

# Acquisitions of Canadian Income Trusts

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## Canadian Income Trusts

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- Over 170 publicly traded income trusts including REITS, Royalty Trusts, Energy Trusts, Business Trusts
- Until October 31, 2006, no entity level tax (no corporate tax)
- Several structures used

## **Income Trusts Distribution Tax**

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- Effective 2007 – new income trusts subject to 34% tax on business and certain other income, reducing to 31.5% in 2011
- Trust distributions treated as eligible dividends
- Grandfathering for existing trusts until 2011
- Rules apply to certain trusts and to limited partnerships

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## **Application of Rules**

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- Business Trusts
- Royalty Trusts
- Energy/Utility Trusts
- REITS owning nursing homes, hotels

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## Excluded

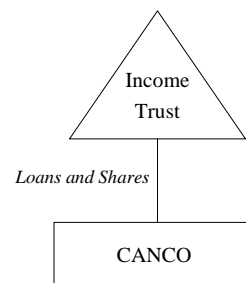
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- Most REITS
- Trusts realizing capital gains from portfolio investments (defined)
- Income participating securities

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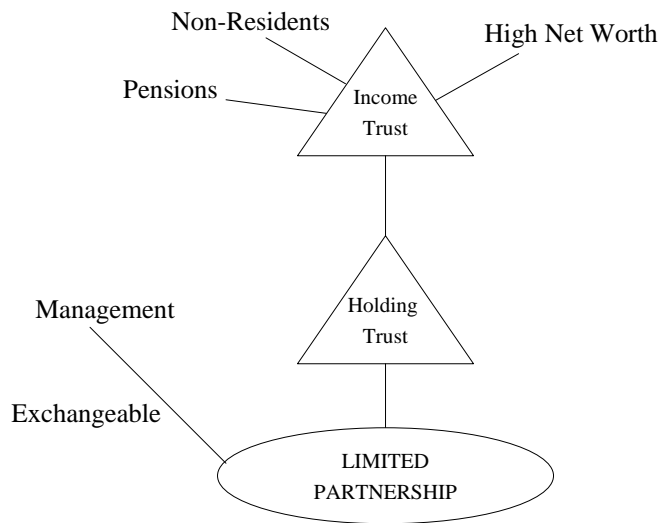
## Early Structure: Canadian Business

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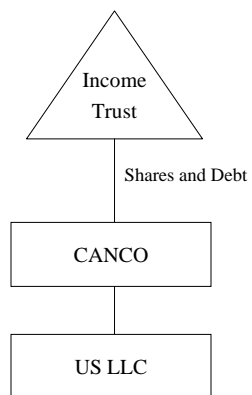
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## Canadian Business



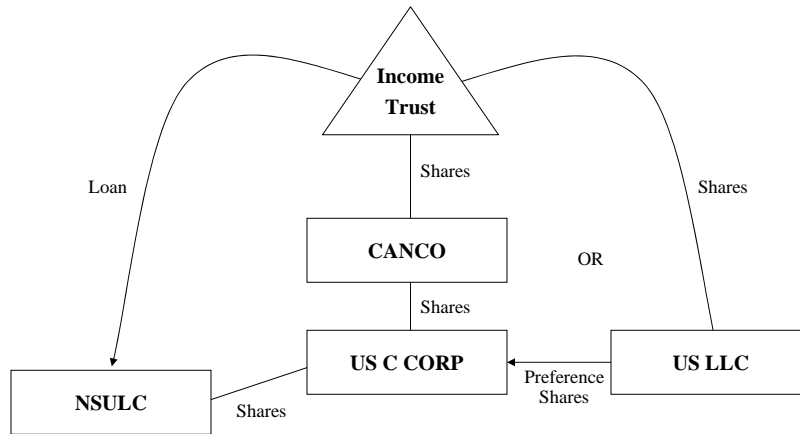
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## Cross Border Income Trust



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## Cross Border Income Trust



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## Recent Income Trust Takeovers as of April 7, 2007

TARGET	BUYER
Alexis Nihon Real Estate Investment Trust	
Amtelecom Income Fund	Canadian Income Trust
Associated Brands Income Fund	Canadian Private Equity
Atlas Cold Storage Income Trust	
Calpine Power Income Fund	U.S. Hedge Fund
Clean Power Income Fund	Australian Private Equity
Entertainment One Income Fund	U.K. Private Equity
Gateway Casinos Income Fund	Australian Private Equity
Gienow Windows & Doors Income Fund	
Great Lakes Carbon Income Fund	U.S. Private Equity
Halterm Income Fund	Australian Private Equity
KCP Income Fund	U.S. Private Equity
Lakeport Brewing Income Fund	Foreign Corporation
Liquor Barn Income Fund	
Multi Fund Income Trust	
Norcast Income Fund	Swiss Private Equity
Retirement Residences REIT	
Sunrise Senior Living Real Estate	
UE Waterheater Income Fund	
Voxcom Income Fund	Canadian Income Fund

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## **Takeover Bids**

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- Alexis Nihon REIT
- Atlas Cold Storage Income Trust
- Amtelecom Income Fund
- Calpine Power Income Fund
- Clean Power Income Fund
- Gateway Casinos Income Fund
- Lakeport Brewing Income Fund
- Multi Fund Income Fund
- Norcast Income Fund
- Retirement Residences REIT
- Voxcom Income Fund

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## **Asset Purchases**

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- Associated Brands Income Fund
- Entertainment One Income Fund
- Gienow Windows & Doors Income Fund
- Great Lakes Carbon Income Fund
- Halterm Income fund
- IPC (US) REIT
- KCP Income Fund
- Sunrise Senior Living REIT
- UE Waterheater Income Fund

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## Structuring Takeover

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- Assume Trust - Trust - Partnership Structure
- Alternatives:
  - Take over bid for publicly traded units of the trust (preferred by securities lawyers)
  - Redemption of trust units
  - Purchase of holding trust (operator)
  - Purchase of limited partnership interest
  - Purchase of assets of limited partnership

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## Takeover Bid

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- Review Trust Deed – 90% compulsory acquisition. Can amend declaration as part of initial bid to reduce 90% to 66 2/3%. Need 66 2/3% to amend trust declaration.
- Subsequent acquisition of remaining units.
- Tax Issues:
  - Maintain mutual fund status notwithstanding more than 50% units acquired by non-residents and less than 150 unitholders (132(7) and 132(6.2) protection)

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## **Takeover Bid – Cont'd**

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- Acquisition of control of any corporations in group – deemed year end, impact on losses etc.
- Exchange exchangeable units for trust units

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## **Assume Takeover Bid**

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- Dissolve Fund and distribute units of holding trust and any loans to holding trust (ie Purchaser then owns holding trust)
  - Any gain or loss?
  - Basis of holding trust unit
- Dissolve holding trust and distribute limited partnership interests to purchaser
  - Any gain?
  - Basis of limited partnership interest

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## **Assume Takeover Bid – Cont'd**

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- Dissolve limited partnership and distribute assets to purchaser
  - Any step up in basis?
  - Should subsidiary partnership be used to step up basis?

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## **Purchase of Holding Trust**

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- Fund may own units and have a loan at interest to holding trust
- What is adjusted cost base (basis) of trust units of holding trust and of limited partnership interest

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## **Purchase of Limited Partnership Interest**

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- What is basis?
- What is tax cost of assets owned by partnership?

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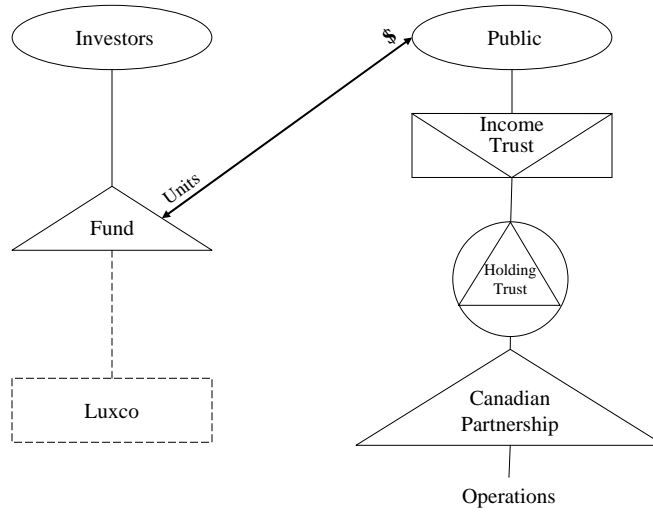
## **Structure for Acquisition**

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- Objectives
  - Minimize Canadian tax
  - Leverage:
    - Avoid withholding tax
    - Thin capitalization if use Canadian corporation
  - Subsequent use of treaty capital gains exemption, if available

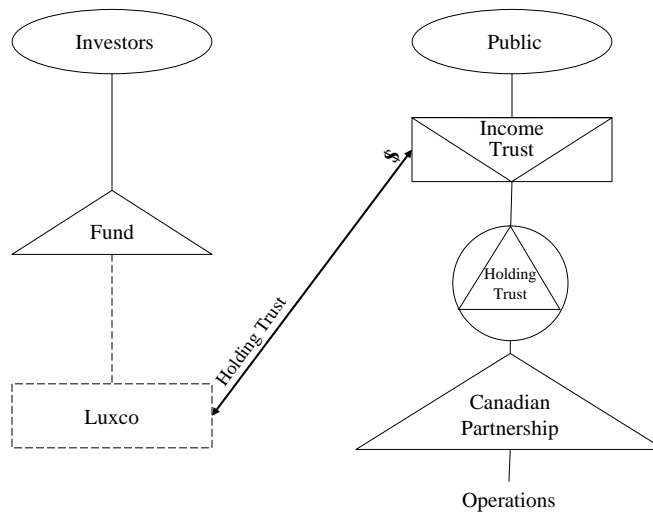
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## Acquisition of Income Trust by Private Equity (Alternative I)



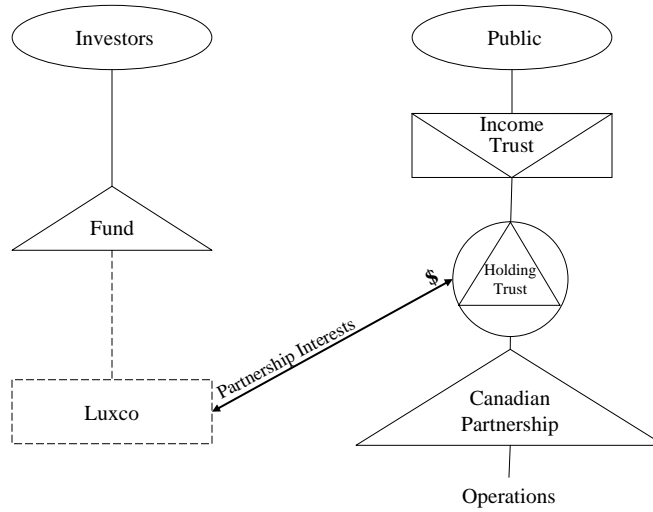
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## Acquisition of Income Trust by Private Equity (Alternative II)



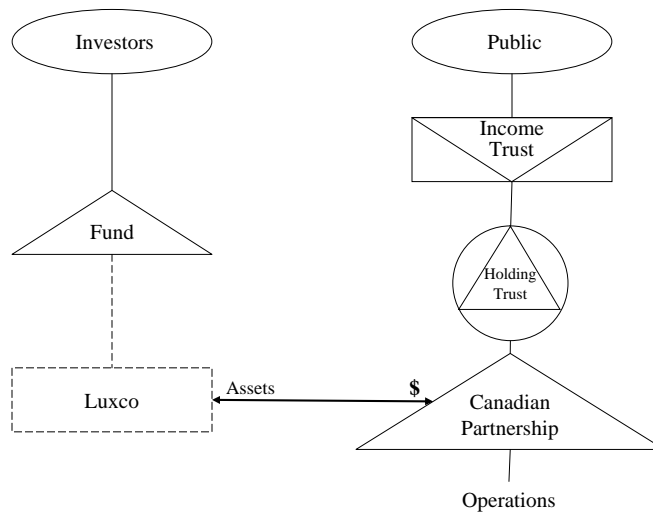
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### Acquisition of Income Trust by Private Equity (Alternative III)



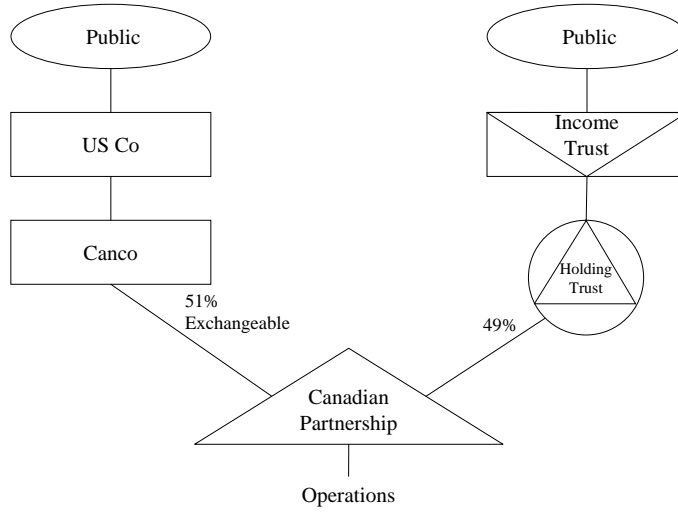
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### Acquisition of Income Trust by Private Equity (Alternative IV)



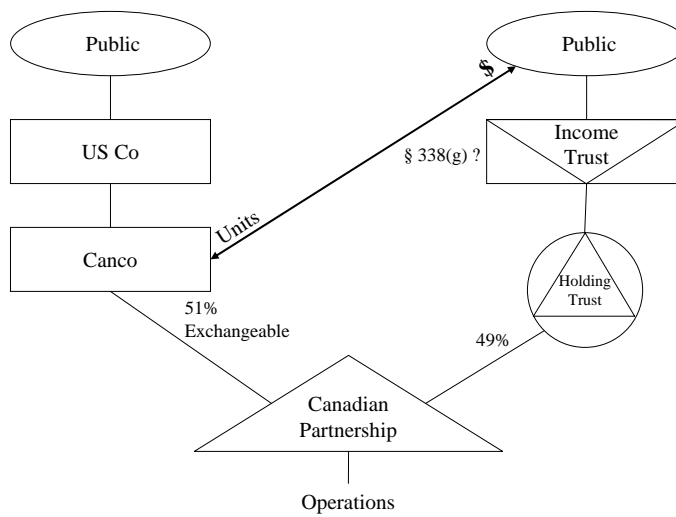
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## Issues for U.S. Controlled Income Trust



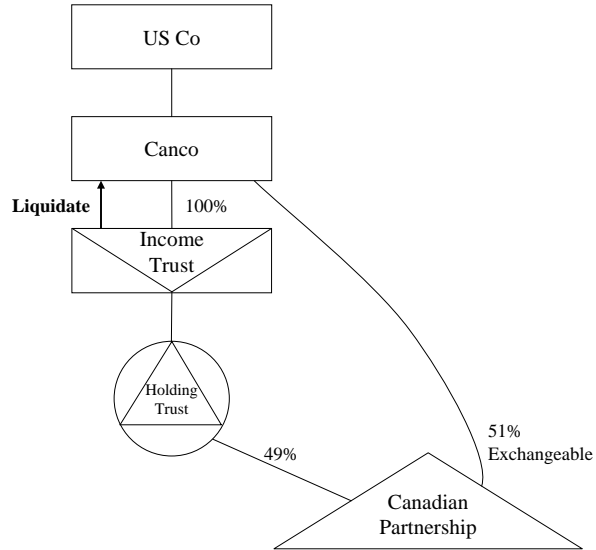
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## Purchase of U.S. Controlled Income Trust Units



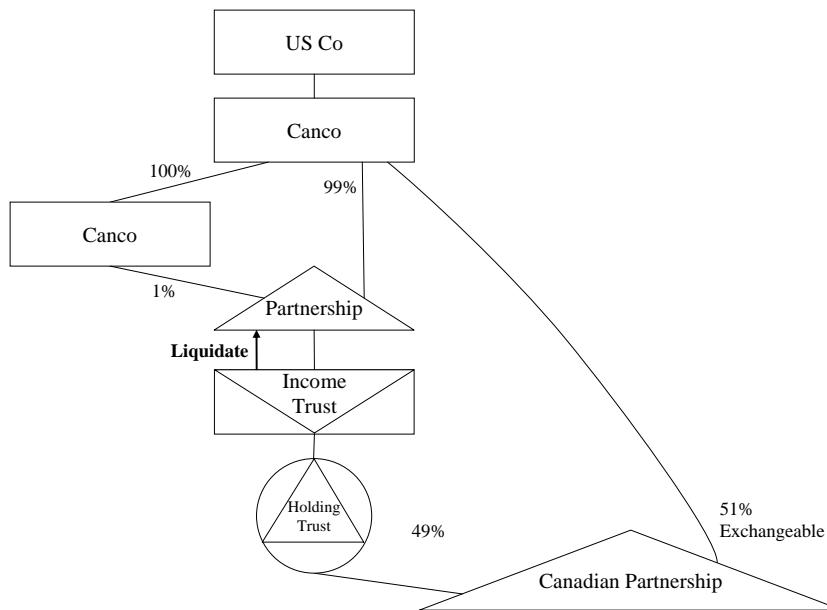
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## Tax-free Liquidation of Purchased Income Trust



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## Taxable Liquidation of Purchased Income Trust



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