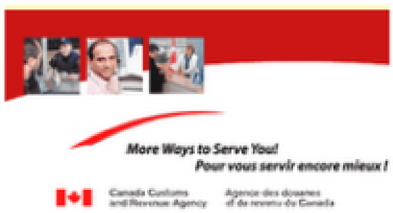
Sales by Non-Residents



By Brian Madigan

You have to be careful if you're purchasing property from a non-resident. If you don't, you may end up paying their income tax.

As part of every real estate transaction the purchaser should obtain proper evidence in the form of an affidavit that the vendor is "not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act".

The correct way to approach this issue is unfortunately to use the double negative, that is the person is NOT a "non-resident".

There are several categories for tax purposes, including both residents and non-residents. However, the mere fact that a person does not fit within the definition of a "non-resident" does not make them a resident for tax purposes.

When a property is being sold, CRA (Canada Revenue Agency) will not be concerned about the residents. They will pay tax when they file their next tax return. They are concerned about non-residents. So, it is important to either:

1) confirm that the vendor is not a non-resident, or

2) comply with the non-resident rules.

Briefly, the **CRA rules** are as follows,

You're a non-resident for tax purposes if you:

1) normally, customarily, or routinely live in another country and aren't considered a resident of Canada; or

2) don't have residential ties in Canada; and

a) you live outside Canada throughout the tax year; or

b) you stay in Canada for less than 183 days in the tax year

Residential ties include:

• a home in Canada

• a spouse or common-law partner and dependants in Canada

• personal property in Canada, such as a car or furniture

• social ties in Canada.

Other ties that may be relevant include:

• a Canadian driver's licence

• a Canadian bank account or credit cards

• health insurance with a Canadian province or territory.

So, who's worried about Canada's non-residency rules? Mick Jagger, that's who! He knows these rules better than anybody. Not only that; he knows the UK rules and the US rules as well. For all three nations, 183 days is the key. That's one day over half the year.

Many years ago he left the UK, and paid all tax that was owing. However, unlike most other people he has never quite arrived in his new country. So, wherever he goes he is a non-resident for tax purposes. This enables him to pay much less than he would pay if he were a resident.

Ever wonder why the Stones practice in Toronto for their North American tour? They're counting up the days; that's why. They run the risk of spending close to 183 days in the US, so they have to practice in Canada. And, all this time you thought it was the value of the dollar.

In any event, if you buy Mick's house in Canada, just make sure he's paid his income tax here, or you could be in for a big surprise.

Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com