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Information on the United States—Canada Income Tax Treaty



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Introduction

This publication provides information on the income tax treaty between the United States and Canada. It discusses a number of treaty provisions that often apply to U.S. citizens or residents who may be liable for Canadian tax.

Treaty provisions are generally reciprocal (the same rules apply to both treaty countries). Therefore, a Canadian resident who receives income from the United States may refer to this publication to see if a treaty provision may affect the tax to be paid to the United States.



This publication does not deal with Canadian income tax laws; nor does it provide Canada's interpretation of treaty articles, definitions, or specific terms not defined in the treaty itself.

The United States—Canada income tax treaty was signed on September 26, 1980. It has been amended by five protocols, the most recent of which generally became effective January 1, 2009. In this publication, the term “article” refers to the particular article of the treaty, as amended.

Application of Treaty

The benefits of the income tax treaty are generally provided on the basis of residence for income tax purposes. That is, a person who is recognized as a resident of the United States who has income from Canada, will often pay less income tax to Canada on that income than if no treaty was in effect. Article IV provides definitions of residents of Canada and the United States, and provides specific criteria for applying the treaty in cases where a taxpayer is considered by both countries to be a resident.

Saving clause. In most instances, a treaty does not affect the right of a country to tax its own residents (including those who are U.S. citizens) or of the United States to tax its residents or citizens (including U.S. citizens who are residents of the foreign country). This provision is known as the “saving clause.”

For example, an individual who is a U.S. citizen and a resident of Canada may have dividend income from a U.S. corporation. The treaty provides a maximum rate of 15% on dividends received by a resident of Canada from sources in the United States. Even though a resident of Canada, the individual is a U.S. citizen and the saving clause overrides the treaty article that limits the U.S. tax to 15%.



Exceptions to the saving clause can be found in Article XXIX, paragraph 3.

Treaty-based position. If you take the position that any U.S. tax is overruled or otherwise reduced by a U.S. treaty (a treaty-based position), you generally must disclose that position on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, and attach it to your return.

Personal Services

A U.S. citizen or resident who is temporarily present in Canada during the tax year is exempt from Canadian income taxes on pay for services performed, or remittances received from the United States, if the citizen or resident qualifies under one of the treaty exemption provisions set out below.

Income from employment (Article XV). Income U.S. residents receive for the performance of dependent personal services in Canada (except as public entertainers) is exempt from Canadian tax if it is not more than \$10,000 in Canadian currency for the year. If it is more than \$10,000 for the year, it is exempt only if:

1. The residents are present in Canada for no more than 183 days in any 12-month period beginning or ending in the year concerned, and
2. The income is not paid by, or on behalf of, a Canadian resident and is not borne by a permanent establishment in Canada.



Whether there is a permanent establishment in Canada is determined by the rules set forth in Article V.

Example. For example, assume that you are a U.S. resident employed under an 8-month contract with a Canadian firm to install equipment in their Montreal plant. During the calendar year you were physically present in Canada for 179 days and were paid \$16,500 (Canadian) for your services. Although you were in Canada for not more than 183 days during the year, your income is not exempt from Canadian income tax because it was paid by a Canadian resident and was more than \$10,000 (Canadian) for the year.

Pay received by a U.S. resident for work regularly done in more than one country as an employee on a ship, aircraft, motor vehicle, or train operated by a U.S. resident is exempt from Canadian tax.

Income from self-employment. Income from services performed (other than those performed as an employee) are taxed in Canada if they are attributable to a permanent establishment in Canada. This income is treated as business profits, and deductions similar to those allowed under U.S. law are allowable.

If you carry on (or have carried on) business in both Canada and the United States, the business profits are attributable to each country based on the profits that the permanent establishment might be expected to make if it were a distinct and separate person engaged in the same or similar activities. The business profits attributable to the permanent establishment include only those profits derived from assets used, risks assumed, and activities performed by the permanent establishment.

You may be considered to have a permanent establishment if you meet certain conditions. For more information, see Article V (Permanent Establishment) and Article VII (Business Profits).

Public entertainers (Article XVI). The provisions under income from employment or income from self-employment do not apply to public entertainers (such as theater, motion picture,

radio, or television artistes, musicians, or athletes) from the United States who receive more than \$15,000 in gross receipts in Canadian currency, including reimbursed expenses, from their entertainment activities in Canada during the calendar year. However, this provision for public entertainers does not apply (and the other provisions will apply) to athletes participating in team sports in leagues with regularly scheduled games in both the United States and Canada.

Compensation paid by the U.S. Government (Article XIX). Wages, salaries, and similar income (other than pensions) paid to a U.S. citizen by the United States or any of its agencies, instrumentalities, or political subdivisions for discharging governmental functions are exempt from Canadian income tax.

The exemption does not apply to pay for services performed in connection with any trade or business carried on for profit by the United States, or any of its agencies, instrumentalities, or political subdivisions.

Students and apprentices (Article XX). A full-time student, apprentice, or business trainee who is in Canada to study or acquire business experience is exempt from Canadian income tax on remittances received from any source outside Canada for maintenance, education, or training. The recipient must be or must have been a U.S. resident immediately before visiting Canada.

An apprentice or business trainee can claim this exemption only for a period of one year from the date the individual first arrived in Canada for the purpose of training.

Pensions, Annuities, Social Security, and Alimony

Under Article XVIII, pensions and annuities from Canadian sources paid to U.S. residents are subject to tax by Canada, but the tax is limited to 15% of the gross amount (if a periodic pension payment) or of the taxable amount (if an annuity). Canadian pensions and annuities paid to U.S. residents may be taxed by the United States, but the amount of any pension included in income for U.S. tax purposes may not be more than the amount that would be included in income in Canada if the recipient were a Canadian resident.

Pensions. A pension includes any payment under a pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances, and payments under a sickness, accident, or disability plan. It includes pensions paid by private employers and the government for services rendered.

Pensions also include payments from individual retirement arrangements (IRAs) in the United States, registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) in Canada.

Pensions do not include social security benefits.

Roth IRAs. A distribution from a Roth IRA is exempt from Canadian tax to the extent it would

be exempt from U.S. tax if paid to a U.S. resident. In addition, you may elect to defer any tax in Canada on income accrued within the Roth IRA but not distributed by the Roth IRA. However, you cannot defer tax on any accruals due to contributions made after you become a Canadian resident.

Tax-deferred plans. Generally, income that accrues in a Canadian RRSP or RRIF is subject to U.S. tax, even if it is not distributed. However, a U.S. citizen or resident can elect to defer U.S. tax on income from the plan until the income is distributed. Form 8891 is used to make the election.

Annuities. An annuity is a stated sum payable periodically at stated times, during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered). Annuities do not include:

- Non-periodic payments, or
- An annuity the cost of which was deductible for tax purposes.

Special rules. Special rules apply to pensions and annuities with respect to:

- Short-term assignments,
- Cross-border commuters, and
- Individuals who participate in a Canadian qualifying plan.

Generally, distributions in such cases are deemed to be earned in the country in which the plan is established, without regard to where the services were rendered.

Social security benefits. U.S. social security benefits paid to a resident of Canada are taxed in Canada as if they were benefits under the Canada Pension Plan, except that 15% of the amount of the benefit is exempt from Canadian tax.

Alimony. Alimony and similar amounts (including child support payments) from Canadian sources paid to U.S. residents are exempt from Canadian tax. For purposes of U.S. tax, these amounts are excluded from income to the same extent they would be excluded from income in Canada if the recipient was a Canadian resident.

Investment Income From Canadian Sources

The treaty provides beneficial treatment for certain items of Canadian source income that result from an investment of capital.

Dividends (Article X). For Canadian source dividends received by U.S. residents, the Canadian income tax generally may not be more than 15%.

A 5% rate applies to intercorporate dividends paid from a subsidiary to a parent corporation owning at least 10% of the subsidiary's voting stock. However, a 10% rate applies if the payer

of the dividend is a nonresident-owned Canadian investment corporation.

These rates do not apply if the owner of the dividends carries on, or has carried on, a business in Canada through a permanent establishment and the holding on which the income is paid is effectively connected with that permanent establishment.

Interest (Article XI). Generally, Canadian source interest received by U.S. residents is exempt from Canadian income tax.

The exemption does not apply if the owner of the interest carries on, or has carried on, a business in Canada through a permanent establishment and the debt on which the income is paid is effectively connected with that permanent establishment.

Gains from the sale of property (Article XIII). Generally, gains from the sale of personal property by a U.S. resident having no permanent establishment in Canada are exempt from Canadian income tax. However, the exemption from Canadian tax does not apply to gains realized by U.S. residents on Canadian real property, and on personal property belonging to a permanent establishment in Canada.

If the property subject to Canadian tax is a capital asset and was owned by the U.S. resident on September 26, 1980, not as part of the business property of a permanent establishment in Canada, generally the taxable gain is limited to the appreciation after 1984.

Royalties (Article XII). For Canadian source royalties received by U.S. residents, the Canadian income tax generally may not be more than 10%.

The following are exempt from Canadian tax:

1. Copyright royalties and other like payments for the production or reproduction of any literary, dramatic, musical, or artistic work (other than payments for motion pictures and works on film, videotape, or other means of reproduction for use in connection with television),
2. Payments for the use of, or the right to use, computer software,
3. Payments for the use of, or the right to use, any patent or any information concerning industrial, commercial, or scientific experience (but not within a rental or franchise agreement), and
4. Payments for broadcasting as agreed to in an exchange of notes between the countries.

This rate or exemption does not apply if the owner of the royalties carries on, or has carried on, a business in Canada through a permanent establishment and the right or property on which the income is paid is effectively connected with that permanent establishment.

Charitable Contributions

United States income tax return. Under Article XXI, you may deduct contributions to certain qualified Canadian charitable organizations on

your United States income tax return. Besides being subject to the overall limits applicable to all your charitable contributions under U.S. tax law, your charitable contributions to Canadian organizations (other than contributions to a college or university at which you or a member of your family is or was enrolled) are subject to the U.S. percentage limits on charitable contributions, applied to your Canadian source income. If your return does not include gross income from Canadian sources, charitable contributions to Canadian organizations are generally not deductible.

Example. You are a U.S. citizen living in Canada. You have both U.S. and Canadian source income. During your tax year, you contribute to Canadian organizations that would qualify as charitable organizations under U.S. tax law if they were U.S. organizations.

To figure the maximum amount of the contribution to Canadian organizations that you can deduct on your U.S. income tax return, multiply your adjusted gross income from Canadian sources by the percentage limit that applies to contributions under U.S. income tax law. Then include this amount on your return along with all your domestic charitable contributions, subject to the appropriate percentage limit required for contributions under U.S. income tax law. The appropriate percentage limit for U.S. tax purposes is applied to your total adjusted gross income from all sources.

Qualified charities. These Canadian organizations must meet the qualifications that a U.S. charitable organization must meet under U.S. tax law. Usually an organization will notify you if it qualifies. For further information on charitable contributions and the U.S. percentage limits, see Publication 526, *Charitable Contributions*.

Canadian income tax return. Under certain conditions, contributions to qualified U.S. charitable organizations may also be claimed on your Canadian income tax return if you are a Canadian resident.

Income Tax Credits

The treaty contains a credit provision (Article XXIV) for the elimination of double taxation. In general, the United States and Canada both allow a credit against their income tax for the income tax paid to the other country on income from sources in that other country. For detailed discussions of the U.S. income tax treatment of tax paid to foreign countries, see Publication 514, *Foreign Tax Credit for Individuals*.

See paragraphs (4) and (5) of Article XXIV for certain provisions that affect the computation of the credit allowed by the United States for Canadian income taxes paid by U.S. citizens residing in Canada.

Competent Authority Assistance

Under Article XXVI, a U.S. citizen or resident may request assistance from the U.S. competent authority when the actions of Canada, the United States, or both, potentially result in double taxation or taxation contrary to the treaty. The U.S. competent authority may then consult with the Canadian competent authority to determine if the double taxation or denial of treaty benefits in question can be avoided.

If the competent authorities are not able to reach agreement in a case, binding arbitration proceedings may apply.

It is important that your request for competent authority assistance be made as soon as you have been notified by either Canada or the United States of proposed adjustments that would result in denial of treaty benefits or in double taxation. This is so that implementation of any agreement reached by the competent authorities is not barred by administrative, legal, or procedural barriers. For information that you should include with your request for competent authority assistance, see Revenue Procedure 2006-54, 2006-49 IRB 1035, available at www.irs.gov/irb/2006-49_IRB/ar13.html. The request should be addressed to:

Deputy Commissioner (International)
Large and Mid-Size Business Division
Attn: Office of Tax Treaty
Internal Revenue Service
1111 Constitution Ave., NW
Routing: MA3-322A
Washington, D.C. 20024

In addition to a timely request for assistance, you should take the following measures:

- File a timely protective claim for credit or refund of U.S. taxes on Form 1040X, Form 1120X, or amended Form 1041, whichever is appropriate. This will, among other things, give you the benefit of a foreign tax credit in case you do not qualify for the treaty benefit in question. For figuring this credit, attach either Form 1116 or Form 1118, as appropriate. Attach your protective claim to your request for competent authority assistance.
- Take appropriate action under Canadian procedures to avoid the lapse or termination of your right of appeal under Canadian income tax law.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS and the Canada Revenue Agency in several ways.

Text of Treaty

You can get the text of the U.S.—Canada income tax treaty from:

Superintendent of Documents
U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954

The treaty can also be found on the Internet at www.irs.gov

U.S. Taxation

During the filing season, the IRS conducts a taxpayer assistance program in Canada. To find out if IRS personnel will be in your area, you should contact the consular office at the nearest U.S. Embassy or consulate.



Mail. For answers to technical or account questions, you can write to:

Internal Revenue Service
International Section
P.O. Box 920
Bensalem, PA 19020-8518



Phone. You can call the IRS for help at (215) 516-2000.

Canadian Taxation

You can get information on Canadian taxation from the Canada Revenue Agency. The International Tax Services Office can be contacted on 1-800-267-5177 (from anywhere in Canada and the U.S.) or on the Internet at www.cra-arc.gc.ca.