CANADA

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1. INTRODUCTION

a. Forms of Legal Entity

Corporations are the most common form of business organisation in Canada. They have separate legal existence as persons, and have the capacity to own property, incur liabilities and carry on business generally. Investors in corporations created under Canadian federal or provincial law ("shareholders") own "shares" of the corporation evidencing their ownership interest in the corporation, and do not have an ownership interest in the corporation's property. The liability of shareholders in most corporations is limited, such that shareholders are not exposed to legal liability for the activities of the corporation and risk only the value of their shares in the corporation. Some Canadian provinces also permit the creation of unlimited liability companies ("ULCs") where shareholders are exposed to some degree to liabilities of the corporation. ULCs and limited liability companies are generally treated the same for Canadian tax purposes (ULCs are typically used where U.S. tax planning requires the ability to treat the entity as transparent for U.S. tax purposes).

Partnerships are a different form of entity. Under Canadian law, a partnership requires that two or more persons (the partners) carry on business in common with a view to a profit. Canadian law provides for both general partnerships (where all partners have full liability for the activities of the partnership) and limited partnerships. In a limited partnership, the general partner actively manages the business and has full liability for the activities of the partnership, while the limited partners are not actively involved in the business of the partnership and are not liable for the partnership's activities beyond their investment in the partnership. Partnerships are often attractive from a tax perspective, because (unlike corporations) for Canadian tax purposes they are treated as transparent or "flow-through" entities: instead of the partnership being taxed, the income earned by the partnership is treated as having been earned by the partners themselves, and taxed in their hands (whether or not actually distributed to the partners). Thus, partnerships involve only one layer of tax (at the partner level).

Trusts are also used as business entities in some circumstances (typically in the real estate and investment fund industry). In general terms, trusts are themselves taxpayers, but can often achieve effective flow-through status because they can generally deduct from their income amounts distributed out to the holders of interests in the trust ("beneficiaries").

2. RECENT DEVELOPMENTS

a. Canada has ratified the Multilateral Instrument or "MLI" arising from the OECD's BEPS Project, with the result that approximately 80 of Canada's bilateral tax treaties will be affected (but not the Canada-U.S. tax treaty).

The key standards adopted relate to treaty abuse, including the prevention of such abuse through the application of a principal purpose test, and also a dispute resolution process through mandatory binding arbitration.

In addition, Canada has accepted the following optional provisions:

- The treaty-based rate of withholding tax on dividends received by corporate shareholders who hold a significant interest in the Canadian dividend payer will only be available if the non-Canadian resident recipient satisfies a 365 day holding period of the shares of that Canadian company.
- A 365 day look-back period for non-residents who realise capital gains on the disposition of shares or other interests that derived their value from Canadian immovable property, before such gain could become exempt from Canadian taxation under the relevant treaty.
- The MLI provision for resolving dual-resident entity cases.

b. Legislative amendments in the past few years now strongly discourage a foreign acquiror of a Canadian corporation ("Target") that itself has foreign subsidiaries from keeping those foreign subsidiaries "under" Canada (i.e owned by a Canadian corporation).

These rules effectively force the Canadian Target to sell or distribute its foreign subsidiaries "up" to the foreign acquiror and out from under Canada. Canadian tax authorities generally perceive there as being no good reason to have a foreign-controlled Canadian corporation own foreign subsidiaries, largely because in some cases foreign multinationals have caused their Canadian subsidiaries to acquire the shares of foreign group members (so-called "foreign affiliate dumping") either in exchange for cash as a means of earnings stripping or in exchange for debt in order to use the resulting interest expense to erode the Canadian tax base. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 786.

c. COVID-19 Relief Measures

In response to the economic consequences arising from health measures adopted to prevent the spread of COVID-19, Canada has adopted a number of tax and financial measures. These measures were primarily focused on employer wage subsidies (known as Canada Emergency Wage Subsidy or "CEWS"), income support payments to individuals (known as Canada Emergency Response Benefit or "CERB"), extension of tax filing payment deadlines, and loan support to small and medium-sized business.

3. SHARE ACQUISITION

a. General Comments

Share acquisitions generally result in the seller realising a capital gain in the amount by which their proceeds of disposition exceed the cost basis of their shares for tax purposes. This is generally advantageous as (1) only 50 of capital gains are included in income for tax purposes, (2) capital gains may be offset by capital losses, and (3) some Canadian shareholders can claim a lifetime exemption up to a specified dollar amount on capital gains realised on "qualified small business corporation shares."

Non-resident sellers of shares will generally be subject to Canadian tax on a share sale only where: (1) the shares have derived their value (directly or indirectly) primarily from Canadian real property and/or natural resource property at any time in the previous 5 years; and (2) no tax treaty relief is available. Where such shares are traded on a public stock exchange, a non-resident seller who (together with non-arm's-length persons) has not owned 25 or more of any class of the corporation's shares at any time in the 5 years preceding the sale will be exempt from Canadian capital gains tax, even if deriving their value primarily from Canadian real property. A withholding and remittance obligation may exist on buyers of shares from non-resident vendors that are (or but for treaty relief would be) subject to Canadian capital gains tax: see "Canada's Section 116 System for Nonresident Vendors of Taxable Canadian Property", Tax Notes International, April 2012.

Parties to a share purchase and sale are advised to ensure that lawyer-client privilege is created over planning and implementation documentation and correspondence to the greatest degree possible, as Canadian tax authorities will generally demand to review all such materials when the transaction is eventually audited. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 778.

b. Tax Attributes

Where the purchase of shares involves an acquisition of control ("AOC") of the target corporation (this will generally occur where the purchaser acquires ownership of enough shares of the target corporation to permit it to elect a majority of the target corporation's board of directors), this will typically have a number of effects on that corporation and its subsidiaries, which are:

- The taxation year will be deemed to have ended immediately prior to the AOC.
- Accrued but unrealised losses on the corporation's property will be deemed to be realised immediately prior to the AOC, and the use of such losses (as well as accumulated loss carryforwards from earlier years) in post-AOC years will be restricted or prohibited. A special one-time election can be made to apply such losses against accrued but unrealised gains on property owned immediately prior to the AOC, so as to reduce or eliminate such gains.
- For a Canadian corporation that owns foreign affiliates, the foreign affiliate dumping ("FAD") rules may apply to the corporation thereafter.

See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 790.

c. Tax Grouping

Canada has no consolidation or group relief tax system, each taxpayer computes its own income, gain and loss and pays tax separately. This makes it important to ensure that deductible expenses / losses are incurred by an entity that has sufficient taxable income to use them, although to a limited degree, Canadian tax authorities tolerate self-help transactions designed to move income and deductions amongst Canadian members of an affiliated group, to optimise the utilisation of deductions. See "Using Tax Losses Within a Canadian Group of Companies," Tax Notes International, April 2012.

d. Tax Free Reorganisations

It is generally possible for a shareholder to exchange his shares for shares of a *Canadian* corporation on a tax-deferred or "rollover" basis under either or both of two provisions in Canadian domestic law. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p.781. No comparable provision allows for seller tax deferral on an exchange of shares for shares of a *non-Canadian* corporation. However, "exchangeable share" structures applying the domestic share-for-share exchange rollover rules have frequently been used to achieve similar results. See "Using Exchangeable Shares in Inbound Canadian Transactions", Tax Notes International, December 2007.

Where two or more Canadian corporations merge (the Canadian legal term is "amalgamate") or one Canadian corporation is liquidated up into another Canadian corporation that owns all of its shares, these transactions generally occur on a tax-deferred (or "rollover") basis for all participants (including shareholders). In fact, it is common for foreign purchasers of a Canadian corporation to use a newly created Canadian corporation as the direct buyer of the target corporation, and then amalgamate with the target corporation immediately post-closing. Demergers, in contrast, are much more difficult to achieve in Canada on a tax-deferred basis, particularly in a cross-border context.

e. Purchase Agreement

In negotiating and documenting a share purchase and sale, the buyer typically performs some degree of due diligence on the tax exposures of the target corporation and its subsidiaries. This may involve reviewing tax returns and planning documentation, questioning target management and its advisors, and preparing a tax diligence report (which Canadian tax authorities will generally be able to review, unless protected from disclosure under solicitor-client privilege).

The share purchase agreement ("SPA") is obviously a key risk management tool, as the buyer will usually seek various representations and covenants from the seller, as well as indemnities to protect the buyer in the event these representations and covenants are breached. The SPA also represents an opportunity for the parties to agree on pre-acquisition restructuring to optimise the use of the target corporation's tax attributes.

f. Transfer Taxes on share transfers (including mechanisms for disclosure and collection)

Canada has no stamp duties or similar levies. In general terms, where shares of a corporation derive their value primarily (directly or indirectly) from land in Canada and are being disposed of by a non-resident of Canada, a notification and withholding regime (the "116 System") applies to require (1) the seller to notify the CRA within 10 days of the sale, and (2) the buyer to withhold and remit 25 of the purchase price to the CRA as a pre-payment of the seller's tax liability (if any). This withholding obligation is a pre-payment towards the seller's capital gain tax liability (if any), rather than a separate tax. See "Canada's Section 116 System for Nonresident Vendors of Taxable Canadian Property", Tax Notes International, April 2012.

g. Share Purchase Advantages

i Capital gains treatment for sellers

As noted above, sellers typically prefer to sell shares rather than assets, as share sales generally yield capital gains only 50 of which are included in income, which can be offset with capital losses, and on which non-residents of Canada are generally exempt from Canadian tax.

ii Cost basis step-up

Where a Canadian corporation (Parent) acquires all shares of another Canadian corporation (Target) and then merges or liquidates Target up into itself, Parent is often permitted to step up the cost basis of any non-depreciable capital property it thereby acquires from Target. This cost basis step-up (the "88(1)(d) bump") is frequently used by purchasers of Canadian target companies. There are several technical constraints on this cost basis step-up, but it is a very valuable provision for foreign purchasers of Canadian corporations (where Target owns foreign subsidiaries). See "Canada's 88(1)(d) Tax Cost Bump: A Guide for Foreign Purchasers" Tax Notes International, December, 2013.

h. Stock Purchase Disadvantages

A buyer of shares effectively inherits whatever liabilities (including tax exposures) exist in the target corporation and its subsidiaries, requiring extensive protections to be obtained in the share purchase agreement, which may prove challenging to enforce in practice.

Furthermore, where the buyer acquires property (shares), the cost basis is not depreciable. However, for an asset purchase, some or all of the property the buyer acquires, may be depreciable on an annual basis for tax purposes.

4. ASSET ACQUISITION

a. General Comments

Transfers of a business occur much more typically as share purchases of the corporation that owns the business, rather than as transfers of assets owned by the corporation. This is largely because share transfers are generally easier to effect commercially (especially where the buyer is to assume related liabilities) and more desirable from a seller tax perspective. However, in situations where a purchase of assets is preferable (e.g. the corporation owns significant assets unwanted by the buyer, or has favourable tax attributes (such as loss carryforwards) that facilitate an asset sale), this is certainly a viable course of action to take. Sales taxes, which do not apply to share purchases are important to consider on asset acquisitions. Canada's sales tax system is described below under the heading "Transfer Taxes & VAT."

b. Purchase Price Allocation

The allocation of the purchase price amongst the various assets of a business being purchased is important to both the buyer and the seller, as they usually have opposing preferences. Buyers generally prefer to allocate more towards assets the cost of which can be effectively deducted from income on a current basis (e.g. inventory, trade receivables) or over a period of years (depreciable property), and less towards non-depreciable capital property. Sellers generally prefer the opposite result, to generate capital gains rather than amounts that are fully included income (e.g. profits on inventory, recapture of previously claimed depreciation, etc.). The purchase price allocation will generally be a matter of negotiation between the parties, and Canadian tax authorities will typically respect any reasonable allocation negotiated between arm's-length parties. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 780.

c. Tax Attributes

The principal tax reason a buyer typically prefers buying assets is the opportunity to increase up to fair market value the cost basis of assets that yield deductions from income for tax purposes, such as depreciable property. "Capital cost allowance" ("CCA") is the Canadian income tax version of depreciation, applicable to most forms of capital property (including most intangibles and physical property, but not land or securities such as shares).

d. Tax Free Reorganisations

It is possible to transfer assets to a Canadian corporation in exchange for consideration that includes shares of the buyer corporation on a wholly or partially tax-deferred basis, where both parties elect to do so under s. 85(1) of the *Income Tax Act* (Canada). Essentially, this provision allows the parties to elect the seller's sale proceeds and the buyer's cost basis to be any amount between the seller's cost basis in the property and its fair market value (but not less than any cash or other non-share consideration received on the exchange).

From a sales tax perspective, the federal GST and harmonised provincial HST described below under the heading "Transfer taxes & VAT" have some exceptions potentially applicable to certain asset sales, most notably the exception under s. 167 of the *Excise Tax Act* (Canada) for the sale of all or substantially all of the assets of a business. Because not all provinces have sales taxes harmonised with the federal GST, it is important to determine where transferred assets are located, and which province's sales tax regime applies.

e. Purchase Agreement

The buyer of assets generally does not inherit whatever tax exposures exist in the seller (as opposed to the purchase of the seller itself), so the income tax elements of an asset purchase agreement ("APA") are generally much reduced than on a share purchase. Typically a buyer's income tax interest is limited to ensuring that the assets are being acquired free and clear of any tax liens or encumbrances, and that there is no withholding obligation on the buyer to remit a portion of the purchase price to the tax authorities (e.g. s. 116 withholding on a sale of taxable Canadian property by a non-resident seller). Tax provisions of an APA tend to focus more on the sales tax/VAT elements of the transaction, in terms of identifying who bears the cost and compliance obligation of sales taxes and whether any exemptions exist (e.g. the s. 167 ETA exemption described above).

f. Depreciation & Amortisation

For Canadian tax purposes, depreciable properties are grouped into different classes, with each class having its own separate rate of CCA. When a taxpayer acquires a depreciable property of a particular class, the cost of that property is added to the pool of expenditures made by the taxpayer for depreciable property of that class. Each year, the taxpayer is entitled to take as a deduction in computing income a percentage of the remaining expenditure balance in that class (the "undepreciated capital cost", or "UCC" of that class), with different percentage rates applying to different classes of property. The UCC of each class is then reduced by the amount of that year's CCA deduction taken by the taxpayer in respect of property in that class, such that CCA functions on a declining-balance basis. Most intangibles (including purchased goodwill) are included in Class 14.1, which provides for an annual deduction equal to 5 of the year-end UCC balance.

Dispositions of depreciable property also reduce the taxpayer's UCC of the relevant class of property. On a sale of depreciable property, any sale proceeds (up to the amount of the taxpayer's original cost of the property) are deducted from the UCC balance of the class to which it relates; any excess of the property's sale proceeds over its original cost is a capital gain to the taxpayer.

g. Transfer Taxes, VAT

The federal goods and services tax ("GST") is a value-added tax levied at a 5% rate on the consumption in Canada of most property and services (there are a few notable exceptions such as most financial services). GST-registered businesses that make taxable supplies of property and services in Canada must collect the applicable 5% GST on their sales and remit it to the Canada Revenue Agency ("CRA"), and may claim an "input tax credit" in respect of (essentially a refund of) any GST they themselves pay on purchases of taxable goods and services used in their business. The result is that the GST is effectively borne only by the final consumer, and for most businesses GST is largely a compliance matter, i.e collecting and remitting the tax on sales in Canada and claiming input tax credits on GST paid on business inputs. Many of the provinces have harmonised their sales taxes with the federal GST and as such receive a share of a higher combined sales tax (a harmonised sales tax or "HST") that is essentially the GST levied at a higher rate in that province, and which combines the 5% federal component and a provincial component that varies by participating province. Quebec's sales tax very closely mirrors the federal GST but is not fully harmonised (Quebec administers the GST in Quebec on behalf of the federal government). Manitoba, Saskatchewan and British Columbia levy completely separate provincial sales taxes, while Alberta and the Northern territories levy no sales tax. See "Nonresidents and Canada's VAT System", Tax Notes International, August 2012.

h. Asset Purchase Advantages

The principal advantages of an asset acquisition for the buyer include: (1) the ability to pick and choose which of the seller's assets and liabilities to acquire; (2) higher cost basis in the assets acquired; and (3) not effectively inheriting whatever tax exposures and liabilities exist within the selling entity (as would occur if the buyer simply acquired the shares of that entity).

i. Asset Purchase Disadvantages

The principal disadvantages of an asset acquisition for the buyer include: (1) the potential that the seller will demand a higher price to compensate it for what is generally less favourable seller tax treatment relative to a share purchase; (2) the need to deal with sales tax implications created by an asset sale; and (3) greater commercial/legal complexity involved in transferring assets, particularly where consents from third parties (such as the seller's creditors) are involved.

5. ACQUISITION VEHICLES

a. General Comments

The choice of which entity to use to make a share acquisition is important, as it will affect various matters such as: (1) the potential for a s. 88(1) cost-basis bump of the target corporation's non-depreciable capital property; (2) Canadian taxation of distributions out of Canada and gains on sale; and (3) Canadian tax deferral for sellers.

b. Domestic Acquisition Vehicles

It is common for foreign acquirors of Canadian corporations to use a newly created Canadian corporation as the direct purchaser of the Canadian target. The primary reason for so doing is to maximise the paid-up capital ("PUC") of the shares of the top-tier Canadian entity. PUC is an extremely valuable tax attribute for foreign investors into Canada, since: (1) a Canadian corporation can return property to its shareholders as a PUC return (i.e not a dividend) without incurring Canadian dividend withholding tax; and (2) PUC forms part of the "equity" of a Canadian corporation that determines how much cross-border non-arm's-length debt a Canadian corporation can deduct interest on under Canada's "thin capitalisation" rules (see below under "Acquisition Financing").

When a Canadian corporation issues shares of itself, the amount received by the corporation is added to the "stated capital" of that class of corporation's shares under the relevant corporate law. PUC is essentially the Canadian tax equivalent of corporate law stated capital: it starts from corporate law stated capital and is subject to certain reductions under the *Income Tax Act* (Canada). A buyer of existing shares of a Canadian corporation will have a cost basis in those shares equal to the purchase price, but their PUC will be unaffected by the transfer since no new shares were issued. For this reason, foreign acquirors typically create and capitalise a new Canadian corporation such that the PUC of its newly-issued shares (and their cost basis) equals their fair market value, and then cause that corporation to buy the shares of the Canadian target, which can then be merged up into the buyer on a tax-deferred basis. The use of a Canadian acquisition vehicle is also necessary to effect a s. 88(1)(d) cost basis step-up.

c. Foreign Acquisition Vehicle

It is relatively unusual for a foreign entity to make a direct acquisition of a Canadian target corporation, for the reasons described above. This might occur where the PUC of the shares of the Canadian target corporation exceeds their fair market value (i.e the opposite of the situation described in b., above).

Considerable variation exists in the capital gains articles of Canada's tax treaties, in terms of when Canada is permitted to tax capital gains realised by non-residents. For this reason, foreign acquirors should generally consider carefully where the direct shareholder of the top-tier Canadian should be fiscally resident (subject of course to treaty-shopping constraints).

d. Partnerships and Joint Ventures

The general aspects of partnerships are as described above under the heading "Introduction." They are most typically used in a cross-border context in situations where the Canadian-source income being earned can be repatriated from Canada with only one level of Canadian taxation, as opposed to using a Canadian corporation which itself pays tax on the income earned and then bears Canadian interest or dividend withholding tax when it distributes the net profits out of Canada. Private equity investors often use partnerships for this reason. They are also advantageous in situations where considerable flexibility is required, since partnerships are generally governed only by the terms of the partnership agreement agreed to amongst the parties.

e. Strategic vs Private Equity Buyers

Private equity ("PE") buyers typically have a shorter time horizon for investing than strategic purchasers, so they will be often be more concerned about taking steps to minimise or eliminate the incidence of Canadian capital gains tax on an ultimate sale of the purchased shares (e.g. ensuring that the shares do not constitute "taxable Canadian property" under Canadian domestic law; structuring to seek tax treaty relief on gains, etc.). PE buyers may also have to deal with the tax preferences of multiple different investors in various jurisdictions, which may not be the same (i.e because they may be investing from different countries).

Strategic purchasers will often have to deal with anti-trust / competition law concerns that other buyers do not, potentially including a requirement to divest some of the Canadian target's property immediately post-acquisition to satisfy regulatory constraints. Such purchasers will be especially concerned with minimising the accrued gains on property to be sold, either through agreements with the seller for pre-acquisition use of target tax attributes, ensuring that the transaction qualifies for the s. 88(1) bump, or otherwise.

6. ACQUISITION FINANCING

a. General Comments

Canada has a direct tracing interest deductibility rule (interest on borrowed money used for an income-earning purpose is deductible) and no group tax regime, so it is important to structure the financing of any Canadian share acquisition at the outset. The use of borrowed funds to acquire shares of a corporation that have some (if not immediate) possibility of producing dividend income will generally satisfy the required income-earning purpose test under Canadian interest deductibility rules.

b. Equity

As noted above with reference to domestic acquisition vehicles, paid-up capital (PUC) is an extremely important tax attribute for non-resident acquirors of Canadian companies, because: (1) PUC represents the ability to repatriate property from Canada without incurring dividend withholding tax; and (2) PUC is a key component of "equity" in the 1.5:1 debt/equity limit in Canada's "thin capitalisation" interest deductibility rules. Because PUC is created where new shares are issued but not when shares are merely transferred from one holder to another, it is very common for foreign acquirors to create a new Canadian corporation to act as the direct purchaser, capitalise it with some or all of the purchase price (thereby creating a corresponding amount of PUC in the newly-issued shares), have it purchase the Canadian target, and then merge with that Canadian target immediately post-closing. This strategy usually maximises the cross-border PUC of the resulting Canadian corporation.

c. **Debt**

Canadian buyers typically have no tax constraints on the use of debt to finance a share purchase. Conversely, foreign purchasers will generally have to consider both Canadian interest withholding tax and Canada's thin capitalisation rules. Canada imposes interest withholding tax on interest paid to non-resident lenders: (1) who deal non-arm's-length with the debtor; or (2) who are paid participating interest (interest computed by reference to profits, etc.). Hence, debt owing to a non-resident parent or sister corporation will generally attract Canadian interest withholding tax (subject to any tax treaty relief).

Canada's thin capitalisation rules limit the extent to which a Canadian corporation can deduct interest expense on debt owing to a non-resident who is either a 25+ shareholder (by votes or value) or someone not dealing at arm's length with such a shareholder. If the amount owing by the Canadian corporation exceeds 150 of the corporation's "equity" for the year (basically the sum of start-of-year retained earnings plus the PUC of all shares owned by non-resident 25+ shareholders), interest on the excess amount is non-deductible for Canadian tax purposes and treated as a dividend for withholding tax purposes. Thus, $100 of equity supports interest deductibility on $150 of cross-border non-arm's-length debt. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 787.

As noted above no consolidation regime exists in Canada, so it is typical to merge a debt-financed Canadian buyer corporation with the Canadian target immediately post-closing, in order to put the deductible interest expense in the same entity as the target's operating income so that one can be applied against the other. Where this cannot be accomplished for some reason, it is usually possible to effect a back-to-back debt restructuring to achieve comparable results.

d. **Hybrid Instruments**

Canadian tax law essentially acts as an overlay on top of the relevant corporate/commercial law, such that an instrument treated as debt under debtor/creditor law will also be treated as debt for tax purposes. As such, from a domestic law perspective, there are no hybrid instruments. On a cross-border basis, there are structures used (both in-bound and outbound) that focus on differences in Canadian and foreign tax laws (in particular U.S. tax laws, which include "check the box" election provisions), although these are coming under increasing scrutiny by Canadian tax authorities and so should therefore be used with caution.

e. **Other Instruments**

This section is left intentionally blank.

f. **Earn-outs**

Where some or all of the sale price is variable and computed with reference to post-closing profits, asset values, etc., this type of arrangement (an "earn-out") can result in the seller being deemed to receive all such amounts as regular income instead of capital gains (only 50 of which is included in income, and which can be offset by capital losses). Two potential exceptions to this rule may apply if the transaction is structured appropriately:

- where shares are being sold to an arm's-length buyer and the earn-out relates to underlying goodwill and is completed within 5 years, the seller may be permitted to use the "cost recovery" method such that no capital gain is realised until determination of the sale price is completed; and
- on a "reverse earn-out", the sale price is expressed as a maximum subject to reductions if reasonable conditions regarding future earnings are not met.

See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015 at p. 783.

7. DIVESTITURES

a. Tax Free

Canadian individual shareholders who dispose of shares of a "qualified small business corporation" can realise up to roughly Cdn.$1 million of capital gains on a tax-free (lifetime) basis. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015 at p. 794. As noted above, Canada's tax rules allow for a tax-deferred rollover on certain exchanges of property in exchange for consideration that includes shares of a Canadian corporation that is the buyer.

b. Taxable

Profits from the disposition of shares are generally treated as capital gains, 50 of which are included in the seller's income and subject to tax at normal rates. A seller with available losses (capital or non-capital) may apply these to reduce or eliminate the amount of the capital gain otherwise added to income. In some cases, it may be advantageous for a seller to realise a pre-sale dividend from the corporation whose shares are being sold, and/or to claim a reserve on a portion of the sale price that is payable in a later year. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015 at p. 793.

c. Cross Border

As noted above, non-residents are generally taxable under Canadian domestic law on gains from the disposition of shares only where those shares have, at any time in the previous 5 years, derived their value primarily from Canadian real property. Where the shares in question are listed on a designated stock exchange, the holder (together with non-arm's-length persons) must have held 25% or more of any class of the issuer's shares at any time during the preceding 5 years for Canada to tax the gain. As noted, where shares of a corporation derive their value primarily (directly or indirectly) from land in Canada and are being disposed of by a non-resident of Canada, the 116 System applies to require: (1) the seller to notify the CRA within 10 days of the sale; and (2) the buyer to withhold and remit 25% of the purchase price to the CRA as a pre-payment of the seller's tax liability (if any). This withholding obligation is a pre-payment towards the seller's capital gain tax liability (if any), rather than a separate tax.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Canada taxes its residents on their worldwide income, while non-residents of Canada are taxed on various forms of Canadian-source income.

b. CFC Regime

In most cases it is advantageous for a Canadian corporation to carry on business outside Canada through a separate corporation that is not resident in Canada for tax purposes (i.e a foreign subsidiary), rather than directly. Canada's rules for taxing income earned by foreign subsidiaries of Canadian corporations may be described at a very general level as follows:

The FAPI System: An anti-deferral regime applies to passive income ("foreign accrual property income" or "FAPI") earned by a foreign corporation in which a Canadian resident is a direct or indirect shareholder and which is controlled by the Canadian resident (itself or by non-arm's-length persons). FAPI earned by such a corporation (a "controlled foreign affiliate") is treated as if it had been earned by the Canadian taxpayer, such that Canadian tax applies immediately whether or not such income is actually distributed to the Canadian taxpayer.

The Surplus System: Canada has a separate set of rules dealing with how to tax distributions made to a Canadian resident corporation by one of its "foreign affiliates" ("FAs") — essentially foreign corporations in which the Canadian has at least a 10% direct or indirect interest. The surplus rules either exempt the distributions from Canadian tax (in the case of dividends from the FA's "exempt surplus", being active business income earned in a country with which Canada has a tax treaty or tax information exchange agreement) or provide appropriate recognition for the foreign tax that the FA's income has borne.

c. Foreign Branches and Partnerships

If a Canadian corporation does operate directly in a foreign country (including through a partnership), Canada will tax the Canadian corporation on foreign income earned, subject to any relief provided under a tax treaty between Canada and that country. Canada will typically offer a foreign tax credit for foreign income or profits taxes paid on foreign-source income, reducing Canadian tax owing by the amount of foreign taxes paid on the same foreign income.

d. Cash Repatriation

Dividends received from a foreign corporation are included in the income of any recipient that is a Canadian resident. If the recipient is a Canadian corporation in respect of which the dividend payer is a "foreign affiliate" (i.e 10% ownership threshold), then the Canadian corporation may be entitled to deduct some or all of the amount included in income, depending on which of various "surplus" accounts maintained by the taxpayer in respect of its foreign affiliates the dividend is deemed attributable to. As noted above, a dividend received by a Canadian corporation from the exempt surplus of a foreign affiliate is received entirely tax free due to a 100% dividends-received deduction. A dividend from the foreign affiliate's "pre-acquisition surplus" is also received tax-free but reduces the Canadian corporation's cost basis in the shares of the foreign affiliate. Dividends attributable to the "taxable surplus" or "hybrid surplus" of the foreign affiliate will be received with a partial deduction in computing taxable income.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

These are described above under the heading "Share Acquisition – General Comments".

b. CbC and Other Reporting Regimes

Canada has a country-by-country reporting regime, created as part of the OECD Global forum on tax transparency. Ultimate parent entities ("UPEs") of multinational enterprise groups ("MNEs") with more than Euro750 million in consolidated group revenue in the immediately preceding tax year must file a country-by-country report (due 12 months from the last day of the taxation year). Under these rules, a Canadian member of a MNE group that is not the UPE is required to file a CbC report in various circumstances described in greater detail here: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4651.html

10. TRANSFER PRICING

Canada's transfer pricing rules apply to transactions between Canadian taxpayers and non-arm's-length non-residents. The statutory rules themselves are simply stated, and require the taxpayer's transactions with non-arm's-length non-residents to correspond to what would occur between similarly-situated arm's-length parties. Essentially these require Canadians to pay no more than, or receive no less than, what an arm's length person would pay for goods or services received from, or provided to, the same counterparty. In situations where the taxpayer's transactions do not meet a "commercial rationality" standard, the CRA is entitled to go beyond merely adjusting the terms and conditions of the actual transactions to meet the arm's-length standard, and can instead determine the taxable income that would arise from whatever transactions arm's-length parties would have entered into. Penalties apply where transfer pricing adjustments exceed certain thresholds if the taxpayer has not made reasonable efforts to determine and use arm's-length transfer prices, and taxpayers who do not prepare and (when requested) provide contemporaneous transfer pricing documentation that meets certain statutory requirements are *deemed* not to have made such reasonable efforts. The Canada Revenue Agency applies the OECD Transfer Pricing Guidelines (including the 2017 amendments) in enforcing Canada's transfer pricing rules, but Canadian courts have taken the position that such guidelines are not the law in Canada and cannot prevail over the domestic statute.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As noted elsewhere, Canadian tax law classifies and treats entities based on their corporate/commercial law characteristics. Therefore, there is no Canadian tax law concept of a hybrid entity. U.S. taxpayers using entities such as unlimited liability companies that are treated as corporations for Canadian tax purposes and partnerships that are transparent for Canadian tax purposes should review Article IV(7) of the Canada-U.S. tax treaty for specific anti-hybrid rules in that treaty, which may apply in situations where the U.S. tax characterisation of such entities differs from their Canadian characterisation.

Non-residents should also be aware that the CRA's administrative position is that U.S. LLCs cannot claim benefits under the Canada-U.S. tax treaty except as permitted by Article IV(6) of that treaty, which essentially allows U.S. residents (but not residents of third countries) to claim treaty benefits "through" the LLC.

b. Use of Hybrid Instruments

As noted elsewhere, Canadian tax treatment of instruments is based on, and generally does not differ from, its legal classification for corporate/securities law purposes, meaning that it is generally not possible to arbitrage tax and commercial law differences in Canada.

c. Principal/Limited Risk Distribution or Similar Structures

It is possible to structure Canadian business operations within the limited risk distribution model, so long as the parties are prepared to, live with and abide by, the commercial and legal constraints that this entails. Canadian tax authorities will carefully review the parties' legal documentation to ensure that its terms correspond with the parties' actual practice. Since Canadian tax authorities aggressively enforce Canada's transfer pricing rules (including the OECD Transfer Pricing Guidelines, which courts have stated are not the law in Canada), it is important that considerable effort go into (determining and contemporaneously) documenting transfer pricing of all transactions between the Canadian entity and non-arm's length non-residents in a way that complies with Canada's transfer pricing rules on contemporaneous documentation.

CANADA

d. Intellectual Property

Intellectual property is generally treated as depreciable property for purposes of Canada's tax depreciation regime, and most typically falls into Class 14.1 (5 annual deduction on a declining balance basis) or Class 44 (generally a 25 annual deduction on a declining balance basis).

e. Special Tax Regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

Canada has ratified the Multilateral Instrument or "MLI" arising from the OECD's BEPS Project, with the result that approximately 80 of Canada's bilateral tax treaties will be affected (but not the Canada-U.S. tax treaty). The key standards adopted relate to treaty abuse, including the prevention of such abuse through the application of a principal purpose test, and also a dispute resolution process through mandatory binding arbitration.

In addition, Canada has accepted the following optional provisions:

- The treaty-based rate of withholding tax on dividends received by corporate shareholders who hold a significant interest in the Canadian dividend payer will only be available if the non-Canadian resident recipient satisfies a 365-day holding period of the shares of that Canadian company.
- A 365-day look-back period for non-residents who realise capital gains on the disposition of shares or other interests that derived their value from Canadian immovable property, before such gain could become exempt from Canadian taxation under the relevant treaty.
- The MLI provision for resolving dual-resident entity cases.

13. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Canadian corporate law generally provides for a corporation to make distributions on its shares as either dividends or as a return of capital. There is generally no requirement that a corporation have retained earnings or some similar surplus to pay a dividend or return capital, although most statutes require that the distribution not result in the corporation being unable to repay its liabilities.

The tax character of a distribution generally follows from its corporate law character, *viz.,* a dividend for corporate law purposes will generally be treated as a dividend for tax purposes as well (there is no U.S.-style "earnings and profits" concept). There are some circumstances where a return of capital made by a corporation will be treated as a dividend for tax purposes, most notably to the extent that the amount distributed on the return of capital exceeds the "paid-up capital" (PUC) of the shares on which the distribution is made. As noted above, since a Canadian corporation can distribute amounts to shareholders as a return of PUC without triggering non-resident dividend withholding tax, foreign investors are particularly attuned to maximising the PUC of any shares they acquire when investing in Canada.

b. Substance Requirements for Recipients

Canadian tax applies on the basis who the beneficial owner of property is, rather than who the holder of mere legal title is. The beneficial owner of property is generally considered to be the entity who enjoys possession and use of, and control over, the property in question, and who bears the risks and benefits of ownership. Agents, nominees and legal titleholders are generally ignored for Canadian tax purposes.

c. Application of Regional Rules

This section is left intentionally blank.

d. Tax Rulings and Clearances

Parties may, but are not obliged to, seek an advance tax ruling from income tax authorities in respect of particular issues. This can be a time-consuming process (generally 6 months or more, depending on the complexity of the transaction), and requires complete disclosure of all relevant facts to the tax authorities. Because of the time and effort involved, in most cases the parties proceed without an advance tax ruling, and instead rely on the advice of counsel as to the likely tax implications of the transaction.

14. MAJOR NON TAX CONSIDERATIONS

a. Corporate/Securities Laws

When acquiring shares of a corporation that are widely held or otherwise subject to securities laws, there are various restrictions on the way the target corporation must conduct discussions with a potential buyer and communicate with shareholders and regulators. Buyers are also subject to constraints on acquiring target securities without filing formal notification with regulators and on formally launching takeover bids to the target entity's shareholders. See "Mergers and Acquisitions in Canada" https://blg.com/en/News-And-Publications/Documents/Mergers-and-Acquisitions-in-Canada.pdf

b. Competition/Anti-Trust Laws

Canada's *Competition Act* requires pre-acquisition notification to the Competition Bureau where the parties' assets and/or revenues exceed certain prescribed dollar thresholds. The Bureau may challenge transactions that are likely to prevent or lessen competition materially in a market in Canada. The *Investment Canada Act* potentially applies where a foreign investor proposes to acquire a Canadian business (directly or indirectly) and the transaction exceeds certain dollar thresholds. The acquisition of culturally-sensitive businesses or those involving national security interests are particularly subject to scrutiny. In both cases obtaining the approval of regulators can be a lengthy and time-consuming process, and so advice in these areas should be sought early in the process. See "Mergers and Acquisitions in Canada" https://blg.com/en/News-And-Publications/Documents/Mergers-and-Acquisitions-in-Canada.pdf

CANADA

15. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Algeria	15	15 / 0	15 / 0	[4]
Argentina	10 / 15	12.5 / 0	3 / 5 / 10 / 15	[14]
Armenia	5 / 15	10 / 0	10	
Australia	5 / 10 / 15	10	10	[5] [29]
Austria	5 / 15	10 / 0	10 /0	[3]
Azerbaijan	10 / 15	10 / 0	5 / 10	[15]
Bangladesh	15	15 / 0	10	
Barbados	15	15 / 0	10 / 0	[21]
Belgium	5 / 15	10 / 0	10 /0	[3] [6]
Brazil	15	10 / 15 / 0	25 / 15	[5] [8] [16]
Bulgaria	10 / 15	10 / 0	10 / 0	[21]
Cameroon	15 / 20	15 / 20	15 / 20	[9] [17] [29]
Chile	10 / 15	15	15	
China (PRC)	10 / 15	10 / 0	10	[5]
Colombia	5 / 15	10	10	
Croatia	5 / 15	10	10	
Cyprus	15	15	10 / 0	
Czech Republic	5 / 15	10	10	
Denmark	5 / 10 / 15	10	10 / 0	[3]
Dominican Republic	18	18	18	
Ecuador	5 / 15	15	10 / 15	[18]
Egypt	15 / 20	15	15	
Estonia	5 / 15	10	10 / 0	[3]
Finland	5 / 15	10	10 / 0	[3]
France	5 / 10 / 15	10	10 / 0	[20]
Gabon	15	10	10	
Germany	5 / 15	10	10 / 0	[3][5]
Greece	5 / 15	10	10 / 0	[21]

CANADA

Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Guyana	15	15 / 25	10	[9] [31]
Hong Kong	5 / 15	10	10	[7]
Hungary	5 / 15	10	10 / 0	[21]
Iceland	5 / 15	10	10 / 0	[3] [29]
India	15 / 25	15	10 / 15 / 20	[19]
Indonesia	10 / 15	10	10	
Ireland	5 / 15	10	10 / 0	[3]
Israel	5 / 15	10	10 / 0	[3] [7]
Italy	5 / 15	10	5 / 10 / 0	[15] [21]
Jamaica	15 / 22.5	15	10	
Japan	5 / 15	10	10	
Jordan	10 / 15	10	10	
Kazakhstan	5 / 15	10	10	
Kenya	15 / 25	15	15	
Korea	5 / 15	10	10	
Kuwait	5 / 15	10	10	
Kyrgyzstan	15	15	10 / 0	[3]
Latvia	5 / 15	10	10	
Lebanon	5 / 15	10	5 / 10	[3] [6]
Lithuania	5 / 15	10	10	
Luxembourg	5 / 10 / 15	10	10 / 0	[3]
Madagascar	5 / 15	10	5 / 10	[3]
Malaysia	15	15	15	[5]
Malta	15 / *	15	10 / 0	[21][29]
Mexico	5 / 15	10	10 / 0	[7][21]
Moldova	5 / 15	10	10	
Mongolia	5 / 15	10	5 / 10	[3]
Morocco	15	15	5 / 10	[21]
Namibia	5 / 15	10	10 / 0	[6]

CANADA

Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Netherlands	5 / 10 / 15	10	10 / 0	[3][5]
New Zealand	5 / 15	10	5 / 10	[3] [7]
Nigeria	12.5 / 15	12.5	12.5	
Norway	5 / 15	10	10 / 0	[3]
Oman	5 / 15	10	10 / 0	[3] [7]
Pakistan	15 / 20	15 / 25	15 / 20 / 0	[3] [9] [10] [22]
Papua New Guinea	15 / 25	10	10	[29]
Peru	10 / 15	15	15	
Philippines	15 / 25	15	10 / 25	[23][29]
Poland	5 / 15	10	5 / 10	
Portugal	10 / 15	10	10	
Republic of the Ivory Coast	18 / 15	15	10	[30]
Romania	5 / 15	10	5 /10	[3]
Russia	10 / 15	10	10 / 0	[3]
San Marino				[5]
Senegal	16 / 15	20 / 16 / 15	15	[12] [29]
Serbia	5 / 15	10	10	
Singapore	15	15	15	
Slovak Republic	5 / 15	10	10 / 0	[21]
Slovenia	5 / 15	10	10	
South Africa	5 / 15	10	6 / 10	[3]
Spain	5 / 15	10	10 / 0	[21]
Sri Lanka	15	15	10 / 0	[21] [24] [27] [28]
Sweden	5 / 10 / 15	10	10 / 0	[3]
Switzerland	5 / 15	10	10 / 0	[3] [5]
Taiwan	10 / 15	10	10	[7]
Tanzania	20 / 25	15	20	[25]
Thailand	15 / 20	10 / 15 / 25	15 / 5	[13]
Trinidad and Tobago	5 / 15	10	10 / 0	[21]

CANADA

Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Tunisia	15	15	15 / 20 / 0	[21] [32]
Turkey	15 / 20	15	10	
Ukraine	5 / 15	10	10 / 0	[33]
United Arab Emirates	5 / 10 / 15	10	10 / 0	[3]
United Kingdom	5 / 15	10	10 / 0	[7] [21]
United States	5 / 15	0	10 / 0	[3] [11]
Uzbekistan	5 / 15	10	5 / 10	[3]
Venezuela	10 / 15	10	5 / 10	[3]
Vietnam	5 / 10 / 15	10	7.5 / 10	[26]
Zambia	15	15	15	
Zimbabwe	10 / 15 / 20	15	10	

CANADA

Footnotes	
1	Dividends - For the vast majority of Canada's tax treaties, the reduced treaty rate applies where the beneficial owner of the dividends is a company which meets a specified ownership requirement with regards to the company paying the dividends. Note that in some case, the beneficial owner must be a company other than a partnership. In other cases, the reduced rate will only apply where the ownership requirement is met and the company paying the dividends is not a non-resident owned investment corporation resident in Canada.
2	Branch Tax - Many of Canada's tax treaties contains certain limits on Canadian branch tax.
3	Royalties - The reduced rate applies to • copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting); and • royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement). Note that is some cases, the 0 rate will only apply where the payer and the beneficial owner of the royalties are not related parties."
4	Royalties - The 0 rate applies to royalties for the use of, or right to use, computer software or any patent (but not including information provided in connection with a rental or franchise agreement).
5	Under Negotiation/Re-Negotiation - This treaty is designated by the Canadian government as currently being negotiated or re-negotiated.
6	Signed but not yet in force - This treaty is designated by the Canadian government as signed but not yet in force.
7	Principal Purpose Test - The Principal Purpose Test will apply to deny access to certain treaty benefits where the principal purpose of a transaction or structure was to gain treaty benefits.
8	Interest - The 10 rate applies where the interest is arising in Brazil and paid to a resident of Canada in respect of a loan guaranteed or insured by the Export Development of Canada for a minimum period of 7 years.
9	Interest - The rates applied depend on the state in which the interest arises.
10	Dividends - The 15 rate applies where company paying the dividends is resident of Canada, and where the company paying the dividends is resident of Pakistan and the recipient is a company which is a resident of Canada and which owns 25 or more of the share capital of the first-mentioned company, the tax charged in Pakistan on such dividends shall not exceed • 15% of the gross amount of the dividends where the first-mentioned company is engaged in an industrial undertaking; and • 20% of the gross amount of the dividends in all other cases."
11	Exempt Entities - This treaty exempts certain entities such as pension and retirement plans and certain investment funds.
12	Interest - The 20% rate applies to the gross amount of the interest on "bons de caisse" interest arising in Senegal, the 16 rate applies to all other interest arising in Senegal, and the 15% rate applies to interest arising in Canada.
13	Interest - The 15% rate applies to interest arising in Canada; the 10 rate applies to interest arising in Thailand where the interest is received by any financial institution (including an insurance company); and the 25 rate applies to all other interest arising in Thailand.

CANADA

Footnotes	
14	Royalties - The applicable rates are: 3 of the gross amount paid for the use of, or the right to use, news; 5 of the gross amount paid for the use of, or the right to use, copyright of literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and work on film or videotape or other means of reproduction for use in connection with television); 10 of the gross amount paid for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial or scientific equipment, or for information concerning industrial or scientific experience, and includes payments for the rendering of technical assistance; and 15 of the gross amount of the royalties in all other cases.
15	Royalties - The reduced rate applies where the royalties are for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).
16	Royalties - The 25% rate applies to royalties arising from the use of, or right to use, trademarks.
17	Royalties - The 15% rate applies where the royalties arose in Canada and the 20% rate applies where the royalties arose in Cameroon.
18	Royalties - The 10% rate applies where the royalties are for the use of, or the right to use, industrial, commercial, or scientific equipment.
19	Royalties - The 15% rate applies where the royalties are for the payment of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof and the 10 rate applies where the royalties are for the payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.
20	Royalties - The 0% rate applies to: - copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), - royalties for the use of, or the right to use, computer software, - royalties for the use of, or the right to use, any patent or for information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement); or - royalties related to cultural motion picture fils (a) paid to a resident of France in respect of French films which meet the requirements of Article 13 of Decree 59-1512 dated 30 December 1959 and which are included in the list of films referred to in Article 2 of Decree 71-46 dated 6 January 1971 which is used by the Art and Experimental Motion Picture Theatre Classification Board (Commission de classement des théâtres cinématographiques d'art et d'essai) provided for in Article 4 of Decree 71-46; (b) paid to a resident of Canada in respect of films wholly or principally directed and produced in Canada and which are included in the list of films prepared by the Canadian Committee of selection that the Bureau of Film Festivals is authorized to convene under Order-in-Council PC 1975-2883 dated 11 December 1975."

CANADA

Footnotes	
21	Royalties - The reduced rate applies to copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television).
22	Royalties -The 20% rate of applies to royalties arising in Pakistan for the payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment and includes payments of any kind in respect of motion picture films and works on film or videotape for use in connection with television; the 15% rate applies to royalties arising in Pakistan for the payments received as consideration for technical know how or information concerning industrial, commercial or scientific experience and all royalties arising in Canada.
23	Royalties - The 10% rate applies to royalties arising in Canada, and where the royalties arise in the Philippines, the tax shall not exceed the lesser of (a) 25% of the gross amount of the royalties, and (b) the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid in similar circumstances to a resident of a third State.
24	Royalties - The 10% rate applies to royalties arising in Canada and royalties arising in Sri Lanka in respect of any contract for new technology.
25	Royalties - The 20% rate applies to patent royalties and royalties for the use or the right to use trade marks, motion picture films and films or videotapes for use in connection with television, or for the use of, or the right to use, industrial, commercial, scientific or harbour equipment.
26	Royalties - The 10% rate applies to royalties and the 7.5% rate applies to fees for technical services.
27	Interest - The 15% rate applies to interest arising in Canada and interest arising in Sri Lanka in respect of any debt-claim, bond, debenture or other security arising from money received from abroad.
28	Dividends - The reduced rate applies to all dividends arising in Canada and to dividends arising in Sri Lanka paid in respect of any shares or other rights representing capital contributed from abroad to the company paying the dividends.
29	Dividends - The reduced rates apply depending on the residency of the company paying the dividends.
30	Dividends - The 18% rate applies where the dividends are paid by a company which is a resident of the Ivory Coast and which is exempt from tax on profits or which does not pay tax on the rate provided under general law.
31	Dividends - The 15% rate is applied to the gross amount of the dividend in the case of Canada and to the amount of the dividend actually distributed in the case of Guyana.
32	Royalties - The 20% rate applies to the gross amount of patent royalties and royalties for the use or the right to use trade marks, motion picture films and films or videotapes for use in connection with television, or for the use of, or the right to use, industrial, commercial, scientific or harbour equipment.
33	Royalties - The 0% rate applies to royalties for the use of, or the right to use, computer software.
For copies of all of the currently in force treaties, visit: https://www.fin.gc.ca/treaties-conventions/in_force--eng.asp For the current status of tax treaty negotiations, visit:https://www.fin.gc.ca/treaties-conventions/treatystatus_-eng.asp	

16. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The following is a Canadian tax due diligence document request list for each of CANADIAN COMPANIES (collectively referred herein as the "Company" or "Target"). Unless otherwise noted, all information is requested for the open tax years, which is usually the last four years, and most recent interim period.

Note that this is not an all-inclusive list as we may be requesting additional items as our diligence progresses.

Category	Sub-Category	Priority	Status	Question / Request
Tax Due Diligence	Canadian Tax	Medium	Open	Please include a full history of the Target in the structure.
Tax Due Diligence	Canadian Tax	High	Open	Copies of all Canadian federal and provincial income tax returns for the past four tax years.
Tax Due Diligence	Canadian Tax	High	Open	Copies of the following in Canadian dollars for the last 4 taxation years: (1) unconsolidated financial statements, including note disclosures (2) unconsolidated trial balances.
Tax Due Diligence	Canadian Tax	High	Open	Details of any income tax audits, reassessments, liens, disputes, objections and appeals (at all levels of government, Canadian or foreign).
Tax Due Diligence	Canadian Tax	High	Open	Copies of all assessments and reassessments (at all levels of government, Canadian or foreign) for last 4 years in respect of income taxes.
Tax Due Diligence	Canadian Tax	High	Open	Details of any intercompany or related party transactions during the last 4 years, including intercompany financing arrangements, loans or indebtedness, and inter-company service fees (including the specific nature of the service fees), and copies of T106 tax forms.
Tax Due Diligence	Canadian Tax	High	Open	Copies of transfer pricing reports and transfer pricing policies.
Tax Due Diligence	Canadian Tax	High	Open	Copies of GST, HST, Quebec Sales Tax ("QST") and provincial sales tax ("PST") filings for the entirety of the prior fiscal year, as well as tax authority correspondence (including notices of assessment, reassessment and statements of account).
Tax Due Diligence	Canadian Tax	High	Open	Details of any GST, HST, QST and PST audits, reassessments, liens, disputes, objections and appeals.
Tax Due Diligence	Canadian Tax	High	Open	In respect of the 2018 calendar year, copies of statements of account, T4 Summaries, RL-1 Summaries and notices of assessment or reassessment regarding withholding for employee federal and provincial income tax, CPP, employment insurance contributions, employee health tax and similar provincial plans ("payroll").
Tax Due Diligence	Canadian Tax	High	Open	Details of any payroll audits, reassessments, liens, disputes, objections and appeals.

CANADA

Category	Sub-Category	Priority	Status	Question / Request
Tax Due Diligence	Canadian Tax	Medium	Open	Description of types and quantum of payments made to individual independent contractors within the past 4 years, or confirmation that none have been made. Explanation of how a person may be considered an employee or an independent contractor (if applicable).
Tax Due Diligence	Canadian Tax	High	Open	Details regarding Regulation 102 and Regulation 105 withholdings in respect of non-residents performing services as employees or of independent contractors in Canada.
Tax Due Diligence	Canadian Tax	Medium	Open	Please provide copies of the Canadian tax provision working papers for the past 2 years.
Tax Due Diligence	Canadian Tax	High	Open	Copies of all tax planning memos prepared internally and by external tax advisors during the past 4 years.
Tax Due Diligence	Canadian Tax	High	Open	Copies of all NR4 and T5 summaries and slips issued during the past 4 years.

CANADA

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