



Your file Votre référence

Our file Notre référence

Koskie Minsky LLP
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2010-037349

July 19, 2011

**Re: Advance Income Tax Ruling
 Nortel Networks Corporation ("Parentco")
 Nortel Health and Welfare Trust**

This is in reply to your letter of July 6, 2010 in which you requested an advance income tax ruling on behalf of the Disabled Employees, Entitled Survivors, Retired Employees, Northern Trust, Parentco and Employerco and your supplemental request of June 12, 2011 in respect of the LTD Life Beneficiaries. We also acknowledge your additional submissions of August 11 and 27, 2010, September 1, 2010, October 19, 2010 and December 17, 2010 and our various related telephone conversations (Sigouin/Tobias and Shields/Tobias).

We understand that, to the best of your knowledge and that of the taxpayer, none of the issues involved in this ruling is:

- (i) in an earlier return of the taxpayer or a related person,
- (ii) being considered by a tax services office or taxation centre in connection with a previously filed tax return of the taxpayer or a related person,
- (iii) under objection by the taxpayer or a related person,
- (iv) before the courts, or
- (v) the subject of a ruling previously issued by the Directorate to the 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 all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

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Definitions:

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

“CCAA” means *Companies’ Creditors Arrangement Act*.

“CCAA Decision” means the Court’s decision in *Nortel Networks Corporation (Re)*, 2010 ONSC 5584 dated November 9, 2010 in the matter of the CCAA proceedings.

“Court” means the Ontario Superior Court of Justice.

“Disabled Employees” means a group of unnamed individuals consisting of Canadian employees of Employerco who have a vested right to receive long-term disability income under the HWT and who are entitled to receive a lump sum payment from, and in respect of the termination of, the HWT in accordance with the CCAA Decision. An individual member of such group is hereinafter referred to as a Disabled Employee.

“Employerco” means collectively, the Canadian affiliates of Parentco, being Nortel Networks Limited, Nortel Networks Technology Corporation, Nortel Networks International Corporation and Nortel Networks Global Corporation.

“Entitled Survivors” means a group of unnamed individuals who have a vested right to receive Survivor Income Benefits and Survivor Transition Benefits under the HWT and who are entitled to receive a lump sum payment from, and in respect of the termination of, the HWT in accordance with the CCAA Decision. An individual member of such group is hereinafter referred to as an Entitled Survivor.

“HWT” means the Nortel Health and Welfare Trust that was originally established on January 1, 1980 by the Trust Agreement.

“LTD Life Beneficiaries” means a group of unnamed individuals consisting of Canadian employees of Employerco who have a vested right to have payment of premiums for group term life insurance paid by the HWT while in receipt of long-term disability income under the HWT and who are entitled to receive a lump sum payment from, and in respect of the termination of, the HWT in accordance with the CCAA Decision. An individual member of such group is hereinafter referred to as a LTD Life Beneficiary.

“Monitor” means Ernst & Young Inc. in its capacity as Monitor of Parentco and Employerco, as appointed under an order of the Ontario Superior Court of Justice on January 14, 2009 in the CCAA proceedings.

“Parentco” means Nortel Networks Corporation.

“Retired Employees” means a group of unnamed individuals consisting of retired Canadian employees of Employerco who have a vested right to have payment of premiums for group term life insurance paid by the HWT and who are entitled to receive

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a lump sum payment from, and in respect of the termination of, the HWT in accordance with the CCAA Decision. An individual member of such group is hereinafter referred to as a Retired Employee.

“Settlement Agreement” means the settlement agreement dated as of March 30, 2010 between Parentco, Employerco, the Monitor and representatives of certain current and former employees of Employerco, which was approved by the Court on March 31, 2010 and was subsequently affirmed by the *Court of Appeal for Ontario in Nortel Networks Limited (Re)*, 2010 ONCA 402 by order dated June 3, 2010.

“Survivor Income Benefit” means the monthly benefits paid to eligible survivors of a deceased employee of Employerco, which are payable from the HWT for the lifetime of the survivor and constitute a ‘death benefit’ as defined and to the extent it is recognized as such in subsection 248(1) of the Act.

“Survivor Transition Benefit” means the monthly benefits paid to eligible survivors of a deceased employee of Employerco, which are payable for a period of 5 years after the death of the employee under the HWT and constitute a ‘death benefit’ as defined and to the extent it is recognized as such in subsection 248(1) of the Act.

“Trustee” means Northern Trust Company, Canada, in its capacity as trustee of the HWT.

“Trust Agreement” means the trust agreement between Northern Telecom Limited (the predecessor corporation to Nortel Networks Limited) and Montreal Trust Company (as predecessor trustee of the HWT) and dated January 1, 1980, as amended on September 24, 1984 and on June 1, 1994 for the establishment of a trust fund, created for the purpose of providing health and welfare benefits to active and retired employees of Employerco and their eligible dependents, as described further in paragraphs 5 and 6.

Our understanding of the facts, proposed transactions and the purpose of the proposed transactions is as follows:

FACTS

1. Parentco and Employerco filed for and obtained protection under the CCAA by order of the Court dated January 14, 2009.
2. On May 21, 2009, Koskie Minsky LLP was appointed representative counsel for the Retired Employees and for the Entitled Survivors. On July 30, 2009, Koskie Minsky LLP was appointed representative counsel for the Disabled Employees and the LTD Life Beneficiaries.
3. Under CCAA protection, Employerco divested most of the assets comprising its various business units such that Employerco no longer has a substantial active employee population in Canada.

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4. Northern Telecom Limited, a predecessor to Nortel Networks Limited and the principal Canadian operating subsidiary of Parentco, established the HWT by Trust Agreement on January 1, 1980.
5. The Trust Agreement outlines that Employerco established certain health and welfare plans, as follows: a Health Care Plan; a Management Long-Term Disability Plan; a Union Long-Term Disability Plan; a Management Survivor Income Benefit Plan; a Management Short-Term Disability Plan and a Group Term Life Insurance Plan. These plans are collectively referred to in the Trust Agreement as the Health and Welfare Plan. To fund the Health and Welfare Plan, a trust fund was created that was to be administered by the Trustee in accordance with the terms of the Trust Agreement.
6. Pursuant to the Trust Agreement, the HWT was created for the purpose of funding health and welfare benefits to active and retired employees of Employerco, including eligible dependents on whose behalf contributions are or have been made to the HWT. The plans administered by Employerco under the HWT for eligible active and former employees, pensioners and dependents, have included plans in respect of health (medical and dental) care, long-term disability, Survivor Income Benefit, Survivor Transition Benefit and group term life insurance.
7. Prior to the establishment of the HWT, an advance income tax ruling was sought and obtained. By advance ruling E-304, dated December 28, 1979, various rulings regarding the HWT were provided, and which confirmed (inter alia) that:
 - (i) long-term disability benefits received by employees under the long-term disability plan in the HWT would be taxable when received under paragraph 6(1)(f) and reportable on Form T4A, Employerco's contributions to the HWT in this regard would not result in a taxable benefit to employees by virtue of paragraph 6(1)(a) and Employerco's contributions would be deductible as ordinary business expenses in the year in which they are incurred to the extent that these contributions were required by the terms of the plan;
 - (ii) group term life insurance proceeds received under the group life insurance plan in the HWT by beneficiaries as a consequence of the death of an employee or retiree would be exempt from tax, the premium (for basic coverage) paid by the trustee of the HWT would result in a taxable benefit to employees and retirees computed in accordance with subsection 6(4) and reportable on Form T4 by Employerco where applicable, Employerco contributions to the HWT would be deductible as ordinary business expenses in the year in which they are incurred and employees' contributions would not be deductible in computing income subject to tax; and

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- (iii) Survivor Income Benefits received by survivors under the survivor income benefit plan in the HWT would qualify as a “death benefit” within the meaning of the Income Tax Act, reduced proportionately to reflect amounts, if any, contributed by the employee, and reportable on Form T4A. The employee’s contributions would not be deductible in computing income subject to tax, Employerco’s contributions would not result in a taxable benefit to employees and Employerco’s contributions would be deductible as ordinary business expenses in the year in which they are incurred to the extent such contributions were required by the terms of the plan.
- 8. The HWT is a trust described in paragraph (a.1) of the definition of “trust” in subsection 108(1) of the Act.
- 9. No Disabled Employee, LTD Life Beneficiary, Retired Employee or Entitled Survivor has an income interest in the HWT for purposes of the Act or a capital interest in the HWT for purposes of Subdivision k of Division B of Part I of the Act.
- 10. The Trustee was appointed a successor trustee of the HWT with effect from December 1, 2005.
- 11. Under the CCAA proceedings and pursuant to the Settlement Agreement, the HWT is to be wound up and the relevant parties are obligated to work towards a Court-approved distribution of the corpus of the HWT by the Trustee, or by any paying agent duly employed by Employerco or the Trustee (including Sun Life Financial Inc.) to the individuals found to be entitled thereto.
- 12. As at December 31, 2009, the net assets of the HWT (consisting primarily of cash and marketable debt securities) available to pay benefits were approximately \$75 million and actuarially determined liabilities were approximately \$250 million. Accordingly, as at December 31, 2009, a deficiency of approximately \$175 million existed to fund (i) continuing long-term disability benefits to Disabled Employees, (ii) continuing Survivor Income Benefits and Survivor Transition Benefits to the Entitled Survivors, (iii) annual premiums in respect of group term life insurance coverage for Retired Employees and (iv) continuing payment of group term life insurance premiums for LTD Life Beneficiaries.
- 13. All reported and valid claims for monthly long-term disability income payments by Disabled Employees as well as monthly Survivor Income Benefits and monthly Survivor Transition Benefits by Entitled Survivors have been paid pursuant to the terms of the relevant benefit plans up to December 31, 2010. In addition, annual premiums for group term life insurance coverage for Retired Employees and LTD Life Beneficiaries payable prior to December 31, 2010 have been paid.
- 14. In the CCAA Decision, the Court concluded that there were four groups of individuals who were entitled to participate in the distribution of the corpus of the

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HWT on termination; the Disabled Employees, the Entitled Survivors, the Retired Employees and LTD Life Beneficiaries.

15. The Court determined that the corpus of the HWT would be distributed in lump sum payments to each individual in the groups described in paragraph 14. The amount of the distribution would be calculated on a pro-rata basis for the actuarial value of the individuals' future benefits.
16. It is possible that one or more of the Disabled Employees, LTD Life Beneficiaries, Entitled Survivors and Retired Employees could no longer be resident in Canada.
17. At any particular time during the 60-month period that ends immediately prior to the distribution of a lump sum payment described in paragraph 15, no more than 50% of the fair market value of a capital interest in the HWT, if any, held by an individual described in paragraph 14, was derived directly or indirectly from one or any combination of: real or immovable property situated in Canada; Canadian resource properties; timber resource properties; and options in respect of, or interests in, or for civil law rights in, any such property, whether or not such property exists.

PROPOSED TRANSACTIONS

18. In accordance with paragraph 11, pursuant to the Settlement Agreement and the CCAA Decision, the HWT will make a lump sum cash payment to each Disabled Employee, LTD Life Beneficiary, Entitled Survivor and Retired Employee in the quantum determined in accordance with paragraph 15. It is understood that the lump sum cash payment to each Disabled Employee will be made in installments.
19. The HWT will be wound up.

PURPOSE OF THE PROPOSED TRANSACTIONS

20. The purpose of the Proposed Transactions is to wind-up the HWT under the CCAA proceedings and pursuant to the Settlement Agreement.

RULINGS GIVEN

Provided that the preceding statements constitute a complete and accurate disclosure of all the relevant Facts, Proposed Transactions and the purpose of the Proposed Transactions, the Proposed Transactions are completed in the manner described above and there are no other transactions that may be relevant to the rulings given, our rulings are as follows:

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- A. The payments to a Disabled Employee, as described in paragraphs 14 and 15, will not be included in a Disabled Employee's income for purposes of the Act and the payor will not be required to withhold and remit income tax or file an information return in respect of the payments.
- B. The payment to a Retired Employee or LTD Life Beneficiary, as described in paragraphs 14 and 15, will be included in the income of a Retired Employee or LTD Life Beneficiary under sections 5 and 6 of the Act in the year of receipt and will be subject to appropriate income tax withholding in accordance with subsection 153(1) of the Act. The payor is required to file an information return in prescribed form in respect of the payment in accordance with subsection 200(1) of the Income Tax Regulations (the "Regulations").
- C. The payment to an Entitled Survivor, as described in paragraphs 14 and 15, will constitute a 'death benefit' as defined and to the extent it is recognized as such in subsection 248(1) of the Act, and will be included in an Entitled Survivor's income in the year of receipt under subparagraph 56(1)(a)(iii) of the Act and subject to appropriate income tax withholding pursuant to subsection 153(1) of the Act. The payor is required to file an information return in prescribed form in respect of the payment in accordance with subsection 200(1) of the Regulations.

Where an Entitled Survivor is a non-resident of Canada, then subject to the application of subsection 10(6) of the Income Tax Application Rules, unless an Entitled Survivor files with the Minister a "required statement", as defined in subsection 809(4) of the Regulations, the payor will be required to withhold and remit the 25% Part XIII tax payable under paragraph 212(1)(j) of the Act and submit a statement in prescribed form in respect of the payment pursuant to subsection 215(1) of the Act.

- D. In respect of the Facts and Proposed Transactions described herein, no Disabled Employee, LTD Life Beneficiary, Retired Employee or Entitled Survivor who is a non-resident of Canada will have disposed of a taxable Canadian property for income tax purposes.

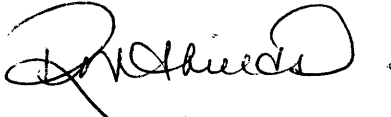
The above advance income tax rulings, which are based on the Act and Regulations in their present form and do not take into account any proposed amendments thereto, are given subject to the general limitations and qualifications set out in Information Circular 70-6R5 Advance Income Tax Rulings, dated May 17, 2002, and are binding on the Canada Revenue Agency provided that the proposed transaction is completed by January 19, 2012.

This letter is based solely on the facts and proposed transactions described above. The documentation submitted with your request does not form part of the facts and proposed transactions and any references thereto are provided solely for the convenience of the reader.

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Further, nothing in this letter should be construed as implying that the CRA has confirmed, reviewed or made any determination in respect of any tax consequences relating to the facts, or the proposed transactions or any transaction or event taking place either prior or subsequent to the implementation of the proposed transactions, whether described in this letter or not, other than those specifically described in the rulings given above.

Yours truly,

A handwritten signature in black ink, appearing to read "Renée Shields". The signature is fluid and cursive, with a large initial "R" and "S".

Renée Shields
for Director
Business and Personal Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch