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1. Interaction Between ss. 17(1) and 247(2)

Background

- Under subsection 17(1), income may be imputed to a corporation resident in Canada in respect of an amount owing by a non-resident person, based on a prescribed rate.

- Under subsection 247(2), an amount in respect of a transaction entered into with a non-arm’s length non-resident may be adjusted to reflect arm’s length terms and conditions.
1. Interaction Between ss. 17(1) and 247(2)

Question

- Where a corporation resident in Canada makes a non-interest-bearing loan to a wholly-owned non-resident subsidiary, could the CRA provide its views on the potential application of subsection 17(1) and/or subsection 247(2) in the following two scenarios?
  
  a) The loan remains outstanding for more than one year and does not qualify for the controlled foreign affiliate exception in subsection 17(8).
  
  b) The loan remains outstanding for one year or less and it would, if it had been outstanding for more than one year, have qualified for the controlled foreign affiliate exception in subsection 17(8).
2. Application of Section 247 to FAPI Computations

Background

- Section 247 may apply in respect of transactions with non-arm’s length non-residents

Question

- Does the CRA consider section 247 to apply in computing a foreign affiliate’s FAPI in respect of a taxpayer, in the context of a transaction between the foreign affiliate and another non-resident person?
3. U.S. LLPs and LLLPs

Background

- At the 2016 CTF annual conference, the CRA announced that it had established an internal working group to study compliance issues related to Florida and Delaware LLPs and LLLPs arising from its prior announcement that it would generally consider such entities to be corporations for Canadian tax purposes.

- As part of this announcement, the CRA indicated that it was open to a prospective approach whereby prior filings would, in certain circumstances, be allowed to stand.

Question

- Can the CRA provide an update on the activities of the working group?
4. Subsections 261(20)/(21) and Foreign Affiliates

Background

- Subsections 261(20) and (21) deny FX losses in respect of specified transactions between related taxpayers with different “tax reporting currencies”

- Subsection 261(1) defines
  - “tax reporting currency” as the currency in which a taxpayer’s “Canadian tax results” are determined
  - “Canadian tax results” as any amount that is relevant in computing income, taxable income, or taxable income earned in Canada

- Subsection 261(6.1) deems a FA, for purposes of computing FAPI, to have an elected functional currency that is the same as that of the taxpayer of which FA is a FA
Question

- Does the CRA agree that the conditions in subsection 261(20) would not be met in this case because FA is deemed to have an elected functional currency only for purposes of determining its FAPI?
5. FTCG Rules and Brazilian Interest on Equity

Background

- Foreign tax credit generator (FTCG) rules in subsections 91(4.1) to (4.7) deny a deduction for foreign accrual tax (FAT) if a “specified owner” is considered under relevant foreign law to own less than all shares of a particular corporation than it is considered to own under the Act (Lesser Ownership Test).

- Lesser Ownership Test is deemed by subsection 91(4.7) to be met if, under relevant foreign law, dividends or similar payments on shares held by specified owner are treated as interest or another form of deductible payment.

Question

- Under Brazilian law, corporations can choose to make tax deductible distributions to shareholders, within certain limits (called “interest on equity” or IOE). Under what circumstances, if any, would the CRA consider such distributions to meet the conditions of subsection 91(4.7)?
6. T1134 Filing Issues

Background

- CRA has previously provided administrative relief from certain duplicate or repetitive reporting for Form T1134 to reduce the compliance burden for a reporting entity.

- Duplicate reporting often arises due to requirement of a reporting entity to file a T1134 for foreign affiliates and controlled foreign affiliates owned at any time in the reporting entity’s taxation year.
6. T1134 Filing Issues

Question

a) Assume each of Canco1, Canco2, CFA1 and CFA2 has a December 31st tax year-end, and that Canco1 and Canco2 amalgamate on August 1st.

Would CRA consider extending its administrative relief to situations where there is a deemed year-end due to an amalgamation of two or more Canadian corporations, such as in this example?

- Canco1 owned CFA1, Canco2 owned CFA2, in short year ended July 31st.
- Neither CFA1 nor CFA2 has a tax year ending in July 31st short year-end.
- Canco1 and Amalco must each file a T1134 for CFA1, Canco2 and Amalco must each file a T1134 for CFA2.
6. T1134 Filing Issues

Question

b) Assume Canco1 transfers CFA1 to Canco2 mid-year

Would CRA consider extending its administrative relief to situations where multiple Canadian taxpayers or partnerships in a related group are required to file a T1134 for the same FA even though information reported may be minimal for reporting entities that do not own FA at end of year, such as in this example?

✓ Each of Canco1 and Canco2 own shares of CFA1 at some point in year
Question
c) For Canadian taxpayers with large FA groups, the requirement to paper file T1134 forms and related attachments is extremely burdensome. Often an additional copy of all forms and attachments is requested by CRA auditors when their audit is commenced.

Is there an expected time frame for being able to file T1134 forms and attachments electronically?
7. Clause 95(2)(a)(ii)(D) Issues Regarding U.S. LLCs

Background

- Issues can arise under subclause (IV) of clause 95(2)(a)(ii)(D) (Cap D) where the 2\textsuperscript{nd} affiliate and/or 3\textsuperscript{rd} affiliate are disregarded LLCs.

- Conditions for sub-subclause (IV)2 require that, for each disregarded 2\textsuperscript{nd} affiliate and 3\textsuperscript{rd} affiliate, and for each of their relevant taxation years that end in the taxation year of the foreign affiliate making the loan:
  - Their members/shareholders at the end of the year be subject to tax in a country other than Canada.
  - On all or substantially all of the income of the disregarded affiliate for a relevant taxation year.
Question

a) Assume either 2\textsuperscript{nd} affiliate (2\textsuperscript{nd} LLC) or 3\textsuperscript{rd} affiliate (3\textsuperscript{rd} LLC) has a loss in a taxation year ending after loan was made to 2\textsuperscript{nd} LLC, and all other Cap D conditions are met.

Can CRA confirm that, notwithstanding reference to “income” in sub-subclause (IV)2, interest paid or payable on loan to 2\textsuperscript{nd} LLC would be eligible for recharacterization?
b) Assume 2\textsuperscript{nd} affiliate (US Holdco) owns 40\% of 3\textsuperscript{rd} LLC which is a partnership for US purposes, with an arm’s length U.S. resident owning other 60\%. 3\textsuperscript{rd} LLC and its members all have December 31\textsuperscript{st} tax year-ends.

US Holdco sells its 40\% interest in 3\textsuperscript{rd} LLC to an arm’s length U.S. resident on June 1\textsuperscript{st} and no deemed year-end arises for US tax purposes. US Holdco is subject to tax on its share of 3\textsuperscript{rd} LLC’s income for period from January 1\textsuperscript{st} to May 31\textsuperscript{st}.

Would CRA consider “end of year” requirement to be met, notwithstanding that US Holdco is not a member of 3\textsuperscript{rd} LLC at its year-end (December 31\textsuperscript{st})?
8. NR4 Reporting for Non-taxable Amounts

Background

- Previous versions of CRA’s Guide T4061 NR4 – Non-Resident Tax Withholding, Remitting, and Reporting stated that an information return is required where amounts are paid or credited that are subject to withholding under Part XIII.

- More recent versions of this Guide appear to suggest that an information return is required for amounts identified in Regulation 202(1) that are paid or credited by a resident of Canada to a non-resident person regardless of whether the payment is subject to Part XIII withholding.
8. NR4 Reporting for Non-taxable Amounts

Question

- Can CRA clarify the reporting obligations for amounts paid or credited by a resident of Canada to a non-resident person?

- For example, is a Canadian resident required to file an information return for interest paid or credited to an arm’s length non-resident person if the interest is not subject to Part XIII withholding?
9. Computation of Earnings for a Disregarded U.S. LLC

Background

- CRA’s response to Question 11 at 2016 CTF Annual Conference indicated a change in position regarding computation of earnings of a disregarded US LLC carrying on an active business
  
  - **2009 Position** → compute earnings under subparagraph (a)(i) of definition of “earnings” in Regulation 5907(1) (*Earnings Definition*)
  
  - **2016 Position** → compute earnings under subparagraph (a)(iii) of Earnings Definition

- CRA indicated change in position due to introduction of Regulation 5907(2.03) in 2011
- Revised position applies to taxation years ending after August 19, 2011
Questions

Given fact that surplus computations have been completed, and balances relied on, for the past 5 years, would CRA be willing to consider following positions:

a) For taxation years of LLC beginning prior to November 29, 2016, taxpayer may choose whether to compute LLC’s earnings based on either the 2009 Position or the 2016 Position?

b) To extent of dividends received by a Canadian taxpayer on or before November 29, 2016, or in respect of other transactions completed prior to that date that rely on surplus computations based on the CRA’s 2009 Position, taxpayer may compute LLC’s earnings based on that 2009 Position?