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 SUBJECT Article X(6) Canada-US Treaty
 SECTION Income Tax Act s. 219; Article X(6), IV(6), XXIX-A(2) and (3)
 Canada-US Tax Convention 1980

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: How does Article X(6) and Article IV(6) of the Canada-United States Income Tax Convention (1980) (the "Treaty") impact a US limited liability company ("LLC") carrying on business in Canada through a permanent establishment?

POSITION: The Treaty benefits may be available to the LLC with respect to income considered to be derived by corporate members of an LLC but not to individual members.

REASONS: The LLC has only one \$500,000 exemption. There is no provision in the Treaty that is equivalent to Article X(6) for individual members of an LLC.

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2012-044010

October 23, 2012

Dear XXXXXXXXXXX:

Re: Branch Tax, Article X(6) Canada-US Treaty

This is in response to your March 15, 2012 letter in which you requested our comments with respect to the application of paragraph 6 of Article X of the Canada-United States Tax Convention (1980) ("Article X(6)") to a United States Limited Liability Company ("LLC") that carries on business in Canada through a permanent establishment ("PE") and is subject to tax under section 219 of the Income Tax Act ("branch tax").

The issues you raised concern the application of the reduced tax rate and the allocation of the \$500,000 exemption pursuant to Article X(6) in situations where two LLC members each have a 50% interest in the income of the LLC and are either a United States (US) individual and a US corporation or two US corporations. The LLC is treated as a fiscally transparent entity for US tax purposes.

Pursuant to paragraph 6 of Article IV of the Convention, the Canada Revenue Agency (the "CRA") will permit a LLC to claim benefits available under Article X(6) on behalf of its members where a member is a qualifying person under paragraph 2 of Article XXIX-A of the Convention or a US resident company entitled to the benefits pursuant to paragraph 3 of Article XXIX-A of the Convention.

To facilitate the computation of the relevant Article X(6) earnings that may be eligible for a reduced 5% branch tax, the earnings are computed by

the LLC as if it were the company referred to in Article X(6). Once the LLC has computed its earnings attributable to permanent establishments in Canada, they are then allocated to the LLC's members by applying Article IV(6). Accordingly, the LLC can generally pay the reduced rate of branch tax in Article X(6) in respect of the share of branch profits that are considered to be derived by its corporate members.

There is no provision in the Convention that is the equivalent of Article X(6) which would reduce the branch tax imposed on the portion of LLC's branch profits that are considered, by virtue of Article IV(6), to be derived by individual members.

It is the CRA's view that a LLC has only one \$500,000 cumulative exemption. It must be shared by associated companies with respect to the same or similar business and reduced by any portion which has previously been deducted. Once the LLC's first cumulative earnings attributable to a permanent establishment in Canada for a year and previous years less the amounts set out in paragraphs (a) to (c) of Article X(6) (the "Cumulative Branch Tax Base") has exceeded \$500,000, its corporate members will cease to qualify for the exemption.

Providing the benefits of Article X(6) are available, the LLC will pay branch tax at the rate of 5% in respect of any corporate member's share of its income that is in excess of its Cumulative Branch Tax Base.

We trust this information is helpful.

Yours truly,

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