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DOCNUM 2014-0541921E5

REFDATE 150120

SUBJECT Whether a contingent amount is an excluded obligation?

SECTION 143.4(1); 80(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: Whether a contingent amount under the definition of this term in subsection 143.4(1) would be considered an excluded obligation within the meaning of the definition of this term in subsection 80(1)?

POSITION: Generally yes.

REASONS: Based on our response to Q. 15 of the 2014 APFF.

XXXXXXXXXX

J.Gibbons

2014-054192

January 20, 2015

Dear XXXXXXXXXXXX:

We are writing in response to your email dated August 1, 2014, wherein you asked for our opinion concerning the **interaction between sections 143.4 and 80** of the Income Tax Act (the "Act").

In particular, you describe a situation where a commercial debt obligation (the "Debt") is entered into that has **an embedded right to reduce the amount payable if certain conditions are met within a year** and the Debt is issued with **respect to the acquisition of property** (the "Property"). You assume that this right is a "contingent amount," as defined under subsection **143.4(1)** of the Act. As we understand it, your question is whether the **debt forgiveness rules in section 80** of the Act

would apply to the Debt if the Debt is later settled or extinguished.

You are concerned about double taxation since the amount of the Debt and the cost of the Property would have been reduced under subsection 143.4(1) because of the contingent amount.

Our Comments

This technical interpretation provides general comments about the provisions of the Act and related legislation. It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 70-6R6, Advance Income Tax Rulings and Technical Interpretations.

As indicated in the CRA's response to question 15 of the Table Ronde Sur La Fiscalité Fédérale of the 2014 APFF (l'Association de planification fiscale et financière), a contingent amount under subsection 143.4(1) of the Act would generally fall under the definition of an "excluded obligation" in subsection 80(1) of the Act. More specifically, it would appear that subparagraphs (a) (ii) and (iii) of the definition of an excluded obligation would generally apply. Subparagraphs (a) (ii) and (iii) describe, respectively, an obligation the proceeds of which were deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts" or "were deducted in computing the capital cost or cost amount to the debtor of any property of the debtor."

An excluded obligation is included under paragraph (j) of amount "B" in the definition of a "forgiven amount" in subsection 80(1). This paragraph provides as follows:

"[S]uch portion of the principal amount of the obligation as represents the principal amount of an excluded obligation."

It should be noted that amount B is deducted from the forgiven amount

otherwise determined. Accordingly, a contingent amount that qualifies as an excluded obligation would **reduce the forgiven amount otherwise determined**. This **should avoid any double taxation** that may arise as a result of the interaction between section 80 and section 143.4 of the Act.

We trust our comments will be of assistance.

Yours truly,

G. Moore

For Director

International Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch