A COMPARISON OF THE EARNINGS AND PROFITS AND SURPLUS CONCEPTS: SELECTED ISSUES

David Grosman and Nadia Manin*

The concept of earnings and profits is fundamental to the tax treatment of corporate distributions under US tax law. The concept of surplus is a cornerstone of Canada’s foreign affiliate regime. In this article, the authors compare and contrast these important tax concepts from the perspective of a Canadian multinational corporation with foreign affiliates resident in the United States. An earlier article examined the relevancy of the concepts, the objectives of the measurements, and related concepts and definitions, and provided general comments on the performance of calculations. This article focuses on the application of the two concepts, and the associated tax implications, within the context of the US entity classification rules, the US tax consolidated return regulations, and certain US reorganization provisions.

KEYWORDS: US ■ FOREIGN AFFILIATES ■ EARNINGS ■ DISTRIBUTIONS

* Of PricewaterhouseCoopers LLP, Toronto.