THE APPLICATION OF TREATY BENEFITS TO PARTNERSHIPS: SOME PRACTICAL EXAMPLES

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In many cases, taxpayers use partnerships in both domestic and international tax-planning structures. As a result of the increase in cross-border investment and financing activities, a number of these structures incorporate both domestic and foreign partnerships. This is the second of two articles in which the author examines the application of tax treaties in this context. In the first article, “The Application of Treaty Benefits to Partnerships: Characterization of a Foreign Entity” ((2004) vol. 52, no. 1 Canadian Tax Journal 294-314), the author focused on issues associated with the characterization of a foreign entity as recommended by the Organisation for Economic Co-operation and Development (OECD), particularly from a Canadian perspective. In this second article, the author presents a number of practical examples to illustrate some of the problems that can arise in the application of the OECD’s recommended approach from the perspective of both source states and residence states. The author also compares the Canada Revenue Agency’s approach with that recommended by the OECD and highlights some recent attempts to address the issue of extending treaty benefits to partnerships in bilateral treaties.

KEYWORDS: PARTNERSHIPS ■ TAX TREATIES ■ OECD ■ RESIDENCY ■ DOUBLE TAXATION

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