

LANGIND E

DOCNUM 2014-0521831R3

REFDATE 14XXXX

SUBJECT Withholding on interest payments

SECTION 212(13.2)

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: To the extent that subsection 212(13.2) of the Act deems a non-resident to be a person resident in Canada, will paragraph 1 of Article XI of the Canada-US Tax Treaty apply to exempt interest payments made by the non-resident to a US resident from Part XIII withholding?

POSITION: Yes

REASONS: Interest payments will be deemed to arise in Canada pursuant to Article XI, paragraph 4 of the Treaty where the indebtedness was incurred in connection with the non-resident's permanent establishment in Canada and interest on such indebtedness is borne by the permanent establishment.

XXXXXXXXXX

2014-052183

Attention: XXXXXXXXXXXX

XXXXXXXXXX, 2014

Dear XXXXXXXXXXXX:

Re: Advance Income Tax Ruling

XXXXXXXXXX

We are writing in response to your letter of XXXXXXXXXXXX, in which you requested an advance income tax ruling on behalf of the above-noted taxpayer. We also acknowledge the additional information provided to us in emails and in phone calls on XXXXXXXXXXXX and XXXXXXXXXXXX.

This letter is based solely on the Facts, Proposed Transactions and Additional Information described below.

We understand that to the best of your knowledge and that of the above-noted taxpayer none of the issues involved in this advance income tax ruling are:

(i) in an earlier tax return of the above-noted taxpayer 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 taxpayer or of a related person;

(iii) under objection by the above-noted taxpayer 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 taxpayer 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, unless otherwise stated, all amounts are in US dollars and the following terms have the meaning specified below:

- a) "XXXXXXXXXX Notes" are bonds publicly issued by US Parent Co as further described in paragraph 15 below.
- b) "XXXXXXXXXX Notes" are bonds publicly issued by US Parent Co as further described in paragraph 17 below.
- c) "XXXXXXXXXX Notes" are bonds publicly issued by US Parent Co as further described in paragraph 19 below.
- d) "Arm's length" has the meaning assigned by subsection 251(1) of the Act.

- e) "Business" refers to Can LP's ownership and operating of XXXXXXXXXXXX near XXXXXXXXXXXX in Province, Canada.
- f) "Can Co" means XXXXXXXXXXXX.
- g) "Can LP" means XXXXXXXXXXXX, as more fully described in paragraph 10 below.
- h) "Code" means the US Internal Revenue Code of 1986, as amended.
- i) "Permanent Establishment" or "PE" has the meaning ascribed to in Article V of the Treaty.
- j) "Promissory Note" is an interest bearing promissory note owing from US Sub to US Parent Co, as further described in paragraph 25 below.
- k) "Province" means XXXXXXXXXXXX.
- l) "Qualifying Person" has meaning ascribed to in paragraph 2 of Article XXIXA of the Treaty.
- m) "Regulations" means the Income Tax Regulations, C.R.C. 1978, c. 945, as amended.
- n) "Related persons" has the meaning assigned by subsection 251(2) of the Act.
- o) "Sale Agreement" means the agreement to be entered into between US Parent Co and US Sub transferring US Parent Co's interest in Can LP to US

Sub in exchange for shares in US Sub and the Promissory Note.

p) "Target" means XXXXXXXXXXXX.

q) "Taxable Canadian corporation" is as defined in subsection 89(1) of the Act.

r) "Treaty" or "Canada-US Tax Treaty" means the Convention Between Canada and The United States of America With Respect to Taxes on Income and on Capital Signed on September 26, 1980 as Amended by the Protocols Signed on June 14, 1983, March 28, 1984, March 17, 1995, July 29, 1997 and September 21, 2007.

s) "United States" or "US" means the United States of America.

t) "US Parent Co" is XXXXXXXXXXXX.

u) "US Sub" is XXXXXXXXXXXX.

#### Facts

1. US Parent Co is a public corporation listed on the XXXXXXXXXXXX.

2. US Parent Co reorganized as a company under the laws of XXXXXXXXXXXX in XXXXXXXXXXXX.

3. US Parent Co is liable to tax in the US by reason of its domicile, place of management, place of incorporation or any other criterion of a similar nature.

4. US Parent Co is a corporation resident in the US for purposes of the Treaty and is a Qualifying Person.
  
5. Through its investment in Can LP, US Parent Co carries on business in Canada through a Permanent Establishment.
  
6. Can Co is a Taxable Canadian Corporation and is a wholly owned subsidiary of US Parent Co. Can Co acts as the general partner of Can LP.
  
7. US Sub is a newly incorporated US limited liability corporation organized under the laws of XXXXXXXXXXXX and is a wholly owned subsidiary of US Parent Co.
  
8. US Sub elected to be treated as a corporation for the purposes of the Code effective the date of its formation.
  
9. US Sub is a Qualifying Person.
  
10. Can LP is a partnership formed under the laws of Province, Canada. Can LP owns and operates the Business in the Province, Canada. US Parent Co has a XXXXXXXXXXXX% limited partner interest in Can LP. Can LP elected to be treated as an entity taxable as a corporation for the purposes of the Code.
  
11. US Parent Co files its T2 Corporation Income Tax Return with the XXXXXXXXXXXX Taxation Centre.

13. On XXXXXXXXXXXX, US Parent Co entered into an agreement to purchase substantially all the assets of the Target for \$XXXXXXXXXXXX, of which \$XXXXXXXXXXXX was payable in cash and \$XXXXXXXXXXXX was payable with US Parent Co shares, plus an amount of approximately \$XXXXXXXXXXXX for Target's working capital. The Target's assets purchased comprised the Business and substantially all the related operating assets, including real property, equipment, leaseholds and licenses.

14. In XXXXXXXXXXXX, partly in order to finance its acquisition of the Target's assets, US Parent Co underwent a public offering of its shares, which raised about \$XXXXXXXXXXXX in additional equity (the "Equity Issue"), before expenses.

15. Concurrently with the Equity Issue, in XXXXXXXXXXXX, partly in order to finance its acquisition of the Target's assets and provide additional funding as further described in paragraph 16, US Parent Co underwent a public offering of \$XXXXXXXXXXXX total principal amount of XXXXXXXXXXXX Notes with interest payable thereon at the rate of XXXXXXXXXXXX% payable semi-annually. Under the terms of the base and supplemental indentures governing the XXXXXXXXXXXX Notes, US Parent Co was not required to repay any principal amount of the XXXXXXXXXXXX Notes before the maturity date except in the case of certain events of default. The XXXXXXXXXXXX Notes matured on XXXXXXXXXXXX.

16. Immediately after the acquisition described in paragraph 13 above, an additional \$XXXXXXXXXXXX was provided by US Parent Co to fund additional working capital requirements and acquire additional capital assets used in the Business.

17. In XXXXXXXXXXXX, US Parent Co issued \$XXXXXXXXXXXX in aggregate principal

amount of XXXXXXXXXXXX% XXXXXXXXXXXX Notes due XXXXXXXXXXXX, referred to as the "XXXXXXXXXX Notes" to principally refinance the XXXXXXXXXXXX Notes. The XXXXXXXXXXXX Notes bear interest at a rate of XXXXXXXXXXXX% per annum, payable semi-annually in arrears on XXXXXXXXXXXX and XXXXXXXXXXXX, commencing XXXXXXXXXXXX. The XXXXXXXXXXXX Notes mature on XXXXXXXXXXXX.

18. XXXXXXXXXXXX.

19. XXXXXXXXXXXX.

20. XXXXXXXXXXXX.

21. XXXXXXXXXXXX.

22. The XXXXXXXXXXXX Notes and XXXXXXXXXXXX Notes are not secured by real or immovable property, or by real rights situated in Canada.

23. Of the XXXXXXXXXXXX Notes and XXXXXXXXXXXX Notes outstanding as of XXXXXXXXXXXX, \$XXXXXXXXXX was used to finance the acquisition and operations of the Business.

#### Proposed Transactions

24. Pursuant to the Sale Agreement US Parent Co will transfer its XXXXXXXXXXXX% limited partnership interest in Can LP to US Sub for fair market consideration consisting of a Promissory Note and XXXXXXXXXXXX shares of US Sub. The Promissory Note will have a face amount of \$XXXXXXXXXX and bear interest at a rate of XXXXXXXXXXXX% per annum.

25. Subsequent to the transaction described in paragraph 25 above, US

Parent Co will not have a PE in Canada.

26. US Parent Co and US Sub will file a notice under subsection 116(1) of the Act with respect to the disposition of the partnership interest in Can LP.

#### Additional Information

27. The principal amount of the Promissory Note will be \$XXXXXXXXXX, equal to the portion of the outstanding XXXXXXXXXXXX Notes and XXXXXXXXXXXX Notes that was used to finance the acquisition and operations of the Business and is presently attributed to the Canadian PE of US Parent.

28. The interest rate on the Promissory Note will correspond to the interest rate on the outstanding XXXXXXXXXXXX Notes and XXXXXXXXXXXX Notes. The interest on the Promissory Note is not the type of interest described in subparagraph 6(b) of Article XI of the Treaty.

29. The Promissory Note will not be secured by real or immovable property, or by real rights situated in Canada.

30. The amount of interest to be attributed to the PE of US Sub will be determined in accordance with Article VII of the Treaty.

31. US Parent Co and US Sub are members of an affiliated group of corporations that will elect to file an income tax return on a consolidated basis under the Code (the "US Group"). As such, the respective incomes of US Parent Co and US Sub will be included in the computation of the "consolidated taxable income" of the US Group. In calculating the group's consolidated taxable income, the "separate

taxable income" of each member of the group must be first determined and calculated under the Code for US federal income tax purposes.

32. In the calculation of its "separate taxable income" under the Code for a taxation year, US Parent Co is required to include the amount of interest on the Promissory Note that accrues in the year. The payment of the interest by US Sub to US Parent Co on the Promissory Note will be treated as a payment of interest to US Parent Co and will not be disregarded for US federal income tax purposes.

33. US Parent Co will be the beneficial owner of the interest on the Promissory Note for purposes of the Treaty.

34. Can LP distributions will be included in the income of US Sub for the purposes of the Code. If Can LP were considered fiscally transparent under the taxation laws of the United States, for the purposes of the Convention the same amount of interest from the Promissory Note would be included in the income of US Parent Co in the manner described in paragraph 33 above.

#### Purpose of Proposed Transactions

35. US Parent Co operates its businesses separately through various subsidiaries and affiliates in order to limit its liability with respect to each of its businesses. The proposed structure fulfils this purpose while: (i) being neutral from a Canadian tax perspective as all of the income from the Business will continue to be taxable in Canada; and  
XXXXXXXXXX.

#### Ruling

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

To the extent that US Parent Co would otherwise be subject to tax under Part XIII of the Act pursuant to subsection 212(13.2) and paragraph 212(1)(b) of the Act on the interest payments made to it by US Sub on the Promissory Note, it will be exempted from such tax pursuant to paragraph 1 of Article XI of the Treaty.

The above ruling is 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 XXXXXXXXXXXX.

#### 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 any tax consequences relating to the Facts, Proposed Transactions and Additional Information described herein other than that specifically described in the ruling given above.

Without limiting the generality of the foregoing, nothing in this ruling letter should be construed as implying that the CRA has considered or is giving an opinion on:

(a) the fair market values of any properties referred to in this ruling letter;

whether the interest on the Promissory Note should, in whole or in part, be attributed to the Canadian PE of US Sub for purposes of Article VII of the Treaty; or

(b) whether the provisions of subsection 18(4) of the Act apply to limit the extent to which interest expense incurred by US Sub is deductible in computing US Subco's share of the income from the Business.

Yours truly,

XXXXXXXXXX

For Director

International Division

Income Tax Rulings Directorate