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## Canadian Principal Residence Designations by Non-Residents of Canada

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Canada's exemption from tax on the sale of a principal residence is not just for Canadian residents. Non-residents of Canada enjoy one year of tax-exempt gains as a result of the "one plus" rule.

While it may seem contradictory, Canadian residence is not a condition of making a Canadian principal residence designation. A property can be designated as a principal residence if it is "ordinarily inhabited" in the year. "Ordinarily inhabited" does not impose a minimum time requirement. If the non-resident inhabits the property at all and the main reason for owning the property is not to gain or produce income, such property will be considered to be ordinarily inhabited by the non-resident. Provided, then, that the non-resident has not already designated another Canadian property as its principal residence for that year, a principal residence designation may be made.

The question is whether one must then be a Canadian resident to claim the corresponding deduction in respect of the designated principal residence. On a casual reading, the answer to this question is "yes" since the years for which the deduction is available are described as "one plus the number of taxation years that end after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada". However, much depends on the first two words of this excerpt. The Canadian residence requirement qualifies only "the number of taxation years that end after the acquisition date". Non-residents still have the benefit of the "one plus"

What this means is that non-residents can deduct from their taxable income that portion of the capital gain that "one" is of the

total number of years in which the non-resident owned the property. If the non-resident buys and sells the property in the same year then the full amount of the gain is exempt. If the non-resident holds the property for ten years then only one-tenth of the gain is exempt. Taking as an example a 10% gain on a Toronto condo purchased two years ago for \$2,500,000.00, a principal residence designation is worth approximately \$30,000.00 in after tax dollars. More commonly, a 15% gain on a Toronto condo purchased while under construction for \$800,000.00 and re-sold post completion within one year for a 15% gain produces similar after tax savings of \$29,000.00.

One must never assume the apparently obvious when tax planning for non-residents. Tax savings can generally be found when one knows where to look.

### About the Author Patrick Westaway, B.A. (Hons), LL.B.

Patrick Westaway is Tax Counsel to Sorbara, Schumacher, McCann LLP, a full service law firm based in Waterloo, Ontario. Patrick advises on a broad range of Canadian taxation issues such as corporate tax planning, structuring inbound investments, corporate reorganizations, cross-border financings, tax opinions for public disclosure documents, tax assessments, personal tax matters, wealth preservation, and on federal and provincial sales tax matters (HST/GST/PST). Patrick also practices corporate and commercial law with an emphasis on the implementation of matters related to his tax planning practice.

### Practice Groups:

Corporate Tax Planning, Corporate and Commercial

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