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## INTERNATIONAL TAX PLANNING

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### SUBSECTION 15(2) AND PARTNERSHIPS IN THE FOREIGN AFFILIATE CONTEXT: INTERPRETIVE ARGUMENTS IN THE ABSENCE OF LEGISLATIVE AMENDMENTS

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The purpose of subsection 15(2) is to include in a shareholder's income amounts received from a corporation, either by the shareholder directly or by certain non-arm's-length persons and partnerships, in the guise of loans or other indebtedness. Specific exceptions exist for amounts owing by certain foreign affiliates, as well as for indebtedness between non-resident persons. Unfortunately, the broad language used in the relevant provisions can lead to anomalous results if those provisions are read and applied literally, without appropriate consideration being given to context and purpose. In particular, the manner in which partnerships have been incorporated into the shareholder loan rule can bring into question the potential application of subsection 15(2) in the foreign affiliate context. This article explores three examples of situations involving partnerships and foreign affiliates where a literal interpretation of the shareholder loan rule could lead to anomalous results. The article then outlines why it is reasonable to conclude, when considering the text, context, and purpose of subsection 15(2) and its related provisions, along with their legislative history, that the shareholder loan rule does not apply in the circumstances described in the examples.

**KEYWORDS:** PARTNERSHIPS ■ FOREIGN AFFILIATES ■ SHAREHOLDERS ■ LOANS ■ DEBT ■ STATUTORY INTERPRETATION

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\*\* Of Deloitte LLP. We would like to thank Michael R. Smith and Olivier Labelle of Deloitte LLP for their comments on earlier drafts of this article. Any errors or omissions are our own.