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FOREIGN AFFILIATE RULES: THE EFFECT OF THE INVESTMENT BUSINESS DEFINITION ON REAL ESTATE DEVELOPERS

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Canadian-based real estate developers undertaking projects in foreign countries through foreign affiliates are at risk of carrying on an investment business under Canada's Income Tax Act. This article provides a comprehensive analysis of the investment business definition in both the current legislation and the proposed February 2004 technical amendments, and outlines some of the anomalies and inconsistencies found in the amendments. The authors highlight the problems in applying the recharacterization rules under subparagraph 95(2)(a)(i) to real estate developers, and they suggest further amendments to the foreign affiliate rules to resolve the difficulties commonly encountered by real estate developers.

KEYWORDS: FOREIGN INVESTMENT ■ FAPI ■ REAL ESTATE ■ FOREIGN AFFILIATES ■ CORPORATIONS ■ PARTNERSHIPS

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