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SUBJECT Services provided by non-residents

SECTION Section 153, Regulations 100, 102

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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:** Where a taxpayer hires a USCo to provide the services of its employees in Canada, can the taxpayer be liable for withholding and remitting of income tax from the remuneration paid to the employees of USCo.

**POSITION:** Question of fact.

**REASONS:** The payer of remuneration is responsible for withholding pursuant to subsection 153(1). Generally, the employer is the payer. However, where an employer/employee relationship exists between the taxpayer and the employees, the taxpayer could be responsible for withholding as the payer.

XXXXXXXXXX

G. Godson

2013-050865

October 2, 2014

Dear XXXXXXXXXXXX:

Re: Non-resident Individuals Performing Services in Canada

We are writing in reply to your email of November 5, 2013, requesting our views on the withholding and reporting requirements for a corporation (CanCo) that has hired a non-resident corporation ("USCo") to provide services and equipment in Canada. In particular, you are concerned that CanCo could be liable for the withholding and remitting of source deductions, and reporting of these amounts for the employees of USCo (the "Employees"), who are also non-residents of Canada. We also acknowledge our various conversations (Young / XXXXXXXXXXXX).

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 IC 70-6R6, Advance Income Tax Rulings.

The Canada Revenue Agency's views on the withholding obligations in situations such as the one you describe can be found in Information Circular IC 75-6R2, Canadian Withholding Tax Obligations under Part I of the Act. However, since your primary concern appears to be that CanCo could be liable for withholding and remitting of income tax from remuneration paid to the Employees if USCo does not do so, we offer the following comments that we hope will be of assistance.

As stated in the IC 75-6R2, the payer – in most cases this will be the employer – of the remuneration to the employees is responsible for withholding tax, remitting it to Receiver General, and reporting the amounts on the appropriate information slips. However, in some situations, such as the one that you describe, it may not be clear who is the payer of the remuneration. These situations, where an employee is temporarily assigned from an entity in one country to an entity in another country, are addressed in paragraphs 35 to 39 of the Information Circular.

Where the facts indicate that an employer/employee relationship exists between CanCo and the Employees, CanCo could be considered to be the Payer, even if the Employees remain on the payroll of USCo. In this situation, USCo would be paying the remuneration on behalf of CanCo. Accordingly, CanCo would be liable for withholding and remitting tax, and reporting the payments on the appropriate information slip. The question of whether an employer/employee relationship exists between CanCo and the Employees is a question of fact that can only be resolved after an examination of all facts and circumstances surrounding the relevant situation.

We trust these comments will be of assistance.

Yours truly,

Terry Young, CPA, CA

Manager, Administrative Law Section

International Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch