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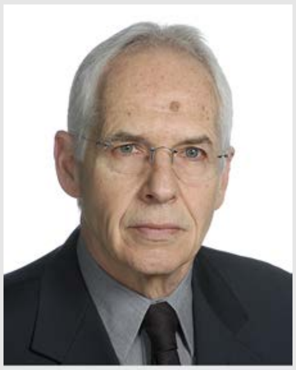

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In this article, the authors discuss Canada's ratification of the OECD's multilateral instrument, focusing on the rules of entry into force and effect of the MLI for Canada. They also consider Canada's position on the MLI and the principal purpose test.

On June 21, the last day before Canada's Parliament recessed for the summer, Bill C-82, "An Act to Implement a Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion And Profit Shifting," received royal assent.[1] Canadian ratification of the OECD-sponsored Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) is now a mere formality, paving the way for it to promptly take effect in Canada.

After providing the background to Canada's accession to the MLI, this article discusses the rules of entry into force and effect of the MLI in Canada, summarizes Canada's MLI position, and finally provides some comments from a Canadian perspective on the principal purpose test (PPT).[2]

Background

The MLI is a multilateral treaty that arose out of the OECD BEPS project. It superimposes a series of antiavoidance measures on the existing network of tax treaties with the objective "to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises."[3] The MLI is not a stand-alone treaty. Rather, it is an efficient means by which tax treaties can be amended without the need for treaty-by-treaty bilateral negotiations.

On June 7, 2017, Canada was among many jurisdictions that signed the treaty at an official ceremony in Paris following the November 2016 completion of MLI negotiations. On June 20, 2018, the MLI was introduced in Canada's Parliament for legislative implementation. After a long but surprisingly uncontroversial legislative process, the MLI has been enacted into law. The next step is obtaining an order in council for formal ratification. Canada will then send a notice to the OECD indicating that it has followed the domestic procedures to implement the MLI. This would trigger MLI entry into force for Canada.

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[1] S.C. 2019 c. 12. *See* Canadian Department of Finance, "Next Steps to Fight Aggressive International Tax Avoidance Become Law" (June 21, 2019).

[2] For prior analysis of the MLI, see Nathan Boidman and Michael Kandev, "Canada's Limited Approach to the OECD's MLI," *Tax Notes Int'l*, July 3, 2017, p. 63.

[3] OECD, "Countries Adopt Multilateral Convention to Close Tax Treaty Loopholes and Improve Functioning of International Tax System" (Nov. 24, 2016).

Once in force, the MLI would affect 75 of Canada's 93 tax treaties,[4] thereafter referred to as covered tax agreements (CTAs). However, Canadian CTAs will notably exclude tax agreements with the United States and Brazil, neither of which are signatories to the MLI; and those with Germany and Switzerland, both of which Canada is in the process of renegotiating.

Entry Into Force and Effect

For Canada,[5] the MLI will enter into force on the first day of the month following the expiration of a three-month period from the time Canada deposits its ratification instrument. Assuming Canada does so before the fall, entry into force should be in 2019.

Once the MLI has been ratified by both CTA parties, the MLI will take effect:

- for withholding taxes, as of the first day of the next calendar year beginning on or after the latest of the dates of entry into force for both parties to the CTA; and
- in all other respects, for taxable periods beginning on or after the expiration of a six-month period following the latest of the two dates of entry into force.

As ratification is essentially a formality, the MLI may enter into force for CTAs as early as January 1, 2020, for withholding tax purposes and April 1, 2020, for all other purposes for tax years beginning on that date. If the instrument of ratification is deposited with the OECD after September 2019, the MLI will not enter into force for Canada until sometime in 2020, and consequently its entry into effect for Canada will generally be delayed until January 1, 2021, for calendar-year taxpayers and withholding tax purposes.

Canada's MLI Position

Upon signing the MLI, Canada indicated that it would adopt only the OECD-agreed minimum standards on treaty abuse and mandatory binding arbitration for treaty disputes. In other words, Canada initially entered reservations regarding all optional MLI provisions.

Specifically, to counter treaty abuse, Canada has committed to the MLI minimum standards:

- a modification of the preamble of each of Canada's CTAs to state that the treaty is intended to eliminate double taxation without creating opportunities for nontaxation or reduced taxation through tax evasion or avoidance;[6] and
- the introduction of a PPT as a general treaty antiabuse rule that considers whether one of the principal purposes of an arrangement or transaction is to obtain treaty benefits in a way that is not in accordance with the object and purpose of the relevant treaty provisions.[7]

On May 28, 2018, Canada announced its intention to remove some reservations and adopt four additional optional MLI provisions[8]:

- a 365-day holding period, ensuring that lower treaty-based withholding tax rates on dividends will only be made available for companies holding a percentage of the share capital of the payer for over 365 days;[9]
- a 365-day lookback testing period to determine whether capital gains on a sale of shares (or similar rights in an entity) that do not derive a specific percentage of their

[4] It is expected that another nine countries will be included in the final list upon ratification (for a total of 84). *See* comments by Stephanie Smith, "MLI Implementation and OECD Developments," International Fiscal Association Canada International Tax Seminar (May 14-15, 2019).

[5] Being a "Signatory ratifying, accepting, or approving this Convention after the deposit of the fifth instrument of ratification, acceptance or approval." *See* article 34(2) MLI. The MLI overall came into force July 1, 2018, following Slovenia's deposit of the fifth ratification instrument (after those of Austria, the Isle of Man, Jersey, and Poland).

[6] Article 6 MLI: "intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions)."

[7] Article 7 MLI. The Canadian government has announced its intention, where appropriate, to negotiate detailed limitation on benefits provisions into its treaties bilaterally either in addition to or to replace the PPT.

[8] *See* Reuben Abitbol, "Canada Goes Beyond the MLI's Minimum Standards," 8(3) *Canadian Tax Focus* (Aug. 2018).

[9] Article 8 MLI. It is anticipated that this MLI provision will result in 22 of Canada's tax treaties being modified. *See supra* note 4.

value from real or immovable property are exempted from tax;[10]

- a provision for methods of resolving dual resident entity cases by mutual agreement;[11] and
- a provision intended to allow treaty partners to switch from a tax exemption system to a foreign tax credit system to provide double taxation relief.[12]

PPT and Canada's CTAs

The PPT is the centerpiece of the MLI. It is set out in article 7(1) of the MLI:

> Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.

The scope and effect of the PPT are matters of great interest in Canada,[13] in particular when the PPT is juxtaposed with Canada's domestic general antiavoidance rule.[14] We next offer general comments on the PPT and consider practical PPT implications from a Canadian perspective.

General Comments

First, it is apparent on its face that the PPT is a general treaty antiabuse rule in that it applies "notwithstanding any provisions of a covered tax agreement." In other words, the PPT can reverse a benefit provided by any other provision of a CTA. However, if the PPT does not result in any treaty benefit denial, this is not the end of the inquiry, because Canada's domestic general antiabuse rule may still apply. Some have argued that because of the way Canada's tax treaties and the MLI are enacted in Canadian law, along with the terms of Canada's Income Tax Conventions Interpretation Act, the GAAR effectively ousts the PPT.[15] However, a better view[16] would be that the GAAR must be considered once a tax treaty (including the PPT) has been applied regarding an item of income or capital. In other words, if the PPT denies a tax treaty benefit, there is no remaining treaty benefit to be reversed by the GAAR. But if the PPT does not deny a treaty benefit, the GAAR may still eliminate it.

Second, the effect of the PPT is to deny a benefit under the CTA for an item of income or capital. As with the GAAR, identifying a treaty "benefit" under the PPT would often be a relatively straightforward exercise, though sometimes a comparative analysis is required. What seems controversial under the PPT, though, is whether the impugned benefit refers to the full benefit provided under the particular CTA or only the incremental benefit vis-à-vis the benefit that might have been obtained under another tax treaty.[17] It is notable that Canada has reserved its position regarding article 7(4), which could mitigate full benefit denial.

Third, the PPT invokes an objective-subjective standard by using the expression "it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes." This means that in disputes about the application of the PPT, evidence of the taxpayer's motivations in implementing an arrangement or transaction would be relevant.

Fourth, a key aspect of the PPT is the use of the expression "one of the principal purposes." While

[10] Article 9 MLI. It is anticipated that this MLI provision will result in 35 of Canada's tax treaties being modified. *See supra* note 4.

[11] Article 4 MLI. It is anticipated that this MLI provision will result in 23 of Canada's tax treaties being modified. *See supra* note 4. Many of Canada's tax treaties already have this rule.

[12] Article 5 MLI.

[13] For a detailed analysis of the PPT, see David G. Duff, "Tax Treaty Abuse and the Principal Purpose Test — Part 2," 66(4) *Can. Tax J.* 947 (2018).

[14] Section 245 of the Income Tax Act (Canada).

[15] Brian Arnold, "Canada Adopts Multilateral Legal Instrument," Canadian Tax Foundation Posting 152, Mar. 20, 2019.

[16] Obviously endorsed by the Canadian Department of Finance. See *supra* note 4.

[17] Duff, *supra* note 13, at 968-971.

this expression is used domestically in various specific antiavoidance rules in the Income Tax Act,[18] it is notable that Canada's GAAR uses a PPT simply to determine the presence of an avoidance transaction. As such, the PPT is conceptually broader than Canada's GAAR when it comes to identifying avoidance. While it may be questioned whether, grammatically, more than one principal purpose can ever exist,[19] Canadian courts have sought to give this expression a meaning, most recently in the *Gerbro Holdings* case,[20] and it can be expected that they would likely do the same regarding the PPT.

Fifth, obtaining that benefit must be one of the principal purposes of "any arrangement or transaction" that resulted directly or indirectly in the benefit.[21] Thus, the benefit must result,[22] directly or indirectly, from an arrangement or transaction, and that arrangement or transaction must have as one of its principal purposes the obtaining of the treaty benefit. This formulation is very similar to that of section 245(3)(b) ITA, which defines an avoidance transaction to mean:

> any transaction that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit.

Like with the GAAR, the similar wording of the PPT should mean that the transaction that produces the benefit (for example, the payment of a dividend that triggers withholding tax reduced by a covered tax agreement) must be part of the same series that comprises the transaction or arrangement that had as one of its principal purposes the obtaining of the treaty benefit (for example, a third-country party establishing and maintaining an interposed company resident in Luxembourg for the purposes of the Canada-Luxembourg tax treaty).[23] Significantly, in this context, the notion of series (inherent in the expression "arrangement or transaction")[24] should mean one or more measures, acts, instances, or activities, whether legally enforceable or not, that form part of a series planned, drawn up, or ordered to accomplish a particular result. Here, the notion of series must be given an autonomous, and not Canadian domestic, interpretation that is consistent with its ordinary and natural meaning[25] — that is, essentially preordained or preordered transactions that can be construed as a single composite transaction.[26] This is by contrast to the extended notion of series applied for the purposes

[18] *See, e.g.*, sections 83(2.1) and 94.1 (which refer to "one of the main reasons").

[19] Boidman, "'One of the Main Purposes' Test," 22(5) *Canadian Tax Highlights* 9 (2014).

[20] *Canada v. Gerbro Holdings Company*, 2018 FCA 197, which considered section 94.1 ITA, the Canadian equivalent of the U.S. passive foreign investment company rules. See also *Groupe Honco v. Canada*, 2013 FCA 128, which considered section 83(2.1) ITA.

[21] See Duff, *supra* note 13, at 973-975, for analysis of this requirement.

[22] This implies a cause-and-effect relationship.

[23] See *Copthorne Holdings Ltd. v. Canada*, 2011 SCC 63, which is the highest and most recent authority on the interpretation of the series notion in the GAAR. In this case, the Supreme Court of Canada, at paras. 42-58, required that the transaction producing the tax benefit must be part of the series that comprises an avoidance transaction. *See also* discussion below under "Practical Implications."

[24] As confirmed by the relevant OECD commentaries; see para. 177 of the OECD commentary to article 29(9), which incorporates the PPT in the OECD model.

[25] *See* Kandev and John J. Lennard, "Interpreting the Expression 'Arrangement or Transaction' in the Principal Purpose Test of the MLI," 106 *Wolters Kluwer International Tax* 1 (June 2019). This is consistent with the objective of harmonization underlying the MLI.

[26] *See id.* at 4; and Kandev, Brian Bloom, and Olivier Fournier, "The Meaning of 'Series of Transactions' as Disclosed by a Unified Textual, Contextual, and Purposive Analysis," 58(1) *Canadian Tax Journal* 277, 327 (2010), in which it was suggested that "series" should be defined as follows:

> A series of transactions comprises two or more related transactions planned by the taxpayer (or the mind directing the taxpayer) as one logical whole and completed in a predetermined sequence and without genuine interruption with the intention of achieving a particular common objective, purpose, or result. An initial transaction will form part of a series if, at the time that the transaction is carried out, it is contemplated that the subsequent transactions constituting the series will be implemented, and the subsequent transactions are eventually carried out. Such contemplation will be considered to exist, on the basis of objectively ascertainable facts, either (1) where the series has been precontracted or has been agreed upon in principle so that there is no practical likelihood that the series will not be completed, or (2) where the taxpayer's intention to complete any remaining transaction(s) is genuine and specific.

of Canada's GAAR.[27] Such a meaning of series under the ITA, as confirmed most recently by the Supreme Court of Canada in *Copthorne*[28] on the basis of its interpretation of subsection 248(10), should not be relevant in determining whether benefits under a given tax treaty are denied under the PPT. Therefore, the PPT should conceptually be narrower in scope than Canada's GAAR regarding the series of transactions being analyzed.

Finally, the effect of the PPT can be avoided if "it is established" that granting that benefit would be in accordance with the object and purpose of the relevant provisions of the CTA. While under Canada's GAAR, the government must establish "proof" of avoidance,[29] the PPT seems to suggest that it is the taxpayer that must establish conformity with the object and purpose of the relevant CTA provisions to redeem a treaty benefit that the PPT would otherwise deny. This "burden of proof" seems unfair because a CTA is essentially a contract between two states, both of which have a better understanding than the taxpayer of the object and purpose of the treaty's provisions.

It appears that while the PPT and the GAAR overlap, each should also have its exclusive scope of application, depending on the particular facts. On one hand, where an "arrangement or transaction" — that is, a common law series — is present, the PPT should be broader than the GAAR because it looks at "one of the principal" purposes and not only "the principal" purpose of the arrangement or transaction. On the other hand, while the PPT should not apply in the absence of a common law series, the GAAR may still apply based on the extended series concept in section 248(10) ITA.

Practical Implications

The foregoing raises practical questions. For example, if a Luxembourg holding company has been established by a non-treaty-country party to acquire a Canadian resource company solely because there may be an exception under article 13 of the Canada-Luxembourg tax treaty from Canadian tax on any resulting gain from a future divestiture (where none is planned at the point of the acquisition), would the PPT deny the treaty exemption?

Perceived "treaty shopping" involving Luxembourg has been challenged twice before Canada's courts under the GAAR in *MIL*[30] and *Alta Energy*,[31] and in both instances the taxpayer won. Would the outcome of these cases be any different under the PPT?

MIL was Canada's first treaty-shopping case, decided by the Tax Court of Canada in 2006. It dealt with a claim for an exemption under article 13 of the Canada-Luxembourg tax treaty on a capital gain realized by the taxpayer, MIL (Investments), on the sale of its shares in Diamond Field Resources Ltd. (DFR) on the 1996 takeover of DFR by Inco, the Canadian mining giant. MIL (Investments), a corporation owned by a nonresident of Canada, was initially incorporated in the Cayman Islands. Before June 1995, it owned 11.9 percent of DFR. On June 8, 1995, MIL (Investments) exchanged, on a tax-deferred basis, 703,000 DFR shares for 1,401,218 common shares of Inco, thereby reducing its shareholding in DFR to 9.817 percent. On July 17, 1995, MIL (Investments) was continued under the laws of Luxembourg. On May 22, 1996, the DFR shareholders approved the Inco takeover of DFR to take effect August 21, 1996. MIL (Investments) received C $427,475,645 for the disposition of its DFR shares. It claimed an exemption from Canadian tax on the resulting capital gain of C $425,853,942 under article 13 of the Canada-

[27] For the purposes of the ITA, the common law definition of series of transactions has been considered to be expanded by subsection 248(10) ITA, which deems a series of transactions or events to include any related transactions or events completed in contemplation of the series. The Supreme Court of Canada in *Copthorne* found that the phrase "in contemplation of" could apply both prospectively and retrospectively. Thus, the Court confirmed that it is sufficient for a later transaction to have been completed "because of" or "in relation to" an earlier transaction in order to be considered part of the same series, regardless of whether the later transaction was ever even contemplated at the time of the earlier transaction.

[28] *Supra* note 23. *See also* Canada's leading GAAR case in *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601.

[29] *Canada Trustco*, [2005] 2 S.C.R. 601, at paras. 63-65.

[30] *MIL (Investments) v. Canada*, 2006 DTC 3307 (TCC), *aff'd* 2007 FCA 236.

[31] *Alta Energy Luxembourg SARL v. The Queen*, 2018 TCC 152 (on appeal to the FCA).

Luxembourg treaty.[32] The treaty exemption on this gain was unsuccessfully challenged by the government mainly under the GAAR.

In considering the GAAR, the Tax Court found that none of the relevant transactions were avoidance transactions under section 245(3) ITA.[33] Tax Court Justice Ronald D. Bell accepted the taxpayer's contention that the June 1995 rollover was carried out primarily to improve the liquidity and diversification of the taxpayer's assets, while the continuation of MIL (Investments) from the Cayman Islands to Luxembourg was primarily for bona fide commercial reasons — Luxembourg was a better jurisdiction than the Cayman Islands from which to carry on a mining business in Africa. Hence, the court found that the GAAR had no application to the case. Furthermore, the Tax Court stated that, in any event, it would not be able to find abusive avoidance under section 245(4).

Had *MIL* been decided under the PPT, the outcome would likely be no different. Following the Tax Court's decision that the ultimate sale, which gave rise to the claim for treaty benefits, was not part of the relevant series,[34] the PPT, like the GAAR, would have no application. Had a series been found in *MIL*, however, then the PPT would likely produce a different result from the GAAR. Specifically, at para. 53, the Tax Court found "it clear that . . . one of the 'driving forces' of the transactions was the Appellant's desire to ensure the sale of its shares in a tax effective manner." Nonetheless, the court concluded that the principal purpose of the transactions was not tax motivated. Under the PPT, however, the finding that one of the driving forces of the transactions was tax minimization may mean that "one of the principal purposes" of the transactions was obtaining a treaty benefit, thereby triggering the application of the PPT.

The recent *Alta Energy* case[35] arose out of the divestment of a private equity fund-backed shale oil venture in Alberta. In 2011 Blackstone Group LP and Alta Resources LLC partnered to form Alta Energy Partners LLC in order to acquire and develop oil and natural gas properties in North America. Later that year, Alta Energy Partners LLC formed Alta Energy Partners Canada Ltd. (Alta Canada), a wholly owned Canadian subsidiary. From June 2011 to April 2012, Alta Canada acquired resource licenses in Alberta. In April 2012 the shares of Alta Canada were sold to a newly formed Luxembourg company, the appellant, Alta Energy Luxembourg, owned by a partnership, Alta Energy Canada Partnership. Alta Canada then proceeded with further exploration and development activity. Ultimately, in 2013 the appellant sold its shares in Alta Canada to Chevron Canada Ltd. for proceeds of C $679,712,251, giving rise to a capital gain of nearly C $400 million. The appellant claimed an exemption from Canadian income tax under article 13(5) of the Canada-Luxembourg tax treaty. The Canadian government denied the exemption both on a technical treaty basis and under the GAAR.

Unlike in *MIL*, in *Alta* the taxpayer conceded the presence of an avoidance transaction because it derived a tax benefit from the restructuring of its activities from the United States to Luxembourg, and "the restructuring was not arranged primarily for a bona fide purpose other than to obtain a tax benefit."[36] The only issue before the court was whether the avoidance transaction was abusive for the purposes of section 245(4) ITA. The Tax Court held in favor of the taxpayer essentially because in the absence of a limitation on benefits clause in the particular treaty, alleged treaty shopping could not be struck

[32] That exemption would be available because the DFR shares sold represented less than 10 percent of the shares of any class or the capital stock of DFR and, in any event, the value of the DFR shares was not derived principally from immovable property situated in Canada because the term "immovable property" does not include property in which the business of the company is carried on, such as a mine.

[33] Interestingly, the government's initial argument was that the relevant series comprised the June 8, 1995, rollover of 703,000 shares of DFR to Inco for 1,401,218 common shares of Inco, and two other transactions, excluding the final sale of DFR stock by MIL (Investments). Likely realizing that the ultimate sale must be part of the series considered under the GAAR, the government subsequently attempted several arguments in order to achieve this result, but without success. The Tax Court found that the ultimate sale was not part of the series.

[34] While *MIL* was decided after *Canada Trustco*, which was the first Supreme Court case that confirmed the possibility of a series being determined based on "retrospective contemplation," the Tax Court seems to have effectively used a more traditional prospective approach to determining a series.

[35] For a detailed comment, see Kandev, "Taxpayer Wins Treaty Shopping Challenge in *Alta Energy Luxembourg*," 47 *TM International Journal* 572 (Sept. 14, 2018).

[36] *Alta Energy*, 2018 TCC 152, at para. 70. It is unclear what the avoidance transaction series comprised.

down under the GAAR. Justice Robert Hogan dismissed each one of the government's arguments:

- the treaty's preamble was too vague to be indicative of the specific purpose of the rules at issue, and actual double nontaxation is irrelevant unless specific rules account for whether tax was paid in the residence country;
- the term "conduit" is a meaningless concept in the absence of an agency relationship; and
- invoking the notion of "treaty shopping" is futile in the absence of an anti-shopping rule negotiated into a treaty.[37]

Had *Alta Energy* been decided under the PPT, the outcome may not be different. The notion in the PPT that a tax benefit could be saved if "it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement" is broadly similar (though reversed in its formulation) to the abuse test in section 245(4) ITA. The test asks whether the avoidance transaction defeated or frustrated the object, spirit, or purpose of the provisions at issue. If it is upheld on appeal, *Alta Energy* suggests that Canadian courts remain suspicious of broad claims of "treaty shopping." In this regard, it was previously commented:

> if the PPT were seen as very similar to the GAAR, taxpayers may argue, further to *Alta Energy*, that the wording of article 4 establishes that treaty shopping is not contrary to the spirit and purpose of the Treaty. In other words, in the absence of either a rule that changes the liable-to-tax test to a subject-to-tax test or a limitation-on-benefits clause, it could still be argued that the clear wording of a treaty would be too powerful an evidence of a treaty's object and purpose to be overridden by a vague preamble or a subjective PPT.[38]

[37]Kandev, *supra* note 35, at 4.

Conclusion

The June 2019 enactment of the MLI brings Canada closer to upgrading many of its tax treaties with a series of antiavoidance features, most notably the PPT, at the stroke of a pen rather than through time-consuming bilateral negotiations.

The PPT is not a mechanical rule, but instead a broad and subjective antiavoidance provision with ambiguous concepts that raise many uncertainties. It will likely be years before Canadian courts get a first opportunity to interpret the PPT. In the meantime, the OECD commentary on the PPT is not comprehensive and the Canadian Department of Finance and the Canada Revenue Agency have been frugal in their PPT comments. Taxpayers and their advisers are therefore largely left to struggle with these uncertainties.

Nonetheless, the foregoing analysis suggests that the PPT, as an anti-treaty-shopping rule, may not operate as expansively as expected. This may explain why Canada's government has adopted the two 365-day rules[39] in articles 8 and 9 and has also indicated that it would seek, where appropriate, to include detailed LOB provisions in some of its treaties. ■

[38]*Id.*

[39]These rules have the benefit of establishing a bright-line temporal test instead of having the government invoke the PPT.