Executive summary and Conclusion:

Canada has a panoply of domestic anti-avoidance measures at its disposal to attack transactions that it perceives as abusive of its tax treaties. Canadian tax authorities' practice is to rely on more than one domestic anti-avoidance measure when challenging a transaction, but there is a clear tendency to include the general anti-avoidance rule ("GAAR") in the arsenal.

The relationship between the GAAR and treaties has been settled by legislative intervention. Therefore, as far as the GAAR is concerned, the issue is no longer whether this rule is compatible or not with a treaty, but whether a transaction can be considered abusive of a treaty. In this regard, growing Canadian case law substantiates that a case-by-case analysis, involving a thorough examination of the Income Tax Act's and the relevant treaty's object, spirit and purpose, will resolve the issue of whether a transaction is abusive of a treaty or not. As mentioned by the Tax Court of Canada in the recent decision of *Garron*: "It does not make sense that a transaction that is subject to tax under the Act by virtue of an anti-avoidance provision necessarily constitutes a misuse or abuse of the Treaty".

As for specific domestic anti-avoidance rules, it is open to debate whether these rules trump treaties. Factors that may impact this determination include the question of whether or not the domestic rule serves to establish facts, whether or not subsequent changes to the Commentary on the OECD Model Convention should bear relevance, as well as the specific text of the relevant treaty and the existence or non-existence of an inherent anti-abuse rule in Canada's bilateral tax treaties.

Part 2 of the report examines anti-avoidance provisions found in treaties. Canada has not typically, to date, negotiated general anti-avoidance type language, specific anti-treaty shopping language such as LOB, or similar "anti-conduit" type language in its bilateral treaties. The Canadian tax authorities have indicated that they would generally rely on the GAAR in circumstances that they consider abusive of a treaty. However, thus far, the GAAR has proven ineffective in combating so-called "treaty shopping" situations as illustrated by the decisions in *MIL* and *Prévost Car* where the courts concluded in both cases that there was no inherent abuse of the applicable treaty. Therefore, whether Canada will seek to negotiate LOB-like provisions or similar anti-abuse provisions into future bilateral treaties remains to be seen.