

## Canada U.S. Taxes

## Immigrants beware: IRS, CRA operate differently

By Veronika Chang



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(February 11, 2020, 2:10 PM EST) -- For immigration purposes, life would be easier if the Internal Revenue Service in the United States and the Canada Revenue Agency in Canada were on the same page. But they are not, and for this reason people must be aware of their status for tax obligations.

The first section of the *Income Tax Act* of Canada says income tax will be paid on taxable income for each taxation year for every person resident in Canada. So, if they are resident they are taxed on worldwide income in Canada, while a non-resident is taxed only on Canadian source income in Canada.

The term "resident" is not specifically defined but the Act provides for two ways to qualify as a resident of Canada for tax purposes:

1. You are considered a deemed resident if you sojourn in Canada for 183 days or more in a year (or are a member of certain Canadian government services).
2. You are considered ordinarily resident if you are not physically present in Canada for 183 days but have not severed all residential ties to this country.

There is no firm test to determine if you have enough residential ties to Canada to be considered resident for income tax purposes, but the Canada Revenue Agency views a home in Canada, a spouse or common law partner in Canada, and dependents in Canada as significant residential ties. Other relevant factors include social and economic ties and personal property here.

The concept of a "tax resident" is broader south of the border. The first section of the *Internal Revenue Code* imposes U.S. tax on worldwide income of all individuals, but s. 871 provides special exclusions for non-resident aliens. By reading s. 1 and 871 together, we deduce that the U.S. taxes everyone except non-U.S. resident aliens, which fall into two categories — U.S. resident aliens and non-U.S. resident non-aliens (i.e., Americans living anywhere in the world).

Unlike subjective rules to determine residency in Canada, U.S. residency rules involve a more mechanical test. There are three ways an alien (non-U.S. citizen) can become a U.S. tax resident:

1. By obtaining a U.S. green card;
2. By spending more than 183 days in the U.S. in a year; or
3. By meeting the "substantial presence test."

You can meet the substantial presence test by being physically present in the U.S. for at least 31 days during the year, and the sum of the number of days you are in the U.S. this year plus one-third of the days in the U.S. last year plus one-sixth of the days in the U.S. the year before must be at least 183 days.

Other than aliens holding a green card, U.S. tax status does not hinge upon what type of visa you have, but the number of days physically in the country.

A Canadian who enters the U.S. as a visitor for pleasure could be considered a U.S. tax resident if they meet the substantial presence test. Canadian snowbirds who spend winter months in Florida can easily meet this test. However, there is an exception for those in the U.S. for less than 183 days during the year and have a closer connection to Canada as long as they file a form indicating such with the IRS.

As for Canadians who travel temporarily to the U.S. for business, the same substantial presence test applies whether they enter the U.S. on a temporary business visitor visa or an investor visa. Then there are Canadians working in the U.S. on a not-so temporary basis and who likely have an employment visa. Unless they travel back to Canada every chance they get in order to spend less than 183 days during a year in the U.S., they will be a tax resident of the U.S. and possibly Canada.

The treaty between the U.S. and Canada helps by providing tiebreaker rules; you are effectively considered resident of one country to which you have the closest connection. Americans who come to Canada as temporary visitors for pleasure or business likely would not be considered Canadian tax residents even if they are in Canada for over 183 days, provided the visit is truly temporary.

There are also Canadians in the U.S. on special visas, such as students and researchers (i.e., teachers or trainees). If the purpose for your presence in the U.S. falls within one of several categories, those days of presence in the U.S. will be ignored in applying the substantial presence test. However, there are time limits to the availability exception for the substantial presence test. For example, researchers may only claim the exception for two years and students for five years.

No such special exception exists for American students and researchers in Canada.

Those working for the government are also given special consideration. Canadians working in the U.S. for Canadian government or international organizations (such as the UN) may ignore the number of days in the U.S. for the substantial presence test. A slightly different exception exists in Canada as well; a foreign national is considered a non-resident of Canada if they came here solely to work at the foreign embassy. But if they came here and then were hired by the foreign embassy, they are considered a resident of Canada.

Whatever your situation, it's best to know the rules.

This is just a cursory look, but the tax residency rule can be very complicated.

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