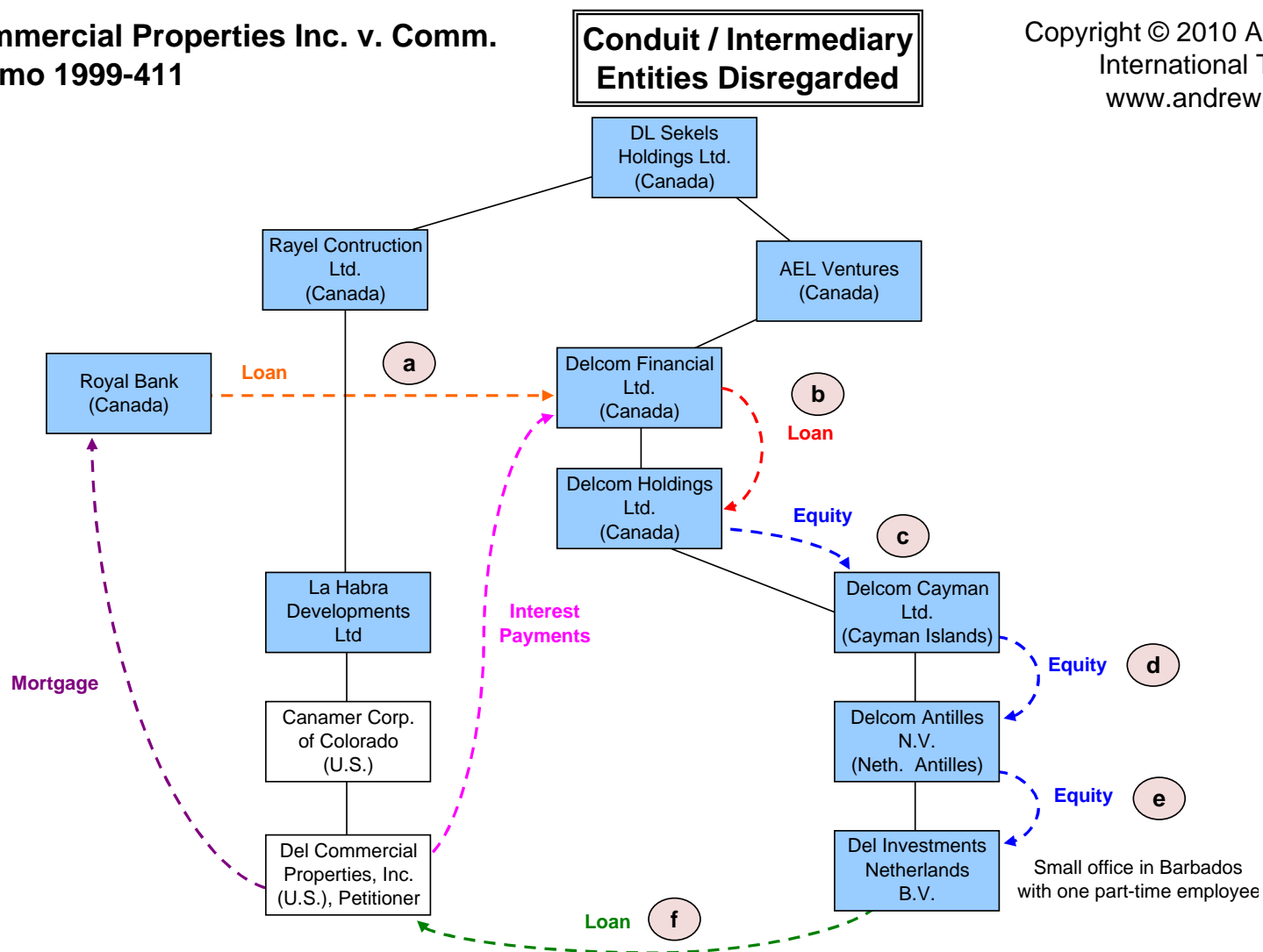


**Del Commercial Properties Inc. v. Comm.
T.C. Memo 1999-411**

**Conduit / Intermediary
Entities Disregarded**

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In 1990, Del Commercial participated in a series of related and essentially simultaneous financial transactions with a number of its affiliated foreign corporations. See steps a through f above. In July of 1992, because of concern of Royal Bank over payments due on its \$14 million loan, Del Commercial began to make the loan payments due on the loan it had purportedly received from Del Netherlands directly to Delcom Financial, bypassing Del Netherlands and Delcom Holdings, and Delcom Financial then forwarded funds to Royal Bank in payment on the Royal Bank loan. On Del Commercial's books and records, those loan payments were still recorded as having been made to Del Netherlands. For 1990 through 1993, Del Commercial did not file U.S. Federal withholding tax returns with respect to interest payments in issue. On audit, the IRS determined that the substance of the \$14 million loan to Del Commercial reflected a loan not from Del Netherlands, but from Delcom Financial, and therefore that the interest payments Del Commercial made on the loan should be treated as having been made by Del Commercial to Delcom Financial and as subject to withholding tax. Del Netherlands had minimal assets, and Del Netherlands had only transitory possession of and no control over the \$14 million loan proceeds as the proceeds were passed from Delcom Financial to Del Commercial. The Tax Court applied the step-transaction doctrine to disregard the use of the intermediate entities and to treat them as conduits for Federal tax purposes.

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