Determination of the location of a source of income

1.52 If there is an applicable tax treaty between Canada and a country in which the taxpayer has a source of income, the treaty may deem the income to arise in one of either Canada or the foreign country for the purposes of eliminating double taxation under that treaty. An example of such a treaty-based sourcing rule is discussed in ¶1.49 above. Such sourcing rules are specific to the treaty in which they are found and do not alter the determination of the location of a source of income for purposes beyond that treaty's scope.

Business income

1.53 While a determination of the place where a particular business (or a part of the business) is carried on (that is, the location of the source of the business income — see the comments starting at ¶1.48) necessarily depends upon all the relevant facts, such place is generally the place where the operations in substance, or profit generating activities, take place. For the following particular types of business, the following factors (among others) should be given consideration:

- development and sale of real or immovable property – the place where the property is situated;
- merchandise trading – the place where the sales are habitually completed, but other factors, such as the location of the stock, the place of payment or the place of manufacture, are considered relevant in particular situations;
- transportation or shipping – the place of completion of the contract for carriage, and the places of shipment, transit and receipt;
- trading in intangible property, or for civil law incorporeal property (for example, stocks and bonds) – the place where the purchase or sale decisions are normally made;
- money lending – the place where the loan arrangement is in substance completed;
- personal or movable property rentals – the place where the property available for rental is normally located;
- real or immovable property rentals – the place where the property is situated; and
- service – the place where the services are performed.

1.54 Other factors which are also relevant, but generally given less weight than the factors listed above include, but are not limited to:

- the place where the contract for the sale of property or the provision of services is formed or entered into;
- the place where payment is received;
- the place where assets of the business are located; and
- the intent of the taxpayer to do business in the particular jurisdiction.

1.55 In the case of a single business comprised of more than one of the above-mentioned activities, each activity is considered separately for purposes of determining in which country or countries the business is carried on (this situation should not be confused with the situation in which the taxpayer has separate businesses—see Interpretation Bulletin IT-206R,Separate businesses). If, however, one activity of a business is clearly incidental to a predominant one, the incidental activity is not considered when determining in which country or countries the business is carried on. For example, if a vendor of machinery provides customers with an engineer to supervise the installation of the machinery, this service would generally be considered to be incidental to the activity of selling the machinery; however, this type of service could in some cases be considered to be a significant activity on its own, depending on the machinery being sold, the nature of the installation service, and the terms of the contract with the customer.

1.56 If a business is carried on in more than one country, a reasonable proportion of the net income from the business must be allocated to each country. For this purpose, see the comments in ¶1.80 - 1.88 regarding the determination of net income from a source or sources in a particular foreign country.

Employment income

1.57 The location of the source of an individual's office or employment is considered to be the physical place where he or she normally performs the related duties. If those duties require the individual to spend a significant part of the time in a country other than Canada, the individual may be subject to tax in that foreign country on a portion of his or her remuneration. In such cases, an apportionment of the individual's regular salary or wages based on the number of working days spent in Canada, and in that other country, is usually considered appropriate in determining the foreign-source income from the employment for the purpose of the foreign tax credit calculation. Director fees are generally considered to be earned where the director meetings are held, and commission income is earned in the country in which the effort was expended for the purpose of gaining such remuneration.

Income from property

1.58 If interest is earned and the interest is income from property rather than income from business as described in ¶1.46 , the residence of the debtor ordinarily determines the location of the source of the income. Other factors that may help determine the location of the source of interest income include: where the contract giving rise to the interest income was formed, where payments are made, where any loaned funds are put to use or where any property securing a loan is located. In most situations these additional factors will have less weight than the residence of the debtor.

1.59 If a resident of Canada receives a dividend on shares of a corporation which is resident in a foreign country and not resident in Canada, the dividend will normally be recognized as being from a source in that foreign country. In determining a dividend-paying corporation's country of residence for purposes of a foreign tax credit, the possible impact of the following should be considered:

- the provisions in an income tax treaty (if any) between Canada and the particular foreign country in question, that can determine the corporation's residence for the purposes of the treaty; and
- subsection 250(5), which (in conjunction with such a treaty) may deem the corporation to be not resident in Canada.

1.60 If income is derived from the rental of tangible property, or for civil law corporeal property, and the income is income from property rather than income from business as in ¶1.46 and ¶1.53 - 1.54, the location of the source of the income is considered to be:

- in the case of income from the rental of real or immovable property, the country where the property is located; and
- in the case of income from the rental of other tangible or corporeal property, the country where the property is used.

1.61 The location of the source of a royalty payment is the country in which the related right is used or exploited. For example, a royalty payment received by a resident of Canada on the amount of ore extracted from a mine situated in a foreign country is income from a source in that foreign country. As a further example, a royalty payment received by a resident of Canada from a resident of a foreign country, on a written work created in Canada and copyright-protected in that foreign country under its copyright laws, is income from a source in that foreign country.

Capital gains

1.62 In determining the country to which a taxpayer's capital gain or capital loss on a disposition of real or immovable property (land and buildings) should be allocated, the major factor to be considered is the geographic location of the property. In the case of capital property other than real or immovable property, the country to which the capital gain or capital loss should be allocated is usually based on the geographic location at which the sale or disposition took place and title was transferred. However, in certain situations, the nature of the property sold and the factors discussed in ¶1.53 - 1.54 may also be informative. (See ¶1.65 for example, in the case of stocks or bonds).

1.63 If there has been a deemed disposition of property under the Act, any resulting capital gain or capital loss is allocated to Canada rather than to a foreign country, regardless of the geographic location of the property at the time of the deemed disposition. For example, where a taxpayer has ceased to be resident in Canada, a taxable capital gain resulting from a deemed disposition of property under paragraph 128.1(4)(*b*) is considered to be Canadian-source income, which therefore cannot be included in the FNBI in the foreign tax credit formula for purposes of claiming a foreign tax credit under subsection 126(1). The resulting pre-departure Canadian taxes may, however, be reduced by a foreign tax credit, under subsection 126(2.21), for a portion of any post-departure foreign taxes resulting from a subsequent actual disposition of the property.

1.64 A different result for a deemed disposition can sometimes occur by means of a tax treaty:

Example

Ms. X emigrated on January 31, 2012, from Canada to the United States. Because of the operation of paragraph 128.1(4)(*b*) of the Act, Ms. X had a capital gain from a deemed disposition of land she owned in the United States, at fair market value on January 31, 2012. Using paragraph 7 (in conjunction with paragraph 1) of Article XIII of the Canada-United States Income Tax Convention, Ms. X elected to be taxed in 2012 by the United States(in accordance with the U.S. *Internal Revenue Code*) on the capital gain accruing on the land up to January 31, 2012. Under subparagraph 3(*a*) of Article XXIV of the Convention, the capital gain so taxed by the United States became a U.S.-source capital gain for purposes of clause 2(*a*)(i) of Article XXIV. As a result, Ms. Xincluded the taxable capital gain that occurred under the Canadian Act in the FNBI for 2012. This allowed Ms. X to claim a subsection 126(1) foreign tax credit against her Canadian tax otherwise payable for the 2012 tax year. (On December 15, 2013,Ms. X, at that time a non-resident of Canada, sold the land and paid tax to the United States as a result of the capital gain accruing from February 1, 2012, to December 15, 2013. This post-departureforeign tax did not qualify for a foreign tax credit under subsection 126(2.21) of the Act as no part of the gain accrued while she was resident in Canada.)

1.65 Generally, the place where a stock or bond is sold is the securities or stock exchange in which it is sold, regardless of the location of the security issuer’s transfer office. Where a sale is not made through a securities or stock exchange, a number of factors (weighted in favour of those factors less susceptible to manipulation) must be considered in establishing where the sale is made. These include:

- the location, residence, or place of business of:
  - the issuer;
  - the issuer’s transfer office;
  - the owner of the security; or
  - the owner’s selling agent;
  - where the title is transferred;
- where the contract is negotiated, signed, and executed;
- where the shares are located;
- where payment is made; and
- any relevant provisions in the governing corporate statutes.