Property of PearTree Financial Services

[redacted]

Robin J. MacKnight
Wilson Vulkelich LLP
60 Columbia Way, Suite 710
Markham ON L3R 0C9

MAR 2 8 2012

March 20, 2012

Dear Mr. MacKnight:

Re: Gifting Arrangement involving Flow-Through Shares

This is in response to your correspondence of December 2, 2011 concerning the income tax treatment under the *Income Tax Act* (the "Act") arising from a gifting arrangement involving flow-through shares ("FTS") issued by a Canadian resident resource corporation pursuant to a private placement to various individuals who are resident in Canada.

In particular, you indicate that immediately after the tax benefits related to the FTS are realized, the individual will donate some of those FTS to a registered charity. In respect of the FTS that are donated, the recipient charity would immediately sell those FTS to an arm's-length purchaser for a pre-determined sale price that will not exceed the original issue price of those FTS. You also indicate that the remaining FTS held by the individual will also be sold to the same arms-length purchaser at that time for the same pre-determined sale price.

Our Comments:

The determination as to whether a taxpayer acquires a particular security, such as a flow-through share, for the purpose of earning income from property, from a business or for some other purpose is a mixed question of fact and law that can only be determined on a case-by-case basis taking into account all relevant factors, including the taxpayer's total course of conduct which may possibly take into account similar securities transactions undertaken by any related person or affiliated person. Such a determination is the responsibility of the Canada Revenue Agency's compliance programs branch which would normally take place during the course of an audit or review of a particular taxpayer's income tax return.

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Canada

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However, we recognize that the courts have generally held that the acquisition of a security, such as a FTS, for a purpose that includes its tax attributes would not, in and of itself, result in a finding that it was acquired for commercial or business reasons or as an adventure in the nature of trade. For instance, it is our general understanding that where a taxpayer is obligated to sell a particular property for a pre-determined sale price that is less that than its original acquisition price such that it results in an "economic loss" (ignoring the value of any relevant tax attributes connected with the property) but results in a gain or profit for income tax purposes as a result of the operation of the rules in the Act, the courts have held that such gain or profit cannot, absent the presence of other factors, result in income earned from an adventure in the nature of trade.[1] Accordingly, we would take all relevant information into account before making a determination in a particular fact situation.

We trust our comments will be of assistance.

Yours truly,

[redacted]

Manager
Business and Trusts Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch

[1] See *Loewen v. The Queen*, 94 DTC 6265 (FCA); *Moloney v. The Queen*, 92 DTC 6570 (FCA); *Paquet v. The Queen*, 95 DTC 868 (TCC); and *Richer v. The Queen*, 2009 DTC 1077 (TCC).

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