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 REFDATE 120913
 SUBJECT Taxable Canadian Property
 SECTION 248(1)

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: Would a share of a corporation that is not listed on a designated stock exchange be taxable Canadian property if, at any time during the 60-month period that ended at the determination time, most of the value of the corporation's shares was directly derived from assets consisting of non-defaulted arm's length mortgages secured by real property situated in Canada?

POSITION: Generally, no.

REASONS: An interest in real property derived from a non-defaulted arm's length mortgage secured by real property is generally limited to an interest as security only, and subsection 248(4) of the Act clarifies that for the purposes of the Act, an interest in real property does not include an interest as security only derived by virtue of a mortgage.

2012 September CICA Compliance Conference

Question

Under the definition of "taxable Canadian property" ("TCP") in subsection 248(1) of the Income Tax Act (the "Act"), a share of a corporation that is not listed on a designated stock exchange will generally be TCP if, at any particular time during the 60-month period that ends at the determination time, more than 50% of the fair market value of that share was derived directly or indirectly from real or immovable property situated in Canada or interests therein.

What is the CRA's position on whether or not a share of a corporation that is not listed on a designated stock exchange would be TCP if, at any time during the 60-month period that ended at the determination time, most of the value of the corporation's shares was derived directly from assets consisting of non-defaulted arm's length mortgages secured by real property situated in Canada?

CRA Position

An interest in real property derived from a non-defaulted arm's length mortgage secured by real property is generally limited to an interest as security only, and subsection 248(4) of the Act clarifies that for the purposes of the Act, an interest in real property does not include an interest as security only derived by virtue of a mortgage. Therefore, CRA is of the view that the fact that at some time during the 60-month period that ended at the determination time, most of the value of the shares of a corporation that is not listed on a designated stock exchange was derived directly from assets consisting of non-defaulted arm's length mortgages secured by real property situated in Canada, would not result in a share of that corporation being TCP. However, if the rights of a particular mortgagee were different from those described in subsection 248(4) of the Act, we would need to examine all of the facts and circumstances relating to that particular mortgage before taking a final position and could conceivably reach a different view.

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