



Deloitte LLP
Brookfield Place
181 Bay Street
Suite 1400
Toronto ON M5J 2V1
Canada

Tel: +14166438753
Fax: +14166016703
www.deloitte.ca

October 15, 2013

Tax Policy Branch
Department of Finance Canada
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Dear Sir or Madam,

August 16, 2013 draft legislation with respect to foreign affiliate dumping – Deloitte’s comments

We are writing to communicate a specific concern with a provision contained in the draft legislation with respect to the foreign affiliate dumping rules that was released for public comment on August 16, 2013. We are grateful for the opportunity to provide this input.

Our concern relates to the definition of “dividend time” contained in draft subsection 212.3(1.1). As noted in the explanatory notes, the concept of dividend time is relevant for identifying the time when a dividend is deemed to have been paid in accordance with paragraph 212.3(2)(a) and the paid-up capital adjustment under subsection 212.3(7).

Pursuant to paragraph (a) of subsection 212.3(1.1), the dividend time will arise at the investment time if “the CRIC is controlled by the parent at the investment time”. We believe that there may be unintended ambiguity as a consequence of testing whether the CRIC is controlled by the parent at the investment time. If a foreign parent (“FPCo”) controls a corporation resident in Canada (“Canco”) immediately before a transaction, but as a consequence of the transaction it ceases to control Canco, should the foreign affiliate dumping provisions apply, assuming that there are no anti-avoidance aspects to the transaction? In a very simple example, suppose FPCo controls Canco. If Canco offers to acquire another corporation – a subject corporation – and as a consequence of this acquisition, in exchange for common shares of Canco, the FPCo ceases to control Canco, should the foreign affiliate dumping rules apply? We think not. The ambiguity arises because immediately before the investment time Canco is a CRIC and immediately after the investment time it is not. At the exact moment of the investment, the transaction through which Canco ceases to be a CRIC since FPCo loses control, does FPCo control Canco? Even if it does, should that matter for the purpose of these rules?

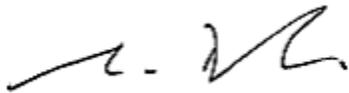
We believe that the rules could operate as intended in the above circumstances without the ambiguity if there were to be a minor amendment to the wording of proposed paragraph 212.3(1.1)(a). If paragraph (a) were to read “if the CRIC is controlled by the parent *immediately after* the investment time, the investment time; or”, then the objectives of the provision would be maintained but an unintended application of the foreign affiliate dumping provisions would not arise. We do not envision this proposed

rewording causing any “leakage” to the foreign affiliate dumping regime. (We observe that paragraph (b) remains relevant should there be an attempt to avoid the provisions by manipulating ownership, and we presume that provision will be retained.)

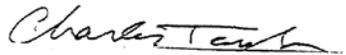
We would welcome the opportunity to meet with you to discuss this issue. Please feel free to contact either of the undersigned with any questions or to arrange a meeting.

Yours truly,

Deloitte LLP



Albert Baker, FCA
Tax Policy Leader



Charles Taylor
Partner

Copy to: Mr. Brian Ernewein
General Director, Tax Policy Branch
Department of Finance Canada