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AUTHOR XXXXXXXXXXXX

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SUBJECT Disposition of property by a foreign partnership

SECTION 95(1)

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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: Whether disposition of excluded property by Foreign LP results in FAPI.

POSITION: No

REASONS: FAPI definition in subsection 95(1).

XXXXXXXXXX

2014-053666

XXXXXXXXXX, 2015

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. The scope of the initial request was subsequently modified and this letter reflects such modified scope.

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.

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") and every reference herein to a section, subsection, paragraph, subparagraph or clause is a reference to the relevant provisions of 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, the following terms have the meaning specified below:

- (a) “adjusted cost base” ” has the meaning assigned to that term in section 54 of the Act;
- (b) “Business” means the business of XXXXXXXXXXXX located adjacent to the Properties;
- (c) “Canco” means XXXXXXXXXXXX;
- (d) “capital property” has the meaning assigned to that term in section 54 of the Act;
- (e) “controlled foreign affiliate” has the meaning assigned to that term in subsection 95(1) of the Act;
- (f) “Country X” means XXXXXXXXXXXX;
- (g) “CRA” means Canada Revenue Agency;
- (h) “designated liquidation and dissolution” has the meaning assigned to the term in subsection 95(1) of the Act;
- (i) “excluded property” has the meaning assigned to that term in subsection 95(1) of the Act;

(j) “foreign accrual property income”, also referred to herein as “FAPI”, has the meaning assigned to that term in subsection 95(1) of the Act;

(k) “foreign affiliate” has the meaning assigned to that term in subsection 95(1) of the Act;

(l) “Foreign Corp” means XXXXXXXXXXXX;

(m) “Foreign Holdco” means XXXXXXXXXXXX;

(n) “Foreign LP” means XXXXXXXXXXXX;

(o) “foreign resource property” has the meaning assigned to that term in subsection 66(15) of the Act;

(p) “Foreign Subco1” means XXXXXXXXXXXX;

(q) “Foreign Subco2” means XXXXXXXXXXXX;

(r) “Foreign Subco3” means XXXXXXXXXXXX;

(s) “Foreign Subco4” means XXXXXXXXXXXX;

(t) “Mine 1” means XXXXXXXXXXXX located in XXXXXXXXXXXX;

(u) “Mine 2” means XXXXXXXXXXXX located in XXXXXXXXXXXX;

(v) XXXXXXXXXXXX;

- (w) "Parent" means XXXXXXXXXXXX;

- (x) "proceeds of disposition" has the meaning assigned to that term in section 54 of the Act;

- (y) "Properties" means Mine 1 and Mine 2, collectively;

- (z) "public corporation" has the meaning assigned to that term in subsection 89(1) of the Act;

- (aa) XXXXXXXXXXXX;

- (bb) XXXXXXXXXXXX;

- (cc) XXXXXXXXXXXX;

- (dd) XXXXXXXXXXXX;

- (ee) "taxable Canadian corporation" has the meaning assigned to that term in subsection 89(1) of the Act; and

- (ff) "US\$" means United States dollars.

Facts

1. Canco is a taxable Canadian corporation that is governed by the XXXXXXXXXXXX. Its tax services office is located in XXXXXXXXXXXX, and its taxation centre is located in XXXXXXXXXXXX.

2. All of the issued and outstanding shares of Canco are owned by Parent. Parent is a taxable Canadian corporation and a public corporation that is governed by the XXXXXXXXXXXX. The shares of Parent are widely-held and are traded on the XXXXXXXXXXXX Stock Exchange.

3. Canco owns all of the issued and outstanding shares of Foreign Holdco, a corporation governed by the XXXXXXXXXXXX. Foreign Holdco is a controlled foreign affiliate of Canco.

4. Foreign Holdco owns all of the issued and outstanding shares of Foreign Subco1, a corporation governed by the XXXXXXXXXXXX. Foreign Subco1 is a controlled foreign affiliate of Canco.

5. Foreign Subco1 owns and operates Mine 1, which consists of properties that constitute foreign resource properties (i.e., land deriving its value from mineral content and other mining rights), as well as other machinery, equipment and structures. Mining activity has been undertaken on several areas of XXXXXXXXXXXX the property XXXXXXXXXXXX. Exploration activity has proven additional XXXXXXXXXXXX and extended Mine 1's life. Reclamation activities have been undertaken XXXXXXXXXXXX while mining continues elsewhere on the property.

6. Foreign Subco1 owns all of the issued and outstanding shares of Foreign Subco2, a corporation governed by the XXXXXXXXXXXX. Foreign Subco2 is a controlled foreign affiliate of Canco.

7. At the time of the proposed series of transactions described below, Foreign Subco2 will have only nominal assets and liabilities.

8. Foreign Subco1 owns all of the issued and outstanding shares of Foreign Subco3, a corporation governed by the XXXXXXXXXXXX. Foreign Subco3 is a controlled foreign affiliate of Canco.

9. Foreign Subco3 holds a XXXXXXXXXXXX% partnership interest in Foreign LP, and is the general partner of Foreign LP. At the time of the series of transactions described below, Foreign Subco3 will not have any material assets other than its interest in Foreign LP and will not have any material liabilities. Foreign Subco3 does not own any foreign resource properties other than the property held through Foreign LP.

10. Foreign Subco1 owns all of the issued and outstanding shares of Foreign Subco4, a corporation governed by the XXXXXXXXXXXX. Foreign Subco4 is a controlled foreign affiliate of Canco.

11. Foreign Subco4 holds a XXXXXXXXXXXX% partnership interest in Foreign LP, and is a limited partner of Foreign LP. Foreign Subco4 also holds other properties that constitute foreign resource properties (i.e., land deriving its value from mineral content and other mining rights).

12. Foreign LP is a limited partnership formed under the XXXXXXXXXXXX. Foreign LP does not have any outstanding liabilities and owns only the following properties:

(a) Mine 2, a XXXXXXXXXXXX mine located adjacent to Mine 1 in XXXXXXXXXXXX. Mine 2 consists of properties that constitute foreign resource properties (i.e., land deriving its value from mineral content and other mining rights), as well as several buildings. The original mining activity at Mine 2 commenced in XXXXXXXXXXXX and went into a period of cessation in XXXXXXXXXXXX. Subsequent exploration programs did not identify additional XXXXXXXXXXXX resources and the mine entered into full reclamation and closure in XXXXXXXXXXXX. Exploration activity on the property continued after XXXXXXXXXXXX and economical reserves were identified in XXXXXXXXXXXX. It is anticipated that further surface mining at Mine 2 will be undertaken to extract these new reserves. The required permits to undertake the mining operations at Mine 2 were issued to Foreign Subco1 as operator of the mine since XXXXXXXXXXXX viewed the mining of the Mine 2 property as an extension of the Mine 1 mining operation and not as a new mine. Notwithstanding that the permits were issued to Foreign Subco1, Foreign LP, if not liquidated, will be able to exploit Mine 2 under XXXXXXXXXXXX mining law. However, Foreign Subco1 will be required to charge its operating and other costs to Foreign LP for providing mining services to Foreign LP at a profit, which will affect the calculation of the depletion allowance of Foreign LP for Country X XXXXXXXXXXXX income tax purposes.

(b) Approximately XXXXXXXXXXXX of the issued and outstanding shares of Foreign Corp, a non-resident corporation, are held by Foreign LP. All or substantially all of the assets of Foreign Corp are used or held by Foreign Corp for the purpose of gaining or producing income from the Business carried on by it. The Business of Foreign Corp is an active business. No dividend has ever been paid on the shares of Foreign Corp held by Foreign LP, and all cash held by Foreign Corp is required as working capital, or for the expansion of, its Business.

(c) A note receivable in the amount of US\$XXXXXXXXXX due XXXXXXXXXXXX and bearing interest at XXXXXXXXXXXX% (the "Note"). The Note was issued in XXXXXXXXXXXX to Foreign LP by an arm's length party in consideration for the sale of land owned by Foreign LP.

Proposed Transactions

The proposed transactions will be carried out in the order set out below:

13. Foreign LP will distribute Mine 2, described in subparagraph 12(a) above, to Foreign Subco3 and Foreign Subco4 in proportion to their respective interests in Foreign LP.

14. Foreign Subco1 will authorize the liquidation and dissolution of Foreign Subco2, Foreign Subco3 and Foreign Subco4 in accordance with the applicable laws of XXXXXXXXXXXX.

15. Foreign Subco2, Foreign Subco3 and Foreign Subco4 will distribute all of their assets to Foreign Subco1 as liquidating distributions, and Foreign Subco1 will assume all liabilities and obligations of Foreign Subco2, Foreign Subco3 and Foreign Subco4.

16. Certificates of "dissolution" will be filed in respect of Foreign Subco2, Foreign Subco3 and Foreign Subco4 in accordance with the XXXXXXXXXXXX law. Upon the certificates becoming effective, Foreign Subco2, Foreign Subco3 and Foreign Subco4 will cease to exist and the shares of each corporation will be cancelled.

17. As a result of the liquidating distributions described in paragraph 15, Foreign Subco1 will become the sole member of Foreign LP and Foreign LP will effectively be dissolved and the property of Foreign LP will be considered to be distributed to Foreign Subco1. Foreign Subco1 will assume all the obligations of Foreign LP.

Additional Information

18. The proposed transactions described in paragraphs 13 to 16 will be non-taxable under Country X federal income tax laws for Foreign Subco1, Foreign Subco2, Foreign Subco3, Foreign Subco4 and Foreign LP such that no gain or loss would be recognized.

19. The liquidation and dissolution of each Foreign Subco2, Foreign Subco3 and Foreign Subco4 will be a designated liquidation and dissolution.

20. Under the terms of the partnership agreement governing Foreign LP (and under the terms of the relevant XXXXXXXXXXXX law), Foreign LP will cease to exist when Foreign Subco1 becomes the sole member of Foreign LP.

21. For Country X federal income tax purposes, the taxation years of Foreign Subco2, Foreign Subco3, Foreign Subco4 and Foreign LP will end on the date of formal dissolution.

22. The shares of Foreign Corp presently are and will continue to be excluded property of Foreign LP at the time of the proposed transactions.

23. None of the foreign resource properties relevant to this ruling request were acquired with a view to selling the property at a profit. Rather, each such property was acquired solely for the purpose of gaining or producing income from the active business of development and production of minerals carried on by each relevant owner of the properties.

24. The Mine 2 properties held by Foreign LP presently are and will continue to be excluded property of Foreign LP at the time of the proposed transactions.

25. The Note held by Foreign LP is not and will not be excluded property of Foreign LP at the time of the proposed transactions. Accordingly, its disposition will result in FAPI to the extent of the taxable portion of the capital gain determined pursuant to paragraph 95(2)(f) of the Act.

26. The partnership interests in Foreign LP will be excluded property of each respective partner immediately prior to the liquidating distributions described in paragraph 15 above.

27. The disposition of the partnership interests upon the dissolution of Foreign LP will result in a capital gain determined pursuant to paragraph 95(2)(f) of the Act.

28. The fair market value of each of the Mine 2 buildings and the shares of Foreign Corp does not exceed their respective adjusted cost base to Foreign LP. Therefore, no capital gain is anticipated on the dispositions of these properties by Foreign LP as determined for purposes of paragraph 95(2)(f) of the Act.

29. XXXXXXXXXXXX

Purpose of the Proposed Transactions

30. The current holding structure for Mine 2 is considered unnecessary and undesirable. The purpose of the proposed transactions is to eliminate the Country X entities that hold Mine 2 and consolidate both Properties in the hands of Foreign Subco1, which holds the XXXXXXXXXXXX permit to construct, operate and reclaim the new mining activity at Mine 2. The main purpose of the liquidation of Foreign LP is to eliminate Country X federal income tax compliance issues described in paragraph 12(a) above associated with holding and operating Mine 2 by Foreign LP.

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:

No FAPI will result from the distribution, described in paragraph 13 above, of Foreign LP's Mine 2 properties, described in paragraph 12(a) above, and from the disposition of the shares of Foreign Corp upon the dissolution of Foreign LP provided these properties are excluded property at the time of the relevant dispositions. The above ruling is given subject to the limitations and qualifications set out in Information Circular 70-6R6 dated August 29, 2014, 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 whether Foreign LP's property will be excluded property at the time of the proposed transactions.

Yours truly,

XXXXXXXXXXXX

For Director

International Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch