RECENT TRANSACTIONS

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TOPICS

1. Outbound Transactions
2. Inbound Transactions
3. Canopy/Acreage

OUTBOUND TRANSACTIONS OUTLINE

1. Motivations / Benefits & Considerations
2. Recent outbound domestications
3. Maxar-type domestication transaction
4. Encana-type domestication transaction
5. Possible out-from-under steps
6. Inbound “F” reorganization *vs.* share-for-share with OFU

1. Motivations / Benefits & Considerations

Recurring/common motivations and intended benefits

- Enhanced market position in the U.S. (including ability to win US government contracts)
- Perceived desirability of investing in US securities / enhance access to certain pools of capital
- Reflect growing relative importance of US presence versus Canadian
- Eliminating Canadian residency requirement for board of directors (*e.g.*, 25% under the CBCA – note that not required under provincial corporate statutes in BC, AB, ON, QC, PEI, NS, NB)
- Mitigate certain Canadian tax inefficiencies (FAPI, FAD, etc.) or other US tax considerations (BEAT, PFIC, etc.)

1. Motivations / Benefits & Considerations (continued)

Considerations in structuring a domestication

- Consider paid-up capital, loss carryforwards & surplus balances, status of shareholders, etc.
- Consider section 128.1 ITA departure tax and Part XIV emigration tax
- Consider impact of a "sandwich" structure and determine if an out-from-under is advisable
- Consider tax impacts in foreign jurisdiction (*e.g.*, criteria for "F" reorganization in the US)

2. Recent outbound domestications

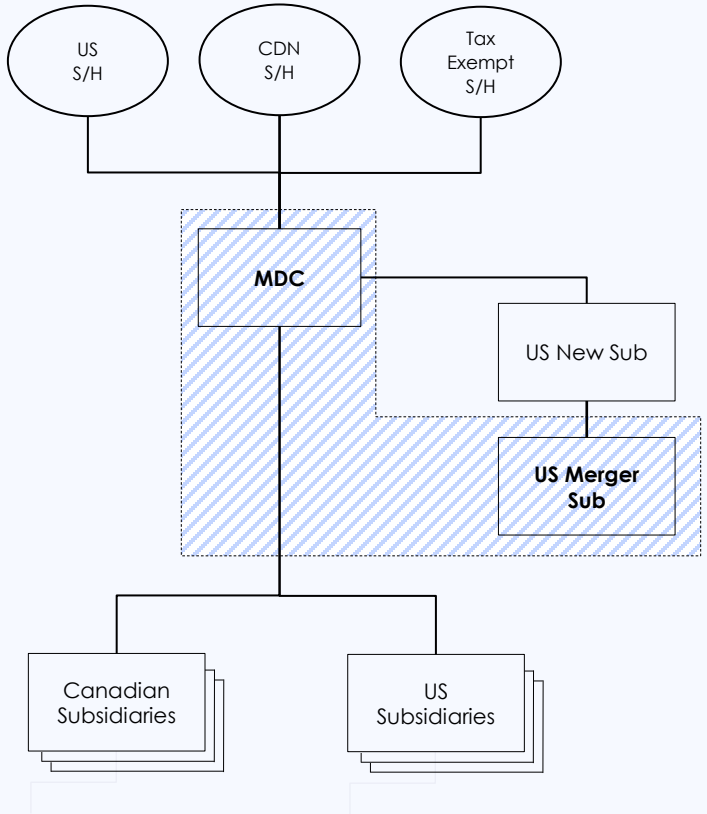
➢Mood Media Corporation (2017):

- A simple continuance under Delaware corporate law from the CBCA as the last step in an acquisition by way of plan of arrangement under the CBCA
- Context was a refinancing and buyout of the corporation further to a strategic review
- Corporation owned interest in various foreign affiliates, but no expression in the information circular that this was a key consideration
- All issued and outstanding shares are acquired, redeemed and cancelled for cash consideration – no deemed dividend expected as PUC ≥ cash consideration
- Intended to be a tax-deferred "F reorganization" for US tax purposes and that New Mood will be treated as a continuation of and successor to the company for US income tax purposes
- No discussion of section 128.1 ITA departure tax – absence of deemed dividend suggests that may not have been any latent gain on assets
- No discussion of Part XIV emigration tax – absence of deemed dividend suggests that FMV assets ≤ applicable liabilities and PUC
- No "sandwich" created but is presumably a fully taxable transaction to the corporation

2. Recent outbound domestications (continued)

- Kingsway Financial Services Inc. (2018):
  - A simple continuance under Delaware corporate law from the OBCA
  - No longer had material operations in Canada
  - Intended to, *inter alia*, mitigate foreign accrual property income exposure as the group had US NOLs that were not FAPLs and to eliminate risk of becoming a passive foreign investment company (PFIC) for US tax purposes
  - For Canadian shareholders, no disposition on the continuance
  - For US shareholders (other than for shareholders holding ≥ 10% or whose shares have a FMV ≥ US$50,000) intended to be a tax-deferred "F reorganization" for US tax purposes – we understand that viewed as an acquisition by a US corporation of all assets of the Canadian corporation in consideration for shares of the US corporation and distribution of those shares to shareholders through a liquidation of the Canadian corporation
  - No 128.1 departure tax as no latent gain on assets
  - No Part XIV emigration tax as FMV assets ≤ applicable liabilities and PUC
  - No "sandwich" created, but is a fully taxable transaction to the corporation

2. Recent outbound domestications (continued)



- MDC Partners Inc. (2021):
  - Continuance of MDC under Delaware corporate law from the CBCA, followed by a triangular merger with a new Delaware subsidiary, followed by MergeCo being converted to an LLC
  - Occurred in the context of a transaction with the Stagwell group (but had previously been proposed as a standalone domestication) – but note that shareholders of MDC Partners not being bought out
  - Substantial presence of operating business in U.S., as compared with diminishing importance of presence in Canada which represented only 7.4% of revenue in 2019
  - Access new capital pools potentially restricted to investments in US corporations (*e.g.*, certain US pension funds)
  - Eliminating 25% Canadian residency requirement for BOD
  - For Canadian shareholders, no disposition on continuance and tax deferred rollover pursuant to subsection 87(8) on the subsequent merger
  - Approx $21M of Canadian capital gains tax triggered, presumably as a result of the section 128.1 departure tax
  - Unclear whether any Part XIV tax (i.e. if FMV assets ≤ applicable liabilities and PUC)
  - Tax benefit from elimination of U.S. Base Erosion and Avoidance Tax (BEAT) related to intercompany interest payments by US subsidiaries
  - Additional tax expense for U.S. Global Intangible Low-Taxed Income (GILTI) which the company was not previously subject to as a Canadian corporation
  - No "sandwich" created, but is a fully taxable transaction for the corporation

2. Recent outbound domestications (continued)

- Zomedica (2020):
  - Continuance under Delaware corporate law from the ABCA
  - Intended to reduce regulatory burden and compliance costs
  - Enhance marketability of its shares
  - Failed to receive sufficient support from shareholders

- Akumin Inc. (2022):
  - Proposed domestication by way of continuance under Delaware corporate law from the OBCA
  - Reduce operating expenses and transactional inefficiencies that currently result from being subject to Canadian corporate laws despite having no operations in Canada
  - US tax consideration: status as a passive foreign investment company (PFIC)

3. Maxar-type domestication transaction

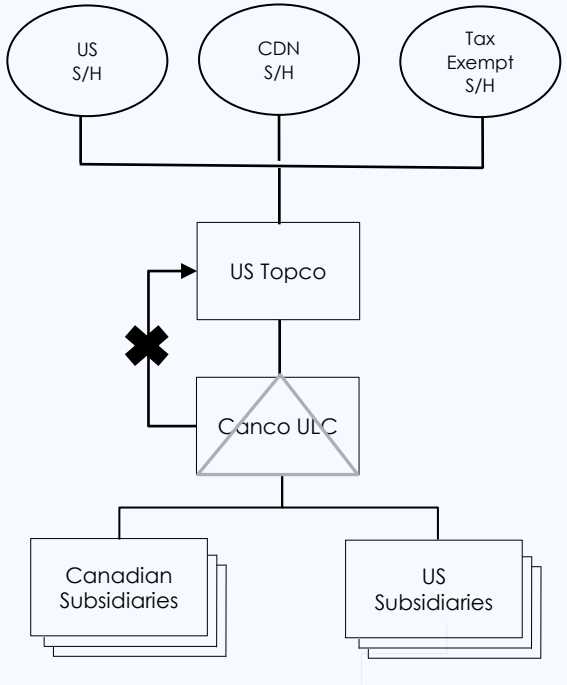
- Maxar (2019):
  - On October 9, 2018, Maxar announced that it would be advancing a proposed domestication into the US by way of a plan of arrangement whereby the ultimate parent corporation of Maxar Technologies Ltd. ("Maxar Canada") would become an entity incorporated under the laws of the state of Delaware.
  - Two possible plan of arrangements were contemplated to implement the transaction:
    - Plan A: Shareholders of Maxar Canada would transfer their shares of Maxar Canada to a Canadian acquisition vehicle in exchange for shares of a new US corporation ("US Topco"); or
    - Plan B: Shareholders of Maxar Canada would transfer their shares of Maxar Canada directly to US Topco in exchange for shares of US Topco.
  - US Topco would become the new publicly listed entity on the NYSE (with Maxar Canada's shares being delisted from the TSX).

3. Maxar-type domestication transaction (continued)

- Choice between Plan A and Plan B was presumably dependent on the valuation of the shares of Maxar Canada.
- A Canadian acquisition vehicle is usually relevant to maximize paid-up capital, unless historical paid-up capital is higher than the FMV of the shares of the Canadian target.
- Maxar had been pursuing a "US Access Plan" for some time, which was aimed at driving incremental growth through the pursuit of US governmental space programs. Maxar's ability to win new US government contracts to provide space systems, imagery and services under classified space and defense programs at various US agencies was viewed as enhanced by the US domestication.
- Enhanced market position: Greater exposure to US and international institutional investors and analysts.
- Per the management circular, the disposition of the shares of Maxar Canada was expected to be taxable for Canadian shareholders of Maxar Canada, while most US holders that owned Maxar Canada shares with a FMV of $50,000 or more were expected to recognize a gain (if any), but not a loss, for US federal income tax purposes.

3. Maxar-type domestication transaction

Plan A - Inbound "F" Reorganization

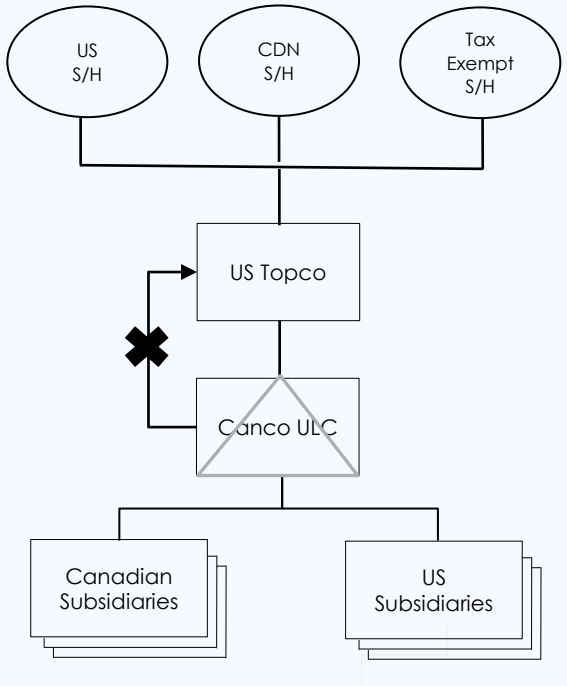


Main (High-Level) Steps

1. A new US "C" corporation is formed ("US Topco") by Canco;
2. US Topco forms a new Canadian ULC ("Bidco");
3. Bidco acquires the shares of the Canadian target ("Canco") and public shareholders receive shares of US Topco in consideration;
   - In consideration for the issuance of shares by US Topco to the public, Bidco simultaneously issues an equivalent number of shares to US Topco.
4. US Topco redeems its shares held by Canco for a nominal amount;
5. Canco elects not to be a public corporation for Canadian income tax purposes; and
6. Bidco and Canco are amalgamated as an unlimited liability company.
   - Canco may have to be continued to the jurisdiction of incorporation of Bidco prior to such step.

3. Maxar-type domestication transaction

Plan B - Inbound "F" Reorganization



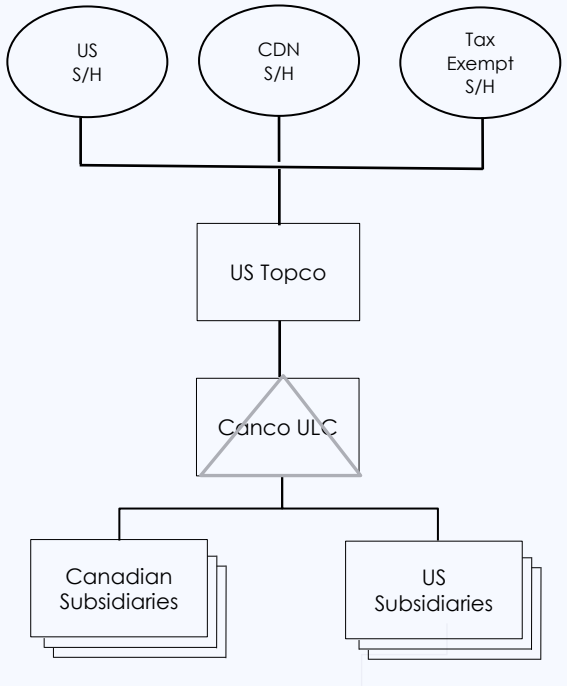
Main (High-Level) Steps

1. A new U.S. "C" corporation is formed ("US Topco") by Canco;
2. US Topco acquires the shares of Canco and shareholders of Canco receive shares of US Topco as consideration;
3. US Topco redeems its share held by Canco for a nominal amount;
4. Canco elects not to be a public corporation for Canadian income tax purposes.
5. US Topco transfers shares of Bidco to Canco and Bidco and Canco are amalgamated as a ULC

➢Key difference with the Plan A is that the acquisition of the shares of Canco is made directly by US Topco (i.e., without Bidco).

3. Maxar-type domestication transaction

Inbound "F" Reorganization



- Selected tax considerations:
  - Taxable disposition of shares of Canco by its Canadian shareholders;
  - US holders who own Canco shares with a FMV of $50,000 or more may generally incur a gain for US federal income tax purposes;
  - Additional tax on dividends received by Canadian shareholders;
  - Additional withholding tax cost for Canadian shareholders;
  - Canco may be included in the US consolidated group;
  - Future upside in US subsidiaries subject to Canadian tax;
  - Future internal financing of subsidiaries will be more difficult.

4. Encana-type domestication transaction

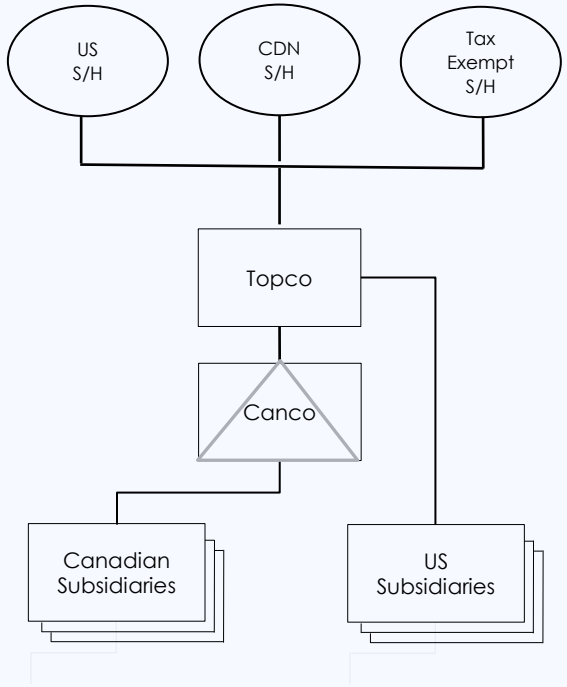
- Encana (2020):
  - Share exchange where all shares of Encana were exchanged for shares of Ovintiv (a new Canadian parent), the former Encana becoming an unlimited liability company, shares and interco debt of Alenco Inc. (a US subsidiary of Encana) being distributed to Ovintiv in consideration for assumption of debt by Ovintiv and repurchase of certain Encana shares held by Ovintiv and then Ovintiv was continued under Delaware corporate law from the CBCA
  - Valuation perceived as discounted as compared with U.S. peers due, in part, to inability to access certain pools of capital in the U.S.
  - Strong connection to the U.S. (employees, shareholders, capital investments)
  - For Canadian shareholders, structured as a share exchange – (i) if shares traded above $6.30, shares exchanged for Ovintiv shares and a note in a nominal amount (to break 85.1 rollover), with possibility of shareholders to elect under section 85, (ii) if shares traded for $6.30 or less, section 85.1 share for share (we assume that PUC must have been around $6.30, such that did not want 85.1 to apply if FMV was above $6.30, to generally achieve ACB for Ovintiv at least equal to $6.30 unless FMV was below that)

4. Encana-type domestication transaction (continued)

- For US shareholders (other than if holding ≥ 10% or shares having a FMV ≥ US$50,000), intended to be a tax-deferred "F reorganization" for US tax purposes – we understand that Ovintiv viewed as a continuation of Encana, with Encana considered to have been liquidated as a result of the conversion to a ULC
- The management circular indicates that they did not expect any material departure tax or emigration tax, but does point out that, if many holders elect under section 85, it is possible that the ACB of the Encana shares to Ovintiv and the aggregate PUC and relevant liabilities of Ovintiv may be less that the aggregate FMV of its assets, which could result in a material tax liability to Ovintiv
- Regarding section 128.1 ITA departure tax, assuming PUC was approx. $6.30 and given trading price which appears to have been approx. $4.90 at the time of the transaction, it may well be that there was little or no latent gain on the assets.
- Regarding Part XIV emigration tax – if PUC was approx. $6.30 and given trading price which appears to have been approx. $4.90 at the time of the transaction, it suggests that FMV assets ≤ applicable liabilities and PUC
- Unclear whether Alenco represented the entirety of the non-Canadian group, but, at least as regards Alenco, there was no "sandwich" structure created, but the distribution of Alenco would have been a fully taxable transaction for the corporation

4. Encana-type domestication transaction

Continuance

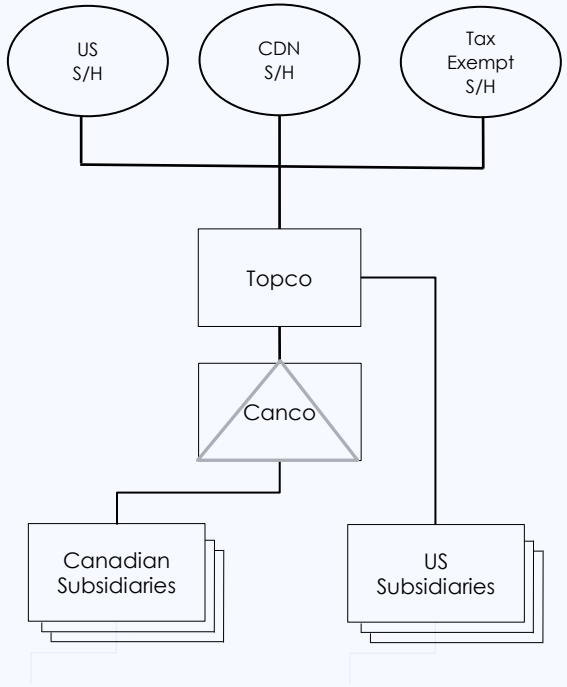


Main (High-Level) Steps

1. Canco incorporates a new corporation in Canada ("Topco");
2. Shareholders of Canco exchange their shares of Canco for shares of Topco;
3. Canco is continued into a new Canadian jurisdiction (*e.g.*, British Columbia) to become an unlimited liability company;
4. Some or all foreign subsidiaries are distributed by Canco to Topco;
5. Continuance of Topco from its Canadian jurisdiction to Delaware.

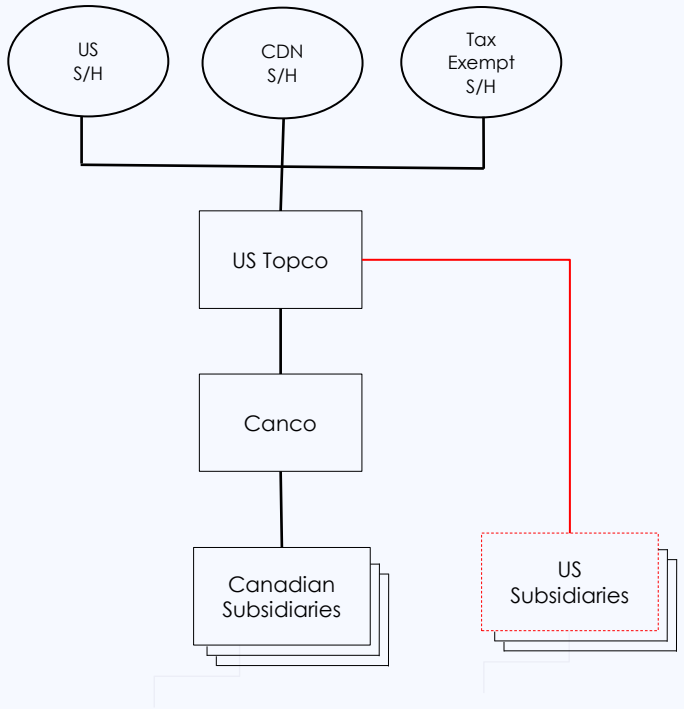
4. Encana-type domestication transaction

Continuance (cont'd)



- Selected tax considerations:
  - Possible rollover for Canadian shareholders on share exchange;
  - Non-resident shareholders: consider if Canco shares are taxable Canadian properties;
  - Distribution of foreign subsidiaries by Canco – possible realization of capital gains on them;
  - Part XIV emigration tax (consider if FMV assets ≤ applicable liabilities and PUC); and
  - Departure tax – possible realization of capital gains on Topco's assets.

5. Possible out-from-under steps



- There are many ways to implement an out-from-under (e.g., sale, return of capital, dividend in-kind, etc.)

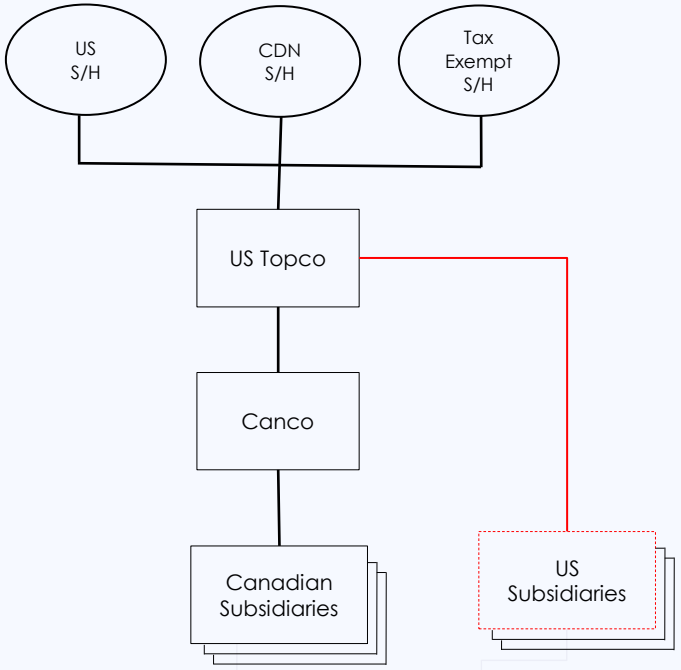
Possible out-from-under steps:

1. Canco sells the shares of the US Subsidiaries to US Topco in consideration for the issuance of a note by US Topco ("Note 1");

2. Canco subsequently makes a return of PUC satisfied by the issuance of a note ("Note 2"); and

3. Note 2 is offset with Note 1.

5. Possible out-from-under steps (cont'd)

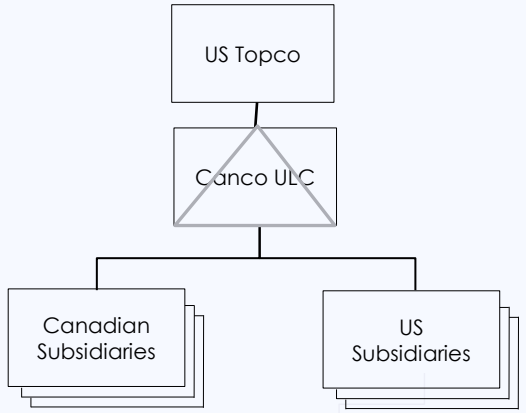


Out-from-under

➢Selected tax considerations:

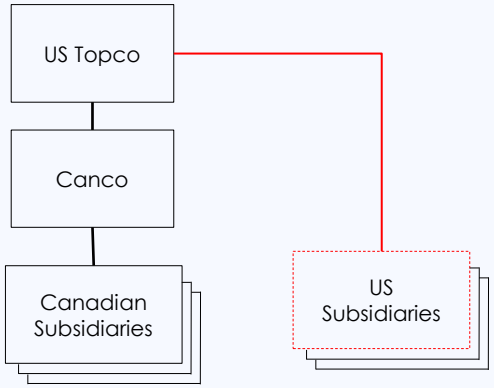
- Would result in a disposition of the transferred shares of the US Subsidiaries (a gain may be realized). Consider loss carry-forwards and surplus balances available;
- Consider whether out-from-under should be implemented by way of sale of shares or return of capital. Consider available PUC;
- Requires valuation of the US Subsidiaries to compute potential gain and value of distribution, as the case may be;
- Is helpful to address inefficiencies of "sandwich" structure (FAD, double layers of withholding tax, etc.).

6. Inbound "F" Reorganization vs Share-for-share with OFU



Inbound F Reorganization:

- No need for immediate valuation; out-from-under ("OFU") is accomplished for US tax purposes with no associated US tax cost.
- Future Canada tax liability attributable to built in gain on US subsidiaries will accrue and could become significant and have adverse consequences (inability to restructure, impact value in case of potential acquisitions, etc.).
- Possibility to implement OFU for Canadian tax purposes only.
- Flow of US profits need to go through Canco, using planning of PUC reduction to avoid withholding taxes – risk of future withholding tax (i.e., PUC reduced to nil) to be assessed.
- Structure involves hybrid entity.
- Application of the FAD rules, if not OFU.
- Need to manage U.S. dual consolidated loss rules with regard to Canco.
- Less clarity on reposition of external debt.



Share-for-Share Exchange with OFU:

- Need to perform valuation of US entities.
- Potential material US and Canadian tax costs attributable to OFU transaction.
- Future increase in value of the US group accrues only in the US.
- Clear pipeline for repatriation of US profits to public shareholders.
- Likely easier to reposition external debt.
- Clarity of non-taxation of share-for–share transaction to US shareholders.
- Possibility of double-dip (Canadian needs for financing) needs further thinking.

Concluding thoughts on Outbound Transactions

INBOUND TRANSACTIONS OUTLINE

1. Contact Gold
2. U.S. Inversion

Contact Gold Repatriation Transaction

- Contact Gold was a Nevada corporation with common shares listed on the TSXV
- Contact Gold redomiciled back to Canada by way of:
  - Plan of conversion under Nevada law
  - Immediately thereafter, amalgamation by way of a plan of arrangement under British Columbia law
- Rationale
  - Reduced regulatory compliance costs
  - Enhanced ability to access capital markets and increase number of investors

Contact Gold – Plan of Conversion

- Plan of conversion made, and articles of conversion filed, under Nevada law and continuation application filed in British Columbia
- To convert Contact Gold from a Nevada corporation to a British Columbia corporation (Contact Gold (BC))
  - Shares and other securities of Contact Gold converted to shares and other securities of Contact Gold (BC)

Contact Gold – Plan of Arrangement Steps

- Not to be effected until certificate on continuation for Contact Gold (BC) issued
- Shares of Contact Gold deemed to be converted into post-continuation shares
- Other securities deemed to be converted into post-arrangement securities
- Contact Gold (BC) and a wholly-owned British Columbia subsidiary merged (with the same effect as if they had amalgamated under section 269 of the *Business Corporations Act* (British Columbia)), with Contact Gold (BC) surviving the merger

Contact Gold – Canadian Tax Considerations of Continuation

- Corporate level:
  - Deemed to be incorporated in Canada and resident of Canada
  - Deemed disposition and reacquisition of property at fair market value
  - Silent on other implications
- Shareholder level:
  - Residents – no change in adjusted cost base of shares
  - Non-Residents – step-up in adjusted cost base of shares to fair market value at time of continuation
  - Potential for deemed dividend if Contact Gold (BC) eligible for and makes election under paragraph 128.1(2)(b) of the Tax Act

Contact Gold – Canadian Tax Considerations of Amalgamation

- Corporate level:
  - Silent on implications, but assume rollover based on favourable CRA rulings that parent-subsidiary amalgamations with a survivor qualify as an "amalgamation" for purposes of subsection 87(1) of the Tax Act
    - CRA document nos. 2006-0178571R3, 2010-0355941R3 and 2016-0643931R3
- Shareholder level:
  - Residents – rollover
  - Non-Residents – adjusted cost base of shares equal to fair market value at time of continuation

Contact Gold – US and Go-Forward Tax Considerations

- Corporate level:
  - Contact Gold (BC) pre and post-merger expected to be a US domestic corporation and subject to US tax on its worldwide income
  - Foreign tax credit considerations going forward
- Shareholder level:
  - Continuation and amalgamation expected to be tax-deferred / non-event for US tax purposes, although non-residents subject to FIRPTA considerations
  - Foreign tax credit considerations going forward

Other Types of Transactions

- Cross-border amalgamations
- Share for share exchanges with new Canadian parent

US Inversion

- Domestication of a US corporation can give rise to an "inversion" for US tax purposes
  - Can arise in other contexts, like RTOs and significant US acquisitions
- Code section 7874(b) treats certain "inverted" corporations as domestic corporations for US tax purposes
  - Subject to US tax on worldwide (including non-US) income
  - Payments to non-US persons subject to US withholding tax
- Becoming more common to see transactions involving inverted corporations

US Inversion

A Canadian corporation that engages in a transaction meeting the following three tests is treated as a US domestic corporation:

- Acquisition of substantially all the assets of a US corporation (including indirectly through the acquisition of shares of the US corporation)
- By reason of the acquisition, former owners of the US corporation hold 80% (by vote or value) of the Canadian corporation
- The Canadian corporation's group does not have "substantial business activities" in Canada
  - 25% of employees by headcount & compensation;
  - 25% of assets (excluding intangibles); and
  - 25% of income

Inversion Considerations

- Payments made by an inverted Canadian corporation can be subject to Canadian and US withholding tax
- Foreign tax credit issues
  - Generally only entitled to a FTC to the extent of Canadian tax otherwise payable on US-source income
  - Payment may not give rise to US-source income
  - No FTC in the absence of other US-source income not bearing full tax
  - Similarly, no US-source income for a treaty-based credit
  - 20(12) deduction may be available
- Similar FTC issues in the US with respect to Canadian withholding tax

Inversion Considerations

- Corporate-level tax consequences may be manageable – inverted corporation is often a holding entity
- Additional Canadian tax considerations may arise on any acquisition of an inverted Canadian target
  - Any structuring requires consideration of Canadian and US rules
  - Potential for additional structural tax if a Canadian buyer acquires an inverted target

Inversion Considerations

- From a Canadian perspective, it may be possible to remove inverted entities from the structure after the acquisition if a bump is available
  - May place limitations on consideration that can be given for target
  - US tax implications need to be considered

CANOPY/ACREAGE

Canopy Acquisition of Acreage

- Canopy Growth Corporation and Acreage Holdings, Inc. entered into amended Arrangement Agreement under which Canopy would acquire majority of Acreage when US federal law changes to permit the general cultivation, distribution and possession of marijuana
- Acreage is inverted
- Canopy also has option to acquire the remainder of Acreage

Canopy/Acreage – Arrangement Steps

- Canopy pays US$37.5 million to existing Acreage shareholders
- Acreage undertakes a capital reorganization, such that each Acreage share is exchanged for (i) 0.7 "Fixed Shares" and (ii) 0.3 "Floating Shares"
  - Terms of Fixed Shares and Floating Shares include an embedded call right in favour of Canopy, but otherwise have *pari passu* common share terms

Canopy/Acreage – Arrangement Steps

Options give Canopy:

- The right to acquire each Fixed Share for 0.3048 of a Canopy common share (deemed to be exercised if US federal law changes)
- The right (but not the obligation) to acquire all of the Floating Shares for cash, Canopy common shares, or a mix
  - Cash consideration per Fixed Share equal to 30-day VWA trading price of Floating Shares, subject to a US$6.41 minimum
  - Canopy share consideration per Fixed Share equal to cash consideration divided by 30-day VWA trading price of Canopy common shares

Canopy/Acreage - Tax Considerations

- US$37.5 million payment to Acreage shareholders treated as a payment for granting Canopy the call option and governed by section 49
  - Amount must be reasonably allocated between call over Fixed Shares and call over Floating Shares
- Shareholders deemed to have disposed of property with adjusted cost base of nil for an amount equal to the amount received
- If relevant call option is exercised, subsection 49(1) treatment unwound and the payment is included in the shareholder's proceeds of disposition of the Fixed Shares or Floating Shares, as applicable
  - If exercised in a subsequent year, taxpayer entitled to refile tax return, and CRA obliged to reassess tax in order to exclude the subsection 49(1) consequences

Canopy/Acreage - Tax Considerations

Acquisition of Fixed Shares and, if applicable, Floating Shares, effected as follows:

- All Fixed Shares held by Non-US Shareholders are transferred to Canopy for Canopy common shares
- If Canopy exercises its right to acquire the Floating Shares, all of the Floating Shares are transferred to Canopy for Canopy common shares and/or cash
- A subsidiary of Canopy merges (the "Merger") with *and into* Acreage, such that Acreage survives. On the Merger:
  - Fixed Shares held by US Shareholders are transferred to Canopy for Canopy shares
  - Fixed Shares held by Canopy are exchanged for Mergeco shares
  - Floating Shares are exchanged for Mergeco shares
  - Mergeco issues Mergeco shares to Canopy in consideration for Canopy issuing its shares to US Shareholders

Canopy/Acreage - Tax Considerations

- Plan of Arrangement provides that the Merger is intended to qualify as an amalgamation for purposes of subsection 87(9) of the Tax Act
  - CRA has ruled that amalgamations with a survivor qualify as an amalgamation for purposes of subsection 87(1) of the Tax Act
  - The transaction should not be taxable in Canada at the corporate level
- Merger construct potentially allows for US reorganization treatment
- If Acreage doesn't survive, amalgamation potentially taxable in US at Acreage level

Canopy/Acreage - Tax Considerations

- Canadians do not exchange Fixed Shares on the Merger – exchanged directly with Canopy for Canopy Shares. Shareholders entitled to file section 85 elections
  - The shareholder's portion of the US$37.5 million payment allocated to the Fixed Shares considered boot under section 49
  - Subsection 87(4) and section 85.1 not available
- If Floating Shares aren't acquired, Canadians who acquire Mergeco shares on the Merger should not realize tax

THANK YOU!