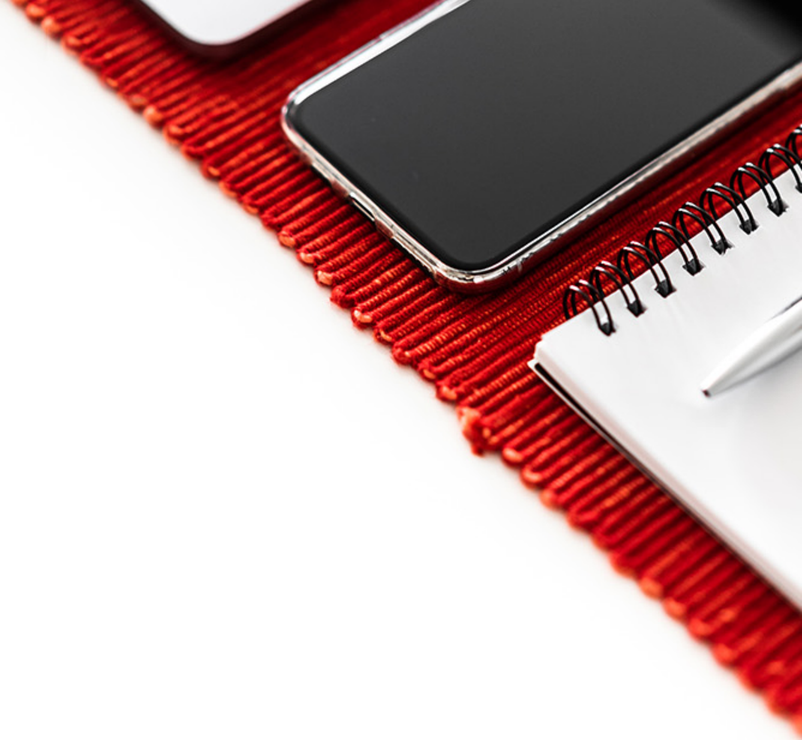
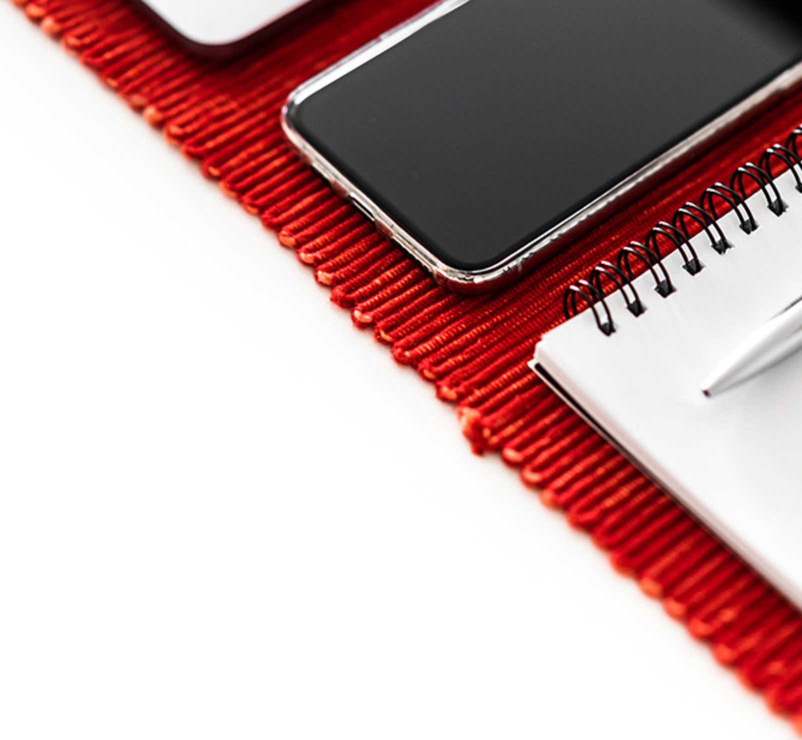
Live And Invest Overseas Conference

Canadian Taxation: Going Offshore
by
George C Gonzalez, PhD, CPA, CA

Outline



I. Residency v. Non-residency
II. Departure Tax
III. Taxation as Non-resident
IV. Tax Treaties



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Residency v. Non-residency

Canadian tax residency means:

- You pay tax on your world income, i.e., income from all sources, both Canadian and foreign.

Canadian tax non-residency means:

- You pay tax on Canadian source income only.

Residency: Tests

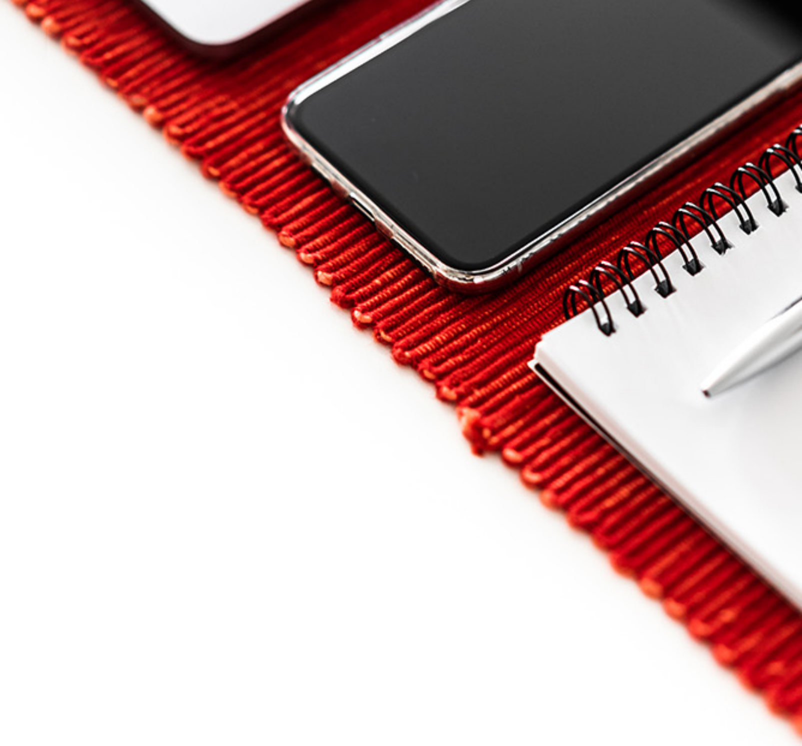
You know you’re a Canadian resident if …

You meet one of the tests under the two main residency categories:

- Factual resident
- Deemed resident

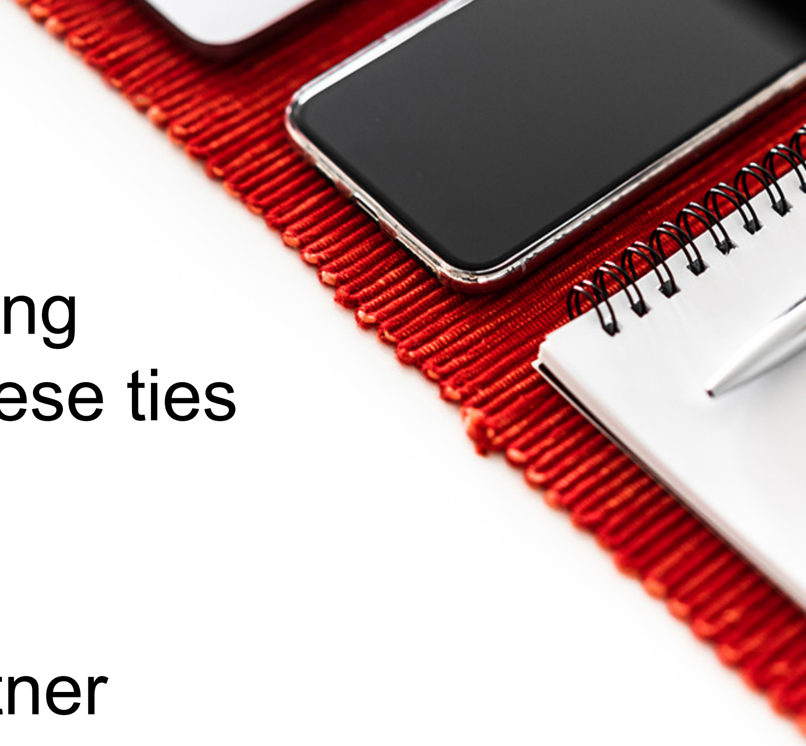
Each of these two categories has different tests.

Residency: Tests



- Factual resident
- Deemed resident

Factual Resident



Someone who has a set of strong "residential ties" to Canada. These ties are:

1. Dwelling place (or places)
2. Spouse or common-law partner
3. Dependants

Factual Resident (cont'd)

1. Dwelling place (or places)
2. Spouse or common-law partner
3. Dependants

The Canada Revenue Agency (CRA) calls these three "significant residential ties". Meeting one of these automatically makes you a resident for tax purposes. (Regardless of how much time you spend in Canada.)

Factual Resident (cont’d)

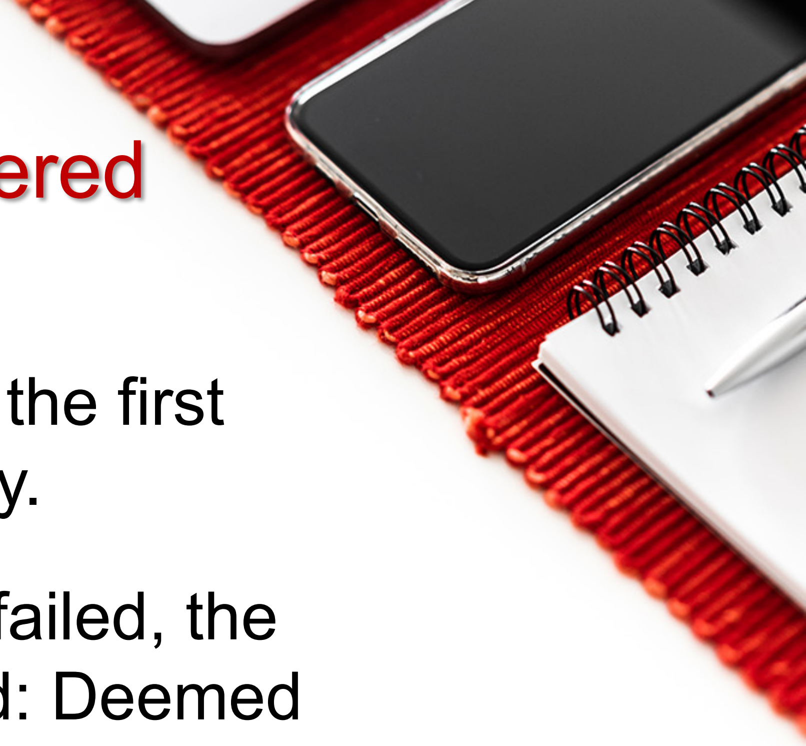
There are also “secondary residential ties”. Some of these are:

- Personal property in Canada
- Economic ties to Canada
- Canadian medical insurance coverage
- Canadian driver's license

Factual Resident (cont’d)

- Other secondary residential ties include social ties, Canadian passport, Canadian work permits, vehicle registered in Canada, seasonal dwelling place.
- Secondary residential ties are examined collectively rather than individually.

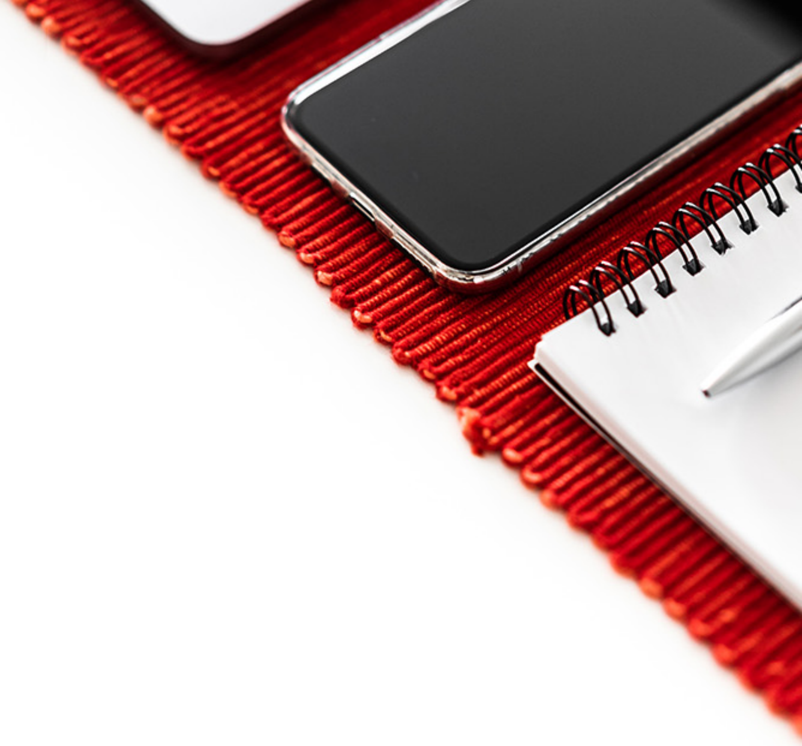
The CRA lists ten secondary residential ties in Income Tax Folio S5-F1-C1.



Residency Tests Are Two-Tiered

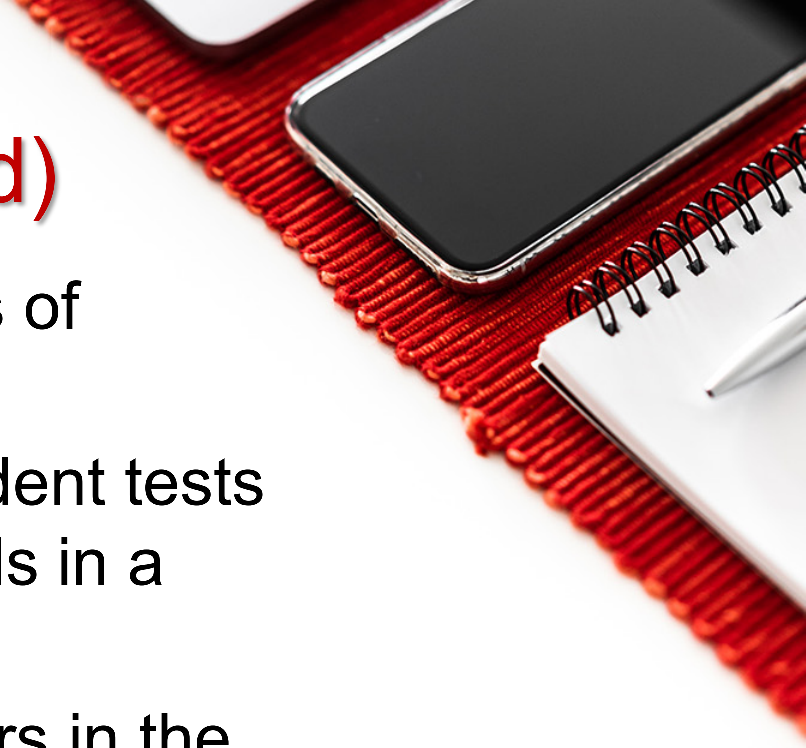
- The Factual Resident tests are the first tier used to determine residency.
- If all of these first tier tests are failed, the second tier of tests is examined: Deemed Resident tests.

Residency: Tests



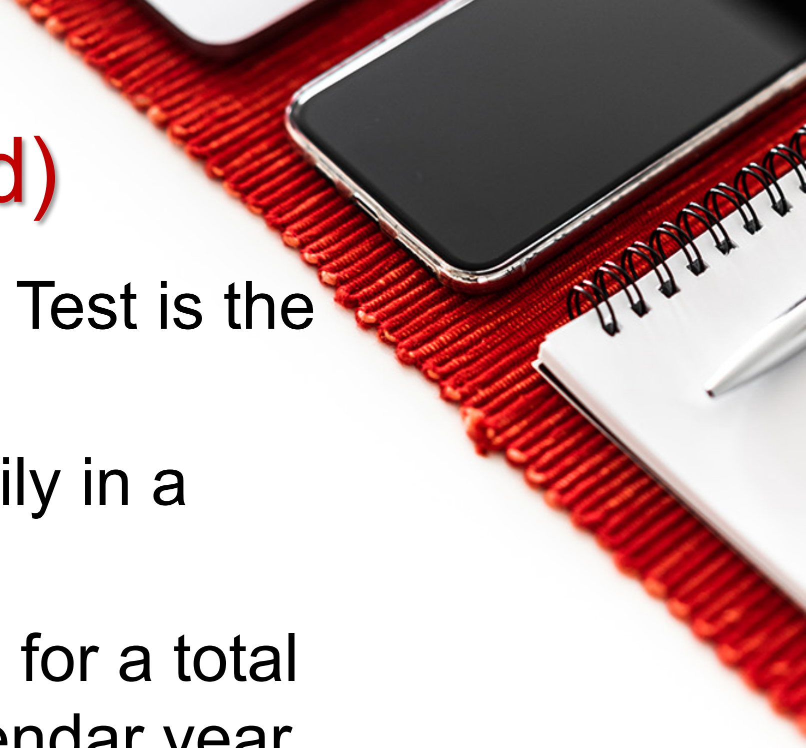
- Factual resident
- Deemed resident

Deemed Resident (cont'd)



- The CRA lists seven categories of deemed residents.
- Six of the seven Deemed Resident tests relate in some way to individuals in a governmental position.
- Examples: armed forces, officers in the federal or a provincial government, etc.

Deemed Resident (cont’d)

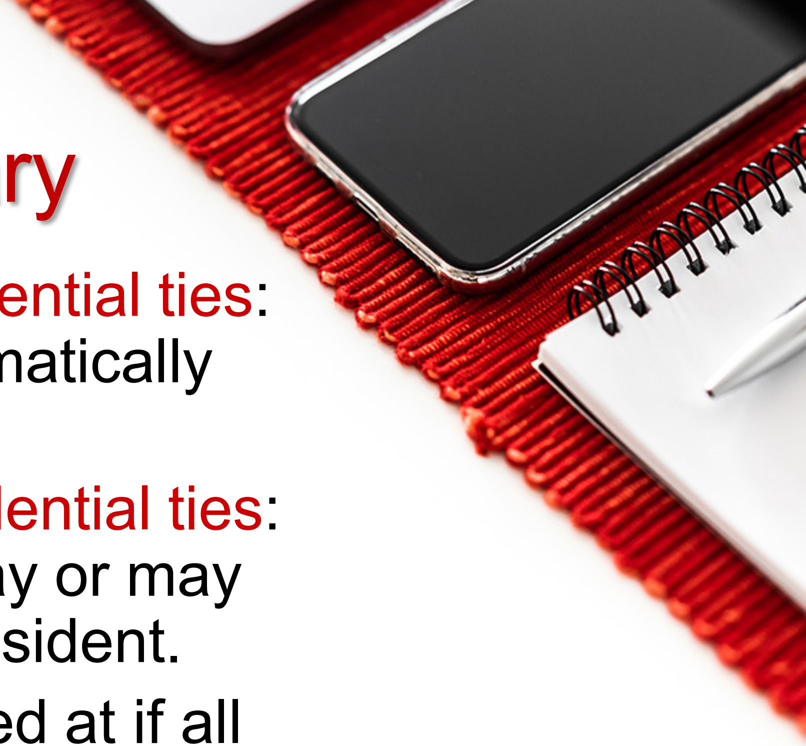


- The seventh Deemed Resident Test is the Sojourner test.
- To “sojourn” is to stay temporarily in a place.
- If an individual stays in Canada for a total of 183 days or more in any calendar year, they meet the Sojourner test.

Deemed Resident (cont'd)

- Importantly:
  - If you are deemed a sojourner, you are taxed as a resident for the full calendar year.

Residency Tests Summary



- Factual Resident, significant residential ties: if one of the three tests met, automatically considered a resident.
- Factual Resident, secondary residential ties: tests are looked at collectively, may or may not result in being considered a resident.
- Deemed Resident: Tests are looked at if all Factual Resident tests failed. If one or more Deemed Resident tests met, considered a resident.

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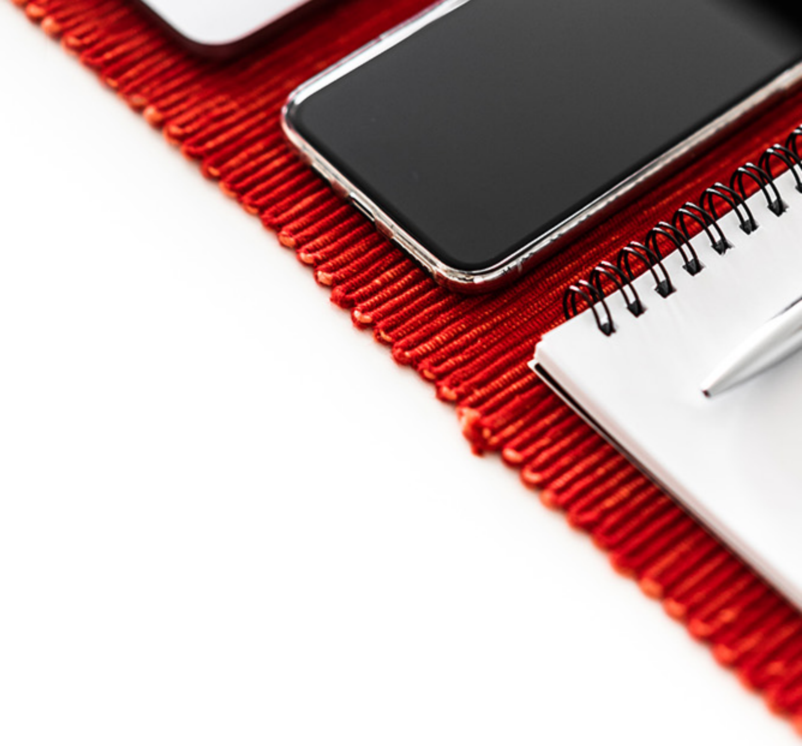

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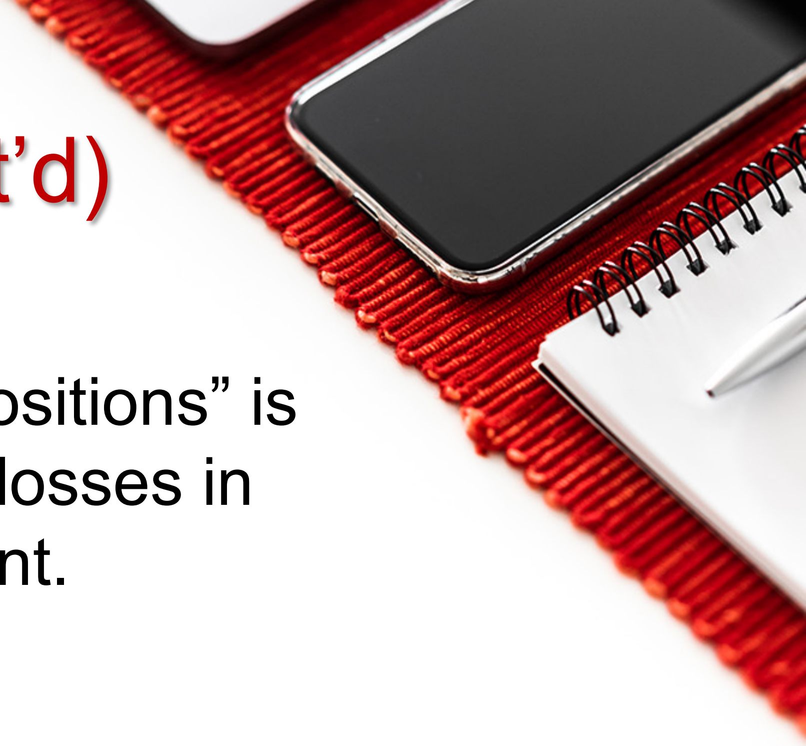
Departure Tax

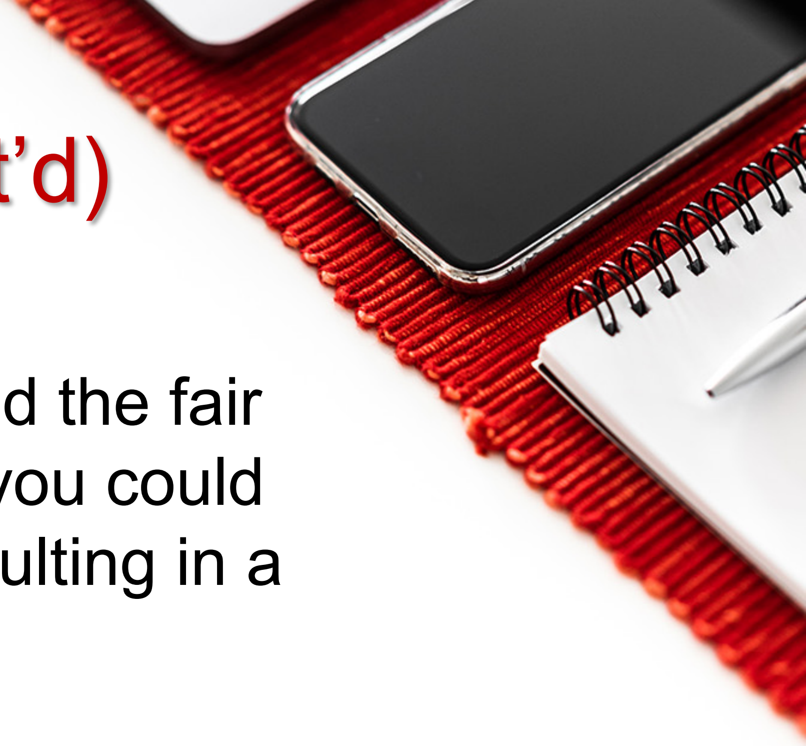
- Applies on your last day as a resident.
- You are deemed to have disposed of your property at fair market value (FMV)…
- … and to have immediately reacquired the property for the same amount.

Departure Tax (cont’d)



- The effect of the “deemed dispositions” is that you will have gains and/or losses in your final tax return as a resident.

Departure Tax (cont’d)

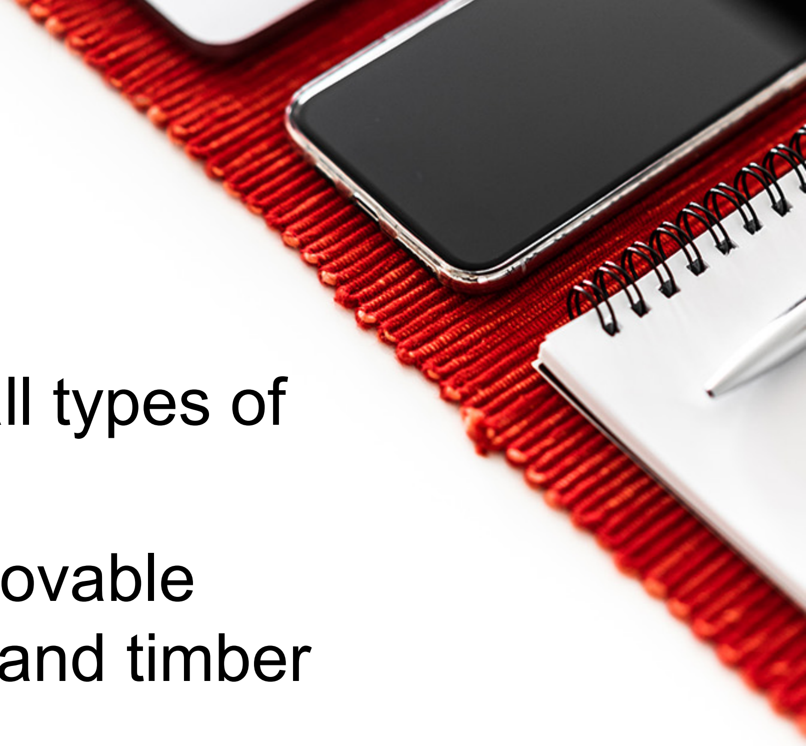


- Depending on the cost base and the fair market value of your property, you could potentially have large gains resulting in a high tax bill.

Departure Tax (cont’d)

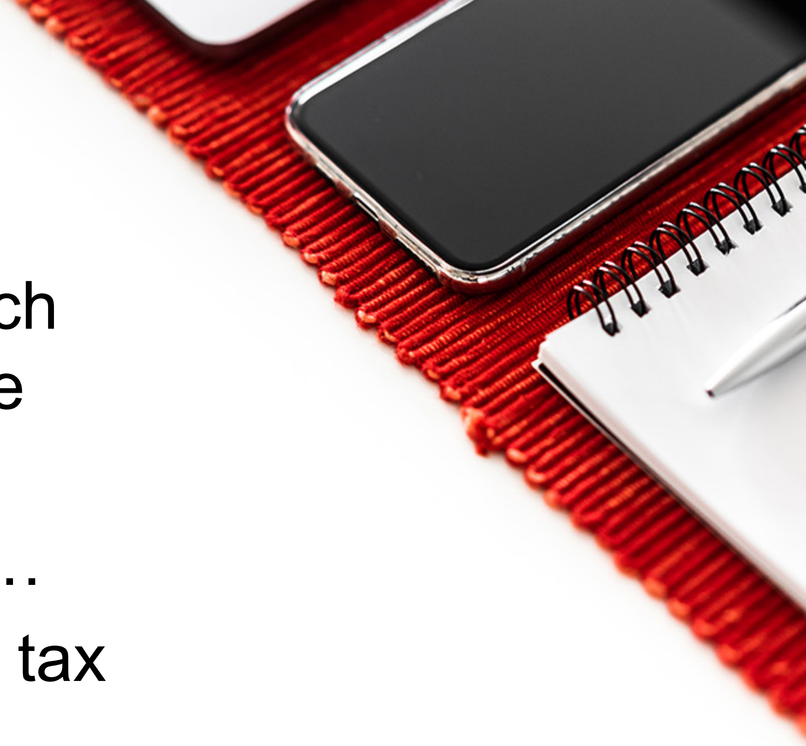
- Not all property is subject to the departure tax.
- One exception is Canadian business property if the business is carried on through a permanent establishment in Canada.

Departure Tax (cont'd)



- Other exceptions include:
  - pension plans and virtually all types of Canadian retirement plans
  - Canadian real property, immovable property, resource property, and timber property

Departure Tax (cont'd)



- It is important to determine which property would be subject to the departure tax …
- for tax planning purposes and …
- to ensure you meet all required tax obligations.

Departure Tax (cont’d)

Some elections are available.

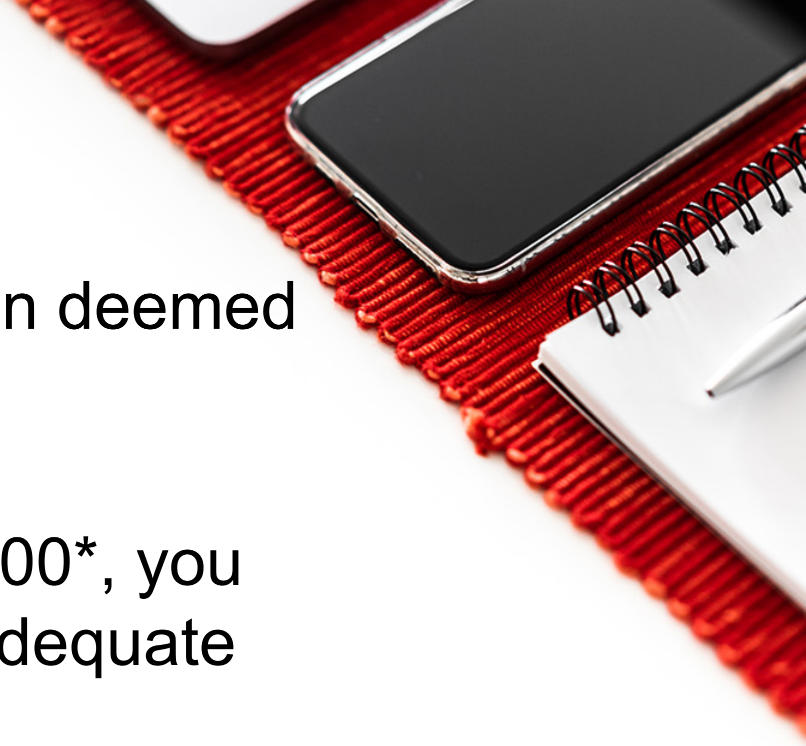
- One election is to defer payment of tax that arises from the deemed disposition rule.
- Another election is to have the deemed disposition rule apply to property that is exempted from the departure tax.

Departure Tax (cont'd)

Election to defer payment of tax on deemed dispositions:

- You would pay the tax later, without interest, when you dispose of the property.

Departure Tax (cont'd)

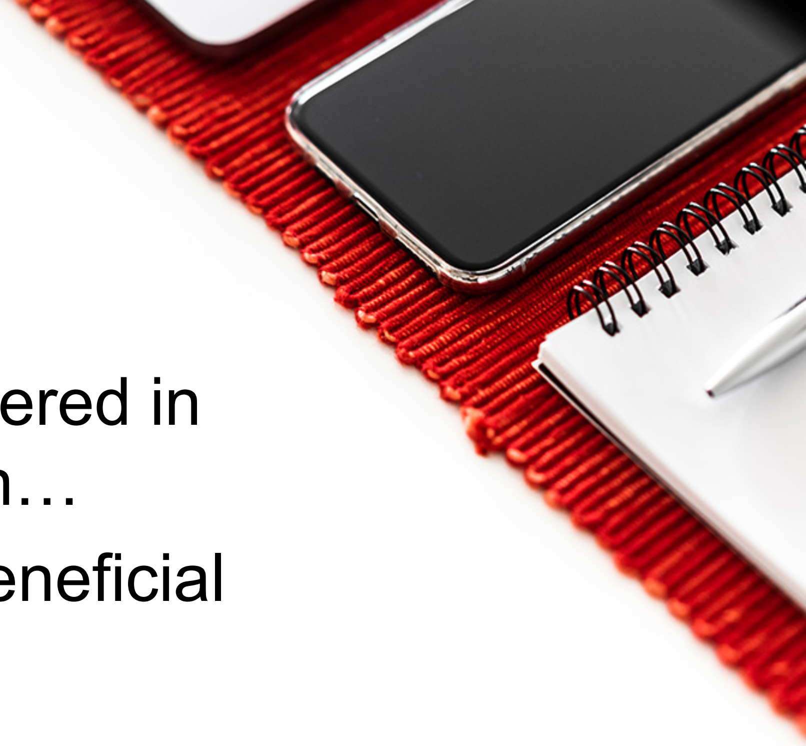


Election to defer payment of tax on deemed dispositions (cont'd):

- If amount of tax from deemed dispositions is more than $16,500*, you have to provide the CRA with adequate security to cover the amount.

* $13,777.50 for Québec residents

Departure Tax (cont'd)



- Each election should be considered in light of your overall tax situation…
- … to determine what is most beneficial from a tax standpoint.

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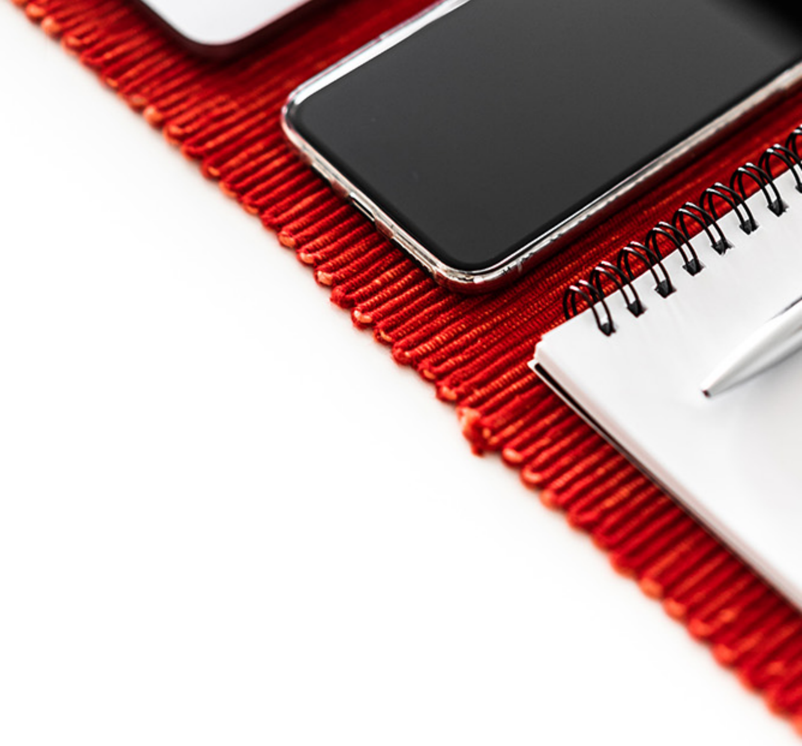

Taxation as a Non-Resident

- Taxed on Canadian source income only.
- File an annual tax return with Canada (Form 5013-R).
- You may also need to file foreign country tax return(s), depending on the jurisdiction(s) where you spend time/invest/conduct business.

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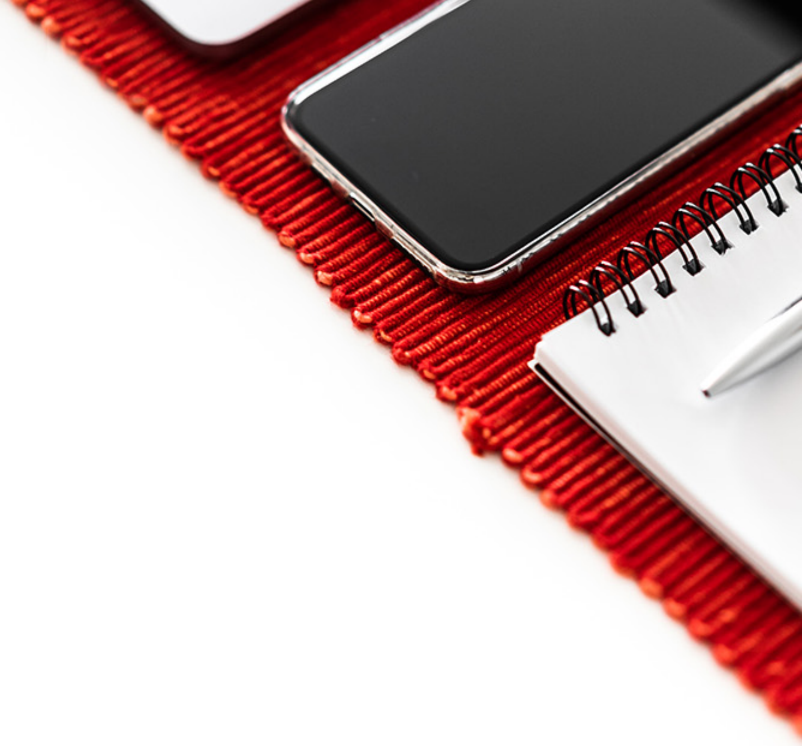

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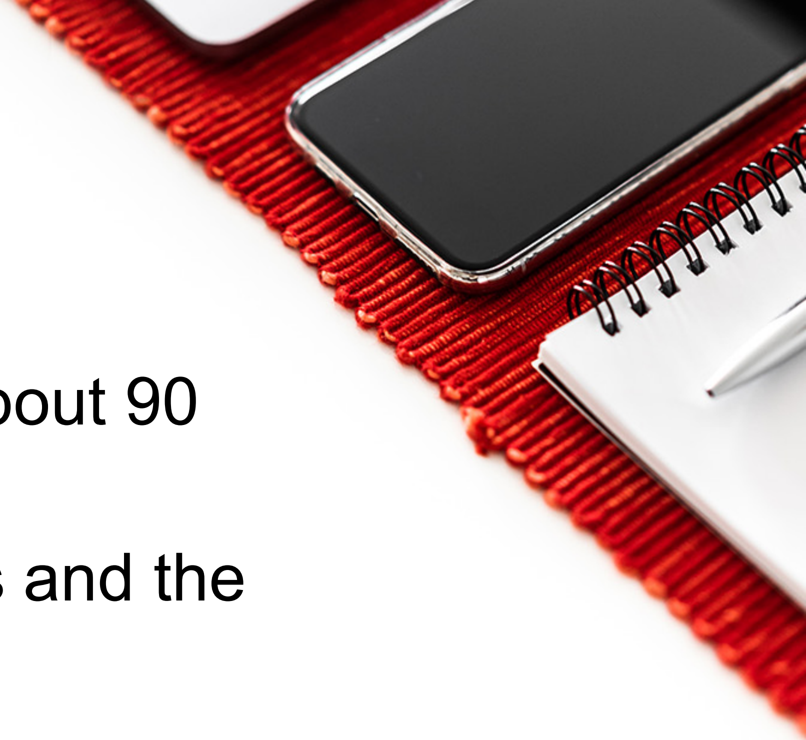
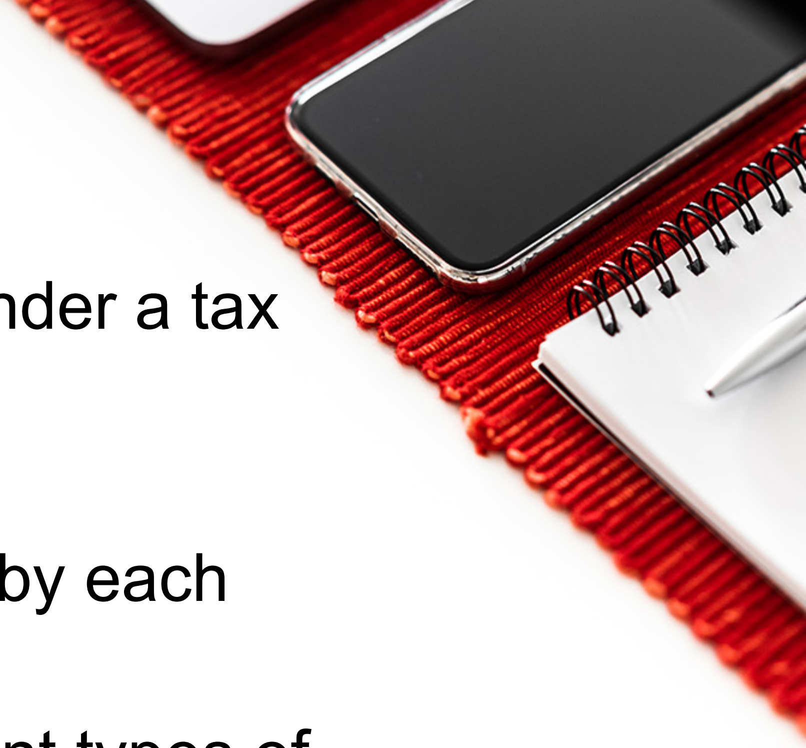


- Canada has tax treaties with about 90 countries.
- A tax treaty overrides Canada’s and the other country’s tax laws.

Tax Treaties (cont'd)



Items that are typically covered under a tax treaty include:

- Definition of resident
- Types of income subject to tax by each country
- Tax withholding rates for different types of income paid out of country (e.g., dividends, rent, royalties, etc.)

Tax Treaties (cont'd)

- Accordingly, it is important to determine if there is a tax treaty between Canada and the country in which you plan to live/invest/conduct business.

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