MSI Global Alliance

Independent legal & accounting firms

Doing Business in Canada

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Doing business in Canada

MSI's guide on Doing Business in Canada provides current information about the financial, regulatory and legal considerations that could affect business dealings within Canada. For further assistance please contact one of our MSI member firms in Canada.

Country overview

Population

Canada has a total population of 38 million inhabitants (2020). Despite its large geographical size and thirteen different provinces and territories, over 60% of Canada's population lives in the two central provinces of Ontario and Quebec.

Government

Although Canada is a political democracy wherein the Government is duly elected by the public, Canada is truthfully a constitutional monarchy. Canada's constitution maintains the country's ties with the United Kingdom and the reigning sovereign of the United Kingdom. Thus, Her Majesty Queen Elizabeth II is technically Queen of Canada and Canada's Head of State.

The Governor General of Canada and the Lieutenant Governors of the provinces represent the Crown in Canada and act on The Queen's behalf. Nonetheless, the Head of State and her representatives in Canada do not bear political responsibility. Such responsibility rests with the Government of Canada.

The Government of Canada consists of the Senate and the House of Commons. Members sit in the House of Commons to serve as representatives of the people who have elected them to that office. These are the government members that are publicly elected officials. Senators, who sit in the Senate, are appointed not elected. The Senate scrutinizes legislation that was put forward in the House of Commons, suggests improvements to said legislation, and fixes drafting mistakes. A bill must pass both the House of Commons and the Senate before it can become law.

Languages

Canada has two official languages: English and French. Most Canadians speak English, however approximately 8% of the population is bilingual and speaks both English and French.

Currency

The national currency is the Canadian dollar.

Economic summary

GDP: $1.736 trillion (USD)
Income per capita: $46,195 (CAD)
Inflation: 1.95%

Main sectors of the economy

Canada's three largest industries are the service industry, the manufacturing industry, and natural resource industry.

Over 75% of Canadians have jobs in the service industry including transportation, education, health care, construction, banking, communications, retail services, tourism and government.

Canada's second largest industry is the manufacturing industry. Canada's largest international trading partner is the United States.

Given Canada's large geographical size, its third largest industry is natural resources including forestry, fishing, agriculture, mining and energy. A large portion of Canada's export industry mentioned above relates to natural resources.

Setting up a business

In Canada there are primarily three different legal structures for a business:
(i) a sole proprietorship,
(ii) a partnership, and
(iii) a corporation.

Business Entities Within Canada

A sole proprietorship is an unincorporated business that is owned by one individual. The owner of a sole proprietorship has sole decision making responsibility, receives all the profits, and does not have separate legal status from the business. Therefore, the individual is taxed on the business' profits personally. The main risk for a sole proprietor is unlimited liability on a personal basis that can even extend to personally held property.

A partnership occurs when two or more individuals or corporations carry on a business with a view to profit. Within a general partnership, much like a sole proprietorship, each partner is personally responsible for the obligations undertaken by the partnership. Within a limited partnership, there is a general partner who controls the business and is responsible for the debts and obligations of the partnership, and there are limited partners who take no part in control or management and are liable for debts to a specified extent only.

A corporation is a business entity considered to be a legal person that is distinct from the shareholders who own it.

A corporation is created by drafting and filing "Articles of Incorporation" in a province to create a provincial corporation, or with the Government of Canada to create a federal corporation. The jurisdiction of incorporation depends on where the business intends to do business.

Foreign Corporations Operating Within Canada

Existing foreign corporations that have incorporated pursuant to a foreign corporate statute can register to do business in Canada by opening a branch office or incorporating a subsidiary. To open a branch office the corporation must apply for registration as a foreign corporation in each province which it intends to do business. Or, the corporation can incorporate a wholly owned subsidiary either federally or provincially to conduct business in Canada.

The determination of which method of business is more suitable for your corporation depends on multiple factors including tax and liability considerations. For example, to the extent that earnings are not reinvested back into the Canadian business, a 25% tax is imposed on the after-tax income of a non-resident corporation in Canada.

Financial year of taxes and financial accounts

Individuals file their income taxes on a calendar basis with returns due on April 30th in the subsequent year. Self-employed individuals have until June 15th to remit their tax return.

All corporations must electronically file a corporate tax return within six months of their year-end. Any related taxes are generally due two months after the fiscal year-end.

Individuals and corporations may be required to remit taxes on an instalment basis.

Partnerships must file an annual information return. The deadline to file the partnership information return is determined by the composition of the partnership. If a partnership has only individuals as partners, then the partnership's information return must be filed on or before the last day of March in the calendar year immediately following the calendar year in which the partnership's fiscal period ended.

If all of the members of a partnership are corporations, including end members of a tiered partnership, then the partnership information return must be filed within 5 months of the end of the partnership's fiscal period. For all other partnerships, the earlier of the two dates mentioned above is the deadline for filing.

Accounting and auditing

Annual financial statements can be prepared under Accounting Standards for Private Enterprises (ASPE) or International Financial Reporting Standards (IFRS). Most private corporations choose ASPE.

There are separate rules for Not for Profit Organizations (NPOs) based on jurisdiction incorporated and whether a soliciting or non-soliciting entity.

There are three (3) types of engagements to consider when preparing financial statements:

- Audit – High level of assurance. Common for public corporations, corporations reporting to Canadian security regulators or requested by lenders/creditors;
- Review – Moderate level of assurance. Common for private entities seeking financial statements that are in accordance with ASPE/GAAP; and
- Compilation – No assurance is provided. Common for entities seeking financial statements for internal reporting, tax purposes etc. Although no audit or review work is done, CPAs must comply with professional standards and follow basic accounting principles.

Taxation

Economic and fiscal incentives

There are certain preferential tax treatments available in certain situations based on the nature of the taxpayer and the nature of the income being earned. In particular, the Income Tax Act (ITA) contains a number of fiscal incentive regimes designed to encourage investment in particular sectors of the Canadian economy, including, small business, oil and gas exploration, and certain scientific and experimental developments.

Both the Canadian Federal and Provincial/Territorial governments provide generous tax incentives for the performance of scientific research and experimental development (SR&ED). Where a corporation incurs expenditures that qualify as SR&ED for the purposes of the ITA, such expenditures may generally be deducted in the current year in computing taxable income. In addition, a federal investment tax credit equal to 15% (or 35% in respect of Canadian Controlled Private Corporations (CCPCs), subject to certain limitations) of qualifying SR&ED expenditures may be available. In the case of CCPCs, the tax credit is refundable. Most Provinces and Territories provide similar tax incentives with respect to expenditures relating to SR&ED.

Goods and Services Tax (GST) and Harmonized Sales Tax (HST)

The comprehensive federal Goods and Services Tax (GST) generally applies to the supply of goods and services made in, or imported into, Canada. The rate of the tax is currently 5%.

The GST system is administered by the Canada Revenue Agency (CRA).

GST is charged at each stage of the selling process. If a purchaser is carrying on a commercial activity and is a GST registrant, they will be able to claim a refund (input tax credit) for any GST paid.

GST on taxable imported goods and services is payable by the importer of record. All goods entering Canada are subject to GST. Exported goods and services are generally "zero-rated" (GST technically applies, but at a rate of 0%). A business that provides zero-rated supplies will generally still be entitled to an input tax credit for the GST it has paid on expenses, whereas a business that makes exempt supplies (not subject to GST) will generally not be entitled to an input tax credit.

Any business, whether resident or non-resident, that is carrying on business in Canada will normally be required to charge and collect GST from its customers on taxable goods and services supplied by it. Businesses that make taxable supplies in the course of a business carried on in Canada must also become GST registrants unless they are "small suppliers" (generally very small businesses making less than $30,000 in taxable supplies in a 12 month period). GST registrants are required to file yearly, quarterly, or monthly returns depending on the registrants' annual sales.

Certain Provinces (Nova Scotia, New Brunswick, Newfoundland and Labrador, Ontario, and Prince Edward Island) have harmonized their provincial sales taxes with the GST to form a single Harmonized Sales Tax (HST). The HST has essentially the same rules as the GST. No separate registration is required as the HST uses the same business number assigned for GST purposes. HST is reported on the registrant's GST return. The HST includes both a provincial component and the federal GST for a combined rate of 13% in Ontario, and 15% in New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island (depending on where the supply is made).

Quebec operates its own Quebec Sales Tax (QST), which is a value-added tax applied and administered separate from but is legally harmonized with the GST regime (although there are certain differences). The QST of 9.975% is a tax on the consumption of goods and services in Quebec. Suppliers require a separate registration number for QST purposes.

The above is intended to provide a brief overview of the GST/HST system. In reality, the Excise Tax Act contains many specific complex rules such as whether GST/HST applies to sales and purchases of real property.

Provincial Sales Tax (PST)

The Provinces of Saskatchewan, British Columbia, and Manitoba each impose a provincial sales tax or retail sales tax (each a PST) on most sales of tangible personal property and certain specified services within the province. Each separate PST has distinct but similar rules. The rates for these taxes are 6% in Saskatchewan, 7% in British Columbia and Manitoba. These taxes must generally be collected and remitted by the vendor of the property or services. However, each province has several exemptions for certain goods (production machinery, inventory for resale, etc.).

The Province of Alberta and the Canadian territories (Yukon, Nunavut and Northwest Territories) do not levy provincial sales taxes.

Income Tax - General

All residents of Canada are subject to tax on their worldwide income. Non-residents of Canada are generally subject to tax only on their Canadian source income, including income from a business or employment carried on or performed in Canada, and taxable capital gains from the disposition of "taxable Canadian property" as defined in the ITA. Though not exhaustive, common types of taxable Canadian property include:

- Real property situated in Canada,
- Property located in Canada used to carry on a business (i.e.: inventory), and
- Shares of a private corporation resident in Canada.

Individual income tax

Every resident of Canada is subject to tax on their worldwide income. Whether an individual is a resident of Canada is a question of fact to be determined on a case-by-case basis. When the matter of residency is in dispute, the CRA considers whether the following significant ties exist:

- A residence in Canada,
- A spouse or common-law partner in Canada, and
- Any dependants in Canada.

The Federal individual tax rates are progressive with tax brackets indexed annually. As well, the various Provinces and Territories apply additional income tax as a percentage of the federal calculation of taxable income. The 2021 Federal marginal tax rates range from 15% to 33% with the top rate applicable to taxable income more than $216,511. The top marginal Federal and Provincial/Territorial combined rates vary by Province/Territory from 44.50% in Nunavut to 54% in Nova Scotia.

Corporate income tax

As with individuals, corporations that are resident in Canada are taxed on their worldwide income. A corporation is generally considered to be resident in Canada for income tax purposes if its central management and control is exercised in Canada. Further, a corporation is deemed by the Income Tax Act to be resident in Canada if it was incorporated or continued into Canada. An applicable tax treaty might resolve questions as to which of two countries a corporation is resident.

The federal income tax rate for general corporations for the 2021 taxation year is 15%. Provincial corporate income tax rates for 2021 range from 8% to 16%.

With respect to a Canadian Controlled Private Corporation (CCPC), it may be entitled to a reduced Federal corporate rate of 9% up to its first $500,000 of taxable income. If a CCPC has taxable income entitled to the reduced Federal rate, it generally also benefits from reduced Provincial and/or Territorial rates. For 2021, depending on the Province and/or Territory, the rate ranges from 0% to 4%.

Non-residents)

Non-residents of Canada are subject to Canadian tax on employment income performed in Canada, income from a business carried on in Canada, and taxable capital gains from the disposition of "taxable Canadian property".

The Income Tax Act provides that a non-resident of Canada is subject to Canadian income tax if the non-resident is carrying on business in Canada, but only to the extent of the income earned from that business.

Following Canada's various tax treaties, business profits are generally only taxable in Canada to the extent that the non-resident has a "permanent establishment" in Canada.

Branch tax

A non-resident corporation carrying on business in Canada through a Canadian Branch is liable for income tax on its Canadian-source business income at the same rates that apply to Canadian residents. Such a corporation is also subject to an additional "branch tax" of 25% on (generally) the after-tax branch profits that are not reinvested in the Canadian business. The branch tax approximates the rate of withholding tax on dividends that would apply if a Canadian Subsidiary had been used to carry on the business instead of a Canadian Branch. The rate of branch tax may be reduced by an applicable tax treaty. For example, under the Canada-U.S. Income Tax Convention, the branch tax is limited to 5% and is not applicable to the first $500,000 of branch profits.

Withholding taxes

Amounts paid or credited by a resident of Canada to a non-resident person with respect to most forms of passive income (including dividends, interest, rents, and royalties) are generally subject to Canadian non-resident withholding tax on the gross amount of such payments. The rate of Canadian non-resident withholding tax under the ITA is 25%, subject to reduction under an applicable tax treaty. For example, the Canada-U.S. Income Tax Convention limits the Canadian withholding tax on dividends paid by a corporation resident in Canada to a resident of the U.S. to 15% (or 5% where the recipient is a corporation that owns at least 10% of the voting shares of the payor) and interest paid is free of withholding.

Under the Income Tax Act, there is no Canadian non-resident withholding tax on interest paid or deemed to be paid by a Canadian resident person to a non-resident person with which the payor deals at arm's length and where the interest is not considered to be "participating debt interest". Such debt occurs where the amount of interest payable is based on the use or production from assets, or derived from revenue, profits, cash flows, etc. Under the Canada-US Income Tax Convention, Canadian withholding tax on arm's length and non-arm's length payments of non-participating debt interest to U.S. persons is generally free from withholding taxes.

HR/ Labour Law

Employment law

Employees that work for the Government of Canada in the federal sector are subject to federal employment legislation. Employees and employers under the guise of the provincial government are subject to the labour and employment legislation of the respective province in which the business is located.

Employers and employees often enter into employment agreements to set out the rights of the employer and the employee. Where an employment agreement is not entered into the employment relationship is purely delineated by the proper federal or provincial employment legislation.

Employment Income

All employment income is subject to deductions at the source. Employers that have employees in Canada, regardless of their residency status, must register with the Canada Revenue Agency for a payroll account. Every employer must withhold and remit payroll taxes with respect to the Canada Pension Plan (or Quebec Pension Plan) and Employment Insurance. In addition, employers must register with the respective Provincial workers' compensation program and if applicable the Provincial Health Tax regime.

Canada Pension Plan

The Canada Pension Plan (CPP) contribution rate for 2021 is 5.45%. The employer is required to match the employee contribution dollar for dollar. The maximum pensionable earnings for 2021 is $61,600 with a maximum contribution by each of the employer and employee of $3,166.45.

The Province of Quebec operates its' own pension plan scheme, Quebec Pension Plan (QPP). The contribution rate for 2021 is 5.90%. The maximum pensionable earnings for 2021 is $61,600 with a maximum contribution by each of the employer and employee of $3,427.90.

Employment Insurance

The Employment Insurance (EI) contribution rate for 2021 applicable to the employees is 1.58%. The maximum insurable earnings for 2021 is $56,300 resulting in a maximum employee contribution of $889.54. Employer contributions are 1.4 times the employee contribution resulting in a maximum employer contribution of $1,245.36.

The Province of Quebec operates its' own EI program where the contribution rate for 2021 is slightly less at 1.18%.

Visa and work permits

Most foreign workers who desire to work in Canada must apply for a work permit. Subject to exceptions, those applying for a work permit must meet all of the criteria outlined within the Government of Canada's online application.

Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Canada should seek professional advice from our member firms before making any business or investment decision.

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