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 DOCNUM 2012-0457741E5
 REFDATE 121203
 SUBJECT Disposition of taxable Canadian property

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 a disposition of taxable Canadian property results from the amalgamation of two corporations in a foreign country.
 POSITION: Possibly.
 REASONS: To be determined substantially by the legal consequences flowing from the foreign corporate law under which the predecessor corporations are amalgamated.

XXXXXXXXXX

2012-045774
 Bing Zhang
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December 3, 2012

Dear XXXXXXXXXX:

Re: Disposition of taxable Canadian property

We are writing in response to your email of August 2, 2012, in which you described a situation involving two corporations ("Forco1" and "Forco2") that are not resident in Canada. Both corporations were incorporated and are resident in a country with which Canada does not have an income tax treaty. Each shareholder of Forco1 holds an identical interest in Forco2, such that the two corporations have the same set of shareholders. The shareholders of Forco1 and Forco2 are all non-residents of Canada.

Canco is a taxable Canadian corporation. Forco1 and Forco2 each own one third of the shares of Canco. Although not specifically stated in your example, we have assumed that the remaining third of the shares of Canco are owned by a third party who is acting on an arm's length basis to Forco1, Forco2, and their respective shareholders. You have stated that the shares of Canco are taxable Canadian property of Forco1 and Forco2.

Forco1 and Forco2 are considering a plan to amalgamate under the corporate law of the foreign country of their residence, to form a successor corporation ("NRAmalco"). Following the amalgamation, NRAMalco will own two thirds of the shares of Canco.

You have asked whether there could be a disposition of the shares of Canco as a result of the amalgamation of Forco1 and Forco 2 in the foreign country, and whether the predecessor companies would be required to obtain a Certificate of Compliance pursuant to section 116 of the Income Tax Act (the "Act").

Our Comments

Written confirmation of the tax implications inherent in a particular transaction is given by this Directorate only where the transactions are proposed and are the subject matter of an advance income tax ruling request submitted in the manner set out in Information Circular 70-6R5, Advance Income Tax Rulings, dated May 17, 2002. However, we are prepared to offer the following general comments that may be of assistance.

As you have noted, a non-resident vendor who disposes of certain taxable Canadian property may be subject to the compliance process outlined in section 116 of the Act. However, in a situation such as you have described, the application of section 116 of the Act would depend upon the determination of whether, as part of the foreign amalgamation, the transfer of property to the successor corporation would be considered a disposition of property by the predecessor corporation for purposes of the Act.

In this regard, the Canada Revenue Agency's longstanding position is such that the Canadian income tax treatment of an amalgamation that does not qualify as an amalgamation under section 87 of the Act will be determined substantially by the legal consequences flowing from the corporate law under which the predecessor corporations are amalgamated. Where the applicable corporate law provides that the predecessor corporations involved in the amalgamation cease to exist, and that a new corporation is formed on the amalgamation, the predecessor corporations will generally be considered to have disposed of any property held immediately before the amalgamation. However, where the applicable corporate law suggests a "continuation type" amalgamation, the predecessor corporations will generally not be considered to have disposed of any assets that they held immediately before the amalgamation.

Based on the limited information that you have provided, we are not able to comment on whether there would be a disposition of shares of Canco as a result of an amalgamation of Forco1 and Forco2. Similarly, we are not able to comment on the application of section 116 of the Act in the situation that you have described.

However, we trust that our comments will be of assistance.

Yours truly,

Robert Demeter
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For Director
International Division
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