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DOCNUM 2013-0473771E5

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DESCKEY 25

RATEKEY 2

REFDATE 131107

SUBJECT Shareholder of a Not-for-profit corporation

SECTION 248(1)

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PRINCIPAL ISSUES: Whether a member of a not-for-profit corporation without share capital is a "shareholder" within the meaning of that term in subsection 248(1) for purposes of subsection 15(1)?

POSITION: Yes

REASONS: Textual, contextual and purposive approach to the interpretation of "shareholder". Also consistent with paragraph 9 of cancelled IT-409 which refers to a shareholder of a non-profit corporation without share capital.

XXXXXXXXXX

2013-047377

T. Harris

November 7, 2013

Dear XXXXXXXXXX:

Re: Not-for-profit Corporation Owning Family Recreational Property

We are writing in response to your letter of December 28, 2012, wherein you requested our interpretation of the status of a member of a non-share capital, not-for-profit corporation (“NPO”) for purposes of the Income Tax Act (the "Act").

For purposes of your request, you have described a scenario in which an NPO is incorporated under the Canada Not-For-Profit Corporations Act as a corporation without share capital. The NPO is intended to operate as a family recreational club and will provide recreational services to its members, including the use of the NPO’s recreational property. The family members pay dues to the corporation in an amount sufficient to cover all expenses relating to all of the property of the NPO and which amount will not be less than a fair market rent. The NPO will be organized and operated in such manner that it will satisfy all of the requirements set out in paragraph 149(1)(l) of the Act.

You have asked whether the members of NPO will be considered shareholders of NPO for purposes of subsection 15(1) of the Act.

Our Comments

As indicated in paragraph 22 of Information Circular 70-6R5, the Income Tax Rulings Directorate only provides written confirmation of the tax consequences arising from a specific proposed transaction by way of an advance income tax ruling. We are nevertheless prepared to provide the following comments in respect of the issues that you raised.

As noted in your letter, the term “shareholder” is defined broadly in subsection 248(1) of the Act to include “a member or other person entitled to receive payment of a dividend”. This definition expands the ordinary meaning of that term to include a person who does not actually own a share.

You have referred to the definition of a “share” in subsection 248(1) of the Act and believe that “XXXXXXXXXX.” You suggest that this view is reinforced by the fact that the definition of a “share” includes a share of the capital of a cooperative corporation and a share of the capital of a credit union, but does not include a membership interest in a non-share capital corporation.

We agree that a person who has a membership interest in a non-share capital corporation would not be considered to hold a share and, therefore, would not fall within the ordinary meaning of “shareholder”, however, we do not believe that this is relevant to the interpretation of the expression “member or other person entitled to receive payment of a dividend” which is intended to expand the ordinary meaning of that term.

You have also noted that each of paragraphs 149(1)(i), (j) and (l) include a requirement that to be eligible for the tax exemption under Part I of the Act no part of the income of a non-profit entity can be payable to, or otherwise available “for the personal benefit of any proprietor, member or shareholder”. You suggest that if Parliament had intended that a member of a non-profit entity be included in the definition of “shareholder” it would be redundant to refer to both a shareholder and a member in each of these provisions. You believe that such interpretation of the Act would be contrary to the presumption against tautology which requires that, to the extent possible, a court should avoid adopting an interpretation that renders any portion of a statute meaningless or redundant (Placer Dome Canada Ltd. v. Ontario (Minister of Finance), [2006] 1 S.C.R. 715, at paragraph 45).

In paragraph XXXXXXXXXX of your letter, you acknowledge that the term “shareholder” as defined in subsection 248(1) of the Act may be open to two different interpretations; however, for the reasons cited in your letter, you believe the focus should be on “the entitlement to receive dividends”. However, as indicated in our technical interpretation 2011-0415831E5 dated November 17, 2011, the CRA has adopted the interpretation that “a member of a society incorporated or continued under the Canada Not-for-profit Corporations Act, under Part II of the Canada Corporations Act, under a provincial societies Act or equivalent provincial legislation would generally be considered a shareholder under subsection 248(1), and therefore subject to the application of subsection 15(1) of the Act, notwithstanding that the society or corporation is prohibited from paying dividends to its members.”

We continue to believe that this is the proper interpretation based on a textual, contextual and purposive approach for the reasons stated in the interpretation. In our view, this interpretation is consistent with the presumption against tautology since an interpretation that a member be required to receive a dividend would render the use of the term “member” in the definition redundant as the same result would be obtained if the definition merely referred to “other persons entitled to receive a dividend”.

In addition, the term “member” is not defined in the Act but has been used in the Canada Not-for-profit Corporations Act and previously in Part II of the Canada Corporations Act both of which specifically prohibit the distribution of income, including the payment of dividends, to members. Pursuant to this legislation, members are generally entitled to elect the board of directors of the corporation, a right which is restricted to shareholders in the case of a corporation with share capital.

In Will-Kare Paving & Contracting Ltd v The Queen (SCC) 2000 SCC 36, Major J. referred to the following comments of Isaac C.J. from page 847 of his decision in Canada v. Hawboldt Hydraulics (Canada) Inc. (Trustee of), [1995] 1 F.C. 830:

In Hawboldt Hydraulics, supra, …..

Isaac C.J. wrote at p. 847:

We are invited by the modern rule of statutory interpretation to give those words their ordinary meaning. But we are dealing with a commercial statute and in commerce the words have a meaning that is well understood.... Strayer J. was right, in my respectful view, to say in Crown Tire at page 225 that:

... one must assume that Parliament in speaking of "goods for sale or lease" had reference to the general law of sale or lease to give greater precision to this phrase in particular cases.

Based on this principle of statutory interpretation, we believe that in referring to a “member” in the definition of “shareholder”, Parliament intended the term to have the same meaning as under Part II of the Canada Corporations Act, which was another federal statute that used the term. Since this legislation prohibited a member of a non-profit corporation from receiving a dividend, Parliament could not have intended that the expression “entitled to receive a dividend” in the definition of “shareholder” apply to a member referred to therein.

Consequently, we remain of the view that members of a non-profit corporation without share capital will be considered shareholders thereof for purposes of subsection 15(1) of the Act, notwithstanding that they are not entitled to receive dividends.

Yours truly,

Yves Moreno

Manager

Reorganizations Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch