



**BDO Seidman, LLP**  
Accountants and Consultants

## **Subject:**

### **British Columbia ULC**

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# International Tax Alert

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#### **Issue**

British Columbia recently amended its Business Corporations Act to allow for an unlimited liability company (“ULC”).

#### **Affecting**

Potentially, US taxpayers making foreign investments in Canada.

#### **Details**

On March 29, the Canadian province of British Columbia amended its Business Corporations Act (the “Act”) to allow the formation of a ULC. A ULC is a form of corporate ownership that exposes the shareholders to unlimited liability. British Columbia now joins Alberta and Nova Scotia as the Canadian provinces allowing the ULC.

#### **US Planning**

US businesses have used ULC statutes in Canada for more than 10 years in connection with cross-border income tax planning.

Under Canadian tax law, a ULC is treated as a corporation. However, US tax law generally treats a ULC (resulting from the fact of unlimited liability under the provincial statutes) as either a disregarded entity (if it has a single owner) or a partnership (if it has multiple owners). This treatment allows for profits and losses and Canadian federal and provincial corporate income taxes incurred by a ULC to flow through to its US shareholder(s). For Canadian tax purposes, a ULC is treated as a corporation and files a corporate income tax return. This difference in US and Canadian tax law offers planning opportunities for many companies.

Many US businesses have used structures with a ULC to acquire Canadian target companies or to use to expand their US activities to Canada. The adoption of ULC statutes in the past two years in Alberta and British Columbia is evidence of this fact.

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The planning can be illustrated by the following example, which involves a US company operating in Canada through a ULC. A third party (such as a bank) makes a loan to a ULC. Both the US owner and the ULC may be able to receive an interest deduction within their Canadian and US income tax returns. Since the interest payments are made by the ULC, Canadian law allows the ULC to deduct the interest. The US owner may also be allowed a deduction for the interest because US tax law treats the interest payment by a pass through entity as if it was made by the parent.

Each province's statute has differences from the others. Canadian legal counsel should be consulted to assist in determining under which provincial statute to operate as a ULC.

The use of a ULC may impact a US taxpayer's foreign tax credits, taxable income, dual consolidated loss limitations, currency exchange gains, and other US tax attributes. Any consideration of the use of the ULC requires careful consideration of the various US and Canadian legal and tax consequences that may result from the use of a ULC.

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