



Business Formation in Canada

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Business Structures in Canada

- **Branch Office**
- **Sole Proprietorships**
- **Corporations**
- **Partnerships**

Incorporating in Canada

- **In Canada a corporation can be incorporated under Federal or Provincial Legislation.**
- **Separate Legal entity:** Corporations under Canadian law are separate legal entities, that have the same rights as a real person.
- **Governance:** Corporations are governed by its Board of Directors who are appointed by the Shareholders. The Board hire's the executives who run the day to day operations.
- **By-Laws and Articles:** establish the Corporation and provide rules and limitations which constrain the Board of Directors.
- **Liability:** Corporations allow the shareholders to avoid personal liability as debts taken on by a Corporation are its responsibility and not that of the shareholders.
- **Tax:** Tax authorities tax corporations separately from their owners. Corporate tax rates are generally lower than income tax rates for individuals.
- **Continuous existence:** A corporation continues to exist unless it winds up, amalgamates, or gives up its charter for reasons such as bankruptcy.

Resident Directors

- **Resident Directors under Statute:** The Canadian Business Corporation Act, along with the Ontario Business Corporations Act (“OBCA”), and the corporate laws of Alberta, Manitoba, Newfoundland and Labrador, Ontario and Saskatchewan impose Canadian residency requirements on the composition of the board of directors.
- **Canadian Residency Requirements defined:** at least 25 percent of the directors of a corporation must be resident Canadians and if a corporation has fewer than four directors, at least one of them must be a resident Canadian.
- **No resident Canadian Requirement:** Certain other provinces such as British Columbia and New Brunswick, do not require resident directors.

Partnerships

- **The relationship which subsists between two or more persons carrying on business with a view to profit.** In Canada, a partnership is not a separate legal person like a corporation. Partnerships are governed by the laws of the jurisdiction in which they are formed and the partnership agreement.
- **There are Multiple types of Partnerships which can be formed in Canada:**
 - **General Partnerships:** Each partner in a general partnership has unlimited liability for the partnership debts and obligations.
 - **Limited Partnerships:** Consists of one or more general partners who have unlimited liability, and one or more limited partners who have limited liability, depending upon their contribution to the partnership. A limited partner contributes financially and may occasionally provide advice, but is not involved in the business.
 - If a limited partner does become involved in operating the business, they will lose their limited liability status and become just as liable as a general partner.



Corporate Taxation in Canada

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Basic Principles of Canadian Taxation

- Canada is a federation made up of two main levels of government: federal and provincial / territorial.
- Canada Revenue Agency (CRA) administers federal taxation and provincial taxation on behalf of most provinces (except for Quebec and Alberta)
- The Canadian Income Tax Act (ITA) imposes income tax as follows:
 - For Canadian residents – on all income (regardless of conceptual / geographic source)
 - For non-residents – income from Canadian business activities and capital gains realized on disposition of specific types of Canadian assets
- Канада – федерация и включает два основных уровня правительства: федеральное и провинциальное / территориальное.
- Канадская налоговая служба (CRA) управляет федеральным и провинциальным налогообложением от имени большинства провинций (за исключением Квебека и Альберты)
- Канадский налоговый кодекс (ITA) устанавливает подоходный налог следующим образом:
 - Для налоговых резидентов Канады - на все доходы (независимо от концептуального / географического источника)
 - Для нерезидентов - доход от предпринимательской деятельности в Канаде и прирост капитала, полученный от реализации определенных видов канадских активов

Basic Principles of Canadian Taxation

- Residency of corporation
 - If incorporated in Canada; or
 - If its central mind & management is located in Canada (in Canada, the central mind & management is considered to be located where key business decisions are made)
- Source of income
 - Conceptual source (business, property, employment and capital gains)
 - Geographic source
- Income vs Taxable Income
 - Inclusions: inducement payments, damage awards etc.
 - Exempt income: domestic dividends
- Налоговая резиденция корпорации
 - Если зарегистрирован в Канаде; или
 - Если место центрального управления и контроля находится в Канаде
- Источник дохода
 - Концептуальный источник (предпринимательская деятельность, собственность, занятость и прирост капитала)
 - Географический источник
- Доход vs налогооблагаемый доход
 - Включения: поощрительные выплаты, компенсация ущерба..
 - Освобожденный доход: внутренние дивиденды

Basic Principles of Canadian Taxation

- Income vs Taxable Income
 - Deductions: Permitted only to the extent that they are incurred for the purpose of producing income
 - No deductions are allowed for expenses incurred on capital accounts or for reserves and estimated expenses
 - Special rules for deductibility of some expenses: interest, professional fees, depreciation etc.
 - Some expenses are non-deductible (ex. taxes, fines and penalties)
- Losses
 - Non-capital losses – carry back 3 years, carry forward 20 years
 - Capital losses – carry back 3 years, carry forward indefinitely
- Доход vs налогооблагаемый доход
 - Отчисления: разрешены только если понесены с целью получения дохода
 - Вычеты не допускаются в отношении расходов, понесенных с целью прироста капитала, или в отношении резервов и сметных расходов.
 - Особые положения для некоторых расходов
 - Вычеты не разрешаются в отношении некоторых расходов (налоги, штрафы и пени)
- Убытки
 - Текущие убытки
 - Убытки по вложенному капиталу

Basic Principles of Canadian Taxation

- Tax Incentives
 - Accelerated depreciation
 - Investment tax credit
 - Scientific research and experimental development tax credit
 - Apprenticeship job creation credit
 - Extractive industries credits (exploration and pre-production expenses, flow-through shares)
- Налоговые льготы
 - Ускоренная амортизация
 - Налоговый кредит на инвестиции в определенные отрасли \ территории
 - Налоговый кредит на научные исследования и экспериментальные разработки
 - Налоговый кредит на создание рабочих мест для студентов \ учеников по рабочим профессиям
 - Налоговые кредиты для добывающих отраслей (затраты на разведку и добычу, flow-through shares)

Corporate Income Tax Rates

- The federal income tax is 38% that is reduced by rebates and reductions to 15% for active business income
- Provincial corporate income tax rates vary by province; as can be seen below:
- Федеральный подоходный налог – базовая ставка - 38%, уменьшается до 15%
- Провинциальные ставки:

Province	Income Tax Rate (2020)
Alberta	10.0%
British Columbia	12.0%
Manitoba	12.0%
New Brunswick	14.0%
Newfoundland and Labrador	15.0%
Nova Scotia	14.0%
Ontario	11.5%
Prince Edward Island	16.0%
Quebec	11.5%
Saskatchewan	11.0%

Administration of Tax Law

- Department of Finance is responsible for developing legislation
 - Canada Revenue Agency (CRA) is responsible for administering, enforcing and providing interpretation of the law
 - CRA provides guidance through the following:
 - Information circulars,
 - Interpretation bulletins,
 - CRA technical views, and
 - Advance tax rulings
- However, the first three are not legally binding
- Департамент финансов отвечает за разработку законодательства
 - Канадская налоговая служба (CRA) отвечает за администрирование, регулирование и толкование закона
 - CRA выпускает:
 - Информационные циркуляры,
 - Интерпретационные бюллетени,
 - Технические положения, и
 - Мониторованное мнение (в отношении совершенных и планируемых операций)
 - первые три не имеют юридической силы

Tax Compliance and Functional Currency

- The CRA administers the federal tax system, and provincial tax system for all provinces except for Quebec and Alberta
- A corporations tax year is its fiscal period and the filing deadline is 6 months after the end of the taxation year
- No consolidated tax filing is allowed
- Tax results are generally reported in Canadian Dollars, but taxpayers can elect to report in USD, EUR, GBP or AUD if certain criteria can be met
- Отчетный налоговый период = финансовый период.
- Налоговая декларация подается в течении 6 месяцев после окончания налогового периода.
- Консолидированная налоговая декларация не допускается
- Налоговые декларации подаются в канадских долларах, но налогоплательщики могут отчитываться в долларах США, евро, фунтах стерлингах или австралийских долларах при выполнении определенных условий

Anti-Avoidance Rules

GAAR

- General Anti-Avoidance Rule (GAAR) is designed to prevent abusive or aggressive tax planning transactions
- Case law is evolving in this area

Transfer Pricing

- An arm's length principle governs transfer pricing in transactions between a Canadian taxpayer and a non-arm's length non-resident
- The CRA has an advanced pricing arrangement service to assist multi-national groups to establish an acceptable transfer pricing methodology

GAAR

- Статья в налоговом кодексе направленная на предотвращение агрессивного налогового планирования
- Прецедентное право

Трансфертное ценообразование

- Налоговый контроль в связи с совершением сделок между взаимозависимыми лицами
- Положения в Канаде основаны на Руководстве ОЭСР (OECD Transfer Pricing guidelines 2017)

Indirect Taxes

- Federal Goods and Services Tax (GST) is a multi-stage sales tax; generally similar to a European Value Added Tax (VAT)
 - The vendor is liable to collect GST at a rate of 5%, and remit to the CRA
 - GST payable is reduced by any GST paid on inputs
 - Export sales of goods and services are “zero-rated” supplies
 - Import goods are subject to GST unless exempted
- Harmonized Sales Tax (“HST”) – New Brunswick, Newfoundland, Nova Scotia, PEI and Ontario
- Provincial Sales Taxes (PST)
- Applicable to goods and services purchased by end users, subject to various exemptions.
- Федеральный налог на товары и услуги (GST) является многоступенчатым налогом с продаж; похож на европейский налог на добавленную стоимость (НДС)
 - Продавец обязан собирать GST по ставке 5% и отчислять их в CRA.
 - GST к уплате уменьшается на любой GST заплаченный на расходах
 - Экспортные продажи товаров и услуг являются поставками с нулевой ставкой
 - Импортные товары могут подлежать GST
- Провинциальный налог с продаж

Withholding Taxes

- Certain payments to non-residents are subject to 25% withholding tax, including interest, dividends, royalties and rentals
- The withholding rate may be reduced by tax treaties
- The onus is on the taxpayer to withhold and remit to the CRA
- Некоторые платежи налоговым нерезидентам облагаются подоходным налогом в размере 25%, включая проценты, дивиденды, роялти и арендную плату.
- Удерживаемая ставка может быть снижена налоговыми соглашениями между странами
- Платящая сторона (канадский налоговый резидент) обязана удерживать этот налог и отчислять в CRA



Canadian Taxation of Employees

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Basic Principles of Canadian Taxation

- An individual's tax residency status determines how he or she will be taxed in Canada:
 - Residents of Canada are taxed on their worldwide income; and
 - Non-residents of Canada are subject to tax on certain Canadian-sourced income.
- An individual's residence for Canadian tax purposes is a question of fact and must be determined based on all of the individual's particular facts and circumstances, specifically the amount of residential ties an individual has in Canada.
- It is not determined solely by the individual's citizenship status (as may be the case in other jurisdictions) or only by their physical location.

Canadian Withholding Requirements

- Every person paying remuneration to employees working in Canada must withhold Canadian income tax at source in respect of their employees' Canadian source compensation
- Withholding obligation applies to non-resident employers
- Withholding obligation applies even if the employee ultimately exempt from Canadian taxation under the Treaty
- Only exception is where a waiver is obtained authorizing no withholding
- Must also report Canadian source compensation and tax withholdings at source on annual information returns (T4 slip and T4 summary)
- Requires the non-resident employer to register and open up payroll accounts with CRA

Canadian Withholding Requirements

- Income tax at graduated rates
- Canada Pension Plan (CPP)

Year	Maximum annual pensionable earnings	Basic exemption amount	Employee and employer contribution rate (%)	Maximum annual employee and employer contribution
2020	\$58,700	\$3,500	5.25	\$2,898.00

- Employment Insurance (EI)

Year	Maximum annual insurable earnings	Rate (%)	Maximum annual employee premium	Maximum annual employer premium
2020	\$54,200	1.58	\$856.36	\$1,198.90

- Other employer taxes might be required i.e. EHT, WSIB
- Ontario resident employees including Canadian citizens, permanent residents and employees on temporary work permits are covered by the Ontario Health Insurance Plan (OHIP) after initial 90 day waiting period.



Thank you



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