



November 9, 2004

XXX

Dear XXX:

Re: International Financial Activity Act, 2004

This letter is in response to your letter of XXX, requesting clarification as to whether specific activities performed by XXX will qualify as international financial activities under the *International Financial Activity Act* (IFA).

Facts

Activity 1

- XXX provides investment management services to non-residents.
- The management services are provided with respect to a portfolio of XXX.

Activity 2

- XXX provides investment management services to XXX.
- The Fund is an open end mutual investment fund established as a Canadian trust.
- The services are provided with respect to the Fund portfolio.
- The Fund portfolio consists XXX listed on exchanges that are outside of Canada and inside Canada.
- XXX receives a management fee as well as a performance based fee for the services provided.

Question

You have asked for a technical interpretation, given the fact pattern above, as to whether the activities described, qualify as international financial activities under the IFA.

Assumption

The corporation meets all of the requirements for registration under sections 9 to 11 of the IFA.

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Discussion

The information in Bulletin IFA 001 is provided for convenience and guidance and is not a replacement for the legislation.

Section 2 of the IFA sets out international financial activities of a corporation which includes section 2(2)(l):

“managing, for a fee or commission, investments for non-resident persons”

Further, section 2(2)(m) of the IFA provides:

“managing, for a fee or commission and for persons resident in Canada, investments in securities that are issued by a non-resident person and that are not listed with a stock exchange prescribed in section 3200 of the Income Tax Regulations (Canada).”

Therefore, to the extent that XXX activities are included in the above definition, those activities would qualify as international financial activities.

For activities to qualify under section 2(2)(m), the investments must be both issued by a non-resident person and not listed on a prescribed stock exchange. The prescribed stock exchanges are Tiers 1 and 2 of the TSX Venture Exchange (also known as Tiers 1 and 2 of the Canadian Venture Exchange), the Montreal Stock Exchange and the Toronto Stock Exchange.

The term security is defined in the *Securities Act* (British Columbia). A security is defined to include a derivative.

Technical Interpretations

Please note that no opinion is expressed on whether transactions related to specific securities provided by you qualify under the IFA.

Activity 1

Managing, for a fee, including a performance based fee, a portfolio of futures for non-residents of Canada is an international financial activity under the IFA.

Activity 2

Managing, for a fee, a portfolio of securities (including derivatives) for a Canadian trust is an international financial activity under the IFA if the portfolio consists of securities issued by non-resident persons and those securities are not listed on a prescribed stock exchange.

Where a portfolio includes securities that are issued by a resident person or securities that are listed on a prescribed stock exchange, the portfolio is a mixed portfolio, and this portion of the activities are not international financial activities. The total fee for managing a mixed portfolio must be allocated, and only the fee that can reasonably be attributed to activities that are international financial activities will qualify as international financial business (IFB) income. The allocation method chosen should be reasonable in the circumstances and should substantiate the amount claimed.

This technical interpretation is intended to provide assistance in understanding the IFA legislation. It is not intended to replace the legislation. Where there is a conflict the legislation shall prevail.

We trust our comments will be of assistance to you.

Should you have any further questions with respect to the above please contact Mike Brooks at 250 356-9113 or by e-mail at Michael.Brooks@gems7.gov.bc.ca

Yours truly,

Jeffrey S. Krasnick
A/Director
Provincial Federal Management Issues
Income Taxation Branch