

September 10 & 11, 2009, Toronto

This program has been accredited by the Law Society of Upper Canada
towards the professional development requirement for certification.
Corporate & Commercial Law: 8.5 hours.



2nd TAXATION of INBOUND INVESTMENT

"I learned a lot and enjoyed the fact that presenters gave practical advice as well as explaining the policy and trends motivating the legislative changes."

"The speakers were excellent."

"Very beneficial."

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who should attend

Tax and investment executives tax accountants and tax lawyers who want to expand this knowledge area or keep up-to-date in this field

course highlights

- Reviewing the impact of the Fifth Protocol to the Canada-U.S. Income Tax Convention
- Examining the current issues surrounding taxable Canadian property
- Assessing the elimination of withholding tax on cross-border interest payments
- Treating hybrid entities
- Analyzing the potential consequences of the new limitation on benefits provision
- Exploring issues involving sales tax
- Planning and structuring inbound investments tax-efficiently
- Understanding payroll obligations
- Examining withholding tax requirements on non-residents
- Working with changes to employee benefits taxation
- Assessing the implications of changes to the permanent establishment rules
- Preparing for the mandatory arbitration of treaty disputes
- Examine recent cases relevant to inbound investment



Course Leader
Thomas A. Bauer,
Bennett Jones
LLP



Julie A. Colden,
Osler, Hoskin &
Harcourt LLP



Kathleen
Hanly,
Fasken
Martineau
DuMoulin LLP



David Kemp,
BDO
Dunwoody
LLP



Terry
McDowell,
Ernst & Young
LLP



Kathleen V.
Penny,
Blake, Cassels
& Graydon LLP



Stephen Ruby,
Davies, Ward,
Phillips &
Vineberg LLP



Larissa V.
Tkachenko,
Borden
Ladner
Gervais LLP

FACULTY

COURSE LEADER

THOMAS A. BAUER

Thomas Bauer is a partner with Bennett Jones LLP, advising clients on corporate income tax matters, with particular emphasis on M&As, corporate reorganizations, income trusts, international tax planning and cross-border transactions. He represents clients in disputes with the Canada Revenue Agency, both at the audit and appeals levels and has appeared as counsel in numerous cases before the Tax Court of Canada and Federal Court.

both domestic and international clients on taxation matters, including the tax aspects of reorganizations, acquisitions, divestitures, investment funds, financial products, financing, debt restructuring and transfer pricing. Ms. Hanly has been a Taxation Instructor at the Bar Admission Course of the Law Society of Upper Canada and regularly speaks and writes on income tax matters. She is a past Chair of the Taxation Section Executive of the Ontario Bar Association.

KATHLEEN V. PENNY

Kathleen Penny is a partner at Blake, Cassels & Graydon LLP. Her focus is on domestic and international corporate income taxation, including M&A, corporate reorganizations, financings and restructurings, income funds and infrastructure projects. Cross-border financing structures are a significant component of her practice, including securitization, lease and debt financing and derivatives.

STEPHEN RUBY

Stephen Ruby is a partner in the Taxation practice at Davies, Ward, Phillips & Vineberg. He has experience which encompasses domestic and cross-border reorganizations of public and private corporations, M&As, financings and securities transactions, as well as employee compensation arrangements. He regularly advises Canadian-based multinationals on outbound investments and foreign enterprises on inbound Canadian investments.

CO-LECTURERS

JULIE A. COLDEN

Julie Colden is a partner with Osler, Hoskin & Harcourt LLP, where she is a member of the firm's Taxation Department. Her practice includes tax aspects of corporate finance and capital markets, reorganizations and divestitures, M&As, and other corporate tax planning in the cross-border and domestic context.

DAVID KEMP

David Kemp, a Partner at BDO Dunwoody LLP within the Global Transfer Pricing & Dispute Resolution Services Group, has over seventeen years of experience in the areas of: global transfer pricing, including corresponding international tax planning strategies, income tax and financial advisory.

KATHLEEN HANLY

Kathleen Hanly is a partner in the Fasken Martineau DuMoulin LLP tax group. Her practice focuses on corporate income tax. She advises

TERRY MCDOWELL

Terry McDowell has more than 20 years experience with Ernst & Young and has most recently headed the firm's Canadian tax practice in New York. His practice includes a number of Fortune 500 companies across a wide variety of industries. He has a particular emphasis on international capital markets and cross-border M&As.

LARISSA V. TKACHENKO

Larissa Tkachenko is a partner practicing in BLG's Toronto office. She practices taxation law with an emphasis on the taxation aspects of corporate and international transactions, mergers and acquisitions and financial services matters.

COURSE PROGRAM

THE CANADA-U.S. INCOME TAX TREATY: CORPORATE TAX PLANNING OPPORTUNITIES

On September 21, 2007, after nearly 10 years of negotiation, Canada and the U.S. jointly released the Fifth Protocol to the Canada-U.S. Income Tax Convention, which will enter into force on the day both governments have completed their respective constitutional and statutory procedures and have exchanged instruments of ratification. This Protocol will have a significant impact on inbound investments into Canada. This session will provide an overview of its impact and look at potential corporate tax planning opportunities.

- Corporate tax planning opportunities in light of the changes
- The elimination of withholding taxes on interest between arm's length persons and phasing in the elimination of withholding tax on interest paid between related persons
- Extending treaty benefits to owners of limited liability companies
- Denial of treaty benefits in certain circumstances when income, profits or gains are derived through a hybrid entity or from a hybrid entity
- Deemed permanent establishment status for service providers that meet certain conditions
- Revision of the limitation-on-benefits article
- Binding arbitration procedure for the resolution of competent authority disputes

TAXABLE CANADIAN PROPERTY

Non-residents of Canada are subject to Canadian capital gains tax or income tax on a disposition of taxable Canadian property (TCP), unless a treaty exemption is available. Section 116 of the Income Tax Act provides a set of compliance requirements applicable to the vendor and purchaser of TCP. However, the federal government's 2008 budget proposals sought to limit the application of the section 116 certificate requirements and tax return filing obligations of non-residents disposing of TCP, to reflect the benefits offered to residents of countries with which Canada has tax treaties. This session will examine the issue of TCP.

- Non-residents disposing of TCP: substantive rules
- The section 116 certificate procedure
- Issues for private equity funds
- Limiting the circumstances when the section 116 requirements apply to a disposition of TCP
- Requirements for a non-resident person to be exempt from Canadian tax under a tax treaty
- Proposed exemption from filing a Canadian income tax return for dispositions of TCP

ELIMINATION OF WITHHOLDING TAX ON CROSS-BORDER INTEREST PAYMENTS

The Protocol provides that, subject to the potential application of the new limitation of benefits provision, withholding tax on interest paid between related persons will be reduced to 7% retroactive to January 1st of the year of ratification, 4% for the immediately following calendar year, and eliminated for subsequent years. This session will examine these changes and their effect.

- The meaning of "related persons" for these purposes
- Expanded eligibility for withholding tax exemption or relief
- Interest withholding tax exemption exceptions and traps
- Interim period considerations: addressing interim period risks
- Inbound investment planning considerations
- Thin capitalization rules

TREATMENT OF HYBRID ENTITIES

The Protocol denies treaty benefits with respect to the use of two categories of hybrid entities that are disregarded in one country and not the other, while providing Treaty relief for U.S. persons investing in Canada through "flow-through" entities such as a U.S. limited liability company. This session will examine the Protocol's impact on hybrid entities.

- Challenges for Canadian ULCs and other cross-border hybrids/structures
- Denial of treaty benefits when income, profits or gains are derived through hybrid entities and from hybrid entities
- Canadian acceptance of U.S. flow-through entities: impact on LLCs and S-Corporations
- Impact on cross-border double dips

THE LIMITATION ON BENEFITS PROVISION

The protocol introduces Canada's first comprehensive limitation on benefits provision, which is intended to address the problem of "treaty shopping" by ensuring that treaty benefits are only available to residents of Canada or the U.S. that also satisfy certain other tests. This session will examine the specific rules in the treaty, which should supplant the Canadian domestic general anti-avoidance rules.

- The comprehensive limitation on benefits provision applicable to both Canada and the U.S.
- The tests that must be met to access treaty benefits
- Limiting full treaty benefits to "qualifying persons" that are otherwise resident
- Which investment activities constitute a trade or business for this purpose
- The "derivative benefits" clause that can extend treaty protection for dividends, interest and royalties
- Applying for competent authority relief

INBOUND INVESTMENT SALES TAX ISSUES

The Goods and Services Tax and Harmonized Sales Tax apply to head office charges and other imported supplies that are provided by a non-resident parent to a Canadian branch or subsidiary. This session will explore sales tax issues involving inbound investments including registration requirements and how to ensure that the tax on inter-company charges is accounted for correctly.

- Cross-border inbound branch-to-branch support
- Registration requirements: registration for persons required to collect and remit GST
- Self-assessment of GST
- Input tax credits for purchases of goods and services used in the course of doing business
- Filing GST returns at the end of each reporting period

TAX STRUCTURING OF INBOUND INVESTMENTS

This session will examine cross-border tax structuring, focusing on best practices in planning and structuring cross-border inbound investments into Canada taking into consideration the latest development of inbound investment taxation policies, tax legislation and administrative practices.

- Structuring of the inbound investment: the choice of entity
- Financing Canadian investments: debt and equity financings and use of exchangeable shares
- Planning for repatriating profits from Canada in a tax-efficient manner

PERMANENT ESTABLISHMENT FOR SERVICE COMPANIES

The Protocol will bring about significant changes to the permanent establishment rules, as an enterprise of one country will be deemed to have a permanent establishment in the other country in certain circumstances where cross-border services are provided in a way that would not otherwise amount to a permanent establishment.

- Canadian tax implications to U.S. companies or individuals that provide services to Canadian residents: the existing rule
- Deeming a permanent establishment for services provided: the new rules
- Impact of changes in the Fifth Protocol on service providers

WITHHOLDING REQUIREMENTS ON NON-RESIDENTS

In order to ensure that non-residents pay tax on Canadian-sourced income, the Income Tax Act imposes an obligation to withhold tax on payments to non-residents providing services in Canada. In the event that payers fail to withhold the appropriate amount of tax, the ITA also imposes on payers an obligation to pay tax on behalf of the non-residents, and subjects them to penalties and interest.

- Obligation to withhold and remit a 15% tax to the CRA
- Obtaining a waiver from the Regulation 105 withholding obligation
- Responsibility of the person paying a non-resident for the non-resident's withholding liability
- Liability for failure to withhold and penalties
- LLCs and problem obtaining Treaty protection until Fifth Protocol is ratified

PAYROLL ISSUES

CRA auditors are increasing their level of surveillance and review of non-resident employers who do not meet their Canadian payroll obligations. Unless a waiver or exemption is met an employer who fails to withhold and remit the amounts as required will be liable for the taxes, plus interest and penalties.

- Impact on non-resident with employees for employment exercised in Canada
- Deductions made at source based on graduated rates
- Withholding and remitting income tax, Canada pension plan contributions and employment insurance premiums
- Full payroll audits
- Obtaining a waiver of Regulation 102 withholding
- Application to business travelers

MANDATORY ARBITRATION FOR TREATY DISPUTES

Where potential double taxation situations between Canada and the U.S. exist, the treaty's mutual agreement procedures provide that the Competent Authorities of the two countries will generally act to resolve the case. But when the Competent Authorities cannot reach an agreement, the protocol adds a new level of dispute resolution, allowing taxpayers to opt for mandatory arbitration.

- Disputes eligible for arbitration
- The use of "last best offer" arbitration
- Rules regarding the arbitration procedure
- The major impact that the mandatory arbitration provision will have on the resolution of double taxation cases: cases resulting from transfer pricing adjustments

TRANSFER PRICING ISSUES ON CHARGES INTO CANADA

Ensuring that any inbound charges to a Canadian company are dealt with appropriately from a transfer pricing perspective is critical from a tax planning and compliance perspective. Determining arm's length prices for inbound charges is required to minimize challenges by the taxation authorities. Consideration must be given to dealing with inbound royalties on intangibles, inbound interest and guarantee fees on loans, inbound management and related fees on services, as well as the typical prices charged for tangible goods.

- Assessing intangibles and determination of royalty rates
- Understanding loans and determination of interest rates and guarantee fees
- Reviewing services and determination of mark-ups on cost
- Dealing with intercompany sales of tangible goods and determination of profitability benchmarks

MULTIMEDIA PRESENTATIONS

Register for Taxation of Inbound Investment and we will give you free of charge a CD-ROM comprising the following virtual presentations from recent Federated Press courses and conferences. Presented in their entirety with complete audio and accompanying PowerPoint slides totaling 790 minutes of expert learning, these presentations are an added bonus to this year's course. Bear in mind that these presenters are not necessarily those that you will see and hear at this year's course.

Inbound Investment Sales Tax Issues

Eric Paton,
PricewaterhouseCoopers LLP
Time: 54 Slides: 38

Effective Tax Structuring of Inbound Investments

Jamie Mitchell,
PricewaterhouseCoopers LLP
Time: 66 Slides: 33

Issues for Non-Residents Providing Services in Canada

Dom Cocco and Kais Aziz,
BDO Dunwoody LLP
Time: 53 Slides: 36

Mandatory Arbitration via CRA's Competent Authority

Tony Wark,
Ernst & Young LLP
Time: 34 Slides: 14

Impact of tax treaties

Angelo Nikolakakis,
Cousin Taylor LLP/Ernst & Young LLP
Time: 23 Slides: 9

Repatriating Profits and Capital

Robert McCulloch,
Deloitte & Touche LLP
Time: 27 Slides: 27

Foreign Exchange Implications and Recognition of Foreign Taxes

Tina Korovilas,
Cousin Taylor LLP
Time: 35 Slides: 33

Custom & Income Tax Methodology's Compared & Customs/GST Valuation

Dalton Albrecht,
Miller Thomson LLP
Time: 46 Slides: 26

Developments in Cross Border Taxation – CDN

Nelson Ong, Martin P. Skretkowicz,
Pricewaterhouse Coopers LLP
Time: 76 Slides: 33

Impact of proposed restrictions on interest deductibility

Angelo Nikolakakis,
Cousin Taylor LLP/Ernst & Young LLP
Time: 74

Cross-border issues

Phil Halvorson,
Ernst & Young LLP
Time: 72 Slides: 46

The tax reporting environment

George C. Vandebek,
BDO Dunwoody LLP
Time: 68 Slides: 28

Developments in tax disclosure requirements

Lisa Somers,
KPMG LLP
Time: 59 Slides: 28

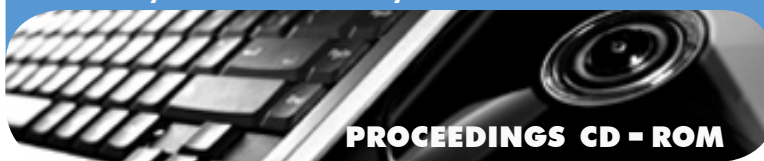
Dealing with foreign-based information requestst

Salvador M. Borraccia,
Baker & McKenzie LLP
Time: 51 Slides: 31

Canada and U.S. cross-border financing issues

Elinore J. Richardson,
Borden Ladner Gervais LLP;
Paul D. Carman,
Chapman and Cutler LLP
Time: 54

Audio/Video segments clickable slide by slide
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PROCEEDINGS CD-ROM

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Location: Metropolitan Hotel, 108 Chestnut Street, Toronto, Ontario, M5G 1R3

Cost: The attendance fee for the course is \$1825 per person and covers attendance for one person and the lecturers' presentation material. The fee further includes lunch on the first day, morning coffee on both days and refreshments during all breaks. You may purchase a Proceedings CD-ROM containing edited actual proceedings and materials from the course.

Time: Course registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at noon.

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