

Canada

Transfer Pricing Country Profile

Updated October 2017

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 247 of the Income Tax Act, RSC 1985, c 1 (5th Supp) (ITA); Information Circular 87-2R International Transfer Pricing; All of Canada's publically available policies and information can be obtained on our external website https://www.canada.ca TPM-14 2010 Update of the OECD Transfer Pricing Guidelines.
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Canada as a member of the OECD endorses the OECD Transfer Pricing Guidelines (TPG). The TPG provide guidance but are not law in Canada. This distinction was mentioned in a Supreme Court of Canada decision (Canada v GlaxoSmithKline Inc., 2012 SCC 52).	Supreme Court of Canada decision (Canada v GlaxoSmithKline Inc., 2012 SCC 52). https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12613/index.do
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Sub-section 251(2) of the ITA defines related persons. Paragraph 251(1)(a) deems related persons not to deal with each other at arm's length. This is the case regardless of how they actually conduct their mutual business transactions. According to paragraph 251(2)(a) of the ITA, individuals connected by blood relationship, marriage, common-law partnership or adoption are related persons. Under paragraph 251(2)(b) of the ITA, a corporation will be related to another	Paragraph 251(1)(a) of the ITA Sub-section 251(2) of the ITA Income Tax Folio S1-F5-C1, Related Persons and Dealing at Arm's Length provides further information

person (including another corporation) where:

- (a) that person controls the corporation;
- (b) that person is a member of a related group that controls the corporation; or
- (c) that person is a person who is related to a person described in (a) or (b) above.

In addition, paragraph 251(2)(c) provides that two corporations will be related if:

- (i) the two corporations are controlled by the same person or group of persons;
- (ii) each of the corporations is controlled by one person and the person who controls one corporation is related to the person who controls the other corporation;
- (iii) 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;
- (iv) 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;
- (v) 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
- (vi) 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.

Transfer Pricing Methods

4 **Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?**

- Yes
- No

If affirmative, please check those provided for in your legislation:

CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 our endorsement of the TPG and specifically allows the OECD recommended methods.

Information Circular 87-2R and TPM-14 2010 Update of the OECD Transfer Pricing Guidelines

5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	Please check all that apply: <input checked="" type="checkbox"/> Hierarchy of methods <input checked="" type="checkbox"/> Most appropriate method <input type="checkbox"/> Other (<i>if so, please explain</i>) Canada's published domestic administrative guidance reflects the guidance provided in Chapter II of the TPG. 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 method should be used. Where more than one method can be applied in an equally reliable manner the natural hierarchy prevails.	Information Circular 87-2R and TPM-14 2010 Update of the OECD Transfer Pricing Guidelines
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed. <input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>) <input type="checkbox"/> Other (<i>if so, please explain</i>) Canada's legislation does not provide specific guidance on commodity transactions.	N/A
Comparability Analysis			
7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Canada endorses the guidance provided in the TPG. Canada's published domestic administrative guidance which provides further information.	TPM-14 2010 Update of the OECD Transfer Pricing Guidelines
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Canada's legislation allows the Minister to use all information in her possession for the purposes of the administration and enforcement of the ITA. However, from an administrative perspective, the use of secret comparables as the basis for an assessment is an approach of last resort.	TPM-04, Third Party Information

10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	TPM-16, Role of Multiple Year Data in Transfer Pricing Analyses
<p>Canada's legislation does not mention ranges or statistical tools. Canada's published domestic administrative guidance allows the use of arm's length ranges but instructs taxpayers not to use interquartile ranges or multiple-year averages to determine arm's length prices. The averaging of historical outcomes of comparable transactions over multiple years may provide information relevant in an advance pricing arrangement (APA) context. Nonetheless, even in this context transfer prices used will be verified on a year-by-year basis.</p>			
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Information Circular 87-2R and TPM-14 2010 Update of the OECD Transfer Pricing Guidelines
<p>There is no such specific requirement in Canadian legislation. Canada's published domestic administrative guidance indicates that comparability adjustments must be made where appropriate provided that they can be done on a reliable basis.</p>			
Intangible Property			
12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>All pricing of controlled transactions involving intangibles would generally be covered by Canada's Transfer Pricing Legislation contained in Section 247 of the ITA.</p>			
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<p>There are a wide number of elements of Canada's income tax legislation and regulations that address the domestic tax treatment of intangibles and assets in general.</p>			

Intra-group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	TPM-15 Intra-group services and section 247 of the Income Tax Act
		Canada's domestic legislation or regulations do not provide guidance specific to intra-group services. However, Canada's administrative policy provides guidance with respect to such issues.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
		There are a wide number of elements of Canada's income tax legislation and regulations that address the domestic tax treatment of expenses in general and would apply to expenses in relation to services in a general sense.	

Cost Contribution Agreements

18	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Section 247 of the ITA Information Circular 87-2R (Part 4)
		The determination of whether a CCA is arm's length falls within our general transfer pricing rules as set out in Section 247 of the ITA. Canada's published domestic administrative guidance provides further information.	

Transfer Pricing Documentation

19	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG 	T2 Schedule 19 – Non Resident Shareholder Information; T2 Schedule 22 – Non Resident Discretionary Trust; T2 Schedule 25 – Investment in Foreign Affiliates; T2 Schedule 29 – Payments to Non-Residents;
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		<input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input checked="" type="checkbox"/> Other (specify): Canada requires specific filings concerning transfer pricing and offshore holdings. See specific reference in the next column.	T2 Schedule 44 – Non-Arm’s Length Transactions; T2 Schedule 97 - Additional Information on Non-resident Corporations in Canada; T106 - Information Return of Non-Arm's Length Transactions with Non-Residents; T1134 - Information Return Relating to Controlled and Not-Controlled Foreign Affiliates; T1135 - Foreign Income Verification Statement; T1141 - Information Return in Respect of Contributions to Non-Resident Trusts, Arrangements or Entities; T1142 - Information Return in Respect of Distributions from and Indebtedness to a Non-Resident Trust.
20	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	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 three months of service of a written request to do so.	Section 247(4) of the ITA TPM-05R Requests for Contemporaneous Documentation provides further information.
21	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sub-Section 247(3) and 247(4) of the ITA Information Circular 87-2R and TPM-09 Reasonable efforts under section 247 of the Income Tax Act .

		Sub-Section 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.	
22	If your legislation provides for exemption from transfer pricing documentation obligations, please explain.	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.	T106, T1134, T1135, T1141 and T1142
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>):</p> <hr/> <p>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.</p>	Objections to Assessments - Section 165 of the ITA.
Safe Harbours and Other Simplification Measures			
24	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.		
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Canada requires taxpayers to price their cross-border related-party transactions using the arm's length principle. A year-end adjustment is one way that this requirement may be met.	
27	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Sub-Section 247(12) of the ITA provides for a secondary adjustment on all transfer pricing adjustments unless a taxpayer has repatriated the amounts. The amount adjusted is deemed by this provision to be a dividend, whether the payee holds an interest in the payor or not, and withholding tax is applicable according to the relevant treaty rates.	Sub-Section 247(12) of the ITA.
Other Relevant Information			
28	Other legislative aspects or administrative procedures regarding transfer pricing		
29	Other relevant information (e.g. whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire)		