

WILLS, ESTATES, TRUSTS AND CHARITIES

New CCRA social housing policy is more flexible

By Robert Hayhoe

Earlier this year, the Canada Customs and Revenue Agency Charities Directorate issued a new Policy Statement (CPS – 020), *Applicants that are Established to Relieve Poverty by Providing Rental Housing to Low Income Tenants* (www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-020-e.html) which outlines the CCRA's new policy on charitable registration of social housing organizations.

Previous to this policy, the CCRA accepted that providing housing to the poor was charitable under the relief of poverty head in *Pemsel's* case. However, the CCRA required that at least 90 per cent of the tenants of any low-income housing project be poor in order for the landlord organization to be eligible for registered charity status. On the theory that poverty could best be relieved by integrating poor and less needy people together, the CCRA's previous policy was criticized for requiring that the poor be segregated into ghettos as a condition of charitable registration.

The new Policy Statement applies a similar analysis to that previously applied by the CCRA. It confirms that the organization must either have purposes limited to assisting people of low income or purposes limited to assisting low- and moderate-income people with actual services limited to low-income

people. The organization must also demonstrate that it applies (on at least an annual basis) an income-screening mechanism to its tenants.

Given that an individual



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tenant may move out of the low-income category at some point, the Policy Statement still recognizes that up to 10 per cent of tenants may always be other than low-income tenants (and therefore paying market rents). All other tenants must pay rent that is less than market (otherwise the charity is not relieving poverty, as required by charity law).

However, the new Policy Statement is considerably more flexible because it provides that under certain circumstances, a low-income housing charity can have as much as 33 per cent of

its tenants pay market rent or not be poor.

Some of the circumstances under which the new Policy Statement permits this increased portion of non-poor tenants include when the charity is seeking to regenerate a depressed neighbourhood or when the project has over 100 units and market tenants are necessary to prevent the social isolation of poor tenants.

The CCRA is also willing to accept 33 per cent market tenants if the project is driven by a local municipality and the market tenants cover the project carrying costs, thereby reducing the burden of local taxation in support of welfare costs.

Finally, if there is strong extrinsic evidence of the organization's poverty-relief purpose, such as a majority of tenants being deeply needy or a focus on some group, such as aboriginals or single parents, which the CCRA views as being at some particular risk of being homeless, the organization will again be permitted to have up to 33 per cent market tenants.

In general, the Policy Statement takes the position that low-income housing charities may not have any commercial tenants. However, the Policy Statement accepts that in some circumstances, up to 10 per cent of the space in a project can be leased to commercial tenants if the space is uninhabitable or if the commercial tenants provide

a necessary service to low-income tenants who lack transportation. This is another helpful change.

The Policy Statement also confirms that in counting the percentages referred to above, a charity may aggregate across each housing project site. For example a housing project with two similar buildings, one with 50 per cent market tenants and one with no market tenants has a project-wide 25 per cent market tenants.

Troubling aspect

The only troubling aspect of the new Policy Statement flows from its potential impact on existing non-profit housing organizations. There are a significant number of existing low-income housing organizations that are not registered charities and that would not have been eligible to be registered until the new Policy Statement was issued. These have assumed (or have been told by the CCRA) that they are tax-exempt non-profit organizations.

However, the *Income Tax Act* definition of non-profit organization (found in paragraph 149(1)(l)) provides that one requirement is that it not be a charity in the opinion of the CCRA (*i.e.*, that it not be eligible for registration).

As the new Policy Statement acknowledges, the CCRA's increased flexibility may result

in some organizations which were agreed to be non-profit organizations suddenly ceasing to be non-profit organizations because they are eligible to be registered as charities. The unfortunate result of this change is that these organizations thereby become taxable.

The *Income Tax Act* has the perverse result of making registered charities and non-profit organizations exempt from income tax while leaving organizations that are charitable but have not been registered, fully taxable.

The new Policy Statement identifies this potential problem but does not suggest any solution beyond applying for registration (which is a fine solution as far as it goes but does nothing to address issues such as income earned between the issuance of the new Policy Statement and the point of registration).

We must hope that the CCRA will deal sensitively with social housing organizations that now fall into the unregistered charity category.

Lawyers who act for social housing organizations need to be aware of the new Policy Statement, both as it applies to new organizations, and as it applies to organizations that assume incorrectly that they are not charitable.

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Retirement compensation arrangement may be solution for you

By Peter Merrick

Over the past three decades businesses operating in Canada have found it difficult to provide a worthwhile retirement plan for their top people. A Retirement Compensation Arrangement (RCA) is the *Income Tax Act's* retirement planning solution for affluent professionals, business owners and corporate executives. An RCA enables you to supplement your pensions and registered retirement savings plans, while increasing your financial and retirement security.

RRSP/pension limitations

In 1957, the Canadian government introduced the Registered Retirement Savings Plan (RRSP), on the premise that an annual tax-deductible contribution of 18 per cent of a business owner's or executive's total T4 income would provide an adequate pension.

In 1976, the federal government set Registered Pension Plan limits at \$60,000. This was considered enough to provide for a 70 per cent pension for an individual earning a T4 income of \$84,000 — a handsome execu-

tive-level salary at the time. If pensions and RRSPs had kept pace with inflation, today's max-



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imum pension limit incomes would be \$193,000 (70 per cent) per annum for individuals earning \$277,000 per year).

Although the 2003 federal budget increased both RRSP and pension contribution limits, individuals who earn more than \$100,000 continue to experience retirement/pension discrimination.

To end RRSP/pension discrimination against high-income

earners, the federal government in 1986 introduced the RCA in s. 248 (1) of the *Income Tax Act*.

An RCA is frequently overlooked in planning executive compensation. In the CCRA's 2003 Retirement Compensation Guild, an RCA is described as "a plan under which contributions are made by an employer or former employer to a custodian in connection with benefits that are to be, or may be received or enjoyed by any person on, after or in contemplation of any substantial change in the services rendered by the taxpayer, the retirement of the taxpayer or loss of office or employment of the taxpayer."

Advantages of an RCA

There are several benefits to creating an RCA:

1. Contributions are 100 per cent tax-deductible by the employer, and are a non-taxable benefit in the hands of the employee. Taxes do not apply until the money is withdrawn during retirement.
2. RCAs are exempt from payroll and healthcare taxes.
3. RCAs are exempt from provincial pension regulators.

4. Assets in an RCA investment account compound tax-free.

5. An RCA plan can provide "golden handcuffs" as a reward for continued service.

6. An RCA allows the buy-back of previous RRSP contribution room prior to 1991.

7. An RCA provides a pension/retirement benefit for executives who are not permitted to make RRSP or pension contributions due to non-resident status.

8. Assets held in an RCA are creditor-proof and are separate from the sponsoring company's assets, and are therefore protected from the sponsor's creditors.

9. Assets in an RCA are excluded from the holder's estate and are not subject to probate fees when a beneficiary is named.

10. Owners of RCAs can arrange to borrow up to 90 per cent of the amount of the RCA contribution and loan it back to their operating company.

11. Owners/key employees can retire offshore to a lower-tax-rate jurisdiction where they can pay as low as 15 per cent tax on the proceeds from their RCA.

12. RCAs can be set up to defer tax on severance packages.

13. Small- and medium-sized business owners and partners can use an RCA as part of their exiting and succession planning.

How do RCAs work?

Money is invested in an RCA through a trustee and is divided equally between two accounts: the RCA Investment Account and the Refundable Tax Account. The Refundable Tax Account is administered by CCRA. All funds in the Refundable Tax Account are refundable to the recipient of the RCA once money is withdrawn from the RCA during retirement.

How much can be invested in an RCA?

Say an executive is 45 years old and has had a T4 income of \$300,000 per year for 15 years. (*Note: This income must have been received from an incorporated business.*) Our executive has maximized his or her RRSP/Individual Pension Plan, and expects to receive annual income increases of 4.5 per cent

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