ASSOCIATION OF CORPORATE COUNSEL

TITLE: **Canada-US Tax Treaty: New Developments in the Taxation of the Energy Industry**

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PRESENTED BY: **ACC Energy Committee**

SPONSORED BY: **Fraser Milner Casgrain, LLP**

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MODERATOR: **Tom P. Bishop**, Chairman, Energy Committee; Vice President & Associate General Counsel, Southern Company

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Operator: Just a reminder today's conference is being recorded.

Female: Welcome to this ACC Webcast. (Tom), please go ahead.

(Tom Bishop): Thank you. Good afternoon. Welcome to this webcast on the Canada-U.S. Tax Treaty and New Developments on the Taxation of the Energy Industry. My name is (Tom Bishop) and I am Chairman of the Energy Committee and will serve as moderator for this webcast.

I want to thank Fraser Milner Casgrain, for their participation as a sponsor of the Energy Committee and for providing the content and presentation for this webcast today.

First, let me take care of a few housekeeping items before I turn it over to the presenters. The session is being recorded. If you need tech support, please e-mail ACC Webcast at CommPartners; that's commpartners.com. At the end of the presentation we will have a question-and-answer period. If at any time during the presentation you have a question, you can type your question in the lower box located in the lower left hand corner of your screen, mark “chat”, and hit, “send”. The presenters will be able to review the question. Also, there is an evaluation form for you to complete, which is available via the link on your screen.

Let me introduce the presenters now. Our first presenter is (Anne Calverley), a partner at the Calgary office of Fraser Milner Casgrain, LLP. (Anne) practices law exclusively in taxation and manages tax planning for resource-based corporations. (Anne) taught advanced resource taxation for 10 years and participated in the publication of Canadian Resource Taxation as a co-author.

Our second presenter is (Don Sommerfeldt). He is a consultant at the Edmonton office of Fraser Milner Casgrain, LLP. (Don) practices reorganizations, tax planning, estate planning and wealth management. Previously, (Don) worked at the Department of National Revenue, where he drafted advance tax rulings and technical interpretations.

Our third presenter is (Christopher J. Steeves), a partner at the Toronto office of Fraser Milner Casgrain, LLP. (Christopher) practices tax law regarding various issues of domestic and cross-border financing. (Christopher) was ranked as one of Canada's leading tax lawyers in the 2006 Chambers Global Guide and was recommended by the Practical Law Company.

Now I'd like to turn the presentation over to (Anne) to begin. (Anne)?

(Anne Calverley): Thank you very much, (Tom). Just checking. I would invite anybody to answer the polling question. What we've done today is prepare our presentation at a rather simplified level in case we have some folks who are unfamiliar with the general subject matter. However, we do invite you to ask questions at the end, and we will be pleased to provide sophisticated answers.

Thank you for joining us this morning for our presentation relating to proposed amendments to the Canada-U.S. treaty that were introduced last year. Canada has now ratified the proposed treaty amendment and the United States is expected to ratify the proposed treaty amendments in either 2008 or 2009.

Today's discussion relates to the impact of certain proposed amendments to the treaty that will affect hybrid entities. A hybrid entity is one that is treated as a flow-through entity in one jurisdiction, but as a taxable entity in the other jurisdiction. For example, in Canada, we have unlimited liability corporations, which we refer to as ULCs, that are treated as corporations in Canada even though shareholders are exposed to liabilities of the corporation.

Thus, ULCs file tax returns and pay tax on taxable income in Canada. However in the United States tax payers may elect through a check-the-box mechanism to treat the ULC as if it were a flow-through entity or as they are sometimes called as the disregarded entity.

Besides ULCs, other hybrid entities include U.S. LLCs and U.S. partnerships that elect to be treated as if they were corporations. These entities are sometimes referred to as fiscally transparent entities in the amendments through the Canada-U.S. treaty because these entities are treated for U.S. tax purposes as if they do not exist.

Where the new rules apply, the rate of withholding tax on cross-border payments of interest, dividends, rent and royalties will no longer be eligible for the reduced rate of withholding tax under the Canada-U.S. treaty. Rather, the higher rates of withholding shown on this slide will apply with the result that Canada will require a 25 percent rate of withholding and the U.S. will require a 30 percent rate of withholding. (Don Sommerfeldt) will now explain how the new rules may apply to affect tax payers with hybrid entities in our corporate structure.

(Don), over to you.

(Don Sommerfeldt): The new rules apply in the context of income, profit or gain being paid to or derived by a person. However, rather than placing those rules in the articles of the treaty, which deal with commercial profits, dividends, interest or the like, the rules will be included in Article IV, which deals with residents.

In simple terms, the first of the new hybrid rules will deny treaty release in respect of the income, which is typically investment or passive income, received from a hybrid entity that is a flow-through entity in its home jurisdiction, but not in the recipient's jurisdiction.

If a particular situation comes within the new rule, under one interpretation of the rule, the recipient of the income will be treated as not being a resident of either Canada or the United States. Alternatively, under another interpretation set out in the technical explanation prepared by the U.S. Treasury Department, the actual recipient of the income will not be treated as having

received or derived the income. Under either interpretation, the treaty will not be applicable such that there will be no treaty relief in respect of withholding tax.

I find that the easiest way for me to understand complex provisions of the treaty is to replace the references to a contracting state and the other contracting state with the names of the actual countries. Using this approach, in the context of a payment of income from Canada to the United States, the new rule would read as follows – and I invite you to follow along just looking at the diagram as I go through this modification or this paraphrase of the rule.

An amount of income shall be considered not to be paid to or derived by a person who is a resident of the United States where the person is considered under the Taxation Law of Canada to have derived the amount through an entity that is not a resident of the United States, but by reason of the entity not being treated as fiscally transparent under the laws of United States, the treatment of the amount under the Taxation Law of the United States is not the same as its treatment would be, if that amount had been derived directly by the person.

Now to try and illustrate that by means of an example, the diagram on page seven refers to a Canadian limited partnership receiving interest from a Canadian subsidiary of a U.S. parent in an arrangement that was very common and often referred to as a synthetic NRO structure. Although the Canadian partnership is fiscally transparent for purposes of Canadian tax law, since it has checked the box or elected to be treated as a corporation for U.S. tax purposes, it comes within the new rule.

Under the current wording of the treaty and pursuant to the current administrative position of the Canada Revenue Agency of looking through a partnership, the Canada Revenue Agency would treat the interest paid by the Canadian subsidiary as being paid to the U.S. partners, such that reduced withholding is currently available under the treaty. Under the new rule, the U.S. partners will be treated as not being resident in the United States, or alternatively, under the other interpretation, the U.S. partners will not be considered as having derived the income. In either case, the result is that treaty relief is not available and the withholding rate would remain at 25 percent, which is the statutory rate.

Under the reciprocal application of the rule, the rule would read as follows, if we substitute the names of the countries. An amount of income shall be considered not to be paid to or derived by a person who is a resident of Canada, where the person is considered under the Taxation Law of the United States to have derived the amount through an entity that is not a resident of Canada. But by reason of the entity not being treated as fiscally transparent under the laws of Canada, the treatment of the amount under the Taxation Law of Canada is not the same as its treatment would be, if that amount had been derived directly by that person.

So in this example where a Canadian corporation is a member of a U.S. limited liability company, since the LLC is treated as a corporation for Canadian tax purposes, and thus, is not physically transparent for Canadian tax purposes, the income derived by Canco from the LLC is treated as a dividend for Canadian tax purposes, which is not the same as its treatment would be if the income had been derived directly by Canco from the U.S. operations carried on by the LLC.

Accordingly, Canco will be treated as not being a resident of Canada for purposes of the treaty, or looking at the other interpretation, Canco will not be considered as having derived the income. In either case, Canco will not qualify for treaty relief such that there will be no reduction in the U.S. withholding tax.

I am now going to pass the baton to (Chris).

(Christopher Steeves): OK. Thank you, (Don), and good afternoon, everybody. The second important change that I'm going to talk about this afternoon relates to the Residence Rules in Article IV of the Canada-U.S. treaty, and they are found in paragraph 7(b).

And unlike (Don), I'm going to use slightly different terminology. Instead of explaining things in terms of Canada and the U.S., I'm going to talk about the source country and the residence country. So the source country is where the income is earned or derived and the residence country is the jurisdiction where the recipient of the income is resident for purposes of the treaty. So if you're thinking about an investment into Canada, Canada is a source country and the U.S. is the residence country.

The new rules in paragraph 7(b) of Article IV provide that any income received by a person in the residence country will be treated as though the person was not a resident of the residence country, where the person is considered, under the laws of the source country, to have received the income from an entity that is a resident of the source country. But by reasons of that source country entity being treated as a fiscally transparent entity in the residence country, the treatment of the income under the tax laws of the residence country is not the same as its treatment would be if that source country entity were not treated as a fiscally transparent entity under laws of the residence country.

Now, wow, that is a mouthful. And I completely understand if your head is spinning right now. It's incredibly complicated. So I'm going to go through some examples. But what this section means is that in some cases royalties, dividends or interest paid from a source country will be subject to full source country taxation without any reduction that would normally be permitted under a treaty. So let's turn to some examples so that everyone can understand this new rule.

So here's a pretty simple example and pretty common here in Canada where you have a Canadian ULC, an unlimited liability corporation that is held by a U.S. corporate entity – it's wholly owned, it's a parent company. And ULCs, unlimited liability companies, are fairly common corporate vehicles in Canada and there are three provinces that offer these types of corporations, Nova Scotia, Alberta, and most recently, British Columbia.

And as (Anne) mentioned at the beginning of our section, under Canadian tax law, a ULC is always treated as a corporation. However, under U.S. tax law, a ULC qualifies for the check-the-box regulations and is treated as a disregarded entity. Therefore, where royalty paid by the ULC to the U.S. corporate – to the U.S. parent corporation is going to be subject to 25 percent Canadian withholding tax instead of the 10 percent withholding tax under the current treaty because the U.S. tax treatment of that amount in the hands of the U.S. parent corporation is different then it would have been if the payment was received by the U.S. parent from an ordinary limited company in Canada.

So now let's change and look at it from the opposite perspective because this rule cuts both ways, where a Canadian corporation – and on my diagram we call it Canco – receives income from a U.S. partnership that has checked-the-box to be treated as a U.S. corporation, these rules will apply in the same way as the previous slide. Under Canadian tax law, U.S. partnerships are generally treated as fiscally transparent entities and income received by Canco from the U.S. partnership will be treated differently than if Canco had received the income from a corporation. Therefore, under these new rules, the payment of the income to Canco will not be eligible for reduction under the Canada-U.S. treaty, and instead will be subject to 30 percent U.S. withholding taxes.

So let's just take a step back and talk about how these rules will have an important impact. Over the last number of years, ULCs have become a significant part of Canadian tax planning and are very common when looking at U.S. companies investing into Canada. And to give you a little bit more background on the reasons for the popularity of these entities, I want to touch on some of the various tax benefits that there are by investing into Canada through a ULC.

There are three main benefits that are set out on this slide. Firstly, any losses suffered by the Canadian business and any tax deductions of the ULC can be used by the U.S. shareholder

because of the ULC status as a disregarded entity. Secondly, U.S. shareholders can usually claim foreign tax credits in respect of any fee and income taxes paid by the ULC. And thirdly, in some cases, the purchase of shares of a ULC can be treated as an asset purchase for U.S. tax purposes.

There are a few Canadian tax issues here as well. Unlike U.S. rules where ULCs are disregarded, as I mentioned, ULCs are treated as ordinary corporations for Canadian tax purposes. That means they pay corporate income taxes, they have to file annual fee and income tax returns, and because they are treated as ordinary corporations, the sale of ULC shares may be exempt under the Canada-U.S. treaty whereas if it were treated as a sale of assets of a branch they would be taxable in Canada.

Now the exception to this rule in the treaty is where the value of the ULC shares derive their value primarily from real property situated in Canada, and this would include oil and gas and other resource properties. Now this exemption from capital gains tax on the disposition of shares of a ULC is not affected by these new rules under the protocol.

So as you can see, these changes in the protocol will mean a sharp increase in the amount of Canadian withholding tax that U.S. resident shareholders of a ULC will be liable for in respect to dividends, interest and royalties and rents as well, and I've spelled out that the current versus the future rates of withholding taxes that will apply on payments from a ULC to a U.S. resident parent company.

Now I'll turn it back over to (Don) who will discuss some of the planning alternatives that we are considering to deal with these new rules.

(Don Sommerfeldt): Thanks, (Chris). In the context of the second of the two rules we've discussed this afternoon, namely the rule which will have the adverse impact on ULCs, there are several alternatives that might be considered to avoid the loss of treaty relief. The selection of a particular rule will depend on the circumstances, and there is really no one-size-fits-all solution.

Dealing with the first alternative, this in essence focuses on some of the grandfathering provisions in the protocol. If the fifth protocol is ratified in 2008, the new rule that will impact ULCs will not take affect until January 1, 2010. In other words, the protocol negotiators built in a bit of lag time to allow people to adjust.

(Chris) will speak in more detail later about the timing of the ratification. It is possible that ratification might be delayed until 2009. And if that occurs, the new rule will take effect on January 1, 2011. Thus one alternative to deal with the adverse impact of the new rule would be to remove surplus cash from the ULC by paying dividends, interest or royalties to the U.S. parent before the effective date of the new rule.

A second alternative relates to a change in status. Since the application of the new rule depends on the ULC being treated as fiscally transparent under the tax laws of the United States, a second alternative would be for the ULC to elect to be treated as a corporation for U.S. tax purposes; in other words, just making another check-the-box election.

Since Canadian tax rates have been decreasing over the last several years and will continue to decrease for several more years, and (Chris) will take more about that, the laws of pass-through or look-through status for U.S. tax purposes may not be unexpectedly detrimental. However, before choosing this alternative of unchecking the box, it would be necessary to consider whether the laws of pass-through status may trigger adverse U.S. tax consequences. This is something that you'd need to have your U.S. tax advisors' examine.

Another alternative would be to interpose between the Canadian ULC and the U.S. recipient of interest or royalties and intermediate corporation in a country with which Canada has a favorable

tax treaty, such as the Netherlands, Ireland or Switzerland. The tax treaties between Canada and those countries generally provide for a 10 percent rate of withholding tax on interest and royalties paid from Canada to the particular country. If the tax laws of the selected foreign country treat a Canadian ULC as a corporation for tax purposes, it is unlikely that Canada's General Anti-Avoidance Rule or GAAR, as it is often known, would apply to the restructuring.

And I'll now turn it back to (Chris) for a consideration of some additional alternatives.

(Christopher Steeves): OK. Thanks, (Don). I guess the first one I'm going to talk about is really a modification of the alternative that (Don) just described, and that is instead of transferring the shares of the ULC to just any treaty jurisdiction, the idea would be that the U.S. parent would transfer the shares to the ULC to another treaty jurisdiction that had entities which qualified under the check-the-box regulations for the U.S. tax purposes.

In this way, by inserting another disregarded entity between the U.S. parent and the ULC, the ULC retains the benefits of being fiscally transparent for U.S. tax purposes and the Canada-U.S. tax treaty would not apply, and those new rules we've been talking about that would impact on the higher withholding tax rates would not apply. Instead, the payments of royalties and dividends by the ULC would be subject to the treaty between Canada and this new treaty jurisdiction.

In many cases, our clients are considering the use of Luxembourg SA or SARLs as they are called – S A R Ls, or Dutch cooperatives, which are qualified for check-the-box purposes. Now these treaties fortunately do not provide for a limitation of benefits provision that would prevent the realization of these reduced withholding tax rates.

Now, there may be some degree of risk under Canada's GAAR, as (Don) mentioned. But recent case law such as the MIL investments case have given tax payers a degree of comfort that the level of risk here may be acceptable.

The final alternative that I'm going to describe today deals with winding up the ULC and the U.S. parent considering to carry on the business in Canada as a branch going forward. Now, careful analysis is required to determine whether the Canadian tax cost of doing this would make the transaction worthwhile, because on a winding-up of the ULC, this would result in a disposition of the assets, which would be taxable in Canada.

In addition, the distribution of the assets on the winding-up of the ULC to the U.S. parent company could attract Canadian deemed dividend withholding tax. Obviously, if this alternative is adopted, the timing of that winding-up and this deemed dividend on distribution becomes important so that any deemed dividend is taxed at the lower applicable rate under the current treaty and prior to the coming into force of these new rules.

On a going forward basis, the Canadian branch of a U.S. parent would generally be subject to ordinary income tax on its profits that are attributable to a permanent establishment in Canada. In addition, the U.S. parent would have to file Canadian tax return and would be subject to Canada's branch taxes in addition to those ordinary income taxes I mentioned.

These taxes are meant to be the equivalent of the dividend withholding taxes that would have been imposed if the U.S. parent had carried on business in Canada through a dividend paying subsidiary. To the extent that the profits of the branch are reinvested in the Canadian business, this branch tax can be reduced or eliminated.

One of the compliance benefits of carrying on business in Canada through a branch instead of through a ULC is that Canada's transfer pricing rules would not be applicable. This avoids the special rules that impose penalties where there is a transfer pricing adjustment by Canadian tax authorities and the Canadian corporate taxpayer has failed to prepare contemporaneous

documentation supporting the transfer prices used in computing its income with respect to transactions with its U.S. parents or other related persons.

That's not to say that these transaction will not still require detailed analysis and thought, but the threat of penalties for failure to prepare this comprehensive and contemporaneous documentation would not apply. Now, (Don) has touched briefly on the timing of the implementation of these rules, and I want to get into a little bit more about the specifics.

On this slide, you can see that the protocol was ratified by Canadian Parliament in bill S-2 which became law in Canada on December 14, 2007. In order to come into effect, it has to be ratified by the U.S. Senate. And I have a little bit of an update on that score.

On September 11, the protocol – that's last Thursday, the protocol was presented to the full U.S. Senate. And in its executive reports that accompany the protocol, the Senate Foreign Relations Committee recommended the approval of the treaty, but it's subject to a condition. Now, the condition requires that the Department of Treasury submit periodic reports to Congress regarding the new mandatory arbitration provision that is contained in the protocol.

Now, this arbitration provision is also in the Belgium and German treaties with the U.S., and it's intended to help resolve double tax disputes between the IRS, and in this case, the Canada Revenue Agency. Now, as (Don) mentioned, the expectation is that the treaty protocol will be ratified and will come into force this year, but given the busy agenda in Washington these days, it could be pushed back to 2009.

So, with that, I am going to hand over the mike to (Anne).

(Anne Calverley): Thank you, (Don). Let me just check my slide. OK. By 2012, Canada's federal tax rate will be reduced with the result that corporations carrying on business in Alberta will be paying tax at the rate of 25 percent. This 25 percent rate is comprised of a federal rate of 15 percent and Alberta rate of 10 percent. Each province in Canada imposes tax at a different rate. So, applicable tax rates will depend on the province in which income is earned. Since these lower tax rates will be less than U.S. income tax rate, some ULCs are likely to be converted to limited liability corporations.

This slide shows the present rate of tax in Canada, which is a combined federal and provincial 29.5 percent in 2008. It should be noted that the province of Alberta announced two years ago that it was considering a rate reduction on provincial Income Tax Act, which would reduce the rate from 10 percent to eight percent, but so far, there has not been an announcement as to whether this lower rate will be adopted. But the results of the rate changes are clear that at a minimum, the rate by 2012 will be 25 percent.

And we recently worked on a takeover transaction that involves a takeover of a large Canadian conglomerate by a U.S. entity. And we thought it would be useful today to illustrate the tax planning involved in that takeover as it relates to the use of hybrid entities.

The U.S. purchaser's objectives were; first, to have the purchase of the shares of Targetco be treated as if it were an asset purchase for U.S. tax purposes. As we discussed, this can be achieved when shares of a hybrid entity are fired, because the hybrid entity is a disregarded entity for U.S. tax purposes.

The second objective of the U.S. purchaser was to reorganize the conglomerate so that each of its separate divisions is held in a separate entity. This will enable possible future dispositions of one or more divisions. This slide depicts a simplified version of the original corporate structure of the Canadian entity. There were actually many more corporations in some preexisting partnerships. However, it is a useful structure, because if we have a number of corporate entities

that were the subject basically of acquisitions, which is why we have so many corporations in this preexisting structure.

This slide shows the structure of the target entity immediately before closing. You will see that the four business divisions are now each held in separate partnership. Targetco was converted to become a ULC as part of the series of transactions and is a member of each partnership. The other partner in each partnership is the special purpose ULC that was formed to hold a small interest in the partnership.

Taxable income earned in each partnership will be allocated to Targetco and the minority partner at the fiscal yearend of the partnership, and these ULCs will pay income tax in Canada on the partnership income. For U.S. tax purposes, this Targetco and the minority partner are disregarded entities. The U.S. parent will compute its income as if it owned the assets and carried on the business.

As mentioned, the assets will have high tax basis for U.S. tax purposes, since the transaction for U.S. tax purposes was treated as a purchase of asset. That will be significant tax shelter for U.S. tax purposes. And in addition, for U.S. tax purposes, the U.S. parent will be able to reduce U.S. taxable income by claiming foreign tax credits for Canadian taxes base.

This slide shows the new corporate structure as it exists after closing. If we start at the top, you will see that the purchaser, U.S. Supplierco formed a check-the-box entity in an offshore jurisdiction labeled as Luxembourg SARL in our diagram. So, Luxembourg SARL is a hybrid entity. Luxembourg was selected as the direct parent of target to avoid the application of the Canada-U.S. treaty. The relevant tax treaties will be the U.S.-Luxembourg treaty and the Canada-Luxembourg treaty, which do not have provisions that adversely affect hybrids.

Beneath the Luxembourg entity is the Canadian ULC that was formed to acquire the shares of Targetco. Targetco was amalgamated with this entity after closing in order to form an entity that we now label as Amalco. This merger serves two tax-related purposes, which are set forth in our last slide.

The Canadian- Acquiredco was funded by the Luxembourg SARL with a mix of debt and equity and will thus have interest expense. It's customary to structure a takeover using debt financing in order to reduce the amount of taxable income incurred by Targetco. The amalgamation thus marries the interest expense paid on the loans from the Luxemburg SARL with the income earned by Targetco, which thus reduces Canadian income taxes payable.

Now, at this point, it's worth noting that it is also customary for U.S. purchasers to borrow money to acquire target (cos) or at least it was customary prior to the current credit crunch. Thus the U.S. purchaser will also have interest expense that reduces its U.S. taxable income. The result is that there is a deduction of interest expense by the U.S. purchaser, which reduces its U.S. taxable income, and a deduction of interest expense in Canada by Target Amalco, which reduces its taxable income.

It is this so called double-dip, i.e., the deducting of interest expense relating to the same borrowed funds in both countries that cause casting authorities to amend the Canada-U.S. treaty.

The important point to know here is that since the ULCs in this take over structure are disregarded entities for U.S. tax purposes, the U.S. purchaser will not recognize in computing income for U.S. tax purposes either the interest expense paid to Luxembourg SARL sorrow by the U.S. LLC or the interest income earned by the Luxembourg SARL, because these are disregarded entities.

The second reason for amalgamating Targetco with its new parent is to increase, or we use the term bump, the tax basis in the partnership unit up to their fair market value. The Canadian

Income Tax Act permits this, because on the amalgamation of Targetco with its new parent corporation, the shares of Targetco with its new parent corporation. The shares of Targetco cease to exist.

Suppose that the purchaser in our example had paid a $100 million to acquire these shares. This tax basis in the shares would be lost after certain provisions in the Canadian Income Tax Act, which enable the 100 million of tax cost in the Targetco shares to be used to bump the basis in assets of Targetco. More particularly, the Canadian Income Tax Act allows Amalco to elect in its tax return to increase or bump the tax basis of non-depreciable capital property such as the partnership units that are owned by Targetco at the time of acquisition of control.

The amount of the allowed bump is up to the $100 million of tax base that had existed in the shares of Targetco prior to the amalgamation. As a result, if Targetco should sell one or more of the partnerships in the future, they would only be taxed on any appreciation in the value of the partnership units.

That concludes the formal part of our presentation, but now, I would invite the moderator to (clear) the closing part of today's presentation.

(Tom Bishop): Thanks (Anne), (Don) and (Chris). Do we have any questions for the presenters today? OK, one. Does Canada have thin capitalization rules that govern the debt-equity ratio of companies that borrow money from non-arms length related companies? (Anne), can you answer that question?

(Anne Calverley): Yeah, I can. And it's a good one, because in our example, you might think that it would be ideal to reduce the taxable income earned in Canada down to zero by inserting 100 cents in a dollar of loan so that all income would flow up to the U.S. and be eligible for U.S. tax shelter, given the fact that the assets now have high tax basis for U.S. tax purposes.

And for that very reason, Canada does have what we call thin capitalization rules. And what they require, excuse me, is that the debt-to-equity ratio can be no more than two-to-one. And what that means is that for every two dollars of debt, there must be one dollar of equity. And the reason for that is to ensure that there is not total removal of income from the Canadian Amalco offshore.

Now, I just should explain a little bit about what happens under our thin cap rules. If you exceed that two-to-one ratio, then a portion of the interest expense is disallowed. It's disallowed to the extent that debt at any particular time exceeds the two-to-one ratio. And since that includes accrued and unpaid interest, one would never actually capitalize at exactly two-to-one, because accrued interest is considered as unpaid debt. So, it's a little more common to capitalize on something like a 60-40 basis to avoid the thin cap rules.

(Tom Bishop): And then the timing of the calculation for the accumulated interest, (Anne), is that monthly, quarterly?

(Anne Calverley): Yes, what we do is we need to compute that monthly, and then it is the average of the months in a calendar year. So, what happens is if you were offsite for the first half of the year, you could correct it by reducing significantly your debt component to average down. So, you computed monthly. And then the average monthly debt is the debt that is the relevant amount in computing the two-to-one thin cap rule.

Thomas Bishop: OK. Thank you. Do we have any other questions for the presenters? (Anne), (Don) or (Chris), anything you want to say wrapping up or conclusions.

(Christopher Steeves): No, not from me. I just thank everyone for attending today, and we'll see you soon.

(Don Sommerfeldt): I'll echo (Chris's) comment. We appreciate your participation. Thank you.

(Anne Calverley): Thanks very much. We think that these rules are likely to come into effect in 2010, and therefore, 2009 will be a busy tax planning year relating to these structures. Thank you.

Thomas Bishop: Thank you all. There are no more questions, (Megan).

Operator: I believe this concludes the program for today. Thank you and have a good day.

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