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Income Tax Folio S6-F1-C1, Residence of a Trust or Estate

Series 6: Trusts

Folio 1: Trusts and Residency Issues

Chapter 1: Residence of a Trust or Estate

Summary

The purpose of this Chapter is to provide the Canada Revenue Agency's (CRA) views concerning the determination of the residence status of a trust (as that term is defined in subsection 248(1)) for Canadian income tax purposes. It also discusses the factors to be taken into account in making this residency determination. The comments in this Chapter dealing with factual residence will apply to determinations of residence status for federal, as well as provincial tax purposes.

For greater certainty, the term **trust** includes an estate (unless the context otherwise requires) and the term **estate**, for civil law purposes, includes a succession.

The CRA issues income tax folios to provide technical interpretations and positions regarding certain provisions contained in income tax law. Due to their technical nature, folios are used primarily by tax specialists and other individuals who have an interest in tax matters. While the comments in a particular paragraph in a folio may relate to provisions of the law in force at the time they were made, such comments are not a substitute for the law. The reader should, therefore, consider such comments in light of the relevant provisions of the law in force for the particular tax year being considered.

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Discussion and interpretation

Factual residence

1.1 The residence of a trust in Canada, or in a particular province or territory within Canada, is a question of fact to be determined according to the circumstances in each case.

1.2 The Supreme Court of Canada (Fundy Settlement v. Canada, 2012 DTC 5063, 2012 SCC 14) has clarified that residence of a trust will be determined by the principle that for purposes of the *Income Tax Act* a trust resides where its real business is carried on, which is where the central management and control of the trust actually takes place.

1.3 Usually the management and control of the trust rests with, and is exercised by, the trustee, executor, liquidator, administrator, heir or other legal representative of the trust. In this Chapter the word **trustee** is used to refer to any such person in relation to a trust. In its decision in *Fundy Settlement*, the Supreme Court of Canada affirmed the view that the residence of the trustee does not always determine the residence of a trust.

1.4 It is not uncommon for more than one trustee to be involved in exercising the central management and control over a trust. The trust will reside in the jurisdiction in which the more substantial central management and control actually takes place.

1.5 In some situations, the facts may indicate that a substantial portion of the central management and control of the trust rests with someone other than the trustee, such as the settlor or the beneficiaries of the trust. Regardless of any contrary provisions in the trust agreement, the actions of these other persons in respect of the trust must be considered. It is the jurisdiction in which the central management and control is factually exercised that will be considered in determining the residence of the trust.

1.6 For example, when making a determination as to the jurisdiction in which the central management and control of a trust is exercised, the CRA will consider any relevant factor, which may include:

- the factual role of a trustee and other persons with respect to the trust property, including any decision-making limitations imposed thereon, either directly or indirectly, by any beneficiary, settlor or other relevant person; and
- the ability of a trustee and other persons to select and instruct trust advisors with respect to the overall management of the trust.

For this purpose, the CRA will look to any evidentiary support that demonstrates the exercise of decision-making powers and responsibilities over the trust.

1.7 After an examination of all factors, it may be determined that a trust is resident in Canada even if another country considers the trust to be resident in that other country.

Deemed residence

1.8 Trusts that are not factually resident in Canada may be deemed to be resident in Canada for a tax year under the non-resident trust rules in section 94 for certain purposes, including computing the income of the trust and determining its liability for Part I tax. These rules are applicable to a factually non-resident trust (other than an exempt foreign trust) if there is a resident contributor to the trust or a resident beneficiary under the trust. Note however that paragraph 94(4)(h) ensures that a deemed resident trust is not considered resident for purposes of applying the attribution rule in subsection 75(2), as discussed in ¶1.11. A detailed description of those provisions would be beyond the scope of this Chapter.

1.9 Generally, each of the resident contributors to a deemed resident trust (except for any electing contributors in respect of it), and the resident beneficiaries under the trust, are jointly and severally, or solidarily, liable with the trust for many of its obligations, including its Part I tax liability.

1.10 The *Income Tax Conventions Interpretation Act* contains rules that govern the interpretation of certain provisions of the tax treaties negotiated by Canada. Section 4.3 of this act came into force on March 5, 2010 to clarify that under Canadian law, a trust that is deemed to be resident in Canada by subsection 94(3) will be deemed to be a resident of Canada and not a resident of the other contracting state for the purposes of applying a particular tax convention. This will be the case notwithstanding the provisions of the particular convention or of the act giving the convention the force of law in Canada.

Other considerations

1.11 Subsection 75(2) is an attribution rule applicable in respect of trusts factually resident in Canada and created after 1934. The rule generally applies where property is held by such a trust on condition that:

- the property, or property substituted for it, may revert to the person from whom it was directly or indirectly received, or pass to persons determined by that person subsequent to the creation of the trust or
- during the existence of the person, the property may be disposed of only with the concurrence of that person.

When either of these conditions is met, any income or loss from or taxable capital gain or allowable capital loss in respect of the property, or property substituted for it, is attributable to that person while resident in Canada.

1.12 Subsection 250(6.1) operates to avoid unintended tax consequences that may arise under a number of provisions of the *Income Tax Act* that require a trust to be resident in Canada throughout a tax year. Specifically, subsection 250(6.1) deems a trust that ceases to exist at any time in a tax year to be resident in Canada during the remaining period in the year if it was resident in Canada immediately before it ceased to exist.

1.13 Taxpayers requiring further general information about how the residence status of a trust is determined for purposes of Canadian income tax should contact the CRA at 1-800-959-8281 or in French at 1-800-959-7383 (toll free in Canada and the United States). Written enquiries should be addressed to:

International and Ottawa Tax Services Office
Post Office Box 9769, Station T
Ottawa ON K1G 3Y4
CANADA

Application

This updated Chapter, which may be referenced as S6-F1-C1, is effective November 25, 2015.

When it was first published on September 19, 2014, this Chapter replaced and cancelled Interpretation Bulletin IT-447, *Residence of a Trust or Estate*.

The history of updates to this Chapter as well as any technical updates from the cancelled interpretation bulletin can be viewed in the [Chapter History](#) page.

Except as otherwise noted, all statutory references herein are references to the provisions of the *Income Tax Act* R.S.C. 1985, c.1 (5th Supp.), as amended and all references to a Regulation are to the *Income Tax Regulations*, C.R.C., c. 945, as amended.

Links to jurisprudence are provided through CanLII.

Income tax folios are available in electronic format only.

Reference

Subsection 2(1) (also subsection 75(2), section 94, subsections 104(1) and (2), and 250(6.1)).

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