

CANADA

LEGISLATION	
Existence of Transfer Pricing Laws/Guidelines	<p>The Canadian statutory rules on transfer pricing are administered by the Canada Revenue Agency (“CRA”) and are contained in section 247 of the Canadian Income Tax Act (“ITA”), which received Royal Assent on June 18, 1998.</p> <p>CRA’s Information Circular 87-2R (IC 87-2R) provides guidance with respect to the application of the transfer pricing rules in section 247 of the ITA and is cross-referenced to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“OECD Guidelines”).</p> <p>Following the issuance of IC 87-2R, the CRA has provided further guidance on transfer-pricing matters in its Transfer Pricing Memoranda (“TPM”), which supplement IC 87-2R and provide further guidance on specific aspects of the transfer-pricing legislation.</p>
Transfer Pricing Scrutiny	<p>The risk of transfer pricing issues being reviewed under audit is high. The pharmaceutical and forestry industries have, for example, been specifically targeted for transfer pricing reviews and audits. Inter-company services, debt, interest charges, and intangibles are also transactions that are typically examined by the CRA, although all transactions are subject to review.</p> <p>The CRA’s International Tax Directorate now requires field auditors to formally request transfer pricing documentation from taxpayers at the beginning of tax audits.</p>
Related Party Definition	<p>Related persons are defined in <i>Subsection 251(2)</i> as:</p> <ul style="list-style-type: none"> a. Individuals connected by blood relationship, marriage or common-law partnership or adoption; b. A corporation and <ul style="list-style-type: none"> i. a person who controls the corporation, if it is controlled by one person, ii. a person who is a member of a related group that controls the corporation, or iii. any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and c. Any two corporations <ul style="list-style-type: none"> i. if they are controlled by the same person or group of persons, ii. if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation, iii. if 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. if 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. if any member of a related group that controls one of the

	<p>corporations is related to each member of an unrelated group that controls the other corporation, or</p> <p>vi. if 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.</p>
<p>Transfer Pricing Penalties</p>	<p>Transfer pricing adjustments that result in a net increase in income or a net decrease in loss are subject to 10 per cent penalty, subject to the following exceptions:</p> <ul style="list-style-type: none"> • Where the net transfer pricing adjustments do not exceed 10 per cent of the taxpayer's gross revenue or C\$5 million, or • Where the taxpayer has used reasonable efforts to determine that its prices are arm's length and document such on or before the date its tax return is due for the taxation year (Transfer pricing memorandum (TPM-09) provides information on CRA's administrative positions on the meaning of reasonable effort). <p>Other applicable penalties are:</p> <ul style="list-style-type: none"> • <i>Late Filing Penalty (Subsection 162(7))</i> - A late filing penalty may be assessed where T106 documentation is filed after the due date. The penalty is equal to the greater of C\$100 and C\$25 per day, as long as the failure to file continues, to a maximum of 100 days. • <i>Failure to File Penalty (Subsection 162(10))</i> - A failure to file penalty may be assessed where reporting persons or partnerships knowingly, or under circumstances amounting to gross negligence, fail to file or fail to comply with a request by the CRA for T106 documentation. The minimum penalty is C\$500 per month, to a maximum of C\$12,000 for each failure to comply. Where the CRA has served a demand to file T106 documentation, the minimum penalty is C\$1,000 per month, to a maximum of C\$24,000 for each failure to comply. • <i>False Statement or Omission Penalty (Subsection 162(2.4))</i> - A false statement or omissions penalty may be assessed where information provided on the T106 Summary or Slip is incomplete or incorrect. The penalty is C\$24,000.
<p>Advance Pricing Agreement (APA)</p>	<p>Information Circular 94-4R (IC 94-4R), dated March 2001, and Information Circular 94-4R (Special Release) (IC 94-4R (SR)), dated March 18, 2005, outlines the procedures and guidelines for obtaining APAs in Canada. The APA service is intended to assist Canadian taxpayers in determining transfer prices acceptable to the CRA for the purposes of the ITA and, where negotiated with tax authorities of other jurisdictions, the relevant treaties with those countries.</p>
<p>DOCUMENTATION AND DISCLOSURE REQUIREMENTS</p>	
<p>Tax Return Disclosures</p>	<p>The <i>T106 Summary and Slips</i> are prescribed forms lodged with the tax return that require disclosure of the amount and type of transactions, transfer pricing methods applied, and disclosure of whether contemporaneous documentation has been prepared.</p>

	<p>Completion of the T106 is required if the total reportable transactions for all the non-residents is more than C\$1,000,000.</p> <p>A Canadian branch of a foreign-based corporation or a foreign-based branch of Canadian corporation does not have to file T106 documentation for notional transactions. However, non-arm's length transactions between a branch and a non-arm's length party have to be reported in the reporting person's/partnership's T106.</p>
Level of Documentation	<p>Subsection 247(4) of the ITA states that a taxpayer must prepare or obtain records or documents that provide a complete and accurate description of:</p> <ul style="list-style-type: none"> • The property or services to which the transaction relates; • The terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction; • The identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into; • The functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction; • The data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction; and • The assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction.
Record keeping	<p>There are no specific rules. However, records should be kept for the same period as stipulated in the statute of limitations.</p>
Language for documentation	<p>Transfer pricing documentation is accepted in both English and French.</p>
Small and medium sized enterprises (SMEs)	<p>There are no specific rules for small and medium sized enterprises.</p>
Deadline to Prepare Documentation	<p>The deadline for corporations is six months after the end of the tax year and for partnerships it is the due date for filing a partnership information return under section 229 of the ITA.</p>
Deadline to Submit Documentation	<p>Taxpayers must submit transfer pricing documentation within three months from the date of a written request from the CRA.</p>

STATUTE OF LIMITATIONS

The statute of limitations for Canadian-controlled private corporations is six years from the date of the initial assessment. For foreign controlled corporations and public corporations it is seven years from the date of the initial assessment. The CRA can request a taxpayer to sign a waiver to extend the audit period.

TRANSFER PRICING METHODS

The CRA accepts all of the transfer pricing methods listed in the OECD Guidelines. While the ITA does not impose an explicit hierarchy of methods, the CRA's view is that there is a natural hierarchy in methods. The traditional methods (CUP, Cost Plus, and Resale Price) are preferable to the transactional profit methods (Profit Split and TNMM).

COMPARABLES

Databases containing detailed information on Canadian public companies can be used to gather data on comparable companies.

The CRA allows use of foreign (such as US) comparables to supplement a Canadian comparables set, provided the taxpayer conducts additional analysis to account for any differences in geographic markets and the taxpayer ensures the foreign comparables meet the comparability standards required by the transfer pricing methods used in Canada.

Date: 1 January 2008