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PRINCIPAL ISSUES: Whether in the particular situation described, a Canadian resident individual is entitled to a deduction under subsections 20(11) and 20(12) of the Act in respect of the U.S. taxes paid by a partnership in which the individual is an indirect member.

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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: Whether in the particular situation described, a Canadian resident individual is entitled to a deduction under subsections 20(11) and 20(12) of the Act in respect of the U.S. taxes paid by a partnership in which the individual is an indirect member.

POSITION: Yes.

REASONS: Since no deduction under subsection 20(12) was claimed by a partnership, the individual is entitled to a deduction under subsections 20(11) and 20(12).

March 7, 2016

Ms. Stephanie Melin HEADQUARTERS

Senior Programs Officer Income Tax Rulings Directorate

Individual Returns Directorate Kimberly Duval

Assessment, Benefit and Service Branch

2015-057246

Deduction of Foreign Non-Business Income Tax

We are writing this letter in response to your email wherein you requested our comments as to whether a particular individual ("Taxpayer") is entitled to a deduction under the Income Tax Act (the "Act") in respect of foreign non-business income tax paid by a partnership of which Taxpayer is an indirect member.

Unless otherwise noted, all statutory references herein are references to the Act.

The facts, as we understand them, are as follows:

* Taxpayer, a Canadian citizen and a resident of Canada for purposes of the Act and the Canada – U.S. Tax Convention (the "Treaty"), owns an interest in a Canadian limited partnership ("LP").

* LP owns an interest in a limited partnership formed in the United States ("Holding LP"). Holding LP has elected to be treated as a corporation for U.S. tax purposes, while it is treated as a partnership for Canadian income tax purposes.

* Holding LP owns XXXXXXXXXX U.S. limited liability companies ("LLCs"). LLCs are each disregarded entities for U.S. tax purposes but are treated as non-resident corporations for Canadian tax purposes.

* In the taxation year in question, LLCs earned active business income in the U.S. that was distributed to Holding LP.

* From a U.S. tax perspective, since LLCs are disregarded entities and Holding LP is treated as a corporation, Holding LP paid taxes to the government of the U.S. in respect of income earned by LLCs. From a Canadian tax perspective, the distributions by LLCs to Holding LP were treated as dividends. The dividend income received by Holding LP was allocated to LP and ultimately to Taxpayer based on the relevant ownership percentages.

* Taxpayer claimed a deduction pursuant to subsection 20(11) and subsection 20(12) on the personal income tax return for foreign non-business income tax allocated to him by Holding LP (through LP). No deduction for the U.S. taxes was made in the year on either Holding LP's or LP's partnership returns.

Based on these facts, you have asked us to consider whether Taxpayer would be entitled to the deduction under either subsection 20(11) or subsection 20(12) (or, alternatively, under the Treaty) in respect of the amount of U.S. taxes paid by Holding LP.

Our Comments

In the situation described above, it is our opinion that Taxpayer is entitled to a foreign tax deduction under subsection 20(11) and/or subsection 20(12) for the taxes paid by Holding LP to the government of the U.S. in respect of income earned by LLCs. This position is supportable based on the CRA's long standing treatment of foreign taxes paid by a partnership for purposes of the foreign tax credit rules in section 126 and the findings of the Tax Court of Canada in FLSmidth Ltd. v. The Queen (2012 TCC 3, aff'd 2013 FCA 160).

In our view, for purposes of our domestic foreign tax credit regime, a partner's non-business income tax, within the meaning of subsection 126(7), paid to a particular foreign country includes the partner's share of any non-business income tax paid to that country through the accounts of the partnership. Consequently, any foreign tax credit under subsection 126(1) or deduction under subsection 20(11) or 20(12) may be claimed by the particular partner, provided all requirements of these provisions are otherwise met.

Please note that since the deduction is available to Taxpayer under the Act, there is no need to analyze the Treaty.

We trust that these comments will be of assistance to you.

For your information a copy of this memorandum will be severed using the Access to Information Act criteria and placed in the Canada Revenue Agency's electronic library. A severed copy will also be distributed to the commercial tax publishers for inclusion in their databases. The severing process will remove all material that is not subject to disclosure, including information that could disclose the identity of the taxpayer.

Yours truly,

Vitaliy Anissimov

Section Manager

for Director

International Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch

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