that any any estate plan is advantageous under both. There are many traps that can catch taxpayers dealing with both systems. Seeking professional advice from cross-border proficient advisors is well advised if you are a U.S. citizen who lives in Canada or who has assets situated in Canada.

**705.14 Does a Canadian citizen need to be concerned if the Canadian citizen’s spouse is a U.S. citizen?**

Generally speaking, no, as the non- U.S. citizen spouse is typically not directly affected by the spouse’s U.S. tax obligations. However, greater care must be taken with succession planning, particularly with respect to U.S. estate taxes. U.S. citizens residing in Canada may want to consider arranging their affairs with the Canadian spouse, as having ownership of Canadian based assets can produce some complications for U.S. citizens and certain Canadian assets.

In addition to succession planning, there may be additional considerations arising from the citizenship of any children. Generally, children born to one U.S. -citizen parent will be considered U.S. citizens and will be required to meet the same filing obligations as their U.S. parent(s) (with certain exceptions for parents who have never resided in the U.S., or who only resided in the U.S. as a young minor, in which case there may be exceptions that are beyond the scope of this publication; it is recommended to seek U.S. citizenship counsel from an immigration lawyer on this matter).

Finally, a U.S. citizen should be cautious about making contributions to a “Registered Education Savings Plan (“RESP”) for children. RESPs are not tax-deferred investment vehicles like RPPs or RRSPs. Rather, they enable an individual to save for the post-secondary education of a “beneficiary”, which usually is the child but can also be the grandchild of the individual. The tax benefit of RESPs does not come from the ability to deduct contributions from income, which means that contributions are paid with after-tax dollars. However, the contributions to an RESP offer 3 important advantages:

1. The Canadian government will provide a grant equal to 20 percent of the contributions made, up to a $500 annual limit and a $7,200 lifetime limit (these limits may increase from time to time, depending on amendments made by the Canadian federal government);
2. The growth in the RESP is non-taxable until withdrawn; and
3. When withdrawals are made, they are taxed in the hands of the beneficiary, and not the contributor. Typically, the beneficiary is in a lower tax bracket than the contributor, thereby adding to the tax benefit that is received between them. [[21]](#footnote-21)

The tax treatment of RESPs may be different if the contributor is a U.S. citizen or a Canadian one. The basis for the distinction lies in the fact that the contributions made to an RESP are not tax-deferred for U.S. purposes and may be considered by the IRS as a foreign grantor trust. The contributions are not subject to similar special relief as contributions made to RRSPs. As a result, a U.S. citizen that is subject to U.S. tax and contributes to an RESP for the benefit of a beneficiary may be faced with an unexpected tax liability as any of the income, interest, or capital gains, as well as any of the Canadian government grants will be considered income of the contributor. Ultimately, it may be best to have the non- U.S. parent contribute to an RESP, or to avoid RESPs all together and use an alternate planning tool.

**705.15 What considerations apply to U.S. citizens whoparticipate in Canadian retirement plans (such as RRSPs) while residing in Canada?**

There are several types of tax-assisted private pension or retirement plans, and they function differently depending on the participants involved and the structure of the plan. There are registered pension plans (“RPPs”)[[22]](#footnote-22) and deferred profit sharing plans (“DPSPs”),[[23]](#footnote-23) which are employer-sponsored pension plans that benefit employees working in Canada, and involve contributions made by both the employer and the employee. These differ from registered retirement savings plans (“RRSP”)[[24]](#footnote-24) and registered retirement income funds (“RRIFs”)[[25]](#footnote-25) in that these are individual plans and only the individual or the spouse of the individual can contribute to his or her own plan. An RPP, DPSP and an RRSP matures in the year the individual turns 71, which means that the total value of an individual’s RRSP is included into income in that year, unless the individual “rolls” his or her RPP, DPSP or RRSP into a RRIF (essentially on a tax-free basis), or in the case of an RRSP alone, into an RRSP annuity (also on a tax-free basis). [[26]](#footnote-26) In this manner, RRIFs are simply extensions of RRSPs that can also be self-administered, with certain restrictions that are imposed on the individual such as annual mandatory withdrawals.

The tax benefit available with RPPs, DPSPs, RRSPs and RRIFs is in the form of a tax-deferral, which is a benefit to the individual because of the time value of money. The individual contributions to the plan(s) are deductible against income in the year the contributions are made, and are not taxable to the individual until the contributions are withdrawn (with two notable exceptions being withdrawals to participate in either the Home Buyer’s Plan[[27]](#footnote-27) and/or the Lifelong Learning Plan[[28]](#footnote-28)). The tax on the contributions is thereby “deferred” to the year of withdrawals. There are limits on the amount of contributions an individual can make in a given year, which limits are defined by an individual’s “earned income,” participation in other plans, employer-dictated contribution limits and statutory maximum contributions. In addition, there may be other tax benefits, such as:

1. Any growth on the contributions within the plan are tax-exempt and are not taxed until withdrawn;
2. Typically, at the time the individual begins to withdraw from an RRSP or a RRIF, the individual is retired and is therefore in a lower tax bracket. The amount of tax owed on the contributions would likely be less than the amount of tax that would have been owed by the individual in the year the contribution was made;
3. Pensioners are entitled to split pension income with their spouses, which again may reduce the amount of tax owed in the year of withdrawal;[[29]](#footnote-29) and
4. There is a pension credit available on the first $2,000 of pension income, which means that the first $2,000 of pension income is essentially received tax-free.

For a U.S. citizen subject to taxation under the U.S. tax code, RRSPs do not qualify for the tax deferral granted by the ITA. However, Article XVIII(7) of the Canada- U.S. Tax Treaty provides some relief. U.S. citizens with RRSPs must file IRS form 8891 to obtain the deferral. This form must be filled out for each RRSP account.

**705.16 Is renouncing U.S. citizenship a viable option to citizens permanently living in Canada?**

Leaving aside any significant non-tax considerations, rescinding one’s U.S. citizenship may not necessarily be the answer to ongoing U.S. tax requirements and potential liabilities. There is an expatriation tax under the U.S. IRC that will apply citizens who have renounced their citizenship.[[30]](#footnote-30) The consequences and tax liabilities that result from rescinding U.S. citizenship may prove to be onerous, and professional tax and/or legal advice is strongly recommended in this circumstance. The benefits that are provided for under the Canada- U.S. Tax Treaty are designed to ameliorate the ongoing tax consequences that are borne by U.S. citizens living or working in Canada.

**705.17 Does a U.S. citizen living in Canada need to be concerned of the “Medicare Tax,” and if so, is there tax relief for it?**

U.S. citizens living in Canada have many considerations that should be taken into account, only some of which are discussed here. In addition to the filing requirements already outlined above, U.S. citizens should be aware of the Net Investment Income Tax, or “Medicare Tax” as it has become colloquially known. U.S. citizens who historically have not had any U.S. income tax liability may be subject to this new tax at a rate of 3.8 percent if they have ‘net investment income’ (generally investment income such as interest, dividends, capital gains, etc. less permitted expenses related to that income such as brokerage fees and interest expenses) and they have a modified adjusted gross income over $200,000 if single, or $250,000 and filing jointly, Unfortunately for U.S. citizens subject to this tax, it seems unlikely that foreign tax credits can be used to reduce or eliminate this tax liability as the Net Investment Income Tax is not imposed by Chapter 1 of the U.S. Code and foreign tax credits are only applied as against chapter 1 taxes.

1. *Income Tax Act,* R.S.C. 1985, c. 1 (the "ITA"), s. 2. [↑](#footnote-ref-1)
2. See subsection 250(1) of the ITA. [↑](#footnote-ref-2)
3. Subsection 250(1)(a) of the ITA. [↑](#footnote-ref-3)
4. <http://www.cra-arc.gc.ca/formspubs/t1gnrl/nnrsdnts-eng.html> 2013 Income Tax and Benefit Package (for non-residents and deemed residents of Canada) [↑](#footnote-ref-4)
5. <http://www.irs.gov/uac/Form-1040,-U.S.-Individual-Income-Tax-Return> [↑](#footnote-ref-5)
6. <http://www.cra-arc.gc.ca/formspubs/t1gnrl/menu-eng.html> General income tax and benefit package for 2013 [↑](#footnote-ref-6)
7. Since the 16th Amendment to the US Constitution the US has taxed worldwide income of its citizens. This is in contrast to Canada that only taxes the worldwide income of Canadian *residents* as defined by the Income Tax Act. Generally, Canadian citizens who are not deemed to be *residents* for tax purposes are not subject to Canadian taxation on their worldwide income, only any Canadian source income. [↑](#footnote-ref-7)
8. <http://www.fin.gc.ca/treaties-conventions/usa_-eng.asp> “Convention Between Canada and the United States With Respect to Income and on Capital” Fifth Protocol [↑](#footnote-ref-8)
9. <http://www.irs.gov/taxtopics/tc856.html> IRS: Topic 856 - Foreign Tax Credit

   <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/fls/s5/f2/s5-f2-c1-eng.html> CRA Income Tax Folio: S5-F2-C1 Foreign Tax Credit [↑](#footnote-ref-9)
10. <http://www.cra-arc.gc.ca/tx/nnrsdnts/cmmn/rsdncy-eng.html> CRA: “Determining your residency status” & <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/fls/s5/f1/s5-f1-c1-eng.html> Income Tax Folio S5-F1-C1 Determining and Individual’s Residency Status [↑](#footnote-ref-10)
11. <http://www.cra-arc.gc.ca/tx/nnrsdnts/ndvdls/nnrs-eng.html> CRA: Non-residents of Canada [↑](#footnote-ref-11)
12. <http://www.cra-arc.gc.ca/formspubs/t1gnrl/nnrsdnts-eng.html> 2013 Income Tax and Benefit Package (for non-residents and deemed residents of Canada) [↑](#footnote-ref-12)
13. <http://www.cra-arc.gc.ca/tx/nnrsdnts/nhncdrprtng/fq-eng.html> CRA: Enhanced Financial Account Information Reporting [↑](#footnote-ref-13)
14. <http://www.irs.gov/uac/Newsroom/IRS-Makes-Changes-to-Offshore-Programs;-Revisions-Ease-Burden-and-Help-More-Taxpayers-Come-into-Compliance> IRS: IRS Makes Changes to Offshore Programs; Revisions Ease Burden and Help More Taxpayers Come into Compliance [↑](#footnote-ref-14)
15. <http://www.irs.gov/pub/irs-utl/IRS_FBAR_Reference_Guide.pdf> “IRS FBAR Reference Guide” [↑](#footnote-ref-15)
16. <http://www.irs.gov/uac/Newsroom/IRS-Makes-Changes-to-Offshore-Programs;-Revisions-Ease-Burden-and-Help-More-Taxpayers-Come-into-Compliance> IRS: IRS Makes Changes to Offshore Programs; Revisions Ease Burden and Help More Taxpayers Come into Compliance [↑](#footnote-ref-16)
17. <http://www.cra-arc.gc.ca/tx/ndvdls/tpcs/ncm-tx/rtrn/cmpltng/rprtng-ncm/lns101-170/127/gns/clclt/menu-eng.html> CRA: How do you calculate your capital gain or loss?

    <http://www.cra-arc.gc.ca/E/pub/tg/t4037/t4037-e.html> CRA T4037: Capital Gains 2013 [↑](#footnote-ref-17)
18. Assumes the property is residential or recreation real estate, and does not have any mineral or resource exploitation rights associated with it. [↑](#footnote-ref-18)
19. <http://www.cra-arc.gc.ca/E/pbg/tf/t2062/t2062-08e.pdf> CRA [↑](#footnote-ref-19)
20. See <http://www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp#s5> for Ontario rates. [↑](#footnote-ref-20)
21. Section 146.1 of the ITA contains the complete rules for RESPs. [↑](#footnote-ref-21)
22. Subparagraph 56(1)(a)(i) of the ITA. [↑](#footnote-ref-22)
23. Paragraph 56(1)(i) of the ITA. [↑](#footnote-ref-23)
24. Paragraph 56(1)(h) of the ITA. Also see <http://www.cra-arc.gc.ca/tx/ndvdls/tpcs/rrsp-reer/rrsps-eng.html> CRA: Registered Retirement Savings Plan. [↑](#footnote-ref-24)
25. Paragraph 56(1)(t) of the ITA. [↑](#footnote-ref-25)
26. Subsection 146(16) of the ITA. [↑](#footnote-ref-26)
27. Section 146.01 of the ITA. The Home Buyer’s Plan assists first time home buyers by permitting a maximum withdrawal of $20,000 that is put toward the payment of a first home, and the withdrawal is not included into income in the year of the withdrawal, but rather is included in stipulated annual installments that are included into the individual’s income over 15 years. [↑](#footnote-ref-27)
28. Section 146.02(1) of the ITA. The Lifelong Learning Plan operates much like the Home Buyer’s Plan. The maximum withdrawal of $10,000 is put towards the individual’s education, and stipulated annual installments are included into the individual’s income over 10 years, starting no later than 5 years after the withdrawal. [↑](#footnote-ref-28)
29. Subsection 60.03(1) of the ITA. This section provides that up to 50% of pension income can be split with a spouse or common-law partner for tax purposes. The term “common-law partner” includes both common law spouses and same-sex partners pursuant to the definition in s. 248(1) of the ITA. [↑](#footnote-ref-29)
30. <http://www.irs.gov/Individuals/International-Taxpayers/Expatriation-Tax> IRS “Expatriation Tax”. [↑](#footnote-ref-30)