



Transfer Pricing Country Summary

Canada

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1. Introduction

Canada's transfer pricing rules, primarily contained in section 247 of the Income Tax Act (the "ITA"), regulate the amount that a taxpayer may deduct, or be required to include, in computing income for Canadian tax income purposes, in respect of the cost of property and services received by the taxpayer from a non-resident person with whom the taxpayer is not dealing at arm's length or that were supplied by the taxpayer to such a non-resident person.

The Federal Budget of November 1, 1997 (the "1997 Budget") stated that the intention of introducing section 247 was to harmonize Canada's transfer pricing rules with the arm's length principle in the OECD Guidelines and to ensure that all the methods described in the OECD Guidelines are available to taxpayers. The contemporaneous documentation requirements are also intended as an aid to CRA's audit of cross border related party transactions. It has also been suggested by some that the transfer pricing penalty system and the contemporaneous documentation requirements are intended

- i) to provide the CRA with the information it believes necessary to resist out-bound adjustments from countries with whom Canada has tax treaties; and
- ii) to counter any tendency taxpayers might otherwise have to bias their transfer pricing policies in favour of countries that impose penalties.¹

2. Laws & Regulations

a) References to OECD/EU/Local Rules

The Canadian statutory rules on transfer pricing are administered by the Canada Revenue Agency ("CRA") and are contained in section 247 of the Canadian Income Tax Act ("ITA"), which received Royal Assent on 18 June, 1998.

CRA's Information Circular 87-2R (IC 87- 2R) provides guidance with respect to the application of the transfer pricing rules in section 247 of the ITA and is cross-referenced to the OECD Transfer Pricing Guidelines. Canada as a member of the OECD endorses the OECD Transfer Pricing Guidelines. The OECD Transfer Pricing Guidelines provide guidance but are not law in Canada.

Following the issuance of IC 87-2R, the CRA has provided further guidance on transfer pricing matters in its Transfer Pricing Memoranda ("TPM"), which supplement IC 87-2R and provide further guidance on specific aspects of the transfer pricing legislation.

A list with the memorandums issued by CRA is presented below:

- TPM-02 (2003) – Repatriation of funds by non-residents – explains how to apply repatriation policy to international transfer pricing, under section 247(2) of the Income Tax Act and Part XIII tax;
- TPM-03 (2003) – Downward Transfer Pricing Adjustments under Subsection 247(2);
- TPM-04 (2003) – Third Party Information- providing guidelines on the use of confidential third-party information in the context of transfer pricing audits;
- TPM-05R (2004) – Requests for Contemporaneous Documentation;
- TPM-06 (2005) – Bundled Transactions;
- TPM-08 (2005) – The Dudney Decision: Effects on Fixed Base or Permanent Establishment Audits and Regulation 105 Treaty-Based Waiver Guidelines – provides guidelines on how to proceed in view of the Dudney decision, with cases under audit concerning fixed base or permanent establishment (PE) determinations under Canadian income tax conventions (also referred to as treaties), to provide

¹ [OHStandard \(cba.org\)](http://OHStandard.cba.org), p. 4

a framework for general PE determinations, to raise some other considerations and to provide an explanation of the application of the treaty-based waiver guidelines to cases requiring a PE determination.

- TPM-09 (2006) – Reasonable efforts – provide guidance as to what constitutes reasonable efforts to determine and use arm's length transfer prices or arm's length allocations under section 247 of the Income Tax Act;
- TPM-11 (2008) – Advance Pricing Arrangement (APA) Rollback;
- TPM-12 (2008) – Accelerated Competent Authority Procedure (ACAP) – providing clarification and guidance on the acceptance of an ACAP request as set out in paragraphs 21 to 23 of the Information Circular IC71-17R5, Guidance on Competent Authority Assistance under Canada's Tax Conventions; -
- TPM-13 (2012) – Referrals to the Transfer Pricing Review Committee;
- TPM-14 (2012) – Update of the OECD Transfer Pricing Guidelines 2010;
- TPM-15 (2015) – Intra-group services – clarifying the Canada Revenue Agency's (CRA) policy on several audit and tax issues commonly encountered during the audit of intra-group services, under section 247 of the Income Tax Act;
- TPM-16 (2015) – Role of Multiple Year Data in Transfer Pricing Analyses;
- TPM-17 (2016) – The Impact of Government Assistance on Transfer Pricing.

Forms required to report tax obligations:

- T1134 (2017) – Information Return Relating To Controlled and Not-Controlled Foreign Affiliates;
- T106 (2017) – Information Return of Non-Arm's Length Transactions with Non-Residents;
- RC4649 (2017) – Country-by-Country Report. The Income Tax Act sets out Canada's legislation on country-by-country (CbC) reporting.

The Country-by-Country reporting requirement applies for fiscal years beginning on or after 1 January 2016.

b) Definition of Related Party

The transfer pricing rules are applicable to Canadian taxpayers and non-resident persons with whom they are not dealing at arm's length. Related persons as defined in subsection 251(2) ITA are deemed not to be dealing at arm's length.

Related persons are defined in Subsection 251(2) as:

1. Individuals connected by blood relationship, marriage or common-law partnership or adoption;
2. A corporation and
 - a. a person who controls the corporation;
 - b. a person who is a member of a related group that controls the corporation; or
 - c. any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and
3. Any two corporations
 - a. if they are controlled by the same person or group of persons;
 - b. if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation;
 - c. if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation;
 - d. if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation;
 - e. if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation; or
 - f. if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Under Subsection 251(1) related persons are deemed not to deal with each other at arm's length. However, arm's length is also a question of fact. Therefore, even if parties do not meet the related party definition, they may still be considered not to be dealing at arm's length and therefore subject to transfer pricing rules.

c) Nature of Transfer Pricing Documentation

In its judgement in *Canada v. GlaxoSmithKline Inc.*, the Supreme Court of Canada considered transfer pricing tax issues for the first time. This decision was important to multi-national enterprises ("MNEs") because the Supreme Court made it clear that Canadian courts have broad scope to determine whether prices used for the transfer of property or services between a Canadian resident taxpayer and non-arm's length non-residents are reasonable.

The Supreme Court agreed with the Federal Court of Appeal in overturning the original decision of the Tax Court of Canada (the "Tax Court") to essentially confirm the income tax reassessment of GlaxoSmithKline Inc. ("Glaxo Canada") issued by the Minister of National Revenue (the "Minister"). The Tax Court held that the reasonableness of transfer pricing should be determined on a strict transaction-by-transaction basis and other agreements or transactions entered into by the parties should be ignored. However, the Supreme Court concluded that if other transactions are relevant in determining whether transfer pricing is reasonable, these transactions should be taken into account. In this case, the existence of both a licence agreement and a supply agreement between Glaxo Canada and certain affiliated non-resident corporations was pertinent to the analysis.²

d) Tax Havens & Blacklists

Even though Canada has one of the highest voluntary tax compliance rates in the world, a small fraction of people refuses to pay what they owe. The Canada Revenue Agency (CRA) is dedicated to ensuring that individuals and corporations pay their fair share of taxes, as well as making tax avoidance more difficult.

Thanks to recent investments from the past three federal budgets, the CRA is using better tools and better approaches, which are leading to better results to improve the integrity and fairness of the tax system. A wide range of compliance measures, such as improved information exchange and engagement with foreign and domestic partners, help the CRA in identifying high-risk audit cases and investigating tax evasion cases.³ Some of these tools and collaborative efforts are⁴:

- Access to international Electronic Funds Transfers (EFTs): Since January 2015, the CRA has been automatically accessing all international Electronic Funds Transfers (EFTs) of more than \$10,000 entering or leaving the country. Reviewing these transfers helps identify transactions on which taxes should potentially have been paid, and better risk-assess individuals and businesses:
- Automatic exchange of offshore banking information: The CRA is also gaining easier access to information on Canadians' overseas bank accounts. Canada made a commitment to the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) partners to participate in the Common Reporting Standard (CRS), as part of a global effort to increase transparency. With the implementation of the CRS, Canada and more than 100 other countries will be exchanging financial account information, to identify instances where Canadians hide money in offshore accounts to avoid paying taxes.

² [Supreme Court of Canada Decides Transfer Pricing Case - Canada v. GlaxoSmithKline Inc. | Knowledge | Fasken](#)

³ [Tax evasion and aggressive tax avoidance know no borders - Canada.ca](#)

⁴ [Tax evasion and aggressive tax avoidance know no borders - Canada.ca](#)

- International collaboration: Through the OECD's Forum on Tax Administration (FTA), 50 countries work together to share best practices and emerging trends, deal with international risks, improve compliance and the overall delivery of tax administration.
- Coordination of criminal investigations: Joint Chiefs of Global Tax Enforcement (J5): Canada has joined Australia, the Netherlands, the United Kingdom and the United States in the Joint Chiefs of Global Tax Enforcement (J5) group. The J5 will share criminal investigations strategies, intelligence and conduct joint operations in the fight against those who commit, promote and enable international tax crimes, money laundering and cybercrimes.
- Multinational enterprises disclosing worldwide financials: Canada is one of more than 60 nations taking part in the Country-by-Country Reporting program. This collaborative approach allows countries to share revenue and profit information on their large multinational enterprises. It helps the CRA better risk assess whether these companies are paying the right amount of tax in each country. The first exchanges of information were in summer 2018.
- Legal tools: Since 1988, the CRA has been invoking the General Anti-Avoidance Rule (GAAR) when a taxpayer attempts to circumvent or exploit the intent of Canada's tax rules and avoid paying their fair share. The GAAR has been applied to more than 1,100 files since the program began as a remedy to aggressive tax avoidance.

The CRA is better equipped to identify persons engaging in tax evasion, both locally and abroad, and guarantee they face the penalties, thanks to enhanced tools, methodologies, and data.

e) Advance Pricing Agreement (APA)

Taxpayers may appeal any re-assessment, including transfer pricing adjustments, to the Appeals Division of the CRA for an independent impartial review. Thereafter, recourse is available through the Canadian court system.

Information Circular 94-4R (IC 94-4R), dated March 2001, and Information Circular 94-4R (Special Release) (IC 94-4R (SR)), dated 18 March, 2005, outlines the procedures and guidelines for obtaining APAs in Canada. The APA service is intended to assist Canadian taxpayers in determining transfer prices acceptable to the CRA for the purposes of the ITA and, where negotiated with tax authorities of other jurisdictions, the relevant treaties with those countries.

f) Audit Practice

The risk of transfer pricing issues being reviewed under audit is high. Audits are conducted by international tax auditors and federal tax auditors at the Tax Services Office (TSO) level. Books and records located outside Canada may be requested during an audit. Taxpayers can be selected for an audit either randomly or based on their risk profile.

3. Transfer Pricing Documentation

a) Level of Documentation

An MNE group that has total consolidated group revenue of 750 million euros or more in the fiscal year immediately preceding a particular fiscal year, as reflected in its consolidated financial statements for the preceding fiscal year, is required to file a Country-by-Country report for fiscal years that begin after 2015.

Canada requires specific filings concerning transfer pricing and offshore holdings.

Subsection 247(4) of the ITA states that a taxpayer must prepare or obtain records or documents that provide a complete and accurate description of:

- The property or services to which the transaction relates;
- The terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction;
- The identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into;
- The functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction;
- The data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction; and
- The assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction.

In addition, IC 87-2R outlines additional requirements for preparing transfer pricing documentation. Taxpayers are not obliged to file contemporaneous documentation with their tax return. Failure to provide such contemporaneous documentation, as defined in section 247, exposes the taxpayer to transfer pricing penalties in the event that the tax administration (Canada Revenue Agency) makes transfer pricing adjustments that exceed the thresholds set out in sub-section 247(3).

Canada's contemporaneous documentation requirements are outlined in sub-section 247(4) of the ITA. It deems a taxpayer not to have made reasonable efforts to determine and use arm's length transfer prices or allocations unless the taxpayer has prepared or obtained records or documents which provide a description that is complete and accurate in all material respects of the items listed in subparagraphs 247(4)(a)(i) through (vi). The documentation must be prepared or obtained on or before the taxpayer's documentation-due date for the tax year or fiscal period in which the transaction is entered into. The taxpayer must provide the records or documents specified in subsection 247(4) to the CRA within 3 months of service of a written request to do so.

There is no exemption from transfer pricing documentation obligations generally. Various de minimis limits and specific exclusion criteria apply to the foreign reporting requirements forms.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity including an indication whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines at paragraph 1.51.

e) Choice of Transfer Pricing Method

Canada's legislation does not specify any method to be used in respect of related party transactions. However, Canada's published domestic administrative guidance reflects the endorsement of the OECD Transfer Pricing Guidelines and specifically allows the OECD recommended methods.

Canada's published domestic administrative guidance reflects the guidance provided in Chapter II of the OECD Transfer Pricing Guidelines. The focus of method selection is on the degree of comparability available under each of the methods and the availability and reliability of the data. As such, the "most appropriate transfer pricing method to the circumstances of the case" should be used. The assessment of the 'most appropriate method' will be based on the quality of and degree of comparability and the reliability of the data that is available. Where more than one method can be applied in an equally reliable manner the natural hierarchy prevails

f) Economic Analysis – Benchmark Study

Local benchmarks are preferred following the jurisdiction of the tested party. For Canada, Canadian benchmarks are preferred but, generally, North American companies are acceptable as comparables.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalizes the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Financial Statements

Subsection 75(9) specifies the following requirements for financial statements filed with a corporation's CT23 or CT8 Corporations Tax Return⁵:

- All financial statements should be prepared in accordance with generally accepted accounting principles (GAAP) in Canada. However, consolidated statements are not allowed. The financial statements should be complete and include all notes to the statements.
- The financial statements should be complete and include all notes to the statements. In addition, if an auditor has reported on the financial statements, the auditor's report should be included.
- If the corporation is a member of a partnership, financial statements of the partnership prepared in accordance with Canadian GAAP should be included for all fiscal periods of the partnership ending in the taxation year of the corporation.

⁵ [Financial Statement Requirements \(gov.on.ca\)](http://www.gov.on.ca)

- If the corporation is a bank or a life insurance company, the financial statements should be prepared in accordance with the statute incorporating, continuing or governing the corporation and all applicable Canadian GAAP.

The financial statements to be filed with the return should be those prepared for reporting to shareholders, owners or partners and, pursuant to subsection 75(6), should be in agreement with the books of account of the corporation.

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	T2	It should be filed within six months after year-end for corporations and within five months after year-end for partnerships	N/A	Yes	No
Master File	Prepare	N/A	no requirement to file a master file	N/A	Yes	No
Local File	Prepare	N/A	This is not applicable unless the TP documentation is requested by the CRA – at which time, the taxpayer will have three	N/A	Yes	No

			months to provide the documentation to the CRA.			
CbCR	File	OECD's XML format ⁶	The report should be submitted no later than 12 months after the last day of the fiscal year to which the CbC report relates.	This is not applicable.	Yes	No
Form T106	File	Electronic	6 months after the end of the year	N/A	Yes – CAD 1 million	No
Annual Accounts	Prepare	GAAP or local IFRS	31 st of March	N/A	N/A	No
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Canada has signed the MCAA agreement for the filing of CBCR.						
* Canada does not request as much and detailed information from smaller and less complex enterprises (SME's included) than it does from large and complex enterprises.						

j) Mandatory Language

Transfer pricing documentation is accepted in both English and French.

k) Notification Requirement

There is no CbCR notification requirement in Canada. However, there is a requirement to file CbC report for MNE groups with consolidated revenues of EUR750 million.

⁶ [oecd-cbc-masterfile-implementierung-englisch.pdf](#), p. 20.

l) Record Keeping

There are no specific rules. However, records should be kept for the same period as stipulated in the statute of limitations.

m) Penalties and Interest Charges

Subsection 247(3) of the ITA provides for a transfer pricing penalty when the net amount of transfer pricing adjustments exceeds specific thresholds. The penalty is intended to be a compliance penalty focusing on the efforts that a taxpayer makes to determine an arm's length price and not solely on the ultimate accuracy of the transfer prices. Therefore, provided a taxpayer makes reasonable efforts to determine and use arm's length prices or allocations, the transfer pricing penalty does not apply. The provisions of subsection 247(4) may deem that taxpayers have not made reasonable efforts to determine and use arm's length prices or allocations.

Transfer pricing adjustments that result in a net increase in income or a net decrease in loss are subject to 10 percent penalty, subject to the following exceptions:

- Where the net transfer pricing adjustments do not exceed the lesser of 10 percent of the taxpayer's gross revenue for the taxation year and C\$5 million; or
- Where the taxpayer has used reasonable efforts to determine that its prices are arm's length and document such on or before the date its tax return is due for the taxation year (TPM-09 provides information on CRA's administrative positions on the meaning of reasonable effort).

Other applicable penalties are:

- Late Filing Penalty - A late filing penalty may be assessed where T106 foreign reporting form (information return) is filed after the due date.
 - o For information returns required to be filed up until 31 December, 2009 (Subsection 162(7)) - The penalty is equal to the greater of C\$100 and C\$25 per day, as long as the failure to file continues, to a maximum of 100 days;
 - o For information returns required to be filed after December 31, 2009 (Subsection 162(7.01)) - The penalty is equal to the greater of C\$100 and where the number of those information returns is less than 51, C\$10 per day, as long as the failure to file continues, to a maximum of 100 days.
- Failure to File Penalty (Subsection 162(10)) - A failure to file penalty may be assessed where reporting persons or partnerships knowingly, or under circumstances amounting to gross negligence, fail to file or fail to comply with a request by the CRA for T106 foreign reporting form. The minimum penalty is C\$500 per month, to a maximum of C\$12,000 for each failure to comply. Where the CRA has served a demand to file T106 documentation, the minimum penalty is C\$1,000 per month, to a maximum of C\$24,000 for each failure to comply;
- False Statement or Omission Penalty (Subsection 163(2.4)) - A false statement or omissions penalty may be assessed where information provided on the T106 Summary or Slip is incomplete or incorrect. The penalty is C\$24,000.