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DOCNUM 2013-0476871E5

REFDATE 141003

SUBJECT Subsection 75(2)

SECTION 75(2); 96(1)(f)

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 subsection 75(2) applies where a settlor contributes an interest in a limited partnership to a trust and under the terms of the trust the partnership interest may revert back to the settlor.

POSITION: It depends on the income earned by the limited partnership.

REASONS: Pursuant to paragraph 96(1)(f) of the Act, the income of a partnership generally retains its character as it flows out to the partners. Where the limited partnership earns business income, that income will be business income to the trust and would not be subject to subsection 75(2). Where the limited partnership earns property income such as interest or dividend income, that income will flow to the trust as property income and subsection 75(2) will apply to that income.

XXXXXXXXXX

2013-047687

J. White

October 3, 2014

Dear XXXXXXXXXXXX,

This is in reply to your email in which you asked whether subsection 75(2) of the Income Tax Act (Canada) (the Act) would be applied to income received by a trust from a limited partnership interest.

Your email contained a scenario in which a taxpayer settles a trust with various properties owned by the taxpayer, one of which is an interest in a limited partnership. The trust indenture is worded so that on the termination of the trust, the property of the trust will revert to the settlor of the trust.

In your email you have suggested that the interest in the limited partnership is a property transferred to the trust from the settlor, in which case all income from the limited partnership would be property income of the trust and allocated to the settlor. Alternatively, you have suggested that subsection 75(2) not apply to the income distributions of the limited partnership as the income from the limited partnership is business income and not property income.

Our comments

This technical interpretation provides general comments about the provisions of the Income Tax Act and related legislation (where referenced). 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 particular 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 IC70-6R6 Advance Income Tax Rulings and Technical Interpretations.

In general, pursuant to paragraph 96(1)(f) of the Act, any income earned by a partnership for the taxation year retains its character in the hands of the partners. That is, where the partnership earns business income, the trust will be considered to have earned its share of the business income and where the partnership earns property income, for example, dividend income, the trust will be considered to have earned its share of the dividend income.

Subsection 108(5) of the Act provides that unless specified by another provision of the Act, income flowing through a trust to a beneficiary shall be deemed to be income to the beneficiary from a property that is an interest in a trust and not from other sources. However, this rule does not affect the attribution rules including subsection 75(2).

Paragraph 5 of Interpretation Bulletin 369R, Attribution of Trust Income to Settlor, provides that in applying subsection 75(2) it is necessary to distinguish between income or loss from property and income or loss from a business. How the particular income from the limited partnership is treated in the hands of the trust will be dependent on the nature of the income generated by the limited partnership as the income retains its character as it flows through to the partners.

Where the partnership earns property income such as interest or dividend income and in accordance with the partnership agreement the trust is allocated such property income, that income will flow through to the trust and will be attributable to the person from whom the partnership interest was received. The business income that flows through to the

trust from the limited partnership will not be attributed to the settlor.

Please note that allocations of partnership income are subject to subsections 103(1) and (1.1) of the Act.

We trust our comments will be of assistance.

Yours truly

Steve Fron CPA, CA

Manager

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