

## **Canada - Non-resident gains**

I thought that some of my fellow members of Tax Planet might be interested in a very important development resulting from the Canadian Federal Budget that was tabled on March 4.

Prior to the Budget, all shares of corporations that are resident in Canada (other than those listed on a designated stock exchange) were classified as "taxable Canadian property" ("TCP").

The significance of being TCP is that under our domestic law, gains from the disposition of TCP that are realized by non-residents will be subject to Canadian tax, and such disposition will be subject to tax clearance and withholding requirements.

Although in many cases provisions in tax treaties with Canada resulted in the gain being exempt from Canadian tax, many non-residents are not residents in countries that have a tax treaty that provides such protection, and furthermore, in many cases the tax clearance and withholding requirements would still apply.

As a result of the changes announced March 4, shares of private Canadian-resident corporations will now be TCP at any particular time only where more than 50% of the value of the assets of the corporation is attributable to interests in Canadian real estate (or property closely akin to that, such as resource properties or timber limits) at any time in the prior 60 months. Shares in ordinary operating companies will generally not be TCP after this change.

This will bring Canada's system for taxing non-residents on capital gains realized by non-residents more in line with international norms, and make it fairly similar to the US "FIRPTA" regime under which only "US Real Property Interests" are taxable in the hands of non-residents.

This is particularly welcome, given that it is coming at a time when there is a great deal of interest by non-residents regarding investing in Canada, given our stable banking system and economy, and abundant natural resources.

If anyone would like any additional information regarding these changes, please feel free to contact me.

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