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 SUBJECT 2012 IFA Seminar - Q.2 Reduced Tax Withholdings

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: Treaty-reduced tax withholdings, taxpayer relief for under-withholding, and refunds of Part XIII tax withheld.
 POSITION: General comments provided.
 REASONS: See response.

International Fiscal Association (IFA) Conference
 Canada Revenue Agency Roundtable

May 17, 2012

Treaty-Reduced Tax Withholdings

Background

With the introduction of forms NR301, 302 and 303, it seems that the CRA requires a higher degree of due diligence by a payer in determining whether the recipient is entitled to reduced tax withholdings. Previously the payer only required the name and address of the recipient to apply a lower treaty rate. The CRA allowed taxpayers until December 22, 2011, to gather the necessary information to complete these forms. This date was extended to December 22, 2012 unless the following criteria existed:

- * the payee is known to act, even occasionally, as an agent or nominee (other than a Swiss agent or nominee);
- * the payee is reported as "in care of" another person, or "in trust," or the address is a post office box;
- * the mailing address provided for payment of interest or dividends is different from the registered address of the "owner";
- * the payee is a flow through entity such as a partnership or limited liability company (that is not taxed on its worldwide income under the laws of another country); or
- * there is reason to believe that a reduced rate will not apply due to limitation of benefits provisions in the Canada - United States tax treaty.

Regardless of the transition, if in doubt, we understand that the forms should be completed. As a result, if the payer obtains the relevant information for this form, it seems that they should not be subject to any under withholding of tax or interest and penalties.

Questions

1. If it is not possible to make this general statement, would the CRA be willing to provide some guidance on when it would provide this due diligence relief?
2. It would be expected that payers will withhold if in doubt, and that there will be more refund requests by recipients. The mechanism for requesting a refund is form NR7-R. Does the CRA have any plans to simplify the process by which refunds may be claimed?

Response

1. The CRA recommends that payers or intermediaries collect the information requested on forms NR301, NR302, and NR303 since this information on beneficial ownership, residency, and eligibility for treaty benefits is generally the information the payer or intermediary will need to establish that a tax treaty rate applies. Since the payee is an active participant in the payer's determination of the withholding tax rate and is providing a written certification, this should reduce instances of non-resident payees providing insufficient or misleading information to payers.

If the CRA determines that not enough Part XIII tax has been withheld on a payment to a non-resident, an assessment (including interest) can be issued to the payer, the non-resident recipient, or both. It can also be issued to an agent of the payer or the non-resident payee. If an assessment of tax is issued to the payer or an agent/intermediary, the amount assessed is also subject to a penalty.

You can ask for penalty and/or interest relief under subsection 220(3.1) by submitting a completed Form RC4288, Request for Taxpayer Relief. This form contains instructions on how to support your request and includes mailing addresses for the taxpayer relief intake centres. See Information Circular IC07-1, Taxpayer Relief Provisions for additional details including administrative guidelines that the CRA follows when making a discretionary decision.

The CRA will consider whether a taxpayer has exercised a reasonable amount of care when deciding if relief is warranted. The payer's level of effort to collect the forms or the information requested on them (a written declaration by the non-resident of beneficial ownership, residency, and eligibility for tax treaty benefits) in order to determine and apply the correct tax rate is important. Each relief request will be reviewed on a case-by-case basis taking into account the facts of the particular situation.

2. The CRA is committed to looking at the process through which Part XIII tax is refunded. The CRA has recently reviewed its internal processing of NR7-R applications and has implemented streamlined procedures that allow for faster processing of applications. The CRA continues to investigate further refinements to the process in order to make the refunding of Part XIII tax more efficient for taxpayers.

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