TORONTO
TAX & ACCOUNTING

Introduction

Toronto is an internationally renowned city often ranking in the top 10 cities in the world to both work and live. Toronto's motto of "diversity our strength" perfectly encapsulates Toronto's culturally diverse population – be it visiting Little China to Greek Town or Little Italy, there is always something to see, do or eat in Toronto.

Economically, Toronto is cited by Forbes as one of the powerful cities in the world. There are plenty of opportunities to develop one's career in Toronto. Toronto has the third largest concentration of private IT companies in the world and has the seventh most Global 500 companies headquartered in Toronto.

When Do You Become a Resident of Canada For Tax Purposes?

Generally, one becomes a tax resident of Canada once they have established a primary tie to Canada. Primary ties to Canada consist of:

- Location of your spouse
- Location of dependent children
- Location of home

Secondary ties to Canada must also be considered. While secondary ties on their own are not a strong indicator of one's Canadian tax residency, having numerous secondary ties to Canada may result in one becoming a tax resident of Canada. Secondary ties consist of the following:

- Canadian investment
- Canadian bank accounts
- Personal effects and belongings in Canada
- Social and economic ties to Canada
- Renewal of Canadian passport, driver's license
- Use of provincial health care

What About Bonuses Paid?

If you receive a bonus while a tax resident of Canada but related to your services performed outside of Canada, then the bonus will be subject to Canadian taxation. A foreign tax credit can be claimed for any home country taxes paid on the bonus thus either eliminating or reducing the Canadian tax liability on this bonus.

As Canada is a higher tax jurisdiction, if possible, receive the bonus prior to establishing your Canadian tax residency.

Does Canada Tax Capital Gains?

Based on current legislation, only 50% of one's capital gains are subject to taxation. If an asset is sold at a loss, the capital loss cannot be applied against other types of income to reduce the overall taxable income but rather can be either applied against previous years' capital gains or carried forward to reduce future years' capital gains.

Any gains on the sale of one's primary home or principal residence would be exempt from taxation. However, any loss resulting from the sale of a principal residence unfortunately cannot be carried back or forward.

Upon the commencement of a taxpayer's Canadian tax residency, the taxpayer is deemed to have sold all their assets and then immediately re-acquired the assets at their fair market value – this is known as "deemed acquisition". The result of the deemed acquisition is that any assets that were owned by the taxpayer upon their arrival into Canada are revalued for Canadian purposes. The cost basis for Canadian purposes will be equal to the fair market value of the assets upon the date the taxpayer becomes a tax resident of Canada.

Does Canada Have an Inheritance or Death Tax?

No inheritance tax but there may be a "deemed disposition" which can be viewed as a death tax. Upon one's passing, certain assets owned by the taxpayer are deemed to have been sold at their fair market value and any unrealized gain will be subject to Canadian taxation.

Do You Have an Obligation to Report Foreign Income?

Yes, as a tax resident of Canada, all the taxpayer's worldwide income is subject to Canadian taxation. A foreign tax credit can be claimed to either reduce or eliminate Canadian taxation on the foreign sourced income.

There are several Canadian tax forms that disclose a taxpayer's foreign investments and holdings. Non-compliance regarding these forms can result in significant penalties.

Departing from Canada

Deemed disposition will also be applicable when leaving Canada – this is known as departure tax. There are certain assets exempt from departure tax.

When terminating one's Canadian tax residency, the taxpayer must ensure that they have no primary ties to Canada and minimize the number of secondary ties to Canada.

Toronto Specific Tax Considerations

Due to the hot Toronto housing market, measures were introduced to minimize the amount of speculative purchases from non-residents. If real estate is purchased in Toronto by a non-resident, a 15% speculation tax on the purchase price of the property will be assessed. Also, non-resident of Canada's down payment is typically larger than a resident's down payment (up to 35%).

It is possible to have the 15% speculation tax refunded (ie becomes a permanent resident of Canada within 4 years) but when factoring the considerable purchase price, land transfer tax and the speculation tax, it may be worth considering purchase real estate once a resident of Canada.

Setting up your Business in Toronto

Issues to consider:

Canada is a premier location for investment in business. Canada not only has a wealth of natural resources but also has a stable political climate, a well-educated workforce, a sound financial system and a first-rate infrastructure. Canada is known for supporting innovation in a wide range of sectors via generous research and development incentives. Low corporate tax rates as well as easy access to major US markets makes Canada a domicile of choice for businesses looking to gain a foothold in North America.

There are several issues which you must consider when contemplating doing business in Canada. This document addresses some of the common questions and provides practical information concerning the primary issues which should be considered.

What type of business structure should we use?

There are advantages and disadvantages to each of the available structures. There is no one correct answer as the most advantageous structure will be dependent on each enterprise's specific business circumstances and needs. A brief overview of the main structures is below. The considerations do not include the application of treaty benefits that may be in effect due to a tax convention between Canada and the applicable non-resident jurisdiction:

Branch:

- Not a separate legal entity but an extension of the overseas parent company.
- No limited liability in respect of the Canadian operations.

- Payments made to a Canadian branch of a foreign entity in respect of services provided in Canada are subject to federal withholding tax.
- If the branch has a permanent establishment ("PE") in Canada then profits from this PE are liable for Canadian federal corporate income tax and branch tax as well as provincial corporate income tax, any withholdings remitted on the branch's behalf can be credited against federal taxes payable.
- Federal goods and services tax ("GST") as well as provincial sales tax ("PST"), as applicable should be considered in all cases.

Corporation:

- Provides limited liability to Canadian operations.
- Corporate income tax to be paid on company profits.
- T2, Corporation Income Tax Return as well as the applicable provincial returns must be filed within 6 months of the year end, taxes are payable within two months each year and monthly tax instalments are due federally and provincially.
- Withholding tax to be paid on any distributions to non-resident shareholders.
- Thin capitalization rules apply to debt / equity financing by non-resident shareholders.
- GST and PST, as applicable should be considered in all cases.

Limited Partnership:

- Members (partners) have limited liability, except for the general partner (normally a corporation with no other assets).
- Payments made to a non-resident partnership in respect of services provided in Canada are subject to withholding tax.
- Taxable income is allocated to the members of the partnership who then pay Canadian income tax on these profits. Non-resident members

may be entitled to foreign tax credits in their home country as a result of the payment of Canadian income tax.

- If the partnership has a PE in Canada then profits from this PE are liable for Canadian federal income tax as well as provincial income tax, amounts remitted in respect of withholding taxes are also allocated and credited against tax otherwise payable, corporate members are also subject to the branch tax as noted previously.
- GST and PST, as applicable should be considered in all cases.

How much Corporation Tax will the business pay?

Current combined federal and provincial corporation tax rates applicable to active business income in Canada by province are:

2019 Combined Federal and Provincial Tax Rates	%
Newfoundland and Labrador	30.0
Prince Edward Island	31.0
Nova Scotia	31.0
New Brunswick	29.0
Quebec	26.6
Ontario	26.5
Manitoba	27.0
Saskatchewan	27.0
Alberta	26.0
British Columbia	27.0
Northwest Territories	26.5
Nunavut	27.0
Yukon	27.0
Non-resident federal	25.0

(NB: includes all rate changes announced up to October 23, 2019)

A general withholding tax rate of 25 percent applies to the gross amounts of certain payments made by a resident of Canada to a non-resident. This includes management fees, dividends, rents and royalties. This rate may often be reduced to a lower rate as stipulated in the applicable tax treaty.

Other considerations include the potential availability of investment tax credits made available by the federal and provincial governments. These include but are not limited to programs such as the film or video production services tax credit, the scientific research and experimental development ("SRED") tax credit and the apprenticeship job creation tax credit.

Availability of tax treaties and totalization agreements?

Canada has tax treaties and totalization agreements in place with several countries, including most of Canada's major trading partners. The tax treaties either minimize or reduce Canadian taxation, while the totalization agreements may provide relief from Canadian Social Security withholding requirements for both the employee and employer.

What if we make cross-border transactions between group companies?

Transfer prices are the prices at which services, tangible property, and intangible property are traded across international borders between related parties. Canadian legislation follows internationally accepted principles, and in particular the Organization for Economic Co-operation and Development ("OECD") transfer pricing guidelines.

Canada's transfer pricing ("TP") legislation embodies the arm's length principle and requires that, for tax purposes, the terms and conditions agreed to between non-arm's length parties in their commercial or financial relations be those that one would have expected had the parties been dealing with each other at arm's length.

The arm's length principle treats a group of parties not dealing at arm's length as if they operate as separate entities rather than as inseparable parts of a single unified business. It is generally based on a comparison of prices or margins between non-arm's length parties on cross-border transactions with prices or margins on similar transactions between arm's length parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods;
- Provision of management services;
- Property rental charges;
- Transfer of intangible assets e.g. trademarks, patents;
- Sharing of knowledge, expertise, business contacts etc.; and
- Provision of financial support e.g. inter-group loans and charging a "market" interest on loans (although the department is more likely to use the specific provisions of the Canadian income tax act relating to loans and other indebtedness to or from non-residents before applying the transfer pricing rules).

A business will need to prepare a transfer pricing report proving the arm's length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length basis. Taxpayers are required to make or obtain records or documents on or before the filing date for the tax year and to provide those records and document to the Canada Revenue Agency ("CRA") within 3 months of the receipt of a written request to do so.

Where a taxpayer is found to not have used reasonable efforts to determine and use arm's length prices or allocations a penalty can apply.

What Employment Taxes and Social Security will need to be paid?

Under Canada's personal income tax system, your personal income tax obligations depend on your residency status for tax purposes. Residency is established at the point when an individual has significant residential ties to Canada. To determine residency status for tax purposes all the relevant facts in each case must be considered including the individual's residency ties with Canada, as well as the length of time, object, intent and continuity with respect to stays in Canada or abroad.

As the rules in this area are complex and are not a bright line test, we would advise any new entrant to Canada or person who spends time working in Canada to seek professional advice to determine whether or not they will be considered to be a resident of Canada for income tax purposes as there may be significant tax and reporting implications.

The amount of personal income tax payable is calculated by the federal tax rate and your provincial tax rate. A summary of the rates currently in effect for Toronto is presented below:

	Tax Rates	Tax Bracket
Federal	15.00%	Up to $47,630
	20.50%	$47,631 - $95,259
	26.00%	$95,260 - $147,667
	29.00%	$147,668 - $210,371
	33.00%	$210,372 and over
Ontario[1]	5.05%	Up to $43,906
	9.15%	$43,907 - $87,813
	11.16%	$87,814 - $150,000

[1]Note there is a 20% and 36% surtax applicable on taxable income in excess of $4,740 and $6,067 respectively.

12.16%	$150,001 - $220,000
13.16%	$220,001 and over

Employers and employees are also required to pay both Canada Pension Plan ("CPP") and Employment Insurance ("EI") contributions.

2020 CPP and EI contributions are:

		Maximum annual earnings	Basic Exemption	Contribution rate	Maximum annual contribution
Employee	CPP	$57,400	$3,500	5.10%	$2,748.90
	EI	$53,100		1.62%	$860.22
Employer	CPP	$57,400	$3,500	5.10%	$2,748.90
	EI	$53.100		2.268%	$1.204.31

(NB: the province of Quebec administers an EI program for residents of that province. The applicable rate will differ for business with employees resident in Quebec.

Includes all rate changes announced up to October 23, 2019)

It is the employers' legal responsibility to withhold and remit an employee's income tax, CPP and EI source deductions to the CRA.

The Canadian health care system is funded both federally and provincially. To supplement the funding of the health care system, some provinces also assess an employer health tax ("EHT") which is a payroll tax based on the renumeration paid to employees and former employees. While the EHT requirement varies between the respective provinces, EHT is typically only required when the renumeration paid exceeds certain dollar thresholds and when a PE has been established in the taxing province.

Tax implications of business travelers into Canada?

A business traveler is an employee that travels outside their home country for short and/or frequent trips to perform employment related services. Such arrangements into Canada may result in Canadian tax filing and reporting obligations for both the employee and employer.

The employee's business travel into Canada may generate a personal Canadian tax filing requirement in relation to the income earned while Canada while the employer would have payroll reporting, remittance and filing requirements even if treaty provisions exists that would exempt income from taxation.

Also, possible PE considerations must be analysed to assess the employer's exposure to Canadian corporate taxation.

With many countries committed to sharing cross border information to identify business travelers (for example Canada Border Service Agency and Homeland Security's Entry/Exit Initiative), significant penalties exposure and negative business implications, it is important to seek professional advice to determine the possible impact of a company's business traveler population.

What are the goods and services tax (GST) and / or harmonized sales tax ("HST") and should the business be registered?

A non-resident that carries on business in Canada may be required to register for GST/HST purposes and may be liable to pay, collect or remit either the GST or the HST or both, as in some cases whether GST or HST must be charged on sales will depend on the province in which the customer is located, rather than the location from where the non-resident operates.

If a non-resident is required to register but does not have a permanent establishment in Canada, they are required to post a recoverable security with the CRA.

The GSxT/HST applies to most supplies of property and services made in Canada and the GST applies to the importation of most goods into Canada. The GST rate is 5 percent and the HST rate varies from between 13 to 15 percent depending on the province in which the supplies are deemed to have been made.

As the intention is that GST/HST is a consumption tax it is not intended to be borne by businesses. It is therefore recoverable if the business is registered for GST/HST purposes and makes GST/HST taxable supplies. Certain supplies are exempt from GST/HST such as the provision of financial services, residential real property and health care or educational services.

HST will apply where a province has agreed to harmonize its provincial sales tax with the GST charged by the federal government and to allow the federal government to collect a provincial amount in addition to the basic GST, on behalf of the province. Certain provinces, namely British Columbia, Saskatchewan, Manitoba and Quebec each impose their own form of provincial sales tax, separate from and in addition to the federal GST. There is a degree of connection to each province required for a seller to register to charge and collect PST / QST for that province. The degree required depends on the province in question. The Quebec sales tax ("QST") is structured similarly to the GST/HST but is administrated by a separate tax authority. PST levied by the other three provinces is more akin to state sales-and-use taxes in the US.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

Canada has a number of "approved" share option plans which give tax benefits to employees and employers alike and it is often possible to adapt an overseas stock option plan to fit into one of these "approved" plans.

However, this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Canada, especially considering the recent legislation concerning stock options.

How else can we compensate our employees?

Canada has a very comprehensive range of compensation and benefit options available for companies to offer their employees. Although Canada has a robust government funded medical system there are certain services which are not fully covered such as prescriptions and dental care. As such private health funding, providing full or partial additional coverage, is quite common among Canadian businesses.

In addition, life and disability coverage are popular benefit options. However, there are several tax rules in this area that should be observed.

Pensions are commonplace benefits provided by many Canada businesses to their workforce. Registered programs such as the registered pension plan ("RPP") have widespread popularity as a method of providing a tax efficient pension plan to employees of Canadian businesses.

Flexible benefit packages are also growing in popularity, giving employees options on how they wish to "spend" their benefits allowance; which can range from "purchasing" additional holiday entitlement to obtaining full family medical coverage.

AT A GLANCE

- Entering or leaving Canada, even temporarily, can result in significant tax implications and it is important to obtain professional advice to both understand and minimize your tax exposure.

- Despite leaving Canada, there may still be Canadian tax filing requirements. It is important to understand your reporting, remitting and filing obligations as there are many time sensitive deadlines which may result in significant tax implications if filed late.

- There are strict foreign assets and foreign income reporting requirements. Foreign assets outside of Canada do not always maintain their tax-free nature as in their home country.

- Canada has tax treaties and totalization agreements with several countries and it is important to understand how these can impact your Canadian taxes.

- Sending employees into Canada to perform services can result in Canadian corporate tax and payroll filing requirements for the employer and also personal tax filing requirements for the employee.

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