# Calgary is open for business

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## What puts Calgary on the map?

Calgary is a growing and dynamic city that presents tremendous opportunity for businesses looking to expand. Historically known as an entrepreneurial oil and gas city, Calgary has embarked on a robust journey of economic diversification and is perfectly positioned for economic growth. It is the place "where bright minds and big ideas come together to help solve global challenges."

The City offers a unique combination of a hard-working entrepreneurial spirit, a can-do attitude, a welcoming culture, an ability to tackle major projects in a sophisticated manner and a very attractive business and tax regime. Not only that, the City makes it easy to maintain an active and fun lifestyle. Calgary boasts a network of bike paths with a cumulative length of over 1,000 kilometers, including a 138-kilometre pathway encircling the City. Calgary is also quite close to the Rocky Mountains, with popular skiing and hiking destinations such as Banff, Canmore, and Kananaskis only about an hour's drive away. This makes Calgary an excellent place to expand a company's workforce.

The existing talent pool in Calgary is young, diverse and highly educated. Calgary has the highest proportion of working age people in Canada, with 70 per cent of Calgary's labour force in the prime productivity years of 25 to 54. Also, 68 per cent Calgary's workforce has a post-secondary education.

In its journey to diversify its economy, Calgary has chosen to focus on developing clusters of expertise in a variety of areas: (1) Aerospace; (2) Agribusiness; (3) Creative Industries; (4) Energy & Environment; (5) Financial Services; (6) Digital Media & Entertainment: (7) Life Sciences; (8) Technology; and (9) Transportation & Logistics.

Aligned with this strategy, there are billions of dollars of exciting projects happening in Calgary that will drive economic growth and truly make it a world class city. For example:

- The Scotia Place Events Arena is set to open for the 2027 NHL season and will have seating capacity of over 18,000. It will be a significant upgrade to the existing Saddledome, hosting the Calgary Flames hockey team and other world class sports and entertainment events.

- The BMO Centre expansion opened in 2024 and is the largest convention centre in Western Canada. It is ideal for national and international conventions and congresses, conferences, galas, special events, trade shows, consumer exhibitions and other events.
- The Calgary Stampede is a 10-day festival in the City held in July, with more than a million guests in attendance annually. The Stampede generates hundreds of millions of dollars of economic impact in Calgary, and is an integral component of the City's culture and identity.
- Three major hotel projects were announced this summer near the Scotia Place Events Arena, the BMO Centre and the Calgary Stampede grounds.
- The Werklund Centre (formerly Arts Commons) is undergoing a massive modernization, to be completed in 2028. Among other things, the expansion will include construction of a 170,000 square-foot building with a 1,000-seat theatre, and will make the Werklund Centre Western Canada's largest arts centre. Together with a reimagined Olympic Plaza, this will be the artistic and civic cornerstone of Calgary's downtown core.
- The YYC Calgary International Airport is a world-class airport with a total land area of over 20 square kilometers, and serves over 18 million passengers annually. With more than 90 direct flight routes, Calgary is a major hub for both domestic and international travel, and serves as Western Canada's largest inland port – supporting a strong transportation and logistics sector, among others.
- Tech investment has soared in the City over the past several years, being dubbed the fastest growing tech hub in North America. The ecosystem includes various supportive organizations such as Platform Calgary and the Opportunity Calgary Investment Fund. Calgary's film and digital media sectors also continue to attract high-end talent and productions.

These various projects and achievements – coupled with Calgary's ongoing strength as a leader in the energy sector – are building significant momentum, and will support population and economic growth in the already multi-cultural City. Not only that, Alberta is the home to the lowest tax rates in Canada, and the most business-friendly corporate legislation.

## The Alberta advantage

Alberta has the lowest provincial general corporate tax rate in Canada, resulting in a combined general corporate tax rate of 23 per cent (8 per cent provincial and 15 per cent federal). Capital gains are taxed at ½ of the rate of ordinary income, and there are a variety of sector-specific tax and other incentives. Unlike many other provinces in Canada, Alberta has no provincial sales tax, employer health tax, or land transfer tax.

In Alberta, the reduction of red tape, facilitation of investment into the province, and maintenance of low tax rates are all important priorities. Under the *Alberta Taxpayer Protection Act*, a provincial referendum must be held before Alberta's provincial tax rate can be increased for individuals or corporations. Similarly, a provincial sales tax cannot be imposed in Alberta without holding such a referendum.

These tax rates, combined with Canada's robust international network of tax treaties, respected financial institutions and stable economic and political situation, provide an "open for business" environment for multi-national companies.

# Friendly business law environment

Compared to other provinces' corporate legislation, the *Business Corporations Act* (Alberta) (the ABCA) is quite modern and user-friendly. For example:

- **Director residence** – There is no requirement for any of the corporation's directors to be resident in Canada, thereby supporting expansion into Canada without unnecessary fees and complexity.
- **Unlimited liability corporations** – Alberta is one of the few provinces in Canada which permits the incorporation of an unlimited liability corporation (ULC). A ULC is a corporation in which the shareholders have unlimited liability for the liabilities, acts, or defaults of the corporation. ULCs are treated as corporations for Canadian tax purposes, but may be treated as flow-through (or disregarded) entities for tax purposes in the United States or other jurisdictions. This may give rise to various cross-border tax planning and optimization opportunities.
- **Quick incorporations** – Incorporations can be completed very quickly, once key information is finalized such as who the directors and shareholders will be, whether the corporation will be an ordinary corporation or a ULC, the basic share structure and what the corporate name will be (numbered companies are permitted).
- **Share capital efficiencies** – A class of shares can generally be split by special resolution of each class of shareholder and, in some cases, by directors' resolution. A corporation may pay a "stock dividend" by issuing fully paid shares, and the ABCA has various provisions allowing the management of stated capital. These features can be particularly useful in tax-effectively managing the flow of funds across borders, including in circumstances where ULCs are utilized and multi-step procedures may be required (such as under the Canada – United *States Income Tax Convention*, where a two-step procedure may be required in certain circumstances to minimize dividend withholding taxes).
- **Shareholder meetings** – In lieu of a shareholders' meeting, a written shareholders' resolution is generally effective as long as it is signed by the holders of at least 2/3 of the shares entitled to vote on that resolution (subject to certain exceptions in the ABCA). This can be helpful in managing an unresponsive or difficult minority shareholder.
- **Streamlined governance** – The corporation's bylaws may provide for a notice period as short as 7 days in respect of a shareholders' meeting (unless the corporation is a reporting issuer, in which case the minimum notice period is 21 days). Also, a corporation may, by special resolution, resolve not to appoint an auditor (unless the corporation is a reporting issuer).

The court system and corporate law jurisprudence in Alberta are well understood and established, and have often taken on a practical tone. Some have referred to Alberta as the "Delaware of Canada" in relation to corporate law. This has, in part, developed through Alberta's "boom and bust" energy economy, with lawyers, judges and other stakeholders being required to "get things done" in order to avoid more catastrophic results, particularly in "bust" years. Despite this, Alberta has been the home of many complex and sophisticated plans of arrangement and other reorganizations, and has a very fair justice system. This practical tone has helped drive entrepreneurialism in Alberta over the years, including through the successful turnaround of formerly insolvent or distressed companies. The Province has also implemented legislation for the creation of captive insurance companies, the popularity of which continues to grow across a variety of sectors.

## Basic Tax considerations for foreign companies entering Canada

Companies entering Canada will need to consider a variety of cross-border tax and business issues. The summary that follows only scratches the surface, but should be a helpful starting point to any business looking to expand into Canada.

- **Corporate residence** – A company is generally resident where it is incorporated. However, there may be nuances depending on where mind and management is located or under the "tie-breaker" rules in Canada's tax treaties.
- **Carrying on business in Canada** – Even if a company is not resident in Canada, it may be subject to Canadian taxation if it "carries on business" in Canada. The threshold under Canadian common law and tax legislation for "carrying on business in Canada" is very low, and thus tax filing obligations may be triggered even where there is limited commercial activity in Canada. As a result, many of Canada's tax treaties limit taxation for foreign companies only to the extent that such income arises from a "permanent establishment" in Canada, as defined in the relevant tax treaty. Accordingly, Canadian tax advice should be sought prior to commencing any business activity in Canada to determine whether, or to what extent, Canadian income tax or indirect tax obligations, or registration requirements, may be triggered.
- **Branch tax vs. Canadian subsidiary** – In addition to ordinary Part I income tax for non-resident companies carrying on business in Canada, a branch tax of up to 25% can apply on profits repatriated to the home jurisdiction, although this rate is generally reduced under Canada's tax treaties to equal the dividend withholding tax rate, and sometimes there is an exemption on up to the first $500,000 of branch earnings. Given this generally tax-neutral outcome, and to accomplish other administrative efficiencies (some of which are discussed below), multi-nationals often prefer to incorporate a Canadian subsidiary for Canadian operations. In some cases, partnerships, trusts, joint ventures or other business relationships might also make sense.
- **Withholding taxes on dividends, interest and rents/royalties** – Canada's domestic legislation generally levies a 25 per cent withholding tax on dividends, non-arm's length interest, participating debt interest (including, potentially, premiums on convertible debt) and rents or royalties. However, these rates are often reduced or subject to exemptions under Canada's tax treaties. In some cases, anti-hybrid, limitation on benefits or other rules in Canada's tax treaties may create complexities in accessing these lower tax rates, so specific Canadian tax advice should be sought in order to properly structure inbound investment – especially since withholding tax is generally not subject to any limitations period. In addition, Canada's thin capitalization rules generally limit the deductibility of interest on debt in excess of a 1.5 to 1 debt-to-equity ratio, as computed in accordance with the Canadian tax legislation, with any excess being both non-deductible and deemed to be a dividend subject to withholding tax. Similarly, Canada's "excessive interest and financing expenses limitation" and "back-to-back anti-avoidance rules" should be considered.

- **Canadian acquisitions** – Acquiring a Canadian company will often require careful structuring, both of the acquisition (e.g. asset vs. share purchase and any earnouts) and the inbound investment structure. In most cases, it will make sense for a foreign acquiror to incorporate and tax-effectively capitalize a Canadian acquisition company with both debt and equity in order to complete the acquisition, and ultimately repatriate future profits. Pre- and post-acquisition structuring should also be considered in order to optimize the post-closing tax attributes for the buyer, including to ensure that "bump" or other planning can be completed to step-up the tax basis of the underlying assets of the target entity. Canada's "foreign affiliate dumping rules" should also be considered in the event that the Canadian entity has a significant (10+ per cent) interest in non-Canadian entities. In plain English, the objective is to avoid the potential for inadvertent double-taxation in the future. Failure to properly structure the acquisition from the outset can create issues that are difficult or impossible to resolve later.
- **Transfer pricing** – Transfer pricing rules generally dictate the requirements for inter-company transactions between a Canadian subsidiary and its foreign parent. Generally, such transactions must be determined based on arm's length terms and accompanied by contemporaneous documentation that complies with the detailed requirements in Canada's tax legislation.
- **Taxable Canadian property** – Dispositions of "taxable Canadian property" (TCP) by non-residents are subject to Canadian taxation and reporting requirements, including withholding taxes imposed on the purchaser of TCP. Very generally, TCP includes Canadian real property, Canadian resource properties (e.g. oil and gas or mining rights) a right to remove timber on Canadian property, rights and options in the foregoing, or interests in entities that derive their value (directly or indirectly) from the foregoing (subject to certain exceptions). Some of Canada's tax treaties have more lenient exemptions than others, so multi-nationals will want to consider all possible alternatives to determine how to best structure their Canadian investment in TCP and entities that derive substantial value from TCP.
- **Employee source deductions** – Canadian employee source deductions are often a trap for non-resident companies that are considering a possible expansion into Canada. Generally, if an employee is physically located in Canada carrying out employment duties, their employer will be required to withhold and remit Canadian source deductions, unless a waiver is obtained from the Canada Revenue Agency. The employee may also be required to file Canadian tax returns. There are various procedures that can potentially reduce or streamline this compliance, depending upon the level of proposed activity in Canada and the tax jurisdictions involved. Secondments to a Canadian subsidiary are often used as a solution for employees splitting their time between Canada and a foreign jurisdiction.
- **Services provided by non-residents** – Payments by a Canadian to a non-Canadian person rendering services in Canada are generally subject to a withholding tax of 15 per cent. Similar to employee source deductions, waivers or exemptions may be available in some cases. However, proactive planning is often required. Also, a non-Canadian company carrying on business in Canada directly may trigger these rules, which may complicate payment logistics and obligations imposed upon its customers. The fact that this could adversely affect customers often weights in favour of incorporating a Canadian subsidiary. Properly structured, this would allow Canadian customers to deal with the Canadian subsidiary (rather than a foreign entity), thereby internalizing any withholding tax compliance matters to the company itself (rather than imposing an additional burden or risk on the customer).

BLG has a strong team of lawyers who are well-versed in the areas of law relevant to the expansion of business into Canada.
Please do not hesitate to reach out to one of our key contacts below to facilitate further discussion.

*Please note that certain comments about Calgary and related statistics are derived from third party resources, including websites for Calgary Economic Development, the City of Calgary and other publications and websites.

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