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David Kerzner, Vitaly Timokhov, David Chodikoff
**The Tax Advisor's Guide to the
Canada-U.S. Tax Treaty**

Dear Valued Subscriber,

The 2024-1 update recognizes the important reformation of Canada's transfer pricing rules to protect the fairness and integrity of the tax system. With the publication of proposed amendments to Canada's transfer pricing rules in a consultation memo released in June 2023, the Department of Finance released its landmark and sweeping changes to its original 1997 legal regime (under section 247 of the Act) on transfer pricing. The update reviews the Federal Court of Appeal's 2020 decision in *Canada v. Cameco Corporation* (citation omitted) and the ensuing tax policy changes the government's proposal contains to better align allocations of profits and losses to the standards in the BEPS 8-10 Final Report.

For Canadian investors in the United States, and their tax advisors, the update also provides insight into the critical new U.S. ownership reporting rules under FinCEN, designed to combat international financial crime, money laundering, and tax evasion. Sometimes, professionals may look to a particular technical issue but miss other important tax and related legal features of the same landscape. The OECD has for many years attempted to implement a beneficial ownership registry. The definition of reporting companies subject to the new rules is quite broad and can include both domestic reporting companies and foreign reporting companies with certain exemptions. The rules also contain potentially harmful civil and criminal sanctions for violators. While traditional information on tax matters flowed historically between diplomatic channels under the Treaty, private information obtained under the new regime can be shared more rapidly with a larger cadre of

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government channels at various levels. The update also explores related ownership themes under the Treaty and U.S. domestic tax law.

Highlights

Specific materials included with this 2024-1 update include:

- **Article VII — Business Profits** — *Corporate Transparency Act*; Mandatory Repatriation Tax — *Moore v. United States*, 602 U.S. ____ (2024);
- **Article IX — Related Parties** — Proposed amendments to Canada’s transfer pricing rules: *Canada v. Cameco Corporation*, 2020 CarswellNat 2291, 2020 FCA 112;
- **Article X — Dividends** — *Corporate Transparency Act*;
- **Article XI — Interest** — *Corporate Transparency Act*;
- **Article XIII — Capital Gains** — Proposed new Canadian capital gains rules;
- **Article XXIXA — Limitation on Benefits** — *Corporate Transparency Act* with appendices on implementation rules; cases on treaty shopping and GAAR: *Canada v. Alta Energy Luxembourg SARL*, 2021 SCC 49, aff’g 2020 FCA 43, aff’g 2018 TCC 152; *Husky Energy Inc. v. The King*, 2023 TCC 167.
- revised Table of Contents, Cases, Index.

On behalf of my co-editors, we wish to express our continued appreciation to all of our subscribers and to our local based publishing and editing team, Emma Dobell, Grant Daly, and Heather Cant-Woodward.

Sincerely,

David Kerzner, Ph.D. (Law)
Editor in Chief