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SUBJECT Non-profit organization

SECTION 149(1)(l); 149(5); 159(2)

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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 an association created for the purpose of providing a clubhouse & dining facility for its members will be taxed on the capital gain realized on the sale of the clubhouse. 2) Whether the Association will be exempt on the provision of the dining facility & clubhouse services to its members; 3) Whether the Association will have to submit income tax returns or information returns; 4) whether the Association is entitled to obtain a clearance certificate under subsection 159(2).

POSITION: 1)no; 2) yes; 3) probably not; 4) recommended for the legal representative to obtain a clearance certificate

REASONS: See letter

October 30, 2014

XXXXXXXXXX

2014-054420

A. Messore

Dear XXXXXXXXXXXX:

Re: Non-profit organization

This is in response to your letter of August 20, 2014, requesting our views on the Income Tax and Goods and Services Tax/Harmonized Sales Tax (GST/HST) implications of a proposed sale of real property by your client, the XXXXXXXXXXXX (the "Association") or, more specifically, by its branch XXXXXXXXXXXX (the "XXXXXXXXX Chapter"). A response to your GST/HST related questions will be sent to you in a separate letter by the GST/HST Rulings Directorate.

The Association was incorporated in XXXXXXXXXXXX by letters patent as a non-share capital non-profit corporation under the provisions of part 2 of the Canada Corporations Act, 1934. The Association was continued, pursuant to a Certificate of Continuance, issued XXXXXXXXXXXX, under the Canada Not-For-Profit Corporations Act.

The objects of the Association are to XXXXXXXXXXXX. The letters patent further provide that the objects of the Association shall be carried on without the purpose of gain for its members.

On XXXXXXXXXXXX, the Association, as then permitted by the Canada Corporations Act, created a separate chartered branch ("XXXXXXXXX Chapter"), an unincorporated entity, to assist in the pursuit of its objects. You have indicated that the XXXXXXXXXXXX Chapter and the Association are separate entities, each acting independently of each other.

On XXXXXXXXXXXX, XXXXXXXXXXXX, acting in trust for the XXXXXXXXXXXX Chapter, purchased certain premises in XXXXXXXXXXXX for the purpose of operating a clubhouse for members (the "clubhouse"). The clubhouse is the XXXXXXXXXXXX Chapter's only asset. The Association has no assets, has never had any income of its own and has never filed any income tax return.

The XXXXXXXXXXXX Chapter's sole activity and source of revenue was the clubhouse operations, which consisted in the sale of food and beverages, including beer and liquor, club memberships, and the occasional rental of the clubhouse for special functions. The clubhouse was operated on a cost recovery basis, with little or no annual profit having been realized over the course of its existence.

In XXXXXXXXXXXX, the XXXXXXXXXXXX Chapter ceased its clubhouse operations because of declining membership and income. The clubhouse was listed for sale in XXXXXXXXXXXX, and subsequently sold on XXXXXXXXXXXX.

You have inquired about the tax implications of the sale of the clubhouse by the XXXXXXXXXXXX Chapter and certain other requirements of the Income Tax Act. All legislative references in this letter are to the Income Tax Act, unless otherwise specified.

Our Comments

This technical interpretation provides general comments about the provisions of the Income Tax 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.

Is the income of the XXXXXXXXXX Chapter from the operation of its clubhouse exempt?

Paragraph 149(1)(l) exempts from income tax a club, society or association (other than a charitable organization or foundation as defined in subsection 149.1(1)) organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, if no part of its income is payable to, or available for the personal benefit of any proprietor, member or shareholder.

According to the facts you have described, the XXXXXXXXXX Chapter appears to be organized in conformity with paragraph 149(1)(l); however, the Income Tax Rulings Directorate is not in a position to make a determination as to whether it is exempt from tax for any particular period. In this regard, we note that whether the XXXXXXXXXX Chapter does, in fact, operate exclusively for any purpose other than profit with no part of its income payable to or otherwise available for the personal benefit of any member is a question of fact the determination of which can only be made retrospectively for each taxation year.

Is the capital gain resulting from the sale of the clubhouse taxable?

The taxable income, including taxable capital gains, of an entity described in paragraph 149(1)(l) ("a 149(1)(l) entity") is exempt. However, subsection 149(5) contains specific rules with respect to the property income earned by a 149(1)(l) entity whose main purpose is to provide dining, recreational or sporting facilities to its members.

In effect, under subsection 149(5), an inter vivos trust is deemed to exist throughout the period during which a 149(1)(l) entity has as its main purpose the provision of dining, recreational or sporting facilities for its members.

Throughout that period, the property of a 149(1)(l) entity is deemed to be the property of the deemed trust and tax is payable by the trust on any income from property (such as income from dividends, interest, rentals, etc.), as well as on taxable capital gains from the disposition of property that is not used exclusively for, and directly by the entity in the course of, providing dining, recreational or sporting facilities for its members. However, any capital gain realized by a 149(1)(l) entity on the disposition of property used exclusively for, and directly in the course of, providing dining, recreational or sporting facilities for its members remains exempt.

A 149(1)(l) entity may cease to qualify for the exemption on a winding-up, dissolution or amalgamation if it distributes assets to its members (other than a member whose primary purpose and function is the promotion of amateur athletics in Canada) which results in any part of its income being thereby distributed. Income for this purpose is determined in accordance with section 3, taking into account that subsection 149(2) effectively excludes the amount of any taxable capital gains from the calculation of the entity's income. This means that the entity can distribute capital gains to its members without affecting its eligibility for exemption under paragraph 149(1)(l) since this would not be considered a distribution of income.

For more information regarding non-profit organizations, please refer to Interpretation Bulletin IT-496R entitled "Non-profit organizations."

To the extent that the XXXXXXXXXX Chapter is a 149(1)(l) entity and that its clubhouse is used exclusively for and directly in the course of providing dining, recreational or sporting facilities for its members, any capital gain resulting from the sale of the clubhouse would likely be exempt. This would not be altered by reason of the occasional rental of the clubhouse for special functions. In addition, the entity may distribute to its members the capital gain resulting from such a sale without affecting its eligibility for exemption under paragraph 149(1)(l).

Are the Association and the XXXXXXXXXX Chapter required to file income tax returns and if so for how many years?

Under subsection 149(12), a non-profit organization described in paragraph 149(1)(l) may have to file a Form T1044, "Non-Profit Organization (NPO) Information Return" if:

- it received or was entitled to receive taxable dividends, interest, rentals, or royalties totaling more than \$10,000 in the fiscal period;
- the total assets of the organization amounted to more than \$200,000 at the end of the immediately preceding fiscal period (the amount of the organization's total assets is the book value of these assets calculated using generally accepted accounting principles); or
- it had to file an NPO information return for a previous fiscal period.

A 149(1)(l) entity may, in certain cases, also have to file other returns such as a T2 Corporation Income Tax Return, a T2 Short, or a T3 Trust Income Tax and Information Return.

If a corporation that is a 149(1)(l) entity meets the conditions of paragraph 150(1)(a), it will be required to file a T2 Corporation Income Tax Return, or a T2 Short.

If a 149(1)(l) entity has as its main purpose the provision of dining, recreational, or sporting facilities for its members, then the property of the entity is deemed to be held by a trust pursuant to subsection 149(5). Trusts are considered to be separate persons under the Income Tax Act.

Where the deemed trust has:

- (i) tax payable with respect to income from property held in the trust (such as income from dividends, interest, rentals, etc.), or
- (ii) realized a taxable capital gain on the disposition of any capital property that is not used directly in the course of providing dining, recreational or sporting facilities to its members,

the deemed trust will be taxable on the income earned or the capital gain realized, and a T3 Trust Income Tax and Information Return must be filed pursuant to paragraph 150(1)(c).

For information on returns that certain clubs, societies or associations may have to file, see Interpretation Bulletin IT-83, "Non Profit Organizations – Taxation of Income from Property." Further information on the filing requirements of the Information Return for non-profit organizations is contained in the Canada Revenue Agency Guide T4117, "Income Tax Guide to the Non-Profit Organization (NPO) Information Return."

Since the XXXXXXXXXX Chapter is an unincorporated entity, it would not be required to file a T2 Corporation Income Tax Return. It would be required to file an NPO Information Return (Form T1044)

for a particular taxation year if the conditions of subsection 149(12) are met. From the description you have provided, this seems unlikely to be the case. Moreover, if the XXXXXXXXXX Chapter does not receive any income from property, and if the clubhouse was used exclusively in the provision of dining, recreational or sporting facilities for its members, there will be no tax payable by the deemed trust on the sale of the clubhouse and a T3 Trust Income Tax and Information Return would not be required. Thus, depending on the circumstances, it could be that the XXXXXXXXXX Chapter may not be required to file any forms or returns for a particular taxation year.

If the Association is a 149(1)(l) entity, and has never owned any assets or received any income of its own, it would not likely be required to file any income tax forms or returns.

Are the Association and the XXXXXXXXXX Chapter entitled to obtain a certificate of clearance under subsection 159(2)?

Subsection 159(2) requires a legal representative to obtain a clearance certificate before distributing property that he or she controls in their capacity as legal representative. If the legal representative does not obtain a clearance certificate before distributing property in his control, he may be personally liable for unpaid amounts owing to the Canada Revenue Agency, whether assessed before or after the actual distribution of property. Accordingly, it is recommended that the legal representative obtain a clearance certificate. This can be done by completing form TX19, "Asking for a Clearance Certificate," and sending it to the Assistant Director, Audit, at your local tax services office. For further information on clearance certificates please refer to the Information Circular IC82-6R10.

We trust these comments will be of assistance.

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