

BUYING A VACATION HOME IN CANADA: PITFALLS AND OPPORTUNITIES

*In the John LeCarre book, *Single & Single*, the character Alfred Winsor is noted for his expertise in "legal second passports, alternative citizenships and non-obligatory residence in more than a dozen climatically and fiscally attractive countries". While many of us think of small tropical islands as tax havens, there are several G9 countries which offer attractive tax sheltering vehicles to entice businesspeople to reside there. In one of a series of articles, international relocation lawyer David S. Lesperance Barrister and Solicitor will examine immigration and tax issues that may arise when an individual who is considering buying a property in Canada.*

Canada is renowned worldwide for its beautiful scenery, clean environment and enviable quality of life. It is often ranked first in annual UN polls that evaluate the quality of life in member states. These factors, along with highly developed infrastructure, low crime rates, proximity to the U.S., and relatively low cost of living make it an attractive place to purchase a vacation or retirement home. However Canada also has a well-deserved reputation for having some of the highest marginal tax rates amongst the OECD countries. Furthermore, after September 11, 2001, international travelers are no longer assuming that they will have an unrestricted ability to travel to and remain in foreign countries, even ones as friendly as Canada.

In this article, I want to expand upon my previous article "Canada as a Tax Haven" to discuss tax issues which arise when one is considering purchasing property in Canada. Firstly, it should be clearly understood that there are no restrictions on foreigners purchasing real estate in Canada. In most provinces, non-residents do not even pay a higher land transfer or stamp duty when purchasing property. In the few provinces which have higher rates, the difference is minimal.

The most significant potential tax issue arising out of a property purchase is not land transfer tax or even on-going property taxes. Rather it is the possibility that the foreign owner may be considered personally resident in Canada for income tax purposes. When purchasing property in Canada, you should plan to either a) remain tax non-resident; or b) become tax resident but only after pre-arrival tax planning that will both minimize or eliminate the impact of Canadian taxation AND possibly lower your existing tax obligation in your home country.

Canada taxes its *residents* on their worldwide income and capital gains. Canada does not tax Canadian citizens or foreigner property owners if they are not "resident" in Canada.

An individual is "resident" in Canada if they either:

- a) "sojourned" (i.e. stay temporarily with any immigration status including "visitor") in Canada for a total of 183 days or more in a calendar year; OR
- b) "centralize" (i.e. stay less than 183 days on any immigration status: citizen, immigrant, student, work permit, or visitor) in Canada their ordinary mode of living with its accessories in social relations, interests, and conveniences of life.

In deciding whether to avoid becoming resident in Canada for tax purposes, a purchaser of real estate must look at several different factors. These include:

- a) desire to spend extended periods of time in Canada for children's schooling, business requirements, or personal preference;
- b) ability to qualify for immigration status and the advantages of same such as insuring ability to enter and remain in Canada without time limit, government medical coverage and future citizenship
- c) ability and desire to maintain homes in both Canada and current country of residence;
- d) desire to establish a tax residence and domicile outside of current home country;
- e) ability to take advantage of tiebreaker rules in tax treaties between Canada and their home country to reduce or eliminate home country taxation.

Often upon reviewing these factors an individual may conclude that there is a real possibility that they will or wish to be deemed "resident" in Canada for tax purposes. If there is a possibility that an individual is going to be resident they should investigate both their ability to qualify for Canadian immigration status and proper pre-immigration tax planning. Tax planning will allow the individual to use their non-Canadian assets while legally avoiding income and capital gains tax. In addition, since Canada does not have an estate/death or gift tax, it is often considered as a favorable "domicile of choice" for those individuals who are currently domiciled in countries which levy estate or gift taxes.

In conclusion, Canada is a very attractive location to purchase real estate. While a foreign purchaser must be aware of the pitfalls of Canadian taxation, if properly anticipated and planned for its impact can be minimized. Furthermore, the purchase of that dream property in Canada may be the key to unlocking yourself from your current home's high tax regime. Today many countries around the world are tightening their grip and increasing their tax take from their non-mobile residents. Those individuals who are adventurous enough to look further afield may find countries like Canada more than just a place to have a second home.

Recommended Steps if you are considering buying a home or property in Canada:

1. Review your intentions and desires in Canada as outlined above.
2. Discuss with qualified Canadian legal counsel the various Canadian immigration/tax status options to determine which one best meets your goals. Discuss with both Canadian and home country legal counsel the possible global tax strategies which could be implemented to lower or eliminate Canadian and home country taxation.

3. Once an appropriate strategy is determined, move forward with the purchase of your property in Canada. Implement the strategy in concert with the tax/immigration plan so that maximum benefit can be derived from your new Canadian home.

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