



Upcoming Events

IFC BC AGM

The IFC BC 2009 Annual
General Meeting
April 1, 2009
12:00 p.m.
The Vancouver Club

IFA Program Seminar

May 7, 2009
8:30 to 10:30 a.m.
BCIT Downtown Campus,
Room 481

IFC BC Annual Golf Tournament

The IFC BC's
14th Annual Golf
Tournament
May 14, 2009
University Golf Club

**Please call
604-683-6626 for
information and
registration.**

Captive Insurance – BC versus Offshore

by Jodi Kelleher

Partner, International Corporate Tax, KPMG LLP

There are many factors and benefits to consider in deciding whether to establish a captive insurance company (for a good summary see Donald Rose's article in the March 2006 issue of this newsletter). While many of the benefits of establishing a captive insurance company are not tax motivated, there are some potential tax opportunities.

Most loss reserves or accruals that are made by companies to fund future potential risks are generally not deductible until an actual expenditure is incurred as they are considered contingent in nature – this is generally true in Canada and in foreign jurisdictions. Therefore, it may be possible for a company to insure those risks with a group captive insurance company and convert what would otherwise be a non-deductible tax reserve into tax deductible insurance premiums, thus accelerating the timing of the deduction.

In addition, if the captive insurance company is located in a domicile that has a rate of tax lower than the rate of tax paid in the jurisdiction(s)

making and deducting the insurance premiums, an additional tax benefit will be realized. Historically the natural tendency of many large Canadian multinationals with international operations has been to locate their captive insurance companies outside of Canada. For example, Barbados is a very popular jurisdiction as a result of its "qualifying insurance company" regime and a tax rate of generally 1.75%.

However, an alternative to locating the captive offshore is to establish a captive under the BC Insurance (Captive Company) Act (BCICCA) (see discussion in Donald Rose's article of March 2006). BC's International Financial Activity (IFA) regime can offer substantial benefits to BC captive insurance companies. Insuring or reinsuring risks (as defined under the BC Insurance Act except life, sickness or accident insurance) of, or relating to non-resident persons and property situated or events occurring outside of Canada are qualifying

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BC's 2009 Budget and the IFA Program

The 2009 Budget announced the following changes to the IFA program:

90 day Amalgamation Notification Rule Relaxed

The rule requiring the commissioner to be notified of an amalgamation between a registered and a non-registered corporation within 90 days of the amalgamation is amended to give the commissioner discretion to accept late notifications.

Intellectual Property Expanded

Effective April 1, 2009, the list of eligible patents is expanded to include patents relating to wastewater treatment and fuel cell technology.

Meaning of Non-resident Person Clarified

Effective September 1, 2004, the Act is amended to clarify that a non-resident person excludes a business carried on in Canada by that non-resident person.

Review Initiated

As required under the International Financial Activity Act, the government has initiated a review of the program. The review will examine program objectives and opportunities for improvement and streamlining.



For further information, please access the website of British Columbia Budget 2009 at www.bcbudget.gov.bc.ca

Captives in BC, continued

activities under the IFA program. Provided the corporation is registered as a captive insurance company under the BCICCA, the insurance can be provided to a related or non-arm's length party. The insurance income from this activity should be eligible for a refund of BC provincial income tax, resulting in a tax rate as low as 19.0% (targeted to be further reduced to 15% by 2012).

On the face, it would seem that the tax savings offered by the rate difference of 1.75% in Barbados versus 15% for BC would make the decision to go offshore well worthwhile. However, the additional costs associated with the diligence and time required to maintain an offshore structure can outweigh the benefits of a lower tax rate. In fact, any benefit of the tax rate differential between 15% and 1.75% for a captive insurance company with annual premiums of \$2 to 3 million may be fully offset by the cost difference in maintaining a Barbados Captive versus a BC Captive. Therefore, opportunities may exist for companies with premium levels that traditionally would not have justified the establishment

of an offshore captive or for those North American groups that do not have the resource capacity to maintain an offshore captive. Furthermore, for groups with a non-Canadian parent, a BC captive may also be more attractive than an offshore captive under some countries' controlled foreign company rules; for example, where a threshold rate of tax must be paid to avoid adverse tax consequences.



As Partner in Corporate Tax, Jodi Kelleher specializes in taxation issues for captive insurance companies.

KPMG is a Canadian leader in delivering audit, tax and advisory services. With a global network of professionals, KPMG member firms respond to clients' complex business challenges across Canada and around the world.

Captive Insurance: A Case for British Columbia

Definition of a captive insurance

Captive insurance companies are used to finance risk emanating from their parent or corporate group although they sometimes also insure risks of the group's customers as well. As part of a risk management strategy, a business forms an insurance company, which is structured to finance certain insurable losses. Other benefits are the ability to realize any cost savings, some favourable tax benefits, and access to the reinsurance markets.

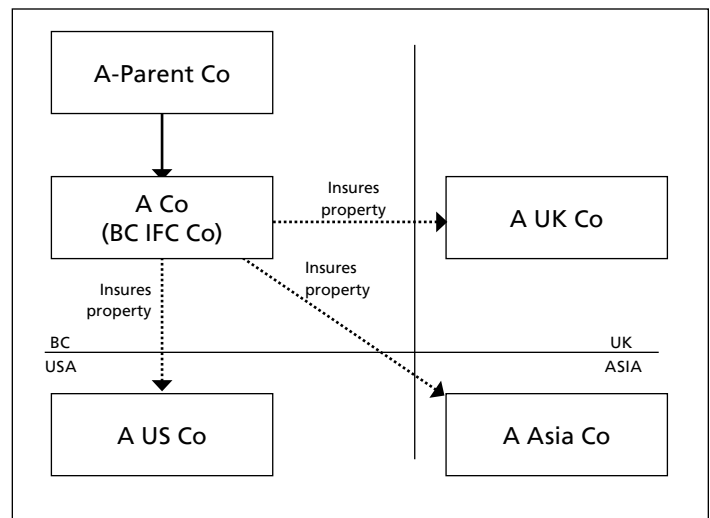
IFAA with respect to Captive Insurance

Paragraph 2(2)(h) of the IFAA qualifies insuring or reinsuring prescribed risks of, or relating to, non-resident persons, and relating to property situated or events occurring outside of Canada. Risks are prescribed by subsection 4(3) of the IFA Regulation and includes all risks that fall within any class of insurance defined under the (BC) Insurance Act, except life, sickness or accident insurance. Insurance is a qualifying activity for non-arm's length or affiliated parties as long as the corporation is registered as a captive insurance company under the BC Insurance (Captive Company) Act.

Case Study of a Captive in British Columbia

Fact Pattern

- Company A (A Co) is a wholly owned subsidiary of A-Parent Co, incorporated in BC and registered under the BC Insurance (Captive Company) Act.
- A-Parent Co has a number of wholly owned foreign affiliates,



which carry on active business in the United States, Asia and Europe.

- A Co is registered as an international financial business.
- A Co insures the property of the affiliates of A-Parent Co located outside Canada.

Analysis

- A Co is carrying on a qualifying business: insuring property outside of Canada is an international financial activity.
- A Co is required to become a member of the IFC BC Society in order to remain registered.
- A Co is eligible to claim a refund of its BC corporate income taxes paid in respect of its international financial business.

