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Tax

Confirming tax residency status key before moving abroad

By AdvocateDaily.com Staff

Following the news that a Canadian couple is facing a large tax bill after living overseas, those planning to work abroad should consider consulting a tax professional to confirm their residency status before leaving, Toronto tax litigator Adrienne Woodyard tells CBC Metro Morning.

The program discussed the recent case of a Calgary couple who believed that they had successfully filed tax returns with the Canada Revenue Agency (CRA) while living and working in China for a number of years.

However, while preparing to return to Canada, the couple was faced with an unexpected $18,000 tax bill after the CRA questioned whether the family qualified as Canadian residents for tax purposes during the years they were abroad.

As Woodyard, a lawyer with Davis LLP, explains, this type of situation is fairly common, as the CRA has at least three years in which to go back and re-examine tax filings. Canadians, she tells CBC, can lose their residency status for tax purposes in one of two ways.

“You can lose your Canadian residency status if you … sever all significant ties to Canada … close your bank accounts, sell your house … But you can also lose your tax residency status if you go to live in a country with which Canada has a tax treaty.

“In that case, if you become resident for tax purposes of that other country, then you are considered a dual resident and there are tiebreaker rules in every tax treaty that operate to determine where you will be considered resident and that determination operates for Canadian domestic tax purposes.”

For dual residents, Woodyard tells CBC, the first tiebreaker rule will look at where you have a permanent home.

“So, it’s pretty definitive if you have a permanent home only in one place, both tax authorities are likely to agree that you’re resident [in that place].

“In this case, if this couple was living in China and did not maintain a permanent home that was available to them at all times in Canada, they would tie-break in favour of China.”

The CBC says the family claimed that it showed proof that it partly owned property in Canada and that their children remained in the school system through distance learning,

However, says Woodyard, while it may sound counterintuitive, “if that property that they owned partly was not available to them at all times – for example if they rented it [and] it was occupied by other people – that would not be a permanent home for purposes of the treaty, so that would cause them to tie-break in favour of China.”

“It doesn’t then matter how many other ties you have to Canada if the permanent home test causes you to become a resident of the other country,” she adds.

For those preparing to live and work abroad, Woodyard says it is advisable to check with a lawyer or an accountant to find out whether you will still be considered a resident for tax purposes. Canadians can also seek an opinion regarding residency from the CRA, but Woodyard tells CBC that the form is fairly intrusive.

“It asks for a lot of personal information; it asks where all of your assets are and why you’re keeping them where you’re keeping them. Most people are reluctant to file that information voluntarily with CRA [as it may] open up a can of worms.”