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CORPORATE TRANSACTIONS: CROSS-BORDER COMPENSATION RESTRUCTURING

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In both Canada and the United States, equity programs are an important component of the compensation of senior management and key employees. In the context of an acquisition of a Canadian target, it is essential to understand the ramifications of existing programs and to ensure that they are replaced with the programs of the acquiring corporation in a tax-effective manner. Cross-border acquisitions have additional complexities, and the tax costs of substituting plans in the United States should be considered in structuring any proposed transaction.

In this article, the authors examine certain compensation issues that arise in the context of a cross-border acquisition. The authors first review the Canadian issues, with an emphasis on preserving the tax-favoured status of options held by employees of a Canadian target company upon an acquisition. The authors then discuss the US tax considerations, focusing on the potentially punitive tax consequences, for both employees and employers, associated with the application of sections 280G, 4999(a), and 409A of the Internal Revenue Code.

KEYWORDS: EMPLOYEE STOCK OPTION PLANS ■ COMPENSATION ■ CROSS-BORDER ■ ACQUISITIONS AND MERGERS

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