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DOCNUM 2013-0495661I7
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DESCKEY 26
RATEKEY 2
REFDATE 140214
SUBJECT Taxability of payment from US charitable trust
SECTION 6(1)(a); 6(3); 56(1)(u)
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Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Are monthly payments from a US charitable trust paid to a former employee taxable?

POSITION: Question of fact, but likely no.

REASONS: Included under 56(1)(u) in net income and deducted under 110(1)(f) in computing taxable income.

February 14, 2014

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Income Tax Rulings Directorate
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Attention: Paula Cleeve

2013-049566

Taxation of financial assistance

This is in reply to your email dated July 4, 2013, asking about the taxation of monthly payments received by an individual from the XXXXXXXXXX ("Fund"). Unless otherwise stated, all statutory references are to the Income Tax Act.

Based on the information provided, our understanding of the relevant facts is as follows:

* The Fund was established in XXXXXXXXXX with a personal donation of \$XXXXXXXXXX of XXXXXXXXXX stock. The Fund has been self-perpetuating and has not received contributions from XXXXXXXXXX or its employees.

* The Fund provides financial assistance to former XXXXXXXXXX employees who, by reason of age or physical disability, are unable to be self-supporting.

* To be eligible for financial assistance, the former employee must:
o have had at least XXXXXXXXXX years of service with one of the XXXXXXXXXX companies;
o be at least XXXXXXXXXX years of age (former employees who are disabled do not have to meet the age requirement); and
o have demonstrated financial need.

* The Fund reviews the individual's income and expenses and makes the decision independently of the individual's employment records (e.g., past earnings, performance, etc.). Other than as an initial form of eligibility, the individual's years of service are not considered in determining whether financial assistance is provided or the quantum of the financial assistance.

* The Fund states that it is not a pension plan and any amount received from the Fund will have no impact on the individual's company pension or on any government pensions or disability benefits.

* The individual applied for and receives monthly financial assistance from the Fund.

Our comments

As stated in paragraph 4 of Interpretation Bulletin IT-334R2, Miscellaneous Receipts, amounts received as gifts (i.e., voluntary transfers of real or personal property without consideration) are not subject to tax in the hands of the recipients. However, when a voluntary payment or other valuable transfer or benefit is received by an employee from an employer, or from some other person, by virtue of an office or employment, the amount of the payment or the value of the transfer or benefit is generally included in income pursuant to subsection 5(1) or paragraph 6(1)(a). Therefore, gifts received by employees are generally taxable unless they are received in the individual's personal capacity or fall under the Canada Revenue Agency's gifts, awards, and social events policy.

An amount is generally considered to be received in an individual's personal capacity, as opposed to his or her capacity as an employee, where the amount is: philanthropic; voluntary; not based on employment factors such as performance, position, or years of service; and not made in exchange for employment services. In this particular case, although an individual must have XXXXXXXXXX years of service with their former employer to be eligible for financial assistance, the years of service are not determinative of whether the individual receives financial assistance or the quantum of any financial assistance. The financial assistance is based on the individual's personal financial needs (i.e., the Fund reviews the individual's actual income and expenses). While payments are usually set up for the life of the individual, we understand that the monthly allowance is subject to a periodic review of financial circumstances and may be changed or discontinued at any time, usually based on significant changes in the individual's situation, such as an influx of income or a dramatic decrease in expenses.

It is a question of fact whether an amount is received by virtue of an individual's employment or in the individual's personal capacity. Based on the information provided, it is our view that the amounts received from the Fund are likely received in the individual's personal capacity rather than by virtue of the individual's employment.

An amount received by an individual may also be considered a windfall and not taxable. Paragraph 3 of IT-334R2 lists the factors that are indicative of whether an amount is a windfall. Since the individual has to apply for financial assistance (i.e., contrary to paragraph 3(c) of IT-334R2), the amounts received from the Fund likely would not be a windfall.

Your email states that you had previously advised the individual that the amounts were taxable under clause 56(1)(r)(iii)(A). It is our view, however, that the amounts received from the Fund likely do not fall under subparagraph 56(1)(r)(iii). Subparagraph 56(1)(r)(iii) has three clauses, and the use of the word "and" at the end of clause (B) ties the three clauses together. In other words, the assistance must satisfy the conditions in all three clauses to be taxable under the subparagraph. Based on the information provided, the financial assistance provided by the Fund does not appear to satisfy clause 56(1)(r)(iii)(C) because it is not the subject of an agreement with the Canada Employment Insurance Commission.

The amount received from the Fund will be required to be included in the individual's income under paragraph 56(1)(u) if the amount is:

- (1) a social assistance payment;

- (2) made on the basis of a means, needs, or income test; and
- (3) not otherwise required by another provision to be included in the income of the individual or his or her spouse or common-law partner.

A social assistance payment generally includes a payment made to an individual whose income is inadequate or non-existent owing to disability, unemployment, old age, etc. Such assistance may be provided under the auspices of a private organization as well as a government organization.

For purposes of the second requirement, each one of the tests is considered to be a financial test. An "income" test is a test based solely on the income of the applicant; a "means" test is similar to an income test, but also takes into account the assets of the applicant; and a "needs" test takes into account the income, assets, and financial needs of the applicant.

In the current situation, the Fund provides financial assistance based on an "income" test to retired individuals XXXXXXXXXX years and older or with a disability. Since the criteria of paragraph 56(1)(u) appear to have been met, the financial assistance should be included in the individual's net income under that paragraph and deducted under paragraph 110(1)(f) in computing the individual's taxable income.

We trust our comments will be of assistance to you.

Yours truly,

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