



May 17, 2005

Reference number: IFA 2005-0003

XXX

Dear XXX:

Re: *International Financial Activity Act* Ruling Request

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

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.

Section 2 of the IFA Act lists the activities that qualify as international financial activities. A partial list includes:

1. Managing, for a fee or commission, foreign exchange activities for non-resident persons (section 2(2)(k));
2. 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) (section 2(2)(o)). 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;
3. Leasing property to a non-resident person, by means of a direct financing lease as defined in the Canadian Institute of Chartered Accountants (CICA) Handbook (section 2(2)(p)). For purposes of section 2(2)(p) of the IFA Act, leases that do not meet the requirements of a direct financing lease under the CICA Handbook, such as the credit worthiness threshold, would not qualify;

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4. Administrative support services directly related to a financial activity of a non-resident financial business (section 2(2)(r)). Call centres, marketing and advertising are excluded by regulation. The determination of the specific administrative support services that qualify for the purposes of section 2(2)(r) of the IFA Act is a question of fact.

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 IFA 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 would be one of the 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
A/Director
Provincial-Federal Management Issues
Income Taxation Branch