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## CORPORATE TAX PLANNING

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### IMPLICATIONS OF RESTRUCTURING A CANADIAN UNLIMITED LIABILITY COMPANY—FALLOUT FROM THE FIFTH PROTOCOL

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Many of the benefits currently available under the tax treaty between Canada and the United States in respect of amounts paid by a Canadian unlimited liability company (ULC) to a US resident will be eliminated by virtue of the fifth protocol to the treaty as of January 1, 2010. The loss of these Canadian tax benefits may significantly influence the continuing viability of ULCs in cross-border US tax planning. Consequently, US shareholders of a Canadian ULC must determine whether the prospect of this additional Canadian tax cost warrants a restructuring of the ULC. The authors of this article explore the historical significance of ULCs and assess the benefits and risks of certain restructuring alternatives from both a Canadian and a US tax perspective. They conclude that there is no single solution that can be applied uniformly by all taxpayers.

**KEYWORDS:** UNITED STATES ■ TREATY ■ UNLIMITED LIABILITY ■ FLOWTHROUGH ■ CONVERSION ■ REORGANIZATION

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