



April 6, 2005

Reference number: IFA 2005-0001

XXX

Dear XXX:

Re: XXX

Thank you for your letter dated XXX requesting advance rulings, on behalf of XXX, with respect to the provisions of the *International Financial Activity Act* ("IFA Act"). I regret the delay in responding.

The ruling requests relate to XXX, a newly incorporated subsidiary of XXX, which is acting as a factor in purchasing accounts receivables from other subsidiaries of XXX.

We provide advance rulings only where transactions are proposed. An advance ruling will not be given as we understand that XXX is conducting transactions referred to in your request. However, we can offer the following comments which may be of interest.

An "international financial business" is defined under section 1 of the IFA Act as a business carried on by a corporation through a fixed place of business in British Columbia as part of an active business of the corporation, if all the activities of the business are "international financial activities". For these purposes, active business has the same meaning as under section 248(1) of the Income Tax Act (Canada) (federal Act) and "international financial activities" has the meaning as provided in section 2 of the IFA Act.

For the purposes of the federal Act, the Canada Revenue Agency has interpreted "active income" to include income from a non-arm's length factoring arrangement on terms comparable to those between arm's length parties, carried out on a regular and ongoing basis. We agree with this interpretation for purposes of applying the IFA Act.

.../2

Section 2 of the IFA Act lists the activities that qualify as international financial activities, including, in section 2(2)(o), collecting trade accounts that are receivable from a non-resident person and have been bought outright from the seller and without recourse to the seller (commonly known as factoring).

It is our view that the term “without recourse” means that the purchaser assumes the financial risk of insolvency and non-payment of the debt. It does not include the common industry practice where the factor does not assume risks associated with the product including defective products and mistaken, incorrect and/or erroneous invoicing.

For the purposes of section 2(2)(o) of the IFA Act, trade accounts receivable may be purchased from a resident or non-resident, on an arm’s length or non-arm’s length basis, so long as the ultimate obligation to pay the debts which have been purchased rests with the non-resident person.

Section 9 of the IFA Act sets out the qualifications to apply to register a corporation. The corporation must be incorporated in Canada and not continued, amalgamated or transferred out of Canada, it must have a permanent establishment in British Columbia as defined in section 400 (2) of the Income Tax Regulations (Canada), and it must not be exempt from income tax under section 27 of the *Income Tax Act (British Columbia)*. It is our view that incorporation under the *Canada Business Corporations Act* meets the criteria of being incorporated in Canada.

Section 19(1) of the IFA Act defines IFB income as the income or loss, as determined under Subdivision b of Division B of Part I of the federal Act, of the international financial business for that part of the taxation year that the corporation was a registered corporation.

For the purposes of the adjusted interest formula, contained in section 19(1) of the IFA Act, it is our view that if factoring income is treated as interest for purposes of the federal Act, it will also be characterized as interest for the purposes of section 19.

Section 20(1) of the IFA Act defines “transaction price” as

20 (1) In this section, "**transaction price**" means, in respect of a transaction or a series of transactions, an amount paid or an amount received or receivable, as the case may be, by a participant in the transaction or series of transactions as a price, rental, royalty, premium, interest or other payment

(a) for, or for the use, production or reproduction of, property, or

(b) as consideration for services, including services provided as an employee or officer and the insurance or reinsurance of risks,

as part of the transaction or series of transactions.

Section 20(2) provides that the transaction price between non-arm's length parties must be determined as if the parties were dealing at arm's length and sets out what price range is acceptable under the Act, as follows:

20 (2) For the purpose of calculating a corporation's IFB income, if the corporation participates in a transaction or a series of transactions for, with or on behalf of a person who is affiliated with or who is not dealing at arm's length with the corporation, any transaction price in respect of the transaction or series of transactions must be the amount that would have been the transaction price in respect of the transaction or series of transactions if the participants in the transaction or series of transactions had been dealing at arm's length with each other.

Section 20(3) permits the Commissioner of Income Tax to set the transaction price between non-arm's length parties as if the parties were dealing at arm's length.

It is our view that transfer pricing documentation prepared in accordance with section 247 of the federal Act will comply for the purposes of applying section 20 of the IFA Act to non-arm's length transactions between residents and non-residents of Canada, where that documentation has been accepted and agreed to by the Canada Revenue Agency. In any other case, transfer pricing documentation prepared in accordance with section 247 of the federal Act will be one of several factors considered in determining the transaction price for the purposes of section 20 of the IFA Act.

We trust that the above comments are of assistance. This letter is not a ruling and consequently is not binding on the Ministry of Provincial Revenue.

Yours truly,

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