

# Taxation in Canada: Helping global companies be compliant and efficient

September 02, 2025

This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business in Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’”](#) page.

Canada’s tax laws are based on residency and source. In Canada, income earned by Canadian residents and income earned by non-residents sourced in Canada are subject to Canadian income tax. Under Part I of the federal Income Tax Act (ITA), Canadian residents are taxed on their worldwide income. In contrast, non-residents are taxed on Canadian source income, which generally includes income that arises from employment in Canada, a business carried on in Canada or the disposition of “taxable Canadian property”. Under Part XIII of the ITA, non-residents may also be subject to Canadian withholding tax on certain types of passive income, including interest, dividends, rents and royalties.

## Residency

Ascertaining an individual’s residency for Canadian income tax purposes generally involves a determination of whether the individual was “ordinarily resident” in Canada or has otherwise established significant residential ties to Canada. The ITA also deems certain persons to be resident in Canada. An individual who is physically present in Canada for a total of 183 days or longer in any year is deemed to be a resident of Canada for the entire year.

A corporation is deemed to be a resident of Canada for tax purposes if it was incorporated in Canada at any time after April 26, 1965. In addition, an entity incorporated in a foreign jurisdiction will be resident in Canada if the directors meet in Canada or if control over the corporation is exercised in Canada. A trust is considered resident in the place where the central management and control of the trust takes place. The ITA may also deem a trust that is not factually resident in Canada to be resident in Canada in certain situations.

If the foreign jurisdiction is a country with which Canada maintains a tax treaty, so-called “tiebreaker” rules may apply if an individual or corporation is found to be resident in

more than one country; these tiebreaker rules would then assign residency to one of the countries involved.

## Income tax rates

Federal taxes on personal income are marginal, increasing with the amount of income. The federal marginal tax rates for individuals are:

- 15 per cent on the first C\$53,359 of taxable income;
- 20.5 per cent on the next C\$53,557 of taxable income;
- 26 per cent on the next C\$58,712 of taxable income;
- 29 per cent on the next C\$70,244 of taxable income; and
- 33 per cent of taxable income in excess of C\$235,676.

In addition to federal income tax, provincial or territorial taxes are also assessed on income. The highest combined marginal income tax rate varies from 44.5 per cent (Territory of Nunavut) to 58 per cent (Newfoundland and Labrador).

The federal corporate tax rate is 15 per cent. A provincial corporate tax is also imposed on general corporate income and the rate varies by province or territory. The provincial corporate tax rate ranges from 8 per cent (Alberta) to 16 per cent (Prince Edward Island), for a combined corporate tax rate of between 23 per cent and 31 per cent. Preferential rates are available for all or a portion of the active business income earned in Canada by “Canadian-controlled private corporations” and, in some cases, for Canadian manufacturing and processing profits.

## Filing and reporting requirements

Canadian residents are required to file an annual Canadian income tax return with the Canada Revenue Agency (CRA) and to report their worldwide income. Canadian residents are also required to file Information returns with respect to certain foreign property interests, as well as certain transactions with non-arm's length non-residents or transactions with foreign trusts. Corporations must file a corporate income tax return within six months after the end of their taxation year.

Non-residents responsible for calculating and paying tax under the ITA must also file a tax return with the CRA. Non-residents may also be required to make self-assessed payments of estimated tax (including with respect to business income and employment income) under the rules applicable to resident taxpayers, unless a waiver has been obtained from the CRA (and Revenu Québec for income to be earned in the Province of Québec) to exempt the remittance of estimated tax payments.

Passive receipts of income, such as dividends, will not, in and of themselves, subject non-residents to a requirement to file a Canadian tax return. However, the payer of such amounts must issue information slips that the payer would submit to the CRA, and such payer may be required to withhold tax on the payments.

A reporting and enforcement system is also provided for under the ITA for dispositions of certain properties (which is labelled as “taxable Canadian property”) by non-residents of Canada. This system enables the CRA to enforce the taxation of such non-resident

dispositions through the possible imposition of penalties on purchasers for any failure to comply with the reporting requirements.

## Business income

The imposition of Canadian tax on a non-resident's business income is typically dependent on whether the business activity is sufficient to create a taxable presence in Canada. A non-resident's income from a business will be taxable if the non-resident "carried on a business in Canada". The question of whether or not a business is being carried on in Canada is determined by reference to both common law doctrines and certain deeming rules. If, however, a non-resident carries on business in Canada and is resident in a country that has a tax treaty with Canada, income earned from the business is subject to tax in Canada only to the extent that the business is carried on through a "permanent establishment" in Canada. In such cases, the business profits may be taxed in Canada, but only to the extent that the profits are attributable to that permanent establishment.

## Employment income

The ITA provides that non-resident individuals are taxable in Canada if they are employed in Canada and their taxable income is attributable to the duties of the office or employment performed by them in Canada. Whether an individual is deemed employed in Canada depends on the location where employment services are physically performed. If a non-resident renders services to a Canadian resident remotely via telephone, the Internet or other means of communication, the services are generally not considered to be rendered in Canada. The employer's residence is generally irrelevant to the determination of the source of employment income.

Relief from Canadian taxation of employment income may be available in certain circumstances. Under many of Canada's tax treaties, employment income earned from services performed in Canada by a non-resident of Canada is not taxable in Canada if:

- the individual who is a resident of the treaty country is present in Canada for a period or periods not exceeding 183 days in a calendar year (or any 12-month period); and
- the remuneration is not deductible in computing the income under the ITA of an employer who is a Canadian resident or in computing the income attributable to a non-resident employer's permanent establishment or a fixed base in Canada.

## Income from the disposition of certain properties

Non-residents are liable for Canadian tax on capital gains derived from the disposition of "taxable Canadian property". "Taxable Canadian property" is defined to include, among other items, real property and resource property in Canada, assets used in carrying on a business in Canada, and shares in the capital stock of certain corporations. Any disposition of such property must be reported.

Relief from taxation may be available under one of Canada's tax treaties. The general pattern of Canada's treaties is to restrict Canada's jurisdiction to tax only those capital

gains realized by the non-resident on the sale or transfer of immovable (real) property or natural resources property situated in Canada, or property forming part of the business property of a Canadian permanent establishment or fixed base of that business. In selected cases, shares of a Canadian company whose value is primarily attributable to Canadian immovable property or natural resources property would also be taxable. In the case of gains arising from the sale or transfer of other types of property, Canada is generally precluded by virtue of its treaties from levying tax.

## Withholding taxes

Interest, rent, royalty, dividends, management or administration fees, and other specified amounts paid or credited by a Canadian resident to a non-resident person are subject to a 25 per cent non-resident withholding tax. Where the non-resident person receiving the payment is resident in a country with which Canada has a tax treaty, the withholding tax rate is usually reduced under the terms of the applicable treaty. Certain types of payments are specifically exempt from this withholding tax, including certain types of royalty payments and non-participating interest payments on arm's-length debt.

## Branch tax

The ITA also imposes a “branch tax” on any non-resident corporation carrying on business in Canada. This tax is meant to be a proxy for Canadian non-resident withholding tax on dividends paid by a Canadian subsidiary to its non-resident parent corporation. In the absence of the branch tax, a Canadian branch would be a tax-preferred alternative to a Canadian subsidiary because income earned through the subsidiary would be subject to both tax on business income and tax on dividends distributed to the non-resident shareholder. In contrast, income earned through the branch would be subject only to business income tax. As a result, a 25 per cent branch tax would be levied on the portion of the non-resident's Canadian source business profits remaining after corporate tax on those profits has been paid, subject to certain adjustments. This 25 per cent rate is intended to match the 25 per cent withholding tax rate under the ITA that is imposed on dividends paid to the non-resident shareholder.

Where the rate on dividends paid to a non-resident is reduced by treaty, the branch tax rate is typically correspondingly reduced. A treaty may also provide additional relief from branch tax. For example, the Canada-U.S. treaty provides that the first C\$500,000 of after-tax profits is exempt from branch tax.

## Canadian taxation of non-resident trusts

As mentioned earlier, a taxpayer's residency will govern the extent of Canada's jurisdiction to tax. Accordingly, a non-resident trust is not taxable in Canada unless it derives Canadian source income. However, a resident trust or a non-resident trust which is deemed to be resident in Canada can become subject to Canadian tax on its worldwide income.

## Capital tax

The federal government and some provinces levy corporate capital tax on financial institutions. Their rates vary.

## **Commodity and sales taxation**

The federal government and most provincial governments also impose various taxes on the sale of goods and services and, in some cases, on the transfer of real property. These taxes include excise, sales, fuel and land transfer taxes.

## **Vacant / Underused housing tax**

Canada's underused housing tax (UHT) is an annual 1 per cent tax on certain vacant or underused residential property owned (directly or indirectly) by foreign nationals (individuals who are not Canadian citizens or permanent residents).

Certain provinces and municipalities also impose forms of vacant home taxes which can vary from region to region.

## **Value-added taxes**

Canada imposes a multi-staged goods and services tax (GST) under the Excise Tax Act on the consumption of goods and services in Canada. While GST is collected by all registered businesses at each stage in the production or marketing of goods and services, the burden of the tax is borne by the ultimate consumer. Under this system, businesses collect tax on their sales and claim a credit, referred to as an input tax credit or "ITC", for any tax paid on their purchases. While sales of most goods and services are subject to GST, some goods and services are exempt or zero-rated (taxable, but at a rate of zero per cent). GST is currently payable at a rate of five per cent.

Certain provinces have harmonized their provincial retail sales taxes with the federal GST, which has the effect of raising the overall tax rate in those provinces. There are five harmonized provinces that impose a combined "Harmonized Sales Tax" or "HST": Ontario (at 13 per cent); and New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (all at 15 per cent). The Province of Québec imposes a separate tax, the "Québec Sales Tax", or "QST", which is similar to the federal GST, at a combined GST and QST rate of 14.975 per cent.

GST also applies to imports of goods and is usually paid by the importer of record. The GST is payable on the duty-paid value of goods, meaning the value for customs purposes, plus applicable customs duty, additional duty, countervailing duty or anti-dumping duty and excise tax. If the importer of record is registered for GST purposes and will resell the goods or otherwise use them in taxable activities, the importer will be able to recover the GST paid by way of an ITC. On importation of commercial goods, only the federal portion of the GST will apply, at a rate of five per cent.

## **Provincial retail sales tax**

The provinces of Saskatchewan, Manitoba and British Columbia impose retail sales taxes. These taxes are levied directly on the purchaser, consumer or lessee of taxable goods and services. They are generally levied on the sale or lease price of the goods or services being taxed. The tax rates range from six per cent (Saskatchewan) to seven per cent (British Columbia) and eight per cent (Manitoba). The GST in those three provinces would still apply, at a rate of five per cent, unless that particular good or service is exempt from GST. Both retail sales taxes and GST are calculated on the sale or lease price before consideration of these taxes.

Businesses providing goods or taxable services in a province that levies a separate **retail sales tax must obtain a provincial vendor's licence. The licensed vendor acts as an agent of the province in collecting the tax imposed on the purchaser or consumer.** Generally, an exemption is provided for sales between licensed vendors as long as the goods are acquired for resale and not for personal consumption or personal use.

## Other provincial taxes

Most provinces impose a tax on forestry and mineral operations and a royalty on petroleum and natural gas production. Additional taxes and levies are imposed on other commodities, such as alcoholic beverages, tobacco and marijuana products, fuel and other specific items at either the federal or provincial levels or at both levels.

## Real estate transfers

Certain provinces and provinces and municipalities impose taxes on transfers of real property, including residential real property and industrial and commercial real property.

Effective as of January 1, 2023, the Prohibition on the Purchase of Residential Property by Non-Canadians Act has prevented non-Canadians from buying residential property in Canada for two years if the residential property is situated in a Census Metropolitan Area or a Census Agglomeration Area. A Census Metropolitan Areas must have a total population of at least 100,000, with 50,000 or more living in the core area. A Census Agglomeration must have a population of at least 10,000. For purposes of this legislation, residential property is defined as buildings with 3 dwelling units or less; this definition would include a purchase of a semi-detached house, a row house, and an individual condominium units. The legislation applies to non-Canadians, including corporations and entities not listed on a stock exchange in Canada, and controlled by non-Canadians. However, the legislation does not apply to Canadians, permanent residents, or temporary residents who meet the exception criteria outlined in the regulations to the legislation.

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**BLG Offices****Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3  
  
T 403.232.9500  
F 403.266.1395

**Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9  
  
T 613.237.5160  
F 613.230.8842

**Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2  
  
T 604.687.5744  
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4  
  
T 514.954.2555  
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3  
  
T 416.367.6000  
F 416.367.6749

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