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# INTERNATIONAL TAX PLANNING

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## CHARACTERIZATION OF FOREIGN BUSINESS ASSOCIATIONS

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### ABSTRACT

After reviewing the Canadian and UK jurisprudence endorsing the factual use of foreign commercial law when characterizing foreign business associations, this article considers some of the problems in applying this two-step approach and concludes that conventional tools such as the use of the composite concept of legal personality (or lack of it) yield uncertain results. In fact, one fundamental thesis of the article is that when comparing the attributes of a “hybrid” foreign business association with a Canadian corporation or with a Canadian partnership, it is necessary to break down the concepts of the lack of legal personality and its converse, the existence of legal personality, into their component legal effects.

The article also argues that it is difficult to generalize a particular characterization to a type of foreign business association because the attributes of a foreign business association under foreign commercial law are typically derived not only from its governing statutes but also from its organizational documents. In this context, rather than making a series of submissions supporting the conclusion that certain foreign business associations should always be characterized in a particular way, the article proposes a basic framework that is flexible enough to take into account changes made by the members, through the organizational documents, to the default statutory attributes of these foreign business associations.

The proposed framework aims to identify and weight characteristics that distinguish a Canadian partnership from a Canadian corporation and develop a spectrum ranging from “clearly partnership” to “clearly corporation” on which a foreign business association that exhibits both partnership and corporate attributes can be placed, so that the end to which the association is closest can be determined. The analysis in the article does not extend to the characterization of other types of hybrid foreign business

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associations, nor does it deal with the application of tax treaties to hybrid foreign business associations in general.

**KEYWORDS:** CLASSIFICATIONS ■ ENTITY ■ HYBRIDS ■ PARTNERSHIPS ■ CORPORATIONS ■ COMPARABILITY

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