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 DOCNUM 2013-0491061R3
 REFDATE 13XXXX
 SUBJECT Upstream Loans
 SECTION 212.3(18); 90(6)

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: 1. Will subsection 212.3(2) apply to the proposed transactions?

2. Will the exception in paragraph 90(8)(a) apply to the specified debtors' proposed repayment of its debt to the creditor affiliates such that subsection 90(6) will not apply to the proposed transactions?

POSITION: 1. No. 2. Yes.

REASONS: 1. Although the proposed transactions include investments in subject corporations made by a CRIC which is controlled by a non-resident corporation, subsections 212.3(18) and 212.3(25) apply in such a manner that subsection 212.3(2) will not apply to any of the investments.

2. The proposed transactions of:

a) a specified debtor repaying its debt to a creditor affiliate; and
 b) the Canco disposing of its interest in the creditor affiliate for FMV consideration in the form of cash resulting in the Canco having no FAs, would result in the bona fide repayment of the upstream loan such that the previous debtor's subsequent borrowing from the previous FA would not constitute a loan within a series of loans and repayments which included the repayment of the upstream loan.

XXXXXXXXXX

2013-049106

XXXXXXXXXX, 2013

Dear XXXXXXXXXXXX:

Re: Advance Income Tax Ruling
 XXXXXXXXXXXX

This is in reply to your letter of XXXXXXXXXXXX, wherein you requested an advance income tax ruling on behalf of the above-noted taxpayers. We also acknowledge the additional information provided to us in your emails and phone calls, the last of which was dated XXXXXXXXXXXX.

This letter is based solely on the Facts, Proposed Transactions and Additional Information described below. Any documentation submitted in respect of your request does not form part of the Facts, Proposed Transactions and Additional Information, and any references thereto are provided solely for the convenience of the reader.

To the best of your knowledge, and that of the above-noted taxpayers, none of the issues involved in this advance income tax ruling are:

- (i) in an earlier tax return of the above-noted taxpayers or of a related person;
- (ii) being considered by a Tax Services Office or a Taxation Centre in connection with a previously-filed tax return of the above-noted taxpayers or of a related person;
- (iii) under objection by the above-noted taxpayers or by a related person;
- (iv) before the courts or, if a judgment has been issued, the time limit for appeal to a higher court has not expired; or
- (v) the subject of a ruling previously considered by the Income Tax Rulings Directorate in connection with the above-noted taxpayers or a related person.

Unless otherwise stated, all references to a statute are to the Income Tax Act (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended to the date of this letter (the "Act") or the Income Tax Regulations (the "Regulations").

Our understanding of the Facts, Proposed Transactions, Purpose of the Proposed Transactions and Additional Information is as follows:

Definitions

In this letter, the following terms have the meanings specified:

- a. "ACB" means adjusted cost base;
- b. "Canadian Group" means Can Holdco, Can Opco 1, Can Opco 2, Can Opco 3, Partnerco, Partnership and ULC;
- c. "Canadian partnership" has the meaning assigned by subsection 102(1) of the Act;
- d. "Can Holdco" means XXXXXXXXXXXX, a corporation governed by the CBCA;
- e. "Can Opco 1" means XXXXXXXXXXXX, a corporation governed by the CBCA;
- f. "Can Opco 2" means XXXXXXXXXXXX, a corporation governed by the CBCA;
- g. "Can Opco 3" means XXXXXXXXXXXX, a corporation governed by the CBCA;
- h. "CBCA" means the Canada Business Corporations Act, R.S.C. 1985, c. C-44;
- i. "FA 1" means XXXXXXXXXXXX, a company organized under the laws of XXXXXXXXXXXX;

- j. "FA 2" means XXXXXXXXXXXX, a company organized under the laws of XXXXXXXXXXXX;
- k. "FA 3" means XXXXXXXXXXXX, a company organized under the laws of XXXXXXXXXXXX;
- l. "FA 4" means XXXXXXXXXXXX, a corporation organized under the laws of XXXXXXXXXXXX;
- m. "FMV" means fair market value;
- n. "foreign affiliate" has the meaning assigned by subsection 95(1) of the Act;
- o. "Former Can Opco" means XXXXXXXXXXXX, a corporation governed by the CBCA and a predecessor to Can Opco 1;
- p. "Former Parent 1" means XXXXXXXXXXXX, a corporation organized under the laws of XXXXXXXXXXXX and a predecessor to Parent;
- q. "Former Parent 2" means XXXXXXXXXXXX, a company organized under the laws of XXXXXXXXXXXX and a predecessor to Parent;
- r. "New Treasuryco Debts" means the new loans made to Treasuryco by members of the US Group, as described in paragraph 31 below;
- s. "Parent" means XXXXXXXXXXXX, a corporation organized under the laws of XXXXXXXXXXXX;
- t. "Parent Group" means Parent and its direct and indirect subsidiaries;
- u. "Partnerco" means XXXXXXXXXXXX, a corporation governed by the CBCA;
- v. "Partnership" means XXXXXXXXXXXX, a general partnership formed under the laws of XXXXXXXXXXXX;
- w. "Proposed Transactions" means the transactions described in 22 - 32 below;
- x. "public corporation" has the meaning assigned by subsection 89(1) of the Act;
- y. "taxable Canadian corporation" has the meaning assigned by subsection 89(1) of the Act;
- z. "Treasuryco" means XXXXXXXXXXXX, a partnership organized under the laws of XXXXXXXXXXXX, and treated as a corporation for XXXXXXXXXXXX tax purposes;
- aa. "Treasuryco Debts" means the loans made to Treasuryco by members of the US Group, as described in paragraph 19 below;
- bb. "ULC" means XXXXXXXXXXXX, an unlimited liability company governed by the XXXXXXXXXXXX;

cc. "US Group" means US Holdco 1 and its direct and indirect subsidiaries including US Holdco 2;

dd. "US Holdco 1" means XXXXXXXXXXXX, a limited liability company organized under the laws of XXXXXXXXXXXX;

ee. "US Holdco 2" means XXXXXXXXXXXX, a limited liability company organized under the laws of XXXXXXXXXXXX;

ff. "US Holdco 3" means XXXXXXXXXXXX, a limited liability company organized under the laws of XXXXXXXXXXXX;

gg. "US Newco" means a new company formed under the laws of XXXXXXXXXXXX;

hh. "US Salesco" means XXXXXXXXXXXX, a corporation incorporated under the laws of XXXXXXXXXXXX; and

ii. "US Salesco Loan" means the loans made to Can Opco 1 by US Salesco, as described in paragraph 20 below.

Facts

1. Parent is a XXXXXXXXXXXX corporation and a non-resident of Canada for purposes of the Act. Parent's shares are listed on the XXXXXXXXXXXX stock exchanges. Parent is the top holding company of the Parent Group, which carries on a XXXXXXXXXXXX business. All of the significant operating subsidiaries of the Parent Group are indirectly owned by Parent through intermediate holding companies.

2. Can Holdco is a corporation resident in Canada for purposes of the Act and a taxable Canadian corporation. All of the shares of Can Holdco are held directly or indirectly by Parent. Can Holdco has a XXXXXXXXXXXX taxation year-end, its Taxation Centre is the XXXXXXXXXXXX Taxation Centre and its Tax Services Office is the XXXXXXXXXXXX Tax Services Office.

3. Can Opco 1 is a corporation resident in Canada for purposes of the Act and is a taxable Canadian corporation. All of the issued and outstanding shares of Can Opco 1 are held by Can Holdco. Can Opco 1 carries on a XXXXXXXXXXXX business, which has its primary operations in XXXXXXXXXXXX. Can Opco 1 has a XXXXXXXXXXXX taxation year-end.

4. Can Opco 2 is a corporation resident in Canada for purposes of the Act and a taxable Canadian corporation. All of the issued and outstanding shares of Can Opco 2 are held by Can Opco 1, other than XXXXXXXXXXXX shares of Can Opco 2 having a redemption amount of \$XXXXXXXXXX, which are held by Can Opco 3. Can Opco 2's primary business is XXXXXXXXXXXX business in XXXXXXXXXXXX, which it carries on through a partnership. Can Opco 2 has a XXXXXXXXXXXX taxation year-end.

5. Can Opco 3 is a corporation resident in Canada for purposes of the Act and a taxable Canadian corporation. All of the issued and outstanding shares of Can Opco 3 are held by Can Opco 2, with the exception of

XXXXXXXXXX shares having XXXXXXXXXXXX redemption value, which are held by Can Holdco. Can Opco 3 carries on a XXXXXXXXXXXX business, the main product of which is XXXXXXXXXXXX. Can Opco 3's main production facilities are in XXXXXXXXXXXX. It also has XXXXXXXXXXXX. Can Opco 3 has a XXXXXXXXXXXX taxation year-end, its Taxation Centre is the XXXXXXXXXXXX Taxation Centre and its Tax Services Office is the XXXXXXXXXXXX Tax Services Office.

6. Partnerco is a corporation resident in Canada for purposes of the Act and a taxable Canadian corporation. All of the issued and outstanding shares of Partnerco are held by Can Opco 2.

7. Partnership is a XXXXXXXXXXXX general partnership and is a Canadian partnership. Can Opco 2 has a XXXXXXXXXXXX% member interest in Partnership and Partnerco has a XXXXXXXXXXXX% member interest.

8. ULC is an unlimited liability company resident in Canada for purposes of the Act and a taxable Canadian corporation. All of the issued and outstanding shares of ULC are held by Partnership. At the time of the Proposed Transactions, ULC's only asset will be the XXXXXXXXXXXX shares of US Holdco 3 referred to in paragraph 15 below. ULC has a XXXXXXXXXXXX taxation year-end, its Taxation Centre is the XXXXXXXXXXXX Taxation Centre and its Tax Services Office is the XXXXXXXXXXXX Tax Services Office.

9. FA 1 is a XXXXXXXXXXXX company and a non-resident of Canada for purposes of the Act. FA 1 has only one class of shares being its common shares which, having regard to all the terms and conditions of the shares and any agreement in respect of the shares, fully participate in the profits of FA 1 and any appreciation in the value of FA 1. All of the issued and outstanding common shares of FA 1 are held by Can Opco 3.

10. FA 2 is a XXXXXXXXXXXX company and a non-resident of Canada for purposes of the Act. FA 2 has three classes of issued and outstanding shares: XXXXXXXXXXXX shares XXXXXXXXXXXX, XXXXXXXXXXXX of which are issued and outstanding and held by FA 1 as capital property; XXXXXXXXXXXX shares XXXXXXXXXXXX, XXXXXXXXXXXX of which are issued and outstanding and held by Can Opco 3 as capital property; and XXXXXXXXXXXX shares, of which XXXXXXXXXXXX are issued and outstanding and held by Can Opco 3 as capital property. The XXXXXXXXXXXX shares XXXXXXXXXXXX held by FA 1 represent XXXXXXXXXXXX% of the total issued and outstanding XXXXXXXXXXXX shares of FA 2 and the XXXXXXXXXXXX shares XXXXXXXXXXXX held by Can Opco 3 represent XXXXXXXXXXXX% of the total issued and outstanding XXXXXXXXXXXX shares of FA 2.

11. FA 3 is a XXXXXXXXXXXX company and a non-resident of Canada for purposes of the Act. All of the issued and outstanding shares of FA 3 are held by FA 2. FA 3 has only one class of shares being its common shares which, having regard to all the terms and conditions of the shares and any agreement in respect of the shares, fully participate in the profits of FA 3 and any appreciation in the value of FA 3.

12. FA 4 is a XXXXXXXXXXXX corporation and a non-resident of Canada for purposes of the Act. All of the issued and outstanding shares of FA 4 are held by FA 3.

13. US Holdco 1 is a XXXXXXXXXX limited liability company and a non-resident of Canada for purposes of the Act. US Holdco 1 is a corporation for U.S. federal tax purposes. US Holdco 1 has four classes of issued and outstanding shares: XXXXXXXXXX shares, XXXXXXXXXX shares, XXXXXXXXXX shares and XXXXXXXXXX Shares. FA 4 holds XXXXXXXXXX shares, representing XXXXXXXXXX% of the total issued and outstanding XXXXXXXXXX shares. Can Opco 3 holds as capital property XXXXXXXXXX shares and XXXXXXXXXX shares, representing XXXXXXXXXX% of the total issued and outstanding XXXXXXXXXX shares, and XXXXXXXXXX share, also held as capital property. All of the XXXXXXXXXX shares are held as capital property by Can Holdco. The XXXXXXXXXX shares have an aggregate redemption amount of US\$XXXXXXXXXX. Dividends on the XXXXXXXXXX shares are non-cumulative. The XXXXXXXXXX share has a redemption amount of US\$XXXXXXXXXX. Dividends on the XXXXXXXXXX are also non-cumulative.

14. US Holdco 2 is a XXXXXXXXXX limited liability company and a non-resident of Canada for purposes of the Act. US Holdco 2 is a corporation for U.S. federal tax purposes. US Holdco 2 is a wholly-owned subsidiary of US Holdco 1.

15. US Holdco 3 is a XXXXXXXXXX limited liability company and a non-resident of Canada for purposes of the Act and a corporation for U.S. federal tax purposes. US Holdco 3 has two classes of issued and outstanding shares: XXXXXXXXXX shares, all of which are held by US Holdco 2; and XXXXXXXXXX shares, all of which are held by ULC. The XXXXXXXXXX shares of US Holdco 3 have a redemption amount of US \$XXXXXXXXXX. Dividends on the XXXXXXXXXX shares of US Holdco 3 are non-cumulative.

16. US Salesco is a corporation incorporated under the laws of XXXXXXXXXX and a non-resident of Canada for purposes of the Act. It is a corporation for U.S. federal tax purposes and an indirect subsidiary of US Holdco 1. US Salesco buys XXXXXXXXXX product from Can Opco 1 for re-sale in the U.S. market.

17. Treasuryco is a partnership formed under the laws of XXXXXXXXXX, and is treated as a corporation for XXXXXXXXXX tax purposes. All the partners of Treasuryco are members of the Parent Group and do not deal at arm's length with any member of the Canadian Group for purposes of the Act. Treasuryco coordinates global cash flow requirements of the Parent Group.

18. Treasuryco operates a treasury management arrangement in which members of the US Group participate in order to optimize the cash management of the US Group. As part of this arrangement, Treasuryco makes short-term loans to members of the US Group to fund their cash flow needs, and members of the US Group make short-term loans to Treasuryco of their cash on hand. These cash movements occur on a daily basis, so the outstanding loan balances fluctuate frequently.

19. Due to recent divestitures in the US Group, Treasuryco is currently a net borrower from the US Group under the treasury management arrangements (the "Treasuryco Debts"). It is difficult to determine the date when any particular loan was made by a member of the US Group to Treasuryco,

however, it is assumed that most of the Treasuryco Debts balances relate to amounts that have arisen post XXXXXXXXXX.

20. US Salesco has a similar cash management arrangement with Can Opco 1 pursuant to which US Salesco's funds are loaned to Can Opco 1 on a daily basis. Can Opco 1 is normally a net borrower from US Salesco under this arrangement and this is expected to be the case immediately prior to the Proposed Transactions (the "US Salesco Loan"). Similar to the Treasuryco Debts, it is assumed that the US Salesco Loan relates to post XXXXXXXXXX transactions.

21. US Newco is a corporation incorporated under the laws of XXXXXXXXXX on XXXXXXXXXX, and is a non-resident of Canada for purposes of the Act. US Newco has only one class of shares: common shares which, having regard to all the terms and conditions of the shares and any agreement in respect of the shares, fully participate in the profits of US Newco and any appreciation in the value of US Newco. No shares were issued on its incorporation.

Proposed Transactions

The following transactions will occur in chronological order, before XXXXXXXXXX.

22. On XXXXXXXXXX, Can Opco 1 will repay the US Salesco Loan and each entity in the US Group that is owed an amount from Treasuryco at that time (the "Treasuryco Debts") will direct that Treasuryco repay that amount to it and that the amount owed to it be paid to US Holdco 1. As a result, there will be one cash transfer by Treasuryco to US Holdco 1 in satisfaction of all Treasuryco Debts. This will result in intercompany receivables and payables within the US group (i.e. a US entity that was repaid by Treasuryco and directed that the amount owed to it be paid to US Holdco 1 will have an inter-company receivable from US Holdco 1).

23. On the following day, Can Opco 3 will sell its shares of US Holdco 1 to FA 3, in exchange for XXXXXXXXXX shares of FA 3. The XXXXXXXXXX shares of FA 3 will be acquired by Can Opco 3 as consideration for a disposition of shares to which subsection 85.1(3) of the Act would apply if determined without reference to subsection 85.1(4) of the Act.

24. Can Opco 3 will sell its shares of FA 2 and FA 3 to FA 1, in exchange for additional XXXXXXXXXX shares of FA 1. The additional XXXXXXXXXX shares of FA 1 will be acquired by Can Opco 3 as consideration for a disposition of shares to which subsection 85.1(3) of the Act would apply if determined without reference to subsection 85.1(4) of the Act.

25. ULC will exchange its XXXXXXXXXX shares of US Holdco 3 for all XXXXXXXXXX of the common shares of US Newco. The XXXXXXXXXX common shares of US Newco will be acquired by ULC as consideration for a disposition of shares to which subsection 85.1(3) of the Act would apply if determined without reference to subsection 85.1(4) of the Act.

26. Can Opco 2 will approve the winding up of Partnerco and Partnerco will distribute all of its assets, being its partnership interest in Partnership, to Can Opco 2, as a consequence of which Partnership will cease to exist and Can Opco 2 will hold all of the shares of ULC.

27. Can Opco 2 will approve the winding up of ULC and ULC will distribute all of its assets, being the common shares of US Newco, to Can Opco 2.

28. CanOpco 3 will sell its shares of FA 1 to Parent for cash consideration equal to the fair market value of these shares.

29. Can Opco 2 will sell its US Newco common shares to Parent for cash consideration equal to the FMV of these shares.

30. Can Holdco will sell its XXXXXXXXXX shares of US Holdco 1 to Parent, for cash consideration equal to the FMV of these shares.

31. The members of the US Group will make new loans to Treasuryco (the "New Treasuryco Debts"). The New Treasuryco Debts will have the same terms as the Treasuryco Debts that were repaid as described in paragraph 22 above (i.e., each member of the US Group will lend an amount to Treasuryco equal to the amount of the Treasuryco Debt owing to that member which was repaid in paragraph 22 above). The members of the US Group will advance cash to Treasuryco under the New Treasuryco Debts by directing that US Holdco 1 settle the inter-company receivables created in paragraph 22 above by paying cash to Treasuryco equal to the principal amounts of these receivables.

32. Can Opco 1 will re-borrow, from US Salesco, the amount it repaid as described in paragraph 22 above.

Purpose of the Proposed Transactions

33. The principal purposes of the Proposed Transactions are (i) to complete the consolidation of Parent's U.S. subsidiaries within the US Group, and (ii) to transfer ownership of the US Group out from under the Canadian Group. Parent wishes to re-align the US Group so that it is no longer held under Canada but is held more directly by its XXXXXXXXXX parent company (through one XXXXXXXXXX holding company), which is consistent with the manner in which strategic business decisions in the group are made and greatly simplifies the corporate structure.

Additional Information

34. XXXXXXXXXX.

35. XXXXXXXXXX.

36. XXXXXXXXXX.

37. XXXXXXXXXX.

38. Partnerco, Partnership and ULC were formed in connection with a "tower" financing structure previously in place to provide financing to US entities indirectly held by Can Opco 3. This structure was mostly unwound several years ago when the external debt owing by Partnership was repaid.

39. CanOpco 3 is of the view that the combined ACB of its direct investment in the XXXXXXXXXX shares of US Holdco 1 and its indirect investment in the XXXXXXXXXX shares of US Holdco 1 through FA 1, FA 2, FA 3 and FA 4 XXXXXXXXXX the FMV of the XXXXXXXXXX shares of US Holdco 1.

40. US Salesco will continue to cash pool with Can Opco 1 in the short term; however, the intention is to ultimately transition to an arrangement whereby US Salesco's cash is managed by another entity in the US Group.

41. In due course, FA 1, FA 2 and FA 3 will be liquidated to further simplify the corporate structure.

Rulings

Provided that the preceding statements constitute a complete and accurate disclosure of all the relevant Facts, Proposed Transactions and Purpose of the Proposed Transactions, and provided further that the Proposed Transactions are completed in the manner described above, we rule as follows:

A. By virtue of subparagraph 212.3(18)(b)(ii) of the Act, subsection 212.3(2) of the Act will not apply to the acquisition by Can Opco 3 of XXXXXXXXXX shares of FA 3 and additional XXXXXXXXXX shares of FA 1 as described in paragraph 23 and 24 above, respectively.

B. By virtue of subparagraph 212.3(18)(b)(ii) of the Act, subsection 212.3(2) of the Act will not apply to the acquisition by ULC of XXXXXXXXXX common shares of US Newco as described in paragraph 25 above.

C. By virtue of subparagraph 212.3(18)(c)(i) of the Act, subsection 212.3(2) of the Act will not apply to the deemed indirect acquisition by Can Opco 2 of the shares of US Newco resulting from the application of paragraph 212.3(25)(c) to Can Opco 2's acquisition of additional interests in Partnership as the result of the winding up of Partnerco as described in paragraph 26 above.

D. By virtue of paragraph 212.3(25)(b), subsection 212.3(2) will not apply to the indirect acquisition by Can Opco 2 of the shares of US Newco upon the dissolution of Partnership described in 26 above.

E. By virtue of subparagraph 212.3(18)(a)(i) of the Act, subsection 212.3(2) of the Act will not apply to the acquisition by Can Opco 2 of the shares of US Newco as described in paragraph 27 above.

F. By virtue of the coming into force provision contained in paragraph 66(3)(a) of Bill C-48 and paragraph 90(8)(a) of the Act, subsection 90(6) of the Act will not apply to include an amount in respect of the US Salesco Loan or the Treasuryco Debts in the income of Can Opco 3, Can Holdco, or ULC.

The above rulings are given subject to the limitations and qualifications

set out in Information Circular 70-6R5 dated May 17, 2002, and is binding on the CRA provided that the Proposed Transactions are completed prior to XXXXXXXXXX.

Comments

Nothing in this ruling letter should be construed as implying that the CRA has agreed to, reviewed or has made any determination in respect of:

- (a) the GST implications of any of the Proposed Transactions;
- (b) the reasonableness of any amount;
- (c) the FMV or ACB of any property or the paid-up capital of any shares referred to herein; nor,
- (d) any tax consequences relating to the Facts, Proposed Transactions and Additional Information described herein other than those specifically described in the rulings given above and, without limiting the generality of the foregoing, the CRA is not ruling on the income tax implications arising from the various dispositions of shares described herein.

Yours truly,

XXXXXXXXXX
For Director
International Division
Income Tax Rulings Directorate