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U.S.-CANADIAN INCOME TAX TREATY PROVISION EFFECTIVE JANUARY 1, 2010

Effective January 1, 2010, a relatively obscure provision in the U.S.-Canadian income tax treaty will deny treaty benefits to U.S. owners of Canadian Unlimited Liability Companies (ULCs), the most common of which is the Nova Scotia Unlimited Liability Company (NSULC).

Many U.S. taxpayers have formed ULCs over the years to obtain U.S. tax benefits because ULCs are flow-through entities for U.S. tax purposes. Cash distributions from ULCs would often be subject to Canadian withholding tax at the reduced treaty rate of 5%. Beginning January 1, 2010, these distributions will be subject to Canadian withholding tax at the non-treaty rate of 25%. Although not a settled issue, a technical analysis of the Internal Revenue Code indicates that these Canadian taxes may not be creditable against the U.S. tax liability of U.S. taxpayers.

We are encouraging U.S. taxpayers to take distributions from their ULCs in the greatest amount possible by December 31 of this year and to consider restructuring operations for future repatriation.

This *Headlines in Tax Law* provides general information about tax issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.