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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 naming rights granted in connection with a gift by a taxpayer would result in an advantage pursuant to proposed subsection 248(32), and whether the amount of such advantage, if applicable, is nil for purposes of proposed subsection 248(31).

POSITION: Question of fact.

REASONS: Where naming rights are provided in gratitude for a gift, the value of any advantage in respect of the gift would be determined at the time of the gift and based on the prospective economic benefit associated with the naming rights granted. If, having regard to the facts, there is no prospective economic benefit associated with the naming rights, it is our view that the amount of the advantage would be nil.

XXXXXXXXXX

2010-037581  
Robert Demeter, CGA  
(613) 952-1505

February 22, 2011

Dear XXXXXXXXXXXX :

Re: Split-Receipting Rules

This is in reply to your facsimile dated July 22, 2010, requesting our comments on the application of proposed subsections 248(31) and (32) of the Income Tax Act (the "Act"), which generally apply to gifts made after December 20, 2002.

In your facsimile, you have described situations in which an educational institution that is a charitable organization pursuant to subsection 149.1(1) of the Act, is raising funds for the purpose of constructing new buildings on its campus to be used in carrying on its charitable activities. The charity plans to name all or a portion of one of the new buildings after donors who donate at specified monetary levels in recognition of the donation.

You have asked whether an advantage, pursuant to proposed subsection 248(32) of the Act, will arise in respect of the naming rights granted to a donor by the charity in gratitude for a gift where:

- i. the donor carries on a business as a sole proprietor;
- ii. a business is carried on by a partnership that does not deal at arm's length with the donor; or
- iii. a business is carried on by a corporation that does not deal at arm's length with the donor.

The particular circumstances outlined in your letter appear to relate to factual situations, involving specific taxpayers. As explained in Information Circular 70-6R5, Advance Income Tax Rulings, it is not this Directorate's practice to comment on proposed transactions involving a specific taxpayer other than in the form of an advance income tax ruling. Should your situations involve a specific taxpayer and a completed transaction, you should submit all relevant facts and documentation to the appropriate Tax Services Office for their views. However, we are prepared to offer the following general comments which may be of assistance.

Pursuant to proposed subsection 248(31) of the Act, the eligible amount of a gift by a taxpayer is the amount by which the fair market value of the property that is the subject of the gift exceeds the amount of the advantage, if any, in respect of the gift. It is the eligible amount of a gift that is relevant in determining an individual donor's "total charitable gifts" pursuant to proposed amendments to section 118.1 of the Act.

As described at proposed subsection 248(32) of the Act, the amount of the advantage in respect of a gift is generally the fair market value of any property, service, compensation or other benefits received, or expected to be received in the future, by the donor, or a person or partnership who does not deal at arm's length with the donor, as consideration for, or in gratitude for the gift. It is a question of fact whether one person is dealing on an arm's length basis with another person or partnership for purposes of the Act. A number of criteria used in the determination of an arm's length relationship with a person or partnership are outlined in Interpretation Bulletin IT-419R2, Meaning of Arm's Length.

It is also a question of fact whether, in any particular situation, there is an advantage in respect of a gift. Where naming rights are granted by a registered charity to a donor in gratitude for a gift, a tax concern is the fair market value of the naming rights in determining the amount of the advantage. If, having regard to circumstances, there is no prospective economic benefit associated with the naming rights, it is our view that the amount of the advantage would be nil for the purposes of proposed subsection 248(32) of the Act. This may be the case, for example, where name recognition is provided to the donor and the donor's name is not identified with a business or corporation. We note that the prospective economic benefit is determined not only from the perspective

of the donor, but also in respect of any person or partnership who does not deal at arm's length with the donor.

Where it is determined that there is a prospective economic benefit associated with the naming rights, it would result in an advantage and the fair market value of the naming rights would reduce the eligible amount of the gift. To the extent that it can reasonably be considered that the payment or transfer of property to the registered charity was made for the purpose of gaining or producing income from a business or property rather than as a gift to the charity, such amount may be deductible in computing income from the business or property.

Where an advantage is provided in respect of a gift, the registered charity must be able to support the basis for the determination of the amount of the advantage provided. The Canada Revenue Agency's position as noted in Income Tax Technical News No. 26 is that if the value of an advantage cannot be reasonably ascertained, no charitable tax deduction or credit will be allowed. In accordance with proposed amendments to section 3501 of the Income Tax Regulations, it is the responsibility of a qualified donee to identify the advantage, and the amount thereof, on a receipt provided to a donor in respect of a gift.

We trust that these comments are of assistance.

Yours truly,

Jenie Leigh  
Section Manager  
for Division Director  
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