Vancouver Cross-Border Investment Guide

Essential legal, tax and market information for cross-border investment into Vancouver, Canada

Digital Download

VANCOUVER ECONOMIC COMMISSION

Vancouver Cross-Border Investment Guide

Published October 2020

About the Vancouver Economic Commission

The Vancouver Economic Commission (VEC) serves one of the world's fastest-growing, low-carbon economies. As the economic development agency for the city's businesses, investors and citizens, VEC works to strengthen Vancouver's economic future by supporting local companies, attracting high-impact investment, conducting and publishing leading-edge industry research, and promoting international trade. VEC works collaboratively to position Vancouver as a global destination for innovative, creative, diverse and sustainable development.

VEC respectfully acknowledges that it is located on the traditional, ancestral and unceded territory of the Sḵwx̱wú7mesh (Squamish), Səl̓ílwətaʔ/Selilwitulh (Tsleil-Waututh) and xʷməθkʷəy̓əm (Musqueam) Nations.

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Deloitte. FASKEN PitchBook.

Contents

Why Invest in Vancouver 1
Sectors to Watch 3
- Technology 3
- Cleantech 4
- Media and Entertainment 5
- Life Sciences 6

Incentives and Tax Credits 7
Vancouver Investment Activity 9
The Canadian Advantage 13
An Interview with Joel Solomon 15
Legal Considerations 17
- Corporate Law 17
- Securities Law 19
- The CCPC Advantage 19

Investment Structures 20
Taxation Considerations 23
- Foreign Investors 23
- Canadian Corporations 26

We Can Help 29

#1

Best City in the World for Startups

Forbes/PeoplePerHour

#2

Most Resilient City in the World

Grosvenor Group

Why Invest in Vancouver

High-Tech

Vancouver is one of the top 15 high-tech cities in the world, according to Business Insider

Competitive

KPMG ranks Vancouver as North America's 5th most competitive city for overall cost of doing business

#1

Top City for American Expats

US Government

Designing the future, today

Vancouver's competitive advantage lies in its highly skilled and culturally diverse workforce; a supportive government offering generous incentive programs; and world-leading university, research and development programs. Here, entrepreneurs and innovators enjoy space and freedom to think outside the box without the limits or restrictions they might face elsewhere.

The city's collaborative energy motivates businesses to consistently push boundaries and deliver the newest ideas and latest advances. In essence, Vancouver's resident businesses and professionals have cultivated an enviable ecosystem of innovation, creativity and sustainability – a truly smart city designed for the demands of the 21st century.

Technology

Unparalleled talent, geographic advantages, and some of the lowest operating costs and taxes of any major global city are a few of many reasons the world's leading technology companies call Vancouver home.

Global imports – such as Amazon, Microsoft, Apple, Cisco, GE, Intel and SAP – and homegrown successes like Slack, D-Wave, Avigilon, Plenty of Fish, and Hootsuite continue to gravitate to Vancouver's rich creative pool, inspiring natural beauty and top-tier infrastructure. In fact, technology is the city's fastest-growing sector, with over 75,000 tech professionals based in and around the city. According to CBRE's 2019 Scoring Tech Talent Report, Vancouver ranks 12th in North America for tech talent and boasts the highest labor quality in Canada.

1QBit

Developer of quantum computing software that allows applications to continually benefit from advances in both quantum and classical hardware. 1QBit has hardware partnerships with Microsoft, IBM, Fujitsu and D-Wave Systems.

Notable Investors

- Accenture
- Allianz Global Investors
- Allianz X
- CME Ventures

>_cmd

Developer of a next-generation server security platform designed to protect production environments. The platform is tailored to the specific needs of large enterprises to granularly control, monitor, and authenticate user activity.

Notable Investors

- GV (Google Ventures)
- Amplify Partners
- Expa
- Norwest Venture Partners

Clio

Provider of a cloud-based practice management platform designed for the legal industry. The platform eases the process of time tracking, billing, administration and collaboration for law firms of all sizes.

Notable Investors

- Technology Crossover Ventures (TCV)
- JMI Equity
- Bessemer Venture Partners
- Jason Finger

Cleantech

Vancouver is one of the world's top 10 cleantech clusters. It is home to hundreds of cleantech companies leveraging global and cross-sectoral expertise, as well as supportive government policies and programs promoting new wave thinking.

The city is at the forefront of global innovation, especially in fuel cell solutions, power electronics and waste & wastewater treatment technologies; and is home to world-leading companies like Westport Innovations (advanced natural gas engines), General Fusion (commercially viable nuclear fusion), Ballard Power Systems (hydrogen fuel cells) and Saltworks Technologies (wastewater remediation). Even young cleantech startups have established far-reaching commercial relationships, including global supply chains and investments from multinational venture capital firms.

Carbon Engineering

Provider of clean energy services that use commercializing technology to capture carbon dioxide directly from the atmosphere which is then used to produce ultra-low carbon fuels for clients' vehicles.

Notable Investors

- Bill Gates
- Starlight Ventures
- Chevron Technology
- Ventures First Round Capital

Terramera

Manufacturer of plant-based pesticide products that offer alternatives to conventional chemical pesticides and fertilizers. The result: sustainable farming that is cheaper, more productive and satisfyingly abundant.

Notable Investors

- Bold Capital Partners
- Ingka GreenTech AB
- S2G Ventures
- Renewal Funds

NANO-LIT

Developer of tunable, full-spectrum Circadian Rhythm Lighting using quantum dots. Tunable lighting simulates natural sunlight, changing color temperature throughout the day to enhance health and wellbeing.

Notable Investors

- Colin Harris
- Ian Marchant
- Sanja Moll
- Shahram Tafazoli

Media and Entertainment

Vancouver is a leading visual effects (VFX) and animation hub, is the third largest film and production center in North America, and is recognized as a top 10 global game development center.

The city's expansive pool of creatives has overseen VFX for top-grossing features like Star Wars, Avengers and Spiderman, and popular globally distributed games like FIFA and Gears of War. Leveraging a 40-year legacy in media and entertainment, Vancouver holds distinction as one of the fastest growing virtual and augmented reality ecosystems worldwide. Thanks to the famously collaborative nature of the city's film and tech industries, ideas and projects flow freely between content creators and platform developers.

ZIVA

Developer of a virtual character production tool that uses real-time and anatomy-warping technology, physics-based character simulation and pre-made human anatomy to create accurate and scalable characters.

Notable Investors

- Millennium Technology Value Partners
- Toyota AI Ventures
- Grishin Robotics
- Epic Games

VIRTRO

Producer of immersive games and viewing experiences using virtual reality (VR), augmented reality (AR), mixed reality (MR) and holographic imagery for industry, government and community organizations.

Notable Investors

- VentureLabs
- Launch Academy
- Angel investors from Vancouver Angel Technology Network (VANTEC)

cognitive3D

Developer of 3D spatial analytics and user feedback tools designed to help organizations quickly and easily display analytics on their users' sessions and collect deep metrics on user behavior and feedback.

Notable Investors

- Verizon Media Tech Venture Studio
- VIVE X Accelerator
- Super Ventures
- Undisclosed angel investors

Life Sciences

One of the fastest growing life sciences clusters in North America, Vancouver is particularly advanced in biotechnology and biopharmaceuticals. Here, the industry has proven successful in translating commercially promising health research into new treatments that are improving patient outcomes and saving lives around the world.

Vancouver's life sciences has generated billions in research funding and continues to attract new investments for product development. The city's UBC–Broadway Corridor is hailed as a world-class life sciences cluster, thanks to an ever-growing concentration of state-of-the-art facilities and for its strong industry–academia links. Vancouver's location – within easy reach of life sciences collaborators and venture capital sources in Washington State and California – is another undisputable advantage.

Aspect biosystems

Pioneer of microfluidic 3D bioprinting of living, human tissue. The company's proprietary technology is enabling advances in disease research, regenerative medicine and the development of novel therapeutics.

Notable Investors

- Pangaea Ventures
- Endure Capital
- Pallasite Ventures
- Rising Tide Fund

MetaOptima

Developer of a health application designed to monitor, record and assess potentially cancerous skin lesions. The app enables patients to diagnose skin problems in advance and assists in the early detection of skin cancer.

Notable Investors

- AirTree Ventures
- Plug and Play Tech Center
- 7 Gate Ventures
- MedTech Innovator

AbCellera

Developer of monoclonal antibodies designed to accelerate the discovery and development of next-generation antibody therapies and immune profiling for vaccine research.

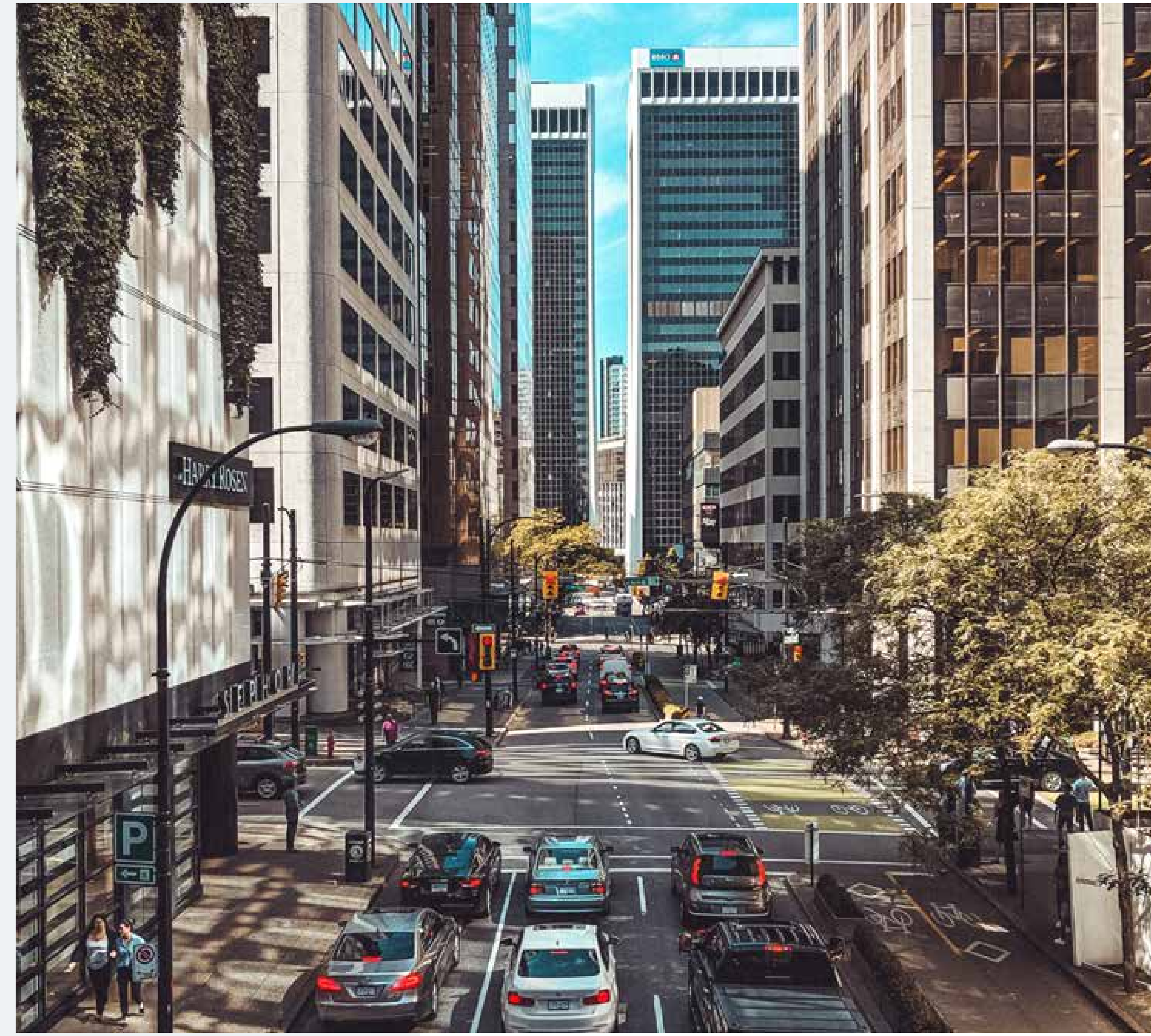
Notable Investors

- Peter Thiel
- Bill & Melinda Gates Foundation
- Founders Fund
- Data Collective

Incentives and Tax Credits

Government support to help your investment succeed

Program Name	Program Description
SR&ED (Government of Canada)	a federal tax incentive program that encourages Canadian businesses to conduct research and development
SR&ED (Province of British Columbia)	a provincial tax incentive program for BC-based businesses designed to encourage research and development
NRC-IRAP	a federal program that engages in cost-shared research and development projects with qualified SMEs in Canada
Sustainable Development Technology Canada (STDC)	a federal funding program that supports Canadian SMEs advancing innovative technologies related to climate change, clean air, clean water, and clean soil
Strategic Innovation Fund	a federal government fund of 1.2 billion CAD that supports research and development, and the scale-up of high-potential companies
BC Tech Fund	a venture capital fund of 100 million CAD launched by the BC Government and managed by Kensington Capital, and dedicated to investing in emerging BC technology companies
Venture Capital Catalyst Initiative (VCCI)	a federal government initiative that dedicates 450 million CAD over three years to increase the amount of late-stage venture capital available to scaling Canadian companies
Canada Media Fund	a not-for-profit corporation that delivers 353 million CAD in funding annually to support the Canadian television and digital media industries
Interactive Digital Media Tax Credit (BC)	provincial tax credits that incentivize digital media production by reducing the net cost for creating, marketing and distributing interactive digital media products
Innovate BC Tech Co-op Grants Program	a provincial grant program that offers companies up to 20,000 CAD per year in funding to hire co-op students
Mitacs	a non-profit national research organization that partners with eligible employers to deliver research and training programs in fields related to industrial and social innovation



Mark Deutschmann
Investor, Nashville

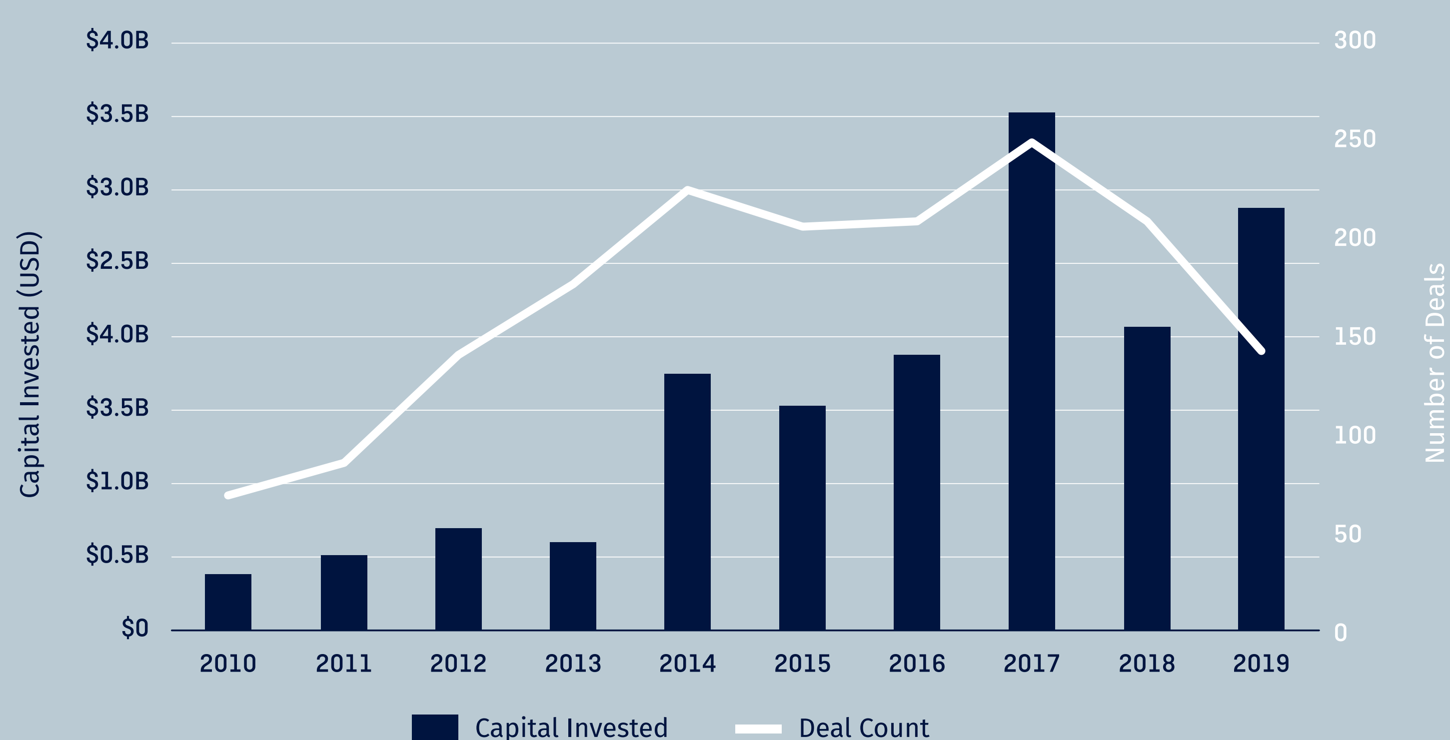
“My investments in Vancouver have been for me both financially rewarding and personally meaningful; I get to see a lot of great socially responsive organizations grow and succeed. Knowing that these investments are serving a community that is committed to being one of greenest cities in the world is very satisfying. I will continue to find ways to invest in this remarkable city!”

Vancouver Investment Activity

Historic investment activity and trends at a glance

Vancouver Investment Activity

2010–2019 Disclosed Direct Investment Deals – Greater Vancouver, Pitchbook



Capital Invested

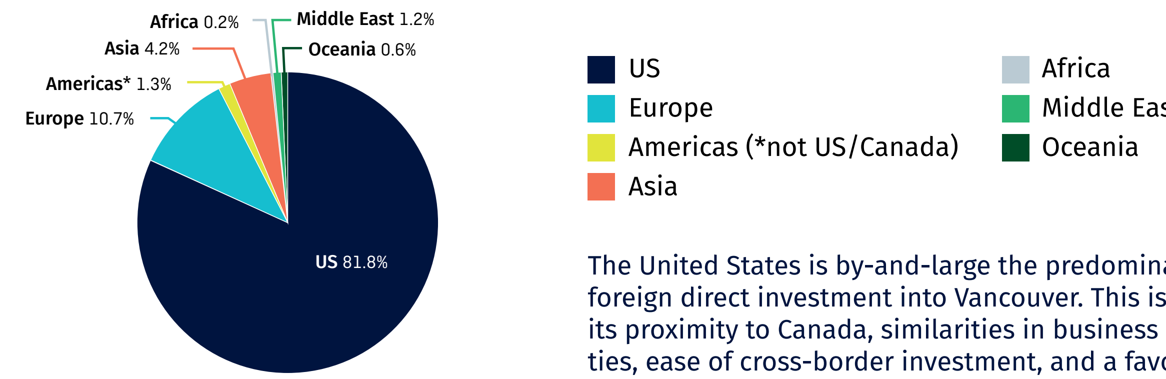
Direct investment into Vancouver has increased dramatically over the last 10 years, with an average annual growth rate of 38 percent.

Investment Deals

There has been a recent trend towards fewer but larger deals, likely the result of investors pooling funds in investment rounds.

Foreign Direct Investment

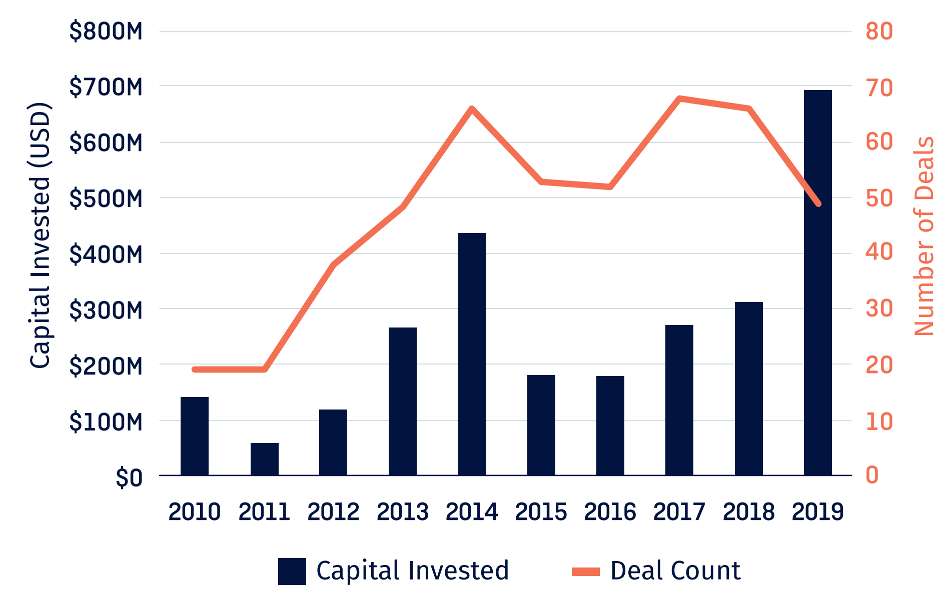
2019 Disclosed Foreign Direct Investment Deals Based on Deal Count - Greater Vancouver, Pitchbook



The United States is by-and-large the predominant country for foreign direct investment into Vancouver. This is unsurprising given its proximity to Canada, similarities in business environment, cultural ties, ease of cross-border investment, and a favorable exchange rate.

US Investment into Vancouver

2010–2019 Disclosed US Direct Investment Deals - Greater Vancouver, Pitchbook

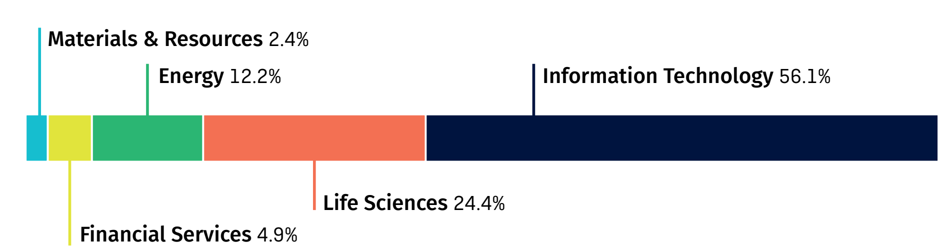


Investment Activity

US direct investment into Vancouver has remained substantial year over year. 2019 was an especially active year, with numerous large deals totaling almost 700 million USD.

US Investment into Vancouver by Sector

2019 Disclosed Foreign Direct Investment Deals Based on Deal Count - Greater Vancouver, Pitchbook

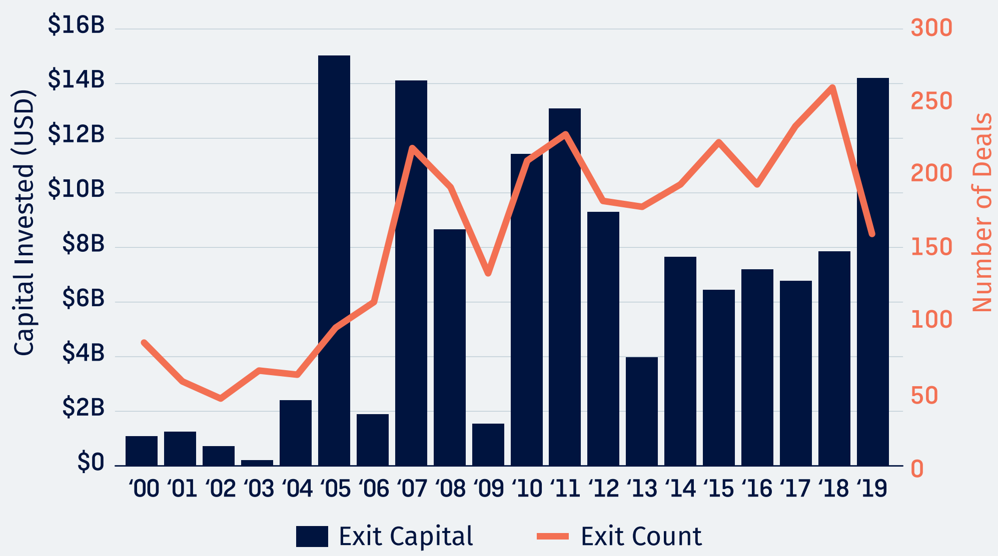


Greater Vancouver Disclosed Exits

2010–2019 Disclosed Exits – Greater Vancouver, Pitchbook

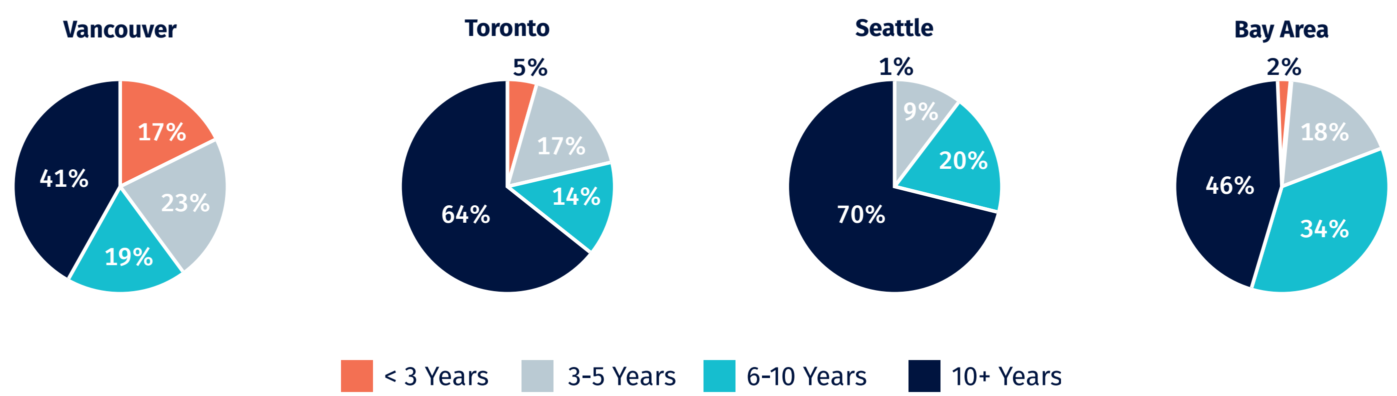
Resilience in Innovation

Vancouver rebounded quickly from the dot-com bubble burst of the early 2000s, and has maintained a large volume of exits and exit value over the past decade. This healthy exit activity is largely due to global interest in acquiring Vancouver companies' unique and profitable IP.



Time to Exit

2019 Disclosed Exits – Greater Vancouver, Greater Toronto, Greater Seattle, Bay Area, Pitchbook



The IP Advantage

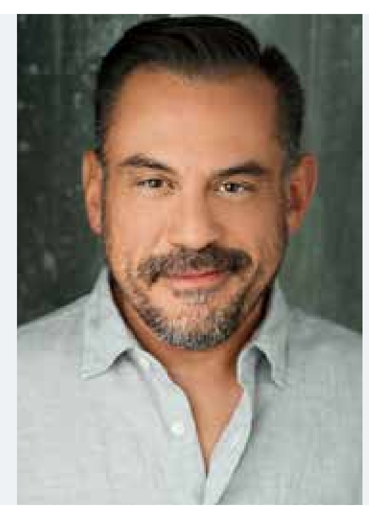
Vancouver startups have the proven ability to rapidly develop valuable IP and build early relationships with both financial and strategic buyers. This translates to quicker exits and earlier returns. In fact, 40 percent of Vancouver companies that exited in 2019 did so within the five-year mark – a significant portion when compared to other notable innovation hubs.

Vancouver Exit Highlights

A summary of notable deals and returns over the past decade, Pitchbook

Startup	Industry	Founded	Raised	Exited	Exit Type	Years to exit	Amount (USD)	Acquirer
Kabam	Entertainment software	2006	n/a	2017	ACQ	11	$1B	Netmarble Games
Avigilon	Security services, B2B	2004	$113M	2018	ACQ	14	$873M	Motorola Solutions
Aptum Technologies	Systems and information management	1999	$30M	2013	ACQ	14	$635M	Cogeco Communications
Plentyoffish Media	Media and information services, B2B	2003	n/a	2015	ACQ	12	$575M	Match.com
Aritzia	Clothing manufacturing	1984	$351M	2016	IPO	32	$351M	n/a
TIO Networks	Automation workflow software	1997	$6M	2017	ACQ	20	$234M	Paypal
Recon Instruments	Wireless communications equipment	2008	$26M	2015	ACQ	7	$175M	Intel Corporation
Phoenix Labs	Entertainment software	2014	n/a	2020	ACQ	6	$150M	Sea
Zymeworks	Biotechnology	2003	$220M	2017	IPO	14	$65M	n/a
Neurio	Cleantech	2005	$2M	2019	ACQ	14	$60M	Generac Power Systems
Mobify	Media and information services, B2B	2007	n/a	2020	ACQ	13	UND	Salesforce
Finger Food Advanced Technology Group	Application software	2009	n/a	2020	ACQ	11	UND	Unity
Lendesk	Fintech	2013	n/a	2019	ACQ	6	UND	Quicken Loans

ACQ = Acquisition, UND = Undisclosed



Leonard Brody
Investor, Los Angeles

"Vancouver is famous for a lot of things, which may be why its innovation ecosystem is so seldom given its due. However, as one of the key pillars of the Pacific Northwest, the innovation economy in Vancouver is thriving. This is evident by some of the recent big exits by local firms in the high tech and VFX/ Animation sector."

Other Recent Notable Private Equity Deals

- PDFTron
- Organika
- Pinkbike
- Watermarq Technologies
- Coast Appliances
- Amur Financial (Alpine Credit)
- CustomAir

The Canadian Advantage

And how it enhances investment, business and innovation

Canada's strong regulatory banking framework has made it one of the world's most recognizably resilient economies, and the country's strong banking and financial services sector offers a welcome environment for cross-border investment, particularly during uncertain economic times. Canada's world-leading economic immigration policies enable companies to attract and retain the highest-quality talent from around the world.

When these assets are considered alongside the Canadian government's proven financial dedication to supporting innovation, it is clear there are few better regions in which to invest and conduct business.

Secure
One of the soundest financial systems in the world, according to the World Economic Forum

Stable
Consistently ranked as one of the most politically stable countries in the world says Marsh and WGI

Protected
The World Bank considers Canada to have the same level of investor protection as the United States

Affordable
Lowest business costs in the G7 for research and development intensive sectors, says Santander

> **"Canada has been able to attract and nurture some of the strongest tech talent in the world due to its friendly immigration policies and world-class universities"**
>
> **Silicon Valley Bank**

#2

in the World for Protecting Minority Investors

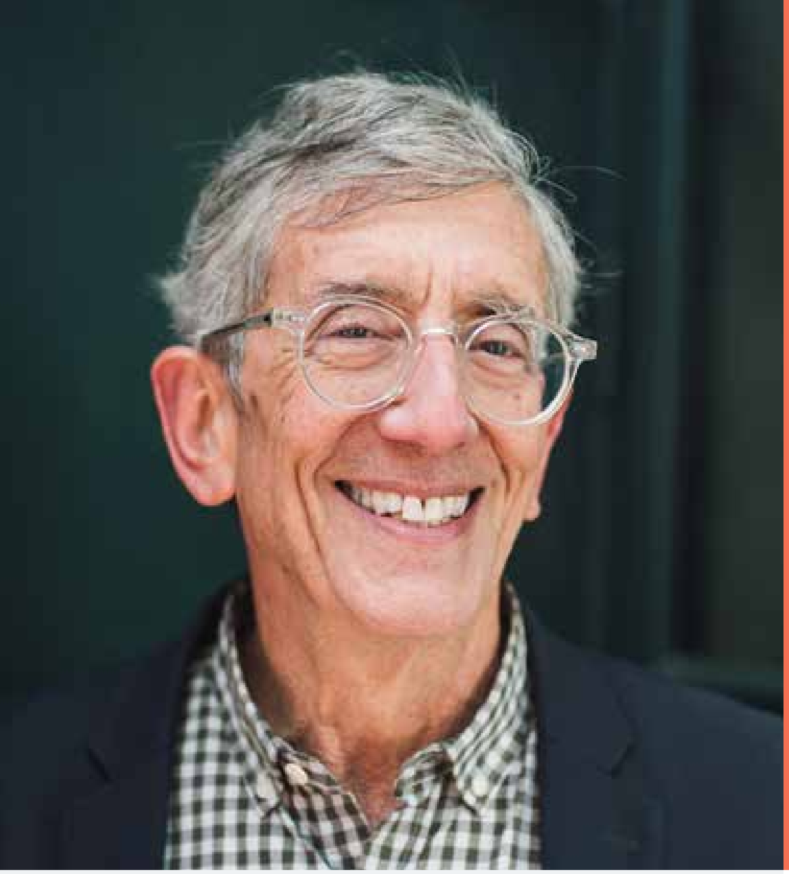
The World Bank

#2

in the World for Ease of Starting a Business

The World Bank

> **"Canada shines as a beacon of political, economic and social stability"**
>
> **Ranstad**



Joel Solomon on what it means to invest in a global solutions city

Joel Solomon is an influential American investor based in Vancouver and a founding partner of Renewal Funds, Canada's largest mission venture capital firm with over $200 million in assets under management.

Leveraging Renewal Funds, and through his own personal investments, Solomon has strategically invested in a variety of notable Vancouver companies, including:

- Terramera
- Happy Planet Foods
- Aquatic Informatics
- Sustainable Produce Urban Delivery (SPUD)
- Lunapads
- Cascadia Windows & Doors
- Horizon Distributors
- Capers

Candid insights from Joel Solomon

What was it about Vancouver that initially captured your interest as an investor?

I found ripe opportunities for broad innovation as a result of Vancouver's business, cultural and physical environment. The city is a dream combination of early leadership in sustainability, social entrepreneurship, climate justice and reconciliation with First Nations peoples, paired with robust economic potential and an enviable location on the edge of a vast and relatively intact natural world.

What motivates you to continue to invest in Vancouver startups?

Our city is one of the youngest and most forward-thinking in North America. It's a hub full of explorers of what's possible, challenging the status quo. Our deep multiculturalism and easy access to Asia are likewise hard to match. As an early-stage city, there are significant challenges to solve, and that opens up an entire world of potential and possibilities. People here are uniquely positioned to make an impact and contribute to the future of the city and far beyond.

Photography: Britney Berner

Can you share any insights you've gained through investing in Vancouver companies?

Opportunities abound in Vancouver! Vancouver is a hotbed of new and creative thinking, where values-driven entrepreneurs create enviable investment options, tackling global challenges. Despite the number of investors who have trained their eyes on Vancouver, the city's potential is still barely realized.

Anything else you would like to share?

There is a robust entrepreneurial explosion underway in Vancouver, with Canada rising above competitors as an intelligent, modern nation. Creative solutions to global challenges are in the air, water and heartbeat of the city. The scale is digestible. The talent is passionate. I invite businesses, investors and entrepreneurs committed to these goals to join us as we continue building a global solutions city.

Legal Considerations

The following non-exhaustive list sets out certain key unique features of Canadian corporate law that are distinguishable from similar corporate statutes in non-Canadian jurisdictions.

Corporate Law

Corporate Statutes
Canadian corporations can be incorporated federally under the Canadian Business Corporations Act (CBCA) or under provincial business corporation statutes; in BC, this would be the British Columbia Business Corporations Act (BCBCA). While very similar in most respects, there are several important, noteworthy differences, some of which are detailed below.

Director Residency Requirement
CBCA mandates that at least 25 percent of the company's directors be Canadian residents. This residency requirement does not apply to a BCBCA company. While in most cases this is not an issue, it can be a consideration if non-Canadian investors wish to nominate directors to the board.

Director Duties
Directors of Canadian companies are bound by fiduciary duties of care and loyalty and are required to act in the best interest of the company and to exercise an appropriate level of diligence and care in arriving at their decisions. Generally, under Canadian law, the "best interest of the Company" is more broadly considered than under Delaware law, and requires the broader consideration of other stakeholders – such as creditors or employees – and in some cases, the interests of other stakeholders are paramount to that of shareholders. Rules with respect to director conflicts also differ slightly under Canadian law. Director duties should be carefully considered by US investors appointing nominee directors to Canadian companies.

Authorized Capital
Unlike in Delaware and other US corporate statutes, companies in Canada can have an unlimited number of authorized shares, and most companies establish their authorized capital in this manner to enjoy the benefits it offers. There is no "franchise tax" concept in Canada. Investor protections to mitigate against the risk of a large number of additional shares being issued is often addressed by the board's gatekeeper role, and through protective provisions in the articles, or a shareholders' agreement between the company and its shareholders.

Shares in Class vs Series
Under BCBCA and CBCA, shares can be issued in classes or in series. Classes of shares can be set to have equal priority with another class or seniority to other classes of shares. Within a class, shares can be issued in series. Each series must have the same fundamental rights of other series and cannot have priority over other series in respect of payment of dividend or return on capital or payments in the event of a sale of the company. In Canada, no one series of shares has priority over other series of shares in the same class. A class of shares can be structured to have priority over other classes of shares.

Voting Shares vs. non-Voting Shares
Shares of a class of shares can be authorized as voting shares or non-voting shares. Generally, non-voting shares do not have a right to vote on the company's annual business typically addressed at an AGM – such as setting the number of directors for the ensuring year, electing directors, or the appointment of an auditor. Under both the CBCA and BCBCA, non-voting shares have voting rights on all matters requiring shareholder vote, other than the annual business. Because shareholder voting is a fundamental right, a series of a class of shares cannot be designated as a non-voting series.

Shareholder Consents
If shareholder approval is required under the BCBCA or CBCA in any of the various situations that may call for it (including the amendment of company articles to create a more senior class of shares in connection with a financing), the unanimous written consent resolution of all shareholders must be obtained, or a meeting of shareholders needs to be held wherein two-thirds of the shareholders that vote approve the matter. This is a more onerous approach than in the US, where under most corporate statutes, consent in writing can be obtained in lieu of a meeting of shareholders, and shareholder consent carried by the same threshold.

Voting Rights
Each share of each class or series is entitled to the same number of votes. In Canada, super-voting shares, which have multiple votes for each share held, are only possible if such shares are in different classes. It is not common for Canadian emerging tech companies to have super-voting classes of shares.

Class / Series Voting
Where shareholders have voting rights under the CBCA or BCBCA, generally, classes or series of shares are required to vote separately as a class or as series, as applicable, to approve the matter proposed for approval, if the matter "prejudices or interferes with" the rights of the holders of that class or that series, as applicable. The required threshold is two-thirds of shares of that class or series that vote in person or by proxy to approve. Practically, creating of next senior class of shares in a VC financing is deemed to prejudice or interfere with the rights of other classes of shares. Care must be taken by investors to ensure that the implication of these statutory rights is contractually mitigated.

Shareholder Right to Dissent
For companies incorporated under the CBCA, dissent rights exist and may be exercised under certain circumstances, including generally any matter that, under corporate statutes, gives rise to class-by-class or series-by-series voting rights. The exercise of a dissent right entitles a shareholder to have all its shares bought by the company at fair market value. Dissent rights of shareholders under BCBCA are much more limited.

Securities Law

Regulatory Regime Generally
Canadian securities law is provincially regulated by the securities commission in each Canadian province; there is no parallel to the US Securities and Exchange Commission at the federal level in Canada. The securities laws across the various provinces are harmonized and generally consistent across Canada. In addition to complying with the local securities laws governing the investor's home jurisdiction, investors investing in a Canadian company must also comply with the securities laws of the province in which the investee company operates.

Purchase of Securities
In Canada, there are broadly two ways to conduct an offering of securities. One is for the issuing entity to file a prospectus with – and receive a receipt from – a Canadian securities regulatory authority, such as the British Columbia Securities Commission, and the other is to offer those securities only to purchasers pursuant to an exemption from the requirement to file a prospectus. Canadian private technology companies typically issue securities by relying on one of the exemptions from filing of a prospectus. The accredited investor exemption is typically one of the only exemptions that apply to US angel investors investing in Canadian companies. Categories of the Canadian accredited investor designation are substantially similar to their US equivalent under Rule 501 of Regulation D in the United States.

Resale Restrictions
Shares in a private company in Canada are subject to significant restrictions on resale or transfer, and cannot be sold or transferred unless the transfer is on an exempt basis by the transfer to someone who meets a criteria for one of the exemptions from the company filing a prospectus. Typically, Canadian companies include provisions in their articles that restrict any ability for a shareholder to resell or transfer, unless approved by the Board of Directors. The Board of Directors is not obligated to approve any such request for transfer unless the company's shareholder agreement requires they do so, generally with respect to a particular shareholder or a group of shareholders.

The CCPC Advantage

CCPC Benefits
The Canadian income tax system grants Canadian controlled private corporations (CCPCs) certain tax benefits under the Canadian Income Tax Act, including (i) a cash refundable amount equal to approximately 35 percent of eligible expenses incurred by the company in the prior year for up to the first $3 million in expenditures; (ii) reduced tax rate on the first $500,000 of annual income; (iii) ability to access various government funding and grant programs designed to spur R&D activities; (iv) for Canadian employees, the ability to defer recognition of employee stock option benefits to pay the applicable tax when the options or shares issued on exercise of the options are sold; and (v) for Canadian shareholders, the ability to rely on the lifetime capital gains exemption from payment of tax on gain from the sale of their shares of the CCPC (2020 capital gains exemption is $838,000).

Maintaining CCPC Status
A company is a CCPC if it remained a CCPC during a company's fiscal year. To qualify as a CCPC, the company must be (i) a Canadian resident company, and (ii) must not be controlled directly or indirectly by non-residents, public corporations or any combination of them. Control in fact and control at law are the tests for control – that is, at least 50 percent of the issued shares of the company that can be voted for the election of directors must be held by Canadian shareholders (meaning that the Canadian shareholders can elect at least 50 percent of the directors), and non-Canadian residents and public company shareholder cannot directly or indirectly exercise control by being able to direct the course of a company's corporate affairs through contractual rights. Maintaining CCPC status is important to Canadian technology companies, and most want to maintain it for as long as possible. There are various structures that assist a company to maintain CCPC, even where financing is from non-Canadian investors who hold greater than a majority of voting shares, but care must be taken in structuring to ensure the company remains a CCPC while allowing non-Canadian investors to have majority ownership of a company and their reasonable expectations to be addressed.

Investment Structures

This section describes common investment structures for minority investments in Canadian companies.

Investment structures and terms in Canada are very similar to investment structures and terms in United States companies.

- Equity investments in shares in Canada are either in **common shares** or a class of **preferred shares**. Most founders and friends and family investors typically purchase common shares and arms-length investors purchase preferred shares.
- **Simple agreement for future equity** (SAFE) instruments are for the most part identical to the customary forms used in the United States, including the Y Combinator model SAFE instruments.
- **Convertible notes** (be it convertible debt or convertible equity) have substantially the same terms and rights as convertible notes used in United States.

Certain key features for the investment structures used in Canadian companies are as follows:

Common Shares
A common share is a security to purchase equity ownership of a company at an agreed-upon valuation. Standard rights attached to common shares include voting (although there can be non-voting classes of common shares), the right to dividends (if declared on the common shares) and the right to a distribution of the company's assets on a liquidation or dissolution. Payment to common shareholders in the event of any liquidation, dissolution or winding-up of the company will be junior to payments to debtholders and to preferred shareholders. Unlike preferred shares, common shares typically do not confer any special rights upon the shareholders. In early-stage companies, common shares are typically owned by founders, friends, family and close business associates of the founders, directors, or employees of the company.

Preferred Shares
Most equity investments in venture-capital-backed companies are structured as preferred share investments. A preferred share is a security to purchase equity ownership of a company at an agreed-upon valuation. Preferred shares will have preferential rights to common shares that often include a liquidation preference, dividend entitlements, anti-dilution adjustment rights, right to convert to common shares, and approval rights over certain decisions of the company. The liquidation preference means that, upon a liquidation, dissolution or winding up of the company, the investor will get the preferred return equal to a value of their investment (or a different agreed-to amount) back – plus any declared but unpaid dividends, prior to the rest of the funds being distributed to holders of common shares or any other classes of junior preferred shares. Dividends are typically not paid in cash, but rather are accrued and paid out when there is a liquidity event. Preferred shareholders will often have some approval rights over items, such as the terms of subsequent rounds of financing, board composition, and acquisition and divesture opportunities and other material corporate decisions that a company makes.

In Canada, a majority of standard preferred share financings are completed based on model documents published by the Canadian Venture Capital Association for Series A preferred financings. The Canadian model documents are consistent with the National Venture Capital Association model document for Series A preferred financings and are broadly accepted by investors and companies.

Simple Agreement for Future Equity (SAFE)
A SAFE is a form of a security and gives the investor an option to convert their investment into shares at a later date upon the occurrence of a pre-determined event, which is typically an equity financing raising a minimum dollar amount of new proceeds. It is a hybrid security and is not classified as debt or equity. There is typically no interest and no maturity date for a SAFE. SAFEs avoid placing a valuation on the company, which can be particularly useful for early-stage companies that have not had enough operating history to properly set a valuation or that wish to obtain interim financing while a share offering round is structured and completed. In the event of a liquidation, dissolution or winding up of the company, the investor will typically be entitled to receive the investment amount of the SAFE, (subject to the commentary regarding "eligible business corporations" in British Columbia below). Such payment will rank as (i) senior to payments for common shares, (ii) pari passu with payments for other SAFEs and/or preferred shares, (iii) junior to outstanding indebtedness and creditor claims, and (iv) junior to preferred shares.

In the event of an initial public offering or a change of control of the company, the investor will typically be entitled, at their option, to receive either: (i) the investment amount, and (ii) the amount payable on the number of common shares equal to the purchase amount divided by the quotient of the post-money valuation cap divided by the number of shares (on an as-converted basis) immediately prior to the liquidity event (the conversion amount).

Advantages

- Simple security that will allow for quick and limited negotiations, limited paperwork
- Rewards investors' early investment by having their money convert at either – or the lesser of either – (i) an agreed-upon valuation cap, and/or (ii) a discount to the equity financing valuation

Disadvantages

- Does not provide investor with shareholder rights, such as information rights, investor veto rights, rights in respect of board seats, or other rights that may be important to the investor unless as otherwise specifically agreed to by contract
- Since it's not debt, there is limited protection to the investor in downside scenarios

BC Eligible Business Corporation (EBC) Tax Credits

The government of British Columbia has established a program where eligible investments made in a British Columbia company that is registered as an eligible business corporation under British Columbia's Small Business Venture Capital Act (SBVCA) results in the BC investor receiving a tax credit equal to 30 percent of their investment amount. An eligible investor for the tax credit can be an individual or a company. An individual or companies must be a resident of BC. If an individual moves outside the province in a year in which they acquire shares, it may affect the eligibility for the tax credit. Companies can receive a non-refundable tax credit that must be claimed in the year the investment is made.

A SAFE is an eligible investment under the SBVCA. A notable difference of an EBC eligible SAFE is that in order for SAFEs to be eligible for the eligible business company tax credits in BC, there can't be a right for an investor to receive the purchase price (i.e. the SAFE must convert into shares rather than the investor getting repaid). Since companies will want to use the same terms for all SAFEs in a round of financing, investors will have to do a mandatory conversion to share concept in a SAFE for an eligible business corporation in British Columbia. Alternatively, investors can require that the mandatory conversion to share concept be applicable only to British Columbia investors.

Convertible Notes
A convertible note is a loan that converts to equity upon a predetermined equity raise (a **qualified financing**) of the company at a specified valuation cap or discount to the next equity price; or, if the company is sold prior to conversion, the investor will receive a higher cash amount as specified in the convertible note, or convert its shares into common shares based on a certain pre-defined valuation. A convertible note must always have a maturity date and typically has an interest rate. A convertible note is a debt obligation of the company, and must be repaid on maturity unless the convertible note contains an automatic conversion feature wherein if not converted pursuant to a qualified financing or repaid, the indebtedness automatically converts into shares at a certain predetermined valuation.

Taxation Considerations

This section summarizes the key features and rules of Canadian taxation law, regulations and tax relief programs distinguishable from similar statutes in non-Canadian jurisdictions.

Foreign Investors

General Rules
Non-residents of Canada are subject to income tax on their (i) income from being employed in Canada, (ii) income from carrying on business in Canada, and (iii) capital gains from disposing of taxable Canadian property (TCP). Furthermore, non-residents earning certain Canadian-source income (such as interest, dividends, rents and royalties) are subject to a 25 percent withholding tax. However, if the non-resident resides in a country that has a tax treaty with Canada, the amount of tax charged on the income may be reduced or eliminated.

Gains from Sale of Stock
Non-residents of Canada who own shares in a Canadian company as capital property, and who sell shares, will only be subject to Canadian tax on any gains from the sale if the share is TCP. In order for a share in a Canadian company to be TCP, the company must generally have derived more than 50 percent of the fair market value of its assets from Canadian real estate or Canadian resource properties at any time in the five years immediately prior to the sale. If the shares being sold are public, the non-resident must also own more than 25 percent of the company.

If the shares sold are TCP, only half of the gain on sale would be subject to tax in Canada. In order to ensure taxes owing from a sale of TCP are collected from non-residents, a purchaser is required to withhold and remit 25 percent of the gross proceeds from the sale to the Canada Revenue Agency (CRA). However, if the non-resident owner obtains a section 116 clearance certificate from the CRA prior to the sale, this withholding requirement is eliminated. In order to obtain the clearance certificate from the CRA, the non-resident must either post security or pay tax on the estimated gain from the sale.

For situations where the shares being sold are TCP and the foreign investor is resident in a country that has a tax treaty with Canada, the treaty may provide further exemptions from the gain being subject to tax in Canada. As a result, given the narrow definition of when a share may be TCP and the additional exemptions from tax provided in a number of Canada's tax treaties, the vast majority of share sales made by foreign investors of Canadian companies will be exempt from Canadian income tax.

Withholding Taxes
Non-residents who receive certain Canadian-source income can be subject to a 25 percent withholding tax. For example, a foreign investor receiving interest or dividends from a Canadian company could be subject to this tax. In many cases, foreign investors that would otherwise be subject to these taxes can structure their investments to significantly reduce or eliminate the tax. For example:

- Interest paid to foreign investors who deal on an arm's length basis with a Canadian company may be exempt from withholding tax if the interest isn't contingent on the company's profit, revenue, or cash flow;
- Interest paid to US investors may be exempt from withholding tax under the United States–Canada Income Tax Treaty;
- Distributions of cash paid as a return of paid-up capital from a private Canadian company can be exempt from withholding tax; and
- Dividends paid to investors resident in the US may either be exempt from withholding tax or may be reduced to 5 percent or 15 percent. Under certain circumstances, a US investor may be able to claim a US foreign tax credit for these withholding taxes or a dividends received deduction may be available to the investor. Please note that the availability of these benefits is fact-specific.

Although many foreign investors in Canadian companies expect to avoid Canadian income tax on their investments by realizing a gain on the sale of their stock, upfront planning can eliminate most additional Canadian taxes that otherwise may be triggered, and keep them from being an additional cost to the foreign investor.

Passive Foreign Investment Companies
A passive foreign investment company (PFIC) is a corporation that is not resident in the US, not controlled by US taxpayers, and which either (i) earns at least 75 percent of the corporation's gross income from passive sources, or (ii) maintains at least 50 percent of the corporation's assets from investments that produce passive income, such as interest, dividends or capital gains. Even though a company may have a number of employees and be in the process of developing a business model for their active operations, the corporation may be considered a PFIC if it has recently raised cash to fund its operations, as its only income may be interest income from the cash invested from its shareholders. As a result, US investors in early-stage operations will often need to understand and manage the considerations associated with investing in a PFIC.

If a US investor owns shares in a PFIC, gains realized on the sale of these shares as well as any **excess distribution** they receive would be subject to US tax at the top federal tax rate, rather than at the taxpayer's marginal rate. An excess distribution is a distribution with respect to the PFIC stock to the extent it represents a ratable portion of the total distributions on the stock during the year that are in excess of 125 percent of the average amount of distributions in respect of the stock during the three prior years. Furthermore, the gain or excess distribution is treated as having been earned equally over the period in which the taxpayer owned the investment, and interest is assessed as though the associated tax liability had accrued each year.

In order to avoid the previously described negative tax consequences of owning shares in a PFIC, there are certain elections that may be filed by the US investor. In general, these elections either result in the current inclusion of shareholder's share of PFIC income, a mark-to-market of the PFIC stock (provided such stock is considered marketable stock). Generally, most Canadian corporations wishing to attract US investors should be willing to provide the information necessary for the US investor to file these elections.

Subpart F
If a US investor owns 10 percent or more of a foreign corporation and the corporation is a **controlled foreign corporation** (CFC), the US investor will have to consider whether the anti-deferral provisions of subpart F applies to their investment.

If the CFC earns income that meets the definition of foreign base company income, the US shareholder may be required to make a current inclusion of their pro-rata share of such income. Foreign base company income includes passive-type income, such as interest, dividends, rents, annuities, royalties, and gains from the sale of certain property, but includes a variety of other types of income as well. Moreover, the subpart F rules are complex with a variety of exceptions, credits, and other components that must be taken into account.

Global Intangible Low-Taxed Income (GILTI)
If a US investor owns 10 percent or more of a foreign corporation and the corporation is a CFC, the US investor will have to consider whether the global intangible low-tax income (GILTI) rules apply to their investment.

If a CFC earns income that exceeds 10 percent of the cost (as determined for US tax purposes) of tangible assets held by the CFC, the US shareholder may be required to include additional income on their US tax return as a result of the GILTI rules. The amount of tax due on the income inclusion under the GILTI rules will vary depending on the characteristics US shareholder (e.g., individual or corporate) as well as if that shareholder has interests in other CFCs. However, with upfront planning, it may be possible to manage the negative tax implications of the GILTI rules.

In situations where the foreign company isn't a CFC or the foreign company is operating as a start-up and does not earn any income during the year, the GILTI rules should not cause an additional tax to apply to the investment.

Gain from Sale of Shares in a Canadian Company
There are notable complexities associated with the sale of taxable Canadian property shares of a Canadian company if the sales are made by a non-resident of Canada. When a non-resident investor disposes of taxable Canadian property (TCP) shares in a Canadian company, any gain on the sale of the shares should be subject to Canadian income tax. In this event, unless the purchaser obtains a withholding certificate to reduce the required withholdings, the purchaser is required to withhold 25 percent of the purchase price and remit it to the Canada Revenue Agency. The non-resident investor must then file a Canadian income tax return to report the gain on the sale of the shares to claim a refund of the excess withholdings previously remitted.

In 2010, the TCP definition was amended to eliminate many of the shares in private Canadian companies from being TCP. Now, a company's shares will be TCP only if, at any time during the 60 months prior to the sale, the company derives 50 percent or more of its value from certain Canadian real property, such as immoveable property situated in Canada, Canadian resource properties, and Canadian timber resource properties. As a result of this amendment, in many situations the gains from the share sales by American investors in Canadian companies will be exempt from Canadian income tax.

Canadian Corporations

General Rules
Canadian corporate tax rates on active business earnings vary by province or territory, and generally range from approximately 11 percent to 31 percent. The actual tax rate incurred by a corporation depends on the size of the company, the ownership structure and the province in which it operates. The lower rates of tax on active business earnings are generally provided to Canadian corporations that are controlled by Canadian resident individuals (referred to as a Canadian controlled private corporation, or "CCPC"). Accordingly, care should be taken when structuring investments into Canadian companies by foreign investors so not to lose CCPC status inadvertently.

Tax Depreciation
Generally, capital expenditures made by companies may be written off over a number of years for tax purposes. In order to simplify the recording of these write-offs, and encourage businesses to make investment in capital assets, the Canadian rules provide numerous incentives:

- Typically, capital asset tax depreciation is calculated through pooled asset classes rather than on an asset-by-asset basis. The pooling of these calculations significantly decreases the time spent recording, tracking and depreciating assets as well as providing the opportunity to defer the recapture of tax depreciation when assets are sold.
- The rates provided to depreciate capital assets can allow for an accelerated write-off of the asset when compared to accounting depreciation or an asset's economic lifetime.
- The government recently provided an accelerated write off of various CCA classes through the Accelerated Investment Incentive (AII). The AII provides accelerated tax depreciation in the year of acquisition for eligible capital assets acquired after November 20, 2018 and made available for use before 2028.
- Certain asset categories have also received enhanced write-off incentives over others. For example, manufacturing and processing assets, specified clean-energy equipment and zero-emissions vehicles are all eligible for 100 percent write off in the year of acquisition.
- Tax depreciation is a discretionary deduction that may be claimed by a company. As a result, a company who has other tax attributes that it may want to utilize can choose not to claim the deduction in the current year where it may not be beneficial thereby preserving the ability to claim the tax depreciation in a future tax year.

Foreign Income
Canadian resident corporations are generally subject to tax on their worldwide income regardless of where it is earned. However, significant opportunities exist for Canadian corporations doing business outside of Canada.

In order to encourage businesses to expand abroad, Canadian tax rules provide the following:

- Structured correctly, Canadian corporations can establish operations in a foreign subsidiary and earn active business income through the subsidiary without being subject to immediate Canadian income tax. If the subsidiary is established in a country that either (i) maintains an income tax treaty with Canada or (ii) maintains a tax information exchange agreement (TIEA) with Canada, the income earned by the subsidiary can also be distributed back to the Canadian parent company without any additional Canadian income tax; and
- Canada currently maintains tax treaties with 93 countries and is in the process of negotiating tax treaties with an additional four countries. Canada also maintains TIEAs with 24 countries and is in the process of negotiating with an additional six countries. These tax agreements allow for the efficient structuring of operations and flow of capital between Canadian companies doing business with many countries around the world.

Government Incentives

The bulk of Canada's government incentives comes through Federal programming, and its Scientific Research & Experimental Development (SR&ED) program in particular. As Canada's flagship government incentives program, SR&ED focuses its support on R&D activities in the form of deductions and tax credits. BC also offers a SR&ED tax credit that supplements the federal incentive. Small and medium-sized CCPCs performing eligible R&D can earn a refundable tax credit at an enhanced rate.

A Comparison of US and Canada's R&D Tax Credits

United States R&D tax credit	Canada's Scientific Research & Experimental Development (SR&ED) tax credit
A non-refundable federal tax credit that is applied to reduce income taxes	Federal and provincial refundable and non-refundable tax credit program
The federal tax credit has an optimized value of 7.9% under the traditional method or 9.1% under the alternative simplified credit for tax years beginning after 31 December 2017	35% for qualifying Canadian controlled private corporations (CCPCs)*; 15% for other companies; Provincial credits range from 3.5% to 20%
Eligible expenditures – qualified research expenditures (QREs) include internal labor, supplies used in the research process, and 65% of qualified payments to subcontractors (contract research).	Internal labor, subcontractors performing work in Canada on behalf of the claimant, materials transformed or consumed, and overhead related to SR&ED
Taxpayers satisfying certain eligibility requirements may elect up to $250,000 per year, over a five-year period ($1,250,000 in total), to offset federal payroll taxes.	Maximum assistance available for non-CCPCs; federal tax credit of 15% of qualified expenditure; various provincial rates range from 3.5% to 20%
	Maximum assistance available for CCPCs from the federal tax credit is 35% of qualified expenditure, and is refundable (maximum 1.05 million CAD per year); various provincial rates range from 10% to 30%
There are two claiming options: • Traditional credit, which is equal to 20% of the amount of the QREs exceeding a base amount • Alternative simplified credit which is equal to 14% of the excess of the QREs over 50% of the average of the previous three years' QREs Both tax credits are incremental and based off increased research expenditures of the company	SR&ED program has one uniform claiming option.
The tax credit does not require technical project descriptions; however, taxpayers must be able to demonstrate, upon request, how its activities satisfy the statutory requirements.	Tax credit requires technical project descriptions
Many states offer research tax credits to offset state income taxes that are refundable, or may be sold	Provincial credits can be refundable or non-refundable and range from 3.5% to 20%

* In Canada, a company eligible for the fully refundable enhanced rate is a Canadian controlled private corporation that is not controlled by non-residents, does not list shares on a designated stock exchange, and has taxable capital of under 10 million CAD in the last tax year.

A Glimpse into SR&ED

A qualifying CCPC that spends a dollar on SR&ED on eligible R&D receives an enhanced refundable federal tax credit of 35 percent. The most common method for claiming high labor R&D projects is the proxy method. The proxy method apples a 55 percent cost of overhead to eligible salaries. In addition, the province of BC provides a refundable 10 percent tax credit. The traditional method includes expenditures directly attributable to SR&ED activities including the provision of premises, facilities or equipment.

What is in it for British Columbia companies?

SR&ED Costs	Refund% for CCPCs	ITC% for Other Claimants
T4 Wages (includes 55% proxy)	64.3%	36.4%
Materials	41.5%	23.5%
Contractors	33.2%	18.8%

In addition to SR&ED, Canadian companies can receive government incentives and subsidies pertaining to hiring, training and innovation on their R&D projects. Programming pertaining to green initiatives, capital expenditures, and moving to new locations are available in various forms from different levels of government.

Other government incentives can further supplement operating costs through direct wage subsides, industry–academic collaborations and innovation grants. These programs can provide incremental benefits, but there is a grind-down effect owing to restrictions on double dipping across Canadian federal and BC provincial programs.

Other Notable Benefits of Operating in Canada

- Canadian companies can borrow money from third parties to invest in their business and claim an interest deduction for the cost of the borrowing. The deductibility of interest on these borrowings is not limited based on the amount of indebtedness that a company maintains, or on the amount of income that the company earns. As well, Canada does not impose withholding taxes on interest payments to non-resident third-party lenders. As a result, Canadian companies have a large amount of flexibility in designing an efficient capital structure for their businesses.
- Significant incentives are available to compensate employees of startup businesses and CCPCs with stock options. Canadian resident CCPC owners may also benefit from earning a portion of the gain from the sale of their shares tax-free. Considered together, these incentives allow Canadian businesses significant opportunities to structure their employee compensation packages to attract and retain key talent in an efficient manner for both the employee and the business.
- Canadian companies can carry forward business losses for 20 years. These losses may be claimed in any future year and are not otherwise restricted in how much may be claimed. As a result, startup companies that may incur significant losses early on have the flexibility to carry forward and utilize their business losses in an efficient manner.
- Only half of capital gains realized by corporations are subject to tax. As a result, Canadian companies that develop capital assets that are ultimately sold will pay a relatively low rate of tax on the gain from sale.

We Can Help

Contact us for more information

Vancouver – with its thriving tech sector and startup ecosystem – is a key gateway into investing in Canada's innovation economy. Contact us if you are interested in learning more about opportunities, processes and logistics related to investing in Vancouver, or if you have any questions about the content in this report.

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