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The Canadian federal budget of March 4, 2010, amended the definition of taxable Canadian property to exclude shares of private Canadian companies, so long as those shares did not, at any time during the 60-month period prior to sale, derive their value principally from real or immovable property situated in Canada, Canadian resource property, or timber-resource property located in Canada. As a result, foreign owners of such shares may now dispose of them without waiting for a clearance certificate from the Canada Revenue Agency (“CRA”), without the purchaser withholding 25% of the purchase price, without reporting the sale to the CRA, and without paying any Canadian tax on the sale. These rules apply regardless of the home jurisdiction of the foreign vendor or the terms of any tax treaty between Canada and such jurisdiction.

U.S. corporations planning to set up Canadian subsidiaries, or having existing Canadian subsidiaries, that qualify for these new rules are now in a position to exit Canada on a sale of the subsidiaries' shares without the burden of having to obtain a clearance certificate from the CRA. Moreover, they may be able to defer U.S. tax on the sale as well. For example, if the U.S. parent incorporates a Barbados International Business Company (“IBC”) as a wholly owned subsidiary, and the IBC in turn incorporates an Alberta Unlimited Liability Corporation (“ULC”) to operate the Canadian business, it should be possible for the IBC to sell the shares of the ULC down the road without Canadian tax and without current U.S. tax. If the IBC remits the sale proceeds to the U.S. parent, U.S. tax would apply, but no Barbados tax, since there is no withholding tax on dividends paid by IBCs. Alternatively, the IBC should be able to redeploy the sale proceeds into another active business venture anywhere in the world other than the U.S. without current U.S. tax.

For more information about the U.S. federal income tax aspects of this planning opportunity, please contact John Wilson or Peter Perla at Holland & Hart LLP in Denver, Colorado. For further information about this change in Canadian tax law or the Canadian aspects of this planning opportunity, please contact Ross Freeman at Borden Ladner Gervais LLP in Calgary.

Given the Canadian tax component of this alert, this article was co-authored by fellow tax counsel from the firm of Borden Ladner Gervais LLP. Ross Freeman is a partner in the Calgary office who practices

exclusively in the tax area with emphasis on corporate, mergers and acquisitions, international and natural resources tax and also handles tax disputes with revenue authorities.

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