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 REFDATE 120518
 SUBJECT non-resident withholding - services
 SECTION Reg. 105 and section 150

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: Whether every partner of partnership that has had Regulation 105 withholdings in respect of fees for services rendered in Canada must file a return to obtain a refund.
 POSITION: Yes - but could obtain waiver of Reg 105 withholding in certain circumstances.
 REASONS: Legislation

International Fiscal Association
 2012 Conference
 CRA Roundtable

Question 6 - Professional firms providing services in Canada

If Regulation 105 withholding is deducted from payments for services made to a US partnership, does the CRA require every non-resident partner of US partnership that is allocated (under partnership agreement) income pertaining to the activities carried on by the partnership in Canada to file a Canadian tax return to claim a refund of their share of the withholding?

CRA Response

Regulation 105 withholding does not represent a final tax of the non-resident. Rather, it is a payment on account of the non-resident's potential Part I tax liability to Canada. The ultimate tax liability is determined after the assessment of the non-resident's Canadian income tax return. Non-resident partners of a partnership are required to file a Canadian income tax return to calculate their tax liability and to obtain a refund. There is currently no administrative procedure whereby a refund can be issued in respect of a particular non-resident partner's share of the Regulation 105 withholding without that partner filing a tax return. However, where a partnership can demonstrate, based on treaty protection, that the normally required withholding is in excess of the ultimate tax liability, the partnership can make an application for a treaty-based waiver of Regulation 105 withholding on behalf of the partnership.

Olli Laurikainen
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