



Statement Regarding Tax Year of Dividend Inclusion for U.S. Tax Purposes

Reference is made to the joint management information circular of Petrobank Energy and Resources Ltd. and Petrominerales Ltd. dated November 19, 2010 with respect to a reorganization of Petrobank and Petrominerales completed December 31, 2010 (the “Circular”). Capitalized terms not defined herein have the meanings set forth in the Circular.

Pursuant to the Petrobank Plan of Arrangement, each Petrobank Shareholder received one New Petrobank Common Share and one Petrobank Special Share in exchange for each existing Petrobank Common Share. Each Petrobank Special Share was then exchanged for approximately 0.6142 of a New Petrominerales Share. For U.S. federal income tax purposes, the receipt of Petrobank Special Shares and their exchange for New Petrominerales Shares was treated as a distribution by Petrobank to its Shareholders of New Petrominerales Shares taxable as a dividend in an amount equal to the fair market value of the New Petrominerales Shares. The following disclosure sets forth Petrobank’s position with respect to the timing of the income inclusion for Petrobank Shareholders, based on advice received from United States tax advisors. We caution that determination of such timing is the responsibility of the individual Petrobank Shareholder and encourage Petrobank Shareholders to obtain advice of a qualified tax professional.

The Petrobank Arrangement became effective on December 31, 2010. Although Shareholders may not have received certificates evidencing their ownership of New Petrominerales Shares until January 7, 2011, the Arrangement was legally effective on December 31, 2010, and all Shareholders became Shareholders of record of New Petrominerales on December 31, 2010. As a result, as of December 31, 2010, all Shareholders (i) were entitled to their pro rata portion of any dividends declared by New Petrominerales, (ii) were entitled to vote on any matters of New Petrominerales requiring shareholder action, and (iii) were entitled to transfer their rights as shareholders of New Petrominerales without the consent of New Petrominerales.

For U.S. federal income tax purposes, a dividend distribution by a corporation to its shareholders “shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands.” *Treas. Reg. § 1.301-1(b)*. See also *Treas. Reg. § 1.6042-2(b)* (“For purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.”).

When a corporation distributes stock of another corporation to its shareholders, in determining when the value of such stock is includible in their gross income, “the time of the actual receipt of the stock certificate is immaterial. The question is, [w]hen did the taxpayers become the beneficial owners of the stock...?” Minal E. Young, Executor, et. al., 6 B.T.A. 472 (1927) (taxable gain recognized in year distributing corporation implemented resolution distributing third-party stock to its shareholders, not in following year when stock certificates actually issued to those shareholders). See also Byrne v. Comm’r, 54 T.C. 1632 (1970) (“[A]n economic interest in a corporation may arise [though] a certificate of stock evidencing such interest has not yet been issued in the name of the owner.”), aff’d, 449 F.2d 759 (8th Cir. 1971); Bonsall v. Comm’r, 317 F.2d 234 (2d Cir. 1963) (“It is clear that the fact that no stock certificates were issued until 1957 does not conclude the question whether petitioners did or did not actually become shareholders in 1956. The certificate is merely evidence of ownership, which is an independently existing fact to be determined by inquiry into the nature of the transaction as a whole.”), aff’g, T.C. Memo 1962-151 (1962) (“It is well-settled that stock and the certificate evidencing the ownership of stock are different. Stock ownership in a corporation does not necessarily have to be evidenced by a certificate. A certificate is authentic evidence of title to stock but it is not the stock itself.”); Comm’r v. Scatena, 85 F.2d 729 (9th Cir. 1936).

Where the intent of the distributing corporation was to vest in its shareholders the ownership interest in the distributed stock as of the date of the distribution, and the shareholders obtained indicia of ownership in the distributed corporation, including the right to vote and the right to receive dividend payments, as of that date, courts have concluded that the shareholders became the beneficial owners of the distributed stock in the year the distribution was declared rather than in the later year in which the stock certificates were issued. See, e.g., Byrne, 449 F.2d at 759; Bonsall, 317 F.2d at 234 (concluding that a stock dividend received in a taxable spin-off was not includible in the shareholders’ income in the year in which the stock certificates were issued but rather in the earlier year in which ownership of the distributed stock was entered on the controlled corporation’s stock ledger); Scatena, 85 F.2d at 729.

Based on the foregoing, because Petrobank intended that the ownership interest in New Petrominerales vest in the Shareholders on December 31, 2010 and beginning on that date the Shareholders became entitled (i) to a pro rata portion of any dividends declared by New Petrominerales, (ii) to vote on any business of New Petrominerales requiring shareholder action, and (iii) to transfer their rights as shareholders of New Petrominerales without the consent of New Petrominerales, we are of the view that the value of the New Petrominerales Shares received pursuant to the Arrangement should be included in the gross income of Petrobank Shareholders in 2010, notwithstanding the fact that such shareholders may not have received certificates evidencing their ownership of New Petrominerales Shares until January 2011.