



Canada

Introduction

Liability to Canadian tax is determined by residence status for taxation purposes and the source of income derived by an individual. Income tax is levied at progressive rates on a person's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income.

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Key messages

Extended business travelers are likely to be taxed on employment income relating to their Canadian workdays and will have an obligation to file a Canadian income tax return. In addition, employers have a payroll reporting and withholding obligation, even if the employee's income is exempt from tax in light of the provisions of a treaty.

Income tax

Liability for income tax

Liability for Canadian tax is determined by an individual's residence status. A person can be a resident or a nonresident for Canadian tax purposes.

Individuals resident in Canada are subject to Canadian income tax on their worldwide income and allowed a credit or deduction for foreign taxes paid on income derived from foreign sources. There are no specific Canadian tax rules for determining whether or not an individual is resident in Canada. The law is based on jurisprudence and Canada Revenue Agency (CRA) comments. Each case is determined on its own merits.

By commencing long-term or permanent employment, acquiring a dwelling place, moving one's family into the country, and establishing residential and social ties (such as acquiring bank accounts, club memberships, or a driver's license), an individual may establish residence in Canada at a specified point in time. Residence is also established by virtue of the taxpayer's intent to remain in Canada. Where residence is established by particular events, individuals are taxed as residents for one part of the year and as nonresidents for that part of the year that precedes residency.

An individual may also be considered a deemed resident taxpayer if the individual is present in Canada for more than 183 days in a calendar year. As a deemed resident, the individual is subject to tax on worldwide income. Tax relief may be available if the individual is also a resident of another country with which Canada has a tax treaty.

Nonresident individuals who are employed in Canada, who are carrying on business in Canada, or who have disposed of taxable Canadian property also are subject to regular Canadian income taxes. Income earned in Canada from property and certain other sources, such as dividends, rents, and royalties, is subject to withholding at the source. There is no withholding on Canadian interest earned by nonresidents.

Extended business travelers are likely to be considered nonresidents of Canada for tax purposes unless they enter Canada with the intention to remain in Canada for more than six months.

Definition of source

Employment income is generally treated as Canadian-sourced compensation where the individual performs the services while physically located in Canada.

Tax trigger points

Technically, there is no threshold or minimum number of days that exempts the employee from the requirements to file and pay tax in Canada. To the extent that the individual qualifies for relief in terms of the income from employment article of the applicable double tax treaty, there will be no tax liability. The treaty exemption will not apply if the Canadian entity is the individual's economic employer.

The treaty exemption does not relieve a person from the obligation to file a Canadian income tax return. Similarly, an employer has a payroll reporting and withholding obligation for payments to an individual for services rendered in Canada. The withholding obligation can be eliminated if the employer or employee obtains a withholding waiver from the CRA.

Types of taxable income

If an extended business traveler is considered a nonresident, the business traveler will generally be taxed on income derived from certain specific sources in Canada as follows:

- Income from carrying on a business in Canada (generally, if carried on through a permanent establishment in Canada)
- Income from office or employment in Canada (including director's fees)
- Net income from real estate located in Canada
- Royalty and other income from Canadian resource property
- Dividends from securities issued by a company resident in Canada
- Capital gains from the disposition of taxable Canadian property. Examples of taxable Canadian property include, but are not limited to:
 - Real estate in Canada
 - Capital property used in carrying on a business in Canada
 - An interest in a private corporation resident in Canada
- Canadian resource property

Employment income is taxable when received or when the individual is entitled to receive it, if earlier. Employment income is subject to tax to the extent it was earned during a period of Canadian residence or in the case of income earned while nonresident, to the extent it was earned in respect of duties performed in Canada.

Tax rates

Net taxable income is taxed at the federal level using graduated rates ranging from 15 percent to 29 percent, both for residents and nonresidents. The maximum federal tax rate is currently 29 percent on income earned over 128,800 Canadian dollars (CAD).

The provinces (except Québec) use the taxable income calculated for federal tax purposes, but can then apply their own tax rates and tax brackets to that income figure. The provinces also set their own nonrefundable tax credits and maintain any low-rate tax reductions and other provincial credits currently in place. The CRA administers both federal and provincial taxes (except Québec), thus, taxpayers calculate their federal and provincial taxes on one return. Provincial tax is computed in essentially the same way as federal tax, but applying the applicable province's tax brackets, rates, and credits to taxable income. The provinces decide

upon and use their own graduated rates. Currently, the rates range from 5 percent to 24 percent. In addition, two of the provinces apply surtaxes.

The maximum combined federal and provincial rates range from a low of 39 percent for Alberta to a high of 50 percent for Nova Scotia.

Nonresidents are subject to the same provincial tax rates as residents. An additional tax of 48 percent of the federal rate is applicable, however, (in lieu of provincial tax) on income that may not be allocated, because of regulation, to a province.

Social security

Liability for social security

Canada has an extensive social security system that confers benefits for disability, death, family allowances, medical care, old age, sickness, and unemployment. These programs are funded mainly through wage and salary deductions and employer contributions.

An employee's responsibility is made up of two parts: Canada Pension Plan (CPP) and Employment Insurance (EI). Fifteen percent of the contributions made by an employee to CPP or EI are creditable against that individual's federal income tax liability. The contributions are also creditable for provincial tax purposes.

Type of insurance	Paid by		Total percent
	Employer percent	Employee percent	
Canada pension plan	4.95	4.95	9.90
Employment insurance	2.49	1.78	4.27
Total percent	7.44	6.73	14.17

Canada pension plan

CPP must be deducted from an individual's remuneration if the individual is employed in Canada, between age 18 and 70, and receiving pensionable earnings. The employer is responsible for withholding and remitting the individual portion and remitting the matching employer portion to the tax authorities. The maximum employee and employer contribution for 2011 is CAD2,217.60 each. Individuals residing in Québec contribute to the Québec Pension Plan (QPP) instead of the CPP program.

If the employee is transferred from a country that has a social security agreement with Canada and/or Québec, the employer may request a certificate of coverage from the other country to exempt the compensation from CPP and/or QPP.

Employment Insurance

EI must be deducted from an individual's remuneration if the individual is employed in Canada and is receiving insurable earnings. There is no age limit for deducting EI premiums.

Like the CPP contribution, the employer is responsible for withholding and remitting the individual's portion as well as remitting the employer portion (1.4 times the individual contribution) to the tax authorities. The maximum employee contribution for 2011 is CAD786.76, with a corresponding employer contribution of CAD1,101.46.

CPP and EI are assessed based on earnings, and the rates are adjusted each year based on actuarial calculations prepared by the federal government.

Canada has entered into formal social security totalization agreements with over 50 countries to prevent double taxation and allow cooperation between Canada and overseas tax authorities in enforcing their respective tax laws. Quebec has entered into separate social security agreements with various countries as well.

Compliance obligations

Employee compliance obligations

Tax returns are due by April 30 following the tax year-end, which is December 31. There are no provisions for extension of this deadline. Late-filing penalties and interest are generally based upon unpaid taxes, although penalties can also be assessed on certain late-filed information forms.

The Canadian tax system is a self-assessment system. Individuals are required to determine their own liability for income taxes and file the required returns for any taxation year in which taxes are payable. Individuals file their own tax returns; spouses do not file jointly.

A nonresident employee is required to file a Canadian income tax return by April 30 following the tax year to report compensation and compute the tax, or claim an exemption pursuant to an income tax treaty. The income taxes withheld are applied as a credit in calculating the final tax liability for the year. To facilitate filing a return, the employee must apply for a Canadian Social Insurance Number. A return is required even if the income is exempt from taxation pursuant to the provisions of an income tax treaty.

Employer reporting and withholding requirements

Employers are required to report, withhold, and remit withholding tax for each of their employees unless a waiver of withholding tax has been issued by CRA. As a technical matter, even short business trips to Canada are subject to payroll withholding unless a waiver has been obtained. These requirements apply even if the employer is a U.S. company that does not have a permanent establishment (PE) in Canada.

The payroll withholding is not the final tax. The income taxes withheld are applied as a credit in calculating the final tax liability for the year. Any additional taxes owed must be paid by April 30 to avoid late payment penalties.

Other

Work permit/visa requirements

Persons wishing to reside and work in Canada on a permanent basis must satisfy Canadian immigration law requirements for obtaining permanent residence. It is possible, however, to arrange to work temporarily in Canada, either by obtaining an employment authorization or by qualifying for an applicable exemption. The use of legal counsel is recommended for individuals immigrating to Canada.

Generally, work permits are issued by Canadian immigration officers abroad for non-visa exempt nationals (see <http://www.cic.gc.ca/english/visit/visas.asp>). Visa exempt nationals, on the other end, can usually obtain it directly at the Port of Entry (POE). For both categories, however, renewals can be obtained within Canada). The authorization will be valid only for the particular employer, position, and time period specified on the work permit. The time period is normally one to three years, but renewals may be available.

When the duration of the work permit is six months or more, a medical examination may be required prior to entering Canada if the applicant has resided six consecutive months or more (within the last 12 months) in one of the designated countries/territories (see <http://www.cic.gc.ca/english/information/medical/dcl.asp>). Starting April 1, 2011, the general rule will impose a maximum of four years in Canada for work permits holders. Exceptions apply, but any foreign worker reaching its three-year mark after 2011 should investigate the opportunity to apply for Landed Immigrant status.

In many cases, the Canadian immigration officer may not issue an employment authorization unless the immigration officer has first obtained a favorable Labour Market Opinion (LMO) from Service Canada in the locale where the employment is to occur. To obtain such an opinion, the prospective Canadian employer must present the job offer and all supporting documents to Service Canada. If Service Canada decides the admission of a nonresident individual will not adversely affect the employment opportunities of Canadian residents, it will issue an employment validation.

It is important to note that starting April 1, 2011, any employer who was not compliant with an LMO or Temporary Foreign Worker Program (TFWP) requirement in the previous two years will become ineligible to hire any foreign worker for a period of up to two years and may also end up "listed" publicly on the Canadian Immigration Web site.

For multinational corporations, one notable exception to the requirement of an employment validation from Service Canada relates to employment that, in the opinion of an immigration officer, will create significant employment benefits or other opportunities for Canadian citizens or permanent residents. This exception provides the basis for the administratively created category of intracompany transferees in senior executive or managerial capacities, as well as

highly specialized knowledge personnel. Such individuals may be granted an employment authorization summarily by an immigration officer without a Labour Market Opinion, provided all conditions are met and the proper documentation is presented.

Citizens of the United States and Mexico wishing to work temporarily in Canada may also gain admittance to Canada under certain provisions of the North American Free Trade Agreement (NAFTA). Working people covered by NAFTA are exempt from the requirement of employment validation through Service Canada. In addition, other special exemptions are available between participating nations of the General Agreement of Trades and Services (GATS) as well as other international agreements.

The use of legal counsel is recommended to determine whether any of these special exemptions apply. Please note that the employment authorization provides for employment for the individual applying, but not for the individual's spouse or dependents. If the individual's spouse or dependents intend to work or seek employment in Canada, they must obtain their own work permits on their own merits. However, in many cases, accompanying spouses (or qualifying common law partners) can become eligible to an "open" working status in Canada for the whole duration of the foreign national's work permit.

Double taxation treaties

In addition to Canada's domestic arrangements that provide relief from international double taxation, Canada has entered into double taxation treaties with approximately 90 countries to prevent double taxation and allow cooperation between Canada and overseas tax authorities in enforcing their respective tax laws.

Permanent establishment implications

A permanent establishment could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

The Canada/U.S. income tax treaty has a provision, which became effective in 2010, that may result in a deemed permanent establishment, even if a permanent establishment does not otherwise exist. Under this provision, a deemed permanent establishment may result if a company in one country provides services in the other country for an aggregate of 183 days or more in any 12-month period with respect to the same project or connected projects for customers who are resident of that other country or who maintain a permanent establishment in that other country for which the services are performed.

Indirect taxes

The Goods and Services Tax (GST) applies at a rate of 5 percent to most goods acquired and services rendered in Canada. Five provinces have a Harmonized Sales Tax (HST)

that is comprised of a 5 percent federal component and a provincial component that varies by province. In Ontario, New Brunswick, and Newfoundland, the HST rate is 13 percent. In Nova Scotia and British Columbia, the HST rate is 15 percent and 12 percent, respectively. In all material respects (tax base and mechanics), the HST system is essentially identical to the GST system.

Businesses (suppliers) that are registered for GST/HST purposes are required to collect and remit GST/HST on taxable supplies they make and are generally entitled to claim offsetting input tax credits for GST/HST paid on their expenditures.

The word supply includes most forms of goods and services. The scope of the GST/HST is not restricted to the provision of goods and services by way of sale but also includes other types of transactions, such as leases and rentals, barter transactions, and the granting or assignment of a right.

Zero-rated supplies (e.g., basic groceries and exported goods) are also taxable supplies but at a 0 percent rate. Suppliers of zero-rated supplies are generally entitled to claim input tax credits for the GST/HST paid on their expenditures.

Taxable supplies do not include exempt supplies such as most healthcare services, financial services, and residential rentals. Suppliers of exempt supplies are not entitled to recover the GST/HST paid on related expenditures.

Generally, the GST/HST applies to the value of the consideration for taxable supplies of goods or services made in Canada. While the consideration is usually expressed in money, the consideration, or part of the consideration, may be other than money, such as property or a service. In such case, the value of the consideration, or part of the consideration, is the fair market value of the property or service.

The payment of money and the provision of an employee's services to an employer are not supplies. However, certain actions carried out for no consideration may, in some circumstances, cause GST/HST to be payable, for example, imports of services and intangibles by a Canadian branch from a foreign branch of the same financial institution, or benefits provided to employees.

Registration – Canadian entities

Generally, if a person makes taxable supplies in Canada and the value of its taxable supplies made inside or outside Canada (including any associated entities) exceeds CAD30,000 in the last four calendar quarters or in a single calendar quarter, the person is required to register, collect, and remit the GST/HST on its taxable supplies. If the value of taxable supplies made in Canada by the person and its associated entities is below this registration threshold, the person is

considered a small supplier, but can still choose to register voluntarily for GST/HST purposes. A person who voluntarily registers is subject to the same obligations and rules as other GST/HST registered persons.

Other special rules apply to, among other entities, charities and taxi businesses.

Registration – Non-Canadian entities

The registration rules that apply to Canadian entities also apply to non-Canadian entities that make taxable supplies in Canada in the course of a business carried on in Canada.

Nonresident registrants without a permanent establishment in Canada will generally be required to provide and maintain security with the Canada Revenue Agency.

Provincial indirect taxes

The provinces of Saskatchewan, Manitoba, and Prince Edward Island each levy, retail sales taxes on tangible personal property and certain services. The rates vary from 5 percent to 10 percent. The legislation and rules vary among the provinces.

The province of Québec levies an 8.5 percent Québec Sales Tax (QST) that applies to the GST-included price of taxable supplies. The QST is generally the same as the GST in application. One of the main differences is the treatment of financial services, which are exempt for GST but zero-rated for QST.

Transfer pricing

Canada requires that transactions with nonresidents be undertaken at arm's-length. Canada's transfer pricing regime generally follows the OECD guidelines. Transfer pricing implications could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature of the services performed.

The CRA and Income Tax Act Section 247 provide the transfer pricing authority. CRA Information Circular 87-2R and various transfer pricing memoranda published by the CRA provide guidelines to the regime.

In determining whether a deduction is allowed for transfer pricing purposes, it must first be determined whether an intra-group service has in fact been provided (i.e., whether the activity provides a respective group member with economic or commercial value to enhance its commercial position). It must also be determined whether the intra-group charge for such services is in accordance with the arm's-length principle. The costs must be specific, identifiable, and reasonable. ¹Furthermore, the service should not be

duplicative of the service provided by the company or a third party. Each case must be determined according to its own facts and circumstances. In all cases, proper documentation must be maintained to support the transfer pricing methodology used.

Local data privacy requirements

Canada has data privacy laws. The Personal Information Protection Electronic Documents Act establishes 10 privacy principles and applies to all inter-provincial and international transactions. Businesses must generally obtain opt-out consent in order to collect, use, or disclose personal information. The law has received an "adequacy" rating from the European Union. The Privacy Commissioner's Office has broad powers to ensure compliance. Various provinces have implemented separate data privacy rules that are largely similar to the federal law.

Exchange control

No direct controls are in effect on the movement of capital or other payments either into or out of the country. The government is in the process of actively strengthening its anti-money-laundering regime to align with international best practices. There are some limitations on foreign investment in specific sectors, but these have been significantly liberalized since 1985.

Every individual entering or leaving Canada is required to report any importation or exportation of currency or monetary instruments in excess of CAD10,000. The currency or monetary instruments are subject to forfeiture or assessment of a penalty if not properly reported.

Currency refers to the currency of any country. A monetary instrument refers to any financial instrument that is immediately negotiable; is a bearer instrument, such as a bearer bond; or is a security, government, or corporate note or bond.

Importation or exportation refers to carrying currency or monetary instruments on one's person or causing another person to do so, including a courier or mail delivery.

Electronic money transfers between financial institutions are subject to separate reporting procedures typically handled by the financial institutions.

¹ In Canada, compensaion related to stock options may not be included in the charge.

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The material contained within draws on the experience of KPMG tax personnel and their knowledge of local tax law in each of the countries covered. While every effort has been made to provide information current at the date of publication, tax laws around the world change constantly. Accordingly, the material should be viewed only as a general guide and not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation.

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