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2020-084779
Grace Tu

May 8, 2020

Dear Mr. Nikolakakis,

You sent us an email requesting a confirmation that a non-resident corporation that operates an airline that normally has flights to and from Canada can qualify as an “eligible entity” under subsection 125.7(1) of the Income tax Act (the “Act”), notwithstanding that a part or all of its income may not be included in computing its income for a taxation year by the operation of the provisions of an income tax convention between Canada and another State and paragraph 81(1)(a).

Our comments

This technical interpretation provides general comments about the provisions of the 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 70-6R9, Advance Income Tax Rulings and Technical Interpretations.

Section 125.7 contains measures that were introduced by the *COVID-19 Emergency Response Act, No. 2* that received Royal assent on April 11, 2020. The interpretive issue surrounds the definition of “eligible entity” under subsection 125.7(1). Paragraph (a) of that definition includes “a corporation, other than a corporation that is exempt from tax under this Part or is a public institution”.

In interpreting the phrase “a corporation that is exempt from tax under this Part” under subsection 125.7(1), we note that while subsection 81(1) excludes certain amounts from the computation of income, subsection 149(1) exempts taxable income of specific types of “persons”.

In the example of a non-resident corporation that operates an airline, its Canadian-sourced income may be excluded from the computation of its income for Part I on the basis that its income meets the conditions under paragraph 81(1)(a), not because such airline is a specific type of entity exempt from tax under subsection 149(1).

The words “exempt from tax” appear in a number of provisions of the Act and their interpretation might be informed by the context and the purpose of the provisions in which they appear.

In the context of section 125.7, a careful review of other paragraphs under the definition of “eligible entity” and of the overall context and purpose of the provision shows that the exclusion in paragraph (a) was meant to exclude, generally, corporations described under subsection 149(1) while providing under paragraph (d) of that definition that five types of persons that are exempt under subsection 149(1) can qualify as an “eligible entity”.

In our view, a non-resident corporation that operates an airline, a portion of whose Canadian source income is not included in the computation of its income under Part I of the Act as a result of the operation of paragraph 81(1)(a) and a provision under an income tax convention between Canada and another State is not a corporation “exempt from tax under Part I” under the definition of “eligible entity” in subsection 125.7(1) and therefore would not be prevented from being an “eligible entity” on that basis.



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