



August 31, 2006

Reference number: IFA 2006-0002

XXX

Dear XXX:

Re: XXX

Thank you for your letter dated XXX requesting a technical interpretation on behalf of XXX with respect to the provisions of the *International Financial Activity Act* (IFA Act).

Section 9 of the IFA Act sets out the qualifications required to apply to register a corporation. XXX.

Section 2 of the IFA Act lists the activities that qualify as international financial activities. Effective January 1, 2006, the list of qualifying international financial activities was expanded to include refunds of provincial corporate income taxes on income derived from certain patents. The new activities are contained in sections 2(2)(q.1) and (q.2) of the IFA Act (“patent activities”).

Section 2(2)(q.1) of the IFA Act includes selling, assigning or licensing to a non-resident person a patent within a prescribed class of patents. Section 2(2)(q.2) of the IFA Act includes selling, to a non-resident person, a good or service in respect of which the sales revenue is principally derived from an invention for which a patent within a prescribed class of patents is owned by the corporation (“qualifying patent”).

It is our view that section 2(2)(q.1) of the IFA Act requires that a corporation must directly license a patent to qualify as an international financial activity. Licensing distribution rights will not fulfill this requirement.

It is our view that to meet the requirements of section 2(2)(q.2) of the IFA Act, a corporation must own at least one qualifying patent that is used to produce the invention. Licensing a patent will not fulfill the ownership requirement of the patent as set out in section 2(2)(q.2) of the IFA Act. Whether or not the sales revenue is principally derived from the invention is a question of fact and is beyond the scope of this technical interpretation.

.../2

In each taxation year, a registered corporation may choose to claim a tax refund either on its patent activities or on its other eligible activities, but not on both. Section 19(1.1) 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 as if the business's income for the taxation year was only from patent activities for that part of the taxation year that the corporation was a registered corporation.

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
A/Director
Provincial Federal Management Issues
Income Taxation Branch