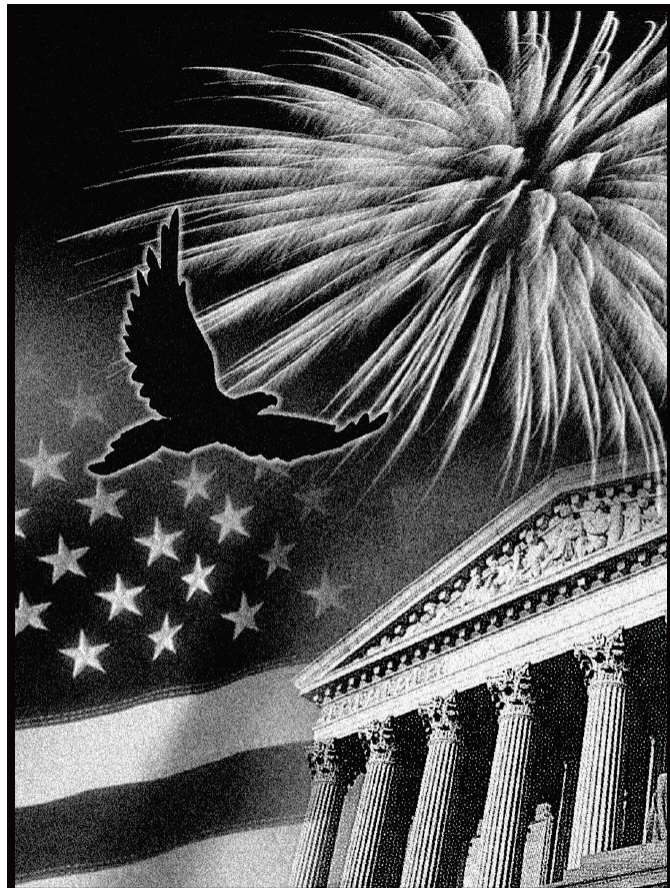


Publication 597

Information on the United States-Canada Income Tax Treaty



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Future Developments

For the latest information about developments related to Pub. 597, such as legislation enacted after it was published, go to www.irs.gov/pub597.

What's New

Under Revenue Procedure 2014-55, 2014-44 I.R.B. 753, available at www.irs.gov/irb/2014-44_IRB/ar10.html, there are new procedures for electing to defer U.S. tax on undistributed income from certain Canadian retirement plans (including RRSPs and RRIFs). Form 8891 is no longer required to make the election or to report distributions or earnings on undistributed income. Revenue Procedure 2014-55 also provides guidance concerning information reporting with respect to interests in certain Canadian retirement plans. For more information, see *Tax-deferred plans* under *Pensions, Annuities, Social Security, and Alimony*, later.

Introduction

This publication provides information on the income tax treaty between the United States and Canada. It discusses a number of treaty provisions that most 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, Canadian residents who receive income from the United States may also refer to this publication to see if a treaty provision affects their U.S. tax liability.



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. For questions regarding Canadian taxation, contact the Canada Revenue Agency at www.cra-arc.gc.ca.

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 under the treaty, who claims the benefit of the treaty, and 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 determining your residence (a tie-breaker rule) if both countries consider you to be a resident under their domestic tax laws (a dual-resident taxpayer).

Dual-resident taxpayers who are Canadian residents under a tie-breaker rule. If you are a dual-resident taxpayer because you have a U.S. green card but you

determine under the tie-breaker rule that you are a resident of Canada, you may claim treaty benefits and compute your U.S. income tax as a nonresident alien. But you must file a U.S. income tax return by the due date (including extensions) using Form 1040NR or Form 1040NR-EZ. You must also attach a fully completed Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b). For more information, see Pub. 519, U.S. Tax Guide for Aliens.

Dual-resident taxpayers who are not Canadian residents under a tie-breaker rule. If you are a dual resident of the United States and a third country and derive income from Canada, you can only claim treaty benefits from Canada if you have a substantial presence, permanent home or habitual abode in the United States, and your personal and economic relations are closer to the United States than to any third state.

If you are a U.S. citizen or green card holder living in Canada, you still have to file a Form 1040 and report your worldwide income because of the “saving clause” in Article

XXIX(2), which allows the United States to tax its citizens and residents as if the treaty had not entered into effect. There are limited exceptions to the saving clause, which means certain types of income may be exempt from tax in the United States. Exceptions to the saving clause can be found in Article XXIX, paragraph 3.

Special foreign tax credit rules for U.S. citizens residing in Canada. If you are a U.S. citizen and a resident of Canada, special foreign tax credit rules may apply to relieve double tax on income from the United States. See Article XXIV(3), (4) and (5). For more information about foreign tax credit rules generally, see *Income Tax Credits*, later.

Example. As a U.S. citizen residing in Canada, you have dividend income from a U.S. corporation. Canada will tax you on your worldwide income, including your U.S. dividend income. As a resident of Canada under the treaty you can claim a reduced withholding rate from the United States on the dividend income (15%) rather than 30%, and Canada generally allows you to deduct

the U.S. withholding tax from your Canadian tax on that income. However, you still need to file a U.S. income tax return and report your worldwide income, and pay any residual tax to the United States, to the extent it exceeds the U.S. tax withheld and the Canadian tax paid with respect to the income.

Income from self-employment (Article VII). 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 taxable on a net basis in Canada in accordance with Article VII(3).

If you carry on (or have carried on) business in Canada through a permanent establishment, Canada may tax the profits the permanent establishment might be expected to make if it were a distinct and separate person. 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).

Services permanent establishment

(Article V Paragraph 9). Under paragraph 9 of Article V, if you, or your enterprise, provide services in Canada, you may be treated as providing them through a permanent establishment in Canada even if you do not have a fixed base in Canada from which you operate. This rule applies, however, only if:

1. You are present in Canada for more than 183 days in a 12-month period, and, during that period or periods, more than 50percent of your gross active business revenues consist of income derived from your services performed in Canada; or
2. Your enterprise provides services in Canada for an aggregate of 183 days or more in any 12-month period with respect to the same or connected project for customers who are either residents of Canada or who maintain a

permanent establishment in Canada and your services are provided in respect of that permanent establishment. This rule applies to tax years beginning after January 1, 2010.

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. 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 (Article VII). 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 certain Canadian retirement plans (including RRSPs or RRIFs) is currently 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 accrued in the plan until the income is distributed. The election procedures differ depending on whether an individual qualifies as an “eligible individual” as described under Section 4.01 of Revenue Procedure 2014-55

available at www.irs.gov/irb/2014-44_IRB/ar10.html. A beneficiary of a Canadian retirement plan is an “eligible individual” if the individual:

- Is or at any time was a U.S. citizen or resident (within the meaning of section 7701(b)(1)(A)) while a beneficiary of the plan;
- Has satisfied any requirement for filing a U.S. federal income tax return for each tax year during which the individual was a U.S. citizen or resident;
- Has not reported as gross income on a U.S. federal income tax return the earnings that accrued in, but were not distributed by, the plan during any tax year in which the individual was a U.S. citizen or resident; and
- Has reported any and all distributions received from the plan as if the individual had made an election under Article XVIII(7) of the Convention for all years during which the individual was a U.S. citizen or resident.

Eligible individuals are treated as having made the election in the first year in which they would have been entitled to defer U.S. tax on the undistributed income from the plan.

Filing Form 8891 (now obsolete) is no longer required to make the election. An individual who has previously made the election on Form 8891 or under the procedures set forth in Revenue Procedure 2002-23 (superseded by Revenue Procedure 2014-55) is not required to file Form 8891 or a similar statement for tax years after December 31, 2012.

Individuals who have previously reported the undistributed income accrued in a Canadian retirement plan (including RRSP or RRIF) on a U.S. federal income tax return are not eligible individuals as described in Revenue Procedure 2014-55 , and must continue to report the undistributed income accrued in their Canadian retirement plan on their U.S. federal income tax return and pay U.S. tax on the undistributed income. If these individuals

want to make the election, they must seek approval from the IRS.

Revenue Procedure 2014-55 also provides guidance concerning information reporting with respect to interests in certain Canadian retirement plans (including RRSPs and RRIFs). However, the revenue procedure does not affect any other reporting obligations that a beneficiary or annuitant of a Canadian retirement plan (including RRSPs and RRIFs) may have, including the requirement to file a Form 8938, Statement of Specified Foreign Financial Assets, and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

For more information on the election and information reporting requirements, see Revenue Procedure 2014-55. Information on FinCEN Form 114 is available at bsaefiling.fincen.treas.gov/NoRegFBARFiler.html.

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). 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, which may be taxed at 10%),
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.

This exemption (or lower rate) does not apply to royalties to explore for or to exploit mineral deposits, timber, and other natural resources.

Other Income

Generally, Canadian source income that is not specifically mentioned in the treaty, may be taxed by Canada.

Gambling losses. Canadian residents may deduct gambling losses in the U.S. against gambling winnings in the U.S. in the same manner as a U.S. resident.

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 charitable organization must meet under tax law. Usually an organization will notify you if it qualifies. For further information on charitable contributions and the U.S. percentage limits, see Pub. 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 Pub. 514, Foreign Tax Credit for Individuals.

Competent Authority Assistance

Under Article XXVI, a U.S. citizen or resident can 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.

Generally, you should file a competent authority request promptly after a competent authority issue arises or is likely to arise. Under certain circumstances, a competent authority request or a treaty notification must be filed within a certain time limit.

For requirements to file, and information that should be included in, a competent authority request, see Revenue Procedure 2015-40, 2015-35 I.R.B. 236, available at www.irs.gov/irb/2015-35_IRB/ar10.html#d0e1688. Additional information is available at www.irs.gov/Individuals/International-Taxpayers/Tax-Treaties.

Your competent authority request should be addressed to:

Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224
SE:LB:IN:ADCI:TAIT:M4-365
(Attention: TAIT)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

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, Foreign Tax Credit (Individual, Estate, or Trust), or Form 1118, Foreign Tax Credit—Corporations, 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.

Text of Treaty

You can get the text of the U.S.-Canada income tax treaty at IRS.gov. Enter "Tax Treaties" in the search box. Click on "United States Income Tax Treaties-A to Z."

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 in several ways.



You can access IRS.gov 24 hours a day, 7 days a week.



You can call the IRS for help at (267) 941-1000 (not a toll-free call).



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

Internal Revenue Service
International Section
Philadelphia, PA 19255-0525

Canadian Taxation

You can get information on Canadian taxation from the Canada Revenue Agency.



You can access the Canada Revenue Agency at www.cra-arc.gc.ca.



You can contact the Canada Revenue Agency for help at 1-800-959-8281 (from anywhere in Canada and the United States).