



November 11 2009

**2009-0316961R3 E—Décisions en impôt
Donation of Flow - Through Shares**

Document No.: 2009-0316961R3

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:

Whether a donation of flow-through shares constitutes a gift for income tax purposes.

POSITION:

Yes, in this particular case.

REASONS:

Based on the facts and having regard to the caveats provided in the Ruling, it is our view that the donation would constitute a gift for income tax purposes and that the CEE renounced to the donor and any investment tax credit or focused flow-through share tax credit claimed pursuant to the flow-through share financing will not constitute an advantage under the draft split-receipting rules.

XXXXXXXXXX 2009-031696

XXXXXXXXXX , 2009

Dear XXXXXXXXXXXX :

Re: Advance Income Tax Ruling Request

XXXXXXXXXX

This is in reply to your letter of XXXXXXXXXXXX , in which you requested an advance income

tax ruling on behalf of the above named taxpayers. We also acknowledge the information provided in subsequent correspondence and during our various telephone conversations in connection with your request (XXXXXXXXXX).

We understand that, to the best of your knowledge and that of the taxpayers involved, none of the issues involved in the ruling request:

- A. is in an earlier return of the taxpayers or a related person;
- B. is being considered by a Tax Services Office or Taxation Centre in connection with a previously filed tax return of the taxpayers or a related person;
- C. is under objection by the taxpayers or a related person;
- D. is before the courts or, if a judgment has been issued, the time limit for appeal to a higher court has not expired; or
- E. is the subject of a ruling previously issued to the taxpayers, other than ruling 2007-024236, by the Directorate.

Unless otherwise stated, all references to a statute are to the Income Tax Act R.S.C. 1985, 5th Supplement, c.1, as amended, (the "Act") and all terms used herein that are defined in the Act or the Income Tax Regulations ("the Regulations") have the meaning given in such definition unless otherwise indicated.

Our understanding of the relevant definitions, the facts, proposed transactions and the purpose of the proposed transactions is as follows:

Definitions

"ACO" means XXXXXXXXXXXX, a securities dealer;

"BCO" means XXXXXXXXXXXX, a securities dealer through which the Donors will subscribe for the Shares;

"Agents" means the syndicate of securities dealers which will participate in the private offering of the Shares of Resource Company, which syndicate includes ACO (as lead) and BCO;

"Arrangement" means the transactions as described in 9 to 27 below;

"CEE" means Canadian exploration expenses as defined in subsection 66.1(6);

"Charity" means each charity listed in Schedule A, individually, and "Charities" means such charities collectively;

"Corporation" means XXXXXXXXXXXX ;

"CRA" means the Canada Revenue Agency;

"Donor" means each donor listed in Schedule A, individually, and "Donors" means such Donors collectively;

"Exchange" means the XXXXXXXXXXXX Stock Exchange;

"Liquidity Provider" means each liquidity provider listed in Schedule B, individually, and "Liquidity Providers" means such entities collectively;

XXXXXXXXXX

"Resource Company" means XXXXXXXXXXXX ; and

"Share" means a flow-through common share of Resource Company as described in 11 below.

Facts

1) The Corporation was incorporated on XXXXXXXXXXXX , under the Business Corporations Act (XXXXXXXXXX). It is a "taxable Canadian corporation" as defined in subsection 89(1). Its tax services office is the XXXXXXXXXXXX TSO and its tax centre is the XXXXXXXXXXXX Tax Centre. It has a fiscal year ending on XXXXXXXXXXXX .

2) The Corporation is registered with the XXXXXXXXXXXX as a limited market dealer. It also

carries on the business of providing consulting services to individual and corporate philanthropists and registered charities.

3) The Corporation has applied for and received tax shelter identification number XXXXXXXXXXXX in respect of the Arrangement in accordance with and pursuant to subsection 237.1(2).

4) You advise that the Donors are either individuals, other than trusts, or "Canadian-controlled private corporations" as defined in subsection 125(7), and that the Donors are not traders or dealers in securities and do not hold securities as inventory. The Donors are all resident in Canada.

5) The Resource Company is a "taxable Canadian corporation" and a "public corporation" as defined in subsection 89(1). It is a mining exploration company and a "principal-business corporation" as defined in subsection 66(15). Its common shares are listed on the Exchange under the trading symbol XXXXXXXXXXXX .

6) Each Charity is a registered charity and a "qualified donee" as described in subsection 149.1(1).

7) You advise that the Liquidity Providers are independent parties which will acquire the Shares from the Charities in the ordinary course of their businesses. The Liquidity Providers were identified by ACO.

8) You advise that the Corporation, the Resource Company, the Liquidity Providers and the Donors deal with each other at arm's length. The Charities also deal at arm's length with the Corporation, the Resource Company and the Liquidity Providers. With the exception of the Donors identified in Schedule A that are making donations to private foundations with whom they do not deal at arm's length, each Donor deals with the respective Charity or Charities at arm's length.

9) On XXXXXXXXXXXX , ACO, on behalf of the Agents, signed a best efforts engagement letter (the "Engagement Letter") with the Resource Company under which the Agents agreed to sell the flow-through shares to be issued by the Resource Company (see 12 below).

10) Each Donor has established a non-discretionary account with BCO and has deposited sufficient cash to pay the subscription price for the Shares (see 14 below).

Proposed Transactions

11) The Resource Company intends to raise up to \$XXXXXXXXXX through a best efforts private placement of up to XXXXXXXXXXXX Shares through the Agents. You advise that the Donors will subscribe for XXXXXXXXXXXX Shares. The remaining Shares will be offered to investors who are not participating in the Arrangement. Under the terms of the subscription agreement for the Shares, the Resource Company has committed to use the proceeds of the offering for exploration on its properties in XXXXXXXXXXXX .

12) Pursuant to the Engagement Letter, the Agents will earn a cash fee equal to XXXXXXXXXXXX % of the gross proceeds of the private placement and that number of broker warrants equal to XXXXXXXXXXXX % of the aggregate number of Shares issued pursuant to the private placement. Each broker warrant will entitle the holder to buy one common share of the Resource Company at the reference price at any time during the XXXXXXXXXXXX months following the closing of the private placement. The Resource Company will reimburse ACO for ACO's expenses incurred pursuant to the offering, including legal fees and disbursements. The Agents are taxable Canadian corporations and will earn these fees in the normal course of their business.

13) The Resource Company will enter into subscription agreements directly with the Donors to issue the Shares under the flow-through share offering. Pursuant to the subscription agreement, the subscription price will be \$XXXXXXXXXXX per Share.

14) The Shares will be issued pursuant to the subscription agreements. The subscription price for the Shares issued to the Donors will be paid from the funds deposited in the accounts of the Donors established at BCO. You advise that the Donors have not borrowed the funds used to subscribe for the Shares.

15) The transfer agent for the Resource Company will register a global certificate for the Shares in BCO's name, as nominee for the Donors, in accordance with industry standards. In its records, BCO will maintain a record of beneficial ownership reflecting the appropriate number of Shares purchased by each Donor. Once issued, the Shares will be listed on the Exchange.

16) You advise that each Share will be a "flow-through share" as defined in subsection 66(15). The Resource Company will renounce eligible CEE to the Donors and other subscribers pursuant to subsections 66(12.6) and (12.601). All attendant tax reporting and renunciation forms will be prepared and filed by the Resource Company in accordance with the Act and Regulations.

17) In the event that any of the CEE renounced to a Donor qualifies as "flow-through mining expenditures" within the meaning of subsection 127(9), the Donors will claim a federal investment tax credit to the extent provided for in subparagraph 127(5)(a)(i). XXXXXXXXXXXX

18) You advise that none of the Corporation, the Donors, the Charities, the Agents or the Liquidity Providers will be "specified persons" in respect of the Resource Company within the meaning of subsection 6202.1(5) of the Regulations.

19) While not obligated to do so, you advise that each Donor intends to donate all of the Donor's Shares unconditionally to the Donor's respective Charity as listed on Schedule A. The Donors will donate their Shares to their Charity by Deed of Gift.

20) The Charities have established non-discretionary accounts with BCO. In accordance with the Deed of Gift, BCO will transfer the donated Shares to each Donor's respective Charity's account at BCO. BCO's records will reflect the change in beneficial ownership in accordance with industry standards. Each Charity will issue a donation receipt to the respective Donor equal to the fair market value of the Shares donated.

21) You advise us that the Charities have indicated that they do not want to retain the Shares, but instead want to sell them to realize cash for their charitable purposes. The Liquidity Providers will make an offer to purchase all of the donated Shares from the Charities.

22) You advise us that none of the Charities has given any undertaking or is obliged in any manner to sell the Shares to the Liquidity Providers. A Charity can still participate in the Arrangement if it chooses not to sell the donated Shares. If a Charity wished to hold the donated Shares and sell them later (either within the hold period of XXXXXXXXXXXX months from the date of closing to another accredited investor, or after the hold period into the market), the Charity will have to pay the Corporation its XXXXXXXXXXXX % fee as described in 25 below based on that ultimate sale price. However, since holding the donated Shares involves considerable risk of changing prices, you advise that no Charity is likely to assume such price risk and will sell the donated Shares to the Liquidity Providers.

23) You advise that each Charity intends to sell all of its Shares to one or more Liquidity Providers as specified on Schedule B. The Charities will enter into share purchase agreements with the Liquidity Providers. The price payable by the Liquidity Providers will be \$XXXXXXXXXX per Share.

24) ACO, on behalf of the Liquidity Providers, and the Corporation, on behalf of the Charities, negotiated this price of \$XXXXXXXXXX per Share at arm's length, without any direction or influence from the Donors or the Resource Company.

25) As consideration for having arranged the series of transactions, the Charities will pay a fee to the Corporation equal to XXXXXXXXXXXX % of the gross selling price of any Shares sold to the Liquidity Providers.

26) You advise that no fees, commissions or compensation of any kind will be paid by or received by any participants in the proposed transactions other than those described in 12, 22 and 25 above.

27) You advise that all purchases, transfers and dispositions of the Shares will comply with all applicable securities laws.

28) Other than the tax benefits relating to the CEE, the investment tax credit and the focused flow-through share tax credit, you advise that the Donors will not receive any benefit or advantage in respect of the donation of the Shares to the Charities.

Purpose of the Proposed Transactions

29) The purpose of the proposed transactions is to allow donors to respond to government initiatives designed to encourage philanthropy by providing preferential tax treatment for gifts of publicly traded shares to charitable organizations. However, notwithstanding that flow-through shares may be publicly traded, there may not be an active market so that charitable organizations cannot convert the shares received as donations into readily available cash. Under the proposed transactions, the Liquidity Providers, with regard to their own independent objectives, will purchase the Shares donated to the Charities so that they can convert the gift in kind into funds which can be applied for their charitable purposes.

Rulings Given

Provided that the preceding statements constitute a complete and accurate disclosure of all the relevant facts, the proposed transactions, and purpose of the proposed transactions, and provided further that the proposed transactions are carried out as described above, we confirm that:

A. The Arrangement will constitute a gifting arrangement pursuant to paragraph (a) of the definition of "gifting arrangement" and a tax shelter pursuant to paragraph (b) of the definition of "tax shelter" in subsection 237.1(1).

B. The donation of the Shares to a Charity by a Donor will not, in and by itself, preclude the Donor from deducting:

a. in the computation of the Donor's income for purposes of the Act, any CEE that the Donor would otherwise be entitled to deduct pursuant to subsections 66(12.61) and 66.1(3),

b. in the computation of the Donor's tax otherwise payable under Part I of the Act, any investment tax credit that the Donor would otherwise be entitled to deduct pursuant to subsection 127(5), or

c. XXXXXXXXXXXX

C. Provided the parties to the Arrangement and in particular the Resource Company and the Liquidity Providers deal at arm's length, neither the donation of the Shares to the Charity by a Donor nor the sale of the Shares to a Liquidity Provider as described above will, in and by themselves, cause a Share to be a prescribed share, within the meaning of section 6202.1 of the Regulations, for purposes of the definition of "flow-through share" in subsection 66(15).

D. An amount equal to the fair market value on the date of donation of the Shares donated by each individual Donor to the Donor's respective Charity, as described in 19 above, will qualify as a gift for the purposes of the definition of "total charitable gifts" in subsection 118.1(1) provided an official receipt containing prescribed information is filed as required by subsection 118.1(2).

E. An amount equal to the fair market value on the date of donation of the Shares donated by each corporate Donor to its respective Charity, as described in 19 above, will qualify as a gift under paragraph 110.1(1)(a) provided an official receipt containing prescribed information is filed as required by subsection 110.1(2).

F. Provided that the Shares are capital property to a Donor, no portion of the capital gain arising from the disposition of the Shares, if any, resulting from the making of the gift to the Charity will be included in computing the Donor's taxable capital gain to the extent provided for in paragraph 38(a.1).

G. Participation in the Arrangement, in and of itself, will not cause the Shares to not be considered capital property to a Donor within the meaning assigned to that term in section 54 if the Shares would otherwise be considered capital property to the Donor.

The above rulings are given subject to the limitations and qualifications set out in Information Circular 70-6R5 and are binding, subject to the caveats noted below, on the CRA provided that the proposed transactions are completed before XXXXXXXXXXXX .

Opinion

As stated in paragraph 20 of Information Circular 70-6R5, although the CRA does not provide advance income tax rulings on draft legislation, it will give non-binding technical interpretations.

In this regard, provided that the above statements constitute a complete and accurate disclosure of all the relevant facts, proposed transactions and purpose of the proposed transactions, and provided that the applicable amendments to the Act as set out in Bill C-10 which received Second Reading in the Senate on December 4, 2007, are enacted substantially as proposed, it is our opinion, subject to the caveats noted below, that the CEE renounced to the Donors and any investment tax credit or focused flow-through share tax credit claimed pursuant to the flow-through share financing will not constitute an "advantage" for the purposes of proposed subsection 248(32).

Caveats

Nothing in this letter should be construed as implying that the CRA has agreed to or reviewed:

a) the determination of the fair market value of the Shares. In this regard, we note that the sales price received by the Charities from the sale of the Shares to the Liquidity Providers as described in 23 above may not be representative of the fair market value of the Shares at the time the Shares are donated by the Donors to the Charities. It is the responsibility of the Charities to support that the amount reported on the donation receipt reflects the fair market value of the property donated to the Charities;

b) the determination of arm's length between any of the parties referred to herein;

c) that any of the Shares issued by the Resource Company will be a flow-through share;

d) any of the expenses renounced by the Resource Company to a Donor will qualify as either a CEE, as a flow-through mining expenditure, or as an eligible Ontario exploration expenditure for the purposes of Ruling B;

e) whether property held by the Donors is held on income or capital account; and

f) any tax consequences relating to the facts and proposed transactions described herein other than those described in the rulings given above.

Yours truly,

XXXXXXXXXX

Manager

Charitable and Financial Institution Sectors

Financial Sector and Exempt Entities Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs

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