IFA 2018

International Tax Conference

Recent Canadian Developments

Moderator: Claire Kennedy, Bennett Jones LLP, Toronto
YIN Rapporteur: Jared Mackey, Bennett Jones LLP, Calgary

Panelists

Brett Anderson, Felesky Flynn LLP, Calgary

Shannon Baker, Cenovus Energy Inc., Calgary

Pierre Bourgeois, Raymond Chabot Grant Thornton LLP, Montreal

Steve Suarez, Borden Ladner Gervais LLP, Toronto

Tuesday May 15 & Wednesday May 16 | Calgary Telus Convention Centre

Recent Canadian Developments

Topics Covered

1. Budget 2018 Announcements
2. Technical Interpretations
3. Current Canadian Compliance Experience
4. Initiatives on the Digital Economy

Budget 2018 Announcements

Budget Measures - International

- No changes to tax rates or other broadly significant changes to multinational groups
- No substantive response to US Tax Reform
  - Commitment to conduct review of impacts on Canada
  - For Canadian headquartered companies, income tax rates now similar after repatriation. For other multinationals, US likely has a rate advantage on domestic or imported capital employed.
- MLI – will ratify in 2018
- BEPS – reaffirmed commitment

Budget 2018 Announcements

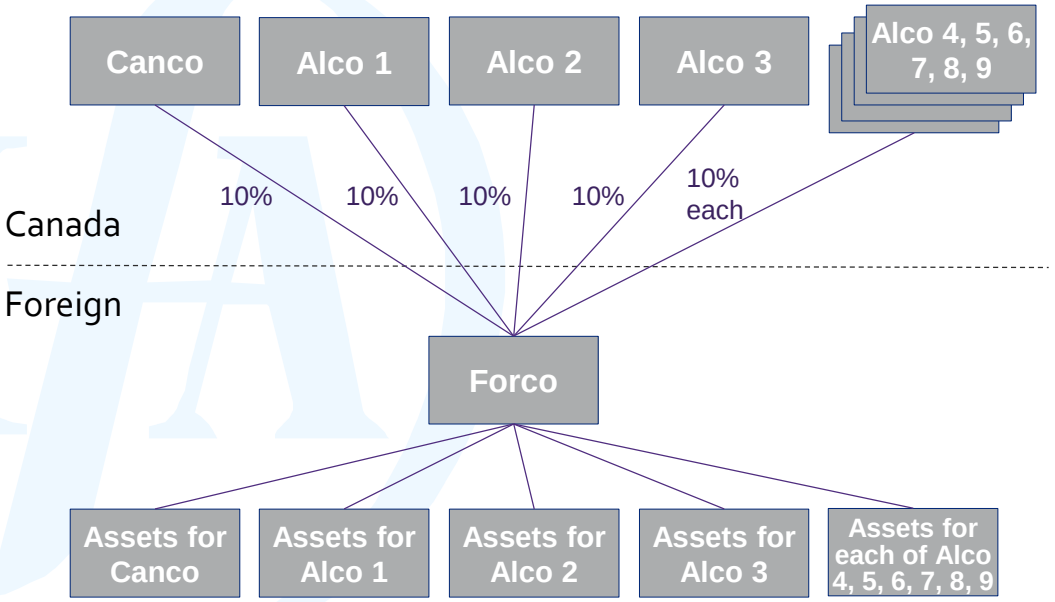
Budget Measures - International

- Information sharing
  - Criminal Matters – Tax and Non-Tax
- Regulated Foreign Financial Institution
- Reassessment period
- T1134 Filing Deadline

Foreign Affiliate Amendments

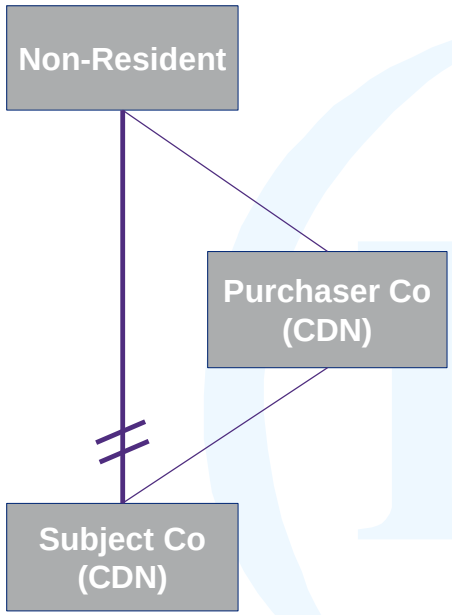
- CFA Change
  - Deemed CFA if a "tracking arrangement" links shareholder's return to particular set of assets

- Investment Business Change
  - If there is a "tracking arrangement each set of assets is deemed to be a separate business for the "6 employee" test

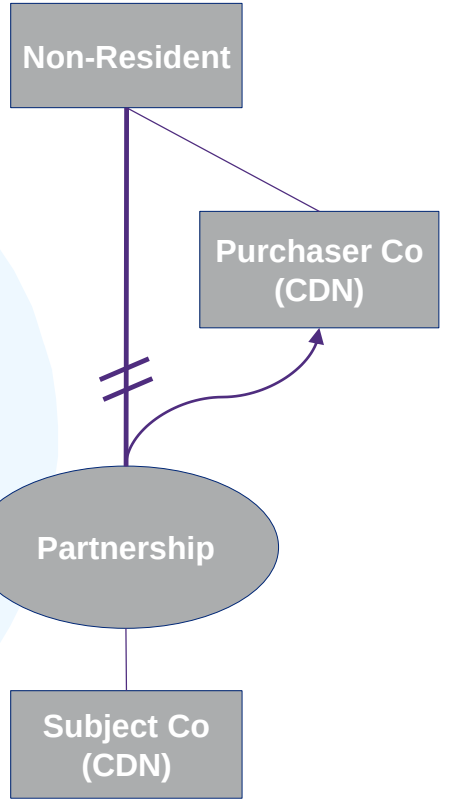


Budget 2018 Announcements

s.212.1 – Anti-Surplus Stripping: Sale of Partnership or Trust Interest



Historically, 212.1 applied to a sale of shares



New look through rule will allow 212.1 to apply to an indirect sale of shares achieved by selling an interest in a partnership or trust

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Technical Interpretations

Summary of Recent Technical Interpretations

	Title
1.	**2017-0721641I7, Thin Cap – Retained Earnings – Other Income (Loss) – Section 18(4)-(6)**
2.	**2016-0643931R3, PUC Reinstatement on Emigration – Section 219.1; 212.3; 87(11); 88(1)**
3	**2016-0664041R3, Participating Debt Interest – Contingent Payment – Section 212(1)(b)(ii); 212(3)**
4.	**2017-0724091C6(E), Conversion from a US LP to an LLC [ACB of inside/outside assets]**
5.	**2017-0724081C6(E), ULC – LLC structures and treaty**
6.	**2017-0694231I7(E), Subsection 247(2), surplus, and FAPI**
7.	**2016-0680801I7(E), Interpretation - subclause 95(2)(a)(ii)(B)(II) Act**
8.	2017-0705201C6, Capital loss - repayment of loan ss. 39(2); 40(2)(g); 40(3.3); 40(3.4); 54
9.	2017-0709041C6, Services PE – Article V(9)(b) of the Canada-US Treaty
10.	2017 TEI CRA Liaison Meeting (Various)

Technical Interpretations

2017-072164I7
Thin capitlization provisions and other comprehensive income

Issue

- For the purposes of computing equity for thin capilization purposes, is other comprehensive income (OCI) considered?

Background

- TSO queried whether a debit balance of OCI needs to be included in equity (i.e., would reduce equity)
- Legislation refers to contributed surplus, paid-up capital and retained earnings
- OCI is a component of shareholders' equity but is not part of retained earnings – must make determination based on accounting meaning
- OCI was determined under US GAAP

Position taken

- OCI not to be considered for thin capitalization purposes
- Caveat provided that results should be similar to the result under Canadian GAAP (ITTN-44)

Technical Interpretations

2016-0643931R3
PUC Reinstatement on corporate emigration

Issue

- In the course of the acquisition of a Canadian target that emigrates out of Canada immediately before extracting foreign affiliates can PUC be reinstated?

Background

- Pursuant to an arrangement, a Canadian Pubco ("Target") was acquired by a non-resident.
- A Canadian AcquisitionCo was used to acquire Target.
- Foreign affiliate dumping provisions applied
- Target's principal assets are two CFA's
- AcquisitonCo and Target are amalgamated
- A s. 88(1)(d) bump operated on the ACB of the CFA's
- AcquisitonCo elected not to be a public corporation per s. 89(1)
- Amalco continues to a non-Canadian jurisdiction. The principal reason for this was to mitigate taxes that would otherwise have resulted on a transfer of the CFA's.

Technical Interpretations

2016-0643931R3
PUC Reinstatement on corporate emigration

Rulings provided

- Bump ruling
- PUC reinstatement for purposes of s. 212.3 and s. 219.1
- Favourable GAAR ruling

Technical Interpretations

2016-0664041R3
Participating debt and contingent payment

Issue

- When does a debt that has an amount that can become payable become a participating debt payment?

Background

- Loan Agreement entered into with an arm's length lender under which there was a periodic interest payment and an "Additional Payment" that is based on a future price of a particular commodity.
- Additional Payment will only become payable in the future if, and only if, the price of the commodity reaches a certain level. This is referred to as the Trigger Date in the ruling.
- Interest paid on a participating debt cannot benefit from 0% withholding per s. 212(1)(b)(ii)

Ruling provided

- Withholding exemption until such time as the Additional Payment is paid or becomes payable (i.e., until Trigger Date)
- Once contingent condition met (Trigger Date), both the periodic interest payment and the Additional Payment are subject to Part XIII withholding tax

Technical Interpretations

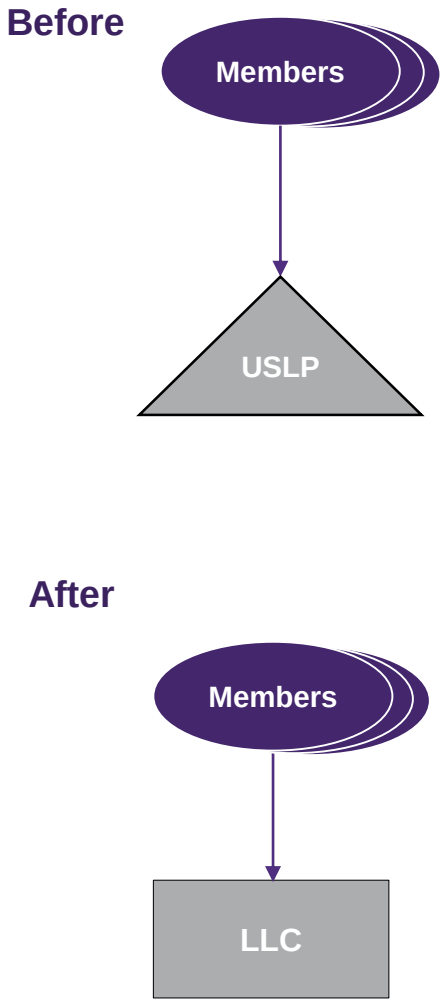
2017-0724091C6(E)
US LP Conversion and ACB of inside/outside assets

Issue

- CRA's comments on ACB of membership interest in the converted entity (i.e. LLC) to the members and the LLC's ACB in its assets immediately after the conversion.

Facts

- CRA previously indicated that upon conversion of a U.S. limited partnership ("USLP") into a U.S. limited liability company ("LLC"), the USLP is considered to have disposed of its assets at FMV and the holder of partnership interest is also considered to have disposed of its interest at FMV. Thus, such a conversion can trigger a gain or loss of the partnership interests and the partnership's assets.



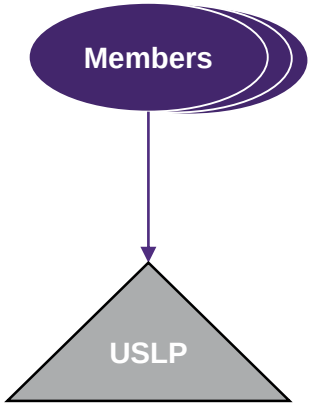
Technical Interpretations

2017-0724091C6(E)
US LP Conversion and ACB of inside/outside assets

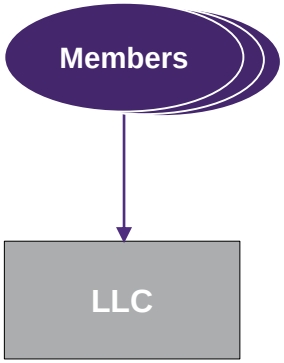
CRA's View

- Conversion would result in following:
  - Would be considered to be from one form to another (i.e. partnership to a corporation).
  - Change in the nature of the interest owned in the entity from a partnership interest to a membership interest.
  - Change in the person with respect to whom the underlying properties are considered to be sources of income. (i.e. from partners to the LLC).
- The following would occur at FMV:
  - Disposition of partnership interest in USLP and disposition of assets of the USLP
  - Acquisition of membership interest in LLC and acquisition of assets by the LLC
- Total ACB immediately after the conversion of all the membership interest in the LLC to the members would correspond to the total FMV at the time of the conversion of all the interest in the USLP.
- LLC's ACB in its assets immediately after conversion would generally correspond to the FMV of these assets at the time of conversion.
- **CRA did not comment on surplus implications of such a transaction**

Before



After



Technical Interpretations

2017-0724081C6(E)
ULC – LLC structures

Issue

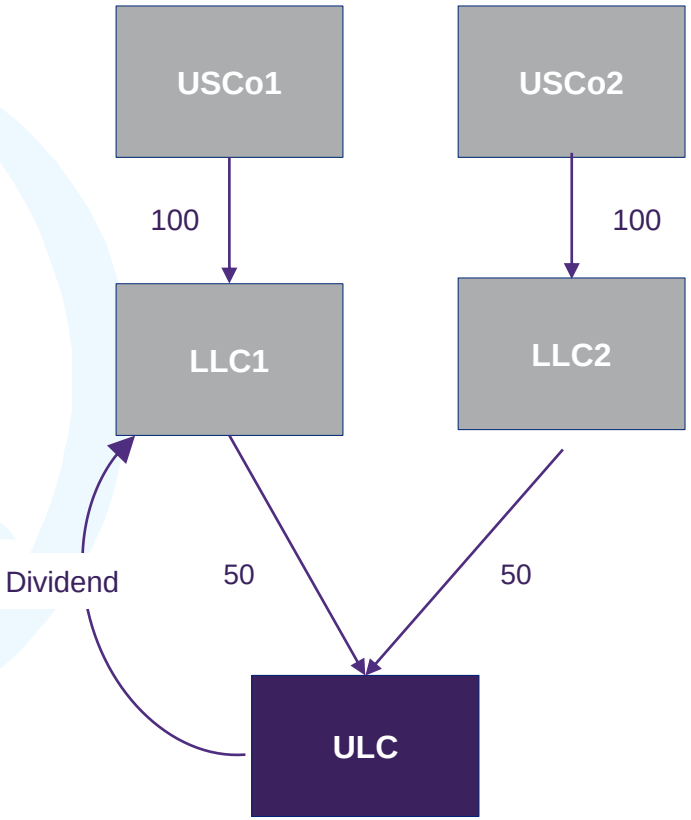
- Eligibility for treaty benefits and reduced rate of WHT on dividend payments in the described structure.

Facts

- LLC1 & LLC2 are disregarded entities for US taxation purposes
- USCo1 & USCo2 are resident of the US, are qualifying persons and are regarded entities

Response

- Due to application of article IV(7)(b) – treaty benefits not available – Withholding rate of 25% applies.

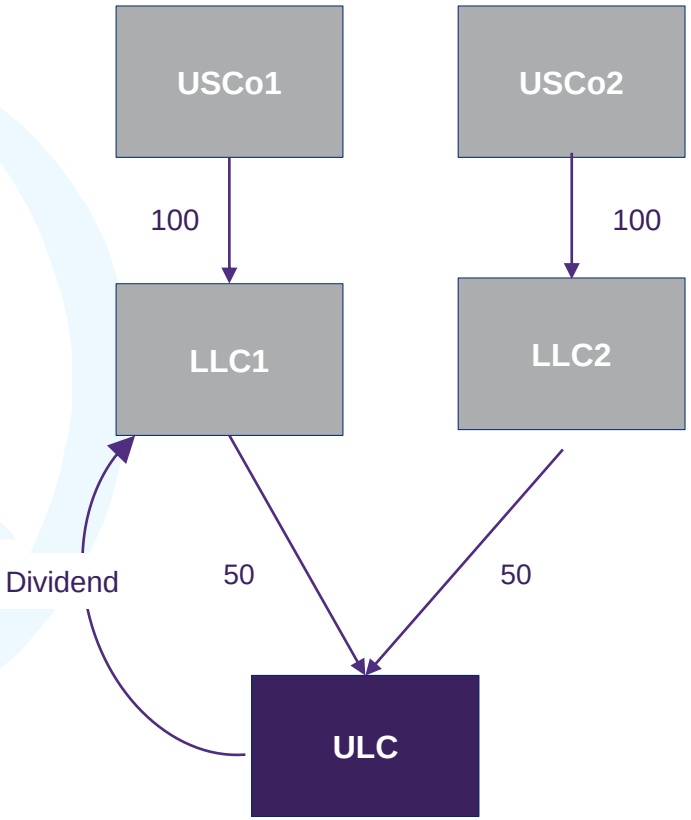


Technical Interpretations

2017-0724081C6(E)
ULC – LLC structures

CRA's View

- Since the ULC is treated as fiscally transparent under the laws of the U.S., pursuant to art. IV(7)(b) of the Treaty, amounts of dividends paid by the ULC shall be considered not to be paid to or derived by a person who is a resident of the U.S. because, by reason of the ULC being treated as fiscally transparent under the laws of the U.S., the treatment of the amount under the taxation law of the U.S. (i.e. as a partnership distribution) is not the same as its treatment would be if the ULC were not treated as fiscally transparent under the laws of the U.S (i.e. as a dividend).
- Therefore, pursuant to art. IV(7)(b) of the Treaty, dividends paid by the ULC to LLC1 and LLC2 would be considered not to be paid to or derived by a U.S. resident. Therefore, the reduced treaty rate for dividends would not apply resulting in a 25% withholding rate.



Technical Interpretations

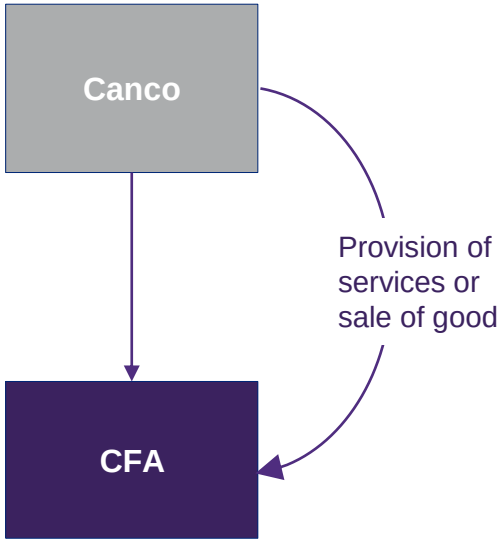
2017-069423I7(E)
Applicability of 247(2) in computing exempt surplus or FAPI

Issue

- Whether subsection 247(2) can apply to reduce exempt surplus or FAPI of a CFA in respect of Canco?

Facts

- Where, as a result of a transfer pricing adjustment made under subsection 247(2) with respect to a transaction between Canco and CFA for the sale of goods or provision of services an amount is included in computing Canco's income.



Response

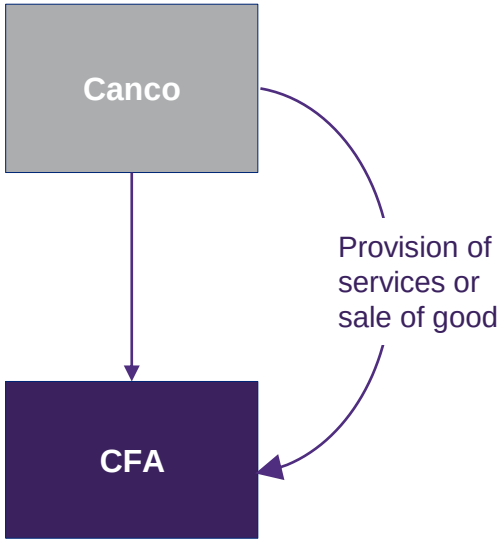
- No

Technical Interpretations

2017-0694231I7(E)
Applicability of 247(2) in computing exempt surplus or FAPI

CRA's View

- S. 247(2) ensures that transactions between a Canadian taxpayer and a non-arm's length non-resident reflect arm's length terms and conditions.
- It has been suggested that the language "in respect of taxpayer" in subsection 247(2) may extend to the FA's surplus and FAPI, CRA does not believe 247(2) is intended to have a two sided effect.
- CFA is transacting with Canco in this scenario and therefore CFA cannot be a taxpayer to which subsection 247(2) applies. Subsection 247(2) cannot be applied independently to CFA to adjust CFA's surplus or FAPI in respect of Canco.
- For 247(2) to apply to CFA, the FA must be the taxpayer to which subsection 247(2) applies.
- Surplus of CFA could be adjusted where CFA's "earnings" are computed under Regulation 5907(1) and corresponding adjustments is made under foreign tax law. Consideration would need to be given to whether 5907(2) of the Regulations could reverse the foreign tax law adjustment, if one was made.



Technical Interpretations

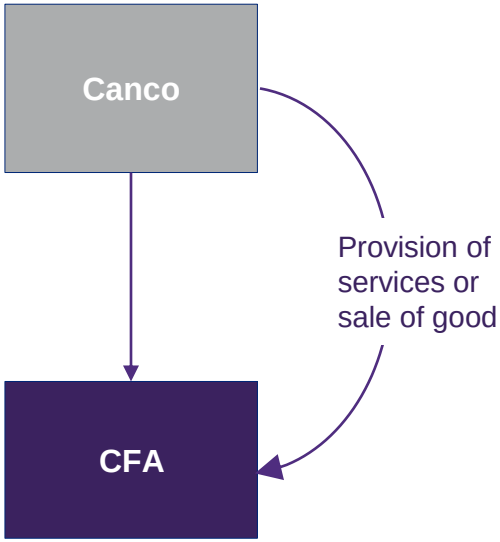
2017-069423I7(E)
Applicability of 247(2) in computing exempt surplus or FAPI

Issue

- Whether there would be any increase in Canco's ACB in the shares of CFA as a result of the application of s. 53(1)(c)?

Facts

- Where, as a result of a transfer pricing adjustment made under s. 247(2) with respect to a transaction between Canco and CFA for the sale of goods or provision of services an amount is included in computing Canco's income.



Response

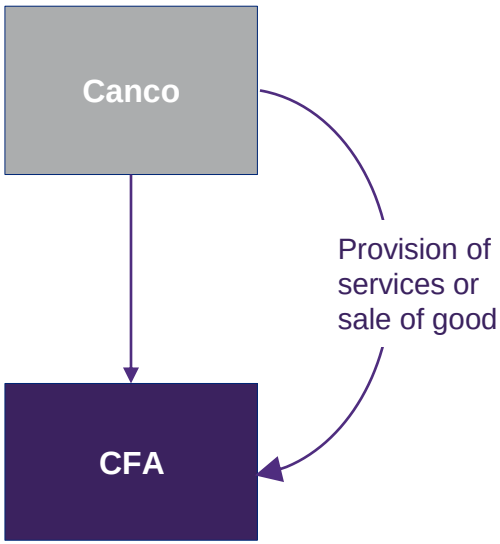
- No

Technical Interpretations

2017-069423I7(E)
Applicability of 247(2) in computing exempt surplus or FAPI

CRA's View

- Benefit conferred in the scenario is not considered a capital contribution by Canco to CFA for purposes of s. 53(1)(c).
- It can generally be considered that a benefit is conferred on the person overcharging or underpaying for goods or services.
- There is no general rule in the Act that deems such a conferral of benefit to be a contribution of capital.
- S. 212.3(10)(b) has a specific deeming provision to achieve this result, but applies only in foreign affiliate dumping context.



Technical Interpretations

2016-0680801I7(E)
Interpretation –subclause 95(2)(a)(ii)(B)(II) Act

Issue

- Whether 95(2)(a)(ii)(B)(II) only applies to 40% of the interest paid to a foreign affiliate by a partnership in which another foreign affiliate is a 40% member and a person other than foreign affiliate is the 60% member.

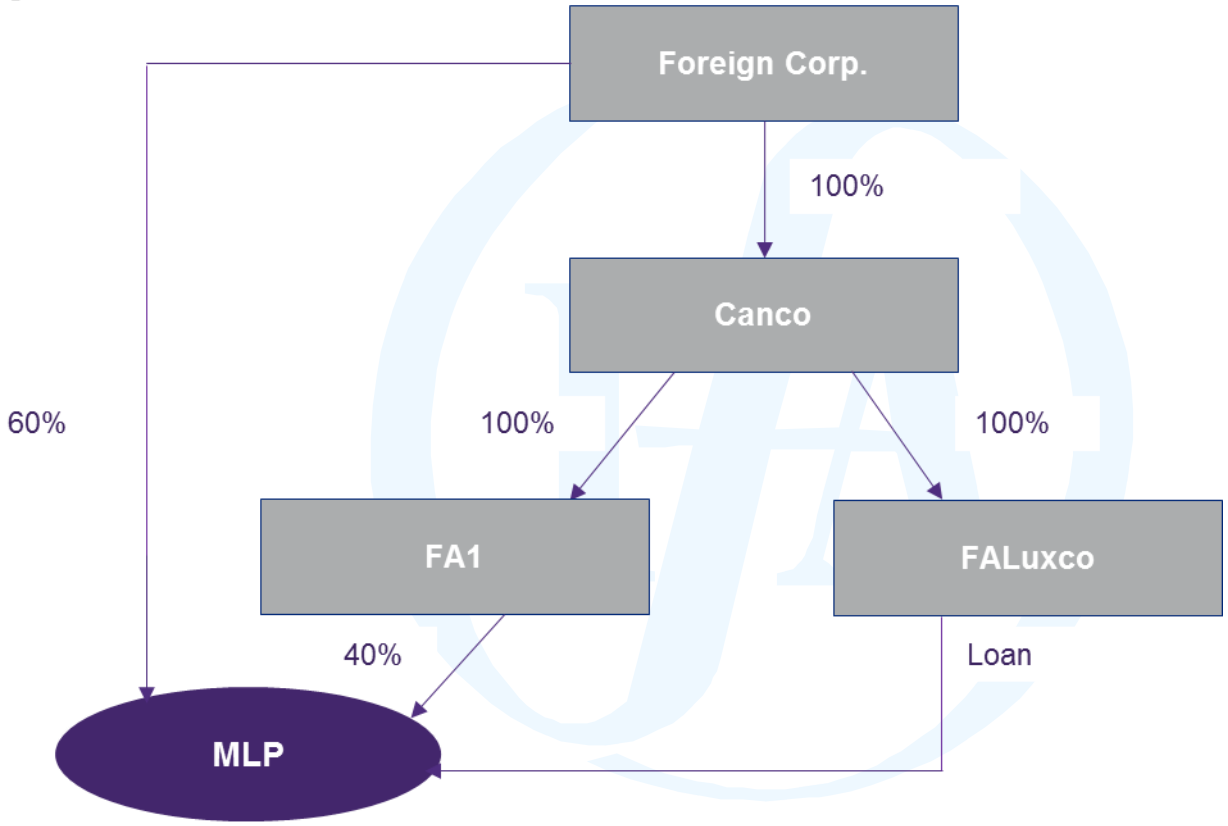
Facts

- A foreign corporation ("FP") owns 100% of Canco.
- Canco owns 100% of two non-resident corporations that are foreign affiliates of Canco ("FA1" and "FALuxco").
- MLP borrows $200M from FALuxco on which it pays $10M interest to FALuxco in respect of a particular taxation year of FALuxco
- MLP carries on an active business in the U.S., and the proceeds from the FALuxco loan are used in its active business.
- FA1 holds 40% partnership interest of MLP
- FP owns 60% partnership interest of MLP

Technical Interpretations

2016-0680801I7(E)
Interpretation –subclause 95(2)(a)(ii)(B)(II) Act

Diagram 1



Technical Interpretations

2016-0680801I7(E)
Interpretation –subclause 95(2)(a)(ii)(B)(II) Act

CRA's View

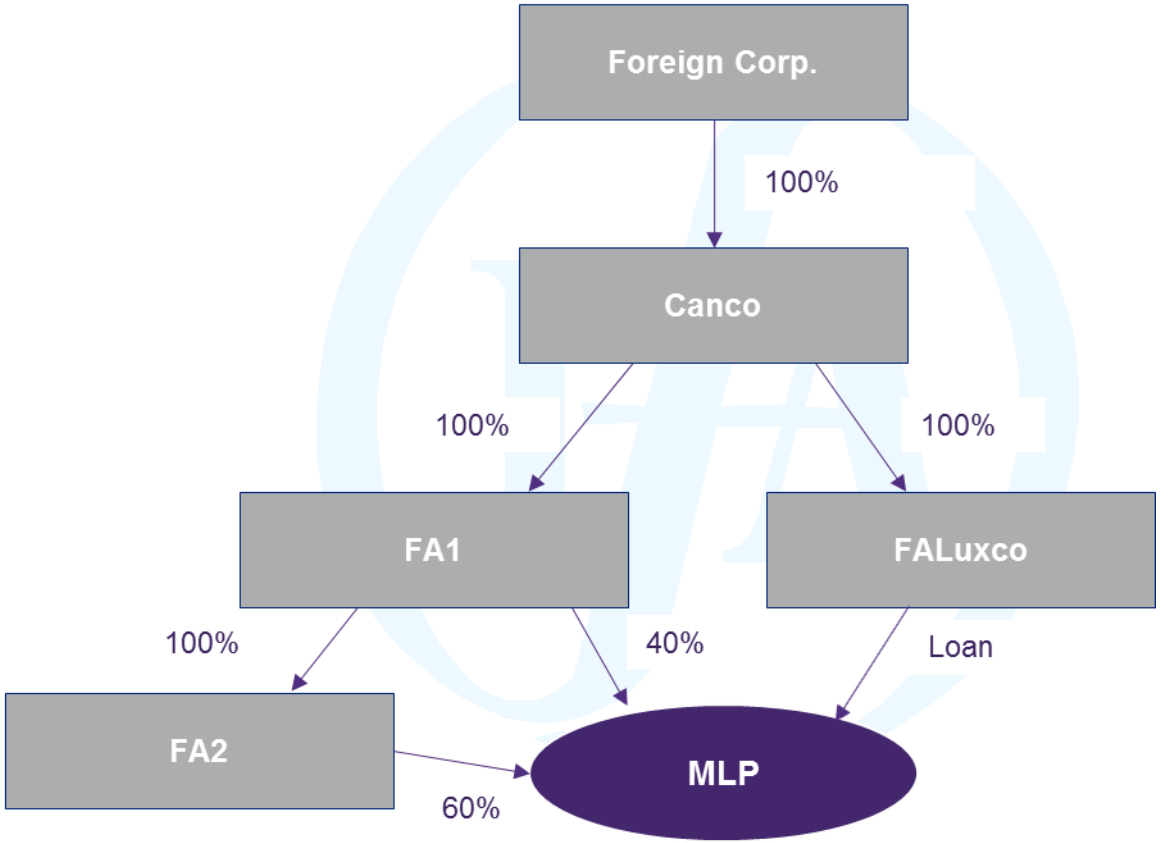
- Only 40% of the $10M of interest received by FALuxco should be recharacterized as income from an active business (resulting in FALuxco having FAPI of $6M).
- In our view, the textual reading of sub clause 95(2)(a)(ii)(B)(II) requires that the particular expenditure (or portion thereof) by the partnership has to meet two separate tests:
  - (i) the expenditure (or portion thereof) has to be deductible in computing the other affiliate's share of the income of the partnership as determined for the purposes of paragraph 96(1)(f); and
  - (ii) the expenditure (or portion thereof) has to be included in computing the amount prescribed to be the other affiliate's earnings as determined for purposes of paragraph (a) of the "earnings" definition in subsection 5907(1) of the Regulations.

- This is consistent with our view that, for the purpose of computing the surplus accounts of a particular foreign affiliate such as FA1 and FA2 that carries on an active business in a foreign country as a member of a partnership such as MLP, subsection 5907(1) of the "Regulations requires the particular affiliate, and not the partnership, to compute the affiliate's "earnings" in respect of the affiliate's active business activities.

Technical Interpretations

2016-0680801I7(E)
Interpretation –subclause 95(2)(a)(ii)(B)(II) Act

Diagram 2



Current Canadian Compliance Experience

CRA Requests for Information – Increasing Pressure?

Overarching trends

- CRA is looking for more information
- In particular, increased focus on subjective information
- Responses required in shorter time period

Current Canadian Compliance Experience

CRA Requests for Information – Increasing Pressure?

This trend is demonstrated by:

- Budget Changes
- Other recent legislative changes
- Anecdotal Evidence
- Case Law Examples
  - 3 recent cases demonstrate the trend
    - *BP Canada Energy Co. v. MNR*
    - *Cameco Corporation v. Canada*
    - *Iggillis Holdings Inc. v. MNR*

A related issue – requests for information by other tax authorities

- Do Canadian privilege laws provide protection

Current Canadian Compliance Experience

CRA Requests for Information – Increasing Pressure?

Summary

- Legislative changes require additional information to be provided to CRA
- Nonetheless CRA increasingly looking for subjective information and audit roadways with broad queries
- Courts have not been sympathetic to CRA

Current Canadian Compliance Experience

CRA Requests for Information – Increasing Pressure?

Suggested Solutions:

- CRA identify specific transactions of concern
- Initial query to understand transaction
- Taxpayers cooperate in explaining steps
- CRA seek subjective information in limited circumstances

Initiatives on the Digital Economy

1. OECD/G20 Interim Report 2018

Follow-up project from BEPS Action 1 (but broader than BEPS: not limited to anti-avoidance issues)

Goal: Final report by 2020 (update in 2019) on agreed allocation of taxing rights

No consensus amongst 113 participating countries on need for change in international tax rules to address digitalization

Suggested temporary solution: excise tax on supply of certain e-services within jurisdiction

Initiatives on the Digital Economy

1. OECD/G20 Interim Report 2018

Targeted e-services:

- Internet advertising
- Digital platforms for sales between users

Compliance with existing tax treaty obligations (Art. 2/Art. 7)

2. Proposed EU Commission Digitalization Tax

Interim Proposal: 3% tax on revenues from:

- Selling on-line advertising
- Digital intermediary activities that facilitate sales between users
- Sale of data generated from user-provided information

on businesses with €750M worldwide + €50M EU turnover (tax collected by member state in which user located)

Long-term solution: EU tax agreement to allow member states to tax profits generated within a member country without a physical presence there ("taxable digital presence") if enough local revenue/users

☺ Moscovici: "Not directed at U.S. businesses" (but no affected EU companies yet identified) ☺

3. Canadian Developments

Quebec 2018 Budget: “Ensuring Tax Fairness in the Digital Economy” - Fairness to Quebec-based businesses

- Simplified registration/collection system for suppliers outside Quebec making supplies to Quebec residents
- QST must be collected and remitted on supplies of taxable incorporeal movable property and services; and
- Moreover, QST must be collected and remitted on supplies by non-resident suppliers located in Canada on supplies of taxable corporeal movable property.

3. Canadian Developments

Federal Developments:

April 26: Commons Standing Committee on Int'l Trade report "E-Commerce: Certain Trade-Related Priorities": Canada should apply sales tax on tangible/intangible products sold in Canada by domestic and foreign sellers, including through an e-commerce platform

Conclusions

1. Breakdown in international consensus as to appropriate allocation of taxing rights
2. Countries (and provinces) willing to act unilaterally (treaties generally limit income tax, not sales tax)
3. EU recommendation of "Taxable digital presence" nexus reflects continued lowering of threshold for source country taxation
4. Lines between tax law, public law and trade law (e.g., EU state aid, WTO) being further blurred
5. Ultimately, it's all transfer pricing / profit allocation

Appendix

ADDITIONAL MATERIALS

Additional Materials

2017-0705201C6
Stop loss rules and capital loss on refinancing of debt (2017 APFF Round Table)

Issue

- Application of loss denial rules on a s. 39(2) foreign exchange loss arising on repayment of debt followed by a refinancing

Facts

- A taxpayer made a loss upon repayment of foreign currency denominated debt. The source of the funds was a loan from an affiliated person.

Response

- None of the loss denial provisions apply. Specifically considered: 40(2)(g)(i), 40(3.3) and 40(3.4)

CRA's View

- Loss does not arise from the disposition of property that is identical to property acquired by the creditor.
- Foreign cash received to pay the debt cannot be identical property.

Additional Materials

2017-0709041C6
Services PE in Canada-USA Treaty (2017 APFF Round Table)

Facts

- Non-resident taxpayer provided services in Canada on a continuous basis from January 15, 2015 to January 25, 2016.
- Additional services are provided in the period January 1, 2017 to January 31, 2017

Response

- Art. V(9)(b) of the Canada-US Tax Convention must be considered

CRA's View

- Non-resident taxpayer has a service PE in F2015 and F2016
- There is no service PE in 2017 as there is no 183 day period

Additional Materials

Various items from December 2017 TEI CRA Liaison Meeting

1. CRA was asked if it could clearly specify the currency used when a Reg. 105 waiver is obtained. CRA indicated that it would make an effort to do so.
2. CRA will also consider adding a dropdown menu with which the currency could be added for NR-4 reporting.
3. CRA reiterated that NR4 forms must be filed even if there if the payment does not require withholding.
4. CRA indicated that it is not prepared to extend administrative relief regarding s. 116 compliance to the foreign mergers contemplated in new s. 87(8.4) and 87(8.5)
5. CRA indicated that it had received approx. 2,500 qualifying non-resident employers (QNRE) requests and that less than 20 applicants were not certified. CRA also mentioned that it has not revoked any issued certifications.

Additional Materials

CRA Requests for Information – Increasing Pressure?

BP Canada

- CRA wanted access to taxpayer's audit working papers, sought order in Federal Court to compel production
- Federal Court granted the order
- FCA allowed appeal
  - Information in audit working papers may need to be disclosed in response to a specific query, but
  - Taxpayers are required to self-assess but CRA cannot compel taxpayers to self-audit
  - Taxpayers not required to reveal their "soft spots"
  - CRA cannot have general and unrestricted access to audit working papers

Additional Materials

CRA Requests for Information – Increasing Pressure?

Cameco

- Cameco involved in transfer pricing litigation for prior taxation years
- CRA asked to interview 25 employees about same issue for subsequent years
- Cameco refused
- Court agreed with Cameco
  - request did not meet principle of proportionality
  - would allow more expansive review than examinations for discovery

Additional Materials

CRA Requests for Information – Increasing Pressure?

Cameco

- Questions
  - Will principle of proportionality be useful in limiting responses to broad requests?
  - Will Tax Court Rules provide some guidance or minimum standards that should be expected from CRA on audit?

Additional Materials

CRA Requests for Information – Increasing Pressure?

Iggillis

- CRA wanted a copy of legal opinion provided to taxpayer
- Here lawyers for each party to a deal worked collectively on an opinion which was provided to both clients
- CRA said this amounted to a waiver of solicitor client privilege that was not cured by doctrine of common interest privilege
- Tax Court agreed with CRA; FCA overturned
  - Legal opinion was privileged
  - Common interest privilege applied

Additional Materials

Digitalisation & Taxation

1. OECD/G20 Interim Report 2018: “Tax Challenges Arising From Digitalisation”, March 16, 2018
2. EU Commission Proposals for Taxation of Digitalized Activity, March 21, 2018
3. Canadian Developments on Digitalisation and Taxation

Additional Materials

Digitalisation & Taxation

OECD/G20 Interim Report 2018: “Tax Challenges Arising From Digitalisation”

- Follow-on work from BEPS Action 1 (Addressing Challenges of the Digital Economy)
- Approved by G20 finance ministers March 20, 2018
- OECD Secretary General: “A key milestone to developing a durable, long-term solution to the tax challenges posed by the digitalization of the economy”
- Goal is to produce a final report by 2020 (update in 2019)

Additional Materials

Digitalisation & Taxation

Key points from BEPS Action 1 Report (2015):

- Digital economy characterized by “an unparalleled reliance on intangibles, the massive use of data, and the widespread adoption of multi-sided business models”
- Difficult, if not impossible, to ring-fence the digital economy
- Digitalisation exacerbates BEPS issues (in particular PE definition, CFC rules and transfer pricing)
- Going beyond BEPS (which is a specific anti-avoidance initiative), digitalisation raises broader tax issues such as data, nexus and characterization

Additional Materials

Digitalisation & Taxation

2018 Interim Report on Digitalisation and Tax:

- No consensus amongst 113 participating countries in terms of whether, and to what extent, international tax rules should be changed:
  - One group believes the issues are confined to certain business models that can be addressed narrowly: no need for wide-spread changes
  - Another group believes the challenges of digitalization apply to the economy more generally, requiring broader rule changes
  - A third group believes that the changes already proposed by the BEPS project are sufficient

Additional Materials

Digitalisation & Taxation

In light of these differences, member countries will review the concepts of “nexus” and “profit allocation” to determine how to allocate taxing rights between jurisdictions, with the goal of achieving a consensus-based solution by 2020

Interim measures: no consensus on the need (some countries opposed), but for those countries that consider some immediate action imperative, Chapter 6 reviews the framework of design considerations that should be considered

- Suggested interim measure: an excise tax on the supply of certain e-services within the jurisdiction

Additional Materials

Digitalisation & Taxation

Design framework for interim taxation measures

- Compliant with country's international tax obligations (tax treaties, trade agreements, EU membership, etc.)
- Temporary
- Targeted
- Minimize over-taxation
- Minimize impact on start-ups and business creation
- Minimize cost and complexity

Additional Materials

Digitalisation & Taxation

"Targeted"

- Should NOT to cover "any and all transactions where the increase in digitalisation poses some risk"
- Should NOT apply to all on-line sales of physical goods
- Should be targeted to e-services businesses that operate remotely, rely heavily on intangible property, data, user-participation and network effects (arguably this creates value in the consumer's home country):
  - Internet advertising
  - Digital intermediation services (platforms) facilitating the exchange of goods & services between users (not direct sales from the seller's own website)

Additional Materials

Digitalisation & Taxation

Compliant with existing tax treaties: OECD model:

- Art. 7: taxation of business profits requires a PE
- Art. 2: treaty applies to “taxes on income” or “elements of income” “irrespective of the manner in which they are levied”

Income taxes focus on the recipient, not consumer

“It makes no difference whether taxes are levied by way of withholding at source, or whether the tax is on a net or a gross amount”

Case for a tax not being an “income tax” stronger where (1) levied on defined category of e-services (2) without regard to supplier’s tax position, (3) at a fixed rate (4) on gross consideration paid, (5) not creditable for recipient

Additional Materials

Digitalisation & Taxation

EU Commission Proposals for Taxation of Digitalized Activity, March 21, 2018

"there is a disconnect – or 'mismatch' - between where value is created and where taxes are paid"

"In the digital economy, value is often created from a combination of algorithms, user data, sales functions and knowledge. For example, a user contributes to value creation by sharing his/her preferences (e.g. liking a page) on a social media forum. This data will later be used and monetised for targeted advertising. The profits are not necessarily taxed in the country of the user (and viewer of the advert), but rather in the country where the advertising algorithms has been developed, for example. This means that the user contribution to the profits is not taken into account when the company is taxed."

Additional Materials

Digitalisation & Taxation

Two legislative proposals made:

1. An interim proposal to ley a 3% tax on revenues from activities (1) where users play a major role in value creation and (2) hardest to tax under current rules:
   - Selling on-line advertising
   - Digital intermediary activities that facilitate sales between users
   - Sale of data generated from user-provided information

- Collected by member states where users located
- Applicable to companies with annual worldwide revenue of €750M and EU revenue of €50M

Additional Materials

Digitalisation & Taxation

2. A common reform of EU corporate tax rules for digital activities

- Member states to tax a company's profits generated there even if no physical presence there
- "Taxable digital presence" or "virtual permanent establishment" in a state for the year if any of:
  - €7M in revenues in that state;
  - More than 100,000 users in that state; or
  - More than 3,000 business contracts for digital services between the company and users

Member states recommended to change bilateral tax treaties to change PE definition accordingly

Additional Materials

Digitalisation & Taxation

U.S. Treasury Secretary Steven Mnuchin:

"The U.S. firmly opposes proposals by any country to single out digital companies. Some of these companies are among the greatest contributors to U.S. job creation and economic growth. Imposing new and redundant tax burdens would inhibit growth and ultimately harm workers and consumers. I fully support international cooperation to address broader tax challenges arising from the modern economy and to put the international tax system on a more sustainable footing."

Additional Materials

Digitalisation & Taxation

Douglas Poms, U.S. Treasury international tax counsel

“We oppose [the proponents'] view, and we view the user input and the user data as just another input that goes into production that comes from an unrelated third party and should be treated in the same way.”

Additional Materials

Digitalisation & Taxation

EU Tax Commissioner Pierre Moscovici:

"I would particularly like to pre-empt any misconceptions that these proposals are aimed at U.S. tech companies, or that they would be seen as a 'cash grab' by the EU."

"I can assure you that we are not targeting any individual companies, or any nationality with these measures."

"Our goal is to ensure a level playing field for all business, whether they are EU-based, non-EU based, large or small."

Additional Materials

Digitalisation & Taxation

Canadian Developments: Federal

Finance Minister Morneau, March 20, 2018

"We're addressing issues like how the international community is going to think about digital taxation"

"We are looking at it carefully because we need to understand what if anything happens to our tax base based on a changing of the economy towards a different business model,"

"We are not studying the issue as an exercise but one that recognizes this presents real differences to how people might be organizing their business over time and where they might be getting profits versus where they might be generating value,"

Additional Materials

Digitalisation & Taxation

March 28, 2018, Canadian Press:

“Federal officials have taken a close look at how the government can make online services like Netflix and Amazon voluntarily collect sales tax, similar to the model Quebec plans to bring in next year.”

“Government lawyers have issued dozens of pages of legal opinions about placing a levy or sales tax on Netflix. The contents of those documents that went to Joly have been blacked out with officials saying they cannot be publicly released because the information is subject to solicitor-client privilege.”

“Last week, Finance Minister Bill Morneau, who is responsible for tax changes, said the Liberals want to ensure online firms "pay the appropriate level of tax," noting a 2020 deadline Canada and other G7 nations have set for a tax regime.”

Additional Materials

Digitalisation & Taxation

Canadian Developments: Quebec 2018 Budget

"ENSURING TAX FAIRNESS IN THE DIGITAL ECONOMY"

"Issues: suppliers that do not have a physical or significant presence in Québec

In 1992, when the QST system was introduced, Quebecers acquired movable property and services almost exclusively from suppliers that had a place of business in Québec. At that time, transactions involving suppliers with no physical or significant presence in Québec were quite rare.

Today, e-commerce is changing the way Quebecers acquire movable property and services. E-commerce enables them to acquire movable property and services from suppliers located outside Québec just as easily as if the suppliers were located in Québec.

The context of the digital economy therefore poses application-related difficulties respecting the collection of the QST by suppliers with no physical or significant presence in Québec."

Additional Materials

Digitalisation & Taxation

"Since consumer self-assessment compliance is practically non-existent, the Québec government sustains substantial tax revenue losses. Second, since the QST is not paid by consumers, suppliers outside Québec have a competitive advantage over Québec businesses, given that the latter are generally required to collect and remit the QST on their supplies in Québec.

The Québec government recognizes the difficulties posed by the application of tax measures in the context of the digital economy, but considers that the status quo is no longer possible. The time has come to adapt the QST system to the realities of the 21st century."

Additional Materials

Digitalisation & Taxation

New “specified registration” system to be put in place for suppliers with no physical or significant presence in Québec (non-resident suppliers) who make supplies to “specified Québec consumers” (Québec residents not QST registered):

- QST must be collected and remitted on supplies of taxable incorporeal movable property and services; and
- Moreover, QST must be collected and remitted on supplies by non-resident suppliers located in Canada on supplies of taxable corporeal movable property.
- Non-resident suppliers registered under new system cannot claim ITCs, nor can recipients of their supplies
- Budget materials cite OECD approach extensively to justify proposals

Additional Materials

Digitalisation & Taxation

- “The requirement to register under the new specified registration system will also apply to digital property and services distribution platforms (hereinafter, “digital platforms”) with respect to taxable supplies of incorporeal movable property or services received by specified Québec consumers, where these digital platforms control the key elements of transactions with specified Québec consumers, such as billing, transaction terms and conditions, and delivery terms.”
- Registration mandatory where taxable supplies made in Québec in previous 12 months exceeds $30,000
- Implementation date of 1/1/19 for non-residents of Canada and 1/9/19 for non-resident suppliers in Canada

Additional Materials

Digitalisation & Taxation

Threshold for source-country taxation of business profits continues to get lower and lower:

2007: Deemed services PE added in Article V(9) of the *Canada-U.S. Tax Treaty*

2015: BEPS Project Action 7: “anti-avoidance” changes recommended to PE definition

2017: OECD Model Convention (Article V and related Commentary amended re dependent agents, etc.)

2018: India introduces “significant economic presence” standard as nexus for taxation

2018: EU recommends “Taxable digital presence” nexus