

NO.: **IT-221R2**

DATE: February 20, 1991

SUBJECT: **SPECIAL RELEASE**
Determination of an Individual's Residence Status

REFERENCE:

Interpretation bulletins (ITs) provide Revenue Canada's technical interpretations of income tax law. Due to their technical nature, ITs are used primarily by departmental staff, tax specialists, and other individuals who have an interest in tax matters. For those readers who prefer a less technical explanation of the law, the Department offers other publications, such as tax guides and pamphlets.

While the ITs do not have the force of law, they can generally be relied upon as reflecting the Department's interpretation of the law to be applied on a consistent basis by departmental staff. In cases where an IT has not yet been revised to reflect legislative changes, readers should refer to the amended legislation and its effective date. Similarly, court decisions subsequent to the date of the IT should be considered when determining the relevancy of the comments in the IT.

An interpretation described in an IT applies as of the date the IT is published, unless otherwise specified. When there is a change in a previous interpretation and the change is beneficial to taxpayers, it is usually effective for all future assessments and reassessments. If the change is not favourable to taxpayers, it will normally be effective for the current and subsequent taxation years or for transactions entered into after the date of the IT.

A change in a departmental interpretation may also be announced in the *Income Tax Technical News*.

If you have any comments regarding matters discussed in this IT, please send them to:

***Director, Business and Publications Division
Income Tax Rulings and Interpretations Directorate
Policy and Legislation Branch
Revenue Canada
25 Nicholas Street
Ottawa ON K1A 0L5***

***Interpretation bulletins can be found on the
Revenue Canada Internet site at: www.rc.gc.ca***

Application

The purpose of this Special Release is to revise Interpretation Bulletin IT-221R2 dated February 25, 1983 to clarify that an individual cannot be a deemed resident in Canada by virtue of subsection 250(1) if he or she is resident in Canada on the basis of the factors discussed in ¶s 4 to 12 of that bulletin. It also clarifies that IT-221R2, and in particular the comments following the heading "**DEEMED RESIDENTS OF CANADA**," applies for the 1980 and subsequent taxation years to those individuals who are deemed by section 250 to have been resident in Canada throughout a taxation year. The change made in this release in ¶ 18(e), as a consequence of the repeal of the dependent children deduction, is applicable to the 1988 and subsequent taxation years.

Bulletin Revisions

1. The first sentence of the comments preceding ¶ 1 of the bulletin is replaced by the following sentence:

"This bulletin replaces and cancels IT-221R dated May 26, 1980, and is applicable to individuals leaving Canada after May 26, 1980 except for those individuals who are deemed by section 250 to have been resident in Canada throughout a taxation year in which case the bulletin applies for the 1980 and subsequent taxation years."

2. ¶s 17 and 18 are replaced by the following:

"¶ 17. A person who is resident in Canada on the basis of the factors discussed in ¶s 4 to 12 above (factual resident in Canada) cannot be a deemed resident in Canada by virtue of subsection 250(1)."

“¶ 18. In addition to persons sojourning in Canada for a total of 183 days or more in any calendar year (see ¶ 15 above), subsection 250(1) ensures that any person (other than a factual resident in Canada) who is included in any one of the categories described in (a) to (e) below, is a resident of Canada by deeming him or her to be so. These categories are

- (a) persons who were members of the Canadian Forces at any time in the year,
- (b) persons who were officers or servants of Canada or a province, at any time in the year, who received representation allowances or who were resident in Canada or deemed to be resident in Canada (e.g., members of the Canadian Forces who were not factual residents in Canada and had been serving abroad) immediately prior to their appointment or employment by Canada or the province,
- (c) individuals who perform services, at any time in the year, outside Canada under an international development assistance program of the Canadian International Development Agency described in Part 3400 of the Regulations to the Income Tax Act, provided they were resident in Canada at any time in the three-month period prior to the day the services commenced,

- (d) persons who were, at any time in the year, members of the overseas Canadian Forces school staff who have filed their returns for the year on the basis that they were resident in Canada throughout the period during which they were such members, and
- (e) the spouse of a person described in (a) to (d) above, if living with that person during the year and if a resident of Canada in a previous year, and any dependent children of that person who were
 - (i) under 18 years of age at any time during the year, or
 - (ii) 18 years of age or over throughout the year and dependent either by reason of physical or mental infirmity.”

“¶ 19. A person referred to in ¶ 18(a) to (e) above, who is not a factual resident in Canada, is deemed to be resident in Canada regardless of where that person lives or performs services. A person who ceases to be described in ¶ 18(a) to (e) above at a particular date in the year will be deemed to be resident in Canada only to that date. Thereafter, residency will depend on the factors outlined in ¶s 4 to 12 above.”

Think recycling!



Printed in Canada