
CRA COMMENTS ON REGISTRATION OF LOW-COST HOUSING RESIDENCES AS QUALIFIED DONEES

*By Terrance S. Carter and Ryan M. Prendergast**

A. INTRODUCTION

In a CRA Views dated March 18, 2013,¹ the Income Tax Rulings Directorate responded to a request from the Charities Directorate for assistance in developing an application for corporations that are a housing corporation resident in Canada and exempt from tax because of paragraph 149(1)(i) of the *Income Tax Act* (Canada) (“low-cost housing corporations”) for registration as a qualified donee. This request resulted from Budget 2011, which proposed amendments to the *Income Tax Act* (Canada) concerning the regulatory regime for certain types of qualified donees. Effective January 1, 2012, CRA was required to maintain a list of low-cost housing corporations and create a registration process for them as qualified donees.

This *Charity Law Bulletin* provides an overview of the definition for low-costing housing corporations as set out in the CRA Views, together with the proposed application processes recommended to the Charities Directorate by Rulings.

B. REVIEW OF CHANGES TO QUALIFIED DONEE REGIME

As discussed in *Charity Law Bulletins* No. 245² and No. 253³, Budget 2011 proposed to extend to specific qualified donees certain regulatory requirements under the *Income Tax Act* that already applied to registered

* Terrance S. Carter, B.A., LL.B., Trade-Mark Agent, is managing partner of Carters Professional Corporation, and counsel to Fasken Martineau DuMoulin LLP on charitable matters. Ryan M. Prendergast, B.A., LL.B., is an associate at Carters’ Orangeville office..

¹ Document #2012-047007117. Technical interpretations are only available by subscription or written request to CRA.

² Theresa L.M. Man, Karen J. Cooper, Terrance S. Carter and Ryan M. Prendergast, “Budget 2011 will have Broad Impact on the Charitable Sector”, *Charity Law Bulletin* No. 245. Available online at: <http://www.carters.ca/pub/bulletin/charity/2011/chylb245.htm>.

charities. These changes affected entities previously defined as “a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i)” in paragraphs 110.1(1)(a) and 110.1(1)(b) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1(1). As a result, Budget 2011 proposed that low-cost housing corporations (and other qualified donees) were to be identified in a publicly available list maintained by the Charities Directorate and as such, the definition of a low-cost housing corporation now states “that has applied for registration” added to it at section 149.1.

Prior to these amendments, low-cost housing corporations were exempt from income tax, and gifts to them were eligible for an official donation receipt. As a qualified donee under the new regime, low-income housing corporations must now also ensure that they maintain adequate books and records and issue donation receipts in accordance with the regulations. Low-income housing corporations are therefore now also subject to penalties and assessments for failing to comply with these obligations as a qualified donee, including suspension or receipting privileges or the revocation of qualified donee status.

These amendments became effective on January 1, 2012, necessitating the Charities Directorate to develop an application process by which low-cost housing corporations can become registered. In this regard, although the requirement that low-cost housing corporations register with the Charities Directorate and be listed on its’ website has been in place since January 1, 2012, the Charities Directorate has yet to develop an application process in order to comply with the *Income Tax Act* (Canada).

The Charities Directorate website currently notes that until the application process is developed, low-cost housing corporations continue to be qualified donees, but will need to apply for registration in order to obtain or continue the qualified donee status once the application process is complete.⁴

C. CRA VIEWS CONCERNING APPLICATION PROCESS

The CRA Views provides comments concerning the eligibility requirements for low-cost housing corporations to be eligible under 149.1(1)(a)(i), together with recommendations concerning the application process to be used by the Charities Directorate.

³ Theresa L.M. Man, Karen J. Cooper and Terrance S. Carter and Ryan M. Prendergast, “Minister of Finance Reintroduces Budget 2011, *Charity Law Bulletin* No. 253. Available online at: <http://www.carters.ca/pub/bulletin/charity/2011/chylb253.htm>.

⁴ See Charities Directorate, “Low-cost Housing Corporations for the Aged” at <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/lwcsthng-eng.html>.

1. Overview of Requirements

In order for a low-cost housing corporation to be a qualified donee under 149.1(1)(a)(i), the definition requires it to be both resident in Canada and exempt from tax by virtue of paragraph 149(1)(i). Specifically, the low-cost housing corporation must meet the criteria set out in paragraph 149(1)(i) on an ongoing basis, even on the winding-up, dissolution, or amalgamation of the corporation. In this regard, previous technical interpretations concerning 149(1)(i) entities are confirmed in the CRA Views. Specifically, the low-cost housing corporation must be constituted exclusively, and operate for, the purpose of providing low-cost housing accommodation for the aged⁵, which is generally 55 years of age or over⁶.

However, Rulings also defines low-cost housing accommodation to include “comfortable but modest rental accommodation at rent levels which are low relative to rent levels generally available for similar accommodations (other than subsidized or non-profit accommodations) in the same community”. In addition, Rulings notes that this can include providing meals, laundry services, home furnishings, medical/nursing care, house-keeping services, resident aides’ services and general assistance with matters of living.

In addition, the requirement that no part of the income of the low-cost housing corporation was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof requires that may not distribute income, either directly or indirectly, to, or for the personal benefit of any member or shareholder. In this regard, the CRA Views notes that the governing documents of a low-cost housing corporation, i.e., its letters patent or articles of incorporation and by-laws, must specifically state that such distribution of income is prohibited.

2. Proposed Application Process

With regard to the application process, it was recommended that the Charities Directorate adopt an application process that requires applicants to clearly evidence that they are constituted and operated as a low-cost housing corporation. In this regard, Rulings suggests a letter enclosing various documentary evidence of this fact. The documentation suggested includes:

⁵ Document 2008-0275381C6.

⁶ Document 2007-0256961E5.

- An explanation of the type of activities, obligations and responsibilities the applicant is entitled to undertake by virtue of its enable documents;
- A description of the actual operations of the applicant and the services provided in fulfilment of its stated objectives and activities, including a statement as to the persons to whom the applicant will be providing services; and
- A full statement as to how the applicant meets the criteria as a low-cost housing corporation; in particular, age of residents, rent charged, and how its constitutes “low-cost” housing accommodation.

As a result, the application suggested to the Charities Directorate is similar to that currently required by applicants for registered charity status, in that the applicant must provide a complete statement of activities in order to evidence that its activities demonstrate that it is both exclusively constituted and operated for the purposes of providing low-income housing.

In addition, the application should also include:

- A statement indicating whether, to the best of the Applicant’s knowledge, the CRA has at any time considered the corporation’s eligibility as a low-cost housing corporation within the meaning of paragraph 149(1)(i) of the Act. If yes, provide a copy of any relevant documentation.

It should be noted that CRA’s recent NPO Risk Identification Project concerning organizations exempt from income tax under paragraph 149(1)(l) of the *Income Tax Act* (Canada) identified approximately 39,000 non-profit organizations on the basis of T2, T3, and T1044 filings.⁷ Since there was no registration process for low-cost housing corporations required before January 1, 2012, corporations would have declared that they are exempt under 149(1)(i). While it is unknown how many corporations operate as low-cost housing corporations, presumably CRA has audited, or been asked by corporations in the past, on the basis of their eligibility. Although the number of 149(1)(i) entities is not publically known, it may be a significant number and a requirement that the applicant include a prior statement from Rulings or an audit letter confirming this status would obviously be of assistance to the Charities Directorate in registering these organizations.

⁷ Canada Revenue Agency, “Non-profit Organization Risk Identification Project – Questions and Answers”. Available online at: www.cra-arc.gc.ca/tx/nnprft/qa-eng.html.

D. CONCLUDING COMMENTS AND IMPLICATIONS FOR LOW-COST HOUSING CORPORATIONS

Although the registration process may not to be implemented in the near future, it will be important for low-cost housing corporations to be aware of this proposed application process so that they can begin reviewing their governing documents, i.e., letters patent and by-laws, to ensure that they have purposes and activities which ensure that they are constituted and operating exclusively as low-cost housing corporations. In this regard, they should ensure that they are not conducting any activities which would suggest that they are not operating exclusively for the purpose of providing low-cost housing accommodation for the aged. In this regard, the recommendations concerning the application in the CRA Views also suggest that the applicant include “If relevant, a description of any other activities carried on by the applicant, such as business activities”. It is not clear at this time if carrying on business activities (or even if “related business” activities are permissible) would mean that the low-cost housing corporation is not operating exclusively for the purposes of providing low-cost housing accommodation for the aged.

It will be interesting to see how the Charities Directorate applies the recommendations from Rulings when developing a process for low-cost housing corporations to apply for registration as a qualified donee.