Selected US Tax Developments

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NEW CANADA-US PROTOCOL CONTAINS HYBRID ENTITY SURPRISES

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Abstract

The new fifth protocol to the Canada-US income tax treaty, which was signed on September 21, 2007, includes a number of important changes including, most notably, the elimination of withholding tax on most cross-border interest payments. The fifth protocol also includes provisions intended to clarify the treatment of hybrid entities, such as US limited liability companies and Nova Scotia unlimited liability companies, under the treaty. Unfortunately, the hybrid entity provisions are ambiguous in several respects and raise significant questions. The authors discuss the issues raised by the hybrid entity provisions in the protocol and propose some approaches to interpreting those provisions.

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