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SUBJECT Donation of shares to public foundation

SECTION 149.1(3), 149.1(12), 245(2)

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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: (1) Will the transfer of 100% of the voting common shares of a taxable Canadian corporation to a public foundation result in the public foundation acquiring control of the corporation under paragraph 149.1(3)(c)? (2) Will the GAAR apply to the proposed transaction?

POSITION: (1) No, the foundation is deemed not to have acquired control of the corporation by virtue of paragraph 149.1(12)(a). (2) GAAR will not apply.

REASONS: (1) The foundation did not acquire for consideration more than 5% of the common shares of the corporation. (2) Based on the facts provided, the proposed transaction would not be considered an avoidance transaction.

XXXXXXXXXX

2012-044332

XXXXXXXXXX, 2013

Dear XXXXXXXXXX:

Re: Advance Income Tax Ruling Request

XXXXXXXXXX

This is in reply to your letters of XXXXXXXXXX in which you requested an advance income tax ruling on behalf of the above named taxpayers. We also acknowledge the information provided in subsequent emails and during our various telephone conversations in connection with your request (XXXXXXXXXX).

This letter is based solely on the Facts and Proposed Transaction described below. Any documentation submitted in respect of your request does not form part of the Facts and Proposed Transaction 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 taxpayers involved, none of the issues involved in the ruling request:

a) is in an earlier return of the taxpayers or a related person;

- b) is being considered by a Tax Services Office or Taxation Centre in connection with a previously filed tax return of the taxpayers or a related person;
- c) is under objection by the taxpayers or a related person;
- d) is before the courts or, if a judgment has been issued, the time limit for appeal to a higher court has expired; or
- e) is the subject of a ruling previously issued to the taxpayers by the Directorate.

Unless otherwise stated, all references to a statute are to the Income Tax Act R.S.C. 1985, 5th Supplement, c.1, as amended, (the "Act") and all terms used herein that are defined in the Act and unless otherwise stated, every reference in this letter to a statutory provision is a reference to the relevant provision of the Act.

Our understanding of the relevant definitions, the Facts, Proposed Transaction and the Purposes of the Proposed Transaction is as follows:

DEFINITIONS

In this letter the following terms or expressions have the meanings specified:

XXXXXXXXXX;

"charitable organization" has the meaning assigned by subsection 149.1(1);

"Corporation" means XXXXXXXXXXXX;

"CRA" means the Canada Revenue Agency;

"Foundation" means XXXXXXXXXXXX;

XXXXXXXXXX;

"Intellectual Property" means any and all (a) trade-marks, trade-mark applications, trade names, certification marks; (b) patents and patent applications; and (c) copyrights, domain names, industrial designs, trade secrets, know-how, software, source code, formulae, processes, user interfaces, inventions, technical expertise, technology research data, and other similar property with respect to, related to or in any way associated with the Technology;

XXXXXXXXXX;

XXXXXXXXXX;

"public foundation" has the meaning assigned by subsection 149.1(1);

"registered charity" has the meaning assigned by subsection 248(1);

"taxable Canadian corporation" has the meaning assigned by subsection 89(1); and

"Technology" means XXXXXXXXXXXX.

FACTS

1. The Foundation is a corporation without share capital incorporated under the XXXXXXXXXXXX on XXXXXXXXXXXX. Its office is located at XXXXXXXXXXXX. The Foundation is a public foundation and a registered charity. The objects of the Foundation are limited to the application of funds for the benefit of the XXXXXXXXXXXX.
2. XXXXXXXXXXXX. The XXXXXXXXXXXX is a XXXXXXXXXXXX and operates pursuant to the XXXXXXXXXXXX. The XXXXXXXXXXXX is a charitable organization and a registered charity.
3. The XXXXXXXXXXXX and Foundation deal with each other at arm's length. The XXXXXXXXXXXX and Foundation are each governed by independent boards.
4. As a by-product of the management activities undertaken by the XXXXXXXXXXXX, the XXXXXXXXXXXX developed the Technology. The Technology was developed XXXXXXXXXXXX. The XXXXXXXXXXXX developed

the Technology for its own use XXXXXXXXXX. The development of the Technology took place over the course of approximately XXXXXXXXXX, and was launched and became fully operational at the XXXXXXXXXX in XXXXXXXXXX.

5. Whereas the Technology was developed by the XXXXXXXXXX for XXXXXXXXXX purposes, the board of trustees of the XXXXXXXXXX determined that the Technology could be commercialized, XXXXXXXXXX. As the XXXXXXXXXX is not in the business of technology development, modification or commercialization, a decision was made to establish a business corporation and to transfer the Technology to the business corporation for the purpose of commercialization.

6. The Corporation is a corporation incorporated under the XXXXXXXXXX on XXXXXXXXXX and is a taxable Canadian corporation. The Corporation was established for the purpose of acquiring and commercializing the Technology. Authorized capital of the Corporation consists of an unlimited number of common shares. No shares were issued on incorporation.

7. The Foundation agreed to provide initial financing to the Corporation XXXXXXXXXX.

8. XXXXXXXXXX. The Foundation and Corporation agreed to document this amount by way of a demand promissory note, dated XXXXXXXXXX, payable by the Corporation to the Foundation. The promissory note bears interest at a rate equal to XXXXXXXXXX and is secured by a general security agreement over the assets of the Corporation. The Corporation anticipates repaying the promissory note from the profits relating to the successful commercialization of the Technology.

9. Pursuant to an asset transfer agreement dated XXXXXXXXXX, the XXXXXXXXXX sold the Intellectual Property relating to the Technology to the Corporation at a purchase price equal to \$XXXXXXX, which the XXXXXXXXXX and the Corporation have agreed is the fair market value of the Intellectual Property. The XXXXXXXXXX board of trustees did not undertake an independent valuation of the Intellectual Property at the time of transfer. Rather, they adopted a value estimate that was based on an amount that the Foundation had determined it was willing to invest based on its consideration of the business case for commercialization of the Technology. The purchase price for the Intellectual Property was paid by the Corporation by the issuance of XXXXXXXXXX common shares in the capital stock of the Corporation to the XXXXXXXXXX.

10. At the time of the transfer of the Intellectual Property to the Corporation, it was the intention of the XXXXXXXXXX that the Corporation's shares that the XXXXXXXXXX received would be transferred to the Foundation by way of gift, provided that the gift could be completed without adverse consequences under the Act. The Foundation does not currently own any shares of the Corporation.

PROPOSED TRANSACTION

11. The XXXXXXXXXX proposes to transfer the XXXXXXXXXX common shares in the capital of the Corporation to the Foundation pursuant to a deed of gift.

PURPOSES OF THE PROPOSED TRANSACTION

12. The general purpose of the Proposed Transaction is to optimize economic benefit to the XXXXXXXXXX of the successful commercialization of the Technology. The specific purposes of the Proposed Transaction are as follows:

- a) The establishment of the Corporation and the transfer of the Intellectual Property to the Corporation was undertaken for the purpose of commercializing the Technology and directing the profits from successful commercialization for XXXXXXXXXX purposes. XXXXXXXXXX.
- b) XXXXXXXXXX.
- c) The XXXXXXXXXX is in the business of XXXXXXXXXX, whereas the Foundation is in the business of raising funds and acquiring, holding and managing investments. The Foundation has appropriate staff, expertise and experience to hold the shares of the Corporation. The transfer to the Foundation of the common shares of the Corporation is desirable and necessary to optimize control and financial management of the Technology commercialization project.

RULINGS GIVEN

Provided that the preceding statements constitute a complete and accurate disclosure of all the relevant Facts, the Proposed Transaction, and Purposes of the Proposed Transaction, and provided further that the Proposed Transaction is carried out as described above, we confirm that:

- A. For the purposes of paragraph 149.1(3)(c), the Foundation will be deemed not to have acquired control of the Corporation pursuant to paragraph 149.1(12)(a), as a result of the Proposed Transaction described in 11 above.
- B. Subsection 245(2) will not be applied as a result of the Proposed Transaction, in and by itself, to redetermine the tax consequences confirmed in Ruling A above.

The above rulings are given subject to the limitations and qualifications set out in Information Circular 70-6R5 and are binding, subject to the caveats noted below, on the CRA provided that the Proposed Transaction is completed before XXXXXXXXXX.

CAVEATS

Except as expressly stated, this letter does not imply acceptance, approval or confirmation of any other income tax implications of the Facts or Proposed Transaction described herein. For greater certainty, the CRA has not considered, reviewed, agreed to or ruled on:

- a) the determination of the fair market value of the Intellectual Property, the common shares of the Corporation or other property referred to herein;
- b) the determination of arm's length between any of the parties referred to herein; and
- c) any other tax consequence relating to the Facts or Proposed Transaction described herein other than those specifically described in the rulings given above.

Yours truly,

XXXXXXXXXX

Section Manager

for Division Director

Financial Industries and Trusts Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch