

## TABLE OF CONTENTS

	5.3.2[a]	Overview .....	5-47
	5.3.2[b]	Provisions of the Canada-U.S. Tax Treaty Currently in Force .....	5-50
	5.3.2[c]	The PE List and the Exempt List..	5-50.1
	5.3.2[d]	Agency PEs.....	5-53
	5.3.2[e]	Miscellaneous Rules.....	5-55
	5.3.2[f]	Services Permanent Establishment	5-56
	5.3.2[g]	E-commerce .....	5-58.7
	5.3.2[h]	Home Office .....	5-58.7
5.4		Treasury Department Technical Explanations.....	5-59
<b>Chapter 6: Article VI — Income from Real Property</b>			
6.0		Treaty Article .....	6-1
6.1		Introduction.....	6-2
	6.1.1	Tax Cuts and Jobs Act 2017 .....	6-2
	6.1.1[a]	U.S. International Taxation of the Sale or Exchange of a Partnership Interest.....	6-2
	6.1.1[b]	Deduction for Qualified Business Income .....	6-2.4
	6.1.1[c]	Opportunity Zones .....	6-2.5
6.2		Explanation & Interpretation of Article VI under Canadian Law .....	6-3
	6.2.1	Taxation of Income from Real Property under Canadian Domestic Law .....	6-3
	6.2.1[a]	Income from Real Property — Income from Property versus Income from Business .....	6-3
	6.2.1[b]	Non-Resident’s Rental and Royalty Income from Real Property .....	6-5
	6.2.1[c]	Income from Business .....	6-6
	6.2.1[d]	Section 216 Election .....	6-7
	6.2.1[e]	Meaning of the Term “Real Property”.....	6-10
	6.2.1[f]	Withholding and Compliance .....	6-12
	6.2.2	Explanation and Interpretation of the Treaty under Canadian Law .....	6-14
	6.2.2[a]	Article VI(1) — Source Based Taxation of Income from Real Property.....	6-14
	6.2.2[b]	Article VI(2) — Definition of Real Property .....	6-18

## TABLE OF CONTENTS

	6.2.2[c]	Article VI(3) — The Scope of Article VI(1).....	6-20
6.3		Explanation & Interpretation of Article VI under U.S. Law .....	6-21
	6.3.1	Taxation of Investments in U.S. Real Property by Canadian Investor.....	6-21
	6.3.1[a]	General Overview—Introduction ..	6-21
	6.3.1[b]	Taxation of Rental Income from Real Property Investments .....	6-22
	6.3.1[c]	Partnership Taxation Issues and Real Property Investments .....	6-25
	6.3.1[d]	Taxation Issues and the Finance of Real Property Investments .....	6-26
	6.3.1[e]	Taxation Issues and the Sale of Real Property Investments .....	6-27
	6.3.2	Explanation of Treaty under U.S. Law .....	6-30
	6.3.2[a]	Taxation of Real Property Income	6-30
	6.3.2[b]	The Term Real Property .....	6-31
	6.3.2[c]	Capital Gains from Real Property and Article XIII Considerations ....	6-32
6.4		Treasury Department Technical Explanations .....	6-35
<b>Chapter 7: Article VII — Business Profits</b>			
7.0		Treaty Article .....	7-1
7.1		Introduction to Article VII — Business Profits .....	7-3
	7.1.1	Tax Cuts and Jobs Act 2017 .....	7-4
	7.1.1[a]	New International and Business Tax Rules Impacting Cross Border Investment.....	7-4
	7.1.2	BEPS.....	7-4.4
	7.1.3	E-Commerce Taxation .....	7-4.6
	7.1.4	New U.S. Ownership Reporting Rules, <i>Corporate Transparency Act</i> .....	7-4.8
	7.1.5	Recent Cases under U.S. Law .....	7-4.9
7.2		Explanation & Interpretation of Article VII under Canadian Law .....	7-5
	7.2.1	Canadian Domestic Law .....	7-5
	7.2.1[a]	Income from Sources in Canada...	7-5
	7.2.1[b]	Carrying on Business in Canada...	7-7
	7.2.1[c]	Management Fees .....	7-8
	7.2.1[d]	Reporting Requirements.....	7-8
	7.2.2	Canadian Interpretation of the Treaty .....	7-10

## TABLE OF CONTENTS

7.2.2[a]	Article VII(1) — Taxation of Profits Attributable to a Permanent Establishment .....	7-10
7.2.2[b]	Article VII(2) — Methodology of the Attribution of Business Profits .....	7-12
7.2.2[c]	Article VII(3) — Business Profits — Allowable Deductions and Expenses .....	7-15
7.2.2[d]	Article VII(4) — Business Profits — Exclusions for Certain Purchasing and Management Functions .....	7-18
7.2.2[e]	Article VII(5) — Business Profits — Consistency of Determination .....	7-18
7.2.2[f]	Article VII(6) — Allocation to other Income to Permanent Establishment .....	7-19
7.2.2[g]	Article VII(7) — Business Profits — Attribution Limited to Assets and Activities of a Permanent Establishment .....	7-20
7.2.2[h]	Additional Considerations .....	7-21
7.2.2[i]	Management Fees Paid to a U.S. Resident .....	7-22
7.3	Explanation & Interpretation of Article VII under U.S. Law .....	7-24
7.3.1	U.S. Taxation of Foreign Persons Doing Business in the U.S. ....	7-24
7.3.1[a]	U.S. Taxation of Income of Foreign Persons .....	7-24
7.3.1[b]	U.S. Sourcing Rules .....	7-25
7.3.1[c]	Effectively Connected Income .....	7-27
7.3.1[d]	General Reporting Requirements of Foreign Corporations .....	7-29
7.3.1[e]	<i>Corporate Transparency Act</i> .....	7-32
7.3.2	U.S. Interpretation of the Treaty .....	7-32.10
7.3.2[a]	Taxation of the Business Profits of a Canadian Resident — Paragraphs (1), (2), and (7) under Article VII .....	7-32.10
7.3.2[b]	Allowable Deductions under Paragraph (3) of Article VII .....	7-39

## TABLE OF CONTENTS

	7.3.2[c]	Purchasing, Executive, Managerial or Administrative Services under Paragraph (4) of Article VII.....	7-39
	7.3.2[d]	Same Method of Attribution under Paragraph (5) of Article VII.....	7-40
	7.3.2[e]	Relationship to Other Articles under Paragraph (6) of Article VII.....	7-40
	7.3.2[f]	OECD Revised Commentary on Article 7.....	7-40
7.4		Treasury Department Explanations.....	7-43
7.5		Commentary to the Fifth Protocol.....	7-49
	7.5.1	Entry into Force and Effective Date of the Fifth Protocol .....	7-49
	7.5.2	Commentary to the Fifth Protocol.....	7-49
	7.5.2[a]	Timing of Permanent Establishment for New Article VII(2) .....	7-49
	7.5.2[b]	Attribution Principles in Article VII(2) .....	7-50
7.6		E-Commerce Taxation .....	7-54
	7.6.1	Background: OECD Commentary on Royalties .....	7-54
	7.6.2	Background: OECD Commentary on Business Profits .....	7-58
	7.6.3	Background: U.S. Characterization of Digital Transactions .....	7-60
	7.6.3[a]	The U.S. Approach to the Taxation of E-Commerce.....	7-60
	7.6.3[b]	Computer Software Classification Regulations .....	7-63
	7.6.4	U.S. Classification of Cloud Transactions and Transactions Involving Digital Content .....	7-68
	7.6.4[a]	General Background to Cloud Transactions.....	7-68
	7.6.4[b]	General Classification Considerations of Cloud Transactions .....	7-69
	7.6.4[c]	Scope of Proposed Regulations § 1.861-19.....	7-70
	7.6.4[d]	“Cloud Transaction” Defined .....	7-70
	7.6.4[e]	Classification of Cloud Transactions .....	7-71
	7.6.4[f]	Scope of Proposed Regulations § 1.861-18.....	7-81

## TABLE OF CONTENTS

7.6.5	Digital Tax and State Considerations <i>[Reserved]</i> .....	7-86
7.6.6	New OECD Proposals for Digital Taxation.....	7-86
	7.6.6[a] Pillar I .....	7-86
7.6.7	Digital Taxation in Canada .....	7-89
<b>Chapter 8: Article VIII — Transportation</b>		
8.0	Treaty Article .....	8-1
8.1	Introduction.....	8-3
8.2	Explanation & Interpretation of Article VIII under Canadian Law .....	8-4
8.2.1	Taxation of Income From Transportation under Canadian Domestic Law .....	8-4
	8.2.1[a] Taxation of International Shipping Companies under Canadian Law .....	8-4
	8.2.1[b] Rents and Royalties Received in the Course of International Transportation Business .....	8-8
	8.2.1[c] Disposition of Transportation Equipment and Other Assets .....	8-9
8.2.2	Explanation and Interpretation of the Treaty under Canadian Law .....	8-10
	8.2.2[a] Article VIII(1) — Profits from International Traffic.....	8-10
	8.2.2[b] Article VIII(2) — Definition of Profits From the Operation of Ships or Aircraft .....	8-12
	8.2.2[c] Article VIII(3) — Profits from Domestic Transportation .....	8-14
	8.2.2[d] Article VIII(4) — Profits from Transportation as a Common or Contract Carrier .....	8-16
	8.2.2[e] Article VIII(5) — Pool Transportation Arrangements .....	8-18
	8.2.2[f] Article VIII(6) — Rental Payments Received in the Course of International Transportation.....	8-18
8.3	Explanation & Interpretation of Article VIII under U.S. Law .....	8-19
8.3.1	Explanation and Interpretation of the Treaty under U.S. Law .....	8-19

## TABLE OF CONTENTS

	8.3.1[a]	Transportation Profits Taxable By Canada Only .....	8-19
	8.3.1[b]	Definition of Transportation Profits .....	8-19
	8.3.1[c]	U.S. Taxation of Canadian Shipping and Cruise Ships.....	8-20
	8.3.1[d]	Certain Motor Vehicle and Railway Profits Taxed by Canada.....	8-20
	8.3.1[e]	Joint Pool.....	8-20
	8.3.1[f]	Additional Provisions for Land Transportation.....	8-21
8.4		Treasury Department Technical Explanations.....	8-22

### **Chapter 9: Article IX — Related Persons**

9.0		Treaty Article .....	9-1
9.1		Introduction.....	9-3
	9.1.1	Tax Cuts and Jobs Act 2017 .....	9-3
		9.1.1[a] Transfers of Intangibles — New Definitions for 367(d) and 482 .....	9-3
	9.1.2	Proposed Amendments to Canadian Transfer Pricing Rules .....	9-4.2
9.2		Explanation & Interpretation of Article IX under Canadian Law .....	9-4.2
	9.2.1	Taxation of Transactions between Non-Arm's Length Parties under Canadian Law.....	9-4.2
		9.2.1[a] Related and Non-Arm's Length Persons .....	9-4.2
		9.2.1[b] Transfer Pricing .....	9-6
		9.2.1[c] Secondary Adjustments .....	9-10
		9.2.1[d] Other Provisions .....	9-12
		9.2.1[e] Recent Cases .....	9-13
		9.2.1[f] Proposed Amendments to Canada's Transfer Pricing Rules .....	9-14.4
	9.2.2	Explanation & Interpretation of the Treaty under Canadian Law .....	9-14.12
		9.2.2[a] Article IX(1) — Transfer Pricing Adjustments .....	9-14.12
		9.2.2[b] Article IX(2) — Definition of Related Persons .....	9-17
		9.2.2[c] Article IX(3) — Corresponding Adjustments .....	9-18

## TABLE OF CONTENTS

	9.2.2[d]	Article IX(4) — Relief from Double Taxation .....	9-21
	9.2.2[e]	Article IX(5) — Fraud or Negligence .....	9-22
9.3		Explanation & Interpretation of Article IX under U.S. Law .....	9-23
	9.3.1	U.S. Transfer Pricing Principles.....	9-23
	9.3.1[a]	Introduction to Arm’s Length Standard.....	9-23
	9.3.1[b]	Transfer Pricing Considerations on Outbound IP Transfers .....	9-28
	9.3.2	U.S. Interpretation of the Treaty .....	9-30
	9.3.2[a]	Arm’s Length Standard.....	9-30
	9.3.2[b]	Associated Enterprises .....	9-30
	9.3.2[c]	Secondary Adjustments under Article 9 (Paragraphs 3, 4 ,5) .....	9-31
	9.3.2[d]	Recent Cases .....	9-32
9.4		Treasury Department Technical Explanations.....	9-32.3
9.5		Appendix	
	9.5.1	Tax Cuts and Jobs Act (Excerpt).....	9-35
	9.5.2	Consultation on Reforming and Modernizing Canada’s Transfer Pricing Rules.....	9-52
	9.5.3	IC94-4R2 International Transfer Pricing: Advance Pricing Arrangements (APAs) .....	9-123
	9.5.4	TPM-05R2 Requests for Contemporaneous Documentation.....	9-166
<b>Chapter 10: Article X — Dividends</b>			
10.0		Treaty Article .....	10-1
10.1		Introduction to Article X — Dividends .....	10-6
	10.1.1	Tax Cuts and Jobs Act 2017 .....	10-7
	10.1.1[a]	New International and Business Tax Rules Impacting Cross Border Investment.....	10-7
	10.1.2	New U.S. Ownership Reporting Rules, <i>Corporate Transparency Act</i> .....	10-8.3
10.2		Explanation & Interpretation of Article X under Canadian Law .....	10-8.4
	10.2.1	Canadian Domestic Law .....	10-8.4
	10.2.1[a]	Canadian Taxation of Canadian Source Dividends Paid to U.S. Residents .....	10-8.4

## TABLE OF CONTENTS

	10.2.1[b]	Meaning of the Term “Dividends” under Canadian Domestic Law .....	10-9
	10.2.1[c]	Entity Classification .....	10-10
	10.2.1[d]	Dividends from Unlimited Liability Companies .....	10-12
	10.2.1[e]	Additional Considerations Involving the Use of Flow-Through Entities .....	10-12
	10.2.1[f]	Withholding Obligations .....	10-13
	10.2.1[g]	Dividends in the Course of Corporate Reorganizations .....	10-15
	10.2.1[h]	Shareholder Debt .....	10-15
	10.2.1[i]	Branch Profits Tax .....	10-16
	10.2.1[j]	Canadian Taxation of U.S. Source Dividends Paid to Canadian Residents .....	10-17
10.2.2	Canadian	Interpretation of the Treaty .....	10-19
	10.2.2[a]	Article X(1) — Residence — based Jurisdiction to Tax .....	10-19
	10.2.2[b]	Article X(2) — Source-based Jurisdiction to Tax at Reduced Rates .....	10-20
	10.2.2[c]	Article X(3) — Definition of Dividend .....	10-27
	10.2.2[d]	Article X(4) — Exception for Dividends Paid to a Permanent Establishment .....	10-28
	10.2.2[e]	Article X(5) — Limitation on the Scope of Residence-based Jurisdiction .....	10-29
	10.2.2[f]	Article X(6) — Limitation on the Branch Profits Tax .....	10-31
	10.2.2[g]	Article X(7) — Dividends Paid by NROs .....	10-32
	10.2.2[h]	Article X(8) — Application of U.S. Accumulated Earnings Tax and Personal Holding Company Tax Regimes .....	10-34
10.3		Explanation & Interpretation of Article X under U.S. Law .....	10-35
	10.3.1	U.S. Taxation of U.S. Source Dividends Paid to Canadian Residents .....	10-35



## TABLE OF CONTENTS

	10.3.1[a]	Classification of Entities .....	10-35
	10.3.1[b]	Classification of Corporate Instruments.....	10-37
	10.3.1[c]	Definition of Dividend .....	10-37
	10.3.1[d]	Sourcing Rules .....	10-41
	10.3.1[e]	Withholding Tax.....	10-41
	10.3.1[f]	Branch Profits Tax.....	10-42
	10.3.1[g]	Additional Considerations Involving the Use of Flow-Through Entities .....	10-44
10.3.2		U.S. Interpretation of the Treaty .....	10-46
	10.3.2[a]	Article X(1) — Residence-based Jurisdiction to Tax .....	10-46
	10.3.2[b]	Article X(2) — Source-based Jurisdiction to Tax at Reduced Rates .....	10-46
	10.3.2[c]	Article X(3) — Definition of Dividends.....	10-47
	10.3.2[d]	Article X(4) — Exception from Dividend Withholding Due to Permanent Establishment .....	10-48
	10.3.2[e]	Article X(5) — Limitation on the Scope of Residence-based Jurisdiction.....	10-49
	10.3.2[f]	Article X(6) — Limitation on the Imposition of the Branch Profits Tax.....	10-49
	10.3.2[g]	Article X(7) — Dividends Paid by U.S. RICS & REITS .....	10-51
	10.3.2[h]	Article X(8) — Application of U.S. Accumulated Earnings Tax and Personal Holding Company Tax Regimes.....	10-51
10.4		Treasury Department Explanations.....	10-53
10.5		Commentary to the Fifth Protocol.....	10-61
	10.5.1	Entry into Force and Effective Date of the Fifth Protocol .....	10-61
	10.5.2	Commentary to the Fifth Protocol.....	10-61
	10.5.2[a]	Treaty Benefits for Inter-Corporate Dividends Paid through Fiscally Transparent Holding Entities .....	10-61
	10.5.2[b]	The Definition of “Dividend”.....	10-63

## TABLE OF CONTENTS

	10.5.2[c]	Dividends Paid by U.S. Real Estate Investment Trusts (“REIT”) .....	10-65
10.6		Appendix: Tax Cuts and Jobs Act (Excerpt) .....	10-66
<b>Chapter 11: Article XI — Interest</b>			
11.0		Treaty Article .....	11-1
11.1		Introduction to Article XI — Interest .....	11-5
	11.1.1	Tax Cuts and Jobs Act 2017 .....	11-6
	11.1.1[a]	Limitation on Deduction for Interest .....	11-6
	11.1.2	New U.S. Ownership Reporting Rules, <i>Corporate Transparency Act</i> .....	11-6.1
11.2		Taxation of Interest in Canada .....	11-7
	11.2.1	Canadian Domestic Law .....	11-7
	11.2.1[a]	Taxation of Interest Paid to a Non-Resident .....	11-7
	11.2.1[b]	Participating Interest .....	11-7
	11.2.1[c]	Fully Exempt Interest .....	11-8
	11.2.1[d]	Former Paragraph 212(1)(b) and Exemptions to Withholding .....	11-9
	11.2.1[e]	Definition of Interest .....	11-11
	11.2.1[f]	Classification of Corporate Instruments: Debt vs. Equity .....	11-13
	11.2.1[g]	Sourcing Rules .....	11-13
	11.2.1[h]	Withholding Obligations .....	11-14
	11.2.1[i]	Non-Arm’s Length Payments .....	11-15
	11.2.1[j]	Canadian Taxation of Interest Received from U.S. Residents .....	11-16
	11.2.2	Canadian Interpretation of the Treaty .....	11-16
	11.2.2[a]	Article XI(1) — Residence-based Jurisdiction to Tax .....	11-16
	11.2.2[b]	Article XI(2) — Source-based Jurisdiction to Tax at the Reduced Rate .....	11-17
	11.2.2[c]	Article XI(3) — Exemptions to Source-based Jurisdiction .....	11-19
	11.2.2[d]	Article XI(4) — Definition of Interest .....	11-24
	11.2.2[e]	Article XI(5) — Interest Income Associated with a Permanent Establishment .....	11-26
	11.2.2[f]	Article XI(6) — Source Rules for Interest .....	11-26

## TABLE OF CONTENTS

	11.2.2[g]	Article XI(7) — Excess Interest ...	11-28
	11.2.2[h]	Article XI(8) — Triangular Interest Payments .....	11-29
11.3		Explanation & Interpretation of Article XI under U.S. Law .....	11-31
	11.3.1	U.S. Domestic Taxation of Interest Paid to Canadian Residents .....	11-31
	11.3.1[a]	Definition of Interest .....	11-31
	11.3.1[b]	Classification of Corporate Instru- ments: Debt vs. Equity .....	11-31
	11.3.1[c]	Sourcing Rules .....	11-32
	11.3.1[d]	Statutory Rate of Tax under Sections 871 & 881 .....	11-33
	11.3.1[e]	Withholding Obligations under Sections 1441 & 1442 .....	11-33
	11.3.1[f]	Earnings Stripping Limitations under Section 163(j) .....	11-36
	11.3.1[g]	Branch Level Interest Tax .....	11-36
	11.3.1[h]	Conduit Financing Regulations .....	11-37
	11.3.1[i]	Related Party Interest .....	11-39
	11.3.2	U.S. Interpretation of the Treaty .....	11-39
	11.3.2[a]	Article XI(1) — Residence-based Jurisdiction to Tax .....	11-39
	11.3.2[b]	Article XI(2) — Source-based Jurisdiction to Tax at Reduced Rates .....	11-39
	11.3.2[c]	Article XI(3) — Exceptions to Source-based Jurisdiction .....	11-40
	11.3.2[d]	Article XI(4) — Definition of Interest .....	11-41
	11.3.2[e]	Article XI(5) — Interest Income Associated with a PE .....	11-43
	11.3.2[f]	Article XI(6) — Source Rules for Interest .....	11-43
	11.3.2[g]	Article XI(7) — Excess Interest ...	11-44
	11.3.2[h]	Article XI(8) — Triangular Interest Payments .....	11-45
	11.3.2[i]	Article XI(9) — Special Rules for REMICS .....	11-45
	11.3.2[j]	Base Erosion and Profit Shifting (BEPS) .....	11-45
11.4		Treasury Department Technical Explanations .....	11-46.2
11.5		Commentary to the Fifth Protocol .....	11-53

## TABLE OF CONTENTS

11.5.1	Entry into Force and Effective Date of Amended Article XI.....	11-53
11.5.2	Commentary to the Fifth Protocol.....	11-54
11.5.2[a]	Zero Rate of Withholding in New Article XI(1).....	11-54
11.5.2[b]	Definition of “Interest” under New Article XI(2).....	11-54
11.5.2[c]	Exceptions from Exclusive Residence State Taxation under New Article XI(6) .....	11-55
11.5.2[d]	Guarantee Fees .....	11-58
11.5.2[e]	New Articles XI(3), (4), (5), and (7) .....	11-59
11.5.2[f]	Relationship to Other Articles .....	11-59
11.6	Appendix: Tax Cuts and Jobs Act (Excerpt).....	11-60
<b>Chapter 12: Article XII — Royalties</b>		
12.0	Treaty Article .....	12-1
12.1	Introduction.....	12-4.1
12.1.1	Tax Cuts and Jobs Act 2017 .....	12-4.4
12.1.1[a]	Transfer of Intangibles — New Definition for 367(d) and 482 .....	12-4.4
12.1.1[b]	Code Section 951A — Global Intangible Low-Taxed Income (GILTI).....	12-4.6
12.1.1[c]	Code Section 250 — Deduction for Foreign-Derived Intangible Income (FDII) .....	12-4.7
12.1.1[d]	Base Erosion and Anti-Abuse Tax (BEAT).....	12-4.7
12.2	Overview of the Canadian Domestic Taxation of Royalties.....	12-5
12.2.1	Rent and Royalties Paid to a Non-Resident ....	12-6
12.2.1[a]	Definition of Rent and Royalties ..	12-6
12.2.1[b]	Similar Payments Treated as Rent and Royalties.....	12-8
12.2.1[c]	Payments For the Use of Property Not Subject to the Part XIII Tax.....	12-11
12.2.1[d]	Payments under Mixed Contracts..	12-13
12.2.1[e]	Sale of Property .....	12-14

## TABLE OF CONTENTS

	12.2.1[f]	Rents and Royalties Received in the Course of Carrying on Business in Canada .....	12-15
	12.2.1[g]	Election to Treat Certain Rents as Business Income .....	12-16
	12.2.1[h]	Options to Acquire Property.....	12-17
	12.2.1[i]	Motion Pictures .....	12-17
	12.2.1[j]	Withholding Obligations and Reporting Requirements.....	12-18
	12.2.1[k]	Non-arm's Length Payments .....	12-18
	12.2.1[l]	Taxation of Royalties, Rents and Similar Income Received by a Canadian Resident .....	12-19
12.2.2	Canadian	Interpretation of the Treaty .....	12-19
	12.2.2[a]	Article XII(1) — Residence-based Jurisdiction to Tax .....	12-19
	12.2.2[b]	Article XII(2) — Source-based Jurisdiction to Tax at Reduced Rates .....	12-20
	12.2.2[c]	Article XII(3) — Exceptions to Source-based Jurisdiction.....	12-22
	12.2.2[d]	Article XII(4) — Definition of Royalties .....	12-25
	12.2.2[e]	Article XII(5) — Royalty Income Associated with a Permanent Establishment .....	12-28
	12.2.2[f]	Article XII(6) — Source Rules for Royalties .....	12-28
	12.2.2[g]	Article XII(7) — Excessive Royalties .....	12-30
	12.2.2[h]	Article XII(8) — Triangular Royalty Payments .....	12-31
12.3	Explanation & Interpretation of Article XII under U.S. Law .....		12-33
	12.3.1	U.S. Taxation of Outbound Royalty Payments	12-33
	12.3.1[a]	Definition of Royalties .....	12-33
	12.3.1[b]	Characterization Issues .....	12-33
	12.3.1[c]	Characterization Issues: Royalties vs. Personal Services Income.....	12-35
	12.3.1[d]	Source of Royalties .....	12-38.1
	12.3.1[e]	Taxation of U.S. Source Royalties Generally .....	12-38.2

## TABLE OF CONTENTS

	12.3.1[f]	Anti-hybrid Provisions.....	12-38.3
	12.3.1[g]	Non-arm's Length Payments .....	12-38.4
12.3.2		U.S. Interpretation of the Treaty .....	12-39
	12.3.2[a]	Article XII(1) — Residence-based Jurisdiction to Tax .....	12-39
	12.3.2[b]	Article XII(2) — Jurisdiction to Tax at Reduced Rates .....	12-39
	12.3.2[c]	Article XII(3) — Exceptions to Source-based Jurisdiction.....	12-39
	12.3.2[d]	Article XII(4) — Definition of Royalty .....	12-40
	12.3.2[e]	Article XII(5) — Royalty Income Associated with a PE .....	12-41
	12.3.2[f]	Article XII(6) — Source Rules for Royalties .....	12-41
	12.3.2[g]	Article XII(7) — Excess Royalties .....	12-42
	12.3.2[h]	Article XII(8) — Triangular Royalty Payments .....	12-42
12.4		E-Commerce Taxation .....	12-43
	12.4.1	Background: OECD Commentary on Royalties .....	12-43
	12.4.2	Background: OECD Commentary on Business Profits .....	12-47
	12.4.3	Background: U.S. Characterization of Digital Transactions .....	12-49
	12.4.3[a]	The U.S. Approach to the Taxation of E-Commerce.....	12-49
	12.4.3[b]	Computer Software Classification Regulations .....	12-52
	12.4.4	U.S. Classification of Cloud Transactions and Transactions Involving Digital Content .....	12-56
	12.4.4[a]	General Background to Cloud Transactions.....	12-56
	12.4.4[b]	General Classification Consider- ations of Cloud Transactions .....	12-58
	12.4.4[c]	Scope of Proposed Regulations § 1.861-19.....	12-59
	12.4.4[d]	“Cloud Transaction” Defined .....	12-59
	12.4.4[e]	Classification of Cloud Transactions .....	12-59
	12.4.4[f]	Scope of Proposed Regulations § 1.861-18.....	12-70

## TABLE OF CONTENTS

12.4.5	Digital Tax and State Considerations <i>[Reserved]</i> .....	12-75
12.4.6	New OECD Proposals for Digital Taxation.....	12-75
	12.4.6[a] Pillar I.....	12-75
12.4.7	Digital Taxation in Canada .....	12-78
12.5	Treasury Department Technical Explanations.....	12-85
12.6	Commentary to the Fifth Protocol.....	12-91
12.6.1	Entry into Force and Effective Date of the Fifth Protocol .....	12-91
12.6.2	Commentary to the Fifth Protocol.....	12-91
	12.6.2[a] Amendments to Article XII.....	12-91
	12.6.2[b] Franchise Agreements.....	12-92
 <b>Chapter 13: Article XIII — Gains</b>		
13.0	Treaty Article .....	13-1
13.1	Introduction to Article XIII — Gains .....	13-5
13.1.1	Tax Cuts and Jobs Act 2017 .....	13-6
	13.1.1[a] U.S. International Taxation of the Sale or Exchange of a Partnership Interest.....	13-6
	13.1.1[b] Deduction for Qualified Business Income.....	13-6.4
13.1.2	Proposed New Canadian Capital Gains Rules .	13-6.4
13.2	Explanation & Interpretation of Article XIII under Canadian Law .....	13-7
13.2.1	Canadian Taxation of Gains of Non- residents.....	13-7
	13.2.1[a] Taxation of Gains on Non- residents.....	13-7
	13.2.1[b] The Meaning of Disposition.....	13-9
	13.2.1[c] Re-characterization Rules.....	13-12
	13.2.1[d] Taxable Canadian Property .....	13-13
	13.2.1[e] Withholding and Reporting .....	13-19
	13.2.1[f] Emigration from and Immigration to Canada.....	13-24
	13.2.1[g] Special Case — Payments by a Mutual Fund Trust.....	13-27
13.2.2	Canadian Interpretation of the Treaty .....	13-28
	13.2.2[a] Article XIII(1) — Gains from Real Property .....	13-28

## TABLE OF CONTENTS

13.2.2[b]	Article XIII(2) — Gains from Personal Property in PE Context .....	13-29
13.2.2[c]	Article XIII(3) — Definition of Real Property .....	13-30
13.2.2[d]	Article XIII(4) — Residual Clause: Gains Exempt from Canadian Taxation .....	13-33
13.2.2[e]	Article XIII(5) — Gains Realized by Former Canadian Residents.....	13-34
13.2.2[f]	Article XIII(6) — Preservation of Personal Residence Exemption .....	13-36

*(Continued on page CON-19)*



## TABLE OF CONTENTS

### Chapter 29A: Article XXIXA — Limitation on Benefits

29A.0	Treaty Article .....	29A-1
29A.1	Introduction to Article XXIXA — Limitation on Benefits .....	29A-9
29A.1.1	Tax Cuts and Jobs Act .....	29A-10
	29A.1.1[a] Limitation on Treaty Benefits for Certain Deductible Payments.....	29A-10
29A.1.2	New U.S. Ownership Reporting Rules, <i>Corporate Transparency Act</i> .....	29A-10.1
29A.1.3	Recent Cases under Canadian Law .....	29A-10.1
29A.2	Anti-Avoidance in Canadian Tax Law and in the Treaty Context.....	29A-11
29A.2.1	Anti-Avoidance under Canadian Domestic Law .....	29A-11
	29A.2.1[a] Common Law and Statutory Anti-Avoidance Rules.....	29A-11
	29A.2.1[b] General Anti-Avoidance Rule and the Treaty.....	29A-12
	29A.2.1[c] Treaty Shopping .....	29A-18
	29A.2.1[d] Withholding .....	29A-19
29A.2.2	Interpretation of the Treaty under Canadian Law .....	29A-20
	29A.2.2[a] Article XXIXA(1) — Entitlement to Treaty Relief .....	29A-21
	29A.2.2[b] Article XXIXA(2) — Qualifying Person.....	29A-22
	29A.2.2[c] Article XXIXA(3) — Active Trade or Business Exception .....	29A-22.14
	29A.2.2[d] Article XXIXA(4) — Derivative Benefits Exception .....	29A-22.25
	29A.2.2[e] Article XXIXA(6) — Competent Authority Relief.....	29A-22.29
	29A.2.2[f] Article XXIXA(7) — Anti-Abuse Provision of the Treaty .....	29A-22.31
29A.3	Explanation & Interpretation of Article XXIXA under U.S. Law .....	29A-22.34
29A.3.1	U.S. Domestic Law .....	29A-22.34
	29A.3.1[a] Introduction.....	29A-22.34
	29A.3.1[b] <i>Aiken Industries, Inc.</i> and Conduit Financing Regulations .....	29A-22.35
	29A.3.1[c] Sham Transaction Doctrine and Economic Substance.....	29A-24
	29A.3.1[d] Section 894(c) .....	29A-25

## TABLE OF CONTENTS

	29A.3.1[e]	Branch Profits Tax — Qualified Resident Limitation .....	29A-26
	29A.3.1[f]	<i>Corporate Transparency Act</i> .....	29A-27
29A.3.2		U.S. Interpretation of the Treaty .....	29A-28.9
	29A.3.2[a]	Concept of “Qualifying Person” ...	29A-28.9
	29A.3.2[b]	Active Trade of Business Exception .....	29A-35
	29A.3.2[c]	Derivative Benefits Exception to Qualifying Person .....	29A-43
	29A.3.2[d]	Article XXIXA(6) — Request for Competent Authority Relief .....	29A-46
	29A.3.2[e]	Article XXIXA(7) — General Anti-Abuse Provisions .....	29A-47
29A.4		Treasury Department Technical Explanations .....	29A-48
29A.5		Commentary to the Fifth Protocol .....	29A-67
	29A.5.1	Entry into Force and Effective Date of the Fifth Protocol .....	29A-67
	29A.5.2	Commentary to the Fifth Protocol .....	29A-67
	29A.5.2[a]	Extension of the LOB Provisions to Canada .....	29A-67
	29A.5.2[b]	Interaction of Article XXIXA with the Hybrid Entity Provisions in Article IV .....	29A-68
	29A.5.2[c]	Publicly Traded Entities as “Qualifying Persons” .....	29A-69
	29A.5.2[d]	Principal Class of Shares .....	29A-70
	29A.5.2[e]	Disproportionate Class of Shares ..	29A-70
	29A.5.2[f]	Base Erosion Test in Article XXIXA(2) .....	29A-71
	29A.5.2[g]	Exempt Organizations .....	29A-71
	29A.5.2[h]	Active Trade or Business Test .....	29A-72
	29A.5.2[i]	Competent Authority Process .....	29A-72
29A.6		Appendix .....	29A-73
	29A.6.1	Guidelines for Taxpayers Requesting Treaty Benefits Pursuant to Paragraph 6 of Article XXIX A of the Canada-U.S. Tax Convention .....	29A-73
	29A.6.2	Tax Cuts and Jobs Act (Excerpt) .....	29A-85
	29A.6.3	Beneficial Ownership Information Reporting Requirements Final Rule .....	29A-87
	29A.6.4	Beneficial Ownership Information Access and Safeguards Final Rule .....	29A-186

## TABLE OF CONTENTS

### Chapter 29B: Article XXIXB — Taxes Imposed by Reason of Death

29B.0	Treaty Article .....	29B-1
29B.1	Introduction to Article XXIXB — Taxation Imposed by Reason of Death .....	29B-6
29B.1.1	Tax Cuta and Jobs Act .....	29B-8.1
29B.2	Explanation & Interpretation of Article XXIXB under Canadian Law .....	29B-9
29B.2.1	Overview of Canadian Taxation of Trusts, Estates, and Their Beneficiaries and Canadian Taxation on Death .....	29B-9
29B.2.1[a]	Introduction.....	29B-9
29B.2.1[b]	Canadian Trust and Estate Residency Rules .....	29B-15
29B.2.1[c]	Taxation of Trusts and Estates in Canada.....	29B-19
29B.2.1[d]	Offshore Trusts: The Non-Resident Trust Rules.....	29B-29
29B.2.1[e]	Attribution of Income in Canada ..	29B-35
29B.2.1[f]	Canadian Taxation at Death .....	29B-51
29B.2.2	Explanation & Interpretation of the Treaty under Canadian Law .....	29B-57
29B.2.2[a]	Introduction.....	29B-57
29B.2.2[b]	Paragraph 1 Article XXIXB .....	29B-58
29B.2.2[c]	Paragraph 2 Article XXIXB .....	29B-59
29B.2.2[d]	Paragraph 3 Article XXIXB .....	29B-59
29B.2.2[e]	Paragraph 4 Article XXIXB .....	29B-59
29B.2.2[f]	Paragraph 5 Article XXIXB .....	29B-59
29B.2.2[g]	Paragraph 6 Article XXIXB .....	29B-60
29B.2.2[h]	Paragraphs 7 & 8 Article XXIXB .....	29B-61
29B.3	Explanation & Interpretation of Article XXIXB under U.S. Law .....	29B-62
29B.3.1	U.S. Transfer Tax Taxation Overview.....	29B-62
29B.3.1[a]	Introduction.....	29B-62
29B.3.1[b]	U.S. Estate Tax for U.S. Citizens and Resident Aliens .....	29B-65
29B.3.1[c]	U.S. Estate Tax for Non-resident Aliens .....	29B-66
29B.3.1[d]	U.S. Gift Tax for U.S. Citizens and Residents .....	29B-68
29B.3.1[e]	U.S. Gift Tax for Non-resident Aliens .....	29B-68
29B.3.1[f]	Generation-Skipping Transfer Tax .....	29B-69

## TABLE OF CONTENTS

	29B.3.1[g] Transfers to Alien Spouses.....	29B-70
	29B.3.1[h] IRC §877-The Expatriation Rules .....	29B-72
	29B.3.1[i] The New Exit Tax Regime under IRC §877A .....	29B-76
	29B.3.1[j] Income Taxation of Trusts Estates and Their Beneficiaries.....	29B-85
29B.3.2	U.S. Interpretation of the Treaty .....	29B-89
	29B.3.2[a] Charitable Bequests.....	29B-89
	29B.3.2[b] <i>Pro Rata</i> Unified Credit .....	29B-90
	29B.3.2[c] Marital Credit .....	29B-91
	29B.3.2[d] Estate Tax Credit for Canadian Gains at Death Tax .....	29B-93
	29B.3.2[e] Relief for Small Estates .....	29B-93
29B.4	Technical Explanation .....	29B-95
29B.5	Fifth Protocol Commentary.....	29B-107
	29B.5.1 Entry into Force and Effective Date of the Fifth Protocol .....	29B-107
	29B.5.2 Commentary to the Fifth Protocol.....	29B-107
	29B.5.2[a] Transfer of Property on Death to Exempt Organizations under New Article XXIXB(1) .....	29B-107
	29B.5.2[b] Spousal Rollovers under New Article XXIXB(5) .....	29B-109
	29B.5.2[c] Clarification of the Application of Articles XXIXB(6) and (7) .....	29B-110
29B.6	Appendix: Tax Cuts and Jobs Act (Excerpt).....	29B-113
<b>Chapter 30: Article XXX — Entry into Force</b>		
30.0	Treaty Article .....	30-1
30.2/30.3	Explanation & Interpretation of Article XXX under Canadian and U.S. Law .....	30-3
30.4	Treasury Department Technical Explanations.....	30-5
<b>Chapter 31: Article XXXI — Termination</b>		
31.0	Treaty Article .....	31-1
31.2/31.3	Explanation & Interpretation of Article XXXI under Canadian and U.S. Law .....	31-2
31.4	Treasury Department Technical Explanations.....	31-3
<b>Appendix</b>		
	<i>Income Tax Conventions Interpretation Act</i> .....	ITCIA-1
	United States Model Income Tax Convention of November 15, 2006 .....	USMITC-1

## TABLE OF CONTENTS

United States Model Technical Explanation Accompanying U.S.	
Model Income Tax Convention, 2006 .....	TE-1
<b>Index</b> .....	1-1