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Canadian Immigration: The Importance of Tax Planning

By James Bowden | June 2021

For anyone planning to immigrate to Canada, or former Canadian residents preparing to return after a period of non-residency, it is worth taking the time to do some pre-immigration tax planning. It may well be that the Canadian tax environment is a lot more aggressive than where you're coming from. If you wait until after you arrive to start arranging your affairs, it will be too late. Each personal or family situation will be unique and will benefit from bespoke professional advice, but this note will outline a few things that a prospective new/returning Canadian should bear in mind before making their move.

Canada imposes tax on the basis of residency, so once you become a Canadian resident you will be subject to Canadian taxation on your worldwide income, including foreign investments, foreign trusts, foreign rental properties, proceeds of the sale of foreign properties, and any other income from any source, anywhere in the world. Foreign tax credits may apply to reduce your Canadian tax burden to some extent on foreign sources of income to avoid "double" tax on such amounts. The Canada Revenue Agency (CRA) actively investigates foreign income and has information exchange treaties with many other countries (including automatic exchange of information treaties that provide for easy, fast, automated sharing), so your assumption should be that the CRA will be able to find or verify any foreign income you may have. It is your responsibility under Canadian law to voluntarily report it – if the CRA has to seek it out, you will be subject to interest and penalties.

Certain income earned before you arrive in Canada, but which you receive after you arrive (i.e., become "resident" in Canada) are taxed in Canada, so make sure you receive as much income as possible prior to your arrival and do not leave amounts accrued and unpaid.

The deemed tax cost (i.e., the adjusted cost base) of your capital assets (worldwide) for Canadian tax purposes will be their fair

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James is an experienced transactional and corporate and commercial practitioner, having trained in both Ontario and with Afridi & Angell in Dubai for many years. He has developed significant expertise in a number of specialisations, most notably commercial advisory and transactional work, onshore and offshore trusts structures, asset protection, and tax and estate planning. James spearheaded the firm's initiative to establish its Toronto office (Afridi & Angell Professional Corporation), which he now heads, taking advantage of the firm's many Canadian ties and bringing the Afridi & Angell service standard to Canadian clientele. James is a member of the Ontario bar and received his L.L.B., from Queens University, Canada, in 2004.

market value as of the date you become a Canadian resident. This is a benefit because when you dispose of any such assets, you pay tax only on the capital appreciation over and above the adjusted cost base of the asset, so the higher it can be, the better. You should obtain third-party valuations of your material capital assets shortly before or after you become a resident and keep this information on file, as you will need it.

Consider arranging for the establishment of one or more trusts which can help reduce your Canadian tax burden during life and upon succession. Canadian tax laws apply various so-called attribution rules and deemed residency rules for non-Canadian trusts, which operate to severely restrict offshore planning opportunities. Other rules do the same for corporate entities that hold property for a Canadian resident (attributing passive income directly to the individual shareholder). There is greater opportunity to implement effective structures without falling afoul of these rules prior to becoming a Canadian resident. The same is true of a restructuring of existing trusts, that will become Canadian resident trusts when you move to Canada. The rules are complex and professional advice is necessary before attempting to implement any structures or changes. The consequences of poor planning can be disastrous from a tax perspective, and such consequences are often avoidable.

Note in particular that even some actions taken prior to residency will come under the scrutiny of the CRA. For instance, if a foreign trust has been settled, or contributed to within the 5-year period prior to Canadian residency, the trust could be deemed to be Canadian resident, including retroactively to the time of the contribution. It depends on who made the contributions and how. For trusts which do become Canadian resident when you do, note that those trusts will be taxable from January 1 of that year (even if you only became resident later in the year). If you can arrange for those trusts to receive payments prior to January 1 of the year you will become a Canadian resident, you should do that (such as paying out dividends to the trust on shares it holds).

Where a Canadian resident is a beneficiary of an offshore trust, and if the trust has been established in a manner that successfully avoids application of the Canadian attribution or deemed trust residency rules, it is possible to receive payments from such trusts on a tax-free basis. To achieve this, payments need to be made out of trust capital, not income, but this is not difficult to arrange with trusts that are established in jurisdictions that do not impose income tax on trusts. Such payments still need to be reported to the CRA as income received from a foreign trust on form T1142, but Canadian income tax is not payable on such amounts.

Even after Canadian residency is obtained, there remains many very good tax and non-tax reasons to make use of trusts in estate and succession planning, and they remain a central tool to the Canadian wealth planning community. However, there are unique and potentially very beneficial opportunities available to non-residents; be sure to take full advantage of them.

Our experienced team members will be pleased to arrange a confidential meeting or call to discuss your situation and goals, and how we can help you protect your wealth. ■

Afridi & Angell

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Afridi & Angell Professional Corporation, Afridi & Angell's Toronto office which was established in 2021, takes advantage of the firm's many Canadian ties and brings to our Canadian clients, and those with Canadian interests, the highest standards of advice and client service for which Afridi & Angell is known. Our Toronto office, which operates as a separate legal entity from Afridi & Angell's UAE offices, provides legal and advisory services in the following areas: corporate and commercial; mergers and acquisitions; tax planning and advisory; asset protection; private client and estate planning; anti-money laundering and anti-bribery compliance; IT outsourcing and contracting; consulting on Canada-UAE opportunities and cross-border legal issues.

Pending the launch of Afridi & Angell's Toronto website, please visit Afridi & Angell's main page at **www.afridi-angell.com**. Meanwhile please do not hesitate to contact **James Bowden** directly at jbowden@afridi-angell.com.