Streaming deals continue to evolve, syndication may be seen in future

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TORONTO (miningweekly.com) – In hindsight, July 6 could mark an important date for Canada's streaming companies, as this was the day Silver Wheaton announced receipt of a Canada Revenue Agency (CRA) letter proposing a tax reassessment on income through the company's foreign subsidiaries between 2005 and 2010.

On September 24, Silver Wheaton announced the arrival of a reassessment notice consistent with the proposal letter. The CRA sought to increase the company's income subject to tax by about C$715-million. That could result in a total federal and provincial tax bill, plus penalties and interest, of C$353-million.

THE TAXMAN COMETH

The company defended its position and announced that it would file a notice of objection, to be reviewed by the CRA's appeals division. The CRA also requested that Silver Wheaton deposit C$177-million, half of the reassessed sum, for the duration of the process. The company said it would seek to post security in the form of a letter of credit for that amount, rather than a cash deposit.

Any monies that might be deposited would have to sit in a bank account rather than being deployed for business, Borden Ladner Gervais partner **Erik Goldsilver** reminded an audience at the Canadian Institute of Mining's recent management and economics society meeting. Goldsilver practiced at the law firm's securities and capital markets group, with specific expertise in the mining, natural resources and energy sectors.

At its heart, the tax structure of streaming related to "active business income". The decision to establish offshore entities ensured tax was liable on foreign subsidiaries within their requisite jurisdictions and not levelled within Canada, Goldsilver noted.

In Silver Wheaton's instance, the streaming deals went through the company's Cayman Islands subsidiary, which was fully operational and staffed. "This is not a shell company… I can tell you Silver Wheaton has people on the ground in the Caymans," he said.

"That's how streaming companies have tried to structure their businesses from a tax perspective. If you deal with Royal Gold, Franco-Nevada or Silver Wheaton, they'll all have operating companies outside of Canada to handle these deals," Goldsilver explained. "The CRA seems to disagree with that position… It will be interesting to see the outcome."

Another important development had been Standard & Poor's (S&P's) decision, made around two years ago, to treat streaming agreements as a form of debt, Goldsilver added. That meant a deal could adversely affect a company's credit rating and, through this, its ability to access debt and the terms on which debt repayment was made.

In addition, certain companies with bonds and debentures issued could have run the risk of being downgraded to 'junk' status, with all the implications that could carry. "So, mining companies have been telling streaming companies: 'we're happy to do a deal with you, but our agreement cannot look like debt – it cannot have any aspect of debt in it,'" Goldsilver pointed out.

Streaming companies had responded by evolving their transactions structure. Any aspects associated with debt had increasingly been removed, such as seeking security or cash repayments. Some companies had even sought the blessing of S&P's before signing a streaming deal. "A mining company's credit rating might be severely affected if S&P's looked at the deal and declared it debt.

“The bottom line is that mining companies with a [weaker] credit rating will not do these deals if S&P's treats it as debt. This has become an important issue over the past year to 18 months,” Goldsilver said.

ISLANDS IN THE STREAM

Other stand-out developments included the use of streaming deals as part of the acquisition process. Here streaming companies were approached and offered a share of a target’s production or potential output to secure up-front funding to make the purchase.

The first example was completed in 2010, when Royal Gold helped finance the acquisition of the Mount Milligan mine, in British Columbia. Goldsilver also highlighted the October 2014 deal by Lundin to acquire an 80% interest in the Candelaria copper mine from Freeport-McMoRan for just over $1.8-billion. For this acquisition, $648-million came from a deal between Lundin and Franco-Nevada, with the latter securing a by-product gold/silver stream.

Goldsilver had also been monitoring the potential for syndication, whereby steaming companies partnered on deals. Only one syndication had occurred to date – the $100-million funding deal involving Franco-Nevada and Sandstorm Gold with True Gold, signed at the end of December 2014. True Gold, which held the Burkina Faso-located Karma gold project, also had an option to increase funding by up to $20-million within 18 months of the agreement coming into effect.

“As streaming deals get larger and larger, the risk appetite among some streaming companies has lowered, so you might see more syndication as a result,” Goldsilver said.

Streaming companies had also felt the pinch of stock market indifference. This had made them less interested in seeking funds through equity and might also push streaming companies towards joining forces.

Another theme for 2015 had been the dominance of Royal Gold in the completion of new deals. “I don’t know if that’s because the tax issues facing Silver Wheaton could, potentially, affect Franco-Nevada,” Goldsilver mused. “But Royal Gold seems to have been most active in the space right now. They’re a US-based company and so, aren’t affected by the CRA’s position.”

He also highlighted the deal between Blackstone and Orion Mine Finance, a private-equity company, and Pretium that was developing the Brucejack gold project, in British Columbia. The streaming element involved $150-million in cash to be advanced to Pretium in return for just over seven-million ounces gold and just over 26-million ounces silver.

The agreement could signpost further private-equity involvement in the space. In addition, the deal was not across the life of the mine, which was the norm for most other streaming deals. “And that’s probably very attractive from the mining company’s perspective,” Goldsilver noted, adding that it gave them a little more upside if more reserves and resources could be found.