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 SECTION 116

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: Partnership obtaining a section 116 clearance certificate.
 POSITION: General comments provided.
 REASONS: See document.

International Fiscal Association (IFA) Conference
 Canada Revenue Agency Roundtable

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Partnerships and Section 116 Clearance Certificates

Question

If a partnership, including a widely-held partnership or a partnership in a multi-tier partnership structure, proposes to dispose of Canadian real estate, a clearance certificate in respect of the disposition will not be available without providing a complete disclosure of all partners, including indirect partners of the partnership. However, in such situations, it may often not be possible to provide a full disclosure of the indirect partners. As a result, a clearance certificate in respect of the disposition may not be available, even in situations where full payment or sufficient security in respect of the tax resulting from the disposition has been provided to the Minister. Would the CRA consider providing further relief in such situations?

Response

The "non-resident person" in section 116 of the Act refers to each partner individually. Therefore, each partner is required to notify the CRA of a disposition of taxable Canadian property by the partnership. In this regard, it is current CRA policy to accept one notification of disposition filed on behalf of all partners on the condition that sufficient information about each individual partner is provided. Therefore, along with the one notice, the CRA requires a complete listing of the non-resident partners who are disposing of the property, including their Canadian and foreign addresses, tax identification numbers, percentage of ownership, and their respective portion of the payments or security. A partnership cannot file one income tax return on behalf of all the partners because the legislation does not provide for this filing method. Generally, each partner is required to file a tax return as each partner's final tax liability will be determined when the tax returns are filed and assessed.