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REFDATE 140331
SUBJECT Director/Executor liability
SECTION 227.1, 160, 159

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.

POSITION: (1) There is no direct obligation imposed by the Act for the executor to file tax returns on behalf of a corporation of which a deceased person was the sole shareholder and director. (2) Yes. For examples, see sections 227.1 and 160. (3) The executor could challenge the validity of the underlying assessment. (4) If and when distributions are made, the executor will need to obtain a clearance certificate. If he or she does not do so, he or she may be liable for the deceased's tax owing.

REASONS: The determination of the potential liabilities of the executor is a question of fact.

XXXXXXXXXXXX

2013-051319
Andrew Deak
613-957-2130

March 31, 2014

Dear XXXXXXXXXXXX:

Re: Director/executor liability

We are writing in response to your letter dated November 22, 2013, in which you requested our views on the reporting and other obligations of an executor under the Income Tax Act (the "Act").

Your letter indicated that your client is the executor of an estate. The deceased person died in XXXXXXXXXXXX. He owned a corporation and was its sole director. The last corporate T2 return was filed on XXXXXXXXXXXX. The company has yet to be dissolved. In addition, you noted that the CRA's records show that the corporation owes money to the CRA from a trust account (GST or Payroll) and that at this point in time no director's liability has been assessed. Your client is concerned that as an executor he or she may become liable for this debt to the CRA and is concerned that he or she may be required to file corporate tax returns. The executor has no knowledge of the company and the company has no assets. No records exist (or have been located) for the company.

On this basis, you have asked us (1) whether the executor has a legal obligation to file T2 returns on behalf of the corporation; (2) can the

CRA take action that would make a deceased taxpayer liable for debts owed by the corporation for which the deceased was a director; (3) if the CRA were to assess the deceased taxpayer for the corporate debts owed, how could the executor object to this; and (4) if the CRA were to make the deceased taxpayer liable, can the executor be held liable for these amounts? In our phone conversation (Deak / XXXXXXXXXXX) on December 20, 2013 you also asked how an executor can ensure he or she will not be liable for any tax debts owed by the corporation.

Our Comments

This technical interpretation provides general comments to assist you in determining the income tax treatment of your particular fact situation. The income tax treatment of specific transactions will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted as set out in Information Circular IC 70-6R5, Advance Income Tax Rulings.

A corporation is a separate person under the Act and the responsibility for filing a return of income rests with the corporation. The responsibilities of the officers and directors to ensure that the corporation meets its obligations under the Act are derived from the Act and from the laws under which the corporation was incorporated. Generally, an executor deals with the assets and debts of an estate. There is no direct legal obligation under the Act for the executor to file a T2 on behalf of the corporation of which the deceased person was the director and sole shareholder. However, considering the deceased person was the sole shareholder and director of the corporation, it may be advisable for the executor to take steps to ensure the corporation files any outstanding T2 returns in order to determine the assets and debts of the deceased.

There are situations where a deceased taxpayer could be liable for tax debts of a corporation. For example, the deceased taxpayer could be liable as a director of the corporation under section 227.1 of the Act or section 323 of the Excise Tax Act. These provisions make directors of a corporation jointly and severally, or solidarily, liable, together with the corporation, to pay amounts that were not remitted by the corporation while the person was a director. For example, pursuant to section 227.1, directors can be held personally liable where a corporation has failed to remit payroll amounts, such as those which you mentioned in your letter. Further, if any property had been transferred to the deceased from the corporation for less than fair market value through, for example, shareholder benefits or dividends, the deceased taxpayer could be liable for tax debts of the corporation under section 160 of the Act. Under that section, the deceased could be liable for taxes owed by the corporation for taxation years prior to and including the year that included the date of the transfer.

If the deceased taxpayer has a tax liability, including any that arose from his capacity as a director as described above, and the CRA issues an assessment to that effect, the executor would have the same rights to object that the deceased taxpayer would otherwise have had. To that end, the executor could contest the validity of the underlying assessment. For

more details, please see IC 89-2R2 — Directors' Liability Section 227.1 of the Income Tax Act, Section 323 of the Excise Tax Act, Section 81 of the Air Travellers Security Charge Act, and subsection 295(1) of the Excise Act, 2001.

Finally, before making any distributions from the estate, the executor is required to obtain a clearance certificate, pursuant to subsection 159(2) of the Act. If the executor fails to obtain a clearance certificate before distributing property, under subsection 159(3) he or she will be personally liable for unpaid tax debts, whether assessed before or after the actual distribution of property. For more information about clearance certificates, please see IC82-6R10 - Clearance Certificate.

We trust our comments will be of assistance.

Yours truly,

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