

IT451R Deemed disposition and acquisition on ceasing to be or becoming resident in Canada

INCOME TAX ACT Deemed Disposition and Acquisition on Ceasing to be or Becoming Resident in Canada

IT-451R March 25, 1987

Sections 48, 88.1 and 219.1 (also sections 90 to 95, 110.6 and 250, subsections 115(1), 126(2.2) and 159(4), paragraphs 212(1)(h) and 212(1)(j) to (q) of the Act and section 1300 and subsection 5907(13) of the Regulations)

This bulletin replaces and cancels Interpretation Bulletin IT-451 dated June 13, 1980 and IT-451 ADDENDUM dated September 8, 1982. Current revisions are designated by vertical lines.

Introduction

1. This bulletin deals with the deemed disposition rules in subsection 48(1) and section 88.1, the deemed acquisition rules in subsection 48(3), and the rules in subsection 48(5) which include prescribed amounts in the foreign accrual property income of certain foreign affiliates.
2. The purpose of subsection 48(1) is to include in the computation of income of a taxpayer, for a taxation year in which the taxpayer ceases to be resident in Canada, certain capital gains or losses accrued prior to departure from Canada. On the other hand, subsection 48(3) is intended to exclude from the computation of income of a taxpayer who has become a resident of Canada that portion of any capital gain or loss that had accrued prior to becoming resident. Although subsections 48(1) and 48(3) refer to "any property" and "each property", they relate only to capital property since these subsections apply for purposes of subdivision c of Division B of Part I only. Furthermore, section 48 does not apply to deem either an acquisition or disposition for capital cost allowance purposes. Where a foreign affiliate of a taxpayer resident in Canada becomes resident in Canada after November 12, 1981, subsection 48(5) provides rules for the calculation of the affiliate's foreign accrual property income as discussed in 22 and 23 below. In addition, as discussed in 18 to 20 below, section 88.1 provides rules, applicable to certain corporations emigrating after August 28, 1980, which override section 48.

Becoming or Ceasing to be Resident in Canada

3. Whether or not a taxpayer has become or ceased to be resident in Canada is generally a question of fact. Where a person sojourns, (see IT-221R2, paragraph 15) in Canada for 183 days or more in a taxation year, paragraph 250(1)(a) deems that person to have been resident in Canada throughout the year. Where this is the case, the person is considered to have become so resident at the commencement of that year and to have ceased to be so resident at the end of the year so that the provisions of section 48 apply. However, where that person is an individual, the relieving provision of subsection 48(4) (see 11 below) may apply to exempt the individual from the deemed disposition rules of subsection 48(1) (also see IT221R2 for additional comments on an individual's residence status).
4. Where the taxpayer is a trust, the trust is generally considered to become resident or cease to be resident in Canada when the trustee who has ownership or control over the assets of the trust becomes or ceases to be resident. It is possible that a trust may be subject to the provisions of

section 48 by virtue of the trustee becoming or ceasing to be a resident of Canada even though the trust property and/or the beneficiary were already located in or outside Canada.

5. Subject to the provisions of subsection 250(4) which deems residency in Canada throughout a particular taxation year, a corporation is normally resident in the country where its central management and control are located. Therefore the provisions of sections 48 or 88.1 may be applicable where such management and control moves out of or into Canada.

Deemed Disposition on Ceasing to be Resident

6. Where a taxpayer ceases to be resident in Canada at any particular time after 1971 in a taxation year, subject to the comments in 10 and 11 below, subsection 48(1) provides that the taxpayer is deemed to have disposed of certain capital properties owned immediately before that time (i.e., while still resident in Canada) for proceeds equal to fair market value. The taxpayer is also deemed to have reacquired the property immediately after ceasing to be resident in Canada at a cost of the same amount. Ownership is to be interpreted in the broadest sense, in accordance with Canadian judicial interpretation, no matter where the property is located. However, for valuation purposes the fair market value in the country or area of location of the property will usually govern.

7. The taxpayer is required to use the rules of subdivision c of Division B of Part I to calculate taxable capital gains, allowable capital losses and taxable net gains (listed personal property) on property deemed to be disposed of in computing income for Part I tax purposes for the taxation year in which the taxpayer ceased to be resident (see IT-193 Special Release). A capital gain from a deemed disposition under subsection 48(1) cannot be reduced by a reserve under paragraph 40(1)(a).

Capital Gains Deduction

8. In taxation years before 1985 (former) paragraph 48(1)(d) had the effect of exempting an individual, other than a trust, on the first \$5,000 of total capital gains from deemed dispositions of property other than listed personal property. To the extent that such capital gains were less than \$5,000, the balance of the exemption was applied under (former) paragraph 48(1)(e) to reduce the individual's gains from deemed dispositions of listed personal property. The taxpayer's "gains" from deemed dispositions of listed personal property were the amounts thereof determined under subparagraph 40(1)(a)(i) and not the "net gain" referred to in subsection 41(2). No part of the exemption could be applied against gains arising from actual dispositions of capital property.

9. In computing taxable income after 1984, section 110.6 permits an individual (other than a trust) who was resident in Canada throughout a taxation year to deduct an amount in respect of capital gains of that taxation year. For this purpose, subsection 110.6(5) provides that an individual who was resident in Canada at some time during a particular taxation year and throughout either the immediately preceding or following taxation year is deemed to have been resident in Canada throughout the particular taxation year. As a consequence such an individual who, for purposes other than subsection 110.6, has ceased to be resident in Canada at some time during a taxation year is eligible for the capital gains deduction to the extent provided by section 110.6. (see 12 below).

Exceptions

10. Subsection 48(1) does not apply to (a) property that would be taxable Canadian property as described in paragraph 115(1)(b) if the taxpayer had not been resident in Canada at any time in the year, unless the taxpayer is an individual (other than a trust) who has elected under paragraph 48(1)(a) to be deemed to have disposed of that property immediately before ceasing to be a

resident of Canada (see 12 and 14 below), (b) property that is deemed to be taxable Canadian property because of an election under paragraph 48(1)(c), (see 13 and 14 below), (c) a right to receive payments described in paragraph 212(1) (h) and paragraphs 212(1)(j) to (q) (e.g., pension benefits, retiring allowances, payments from registered retirement savings plans, etc.), or (d) a right to receive a payment of any benefit under the Canada Pension Plan or a provincial pension plan described in section 3 of that Plan. In addition, as discussed in 18 to 20 below, subsection 48(1) is not applicable to a corporation that was incorporated in Canada where section 88.1 is applicable nor, as discussed in 11 below, to certain properties owned by an individual other than a trust.

Resident in Canada for Short Term Only

11. Subsection 48(4) excludes from the deemed disposition rule of subsection 48(1) any property owned by an individual (other than a trust) if the taxpayer either owned the property immediately before becoming resident or acquired it by inheritance or bequest after becoming resident, provided that during the 10-year period immediately before ceasing to be a resident the taxpayer was not resident in Canada for periods totalling more than 60 months. Property acquired in exchange for property owned when the individual last became resident, as may be the case as a result of a share exchange under section 85.1 or under the rollover provisions of section 85, is not excluded by subsection 48(4) and is deemed to be disposed of when the individual subsequently ceases to be resident. Where an individual who sojourned in Canada is deemed to be resident in Canada under paragraph 250(1)(a) throughout a calendar year, the full calendar year, as opposed to the actual period of sojourning, is required to be included in determining the 60-month period referred to in subsection 48(4).

Election to Include Property

12. For 1985 and subsequent taxation years an individual (other than a trust) who elects under paragraph 48(1)(a) in prescribed manner and within a prescribed time is deemed to have disposed of property described in 10(a) above immediately prior to departure from Canada for proceeds of disposition equal to the fair market value of the property immediately before the departure. By making such an election an individual may claim a capital gains deduction in respect of capital gains accrued at the time of departure. The capital gains deduction is not available to a non-resident except to the extent described in 9 above. Procedures for making an election under paragraph 48(1)(a) have not yet been prescribed.

13. A Canadian corporation or an individual other than a trust may elect under paragraph 48(1)(c) to exclude from the deemed disposition rule of subsection 48 Election to Exclude Property (1) any property to which that rule would otherwise apply. The election is made on form T2061 which must be filed not later than the time when the taxpayer is required under section 150 to file an income tax return for the year of ceasing to be resident. Regulation 1300 sets out the applicable requirements. Security acceptable to the Minister is required to be furnished (see 15 below). Subsection 48(2) deems any property in respect of which such an election is made to be taxable Canadian property from the time immediately after the taxpayer ceased to be resident until the earlier of the date that the property is sold and the date on which the taxpayer next becomes resident in Canada.

14. Where a taxpayer has elected under paragraph 48(1)(a) or (c) on one or more properties, subsection 48(1) limits the allowable capital losses from deemed dispositions of property other than listed personal property to the lesser of (a) the aggregate of such allowable capital losses, and (b) the amount deemed by subsection 48(1) to be the aggregate of the taxable capital gains from deemed dispositions of property other than listed personal property. This limitation prevents a taxpayer from electing in respect of property (other than listed personal property) under paragraph 48(1)(a) or (c) in such a manner as to defer deemed capital gains while claiming deemed capital losses. There is no similar provision in respect of listed personal property because

