

Income Tax

IMP. 22-3/R2 Determining the residence of an individual who has left Québec and
Canada

Date of publication: Septembre 29, 2017

Reference(s): *Taxation Act* (CQLR, c. I-3), section 22

This version of bulletin IMP. 22-3 supersedes the version of July 31, 1990. The bulletin has been revised to bring it up to date, considering the evolution of the jurisprudence and doctrine.

This bulletin states the main factors considered by Revenu Québec in determining the residence of an individual who has left Québec and Canada. Those same factors may be considered by Revenu Québec in determining the residence of an individual who has left Québec without leaving Canada.

APPLICATION OF THE ACT

1. The most important factor to be considered in determining whether an individual who has left Québec and Canada remains resident in Québec while outside Canada is whether the individual maintains residential ties with Québec.
2. Generally, an individual who has left Québec and Canada continues to be resident in Québec unless the individual severed all significant residential ties with Québec upon leaving.

Significant residential ties with Québec

3. The significant residential ties of an individual are the individual's:
 - (a) dwelling place or places;
 - (b) spouse; and
 - (c) dependants.
4. Where an individual has left Québec and Canada but keeps in Québec a dwelling place owned or leased by the individual and available for his or her occupation, the dwelling place will be considered a significant residential tie with Québec during the individual's stay outside Canada. However, if the individual leases a dwelling place located in Québec to a third party on arm's-length terms and conditions, Revenu Québec will take into account all of the circumstances of the situation, including the relationship between the individual and the third party, the real estate

market at the time the individual left Canada and the reasons for the individual's stay outside Canada, and may consider the dwelling place not to be a significant residential tie with Québec unless taken with other residential ties.

5. If an individual who has left Québec and Canada has a spouse who remains in Québec, the spouse will generally be considered a significant residential tie with Québec during the individual's stay outside Canada. Similarly, if an individual who has left Québec and Canada has dependants who remain in Québec, the dependants will generally be considered a significant residential tie with Québec during the individual's stay outside Canada. Where prior to leaving Québec and Canada an individual was legally separated from his or her spouse or living separate and apart from him or her by reason of the breakdown of their union, the spouse will not be considered a significant residential tie with Québec.

Secondary residential ties

6. Generally, secondary residential ties must be looked at collectively in order to assess the significance of each of them. Therefore, it would be unusual for a single secondary residential tie with Québec to be considered significant enough, in and of itself, to conclude that the individual is resident in Québec while outside Canada. Secondary residential ties to be considered in determining the residence status of an individual who is outside Canada are:

- (a) personal property in Québec (such as furniture, clothing, automobiles and recreational vehicles);
- (b) social ties with Québec (such as membership in a recreational or religious organization);
- (c) economic ties with Québec (such as employment with a Québec employer, active involvement in a Québec business, or a Canadian bank account, retirement savings plan, credit card or securities account);
- (d) permanent resident status or an appropriate work permit in Canada or in Québec;
- (e) provincial hospitalization and medical insurance coverage;
- (f) a driver's license from a province or territory of Canada;
- (g) a vehicle registered in a province or territory of Canada;
- (h) a seasonal dwelling place in Québec or a leased dwelling place, as referred to above;
- (i) a Canadian passport; and
- (j) membership in a Canadian union or professional organization.

Other residential ties

7. Other residential ties that the courts have considered, and that Revenu Québec may also consider, in determining the residence status of an individual during his or her absence from Québec and Canada include the retention of a mailing address, post office box or safety deposit box in Québec or Canada, letterhead or business cards with a Québec address or telephone

number, and local newspaper or magazine subscriptions. Such residential ties are generally of limited importance unless taken with other residential ties.

Residential ties elsewhere

8. The courts maintain that a person must be resident somewhere and may be resident in more than one place at the same time for income tax purposes.

9. An individual who has left Québec and Canada and intends to become a non-resident of Québec without establishing any significant residential ties elsewhere may continue to be resident in Québec if the ties he or she still has with Québec prove to be more significant. Furthermore, the fact that an individual has established significant residential ties elsewhere does not in and of itself mean that the individual is no longer resident in Québec since the courts maintain that an individual may be resident in more than one country at the same time for income tax purposes.

Regularity and length of visits to Québec

10. Where an individual has left Québec and Canada and become a non-resident of Québec, his or her non-resident tax status is generally not affected by occasional return visits to Québec, whether for personal or business reasons. However, where such visits are more than occasional, particularly where they occur on a regular basis, that factor will be considered along with any other secondary residential ties to determine whether the individual's residential ties with Québec are significant enough to conclude that he or she is resident in Québec.

Anticipated return to Québec at the end of the stay

11. Where the facts show that an individual who has left Québec and Canada anticipates returning to Québec at the end of his or her stay outside Canada, that factor must be considered along with any other residential ties to determine whether, taken together, they are significant enough to conclude that the individual has not permanently severed his or her residential ties with Québec.

12. Revenu Québec considers that the following facts, in particular, may determine that a return to Québec is anticipated:

- the individual does specific work of limited duration outside Canada (such as the construction of a bridge, the installation of prefabricated houses or the installation of a telephone network);
- the individual performs his or her duties under a fixed-term contract that provides for the individual's return to Québec;
- the individual reserves the right to return to Québec or the individual's employer reserves the right to recall him or her;
- the individual has the assurance that the individual will resume his or her duties with the employer upon returning to Québec or that the individual will hold employment in Québec.

The date non-resident status is acquired

13. The date on which a resident of Québec who has left Canada becomes a non-resident for income tax purposes is a question of fact that can only be determined after reviewing all the relevant facts and circumstances. Generally, Revenu Québec will consider that date to be the date on which the individual severed all residential ties with Québec, which will usually coincide with the latest of:

- (a) the date on which the individual left Québec;
- (b) the date on which the individual's spouse or dependants left Québec; and
- (c) the date on which the individual became resident in the country to which he or she immigrated.

14. An exception to that rule applies where an individual who was resident in another country before coming to Québec leaves Québec to return to that country to re-establish his or her place of residence there. In such a case, the individual generally becomes a non-resident on the date he or she leaves Québec even if, for example, the individual's spouse remains temporarily behind in Québec to dispose of their dwelling place in Québec or to enable their dependants to complete a school year already in progress.

Tax avoidance

15. In this bulletin, an individual's good faith is presumed. However, if it appears that the individual's main reason for leaving Québec and Canada was to avoid being subject to income tax, other factors will be considered and assessed in order to establish whether the individual is still resident in Québec and Canada.