Comité mixte sur la fiscalité de l'Association du Barreau canadien et de l'Institut Canadien des Comptables Agréés

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Le 15 février 2010

Monsieur Brian Ernewein
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Objet : Modifications de nature technique relatives à l'imposition des sociétés étrangères affiliées (18 décembre 2009)

Monsieur,
Vous trouverez ci-joint notre mémoire qui porte sur le projet de loi et de règlement relatif à l'imposition des sociétés canadiennes qui ont des sociétés étrangères affiliées, publié pour commentaires le 18 décembre 2009.

Dans notre mémoire, nous livrons notre point de vue et nos recommandations sur les sujets suivants :

- délai pour l'exercice des choix visant les sociétés étrangères affiliées;
- paragraphe 93(1) et anciennes règles de réattribution du déficit;
- règles du comblement du déficit;
- majoration et réduction relatives au surplus libre d'impôt;
- pays désigné;
- pertes étrangères accumulées, relatives à des biens, et impôt étranger accumulé prescrit;
- autres dispositions choisies.

Nous avons limité nos commentaires aux modifications publiées le 18 décembre 2009, mais il est à noter que certaines des dispositions pourraient être touchées par les propositions de février 2004 encore en suspens sur les sociétés étrangères affiliées (qui en gros comprennent les dispositions relatives aux réorganisations) lorsqu'elles seront publiées.

À titre d'observation générale, nous constatons que cet ensemble complexe de modifications a été publié à un moment de l'année où la plupart des multinationales sont concentrées sur leur audit de fin d'exercice et les travaux connexes. La date limite de réception des commentaires, le 15 février 2010, laisse peu de temps pour examiner les règles en détail avant la fin de la période de consultation.

Néanmoins, nous vous remercions de nous offrir l'occasion de présenter notre opinion sur les modifications proposées. Une fois que nous les aurons examinées plus étroitement, il est possible que nous ayons des commentaires et des recommandations supplémentaires à vous soumettre.

Nous espérons que vous trouverez nos commentaires et nos recommandations utiles. N'hésitez pas à communiquer avec l'un ou l'autre d'entre nous si vous avez des questions ou si vous désirez avoir plus d'informations sur les sujets traités dans le document joint.

Nous vous prions d'agréer, Monsieur, nos salutations distinguées.

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Président, Comité sur la fiscalité
L'Institut Canadien des Comptables Agréés

Elaine Marchand
Présidente, Section de droit fiscal
L'Association du Barreau canadien

Submission of the
CICA-CBA Joint Committee on Taxation

December 18, 2009 Technical Amendments relating to the taxation of Foreign Affiliates (the "December 2009 Amendments")

1. Revocation deadline for the Foreign Affiliate elections

The foreign affiliate proposals enacted in Bill C-28 include numerous elections that affect the timing of when these revised foreign affiliate rules apply. The December 2009 Amendments propose to extend the deadline for filing these new elections to December 31, 2009, but the deadline for revoking them remains at June 30, 2011 (for a calendar year filer). It is unlikely that the Canada Revenue Agency ("**CRA**") will have completed its audit activities related to these elections by that date. As a result, taxpayers are denied the ability to revoke these elections to mitigate the impact of any post-June 30, 2011 assessment. Our understanding was that the original reason for providing taxpayers the opportunity to revoke these elections was that the provisions apply to several prior years (in some cases to 1995), leaving taxpayers unable to reasonably determine whether there is any detrimental effect to making these elections and whether they would benefit from any changes that fixed anomalies. As such, the ability to revoke would provide comfort to such taxpayers that they should be no worse off for having elected.

Recommendation: The deadline for revoking the new foreign affiliate elections should be extended to the end of the reassessment period for all affected years.

2. Foreign affiliate election deadline

Before the December 2009 Amendments, only the "global election", which covers over 20 foreign affiliate provisions, was revocable. Since other elections with retroactive effect were not revocable, some taxpayers may have been reluctant to make them. The December 2009 Amendments add the ability to revoke these other elections. However, taxpayers with calendar taxation year-ends who were previously reluctant to make the elections because of their irrevocability only had from December 18 to December 31, 2009 (13 days in total over the holidays) to revisit their decisions as to whether to make one or more of these elections.

Recommendation: We recommend that the deadline for making these other elections be extended so that taxpayers have a minimum of six months to take the necessary action.

3. Subsection 93(1) and the former deficit reallocation rules - Unintended pre-acquisition surplus dividends

For almost six years, taxpayers have conducted their tax planning on the basis of the February 2004 proposals. These proposals included the "deficit reallocation" rules that would have caused deficits created by elections under subsection 93(1) of the Income Tax Act ("**ITA**") to be offset against surplus in lower-tier foreign affiliates instead of producing a deficit in the transferred foreign affiliate. As a result, taxpayers may have inadvertently triggered pre-acquisition surplus dividends (and potentially gains) because exempt surplus dividends were paid through affiliates with blocking deficits that would not have existed had the February 2004 proposals been enacted. Additionally, representatives of the CRA have clearly indicated that taxpayers should file their returns based on proposed legislation at several tax conferences.

Recommendation: A transitional election should be introduced to allow taxpayers to elect to apply draft Regulations 5902 and 5905, as proposed in the February 2004 proposals, to any transaction that occurred during the period from February 27, 2004 to December 18, 2009.

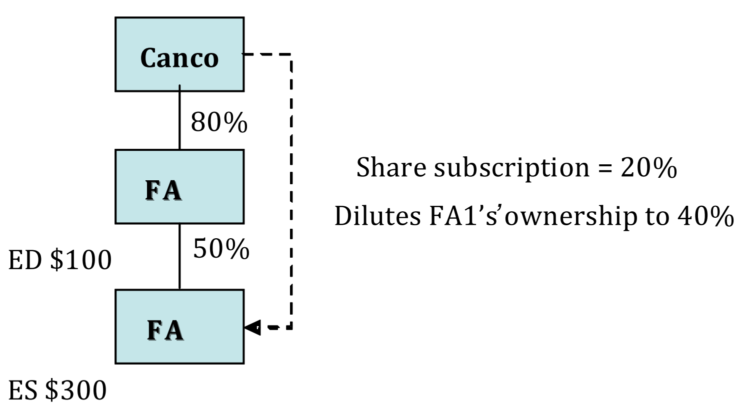
4. Issues arising from former "consolidated net surplus" approach

Some taxpayers have made subsection 93(1) ITA elections based on the "consolidated net surplus" approach required under the February 2004 proposals and could have had a better result under the current rules. For example, where there is a deficit in a foreign affiliate that is at the lowest tier of a chain of foreign affiliates, for purposes of a subsection 93(1) election, the deficit would reduce the surplus in the top-tier affiliate whose shares are disposed of. This result would not occur under either the current rules or the December 2009 Amendments. Under subsections 93(5.1) and (6), the ability of the taxpayer to amend a subsection 93(1) election is subject to the Minister's discretion and the taxpayer is required to pay a penalty. Additionally, the relevant years may be statute-barred.

Recommendation: Taxpayers should have the right to amend subsection 93(1) elections made in respect of dispositions occurring after February 27, 2004 and before December 18, 2009 without incurring a penalty. In addition, affected taxpayers should be permitted to open statute-barred years to amend their tax filings accordingly.

5. Fill-the-hole rules - Loss of surplus where deficit foreign affiliate not wholly-owned

The formulas in Regulation 5905(7.2) cause an inappropriate loss of exempt surplus (**"ES"**) in situations where the Canadian corporation's surplus entitlement percentage (**"SEP"**) in the deficit affiliate is less than 100%. Consider the following example:



A Canadian resident corporation (**"Canco"**) owns 80% of the shares of a foreign affiliate (**"FA1"**), which owns 50% of a second foreign affiliate (**"FA2"**). Canco subscribes for newly issued shares of FA2, such that Canco gains 20% direct ownership in FA2 and FA1's ownership is diluted to 40%. FA1 has an exempt deficit ("**ED**") of $100 and FA2 has ES of $300.

Under current Regulation 5905(1), FA2's exempt surplus of $300 would be reduced to $230 [40%/52% × $300]. Canco can access this surplus by receiving dividends on the FA2 shares that it holds directly.

Under the December 2009 Amendments, Regulation 5905(7.2) would apply because FA2 shares are acquired by Canco and, as a result, FA1's surplus entitlement percentage in FA2 is less than it was before Canco acquired the FA2 shares. FA2 is thus required to decrease its exempt surplus by the lesser of:

- $100 Exempt deficit (**"ED"**) of FA1/40% SEP in FA2 = $250, and
- $300 – which is the ES of FA2

for a result of $50.

In addition, FA1's exempt deficit is reduced by $250 x 40% (Canco's SEP in FA2) = $100 to nil.

As a result, Canco's surplus entitlement immediately after the adjustment is $20 (80% x 0 + 40% x $50) whereas immediately before the adjustment it is $40 (80% x (-$100) + 40% x $300 = $40). This loss of exempt surplus of $20 does not seem appropriate.

Recommendation: We recommend that the formulas be re-drafted to ensure consistency among the adjustments to the surplus balances of the deficit affiliate and the acquired affiliate, and the adjusted cost base ("**ACB")** adjustment under Regulation 5905(7.6). Specifically, the variables "B" in Regulation 5905(7.2)(a)(i) and "D" in Regulation 5905(7.2)(b) should be modified to replace the words "*the corporation's surplus entitlement percentage in respect of the acquired affiliate immediately before the acquisition time*" with the words "*the percentage that would, if the deficit affiliate were resident in Canada, be the deficit affiliate's surplus entitlement percentage in respect of the acquired affiliate immediately before the acquisition time.*"

To continue the example above, if our proposed language were adopted, the result of the formulas would be as follows:

Decrease in FA2's Exempt Surplus is lesser of:

- $100 exempt deficit /50% (FA1's "SEP" in FA2) = $200
- $300 – exempt surplus of FA2

Thus, exempt surplus is reduced by $200 to $100.

In addition, FA1's exempt deficit is reduced by $200 x 50% (FA1's "SEP" in FA2) or $100 to nil.

As a result, Canco's surplus entitlement immediately after the adjustment would be $40 (80% x $0 + 40% x $100), or the same as it was immediately before the adjustment. We submit this is the correct result from a policy perspective as we understand the intent of the rules is to simply net surpluses against deficits without affecting the consolidated surplus entitlement of the Canadian taxpayer.

6. Loss of surplus where insufficient designation

Where the Canadian corporation makes insufficient designations under Regulation 5905(7.2)(a)(ii)(B)(I) to fully allocate the fill-the-hole amount to the acquired affiliates, Regulations 5905(7.3) and (7.4) essentially cause the surplus grind to be duplicated. The Technical Notes suggest this is a penalty provision "meant to encourage proper designations." However, an insufficient designation is not necessarily the result of intentional understatement; it may be due to genuine disagreements and uncertainties regarding the computation of the surplus and deficit balances or to unintentional computational errors. Given the complexity and gray areas involved in computing surplus accounts, we submit that penalizing taxpayers for such insufficient designations is inappropriate.

Recommendation: Regulation 5905(7.4) should be amended to provide that if the computation under Regulation 5907(7.3) produces a positive amount, the Minister shall allocate such shortfall to the acquired affiliates in any manner that is reasonable in the circumstances.

7. ACB adjustments and subsection 88(3)

Where the fill-the-hole rule applies, the direct holder's ACB in the acquired affiliate and any intermediary affiliates is stepped up by essentially the amount of the exempt surplus grind in the acquired affiliate. While this rule is generally appropriate, adverse interactions with subsection 88(3) ITA may result where the deficit affiliate is liquidated into Canada.

Specifically, the Canadian taxpayer's proceeds of disposition of the shares of the liquidating affiliate are increased pursuant to clause 88(3)(a)(i)(A), subparagraph (a)(ii), and paragraph 88(3)(c), but there is no offsetting increase in available exempt surplus for a subsection 93(1) election or in the "outside basis" of the liquidating affiliate. In our view, it is inappropriate for gains to arise on a subsection 88(3) liquidation where the "inside basis" of the foreign affiliate shares exceeds the "outside basis" in the shares of the liquidating foreign affiliate. This treatment is inappropriate because (i) no actual "realisation" event occurs (i.e., the Canadian taxpayer does not acquire any cash or tax basis that results in deductible outlays), and (ii) in the opposite scenario where the outside basis exceeds the inside basis, the resulting capital loss is deemed nil and added to the ACB of the acquired lower-tier FA shares pursuant to subsection 93(4).

Recommendation: We recommend that subsection 88(3) be amended to provide that any outside basis shortfall is allocated, either automatically or by taxpayer election, to the ACB of any lower-tier foreign affiliate shares acquired by the taxpayer. (Where more than one foreign affiliate is distributed, the allocation should be pro rata to the foreign affiliate shares' fair market value). The remaining difference should result in a capital gain only where the shortfall exceeds the total ACB of lower-tier foreign affiliate shares acquired. This treatment would be consistent with the treatment of losses under subsection 93(4) and with certain rules in the domestic context, such as the treatment of partnership liquidations under subsection 85(3).

8. Related-party acquisitions

As currently drafted, Regulation 5905(5.2) applies any time a person or group of persons acquires control of a corporation resident in Canada. This provision appears to include situations where control is acquired from a related person. In contrast, paragraph 256(7)(a) ITA generally excludes related-party acquisitions from most of the other "acquisition of control" rules.

Recommendation: We recommend that subsection 256(7) ITA be amended so that it applies for purposes of Regulation 5905. Alternatively, we recommend that Regulation 5905(5.2) be amended to clarify that it applies only where control of a corporation is acquired from unrelated persons.

9. Interaction between bump room and tax-free surplus

For post-December 18, 2009 acquisitions of control, Regulation 5905(5.4) reduces the "bump room" by the tax-free surplus balance in the foreign affiliate at the time of the acquisition of control. Consequently, up-to-date surplus calculations are required essentially every time a bump designation is made, especially since bump designations cannot be amended. In many cases, the target may not have up-to-date surplus calculations. Reliable information may be difficult or impossible to obtain if it relates to periods before the acquisition of control (e.g., where the seller is uncooperative or where the taxpayer has undergone several changes in ownership). Additionally, in many jurisdictions the audit cycle is at least as long as the cycle in Canada and tax return filings are often not made until many months (or even years) after the end of the taxation year.

Further, the "disproportionate tax designation" in the definition of underlying foreign tax (**"UFT"**) is not allowed for subsection 93(1) deemed dividends. As a result, to the extent the tax-free surplus balance is represented by grossed-up UFT, there is an inconsistency between reducing the bump room by that amount and requiring a net income inclusion where a subsection 93(1) election is filed on a later disposition of the shares in situations where the taxable surplus exceeds grossed-up UFT.

In contrast, the transitional regime in Regulations 5905(5.11) to (5.13) only requires a computation of the surplus balances and dividends after an acquisition of control (i.e., because dividends are deemed to come from post-acquisition of control surplus first and Regulation 5905(5.12) deems any pre-acquisition of control surplus to be nil). Thus, this approach does not suffer from the same informational issues as the approach in Regulation 5905(5.4). Also, the bump room is not reduced in respect of any notionally tax-free surplus unless that surplus has been used to shelter dividends from tax.

We are concerned with the practical aspects of applying this provision. The uncertainty respecting the calculation of surplus accounts in these circumstances creates additional complexity that is not currently inherent in the bump rules.

Accordingly, we believe that a taxpayer should have the ability to amend its bump designations in the event that the calculation of the tax free surplus balance on which the bump designations were initially based is amended (either by the Minister on assessment or by the taxpayer).

In many cases, an acquiror may seek to reorganize the corporate structure of the acquired Canadian corporation and this may involve distributing the shares of its foreign affiliates to its foreign parent. In such a situation, a subsection 93(1) election may need to be made to ensure that no gain is realized (when combined with the restricted bump designation).

A number of issues arise. A “disproportionate tax designation” should be available on a subsection 93(1) election in these circumstances where the existence of UFT restricted the bump designation. In addition, it may be necessary to amend the subsection 93(1) election in situations where the bump designations are also amended by virtue of a change in surplus calculations. The conditions for making each of these amended elections and designations should be the same.

Finally, we recommend a simplifying amendment that would allow a taxpayer, at its option (by election), to avoid the need to reduce the bump designation in respect of a foreign affiliate by the tax-free surplus balance in circumstances where shares of the foreign affiliate are distributed shortly after the acquisition of control (say, for example, 90 days) and the surplus of the foreign affiliate was not actually utilized by the taxpayer following the acquisition of control. In such a case, it is expected that the taxpayer would fully bump the tax cost of the foreign affiliate shares (without regard to surplus balances) and would distribute the foreign affiliate shares from Canada without the need for a 93(1) election (and without having actually received any dividends). Such a provision would reduce complexity both for the taxpayer (the need to calculate the tax-free surplus balance initially, and to file amended elections and designations if a change is made to such tax-free surplus balance) and for the CRA (the need to audit surplus balances in a situation where they are not relevant to the tax consequences of the transaction).

10. <u>Acquisition of Control where foreign affiliates have deficits</u>

While exempt surplus can be reduced on an acquisition of control and bump room is reduced by tax free surplus, deficits in foreign affiliates are not addressed. If for example, a Canadian target owning a foreign affiliate with an exempt deficit of $100 is acquired by another Canadian corporation for say $1, the exempt deficit remains and must be "filled" with post acquisition surplus prior to repatriating funds to Canada.

Recommendation: In circumstances where an acquisition of control has occurred, consideration should be given to reducing "consolidated" or higher tier deficits.

11. <u>Designated treaty country status</u>

Currently, a foreign affiliate's active or deemed active business income for a particular taxation year is included in "exempt earnings" provided the affiliate is resident in a designated treaty country ("**DTC**"). The ITA is silent on when the residency test must be met however based on CRA's view (#9807125 and 2003-0016811R3) the test must be met at the end of the particular year.

Under the December 2009 Amendments, the definition of "exempt earnings" is modified to require that the affiliate be resident in a DTC "throughout the year". This approach could create a loss in exempt earnings status in situations where a non-resident becomes or ceases to be a foreign affiliate of a taxpayer during a year, if the foreign affiliate fails the residency test prior to the acquisition or after the disposition − for reasons that are not within the taxpayer's control, as illustrated in the following examples.

Assume Canco acquires FA1 from an unrelated person. FA1 carries on an active business in a DTC and has a calendar year end. Prior to the acquisition FA1's central management and control is not located in that country. As a result FA1's active business income in the year of acquisition cannot be included in exempt earnings.

In the case of a disposition, assume Canco owns Opco and Finco. Finco has made an interest bearing loan to Opco in year 1. Each of Finco and Opco has a calendar year end and is at all times resident in its home country which has a treaty with Canada. The loan qualifies for subparagraph 95(2)(a)(ii) treatment. Finco's income on the loan is included in exempt earnings because both Finco and Opco meet the throughout-the-year residency test.

Prior to the end of calendar year 3 the loan is settled and Opco is sold to a third party. After the sale Opco's central management and control ceases to be located in its home country and as a result Finco's income earned in that year cannot be included in exempt earnings.

Recommendation: We recommend that a rule similar to subsection 95(2.2) be introduced to deem a foreign affiliate to meet the throughout- the- year residency test, provided it meets the test throughout the year post-acquisition or pre-disposition, where the acquisition or disposition is with a third party.

12. <u>Exempt earnings definition in 5907(1) – clause 95(2)(a)(ii)(D)</u>

Exempt surplus includes interest income that is re-characterised as active business income under clause 95(2)(a)(ii)(D) that is earned in a DTC. This provision requires that the shares of the "third" affiliate effectively derive all or substantially all their value directly or indirectly by reference to property used or deemed to be used in an active business carried on in a DTC. This may create significant difficulties for taxpayers that have acquired or operate large groups in a particular DTC but where ultimately more than 10% of the value is derived from assets used in businesses carried on in non-DTCs. In effect, a relatively small ownership of the 3rd affiliate in non-DTC businesses (including many tiers down) precludes all the interest income from qualifying as exempt surplus. Restructuring to meet the test may not always be possible due to foreign tax and regulatory restrictions which make transferring non-qualifying assets impossible or costly. Furthermore, this amendment to the definition of "exempt earnings" would appear to have retroactive application to taxation years beginning after 2008.

Recommendation: We recommend that the Department of Finance consider introducing a rule that allows for the allocation of interest income re-characterised under clause 95(2)(a)(ii)(D) between exempt and taxable earnings based on the proportionate fair market values of DTC versus non-DTC assets, determined on a consolidated 'look-through' basis at the level of the 3rd affiliate, taking into account its direct and indirect ownership in all lower-tier foreign affiliates. Alternatively, consideration could be given to applying the rule on a "layered basis". That is, limit the application of clause 95(2)(a)(ii)(D) to the extent indebtedness exceeds property of the third affiliate that is excluded property absent the change to the definition of exempt earnings. Furthermore, we recommend that any change apply in such a manner as will allow taxpayers to restructure any affected arrangements within a reasonable period to time.

13. <u>Arrears interest and FAPL carrybacks</u>

Subsection 161(7) ITA has been amended to require the computation of arrears interest for a particular taxation year without reference to any foreign accrual property loss ("**FAPL**") carrybacks from later years until 30 days after the filing of the carryback claim. This amendment is retroactive to taxation years beginning after November 1999, even though this rule was not included in the original version of the FAPL carryback regime.

Recommendation: Proposed subsections 161(7) and 164(5) should be amended so that they only apply to taxation years that begin after December 18, 2009.

14. Tax-sharing payments and Regulation 5907(1.4)

As currently drafted, Regulation 5907(1.4) provides that prescribed foreign accrual tax "shall only include the portion …. that can reasonably be considered to be in respect of a loss of another corporation [that is a controlled foreign affiliate of the taxpayer or a non-arm's length person….] that would be a FAPL of [the recipient of the tax sharing payment]." Under a broad interpretation of this proposal, tax-sharing payments that are unrelated to FAPLs but also unrelated to any other type of loss (e.g., payments to reimburse the primary affiliate for actual cash taxes paid) do not qualify as prescribed foreign accrual tax. We understand that this result is not intended.

Recommendation: We recommend that Regulation 5907(1.4) be amended to clarify that it only applies where the tax-sharing payments can reasonably be considered to be in respect of a loss of any other corporation. Reverting to the version of this Regulation proposed in the February 2004 proposals should achieve this result.

15. Regulation 5907(1.1)

The preamble to Regulation 5907(1.1) requires that the primary affiliate and secondary affiliates be resident in the same foreign country, and that each be a foreign affiliate of the same Canadian corporation. However, two companies that are part of the same consolidated group may be resident in different countries (such as where their central management and control is in different countries), or where a foreign entity is taxed as a domestic corporation under the local tax rules (such as under Section 953(d) of the United States Internal Revenue Code). Also, it is possible that two members of an affiliated group may be foreign affiliates of different Canadian taxpayers. These issues were referred to in a comfort letter from the Department of Finance dated June 9, 2006.

Recommendation: Regulation 5907(1.1) should be revised in a manner similar to that recommended in the June 9, 2006 comfort letter, namely by removing the requirement that each member of the consolidated group be resident in the same foreign country, and treating foreign affiliates of related Canadian companies as foreign affiliates of the same Canadian company for purposes of Regulation 5907(1.1).

16. Regulation 5907(1.4)

Regulation 5907(1.4) prevents taxpayers from using active business losses to shelter foreign accrual property income ("FAPI") as part of a consolidated or group relief regime.

Specifically, that provision prevents a compensation payment made by one affiliate in respect of its FAPI from being considered “foreign accrual tax” (“FAT”) under Regulation 5907(1.3) where it can reasonably be considered that the compensation payment is in respect of active business losses of another corporation. However, in many cases a group may have active business losses the year the FAPI is earned, but may also have active business income in earlier or later years. From a policy perspective it would seem somewhat arbitrary to deny FAT recognition solely because the FAPI happened to be realized during a period of active business losses for the group, rather than in a year in which the group had active business income.

Recommendation: Regulation 5907(1.4) should be revised to allow FAT recognition in respect of payments made by a foreign affiliate in respect of FAPI sheltered with active business losses in the group, but only to the extent that the taxpayer may establish that the active business income of the group exceeds the active business losses during an acceptable carryover period. For this purpose the carryover period could mirror the period in Regulation 5903 or the carryover period in subsection 91(4) ITA.

17. <u>Regulation 5905(1)</u>

The proposed change to Regulation 5905(1) corrects an anomaly in the calculation of surplus accounts that previously resulted in certain transactions. For example, prior to this proposed change, the surplus accounts of a foreign affiliate would generally not have increased on a transfer to another foreign affiliate under subsection 85.1(3), where the taxpayer’s SEP in the transferred affiliate decreases (i.e., where the acquiring affiliate has other shareholders). As a result, the transfer inappropriately reduced the amount of exempt surplus that could be distributed to the taxpayer. While this proposed change is effective for transfers that occur after December 18, 2009, it does not address transfers made in prior periods.

Recommendation: The coming into force provision in respect of draft Regulation 5905(1) should be revised to allow taxpayers to elect to have the provision apply in respect of all of their foreign affiliates retroactively.

18. <u>Bump Transition Rules – Proposed Regulation 5905(5.12)</u>

Pursuant to proposed Regulation 5905(5.12), when an amount has been designated under paragraph 88(1)(d) ITA, the surplus balances of foreign affiliates of the subsidiary corporation are reset to nil with respect to the subsidiary corporation. Regulation 5905(5.12)(b) reinstates those surplus balances, to the extent they relate to the control period, but in respect of the parent corporation. This is achieved by attributing any shares held by the subsidiary corporation during the control period, as well as any acquisitions or dispositions of such shares, to the parent corporation for surplus computation purposes.

However, in some circumstances, the parent corporation (as that term is used in this context) may not have existed throughout the control period. In these circumstances it is not clear that the methodology adopted in Regulation 5905(5.12)(b) would operate as intended.

Recommendation: For clarity, we recommend that a provision be introduced to deem the parent corporation to have existed throughout the control period for the purpose of applying regulation 5905(5.12)(b).