



Mr. Ian Morrison
Friends of Canadian Broadcasting
200/238 - 131 Bloor Street West
Toronto, ON
M5S 1R8

2017-068435
K. Robinson

May 25, 2017

Dear Mr. Morrison:

Re: Advertising expenses - broadcasting

This is in reply to your correspondence dated January 20, 2017, wherein you requested our views on whether section 19.1 of the *Income Tax Act* (“Act”) would apply to deny expenses incurred by Canadian taxpayers to advertise on foreign internet websites.

In your submission, you referenced technical interpretation #9618735 dated October 24, 1996 (the “1996 technical interpretation”), wherein we concluded that a website was not a broadcast by a “foreign broadcasting undertaking” and therefore not subject to the limitation in section 19.1.

You indicate that it is the Friends of Canadian Broadcasting’s contention that the 1996 technical interpretation no longer conforms to the current reality of internet media and the rich audio-visual broadcasting now common on broadband. Specifically, you are asking us to reconsider the position taken in the 1996 technical interpretation.

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 a particular transaction 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 70-6R7, *Advance Income Tax Rulings and Technical Interpretations*.

Advertising expenses related to the income-earning process are generally deductible. However, subsection 19.1(1) of the Act provides that in computing income, no deduction shall be made in respect of an otherwise deductible expense of a taxpayer for an

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advertisement directed primarily to a market in Canada and broadcast by a “foreign broadcasting undertaking.”

Subsection 19.1(4) of the Act defines a “foreign broadcasting undertaking” as a network operation or a broadcasting transmitting undertaking located outside Canada or on a ship or aircraft not registered in Canada. “Network” is also defined in subsection 19.1(4) and includes any operation involving two or more broadcasting undertakings whereby control over all or any part of the programs or program schedules of any of the broadcasting undertakings involved in the operation is delegated to a network operator.

The *Interpretation Act* defines “broadcasting” as any radiocommunication in which the transmissions are intended for direct reception by the general public. The *Interpretation Act* also defines “radiocommunication” as any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by means of electromagnetic waves of frequencies lower than 3000 GHz propagated in space without artificial guide.

The rules in section 19.1 of the Act, as they are currently written, clearly prohibit the deduction of expenses for advertising directed primarily to the Canadian market by foreign radio and television broadcasters. While we appreciate today’s digital broadband and the mobile internet age, in our view, the CRA is not able to apply the rules in section 19.1 to advertising on foreign internet websites without an amendment to the law. As such, the 1996 technical interpretation continues to represent our views on this matter.

We trust that these comments will be of assistance.

Yours truly,

A handwritten signature in blue ink that reads "Michael Cooke". The signature is written in a cursive, flowing style.

Michael Cooke, CPA, CA
Manager
Business Income and Capital Transaction Section
Business and Employment Division
Income Tax Rulings Directorate