

PARTNER CONTENT

Doing business in Canada

INTERVIEW

Ready for business

Canada's attractive regulatory and tax environment makes the country a competitive destination for foreign investment, say Gardiner Roberts partners Soma Ray-Ellis, Arlene O'Neill, Vitaly Timokhov and Christopher Besant

What is the employment regulatory regime like in Canada for companies setting up a new business?

Canada has one of the most highly educated and skilled workforces in the world. This combined with free healthcare and accessible childcare rates makes Canada one of the most attractive regulatory regimes to set up shop. Canada's employment regime is bifurcated where certain industries like



*Soma Ray-Ellis,
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chair of the
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banking, aviation and inter-provincial transportation are subject to the federal jurisdiction, while most companies are provincially regulated. There are clear laws defining obligations of employers which include human rights protections, occupational health and safety requirements, workers compensation rights, and minimum standard legislation. Unionised employers are subject to

labour legislation which govern the collective bargaining regime. In addition, companies are expected to have policies and practices consistent with mandatory legislation for such things as disability accommodation, anti-racism and discrimination practices, along with the right to disconnect. Complaints with respect to employment issues may be heard either by the courts or various tribunals implementing the legislations. In addition, employees have protections under the Canadian common law. The common law provides additional rights beyond the statutory regime. A large part of common law rights involves interpreting written or verbal employment contracts and other judge-made laws. Canadian employment law also has a lot in common with the regulatory regime in the United States and the common law of the United Kingdom.

How would you describe Canada's business environment for foreign investment?

Canada has a stable and business-friendly environment where investors can structure operations at a federal or provincial level. Canadian jurisdictions present a staple of modern laws that address stakeholder rights



*Arlene O'Neill,
partner and co-chair
of the business
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commercial group*

What tax considerations should international businesses be aware of when investing in Canada?

Canada offers one of the most competitive and investor-friendly tax regimes among developed economies. Typically, a foreign investor will operate business either through a branch or a Canadian corporation. Corporate income tax applies federally and provincially, with combined rates generally between 23%-31%, with



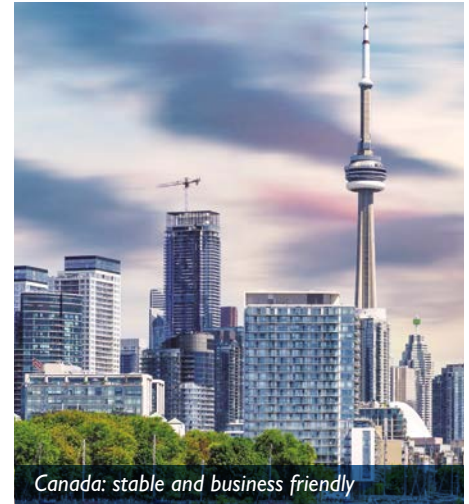
*Vitaly Timokhov, tax
partner*

Ontario standing at a very competitive rate of 26.5%. Branch operations are taxed on Canadian-source profits at corporate rates, with an additional branch profits tax of 25%, reduced by tax treaties to as low as 5%. Canada maintains an extensive OECD-aligned treaty network with over 90 jurisdictions. These treaties mitigate double taxation, reduce withholding rates and provide dispute resolution mechanisms. They also incorporate provisions on transfer pricing, exchange of tax information and anti-avoidance. Canadian withholding tax applies to dividends royalties, related party interest and certain fees paid to non-residents, typically at 25%. There is no withholding tax on arm's length interest payments. The withholding tax rates are reduced by Canadian tax treaties. For example, the Canada-US treaty lowers dividends to 5% for substantial shareholders. European treaties provide similar relief.

How would you describe the commercial dispute resolution landscape in Canada?

The Canadian litigation landscape has four key

in a predictable manner similar to many United States' jurisdictions. Canada also provides a secure and predictable legal system for carrying out transactions and for resolving disputes. Corporate law statutes in Canada set out clear expectations for directors and officers – imposing a fiduciary duty on individuals serving in those roles.



Canada: stable and business friendly



*Christopher
Besant, partner*

elements: (i) commercial disputes, which are generally handled by specialised commercial courts in each province; (ii) insolvency proceedings, which are also handled by the commercial courts; (iii) class actions, which are also handled by provincial courts but are coordinated interprovincially to achieve binding national results,

an area which has grown dramatically in the past decade; (iv) extra-judicial arbitration and mediation proceedings which are also playing an increasingly important role in disputes, and the results of which are seamlessly integrated with the court run litigation process. There are pending reforms under discussion to dramatically reduce the time and cost of commercial litigation, which are in part inspired by short cuts implemented in the insolvency arena by commercial courts. Because of the historical integration with the US economy, Canadian courts also have sophisticated experience in managing cross-border litigation and insolvency matters, and despite recent trade tensions, continue to encourage international cooperation in dispute resolution.

Toronto-based Gardiner Roberts LLP is a full-service law firm serving Canadian and international businesses.

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