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Former federal NDP leader Ed Broadbent recently gave a speech that called for an increase in taxes for those making more than \$250,000. By increasing the top bracket from 29% to 35%, the government would raise an additional 3.7 billion dollars that could be used to eliminate child poverty. The calls from the political left to increase taxes on the wealthy are not consistent with mindset of most Canadians or the two major political parties that wish to govern the country. However, the possibility exists that higher taxes may be inevitable given the size of our deficits, a shrinking tax base and the increased demand for public services by the retiring baby boomers. Given Ontario's announcement of a projected \$25 billion deficit and a federal deficit that will exceed \$50 billion, tax increases will probably be part any future deficit reduction plan.

The reality is that the Canadian income tax system is voluntary. An individual living in Ontario can avoid that province's taxes by moving to Alberta. If Canadian taxes seem excessive, one has the option of moving to the United States or any number of lower tax rate countries. For most individuals that have a job, moving to save taxes is not a viable option. However, for wealthy or retired individuals, leaving Canada may not be exclusively motivated by taxation, but it can be a significant factor in the decision to relocate. There are approximately three million Canadians living overseas and the United States is the preferred destination. In this edition of the Canadian Tax Planners Newsletter, we shall review the tax implications of becoming a non-resident, issues related to leaving assets in Canada, such as a principal residence or a RRSP and receiving income as a non-resident from Canadian sources.

Residence

Residents of Canada are taxed on their world income, while non-residents are subject to tax on income from Canadian sources. It is CRA's view that there are two types of residents – factual and deemed. The concept of factual resident starts with the assumption that one must be a resident of some country. Therefore, one can only become a non-resident of Canada by becoming a resident of another country. Although there are various rules and guidelines, if individuals want to be a non-resident, they must move from Canada and sever the ties that connect them to Canada. The most important

step is to move the entire family and sell the principal residence. Certain individuals are considered residents even though they have moved abroad. This includes students, individuals on a long term vacation, teachers on overseas assignments and individuals that take a foreign job if their intention is to return to Canada upon the completion of the assignment.

The primary category of deemed residents is known as “sojourners.” They are individuals who are present in Canada for more than 183 days in a calendar year. Also included as deemed residents are individuals in the armed forces and various government officials who work abroad on behalf of Canada.

In most cases it reasonably straightforward whether or not an individual has become a non-resident. CRA has form NR73 where an individual can request a ruling on their status as a non-resident. However, most taxpayers who wanted to be treated as non-resident do not request a ruling, as they not only have to disclose information to CRA, but they may not get the answer they desire. Even if an individual has permanently moved from Canada, CRA may still consider them as a Canadian resident in the following situations:

- a spouse, including a common law partner continues to reside in Canada
- the principal residence was not sold after leaving Canada. A non-resident’s position is strengthened if the property was leased on a long term basis to an arm’s length individual
- a recreation property such as cottage, that is suitable for year round occupancy, has not been sold by the individual

Tax Treaty Tie Breaking Rules – Canada has signed tax treaties with most countries to avoid double taxation. If individuals emigrate from Canada, but CRA believes there are reasons to consider them as Canadian residents, such as owning a cottage in Canada, the tie breaking rules contained in the various tax treaties may ensure the individual is treated as a non-resident.

Note – The remainder of this article is only available to subscribers of the Canadian Tax Planners Newsletter. If you elect to subscribe and wish to receive a copy of this newsletter, advise us accordingly and the complete article will be forwarded by return mail.