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DOCNUM 2012-0462361I7

REFDATE 121129

SUBJECT Meaning of "Prime Metal Stage or its Equivalent"

SECTION 65; 66(15); 125.1(3); 127(9); Regulation 1104; Regulation 1200

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: What does the phrase "prime metal stage or its equivalent" mean for purposes of the ITA?

POSITION: It means the point at which the commodity is marketable and saleable to its customers.

REASONS: Jurisprudence and previous interpretations

November 29, 2012

Excise GST/HST Rulings
General Operations & Border Issues

Attention: Angela Stachowski

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2012-046236

Meaning of "Prime Metal Stage or its Equivalent"

We are writing in response to your letter dated September 14, 2012 in which you requested our views on the meaning of the phrase "prime metal stage or its equivalent" for purposes of the Income Tax Act (the "Act").

You advised that you are dealing with an issue involving when GST/HST would apply to activities undertaken during the mining process. You indicated that our views regarding the "prime metal stage or its equivalent" and how that term is used for federal income tax purposes would be of assistance in making your determination.

OUR COMMENTS

The phrase "prime metal stage or its equivalent" is used both in the Act and in the Income Tax Regulations (the "Regulations") to determine the applicability of certain resource tax provisions. The phrase is not defined in the Act or Regulations but has been the subject of several court decisions. We follow the decision of the Federal Court of Appeal in Canadian Pacific Ltd. v. Canada 1994 F.C.J. 993 (FCA) (Canadian Pacific) which held that the prime metal stage or its equivalent is met for purposes of the Excise Tax Act when "metallurgical and thermal coal has been processed to the condition in which it meets the specifications of its consumers and they buy and take delivery of it as coal in that condition...".

The reasoning in the Canadian Pacific case was adopted by the Federal Court of Appeal in the 1996 case Her Majesty the Queen v. Gulf Canada Resources Limited 96 DTC 6065 (FCA) ("Gulf"). The Gulf case dealt with the calculation of income for purposes of the resource allowance. The court quoted with approval from the Canadian Pacific case and added:

"Even though this quotation dealt with the phrase as it appeared in a different statute, I see no reason to depart from the interpretation given above in the present context. In my view, the equivalent of the prime metal stage for mineral production is that point where the production processes have produced a marketable, saleable commodity which meets the specifications of its consumers"

When asked about a specific mineral resource we often consult with Natural Resources Canada in order to determine the prime metal stage or its equivalent for that particular mineral resource. However, our general position is that the prime metal stage or its equivalent is met when the mineral resource has reached a stage at which it is marketable and saleable to another party.

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We trust this information will be helpful.

Yours truly,

Fiona Harrison, C.A.
Manager
Resources Section
Reorganizations Division
Income Tax Rulings Directorate
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