

Canada

Introduction

Our Location Offer

Canada offers excellent opportunities for business leaders who are looking for growth, innovation and manageable risks. Home to world-leading research and education, and offering lower costs, risks and business taxes, as well as ready access to North American markets, Canada is an investment partner of choice. Canada's NAFTA advantage gives investors access to more than 443 million consumers and a combined GDP of more than US\$15.4 trillion.

Canada is a trading country and international trade is integral to its continued prosperity. Canada is the world's ninth largest exporter and tenth largest importer? trade is equivalent to more than 71% of its GDP. Household spending has been boosted by a rise in personal wealth. Strong corporate earnings, falling prices for imported capital goods, and low interest rates have facilitated business investment.

A country's greatest asset in a knowledge economy is a smart workforce and Canada is rich in talented human resources. Canada has the best educational system in the G7 and is rewarded with the most highly-educated population in the OECD. In addition, Canada also attracts the best and brightest from every corner of the globe due to its business-friendly immigration policies enable highly qualified newcomers.

Canada has a prudent fiscal policy, low inflation, interest and unemployment rates, and a corporate tax framework that is among the best in the world. Canada is an emerging energy superpower, the only stable and growing producer of this scarce commodity. Further, the country's strategic investments in technology, education and healthcare result in perfectly ideal conditions for businesses to grow and prosper.

Canada is ranked 8th out of 183 economies in the 2010 Ease of Doing Business Global Rankings. Canada is 2nd overall in terms of starting a business and 5th overall in terms of investor protection. (Ease of Doing Business Index)

In Budget 2010, the Government of Canada announced a major new initiative that will see tariffs on all manufacturing inputs reduced to zero by 2015. With most of the cuts happening in 2010, the entire country can be considered one big Free Trade Zone (FTZ) for investors. Investors considering their next investment destination now have the advantage of importing advanced machinery and equipment from their parent companies free of import duties. This duty-free treatment, together with Canada's 50% per-year straight-line depreciation method allowed for manufacturing or processing equipment, means that investors can write off their capital investments in a very short period of time and thereby reduce costs and increase the profitability of their global operations.

Introduction to investment regime

Canada has a clear interest in providing for stability, transparency, predictability, non-discrimination and protection for Canadian companies and individuals that invest abroad, as well as for foreign investors wishing to invest in Canada. Good investment rules make for a positive economic climate, which favours growth and jobs. Canada has, therefore, consistently supported a strong, rules-based system, multilaterally, regionally and bilaterally.

Certain investments are subject to review under the Investment Canada Act. The purpose of the Investment Canada Act is to review significant investments in Canada by non-Canadians in order to ensure benefit to Canada. Investments subject to review under the Act are either restricted to high monetary thresholds or a small number of sectors.

The federal government created the Invest in Canada bureau to promote, attract and retain foreign direct investment in Canada. As a bureau of the Department of Foreign Affairs and International Trade, Invest in Canada assists multinational companies planning to invest in Canadian businesses or expand their operations in our country. Invest in Canada offers guidance through every step of the investment process, from the exploratory phase through to site selection and follow up: and can provide investors with a wealth of information about doing business in Canada and facilitate introductions to specialists who offer one-on-one assistance.

Investment priority plan/equivalent policy

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The Government of Canada is committed to making Canada a destination of choice for global investment and innovation. The Global Commerce Strategy and Invest in Canada Bureau's 2010 Flagship Report outline Canada's priorities for attracting investment. The latter identifies key sectors in which investment is encouraged.

The priority sectors outlined in the Invest in Canada Bureau's 2010 Flagship Report include : Advanced Manufacturing: Automotive, Aerospace and Defence, Machinery and Equipment; Agri-food: Food Processing; Chemicals and Plastics; Clean Technologies: Renewable-energy technologies, Environmental technologies; Information and Communications Technology: Digital Media, Software, Wireless communications; Life Sciences: Biopharmaceuticals, Medical devices; Services: Business services and Financial services.

Please consult the Invest in Canada 2010 Flagship Report for further details on the priority sectors and what the Government of Canada is doing to encourage investment.

More information

Invest in Canada Bureau: <http://investincanada.gc.ca/eng/default.aspx>

Department of Foreign Affairs and International Trade: <http://www.international.gc.ca>

Investment Canada Flagship Report: <http://investincanada.gc.ca/download/1099.pdf>

Regulation of foreign investment

Process for foreign entities/nationals to invest in our economy

Canada relies on foreign investment to further its economic development. Foreign direct investment generates benefits to Canadian communities through increased trade opportunities, the introduction of new technologies and management practices, job creation, the payment of taxes and the purchase of goods and services locally. Canada actively seeks to promote its advantages as an investment destination. Foreign direct investment promotion is carried out by the Department of Foreign Affairs and International Trade (DFAIT). Within DFAIT, the Invest in Canada Bureau is primarily responsible for providing the department with strategic leadership and support for FDI promotion and attraction.

The Investment Canada Act (ICA) is a law of general application with respect to foreign investment in Canada relating to the establishment or acquisition of a Canadian business. The ICA reflects Canada's policy of welcoming international investment and of working to attract beneficial investment. To ensure that such investments will be of net benefit to Canada, the ICA contains provisions for the review of acquisitions of control of Canadian cultural and non-cultural businesses above certain thresholds and the establishment of new cultural businesses. The ICA also contains provisions, implemented in 2009, which allow for the review of investments in Canada by non-Canadians on the basis of national security. In addition, the ICA contains guidelines, announced in December 2007, which clarify the application of the 'net benefit' assessment process for investments involving the acquisition of control of a Canadian business by a non-Canadian State-owned Enterprise.

A Notification or an Application for Review must be filed under the ICA with respect to the establishment of a new business activity or the acquisition of control of an existing Canadian business by a non-Canadian. Certain transactions are exempt from the notification and application requirements, for example, acquisitions of control of Canadian farms, share purchases by securities traders or dealers, purchases in connection with the realization of loan securities, most transactions regulated under the Bank Act, and investments by life insurance companies for the benefit of their Canadian policy holders.

In March 2009, the Government of Canada amended the ICA to authorize the government to review investments on national security grounds. When a potential national security threat associated with an investment in Canada by a non-Canadian is identified, the Minister of Industry, after consultation with the Minister of Public Safety, may refer the investment to the Governor in Council (Cabinet), which will determine whether a review should be ordered. Once the Governor in Council orders a review, the Minister of Industry will lead the review in consultation with the Minister of Public Safety. If a national security threat is confirmed, the Minister of Industry is responsible for submitting a report to the Governor in Council with recommendations. The Governor in Council will have the authority to take any measures in respect of the investment that it considers advisable to protect national security.

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All mergers, whether involving foreign or domestic parties, which directly or indirectly impact Canadian markets, are subject to review under the merger provisions of the Competition Act. This review determines whether or not the transaction is likely to result in a substantial lessening or prevention of competition and could ultimately result in an application before the Competition Tribunal for remedial action. For further information, please visit Chapter 8 of Canada's IAP chapter on Competition Policy or visit: <http://www.competitionbureau.gc.ca>.

As a WTO member, Canada adheres to the obligations of the WTO Agreement on Trade-Related Investment Measures (TRIMs). Canada is also a party to the North American Free Trade Agreement (NAFTA), Canada-Chile Free Trade Agreement (CCFTA) and Canada-Peru Free Trade Agreement, which include obligations on investment, and the Canada-Costa Rica Free Trade Agreement (CCRFTA) which did not include an investment chapter because of the existence of a bilateral investment treaty (FIPA) with Costa Rica. Canada also adheres to the OECD Guidelines for Multinational Enterprises, a set of voluntary standards of conduct recommended by Member governments regarding the operations of these enterprises in OECD markets.

Canada currently has twenty-three Foreign Investment Protection Agreements (FIPAs) in force. FIPAs are bilateral, reciprocal agreements designed to promote and protect Canada's foreign investments abroad through a framework of legally-binding rights and obligations. Canada's model FIPA incorporates several key principles: treatment that is non-discriminatory and that meets a minimum standard; protection against expropriation without compensation and restraints on transfer of funds; and dispute settlement procedures.

Does this apply to all investment or, are there differential treatment?

An investment is reviewable under the Investment Canada Act if there is an acquisition of a Canadian business and the asset value of the Canadian business being acquired equals or exceeds the following thresholds:

a. For non-WTO investors, the threshold is \$5 million for a direct acquisition and over \$50 million for an indirect acquisition; the \$5 million threshold will apply however for an indirect acquisition if the asset value of the Canadian business being acquired exceeds 50% of the asset value of the global transaction.

b. Except as specified in paragraph (c) below, a threshold is calculated annually for reviewable direct acquisitions by or from WTO investors. The threshold for 2009 is \$312 million. Pursuant to Canada's international commitments, indirect acquisitions by or from WTO investors are not reviewable.

c. The limits set out in paragraph (a) apply to all investors for acquisitions of a Canadian business that:

- i. engages in the production of uranium and owns an interest in a uranium producing property in Canada;
- ii. provides any financial service;
- iii. provides any transportation service; or
- iv. is a cultural business.

2. Notwithstanding the above, any investment which is usually only notifiable, including the establishment of a new Canadian business, and which falls within a specific business activity listed in Schedule IV of the Regulations Respecting Investment in Canada, may be reviewed if an Order-in-Council directing a review is made and a notice is sent to the Investor within 21 days following the receipt of a certified complete notification.

Conditions of investment

Canada's foreign investment laws are largely applied on an MFN and national treatment basis. Canada has made substantive investment commitments in the NAFTA and Canada-Chile Agreements. Any derogation from the principles of MFN and national treatment are clearly identified in these agreements.

Canada Business Corporations Act (CBCA) - Boards of Directors

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The Canada Business Corporations Act requires, for most federally- incorporated corporations, that 25 per cent of directors be resident Canadians. A simple majority of resident Canadian directors is required for corporations in prescribed sectors. These sectors include: uranium mining; book publishing or distribution; book sales, where the sale of books is the primary part of the corporation's business; and film or video distribution. Corporations that, by an Act of Parliament or Regulation, are individually subject to minimum Canadian ownership requirements are required to have a majority of resident Canadian directors.

CBCA - Issues, transfers, ownership of shares

The Canadian Business Corporations Act permits corporations to 'constrain' the issue, transfer and ownership of shares in federally incorporated corporations.

The object is to permit corporations to meet Canadian ownership requirements, under certain laws set out in the Canada Business Corporations Act Regulations, in sectors where such ownership is required as a condition to operate or to receive licenses, permits, grants, payments or other benefits.

Federal Fisheries Act

Fish processing companies which have more than 49% foreign ownership are not permitted to hold Canadian commercial fishing licenses. There is no limit on foreign ownership of fish processing companies that do not hold fishing licenses.

Foreign fishing vessels are prohibited from entering Canada's Exclusive Economic Zone except under authority of a license or under treaty. Foreign vessels are those which are not 'Canadian' as defined in legislation. The Minister of Fisheries and Oceans has discretionary authority with respect to the issuance of licenses.

Canada Transport Act

Air: Canadian legislation governing air transportation (Canada Transportation Act) allows only Canadian owned and controlled airlines to provide domestic scheduled air service and to be designated under Canada's bilateral air agreements to provide scheduled international services. Currently, the limit on voting interests in Canadian airlines that can be held by foreign investors is 25 percent.

Book Publishing and Distribution Investment Policy

Direct acquisition by non-residents of Canadian-controlled businesses engaged in the production, distribution or sale of books is not normally allowed. Foreign investment in new businesses is considered favourably, provided the investment is through a joint venture with Canadian control. Indirect acquisitions are allowed, subject to net benefit.

Broadcasting Investment Policy Guidelines

Broadcasting in Canada includes both broadcasting programming (e.g. 'over the air' broadcasting, pay and specialty services, video on demand) and broadcasting distribution (e.g. cable, direct-to-home satellite and wireless). Legislation (the Broadcasting Act) requires that the Canadian broadcasting system be effectively owned and controlled by Canadians. A Directive by the Governor-in-Council limits foreign ownership to 20% of voting shares in a licensee and 33 1/3 % of voting shares in the case of holding companies. Therefore, foreign ownership can comprise 46.7% of a Canadian broadcasting licensee both directly and indirectly (20% directly, plus 33% of the Canadian holding company which owns the remaining 80% of the licensee). There are no restrictions on foreign ownership of non-voting shares in a holding company or licensee. In addition, the Chief Executive Officer (CEO) plus 80% of the Board of Directors of a company, which directly holds a broadcasting license, must be Canadian.

Film Distribution Investment Policy

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Foreign acquisition of a Canadian controlled film distributor is not allowed. Foreign Investments in new distribution business is permissible only for importation and distribution of proprietary products (the importer owns world rights or is a major investor). Direct or indirect acquisition of foreign distribution businesses in Canada by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings "in accordance with national and cultural policies".

Periodical Publishing Investment Policy

Foreign investments in the periodical publishing sector, including investments to establish or, directly or indirectly, acquire foreign businesses to produce and sell periodicals in Canada and to access the Canadian advertising services market must meet the net benefit test, which includes a commitment to the production of majority Canadian editorial content. Foreign acquisitions of Canadian-owned and Canadian-controlled periodical publishing businesses are not permitted.

Financial Services

Canada maintains a sized -based ownership regime for the banking sector: small (less than Can\$2 billion in equity), medium (Can\$2 billion-Can\$8 billion) and large (greater than Can\$8 billion). Large banks must remain widely held (investor, whether Canadian or foreign, can own up to 20% any class of voting shares and 30% any class non-voting shares). Medium size banks are allowed to be closely held, but must have a public float of 35% of voting shares. Small banks have no ownership restrictions other than "fit and proper" tests.

Telecommunications Act

Foreign ownership of Canadian common carriers is limited - the carrier cannot be controlled by non-Canadians, and voting equity is limited to 20% direct and 33% indirect.

Uranium

A minimum level of resident ownership in individual uranium mining properties of 51% at the stage of first production is required. Exceptions to this limit might be permitted if it can be established that the property is in fact 'Canadian controlled' (as defined in the Investment Canada Act). While these limits apply to the control of production facilities, there are no limits applied to foreign investment in exploration and development.

Investment promotion and facilitation

The federal government has created Invest in Canada to promote, attract and retain foreign direct investment in Canada. As a bureau of the Department of Foreign Affairs and International Trade, they assist multinational companies planning to invest in Can

More information about the process of investing in our economy

Invest in Canada Bureau: www.investincanada.gc.ca

Investment Canada Act: www.investcan.ic.gc.ca or <http://pch.gc.ca/invest/>

Canada's FIPAs: www.international.gc.ca/tna-nac/fipa-en.asp

Canada Business Corporation Act: <http://laws.justice.gc.ca/en/index.html>

Federal Fisheries Act: <http://laws.justice.gc.ca/en/index.html>

Canada Transport Act: <http://laws.justice.gc.ca/en/index.html>

Book Publishing and Distribution Investment Policy: <http://pch.gc.ca/invest/bkp-eng.cfm>

Broadcasting Act: <http://laws.justice.gc.ca/en/B-9.01/index.html>

Film Distribution Investment Policy: <http://pch.gc.ca/invest/film-eng.cfm>

Canada

Periodical Publishing Investment Policy: <http://pch.gc.ca/invest/prd-eng.cfm>

Financial Services: www.fin.gc.ca

Telecommunications Act: www.fin.gc.ca

Investment protection

Protection of property rights and conditions for expropriation

Both at the federal and provincial levels, there exists legislation which gives authority to expropriate for a public purpose in accordance with due process of law, subject to compensation. In all circumstances, a fair and equitable legal process is available to the expropriated party for the determination of compensation.

Authorities first attempt to reach agreement on appropriate compensation, failing which the action is subject to the judicial process. Compensation is based on fair market value. Valuation criteria are determined by the courts and can include such things as asset value, going concern value, and other criteria.

More information

For information about the provincial or federal legislation which relates to expropriation and compensation, please see :

Government of Canada : <http://canadagazette.gc.ca>

Government of Alberta : www.qp.gov.ab.ca

Government of British Columbia: www.qp.gov.bc.ca

Government of Manitoba: <http://web2.gov.mb.ca>

Government of New Brunswick: www.qnb.ca

Government of Newfoundland and Labrador: www.hoa.gov.nl.ca

Government of Northwest Territories : www.gov.nt.ca

Government of Nova Scotia : www.gov.ns.ca

Government of Nunavut : www.gov.nu.ca

Government of Ontario: www.gov.on.ca

Government of Prince Edward Island : www.gov.pe.ca

Government of Quebec: www.gouv.qc.ca

Government of Saskatchewan : www.qp.gov.sk.ca

Government of Yukon: www.gov.yk.ca

Protection of IPRs

Canada supports effective intellectual property rights protection that provide certainty and transparency to encourage marketing of goods, services, technology and entertainment; investment in R&D and innovation; and licensing arrangements (transfer of technology) to establish or expand existing business investment.

Canada continues to improve intellectual property laws and their administration, to ensure adequate protection for owners of intellectual property, including effective mechanisms for enforcement of rights.

More information

Canada

For further information regarding the administration and registration of intellectual property laws, please visit: <http://cipo.gc.ca>

and regarding intellectual property policies, please visit:

<http://www.ic.gc.ca/epic/site/ippd-dppi.nsf/en/Home>

Flow of funds

Canada has a flexible exchange rate system. Because we have a target for inflation that aims to preserve the domestic value of the Canadian dollar, we cannot also have a target for its external value. So, there is no set (fixed) value for our currency in terms of any other currency. The exchange rate for the Canadian dollar against the U.S. dollar, and indeed against any other currency, floats and is determined by the demand for and supply of Canadian dollars in the foreign exchange market.

And if managed, under what circumstances or purposes does your government/central bank intervene?

N/A

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Canada permits all transfers relating to investments to be made freely and without delay.

Mechanisms to review decisions, and settle disputes

Under the Investment Canada Act, there is no provision for a judicial appeal from the decision of the relevant minister.

What, if any, mechanism do you have for foreign investors to settle disputes?

Foreign and national investors have equal access to legal procedures in Canada. In addition, under the NAFTA and Canada - Chile Free Trade Agreement, as well as the FIPAs, disputes with respect to investment obligations can be referred to investor-state dispute settlement.

Canada is a party to the Convention on the Recognition and Enforcement of the Foreign Arbitral Awards (the "New York Convention") done at New York, June 10, 1958. It entered into force for Canada on May 12, 1986.

The British Columbia International Arbitration Centre (Vancouver, B.C.) and the Quebec National and International Commercial Arbitration Centre (Montreal, Que) offer services that can be accessed by foreign investors.

ICSID

Canada signed the ICSID Convention on December 19, 2006 and is now undertaking the ratification process. Currently, Canada provides for use of the ICSID Additional Facility Rules and the Arbitration Rules of UNCITRAL in its bilateral investment agreements, the NAFTA and the Canada-Chile FTA.

More information

N/A

International investment agreements

With;

Argentina; Armenia; Barbados; Chile; Costa Rica; Croatia; Czech Republic; Ecuador; Egypt; Hungary; Latvia; Lebanon; Mexico; Panama; Peru; Philippines; Poland; Romania; The Russian Federation; Slovakia; Thailand; Trinidad & Tobago; Ukraine; United States; Uruguay; Venezuela;

Canada

Please provide a brief description of these IIAs, or your IIAs in general.

Canada has embarked on an expanded FIPA work program and hopes to negotiate Foreign Investment Promotion and Protection Agreements in the near term with priority partners, including members of APEC.

Amongst APEC members, FIPAs are already in force between Canada and the Philippines, Russia and Thailand.

Canada is currently in FIPA negotiations with China, Vietnam, and Indonesia. Canada has 3 Free Trade Agreement (FTAs) with investment chapters in force: NAFTA, Peru and Chile, and is currently in FTA negotiations with Korea and Singapore. The potential for future negotiations with other APEC economies is also being explored.

More information

Canada's FIPAs:

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/fipa-purpose.aspx?lang=>

Movement of persons

Treatment of foreign nations or personnel of foreign firms

Entry and sojourn of personnel:

To facilitate information exchange, Citizenship and Immigration Canada (CIC) maintains a website which provides information on visiting Canada. It can be accessed at: <http://www.cic.gc.ca/english/index.asp>

Information specific to APEC economies can be found in Canada's entry in the APEC Business Travel Handbook at: http://www.apecsec.org.sg/apec/business_resources/apec_business_travel.html.

Under the new Immigration and Refugee Protection Act which came into force on June 28th 2002, Canada revised its Temporary Foreign Worker Program regulations to further streamline and improve efficiency.

Short Term Business Entry:

In general, business visitors entering Canada for short term visits to engage in international business activities without directly entering the Canadian labour market do not require an employment authorization (i.e., work permit) but do require a visitor visa.

For further information, please visit: <http://www.cic.gc.ca/english/index.asp>.

Temporary Residency

Foreign nationals wishing to enter Canada's labour market are required to apply for an employment authorization to enter Canada as a temporary foreign worker. Depending on the circumstances of the individuals involved, there are several mechanisms to obtain an employment authorization as a temporary foreign worker.

More information

Invest in Canada :

<http://investincanada.gc.ca/eng/establish-a-business/entry-requirements/business-immigration.aspx>

Citizenship and Immigration Canada: <http://www.cic.gc.ca/english/work/index.asp>

The manual on Canada's current Temporary Foreign Worker guidelines can be found at:

<http://www.cic.gc.ca/english/resources/manuals/fw/index.asp>.

Taxation

Taxation of foreign nationals and foreign firms

Foreign investors undertaking business activities in Canada through a separate legal entity (i.e., subsidiary) are considered residents in Canada and they are taxed as such. That is, income tax is applied to their worldwide income and appropriate relief is provided for taxes paid in foreign jurisdictions if the subsidiary also carries out business abroad (see below).

In addition to income taxes, Canadian residents, including corporations controlled by non-residents, are subject to withholding taxes on payments that they make to non-resident persons, including foreign shareholders. Such withholding taxes can be viewed, in part, as proxy for the income taxes that shareholders would pay if they were residents of Canada. However, the totality of invested capital can be repatriated tax-free before any withholding taxes start to apply.

The statutory withholding tax rate is 25%. However, the applicable withholding tax rate is usually reduced in the extensive network of tax treaties entered into with other countries. Profits may be repatriated by way of dividends. The rates may vary according to the type of payment (e.g., interest, dividends, royalties). For example, the Canada-United States tax treaty provides for withholding tax rates of 10 percent on interest and royalties and 5 percent on dividends paid to non-resident corporations with a significant ownership in the corporation.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Canada's tax treaties divide the tax jurisdiction for certain elements of income between Canada and the other signatory country. As a general rule, exclusive jurisdiction is conferred either on the country where the taxpayer resides or on the country where the income arises. Income from real property, business profits, the income earned by performers and athletes, and payments received through salaried employment are taxable only in the country where the income arises. Other elements of income are taxable only in the country of residence: this income includes capital gains arising from the sale of securities and profits on businesses not attributable to a permanent establishment situated in the other country.

Finally, for three other categories of income - dividends, interest and royalties - Canada shares income tax jurisdiction with the other signatory country, but the amount of income tax that can be levied by the country where the income arises is limited. These limitations vary depending on the country and according to the terms negotiated. As a general rule, the country where the income arises must limit the income tax it collects to 15% of gross dividends (unless the beneficial owner of the dividends is a corporation controlling at least 10% of the voting capital in the corporation that pays the dividends, in which case the tax is limited to 5%), and to 10% of gross interest.

Canada has double taxation agreements (DTAs) in force with the following countries: Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Brazil, Cameroon, Chile, Peoples Republic of China, Cyprus, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Guyana, Hungary, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Romania, Russia, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Thailand, Trinidad & Tobago, Tunisia, Ukraine, United Kingdom, United States, Uzbekistan, Zambia, Zimbabwe.

More information

Additional information on Canada's double taxation treaties can be found at www.fin.gc.ca