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CIAA Tax Update

September 2014

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Agenda

1. Legislative and other corporate tax updates
2. CRA update
3. Indirect tax update
4. FATCA

Legislative and other corporate tax updates

Legislative and other corporate tax updates

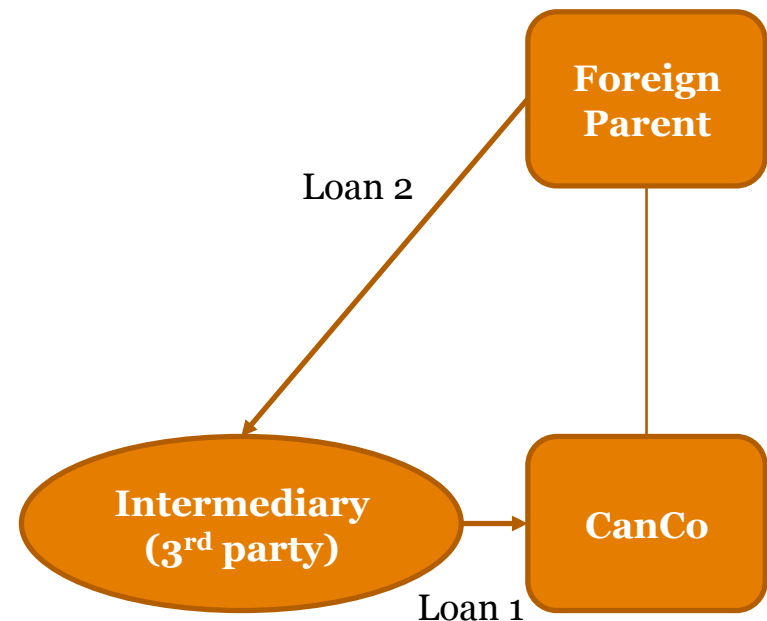
Selected developments

- Back-to-back loans
- Foreign affiliate FIs
- Other federal budget updates
- Provincial developments
- Statutory tax rates
- CRA rulings and views

Back-to-back loans

Background

- Thin-cap rules limit the deductibility of interest on debts owing to non-resident shareholders with >25% votes or value to a debt:equity ratio of 1.5:1
- Related party non-residents are grouped together for the test
- Non-deductible interest is deemed to be a dividend subject to withholding tax
- Certain back-to-back loan arrangements had avoided the thin-cap rules
- Proposed rules prevent this avoidance
- Rule applies for tax years beginning after 2014



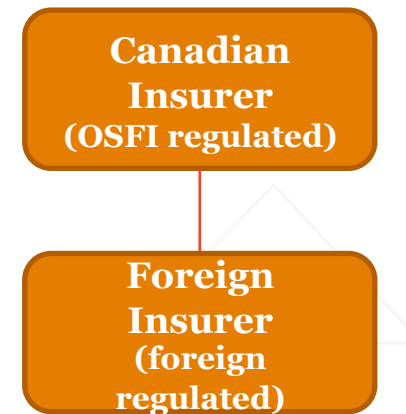
Back-to-back loans

Proposed legislation (high level)

- Four conditions required for application to a taxpayer:
 - 1) A taxpayer has an amount outstanding to an intermediary (“Loan 1”);
 - 2) Intermediary is not a shareholder with >25% of votes and value of the taxpayer;
 - 3) Intermediary (or related party) receives property, limited recourse debt, or conditional loan from non-resident shareholder in relation to Loan 1; and
 - 4) The amounts in #3 (i.e., Loan 2) are at least 25% of Loan 1
- Loan 1 deemed to be owing to non-resident shareholder for purposes of thin-cap rules
- Similar conditions under withholding tax rules where back-to-back loans used to avoid withholding tax

Foreign affiliate FIs

- Certain “passive” foreign income is not FAPI if foreign business regulated in local jurisdiction
- Previously, certain non-FI taxpayers established private foreign banks to avoid FAPI
- New rule proposes that only certain regulated Canadian FIs afforded this FAPI relief
- Proposed rules impose certain structuring limitations as well as capital thresholds
- Rule applies for tax years beginning after 2014



Other federal budget updates

- Risks insured by captive insurers using swaps
- Domestic treaty shopping rule – recent comment on Aug. 29 release
- Demutualization
- Eligible capital expenditure regime (ECE)
- Prior year ITC rate reduction now in effect (i.e., 20% to 15%)

Provincial developments

British Columbia

- Provincial SR&ED credit extended three years to September 1, 2017

Manitoba

- Co-op tax credit scheduled to expire on December 31, 2014 extended indefinitely with enhancements

Saskatchewan

- 2014 budget made no mention of planned tax rate decrease from 12% to 10% that was mentioned in previous budgets

Provincial developments

Ontario

- Technical panel reviewing business support programs (incl. SR&ED and Co-op tax credit)
- Pension reform
- Budget reiterates comment to combat tax avoidance
- Ontario to adopt proposed federal legislative changes once enacted

Quebec

- Province's R&D tax credit reduced by 20% (to 14%)

Other

- Capital tax regime now fully abolished in all provinces for non-life insurers

Statutory tax rates

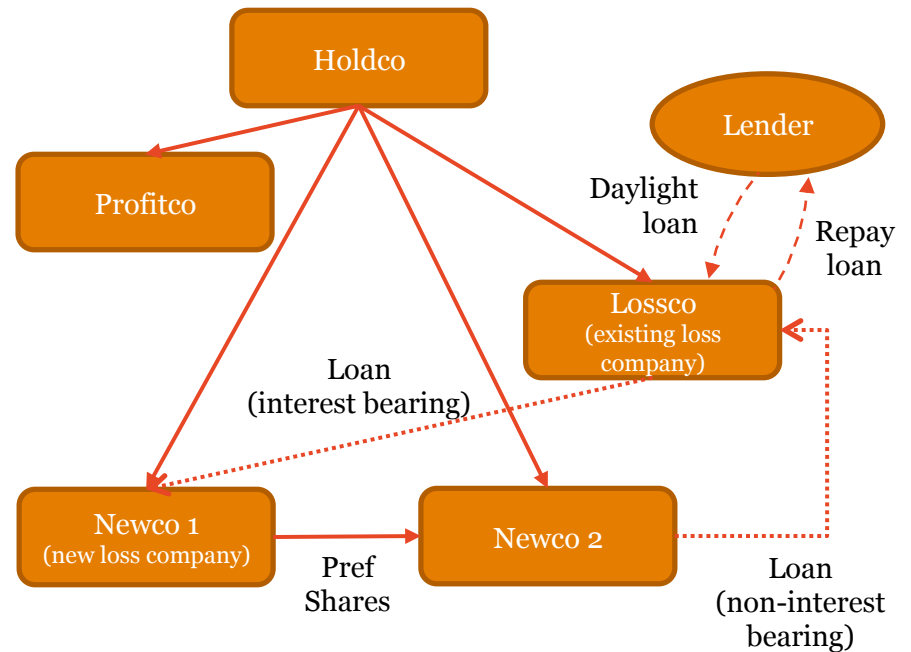
As at September 16, 2014

	2014 %	2015 %	2016 %	2017 %	2018 %
Federal tax rate	15.00	15.00	15.00	15.00	15.00
Alberta	10.00	10.00	10.00	10.00	10.00
British Columbia	11.00	11.00	11.00	11.00	11.00
Manitoba	12.00	12.00	12.00	12.00	12.00
New Brunswick	12.00	12.00	12.00	12.00	12.00
Newfoundland	14.00	14.00	14.00	14.00	14.00
Northwest Territories	11.50	11.50	11.50	11.50	11.50
Nova Scotia	16.00	16.00	16.00	16.00	16.00
Nunavut	12.00	12.00	12.00	12.00	12.00
Ontario	11.50	11.50	11.50	11.50	11.50
Prince Edward Island	16.00	16.00	16.00	16.00	16.00
Quebec	11.90	11.90	11.90	11.90	11.90
Saskatchewan	12.00	12.00	12.00	12.00	12.00
Yukon	15.00	15.00	15.00	15.00	15.00

CRA rulings and views

2013-051199 – Loss consolidation

- CRA issued favorable ruling for loss consolidation plan
- Plan involves utilizing inter-group borrowings and shareholdings to monetize losses
- Losses transferred from Lossco to Newco 1
- Newco 1 transferred to Profitco and subsequently wound-up
- In year following wind-up, Profitco's income sheltered by Newco 1 losses



CRA rulings and views

2012-047221 – Trips offered by a company

- Considers corporate and personal tax consequences relating to company offering vacations to certain employees and contractors
- Similar fact pattern to insurers offering incentives to agents and brokers
- In this case CRA viewed cost of trip to be deductible
- Deduction reduced by 50% M&E rule, except where recipient has received trip as an employee benefit
- Employee benefit not necessarily required to be received in respect of taxpayer claiming deduction
- Various issues are a question of fact:
 - Employee benefit vs. shareholder benefit
 - Business element vs. personal element of trip
 - Value of trip

CRA rulings and views

Other

- 2013-0500891I7 – Capital property generally maintains character when transferred on section 85 rollover
- 2013-050766 – Automatic renewal of loan does not, in and of itself, result in a realization event for FX purposes
- 2014-052134 – Taxpayer cannot claim unclaimed deduction in subsequent year

CRA update

CRA update

Selected topics

- Regulation 102
- DPAC

Regulation 102

Regulation 102

Application

- CRA has significantly increased investigation activities in this area
- Applies to every employer (both resident and non-resident) whose employees perform duties in Canada
- Duties in Canada may include:
 - Participation in operational projects;
 - Training;
 - Internal audit; and
 - Attending board meetings
- Applies to same day or short-term meetings
- Requires employers to withhold Canadian tax on remuneration
- No *de minimis* or treaty exceptions to employer requirements

Regulation 102

How to comply – waiver

- Obtain waiver to avoid Reg. 102 withholding obligation if employee expected to be exempt under treaty
 - Employee resident of treaty country (e.g., US), and
 - Employee remuneration < C\$10K (J waiver), or
 - Employee in Canada < 183 days in a 12 month period and remuneration not borne by Canada (R waiver)
- “Borne by” threshold generally means Canada is viewed as employer. Management fees and cross charges typically fine but may have other implications such as transfer pricing, Reg. 105, and deemed services PE
- Waivers must be requested 30 days before employee in Canada
- Withholding exemption only binding after waiver issued
- Employers need to track the details of employee travel to Canada

Regulation 102

How to comply – no waiver

- If no waiver obtained, employer responsible for remitting correct tax and issuing proper slips (T4)
- Responsibility exists notwithstanding employee treaty exemptions
- Non-resident employee can file Canadian return to recover tax if ultimately entitled to treaty relief
- Employer may have to recover taxes from employee (if employee treaty exempt)
- Be mindful of immigration (visa) compliance

Regulation 102

Potential cost of non-compliance

- Penalties for failure to deduct and remit:
 - 10% penalty on amount of Canadian tax not withheld
 - Increased to 20% if failure to remit made knowingly or under circumstances of gross negligence
 - Interest charges on tax not withheld
- Penalties and interest for not issuing proper slips (i.e., T4)
 - Penalty ranges based on number of slips, up to \$7,500
- No statute of limitations with respect to Reg. 102

DPAC



DPAC

Accounting

- Policy acquisition expenses deferred when computing accounting net income (DPAC)
- CICA guideline allocates insurance costs into the following:
 - 1) Direct costs
 - 2) Indirect costs
 - 3) Other costs

DPAC

Tax definitions and industry positions

- 9(1) is basic rule for computing income from a business
- 18(9) limits deduction of prepaid expenses and services
- 18(9.02) is a supporting rule that applies to certain expenses of an insurer. It states:

“For the purposes of subsection (9), an outlay or expense made or incurred by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy that provides coverage for a period of 12 months or less) is deemed to be an expense incurred as consideration for services rendered consistently throughout the period of coverage of the policy.”

- Many insurers historically deferred same for accounting and tax

DPAC

CRA reassessments

- Many insurers have been reassessed on the basis that additional DPAC should be deferred for tax purposes
- Disputes generally around the indirect costs. CRA has reassessed on the basis that some portion should be deferred for tax
- CRA has put forth varying methodologies to determine how much should be deferred

DPAC

Interpreting the law

- Text and context of subsection 18(9.02)
- No specific examples of costs in the legislation
- Consistent application
- Policy intent

DPAC

Responding to reassessments

- Corporations have 90 days to submit written objections
- Objections by “large corporations” should outline:
 - Each issue to be decided;
 - For each issue, the relief sought (expressed as a change to taxable income and tax payable); and
 - Provide facts and reasons for objecting for each issue
- A ‘large corporation’ is one where together with the related group has over \$10 million of capital employed in Canada
- Objections protect a taxpayer in respect of the particular issue

DPAC



Indirect tax update

Indirect tax updates

Agenda items

- QST
- Common GST/HST issues
- Reinsurance – loading update

Indirect tax updates

QST

- QST harmonization effective January 2013
- Insurance is now QST exempt – no QST input tax refunds
- Is the insurer considered to be a QST selected listed financial institution (SLFI)?
 - Licensed to carry of business in Quebec; or
 - Insures risks regarding property located in Quebec or persons resident in Quebec

Indirect tax updates

QST

- Insurers that are HST SLFIs and QST SLFIs
 - File RC7294 SLFI GST/HST and QST tax return
 - File RC 7291 GST/HST and QST annual information return
- Insurers that are HST SLFIs but not QST SLFIs
 - File GST 494 SLFI GST/HST tax return
 - File GST 111 GST/HST annual information return

Indirect tax updates

QST

- GST/HST and QST are still separate taxes
- Most Ontario based insurers
 - Claim HST SLFI refund
 - Owe QST SLFI payable
 - Amounts can be offset on return
- Issue: outstanding QST liabilities must be paid on time – late filing of refund returns can still be subject to interest
- Issue: QST quarterly instalment payments

Indirect tax updates

Common GST/HST Issues

SLFI Filing Issues

- Inconsistent information on GST 494 and GST 111 returns
- Reporting qualifying consideration earlier than required
- Including claims related input tax credits in “B” of the SAM formula
- Provincial attribution percentage for reinsurers

Indirect tax updates

Common GST/HST Issues

Other GST/HST Issues

- Unclaimed input tax credits related to risk outside Canada
- Missed section 184 ITCs for property claims with non-registrants
- Incorrect treatment regarding sales through auctioneers

Indirect tax updates

Reinsurance – loading update

What has changed since last year?

... not much

FATCA

FATCA – It has arrived!!

General information

- Rules that require information reporting
- Focuses on banks, investment entities and life insurance companies
- Other companies (including P&C insurers) must undertake certain actions and complete certifications in respect of FATCA status
 - Completed W-8 BEN-E or similar form will likely be requested.
 - Certain forms completed under penalty of perjury
- Foreign FIs must register with IRS and obtain GIIN by December 31, 2014
- Non-compliant FIs and/or account holders can be subject to 30% withholding on U.S. withholdable payments received

FATCA

Canada-U.S. Intergovernmental Agreement (IGA)

- U.S. and Canada signed IGA on February 5, 2014
- IGA is a Model I agreement with some key differences
 - Financial institution (FI) classification requires entity to be regulated (even Investment Management companies)
- FIs in Canada will not report directly to IFRS but to the CRA
- Entity classification:
 - FI or non-financial foreign entity (active or passive)
 - Canada has released some guidance in respect of the IGA

FATCA

Key information reporting dates

- July 1, 2014
 - 30% withholding applies to certain payments
- March 31, 2015 - FFIs in non-IGA or Model 2 IGA jurisdictions (**Group #1**)
 - Report items #1 to #6 (see next slide) in respect of 2014
- September 30, 2015 - FFIs in Model 1 IGA jurisdiction (e.g., Canada) (**Group #2**)
 - Report items #1 to #6 (see next slide) in respect of 2014
- March 31, 2016 – Group #1 report items #1 to #7 in respect of 2015
- September 30, 2016 – Group #2 report items #1 to #7 in respect of 2015
- March 31, 2017 – Group #1 report items #1 to #8 in respect of 2016
- September 30, 2017 – Group #2 report items #1 to #8 in respect of 2016

FATCA

Information reporting list

1. Account holders name
 - For passive NFFE, the name(s) of any substantial U.S. owners
2. Account holders U.S. taxpayer identification number (TIN)
 - For passive NFFE's, only the TIN(s) of any substantial U.S. owner(s)
3. Account holders address
 - For passive NFFE's, only the address(es) of any substantial U.S. owner (s)
4. Account number
5. Account balance or value
6. For accounts held by recalcitrant/non-consenting account-holders: report aggregate number and balance or value
7. Income paid (except certain gross proceeds from the sale or redemption of property)
8. Gross proceeds paid to custodial accounts

Thank you!

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