CANADA

RETURN TO CONTENTS PAGE

Overview

Borden Ladner Gervais LLP, Taxand Canada

Canada's largest law firm offers clients advice on all aspects of business law from coast to coast in every major city across the country. BLG's Tax Group provides advice on all varieties of taxes in Canada, including transfer pricing in an income tax context. In particular, members of BLG's Tax Group have advised clients on obtaining advance pricing agreements, preparing contemporaneous documentation, managing transfer pricing audits, and resolving controversies at various levels, including mutual agreement procedures and before the courts.

We work with Taxand group members who have in-house economics and valuation expertise to address client needs on issues requiring such specialized transfer pricing knowledge.

General : Transfer Pricing Framework

Canada's transfer pricing regime is contained in section 247 of the *Income Tax Act* (Canada) (ITA). Bill C-15, Budget 2025 Implementation Act, No. 1, received Royal Assent on March 26, 2026 and represents the most significant modernization of section 247 since its introduction. The new rules apply to taxation years and fiscal periods that begin after November 4, 2025.

The revised rule replaces the former two-track structure, which distinguished between repricing adjustments and the more restrictive statutory recharacterization rule. Under the new single operative adjustment rule, a transfer pricing adjustment may be made where an in-scope transaction or series has "actual conditions" that differ from "arm's length conditions".

The analysis is now expressly "delineation first". The transaction or series must be analyzed by reference to its economically relevant characteristics, including contractual terms, the actual conduct of the participants, functions performed, assets used, risks assumed, the characteristics of property or services, economic circumstances, business strategies, surrounding circumstances, industry practices, and the relationship of the functions performed to the wider generation of value by the multinational enterprise group.

The definition of arm's length conditions asks what the actual participants would have agreed to if they had been dealing at arm's length in comparable circumstances. This is a material change from the former framing, under which Canadian jurisprudence often placed significant weight on the legal rights and obligations created by the parties and treated the OECD Transfer Pricing Guidelines as useful but not controlling.

The revised legislation also requires section 247 to be applied in a manner that best achieves consistency with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as adopted by the OECD Committee on Fiscal Affairs on January 7, 2022, subject to any later prescribed guidance.

What no longer applies in the same way: the former distinction between ordinary repricing and statutory recharacterization, the former statutory tax-benefit purpose condition for recharacterization, and the view that the OECD Guidelines are merely an external interpretive aid with no statutory role. The new framework does not mean that contracts are irrelevant. Rather, contracts remain important evidence, but must be tested against actual conduct, and the full set of economically relevant characteristics.

Accepted Transfer Pricing Methodologies

The Canadian statute still does not prescribe any particular method or hierarchy for determining and applying arm's-length terms and conditions. The appropriate method must be selected and applied in accordance with the revised section 247 framework and the OECD Guidelines. The Canada Revenue Agency (CRA) continues to recognize the traditional transaction methods and transactional profit methods commonly used internationally, including:

- comparable uncontrolled price "CUP" method;
- resale price method;
- cost-plus method;
- transactional net margin method; and
- transactional profit split method.

What still applies: method selection remains fact-specific and comparability-driven. Disputes will continue to turn on whether the selected method is the most appropriate method for the economically delineated transaction. What has changed is that the method selection and application should now be tied more directly to the statutory concepts of actual conditions, arm's length conditions and economically relevant characteristics.

Transfer Pricing Documentation Requirements

Canada continues not to have a formal master file/local file filing regime for ordinary transfer pricing documentation. However, the substantive contemporaneous documentation requirements in subsection 247(4) have been revised to align with the new analytical framework. Documentation should now address the economically relevant characteristics of the transaction or series, including group-wide context, realistic alternatives where relevant, and why the selected method is appropriate under the OECD Guidelines.

The documentation must be prepared or obtained by the taxpayer's documentation due date, generally the filing due date for the relevant tax return. For a corporation, this will generally be six months after taxation year-end. The documentation is not filed with the tax return. It must be provided to the CRA within 30 days after a written request. The former 90-day production period no longer applies for taxation years subject to the new rules.

Additional proposed legislation was released on July 23, 2026 (the "July 23, 2026 Draft Proposals"). The July 23, 2026 Draft Proposals would, if enacted as proposed, allow simplified contemporaneous documentation for certain qualifying taxpayers and transactions. The proposed simplified regime would apply to taxation years and fiscal periods beginning on or after January 1, 2026, and would be available by election filed by the documentation due date. As of the date of publication of this guide, this aspect remains draft legislation.

Under the July 2026 Draft Proposals, simplified documentation would be available in four categories:

- small taxpayers and partnerships meeting specified conditions, including a prior-year Canadian group revenue threshold of C$25 million or less and no specified intangible-property dispositions or royalty payments with non-arm's length non-residents;
- small tangible property transactions with non-arm's length non-residents where the gross amount paid or payable for the property is C$5 million or less;
- small intragroup services transactions with non-arm's length non-residents where the gross amount paid or payable for the services is C$2 million or less; and
- loans with non-arm's length non-residents where the gross amount of interest paid or payable on the loan is C$1 million or less.

The simplified regime should not be treated as a general safe harbour from transfer pricing scrutiny. It is proposed to provide penalty-protection documentation relief for qualifying transactions, not to displace the arm's length principle.

A Canadian taxpayer is obliged to file a Form T106 for each non-arm's length non-resident with whom the taxpayer has transacted during the year (subject to a de *minimus* exception). The Canadian taxpayer must also file a T106 Summary form annually summarizing all such transactions with all non-arm's-length non-residents during the year. These forms constitute the primary way in which the CRA is alerted to transactions of interest from a transfer pricing perspective.

Each late-filed T106 form is subject to a penalty of $25/day ($2,500 maximum) and a failure to file is penalized at $500 ($12,000 maximum), which is doubled ($1,000/month, $24,000 maximum) where the CRA has served a demand to file.

Local Jurisdiction Benchmarks

Identification of suitable comparables remains central to Canada's transfer pricing system. There are no legislative guidelines for establishing comparability, so determining appropriate comparables is an area of judgment on which taxpayers and the CRA frequently disagree. Foreign comparables may be acceptable, and the CRA has expressed the view that while domestic comparables would be assumed to be more reliable where the Canadian taxpayer is the tested party, foreign comparables meeting the same standards of comparability are valid.

What still applies: taxpayers may expect disagree with the CRA over the selection of comparables, adjustments, tested party, and use of current-year versus multi-year data. The CRA may continue to rely on information from other taxpayers that is not fully disclosed during the audit stage. What has changed is that comparability must now be assessed within the broader statutory framework of economically relevant characteristics and actual versus arm's length conditions.

Focus on Financial Transactions

The 2026 amendments are likely to be particularly significant for intercompany financial transactions. The revised legislation places greater emphasis on accurate delineation, economically relevant characteristics and the parties' actual conduct. As a result, taxpayers should be prepared to support not only the pricing of intercompany loans, guarantees and cash pooling arrangements, but also the amount of debt, allocation of financial risks and commercial rationale for the arrangement.

In practice, this will often require a detailed assessment of the borrower's creditworthiness, the effect of explicit or implicit group support, and whether the contractual allocation of risks is consistent with the parties' actual conduct. Particular attention should also be paid to treasury and cash pooling arrangements, as returns earned by treasury entities should reflect the functions performed, decision-making authority exercised and risks assumed. Compliance with Canada's thin capitalization and other interest deduction limitation rules does not eliminate the need to demonstrate that intercompany financial transactions satisfy the arm's length principle.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

APAs remain available in Canada, and are frequently a cost-effective alternative to lengthy and expensive audit disputes. APAs may be unilateral, bilateral or multilateral. The CRA has a strong preference for bilateral or multilateral APAs.

Certain business restructuring transactions may not be suitable for the APA program. The typical term of an APA is 3 – 5 taxation years.

The APA process involves a pre-filing meeting with the CRA to discuss potential suitability. This is followed by the taxpayer making a formal request setting out the relevant taxpayers, transactions and years to be covered by the APA requested. If the CRA accepts the taxpayer's proposal, the taxpayer prepares the formal APA submission setting out the proposed transfer pricing methodology and underlying data, for the CRA team to review. There are usually a number of follow-up

information requests for the taxpayer from the CRA before the final version is settled and executed, as well as negotiations with other relevant tax authorities for bilateral or multilateral APAs. Depending on the countries and issues involved, two years is a common time-frame from start to finish.

Transfer Pricing Audits

The CRA regularly and aggressively conducts transfer pricing audits, which are extremely document-intensive and time-consuming to respond to. The CRA applies a "risk-based approach to file selection, proper assessment of the facts and circumstances relevant to OECD comparability factors, well-supported and documented audit files, and assessments that respect the arm's-length principle."

The audit process generally begins with a formal demand for the taxpayer's contemporaneous documentation. For taxation years subject to the new rules, the taxpayer must provide that documentation within 30 days of the request. The former 90-day response period should no longer be relied on. The CRA audit team will generally also seek oral interviews with various personnel within the multinational enterprise of which the Canadian taxpayer is a member, and (depending on the circumstances) site visits. Recent legislative changes have significantly expanded the CRA's powers to require oral interviews, and the CRA views this tool (and in particular functional interviews to determine how functions and risks are allocated within the MNE) as an essential element of the audit process.

It is essential for the taxpayer to assemble a team of internal and external resources to conduct the transfer pricing audit in an organized and effective manner, and to minimize the risk of the CRA audit team receiving misinformation that creates an unfavourable or misleading image with the CRA. This is generally achieved by establishing a single point of taxpayer contact with the CRA audit team, a process for handling the CRA audit team's requests, and identifying communications and analysis that are protected from disclosure under lawyer-client privilege.

Near the end of the audit, the CRA team leader will issue a "proposal letter" indicating the adjustments that the CRA intends to make and inviting final submissions in response (the usual response time offered is 30 days, which can often be lengthened if requested). Following that process, the taxpayer will generally receive a final letter stating what adjustments the CRA is making, followed by the issuance

of a formal notice of re-assessment. The taxpayer has 90 days from there to initiate the appeals process within the CRA Appeals branch by filing a Notice of Objection, with other potential recourse (i.e., MAP, litigation before the courts) potentially available. The taxpayer can usually obtain a copy of the auditor's T20 report and supporting working papers on request, which should be scrutinized for factual deficiencies.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In a typical Canadian civil case, the burden of proof rests with the party making the allegations, usually the plaintiff. If the plaintiff fails to establish the allegations, the case must be dismissed.

This principle is reversed in Canadian tax litigation. When the CRA makes allegations against a taxpayer, the responsibility to disprove the allegations often shifts to the taxpayer. This distinction stems from Canada's self-reporting tax system, as taxpayers are most familiar with their financial affairs to challenge the tax authority's assumptions.

Similarly, in Canadian transfer pricing disputes, the CRA has the authority to reassess a taxpayer's transfer pricing arrangements, and the burden of proof generally rests with the taxpayer to support its transfer pricing positions. The taxpayer must provide sufficient documentation and evidence to support their pricing methodology and ensure compliance with the arm's length principle.

The CRA relies on its Transfer Pricing Memoranda and OECD Guidelines to assess compliance, and taxpayers must be prepared to support their positions with robust contemporaneous documentation, expert analysis, and, where necessary, legal arguments. This has become even more important under the 2026 framework, which places greater emphasis on actual conduct, economically relevant characteristics and arm's length conditions. As a result, taxpayers should maintain contemporaneous evidence of the functions performed, assets used, risks assumed and business rationale underlying their arrangements, as these facts may be as important as the benchmarking analysis itself in defending against adjustments, penalties and interest.

Transfer Pricing Penalties

Transfer pricing penalties apply under s. 247(3) of the ITA in certain circumstances, serving as a deterrent to under-allocating income to Canada. The amount of the penalty is computed as 10% of the taxpayer's net adverse transfer pricing adjustments made by the CRA (not 10% of the increased tax resulting therefrom). As such, penalties can apply even if the taxpayer is in a loss position for the year and are onerous by international standards.

The penalty threshold has changed. For taxation years subject to the new rules, penalty consideration generally arises where the net adverse transfer pricing adjustment exceeds the lesser of C$10 million and 10% of the taxpayer's gross revenue for the year. The former C$5 million threshold no longer applies for taxation years subject to the enacted 2026 amendments. In this regard, the taxpayer's net transfer pricing adjustment for the year is defined to exclude those adjustments in respect of which the taxpayer made "reasonable efforts" to determine and use arm's-length prices and allocations – as such, "reasonable efforts" are a defence against penalties even where an adverse adjustment occurs. While what constitutes such "reasonable efforts" is not set out in the statute (there are no safe harbours) and so must be determined in each case based on the taxpayer's particular circumstances, a taxpayer is deemed not to have made such reasonable efforts unless it prepares contemporaneous documentation within

6 months of each taxation year-end (a shorter time period than the 1 year applicable in many countries) that meets the substantive requirements in s. 247(4) of the ITA, and delivers it to the CRA within 30 days of a demand for it. Whenever the dollar threshold is met for transfer pricing adjustments, the CRA will frequently assess penalties on the basis that the taxpayer's contemporaneous documentation does not meet the required substantive standard. Such a penalty assessment requires approval from the CRA's internal Transfer Pricing Review Committee.

Where the July 23, 2026 Draft Proposals apply, qualifying taxpayers or transactions may be able to obtain penalty protection by satisfying the simplified documentation requirements, assuming the proposals are enacted as drafted.

Secondary adjustments also remain relevant. While not a penalty per se, when adverse transfer pricing adjustments are made to the Canadian taxpayer, there will usually be a "secondary adjustment" to reflect the value of the Canadian taxpayer having charged too little for goods and services it has delivered to, or paid too much for goods and services received from, a non-arm's-length non-resident. The amount of that secondary adjustment will usually be treated as a deemed dividend triggering non-resident withholding tax (25% unless reduced by a tax treaty), unless the non-resident has repatriated the relevant amount back to the Canadian taxpayer with the CRA's concurrence.

Local Hot Topics and Recent Updates

The June 2023 consultation paper is no longer merely a proposal. The core transfer pricing reforms were enacted when Bill C-15 received Royal Assent on March 26, 2026, and they apply to taxation years and fiscal periods beginning after November 4, 2025. The July 23, 2026 draft legislative package adds proposed simplified documentation rules and related regulations for specified low-value or small-taxpayer situations. Those July 2026 measures are not yet enacted as of this update.These changes are, in large part, a response to the CRA's unsuccessful attempt in the Cameco case (*Canada v. Cameco Corporation*, 2020 FCA 112, aff'g Cameco Corporation v. The Queen, 2018 TCC 195, leave to appeal to SCC refused), where the CRA sought unsuccessfully to apply the "recharacterization" rule in s.247(2)(b) and (d) of the ITA.

CANADA

RETURN TO CONTENTS PAGE

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	€ 750M

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months from year-end

Penalty Provisions

Documentation – late filing provision	Not Applicable; however, absence/inadequacy of timely contemporaneous documentation exposes taxpayer to penalties if transfer pricing adjustments exceed prescribed threshold
Tax return disclosure – late/incomplete/no filing	Late filing penalty of 5% of taxes owing plus a further 1% per month late (maximum 12 months)
CbCR – late/incomplete/no filing	$500/month to a maximum of 24 months

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