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PRINCIPAL ISSUES: Whether a C3 that elects not to distribute any of its profits to its shareholders, but donates all of the profits to a charitable organization, will qualify for exemption from tax under par. 149(1)(l)?

POSITION: The C3 remains a taxable corporation not eligible for the exemption under par. 149(1)(l).

REASONS: A C3, like any other business corporation, operates for profit, and therefore does not satisfy the requirement of par. 149(1)(l) that a non-profit organization be organized and operated exclusively for purposes other than profit. In addition, the destination of funds test has been discarded as a valid criterion for determining whether an entity qualifies as a non-profit organization within the meaning of par. 149(1)(l).

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2014-054003

A. Messore

September 11, 2014

Dear XXXXXXXXXXXX:

Re: Community Contribution Company

This is in response to your letter requesting our views on whether a community contribution company about to be incorporated by one of your clients in the province of British Columbia would be exempt from tax by virtue of paragraph 149(1)(l) of the Income Tax Act (the "Act").

Your client wishes to incorporate a community contribution company in order to operate a XXXXXXXXXXXX in XXXXXXXXXXXX. The incorporating documents will stipulate that the company must donate 100% of its profits to the XXXXXXXXXXXX, a local charity which assists children and families in XXXXXXXXXXXX. Since all of the profits would be required to be donated to a charity, and the

shareholders will have no right to receive any portion of the profits, you would like to know if this community contribution company meets the requirements of an exempt non-profit organization within the meaning of paragraph 149(1)(l) of the Act.

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 particular transactions 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 IC70-6R6, Advance Income Tax Rulings and Technical Interpretations.

The community contribution company is a new type of business corporation recently introduced in the British Columbia Business Corporations Act. (footnote 1) This novel corporate structure allows a for-profit share-capital corporation to do business and generate profits in the normal course of its commercial activities, while at the same time capping the dividends that can be paid out to shareholders. This ensures that a share of the profits are either retained by the company or directed for community benefit. The community contribution company is sometimes referred to as a hybrid corporate model because its structure allows profits to be generated and provides a (limited) return to the investor, such as is available with a traditional for-profit corporation, but at the same time provides social enterprise benefits to the community similar to charitable and non-profit organizations.

In general terms, paragraph 149(1)(l) of the Act provides that an entity is exempt from tax under Part I of the Act for a period throughout which it complies with all of the following:

- a) it is not a charity;
- b) it is organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit with no income available for the personal benefit of its members or shareholders;
- c) it is in fact operated exclusively for the same purpose for which it was organized or for any of the purposes mentioned in (b); and
- d) it does not distribute or otherwise make available for the personal benefit of a member or shareholder any of its income, unless the organization is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

In our view, community contribution companies are organized and operated to make a profit with which to provide both a return to investors and community benefits. Since a community contribution company is typically not organized and operated exclusively for any other purpose except profit, it will not qualify as an entity within the meaning of paragraph 149(1)(l) of the Act. Accordingly, it is subject to tax as a regular corporation under the Act.

At the outset, a community contribution company, like any traditional business corporation, is a taxable corporation. You have inquired whether, in your client's particular circumstances, the community contribution company may be eligible for exemption under paragraph 149(1)(l) of the Act since all of its profits are destined for charitable purposes with no part of the profits permitted to be distributed to the shareholders.

Even though all or substantially all of the profits of this particular community contribution company are destined for a good cause, with no part of the profits to be made available for the benefit of any shareholder, it will nevertheless be organized (and operated) for profit and, as such, would not qualify for the exemption under paragraph 149(1)(l) of the Act. For purposes of that exemption, the charitable destination of the profits does not remediate the disqualifying pursuit of a profit purpose.

We trust these comments will be of assistance.

Yours truly,
Roger Fillion, CPA, CA
Manager
Non-Profit Organizations and Aboriginal Issues
Business and Employment Division
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