
Advance Ruling – Unofficial Translation

[UNOFFICIAL TRANSLATION OF AN ADVANCE RULING ISSUED BY THE *MINISTÈRE DU REVENU DU QUÉBEC*]

Québec, January 29, 2010

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Subject: *Taxation Act*, R.S.Q., c. I-3
Gift of flow-through shares
Our Ref: 09-006878-001
Your Ref: 227212

Dear Sir:

This is further to your letter of April 24, 2009, requesting a ruling from us with respect to transactions involving a gift of flow-through shares by an individual to a charity, as described in paragraph 27. This request was later amended by your letter of January 8, 2010.

Facts

1. PearTree Financial Services Ltd., hereinafter the “Promoter”, was incorporated on November 27, 2007 under the *Business Corporations Act*, R.S.O. 1990, c. B-16. Its head office is located at 110 Eglinton Avenue West, Suite 400, Toronto, Ontario, M4R 1A3. Its fiscal year ends on October 31.
2. The Promoter is in the business of providing services to persons involved in philanthropy.

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3. In connection with its business, the Promoter is proposing a gifting arrangement, in accordance with paragraphs 13 to 38, that would involve gifts to a charity and the financing of a “qualified corporation” within the meaning of section 726.4.15 or 726.4.17.7 of the *Taxation Act*, R.S.Q., c. I-3 (“the *Taxation Act*”).
4. In accordance with sections 1079.2 and 1079.3 of the *Taxation Act*, the Promoter has obtained Tax Shelter ID number QAF-08-01275.
5. The qualified corporation be financed by the issuance of “flow-through shares” within the meaning of section 359.1 of the *Taxation Act*.
6. XXXXXXXXXXXX, hereinafter “XXXXXXXXXXXX”, is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, and having its head office at 580 Grande-Allée East, Suite 380, Québec, Québec, G1R 2K2.
7. XXXXXXXXXXXX is both a “taxable Canadian corporation” and a “public corporation” within the meanings of paragraphs 570(m) and 570(o) of the *Taxation Act*, respectively.
8. XXXXXXXXXXXX is a “development corporation” within the meaning of section 363 of the *Taxation Act*, and its principal business is one or a combination of the activities set out in section 363(b) of that Act.
9. XXXXXXXXXXXX’s principal business is not one or a combination of the activities set out in paragraphs 363(h) and 363(i) of the *Taxation Act*.
10. As of January 8, 2010, XXXXXXXXXXXX’s issued and outstanding share capital consisted of 74,057,945 common shares. The corporation is authorized to issue an unlimited number of shares of its capital stock.
11. XXXXXXXXXXXX’s common shares are listed on the TSX Venture Exchange, a “Canadian stock exchange” within the meaning of section 1 of the *Taxation Act*.
12. Subject to the fact that the liquidity provider (described in paragraph 17) is acting both as an agent for the purposes of the private placement (described below) and as a liquidity provider; and subject to the fact that certain donors (described in paragraphs 15 and 16) could make a gift to a charity with which they are not dealing at arm’s length, the persons involved in the proposed series of transactions are dealing with each other at arm’s length.

The proposed transactions

13. The Promoter will facilitate the structuring and implementation of the proposed transactions.

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14. As part of a private placement to be completed on or about January 31, 2010, XXXXXXXXXXXX will issue 5,400,000 common shares of its capital stock at a price of \$0.89 per share, for a total of \$4,806,000. These shares will qualify as “flow-through shares” within the meaning of section 359.1 of the *Taxation Act*.
15. The subscribers of the flow-through shares, hereinafter called the “donors”, will subscribe for the 5,400,000 flow-through shares.
16. Each of the donors is an individual and a Canadian resident. None of the donors operates a business of trading or dealing in securities or holds shares as inventory.
17. XXXXXXXXXXXX, hereinafter the “liquidity provider”, is a corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B-16. Its head office is located at XXXXXXXXXXXX. The liquidity provider will act as agent in connection with the private placement.
18. The liquidity provider will also acquire, from charities, flow-through shares that have been issued as part of the private placement and have been gifted to those charities by the donors.
19. The liquidity provider is not related to any of the parties to the proposed transactions, and it will acquire the flow-through shares in the ordinary course of its business.
20. For its services as agent, the liquidity provider will receive, from XXXXXXXXXXXX, a commission equal to 4% of the gross revenues from the sale of the flow-through shares.
21. Oberon Capital Corporation, hereinafter “Oberon”, is a corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B-16. Its head office is located at 110 Eglinton Avenue West, Suite 400, Toronto, Ontario, M4R 1A3. Like the liquidity provider, Oberon will act as agent in connection with the private placement and will negotiate the terms and conditions of the flow-through share offering with XXXXXXXXXXXX. In consideration therefore, Oberon will receive from XXXXXXXXXXXX a commission equal to 1% of the gross revenues from the sale of the flow-through shares.
22. Each donor will deposit with XXXXXXXXXXXX, hereinafter the “Escrow Agent”, an amount corresponding to the amount of such donor’s flow-through share subscription in the private placement.
23. Pursuant to a subscription agreement, XXXXXXXXXXXX will issue flow-through shares to the donors in consideration of an amount of \$0.89 per share. This amount will be paid by the Escrow Agent out of the amounts that the donors will have previously deposited.

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24. No donor will, for the purpose of acquiring flow-through shares, borrow funds from a party described in the proposed transactions.
25. Once the flow-through shares are issued, they will be listed on the TSX Venture Exchange.
26. Before the gift contemplated in paragraph 29 is made, XXXXXXXXXXXX will renounce, in favour of the donors, the expenses described in sections 359.2 and 359.2.1 that it will have incurred, the whole in accordance with Chapter X of Title VI of Book III of Part I of the *Taxation Act* (“Development of Natural Resources”).
27. The donors may but shall be under no obligation to make a gift of their flow-through shares to one or more charities. These organizations shall be determined in advance in accordance with each donor’s wishes.
28. Each charity is a “registered charity” within the meaning of section 1 of the *Taxation Act* and a “qualified donee” within the meaning of paragraph 985.1(b) of the *Taxation Act*.
29. The donors will donate their flow-through shares and the gift will be effected by notarial deed in accordance with the *Civil Code of Québec* (L.Q. 1991, c. 64). The donors will transfer their flow-through shares by instructing the transfer agent, Computershare Trust Company of Canada, to register the flow-through share certificates under the name of the charity, or to reflect the transfer of the flow-through shares in any other manner that complies with all applicable securities legislation.
30. At the time of the gift, the flow-through shares will still be listed on the TSX Venture Exchange.
31. In accordance with section 752.0.10.3 of the *Taxation Act*, each charity will issue a receipt for a gift of an amount equal to the fair market value of the flow-through shares at the time of the gift.
32. The charities intend to sell the flow-through shares after the gift and to use the proceeds from the sale in furtherance of their charitable activities. The liquidity provider will make an offer to purchase all the flow-through shares gifted. The charities will dispose of these shares for \$0.51 per share.
33. The charities will dispose of these shares to the liquidity provider, an unrelated person, that acquires such shares in the ordinary course of its business.
34. The charities will instruct the transfer agent to register the flow-through share certificates under the liquidity provider’s name.

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35. In consideration for the services rendered by the Promoter to facilitate the proposed transactions, the charities will pay the Promoter a commission equal to 14.5% of the gross proceeds from the sale of the flow-through shares to the liquidity provider.
36. None of the charities has undertaken or agreed in any manner whatsoever to sell the flow-through shares to the liquidity provider. A charity can nonetheless participate in the proposed transactions even if it chooses not to sell the flow-through shares that it receives from a donor to the liquidity provider. A charity that wishes to keep the flow-through shares in order to sell them to a third party at a later date would have to pay the Promoter the fees set out in paragraph 35 based on the selling price in question. However since, by keeping the issued shares, the charity would assume the risk of a price variation, it is unlikely that a charity would choose to assume such a risk. On the contrary, the charities are likely to sell their flow-through shares to the liquidity provider.
37. Neither the liquidity provider nor any of the donors or charities, is a specified person in relation to XXXXXXXXXXXX for the purposes of section 359.1R1 of the *Regulation respecting the Taxation Act*, R.R.Q., c. I-3, r.1. Oberon Capital Corporation is in the same situation.
38. Prior to the private placement described in paragraph 14, the Promoter will have made representations with respect to both the proposed transactions and the tax consequences thereof. These representations will assume all the facts set out in this advance ruling and will provide an overview of the tax deductions potentially available as a result of the proposed transactions.

ADDITIONAL INFORMATION

The proposed transactions will not prevent the taxpayers referred to in this application from fulfilling their tax obligations.

To the best of your knowledge and your client's knowledge, none of the matters on which you have asked for a ruling from us has been the subject of an objection or appeal in respect of a tax return that has already been filed and none of them has previously been reviewed by the Ministère du Revenu du Québec.

All material transactions related to the proposed transactions that have been carried out before submitting the request for advance rulings, or that could be undertaken following the completion of the proposed transactions, are described herein.

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ADVANCE RULINGS

Provided the statement of facts and proposed transactions set out in this letter is accurate and constitutes a full and truthful disclosure of all the relevant facts and proposed transactions, that the proposed transactions are completed as described in this letter, and that our understanding is accurate, we are issuing the following advance rulings.

- A. The gifting arrangement described in this letter will constitute a gifting arrangement within the meaning of paragraph *a.* of the definition “gifting arrangement” set out in section 1079.1, paragraph 1, of the *Taxation Act*, and a tax shelter within the meaning of clause *b.* of the definition “tax shelter” set out in that paragraph.
- B. Provided the conditions set out in Chapter X of Title VI of Book III of Part I of the *Taxation Act* (“Development of Natural Resources”) and, in particular, the conditions set out in sections 359.2 and 359.8 of that Act, are satisfied, XXXXXXXXXXXX will be able to renounce, in favour of the donors, the Canadian exploration expenses that it will have incurred.
- C. Provided the conditions set out in Division III of Chapter X of Title VI of Book III of Part I of the *Taxation Act* (“Canadian Exploration Expenses”) are satisfied and, more specifically, subject to the conditions set out in section 396 of the *Taxation Act*, a donor, in computing the donor’s income, will be able to deduct an amount not exceeding the amount set out in section 401 of the *Taxation Act*.
- D. Provided the conditions set out in Title VI.3.2 of Book IV of Part I of the *Taxation Act* (“Additional Deduction in respect of Certain Exploration Expenses Incurred in Québec”), and, more specifically, the conditions set out in section 726.4.10.1 of that Act, are satisfied, each subscriber who is an individual will be able to include in his or her “exploration base relating to certain Québec exploration expenses”, an amount equal to 25% of the Canadian exploration expenses contemplated in paragraph *a.* of section 726.4.10 of the *Taxation Act* (other than the expenses described in section 726.4.12 of the *Taxation Act*) that XXXXXXXXXXXX will have renounced in favour of such subscriber as described in paragraph 26.
- E. Provided the conditions set out in Title VI.3.2.1 of Book IV of Part I of the *Taxation Act* (“Additional Deduction in respect of Certain Surface Mining Exploration Expenses [...] Incurred in Québec” and, more specifically, the conditions set out in section 726.4.17.2.1 of that Act, are satisfied, each subscriber who is an individual will be able to include in his or her “exploration base relating to certain Québec surface mining or oil and gas exploration expenses” an amount equal to 25% of the Canadian exploration expenses contemplated in paragraph *a.* of section 726.4.17.2 of the *Taxation Act* (other than the

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expenses described in section 726.4.17.4 of the Act) that XXXXXXXXXXXX will have renounced in favour of such subscriber as described in paragraph 26.

- F. The proposed transactions, in and of themselves, will not cause a share issued as part of the private placement described in paragraph 14 to be a share described in sections 359.1R2 to 359.1R4 of the *Regulation respecting the Taxation Act* for the purposes of the expression “flow-through share” in section 359.1 of the *Taxation Act*.
- G. An amount equal to the fair market value of the shares issued, at the time such shares are gifted to a charity by a donor as part of the gifting arrangement, will constitute the eligible amount of such gift to the charity for the purpose of applying the definition “total charitable gifts” in the first paragraph of section 752.0.10.1 of the *Taxation Act*. The rules set out in sections 7.20 to 7.31 of the *Taxation Act* will not apply as a result or by reason of the proposed transactions so as to reduce the eligible amount of the gift.
- H. Provided a flow-through share is capital property to a donor who owns it, the capital gain from the gift of the share will be deemed to be nil in accordance with section 231.2 of the *Taxation Act*.
- I. Provided a flow-through share is capital property to a donor who owns it, the subscription by a donor for such a share, followed by the gift of that share, the whole in accordance with the proposed transactions, will not cause the share to cease to be capital property.
- J. The provisions of section 1079.10 of the *Taxation Act* will not apply as a result or by reason of the proposed transactions to redetermine the tax consequences confirmed in the foregoing rulings.

CAVEATS

The advance rulings set out in this letter are effective and binding on the Ministère du Revenu du Québec provided the proposed transactions are lawfully carried out or irreversibly undertaken within six months of the date hereof. They are subject to the conditions and restrictions set out in Revenu Québec Interpretation Bulletin ADM. 2/R7 of June 30, 2000.

Moreover, nothing in this letter should be construed as an acknowledgement by the Ministère du Revenu that

- (a) the exploration expenses incurred by XXXXXXXXXXXX are “Canadian exploration expenses” within the meaning of section 395 of the *Taxation Act* or expenses described in paragraph 726.4.10(a) or 726.4.17.2(a) of the *Taxation Act*;
- (b) the expenses incurred will constitute Canadian exploration expenses;

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- (c) XXXXXXXXXXXX is a “qualified corporation” within the meaning of sections 726.4.15 and 726.4.17.7 of the *Taxation Act*;
- (d) for the purposes of Chapter X of Title VI of Book III of Part I of the *Taxation Act*, XXXXXXXXXXXX qualifies as a “development corporation” within the meaning of section 363 of the *Taxation Act*;
- (e) the shares that XXXXXXXXXXXX will issue in connection with the private placement described in paragraph 14 will constitute “flow-through shares” within the meaning of section 359.1 of the *Taxation Act*;
- (f) that the Ministère has examined other potential tax consequences of the proposed transactions set out herein; or
- (g) that the Ministère is issuing a ruling or determination as to the fair market value of the flow-through shares at the time of the gift described in paragraph 29.

We trust that the above is fully satisfactory to you.

Kind regards,


Service de l'interprétation relative aux entreprises