January 22, 2012

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Dear Ms. Schermann:

Re: NR301, NR302 and NR303 Eligibility Declaration for Tax Treaty Benefits

Thank you very much for our joint teleconference on December 21, 2011, and the welcomed notification shortly after regarding the deferral of the formal date of implementation until January 1, 2013. Below is a summary of where we think we stand on the matters discussed, in the order in which they appeared in our December 16, 2011 letter. Please let us know if there is anything we have misunderstood or omitted and whether we can proceed on the matters in question.

Recommendations/Proposals

1. ***Forms:*** To the extent that the forms will not be updated at this time, we understand that the CRA is open to developing Qs&As for payers and for client payees to address questions that have been received or are the result of a review of forms incorrectly completed. This includes, for example, one form completed for two people (see point 3. below).

   Also, we believe that the CRA agreed to consider an option for a single power of attorney (POA) to sign once for multiple payees.

   Finally, we would appreciate being given the contact information of your colleagues with whom we might speak regarding the placement and size of form numbers generally: while appearing to be a small issue, it is important for our members from an operational and processing efficiency perspective. We also believe that Canadian taxpayers should be able to easily identify the forms required and would like to pursue this with the appropriate area of the CRA.

2. ***More information for taxpayers:*** We believe that the CRA agreed to develop additional plain-language information for the CRA website for non-residents and for Canadian residents whose investment income may be withheld on at a non-resident withholding rate. As mentioned, we would be pleased to work with you on wording for the CRA website (and form instructions). This information would reflect, where relevant, some of the information in points 1. above and 3. below, including whether, and if so how, claims can be made for any excess amounts withheld. Examples for payees and payers would be most helpful.

3. ***More payer information:*** We request that the Qs&As for payers include the following points:
   i. Specification of all fields that must (or need not) be completed for a form to be "valid" (e.g., type of expected income, tax ID boxes); we suggest that this be done via notations of 'required' or 'optional' on a sample PDF form itself so as to minimize cross-referencing challenges).
   ii. Plain-language description of the right to treaty benefits ('e.g., identify the country to which you must declare investment income and/or pay taxes').
   iii. Clarification of where hybrids, LLCs and partnerships should be recorded among the individual, corporation and trust categories on Form NR301.
   iv. Clarification that POAs are authorized signatories (and any related procedures the CRA expects to be followed).
   v. Plain-language summary of which entities are, or may be, exempt from the rules, such as governments, certain tax-exempt entities, including charities, pension or retirement accounts (e.g., IRAs), etc. and to where they should be referred if they should be exempt, but do not currently have the necessary paperwork (for example, a CRA website link and/or guide).
   vi. Confirmation that:
      - Any fields left blank, other than those that are required, will not affect the validity of the form.
      - CRA auditors considering what penalties to apply in cases of under-withholding will consider the eligibility information obtained from an alternative but equally rigorous process, with the same weight as completed NR301, 302 and 303 forms as to a payee's eligibility for treaty benefits, provided there is evidence of due diligence and no evidence of a payer ignoring contrary information.
      - Knowing that a client is a "snowbird" – spends some winter months in southern locations – is not information that would require a payer to withhold tax on a Canadian resident payee.
      - Firms that have obtained an NR301, 302 or 303 at some point may choose *not* to update the form (or update it less frequently than every three years) and that the fact that such forms are no longer collected (or collected less frequently) will *not* affect an auditor's assessment, again provided there is evidence of due diligence that the payer collected all the necessary client/account information and there is no evidence of a payer ignoring contrary information.

As well, we understand that the CRA – in light of the bullet "You have no reason to suspect the information is inaccurate or misleading" in the CRA's publication called *Pending updates to IC76-12, Applicable rate of Part XIII tax on amounts paid or credited to persons in*

countries with which Canada has a tax convention related to forms NR301, NR302, and NR303 – will consider deleting the phrase "You have no contradictory information" from the publication as it is redundant and confusing.

4. ***Efficient access to withholding tax changes:*** From an efficiency perspective, we think that treaty rates per income type per country should be information that is made available by the CRA in an electronic file to all parties that request it, with the file being resent to them as withholding rates are amended. The objection that the CRA provided, if we understood correctly, was that it wants payers to read the actual treaties. While we understand the CRA's concern, the reality is that many of the people who need to interpret and apply this information in an operations environment were not hired for this particular skillset, which is needed for only a small part of their overall responsibilities. These treaties are very long, written in a legal rather than plain-language style that makes understanding by non-tax staff working in a fast-paced environment difficult and this is only a fraction of the material required by tax-reporting departments. The CRA, by providing the information in a file format or on a website, would reduce errors and costs for many small (and larger) payers. There are many examples of federal government departments providing simplified compliance guides for businesses[1]. We hope that you will be able to connect us with the appropriate CRA contacts to begin to address this.

5. ***Grandfathering:*** We requested, and understand that the CRA will consider, grandfathering of all existing individual accounts, including registered plan types of accounts, from the requirements. As well, we asked for administrative relief in the case of existing non-individual accounts to align data collection with requirements to obtain similar information under the U.S. *Foreign Account Tax Compliance Act*.

6. ***Refunds:*** We would appreciate a contact within the CRA with whom we can discuss simplification of the NR7-R claim process. As promised, we provided your colleague with a copy of the letter to the Minister in regards to a range of proposals to reduce the administrative impact on financial institutions, in particular small firms, from the impacts of tax reporting requirements that go well beyond requirements on businesses generally.

7. ***Other:***
   - We appreciated your response to the effect that the CRA is *not* expecting to make additional changes to any in the NR series of forms in the next three years, which might affect payers' implementation plans.

   - We would appreciate any data that the CRA has regarding the current number of NR7-R refund requests and the average time between claim receipt and payment.

   - We appreciated the CRA's willingness to participate in a meeting with multiple groups and accounting firms to review the forms and achieve a common understanding of the obligations of the various parties involved in this process. We would like to ensure that fund managers offering funds on a client-name basis and those entities offering mutual

[1] See http://www.priv.gc.ca/information/guide_e.cfm#contenttop and http://www.fintrac.gc.ca/publications/general-general-eng.asp#s2 for examples.

funds of the same fund managers, but on a nominee basis, have an opportunity to hear the same message. Also, we believe that we understood you to say that it is up to the parties themselves to make that determination and that the CRA will be satisfied as long as one of the parties has ensured that clients have been correctly documented. However, we would like to understand which the CRA would hold responsible if the reporting somehow fell through the cracks on a nominee-held account – the fund manager or the nominee. That said, we think it would be helpful to have answers to, or confirmation of, a number of the above points and wonder if we might target February for a stakeholder meeting, which we would be pleased to co-host with the CRA.

Thank you for consideration of the above. We hope to be in touch shortly and, in the meantime, please do not hesitate to contact us.

Yours sincerely,

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