# Module 2: Liability for Tax
# Tran Chung

## Liability for Tax

## For Resident

**Subsection 2(1)** – An ***income tax*** shall be paid, ***as required by this Act***, on the ***taxable income*** for each ***taxation year*** of every ***person resident*** in ***Canada*** at any time in the year.

Subsection 2(1) is known as "charging" provision.

Person resident in Canada at any time in a taxation year is generally liable for tax on ***worldwide income***.

**What determines residency of individuals?**
There is no smoking gun, rather one has to determine on a case by case basis after taking into consideration all of the relevant facts.

Primary criteria:

- Maintaining a dwelling, whether owned or leased, suitable for year-round occupancy and available for occupancy, would establish an important residential tie.

- A spouse or common-law partner and other members of the immediate family remaining in Canada when an individual leaves would be regarded by the CRA as an important residential tie.

Secondary criteria:

- Maintaining personal property and social ties in Canada would indicate a “continuing state of relationship through secondary residential ties. Personal property might include furniture, clothing, cars and recreational vehicles.

- Other secondary residential ties include social ties, Canadian medical and insurance coverage, Canadian accounts, credit cards, etc…

**Deemed Residents (overrides common law determination above)**
Section 250 of the Act contains a series of deemed residence provisions – “throughout a taxation year”

**Paragraph 250(1)(a)** contains the so-called “sojourning” rule.  --- 183 days or more

A sojourner typically lacks a permanent residence in Canada although he or she may have a seasonal residence. Sojourning as an exercise which is transient in nature, comprising visits which are unusual, casual or intermittent.

250(1)(b) – members of Canadian armed forces

250(1)(c) – servant of Canada

250(1)(f) – dependants of (b) or (c) above

250(1)(g) – special tax treatment because of related to Canadian resident

## Part-Year Residence

For the portion of the year during which the individual was a non-resident, tax under Part I of the Act is only exigible on "taxable income earned in Canada".

***Residency Class Problem***

Mary Sothor is the Canadian ambassador to Tanzania. She was a resident of Canada immediately prior to her appointment as ambassador. Living with her in Tanzania's capital city are her husband and two children. Her husband was born in Canada and was a Canadian resident at the time of their marriage. He is exempt from Tanzanian taxation because he is the spouse of a foreign diplomat. Her 25 year old son was born in Canada and works for a Tanzanian company. His income exceeds $30,000 annually. Her 16 year old son was born in Kenya and is a full time student with no income of his own. Which of these individuals would be considered Canadian residents for tax purposes? Explain your conclusions.

## Corporate Residency

The residency of a corporation is determined by a combination of statutory provisions and the common law.

*Deemed Resident*

**Paragraph 250(4)(a) -** corporation shall be deemed to have been resident in Canada throughout a taxation year if it was incorporated in Canada after April 26, 1965.

**Paragraph 250(4)(b)** – deems certain foreign corporation to be resident in Canada (rarely seen) – we will ignore

**Paragraph 250(4)(c) -** If the corporation was incorporated in Canada before April 27, 1965 it will be deemed to be resident in Canada if at any time after April 26, 1965, it was resident in Canada or carried on business in Canada.

***Central Management and Control***

Commonly refered to as *defacto* control. Based mainly on UK jurisprudence.

“Mind and Management” – again no smoking gun

*Defacto* management is based primarily on the residency of the directors and the place where director’s meetings are held.

Check-list

(a) the majority, if not all of the directors should not be resident in Canada. A majority decision should be required if there is to be a Canadian director;

(b) all meetings of the directors should be held outside of Canada;

(c) the directors should make policy decisions without requiring prior approval of the shareholders;

(d) the head office of the company should be outside of Canada;

(e) the company should have an employee knowledgeable in the business who will sign all contracts on behalf of the company outside of Canada;

(f) the company should have its own letterhead, fax and phone number;

(g) all banking should be done outside of Canada;

(h) persons resident in Canada should not send instructions on all major decisions and day-to-day business activities to the non-resident corporation by E-mail, fax or telephone;

(i) all accounting should be done outside of Canada;

(j) all sales should be negotiated outside of Canada;

(k) no persons resident in Canada should use business cards of the corporation; and

(l) the right to remove the directors will not be relevant for this determination as it may only occur after the directors have made decisions

***Corporate Residency Class Problem #1***

Nixon Inc. was incorporated as an Ontario corporation in 2001. However, since 2004, all of the Company's business has been carried on outside of Canada. Determine the residency status of Nixon Inc.

***Corporate Residency Class Problem #2***

Wolfhowl Ltd. was incorporated in Banff, Alberta in 1961. Despite its Canadian charter, the Company has never carried on business in Canada. However, until 1971, all meetings of the Board of Directors were held in Banff. Since 1971, all directors' meetings have been held in Wyoming. Determine the residency status of Wolfhowl Ltd.

# Taxation of Non-Residents

**Subsection 2(3) –** Where a person who is not taxable under subsection (1) for a taxation year

a. was employed in Canada,
b. carried on business in Canada, or
c. disposed of taxable Canadian property

at any time in the year or previous year…

## *Employment Income*

## *Business Income*

## *Disposition of Taxable Canadian Property*

## *Property Income*

Non-resident persons who are the recipients of payments or credits from Canadian residents may be subject to Canadian taxation under part XIII of the Act.

Flat 25% tax on Canadian property income, but can be reduced by international tax treaty between Canada and the country the individual is resident in.