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REFDATE 140110
SUBJECT Meaning of "assembly project" in Brazil Convention
SECTION Article 5 of the Canada-Brazil Tax Convention.

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: (1) Whether the terms "installation project" and "assembly project" have a similar meaning such that any position previously taken by the Directorate with respect to an "installation project" can apply to an "assembly project", as provided in the Convention. (2) Whether installation and assembly projects extend beyond construction and manufacturing industries.

POSITION: (1) In the context provided, the better view is to consider the terms "assembly" and "installation" as having a similar meaning. Consequently, any position previously taken by the Directorate with respect to an "installation project" would generally be relevant in determining if an "assembly project" exists for the purposes of the Canada-Brazil Income Tax Convention. (2) It is our view that installation and assembly projects are not limited to construction or manufacturing-type activities.

REASONS: Based on our interpretation of the Canada-Brazil Income Tax Convention and consistent with our positions in previous technical interpretations.

XXXXXXXXXXXX TSO

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2013-050591

January 10, 2014

Re : Assembly project under the Canada-Brazil Tax Convention

This letter is in response to your email sent to the Income Tax Rulings Directorate (the "Directorate") of the Canada Revenue Agency (the "CRA") on September 25, 2013, in which you asked for our opinion with respect to the application of Article V of the Convention Between the Government of Canada and the Government of the Federative Republic of Brazil for the Avoidance of Double Taxation with Respect to Taxes on Income (1984) (the "Convention").

As per subparagraph V(2)(g) of the Convention, the term "permanent establishment" shall include a building site or construction or assembly project which exists for more than six months. In your email, you mentioned that a majority of the literature and CRA documents only deals with "installation projects", which is the expression used in Article 5

of the OECD Model Convention (the "OECD Model").

You asked us whether the terms "installation project" and "assembly project" have a similar meaning such that any position previously taken by the Directorate with respect to an "installation project" can apply to an "assembly project", as provided in the Convention. You also requested us to determine whether installation and assembly projects extend beyond construction and manufacturing industries.

Unless otherwise stated, all statutory references in this letter are to the Income Tax Act (the "Act").

RELEVANT FACTS SUBMITTED

We understand that XXXXXXXXXXXX (the "Taxpayer") is a XXXXXXXXXXXX. During the audit period, the Taxpayer had an agreement with XXXXXXXXXXXX ("Canco") to provide services relating to the XXXXXXXXXXXX.

OUR COMMENTS

In our view, subparagraph V(2)(g) of the Convention is likely based on Article 5 of the 1963 OECD Model. The expression "assembly project" stated in the 1963 OECD Model was changed to "installation project" in 1977 and no comments were provided by the OECD with respect to the replacement of the term. Since the OECD Model and Commentaries, the Convention, the Income Tax Convention Interpretation Act and the Act do not define the expression "assembly project", it follows that the ordinary and common meaning of the words should prevail.

Considering the above, we believe that the better view would be to consider the terms "assembly" and "installation" as having a similar meaning. Accordingly, it is our view that any position previously taken by the Directorate with respect to an "installation project" would generally be relevant in determining if an "assembly project" exists for the purposes of the Convention.

With respect to your second question, it should be mentioned that the OECD Commentaries have been expanded to make it clear that paragraph 5(3) of the OECD Model is not limited to construction or manufacturing-type activities. However, it is still not clear how far the definition of "installation project" would extend.

Whether an installation project exists is a question of fact that can only be determined with full and complete knowledge of all of the facts of the situation. Usually, however, installation is seen as being performed in relation to a tangible property, such as a machine or equipment, and the Directorate has traditionally taken a fairly narrow view as to what constitutes an installation activity. Our general view would be that XXXXXXXXXXXX, in and of itself, is not an installation project. Finally, installation should be the main activity of the project to qualify as an "installation project". If significant other activities are also taking place, such as consulting, modification and testing, the project may not be viewed as an installation project.

We trust these comments will be of assistance.

Guy Goulet, CA, CPA, M. Fisc.

For Division Director

International Division

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