



Canada Signs TIEA with Bermuda

On June 14, 2010, Canada signed a tax information exchange agreement (“TIEA”) with Bermuda. This is welcome news for both Nations.

What is the TIEA?

Broadly speaking, TIEAs facilitate the exchange of information relating to taxes between the two jurisdictions party to the TIEA. TIEAs are considered to be an important tool to help prevent tax evasion in circumstances where there is not a comprehensive tax treaty.

In Canada, the benefits of TIEAs are even more pronounced. In March, 2007, Canada passed laws which provided favourable tax treatment for business income repatriated from TIEA jurisdictions and introduced negative tax consequences for the repatriation of income from any jurisdiction which does not agree to a TIEA within 60 months of a request from Canada. With respect to the favourable tax treatment, we understand that actual or deemed business profits of a company based in a TIEA jurisdiction are eligible for tax free dividend repatriation to a Canadian parent as “exempt surplus”.

Specifically, not only is active business income earned in the TIEA jurisdiction able to be repatriated tax free, but passive forms of income such as interest or royalty payments paid to a company in a TIEA jurisdiction by a sister company resident and carrying on active business in a third jurisdiction (also being a TIEA or treaty jurisdiction) may be repatriated on a tax free basis to the Canadian parent, so long as the amount is deductible in computing active business income of the sister. This allows the Canadian parent to take advantage of the favourable tax regime (ie. zero tax regime) of our TIEA jurisdictions.

Advantages for Bermuda

The signing of the Canada-Bermuda TIEA provides a more tax-effective platform for Canadian-owned groups with foreign operations. Several Canadian companies are already significantly involved in the Bermuda business world, specifically, in the captive, hedge fund and private equity areas and, more recently, in the banking arena. The Canada-Bermuda TIEA will exempt certain dividends payable to foreign affiliates resident in Bermuda and distributed to their Canadian parent companies from relevant Canadian taxation.

The agreement will make it easier for Canadian firms to form new Bermuda companies (particularly captives and financing vehicles), and to potentially move business to Bermuda from other double-tax treaty jurisdictions.

Advantages Over Other Double-Tax Treaty Jurisdictions

While Canada has had a long standing relationship with Barbados pursuant to the Barbados - Canada tax treaty, as a result of the TIEAs being entered into by Canada, we expect Bermuda to play a significantly greater role in the international structuring by Canadian companies.

Since 1980, Barbados has enjoyed the benefits of a double-tax treaty with Canada ("Canada-Barbados Treaty"), which has given them an advantage in financial and investment services of Canadian businesses. Through the establishment of an International Business Corporation ("IBC") and the Canada-Barbados Treaty, Barbados has been a convenient tax saving jurisdiction for many Canadian businesses.

When the Canada-Bermuda TIEA becomes effective, Bermuda will become a "designated treaty country"¹ as a consequence of the 2007 Canadian Budget. With this designation, income earned by a Bermuda subsidiary and distributed to its Canadian parent is not subject to certain taxes. This designation has been afforded to foreign affiliates in countries who share a double-tax treaty with Canada (including Barbados, Ireland and Cyprus). However, unlike these countries, Bermuda does not impose any corporate income tax, capital gains tax or withholding tax. Thus by establishing a Bermuda subsidiary, a Canadian corporation may benefit from the tax savings available to it. With the Canada-Bermuda TIEA, Bermuda may be even more attractive than such double taxation treaty partners, by offering Canadian groups an international financial centre with a favourable tax regime and advanced business infrastructure.

¹ Subsection 5907(11) of the Income Tax Regulations (Canada)

We refer you to Canadian tax counsel for the exact tax consequences under Canadian law of utilising a company in Bermuda. Otherwise, please contact your usual Conyers Dill & Pearman contact for advice in connection with incorporating such a company under Bermuda law.

Consequences of the Canada-Bermuda TIEA

The Canada-Bermuda TIEA is similar to previously agreed TIEAs and includes the standard resources required to ensure that due process is followed when requests for tax information are received in Bermuda, including, for example, provisions to protect the confidentiality of the information provided and adhering to public policy. It further includes provisions relating to the protection of legal privilege, as well as ensuring that requests from Canada are relevant to tax investigations being conducted by Canadian authorities.

Bermuda has signed some twenty-three TIEAs and is currently negotiating with Spain, South Africa and Brazil.



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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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