LEGALQUOTIENT
USA · INDIA · CANADA · UAE

FREE GUIDE · World to CA

Coming Into Canada

What a foreign company actually files in Canada, and how the branch-or-subsidiary choice changes the answer for years afterwards.

Setting up in Canada: branch, subsidiary or neither
Business & structure · Published by Legal Quotient Consultants

Setting up in Canada: branch, subsidiary or neither

A foreign company can serve Canadian customers three ways: from outside with no Canadian presence, through a branch of the foreign company, or through a Canadian subsidiary. Each has a different filing profile, and the choice is hard to reverse cheaply.

Who this is for

- US, Indian, UK and Gulf companies with Canadian customers or a first Canadian hire.
- Groups that already sell into Canada and have been asked for a Canadian tax number.
- Founders comparing a branch against a Canadian corporation for a first-year entry.

The first question is whether you have a taxable presence at all

Canada taxes a non-resident corporation on income from carrying on business in Canada, and a treaty generally narrows that to profits attributable to a permanent establishment. So the threshold question is factual: does the activity amount to a fixed place of business, or an agent with authority to conclude contracts, or a project of enough duration in one place?

Answering "no" does not always mean "no filing". Where a treaty exemption is relied on, a Canadian return claiming that exemption is frequently the right posture, because it puts the position on the record and starts the clock. Where the answer is "yes", the return reports the attributable profit and the Canadian tax is creditable in most home jurisdictions.

Branch versus subsidiary, in the terms that actually decide it

A branch is the foreign company operating in Canada directly. It files a Canadian corporate return reporting the Canadian business income, and the foreign company remains the contracting party, which is often what customers and regulators care about. The trade-off is that Canada applies a separate tax on branch profits not reinvested in Canada, designed to approximate the withholding a subsidiary would have paid on a dividend, and treaty relief for that tax varies.

A subsidiary is a Canadian corporation. It files as a Canadian resident, is taxed on its worldwide income, and distributes profits to the parent as dividends subject to withholding at the treaty rate. It brings its own governance requirements — director residency rules vary by jurisdiction of incorporation — and its own annual maintenance.

The honest summary is that a branch is usually simpler for a short, project-shaped presence, and a subsidiary is usually better once there are Canadian employees, Canadian contracts and a plan to keep profits in Canada. Thebranch or subsidiarypage sets the comparison out in full, and it is worth modelling rather than assuming.

Sales tax registration arrives before income tax does

Canada's federal goods and services tax, harmonised in several provinces, applies to supplies made in Canada, and a non-resident supplier can be required to register even without a permanent establishment. There is a simplified registration regime aimed at non-residents supplying digital products and services to consumers, and an ordinary registration regime that allows input tax recovery.

Choosing between them is a real decision rather than a formality: the simplified route is lighter to operate but does not let you recover the tax you pay on Canadian costs. Several provinces also run their own provincial sales taxes with their own registration rules, which the federal registration does not cover. Our page onsimplified versus normal registrationcompares them.

Paying and being paid across the border

Payments from Canada to a non-resident for services performed in Canada attract withholding, and payments of dividends, interest and royalties attract withholding at rates the treaty may reduce. In each case the reduction is claimed by putting the right declaration in the payer's hands, and a waiver can be applied for in advance where the withholding would otherwise exceed the eventual tax.

If Canadian and foreign group members transact with each other, transfer pricing applies from the first invoice, and Canada has its own contemporaneous documentation expectation together with an information return for transactions with non-arm's-length non-residents. It is far cheaper to set the intercompany arrangements up correctly at entry than to reconstruct them at audit.

A Canadian entry, in order

Registrations follow the structure decision, not the other way round.

1. **Establish the presence question** Fixed place, agent authority, project duration and staff location, tested against the applicable treaty. This determines whether Canadian income tax is in play at all.
2. **Model branch against subsidiary** On repatriation plans, expected early losses, customer requirements and exit intentions — not on which is easier to open.
3. **Incorporate or register, as chosen** A subsidiary needs a jurisdiction of incorporation and directors who satisfy its residency rules; a branch needs extra-provincial registration where it operates.
4. **Obtain the tax accounts** A business number with the programme accounts you actually need — corporate income tax, sales tax, payroll and import accounts as applicable.
5. **Decide the sales tax posture** Simplified or ordinary registration, plus any provincial sales tax registrations, decided on whether recovering tax on Canadian costs matters to you.
6. **Document the intercompany arrangements** Written agreements, a pricing basis, and the information return obligations diarised — before the first intercompany invoice, ideally.

Papers to gather

What the entry review needs:

- Group structure chart with countries of residence and ownership percentages.
- Description of the Canadian activity: customers, staff, premises, inventory, contract signing.
- Draft or signed Canadian customer contracts.
- Expected Canadian revenue, costs and profit for the first two years.
- Details of any intended intercompany charges between Canada and the group.
- The parent's last financial statements and home-country tax return.
- Any Canadian registrations or correspondence already in existence.
- Repatriation intentions: keep profits in Canada, or distribute annually.

Where it goes wrong

- **Incorporating first and asking about tax later** The jurisdiction of incorporation carries director residency rules and the structure carries repatriation consequences. Both are cheap to get right at the start and awkward to unwind.
- **Missing the sales tax registration** It commonly bites before income tax does, because a non-resident can be required to register without any permanent establishment. Unregistered supplies do not stop being taxable.
- **Starting intercompany charges with no agreement** A management fee or a service charge with no written basis is the easiest adjustment an auditor can make. The agreement and the pricing rationale should exist before the invoice does.

Questions this raises

Can we sell into Canada without registering for anything?

Sometimes for income tax, rarely for sales tax. A non-resident with no Canadian permanent establishment may have no Canadian income tax liability while still being required to register for and collect goods and services tax on supplies made in Canada.

Is a branch cheaper than a subsidiary?

Cheaper to open, not always cheaper to run. A branch avoids incorporation and separate financial statements but exposes the foreign company directly and attracts a separate tax on branch profits that are not reinvested in Canada.

Do we need Canadian resident directors?

It depends on the jurisdiction of incorporation. Some Canadian jurisdictions impose director residency requirements and others do not, which makes the choice of jurisdiction a practical decision as well as a legal one.

When does transfer pricing start to matter?

At the first transaction between the Canadian entity and a related non-resident, including a service charge, a licence or a loan. Documentation expectations and an information return for non-arm's-length transactions follow from that, not from a size threshold alone.

What to do next

The useful first deliverable is a one-page structure recommendation with the registrations it implies and the annual filing calendar it creates. That is enough to decide with, and it prevents the common pattern of incorporating quickly and discovering the consequences at the first year end.

We handle entry reviews, incorporation, registrations and the first two years of filings as a fixed-fee engagement agreed before work starts. Seeexpanding from the US into Canadaoran Indian company setting up in Canadafor the corridor detail.

Legal Quotient Consultants

Cross-border and international tax. Fixed fees agreed in writing before work starts, quoted from your own documents.

United States: 5243 Strathmore Ave, Kensington MD 20895
Canada: 381 Front St W, Toronto ON M5V 3R8
India: A-1/2, Shakti Nagar Extension, Ashok Vihar, Delhi DL 110052

contact@lqconsultants.com · +1-416-619-0068 · +91-989-909-9030