



March 7, 2006

Reference number: IFA 2006-0001

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"). The issues outlined in your letter were further expanded and discussed in our visit to your premises on XXX, and our telephone conversations with XXX on XXX and XXX. 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 currently conducting the transactions referred to in your letter. However, we can offer the following comments which may be of interest.

The term "financial", while not defined in the IFA Act, is used in a number of expressions including "financial business", "financial activity", "financial advice" and "financial research". It is our view that "financial" requires a relationship to the management of money and other assets of a business system, including the acquisition and allocation of those resources. The determination of that relationship is a question of fact.

For the purposes of the IFA Act, an "international financial business" is 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, and the corporation carries on an "international financial activity". Income derived from an international financial activity may be eligible for the tax refund under the IFA Act even if the corporation carries on non-qualifying activities. For these purposes, "active business" and "business" have the same meaning as under section 248(1) of the *Income Tax Act* (Canada) (the "federal Act") and, "international financial activity" has the meaning as provided in section 2 of the IFA Act.

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Section 2(2)(i) of the IFA Act includes providing financial advice to non-resident persons. The provision of legal, accounting or tax advice by a corporation in the business of providing that advice is excluded by regulation. It is our view that financial advice includes a recommendation or an opinion offered regarding a course of action. For other activities that are not inherently financial, such as providing legal advice, whether the activity qualifies under the IFA Act will depend on whether the activity provides financial advice. Whether an activity provides financial advice for the purposes of section 2(2)(i) of the IFA Act is a question of fact, to be determined based on all of the circumstances.

Section 2(2)(n) of the IFA Act includes preparing stock market or other financial research prescribed for the exclusive use of non-resident persons. The provision of legal, accounting or tax research by a corporation in the business of providing that research, is excluded by regulation. Activities such as corporate and operations accounting by their nature provide financial research. Whether an activity provides financial research for the purposes of section 2(2)(n) is a question of fact to be determined based on all of the circumstances.

Section 2(2)(r) of the IFA Act includes providing, to a non-resident person, administrative support services that are directly related to a financial activity of the non-resident person. Call centres, marketing and advertising are excluded by regulation. In our view, providing centralized accounting services would likely constitute administrative support services where those services support a financial activity. 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 example, the cash collection and recording functions relating to the collection of trade accounts receivable supports a financial activity whereas collecting outstanding trade accounts receivable is a financial activity in and of itself. While collecting accounts receivable is not an administrative support service, to the extent that the collection of trade accounts receivable from non-resident persons is conducted exclusively for non-resident persons for a fee or commission, that activity will qualify as an international financial activity under section 2(2)(t) of the IFA Act.

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) of the IFA Act 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 IFA 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) of the IFA Act 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 documentation required by section 247(4) of the federal Act will be accepted 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 to you. This letter is not a ruling and consequently is not binding on the Ministry of Small Business and Revenue.

Yours truly,

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