Doing Business in Canada

May 2018

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Topics to be Discussed

1. The Canadian Tax Regime

2. Top 10 Things You Should Know About Sales Tax in Canada

The Canadian Tax Regime

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Canadian Corporate Tax Rates

2017 Tax Rates			
Jurisdiction	***Small Biz Income < $500k***	***General Biz Income***	***Investment Income***
British Columbia	12.5%	26.0%	49.67%
Alberta	12.5%	27.0%	50.67%
Saskatchewan	12.5%	26.5%	50.17%
Manitoba	10.5%	27.0%	50.67%
Ontario	15.0%	26.5%	50.17%
Quebec	18.5%	26.8%	50.47%
New Brunswick	13.5%	29.0%	52.67%
Nova Scotia	13.5%	31.0%	54.67%
Prince Edward Island	15.0%	31.0%	54.67%
Newfoundland	13.5%	30.0%	53.67%

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Personal versus Corporate Tax Rates

Personal	Rate (%)
Salary / investment income	53.5
Eligible dividends	39.3
Non-eligible dividends	45.3
Capital gains	26.8

Corporate	Rate (%)
Regular	26.5
Small business income ($500,000 limit)	15.0*
Investment income	50.2

Tax deferral on business income: 27% to 38.5%

$100,000 taxed at the small business rate leads to $85,000 of after-tax income

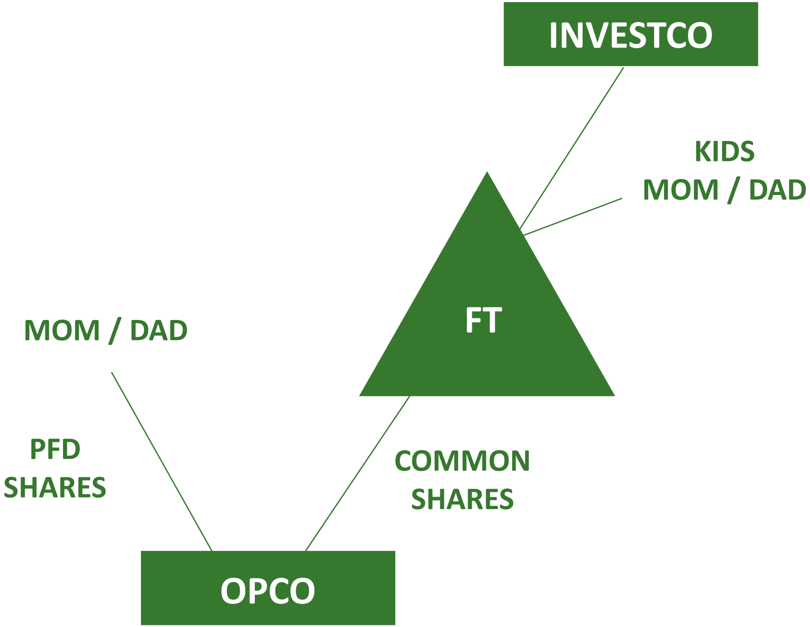
$100,000 at top personal tax rate leads to $46,500 such that the corporation provides a $38,500 benefit

*** Rate will decrease to 13.5% on January 1, 2019**

Canadian Corporate Tax Rates

- Bias to tax income at the corporate level in Canada
- Small business rate applies to business income earned by a Canadian-controlled private corporation (CCPC)
- Private company that is not controlled by a public corporation or non-residents
- Rate on investment income is high to prevent the use of corporations as a tax deferral vehicle on investment income
- US corporate entities are subject to corporate rates on Canadian business income – 26.5% rate in Ontario

Common Canadian Structure



Corporate Tax Compliance

- Canada Revenue Agency administers federal tax and provincial tax for all provinces except Quebec and Alberta
- Quebec can be a challenge because tax agency is primarily French
- Corporate tax return is due six months after year-end
- No extensions, penalties apply only if taxes owing
- Balance of tax owing is due two months after year-end
- No notion of consolidated returns
- Canada has generous tax incentives for corporations that carry on Scientific Research and Experimental Development in Canada

Taxation of Non-Residents

- **Canadian income tax on:**
  - Canadian employment
  - Carrying on business in Canada
  - Dispositions of Taxable Canadian Property, i.e. real estate
- **Withholding tax in respect of interest, dividends, rents and royalties paid to non-residents – standard rate is 25%**
  - Withholding rate on interest paid to a US resident is 0% (arm’s length or non-arm’s length)
  - Withholding rate on dividends to a US resident will be 5% or 15%
- **Business income of a non-resident may be exempt from tax pursuant to a treaty**

Additional Withholding Tax

- **Regulation 102 – Withholding on Salaries**
  - Must withhold on Canadian remuneration for both resident and non-resident employees
  - Possible treaty-based waiver for non-resident employees
    - *Non-resident employer*
    - *Evidence of exemption under Treaty*
    - *Proof of resident status*
- **Regulation 105 – Services Rendered in Canada**
  - Withholding of 15% (plus 9% if service rendered in Quebec)
  - Must file a Canadian tax return to recover
  - Waiver available – if exempt from Canadian tax under Treaty

Reg 105 Compliance

- **Payor is required to comply with Reg 105 – must withhold 15% on payment to non-resident for services provided in Canada**
- **Return filed by non-resident to recover withholdings may lead to scrutiny as to overall compliance**
  - Assisted a US group that had not withheld tax on Canadian remuneration
  - Issue was detected by CRA in connection with tax return filed to recover Reg 105 withholdings
- **Presumably no US FTC for Reg 105 withholdings that can properly be recovered from Canada**

Business Investment in Canada - Branch

- A US entity can carry on business in Canada via a branch
- Taxable income of branch will be subject to Canadian tax and a branch profits tax may also apply
- May avoid Canadian tax by not having a permanent establishment in Canada – degree of presence
- Must file a treaty based return to benefit from permanent establishment exemption
  - Schedule 91 of return provides the tax authority with information to vet activity in Canada:
- Penalties apply even if no tax owing

Branch Operated by US LLC

- US LLC taxed as a corporation in Canada – no flow through concept for CDN tax purposes
- Must file a CDN corporate tax return and pay tax on CDN profits or rely on Treaty based exemption if no CDN PE
- Recent changes to Treaty allow for Treaty benefits if LLC members are eligible
- Branch accounting can be nebulous to some corporate groups
  - Fundamental requirement is to identify Canadian revenue
  - Deduct applicable expenses

Schedule 91

Canada Revenue Agency | Agence du revenu du Canada

Schedule 91
Code 0803
Protected B
when completed

Information Concerning Claims for Treaty-Based Exemptions
(2008 and later tax years)

Corporation's name	Business Number	Tax year-end Year Month Day

- If you are a non-resident corporation that carried on a **treaty-protected business** in Canada, had a taxable capital gain, or disposed of a **taxable Canadian property** that was a **treaty-protected property** any time in the year (or a previous year, if a liability for Part I tax would result in the current year, but for the provisions of a tax treaty), complete and file this schedule with your *T2 Corporation Income Tax Return*. If you need more space, attach additional schedules.
- All legislative references are to the federal *Income Tax Act* and *Income Tax Regulations*.
- The terms **taxable Canadian property**, **treaty-protected property**, **business**, and **treaty-protected business** are defined in subsection 248(1) of the Act. The extended meaning of **carrying on business** is defined in section 253 of the Act.

Taxpayer identification number in country of residence . . . . **105** ____________

Tax year-end in country of residence (yyyy/mm/dd) . . . . **110** ____________

(Report all amounts in Canadian funds.)

Part 1 – Carrying on business in Canada

1. **111** The province or territory where revenue was earned in Canada (Tick one box only. If more than one applies tick MJ.):

☐ BC British Columbia
☐ AB Alberta
☐ SK Saskatchewan
☐ MB Manitoba
☐ ON Ontario
☐ QC Quebec
☐ YT Yukon
☐ NT Northwest Territories
☐ NU Nunavut
☐ NB New Brunswick
☐ NS Nova Scotia
☐ PE Prince Edward Island
☐ NL Newfoundland and Labrador
☐ MJ Multiple jurisdiction

2. **112** Type of business activity carried on in Canada:

☐ 01 Entertainment
☐ 04 Petroleum and gas
☐ 07 Business professional
☐ 10 Health
☐ 02 Sports/recreation
☐ 05 Transportation
☐ 08 Architectural/engineering/scientific/technical
☐ 11 Other, please specify: **113** ____________
☐ 03 Construction
☐ 06 Communications
☐ 09 Education

3. Canadian revenues derived by:

sale of goods . . . . **115** ____________
services provided in Canada . . . . **116** ____________
financing activities . . . . **117** ____________
other . . . . **118** ____________
Total Canadian revenues . . . . **125** ____________

4. Did you rent, lease, or own any physical facilities* in Canada during the tax year? . . . . . . **135** 1 Yes ☐ 2 No ☐

5. Article and paragraph of the tax treaty under which an exemption is claimed . . . . . . **146** ____________

6. Main corporate customers to whom goods were sold or services were provided in Canada (including non-residents) during the tax year (attach copies of all T4A-NR slips.):

	Corporation's name **155**	Contract/project started (yyyy/mm/dd) **158**	Contract/project completed (yyyy/mm/dd) **159**
1.			
2.			
3.			
4.			
5.			

* Indicate the nature and address of any owned, leased, or rented physical facilities located in Canada that are used by the non-resident corporation in carrying on its business activities in Canada. Examples of such facilities include an administrative or sales office, a warehouse, or a mine.

Schedule 91

Protected B when completed

Part 1 – Carrying on business in Canada – continued

7. Services provided in Canada by employees during the tax year:

a) Salary, wages, and remuneration paid to:

		Number of employees		Amount paid
Canadian resident employees	160		161	
non-resident employees	165		166	

		Started (yyyy/mm/dd)		Completed (yyyy/mm/dd)
b) Employee employment period in Canada	170		171	

c) Number of calendar days, or part days, during the tax year, that any non-resident employee was physically present in Canada to provide services to, or for, the corporation **175** ______

8. Services provided in Canada by subcontractors during the tax year:

a) Fees, charges, reimbursements of expenses, or other payments made to:

		Number of subcontractors		Amount paid
Canadian resident subcontractors	180		181	
non-resident subcontractors	185		186	

		Started (yyyy/mm/dd)		Completed (yyyy/mm/dd)
b) Subcontractor employment period in Canada	190		191	

c) Number of calendar days, or part days, during the tax year, that any non-resident subcontractor was physically present in Canada to provide services to, or for, the corporation **192** ______

9. Has the corporation applied for a waiver of the withholding requirement under Regulation 105? **195** 1 Yes ☐ 2 No ☐

If yes, did the Canada Revenue Agency waive or reduce the withholding requirement? **196** 1 Yes ☐ 2 No ☐

Part 2 – Disposing of taxable Canadian property (TCP) (other than real property) and taxable capital gains

1.

	Description of TCP or other property disposed of 201	Proceeds 202	Cost or adjusted cost base 203	Income, gain, or loss 204
1.				
2.				
3.				
4.				
5.				

2. Article and paragraph of the tax treaty under which an exemption is claimed **211** ______

3. Attach Form T2064, *Certificate – Proposed Disposition of Property by a Non-resident of Canada*, or Form T2068, *Certificate – The Disposition of Property by a Non-Resident of Canada*. See section 116 and Information Circular IC72-17, *Procedures concerning the disposition of taxable Canadian property by non-residents of Canada – Section 116.*

Business Investments in Canada
CDN SubCo

- SubCo taxed on income – 26.5% rate in Ontario
- SubCo complies with Reg 102 for remuneration paid
- Reg 105 does not apply because Canadian customers are not making payments to a non-resident
- Plan for repatriation of profits to US parent:
  - Dividends 5% or 15% withholding tax
  - Interest – 0% withholding tax
  - Management fees – maybe 0% withholding tax
- Transfer pricing issues – contemporaneous documentation
- Reporting issues – form T106 – “Information Return of Non-Arm's Length Transactions with Non-Residents"

Top 10 Things You Should Know

About Sales Tax in Canada

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Sales Tax in Canada #1

Not all sales taxes are created equal!

- In Canada we have two types of sales taxes;
- Value-added sales taxes (i.e. VAT) GST, HST, QST
- Traditional sales tax

Sales Tax in Canada #2

GST, HST, and QST are Refundable Taxes

- Registering for these taxes can be an effective way to reduce the cost of doing business in Canada

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Sales Tax in Canada #3

GST, HST and QST are applicable to most goods and services supplied in Canada (Quebec for QST) including intangible property (i.e. software licenses) and real property

Sales Tax in Canada #4

Companies can voluntarily register for GST, HST and QST which will facilitate obtaining tax refunds

- Most Canadian customers will be neutral as to whether they are charged the GST/HST/QST since most likely they will be entitled to a credit for the sales tax they pay.

Sales Tax in Canada #5

You may be required to register for GST/HST/QST

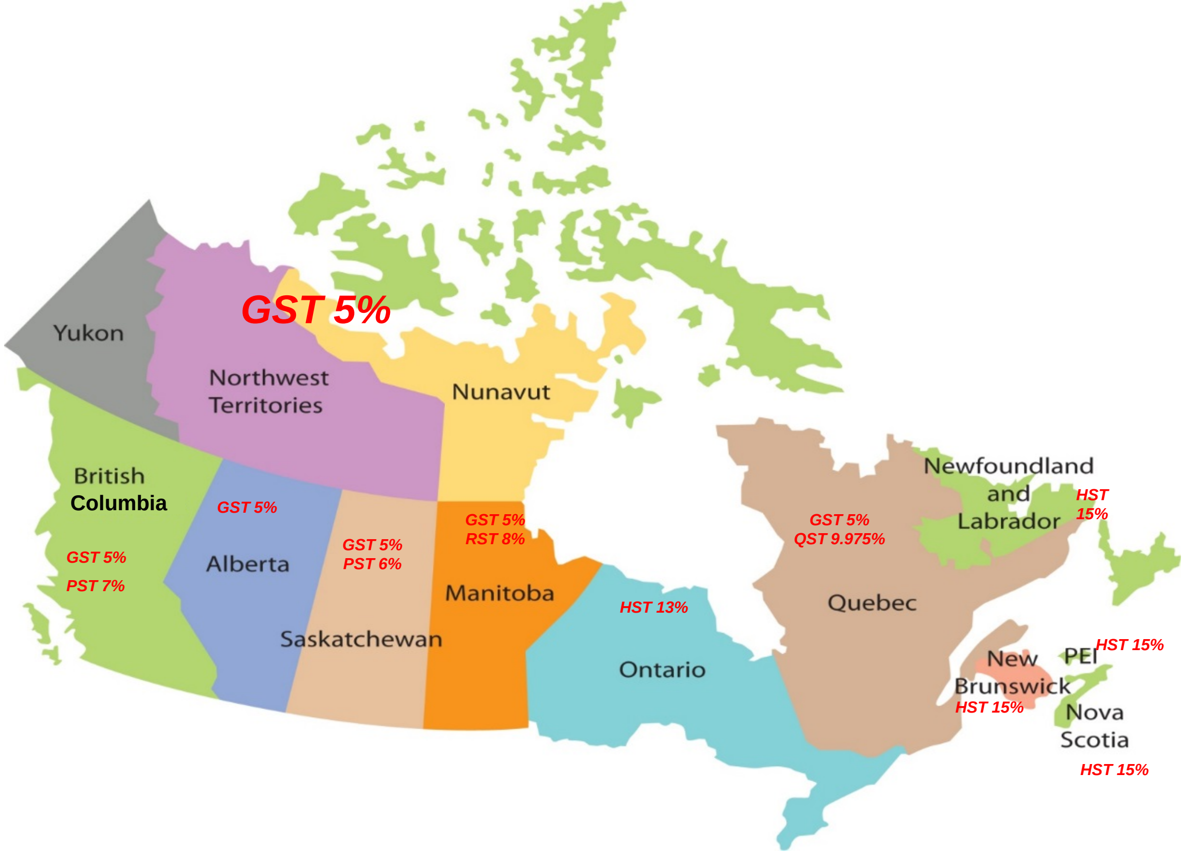
- The criteria which requires a person to register for and collect GST/HST/QST is not the same as the criteria which requires a person to pay income tax in Canada. Therefore your client may be required to register for and collect GST/HST/QST even if they do not have a permanent establishment in Canada.

Sales Tax in Canada #6

Canada is divided into provinces and the tax rate varies depending on the province

- Some provinces have harmonized their Provincial Sales Tax regimes with the Federal GST. Those provinces have HST which is GST but with an added provincial component. The only difference between HST and GST is the rate

A National View



Sales Tax in Canada #7

If a person is registered for GST that person is automatically registered for HST

Sales Tax in Canada #8

Some provinces have a separate provincial sales tax regime in addition to the Federal GST. A separate registration is required in each of the PST provinces in order to collect the PST in those provinces

Sales Tax in Canada #9

Security deposit requirements for non-residents with no permanent establishment if sales over $100,000 or net GST/HST payable or receivable is greater than $3,000

Sales Tax in Canada #10

Filing Frequencies

- < $1.5 million – annual filing
- >$1.5 million < $6 million – quarterly filing
- >$6 million – monthly filing