



Bermuda announces Tax Information Exchange Agreement with Canada

On 7 May 2009, the Bermuda Ministry of Finance announced a tax information exchange agreement with Canada (“TIEA”). Bermuda government sources indicate that Canada has committed to sign and bring the agreement into force before September 2009.

While the terms of the TIEA have not been made publicly available, the TIEA will provide for the exchange of information relating to criminal and civil tax matters. TIEAs are not new for Bermuda – the Bermuda/USA TIEA has been in force for over 20 years. Bermuda currently has 11 TIEAs in force and completed negotiations for 4 further TIEAs.

“Designate Treaty Country” = Tax Savings

As a consequence of the 2007 Canadian Budget, once the Canada/Bermuda TIEA comes into force Bermuda will become a “designated treaty country”¹. As a result certain income earned by a Bermudian subsidiary and remitted to its Canadian parent corporation will be eligible for favorable Canadian tax treatment. The same treatment was previously only available to foreign affiliates resident in countries that have entered into a double taxation treaty with Canada (e.g. Barbados, Ireland, Cyprus). Unlike Canada’s double taxation treaty partners, Bermuda does not levy any corporate income tax, capital gains tax or withholding tax, accordingly Canadian corporations may realise tax savings by using a Bermuda subsidiary as part of their overseas structure.

Background

Canada has a partial exemption and partial credit regime for dividends paid by a foreign subsidiary to its Canadian parent, dependent on whether or not the dividends are derived from active business income earned by a foreign affiliate resident in a designated treaty country or a country which has a TIEA with Canada. Active business income earned by a foreign subsidiary will only be subject to Canadian tax when it is repatriated to Canada by way of a dividend to its Canadian parent. If the dividend is paid out of the subsidiary’s “exempt” earnings it can generally be received by the Canadian parent without any Canadian tax. If paid from the subsidiary’s “taxable” earnings the Canadian parent is required to include the dividend in income but is entitled to a deduction based on a gross-up of the foreign tax paid by the subsidiary. This deduction will not fully offset the income inclusion to the Canadian parent, where the foreign income is earned in a low or no tax jurisdiction. Accordingly a Canadian parent will seek to structure its international operations, intra-group financing and licensing so that the subsidiaries generate exempt income.

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

This eAlert is published by APPLEBY and is not intended to be, nor should it be used as, a substitute for specific legal advice on any particular transaction or set of circumstances. It does not purport to be comprehensive or to render legal advice and is only intended to provide general information for the clients and professional contacts of Appleby as at the date hereof.

A further consequence of the 2007 Canadian Budget is that Canadian parents of subsidiaries based in countries which fail to enter into a TIEA with Canada within 60 months of a 'written invitation to enter into negotiations' will become subject immediate attribution of active business income – a form of punitive taxation. Accordingly a Canadian multinational which uses Bermuda in its overseas structure will take comfort it will not need to alter the structure in the future to avoid this punitive tax.

Conclusion

Once the Canada Bermuda TIEA is in force, it will become possible to earn active business income through a Bermudian subsidiary and repatriate that income to Canada without any Bermudian or Canadian tax (since Bermuda does not impose any corporate income or withholding tax on dividends). Accordingly, Bermuda will become an even more attractive jurisdiction for Canadian corporations looking to set up certain types of off shore operations.

For further information, please contact:



Randall Krebs

Private Client & Trusts

Tel: +1 441 298 3274

Email: rkrebs@applebyglobal.com

Global Corporate & Commercial Contacts

Judith Collis	Practice Group Head	Bermuda	+1 441 298 3211	jcollis@applebyglobal.com
Michael Burns	Local Group Head	BVI	+1 284 852 5318	mburns@applebyglobal.com
Bryan Hunter	Local Group Head	Cayman Islands	+1 345 814 2052	bhunter@applebyglobal.com
Frances Woo	Local Group Head	Hong Kong	+852 2905 5720	fwoo@applebyglobal.com
Mark Lewis	Local Group Head	Jersey	+44 (0)1534 818 042	mlewis@applebyglobal.com
Warren Cabral	Local Group Head	London	+44 (0)20 7469 0521	wcabral@applebyglobal.com
Malcolm Moller	Local Group Head	Mauritius	+230 203 4301	mmoller@applebyglobal.com
Jonathan Vanderkar	Local Group Head	Zurich	+41 44 214 6522	jvanderkar@applebyglobal.com

Offices



Bermuda

Canon's Court
22 Victoria Street
PO Box HM 1179
Hamilton HM EX
Bermuda

Tel +1 441 295 2244
Fax +1 441 292 8666

Jersey

PO Box 207
13-14 Esplanade
St Helier
Jersey JE1 1BD
Channel Islands

Tel +44 (0)1534 888 777
Fax +44 (0)1534 888 778

British Virgin Islands

No 56 Admin Drive
Wickhams Cay 1
PO Box 3190
Road Town
Tortola VG 1110
British Virgin Islands

Tel +1 284 494 4742
Fax +1 284 494 7279

London

2nd Floor
2 Royal Exchange Bldgs
London EC3V 3LF
United Kingdom

Tel +44 (0)20 7283 6061
Fax +44 (0)20 7469 0540

Cayman Islands

Clifton House
75 Fort Street
PO Box 190
Grand Cayman KY1-1104
Cayman Islands

Tel +1 345 949 4900
Fax +1 345 949 4901

Mauritius

8th Floor
Medine Mews
La Chaussée
Port Louis
Mauritius

Tel +230 203 4300
Fax +230 210 8792

Hong Kong

8th Floor
Bank of America Tower
12 Harcourt Road
Central
Hong Kong

Tel +852 2523 8123
Fax +852 2524 5548

Zurich

Bahnhofstrasse 52
CH-8001
Zurich
Switzerland

Tel: +41 44 214 6525
Fax: +41 44 214 6524