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File no. A135752

MEMORANDUM

To: Vanessa Allen, Deloitte Restructuring Inc.
Re: Registered Charities as NewCo Shareholders
Date: May 25, 2016

You have asked for our opinion as to whether the exchange (the “**Exchange**”) of unsecured debt (the “**Debt**”) issued by the Church Extension Fund of the Lutheran Church – Canada, the Alberta & British Columbia District (the “**District**”) for cash and shares (the “**Shares**”) in the capital stock of a new Alberta corporation (“**NewCo**”), by a holder of Debt that is a “charitable organization” and a “registered charity” (a “**Charity**”), both for purposes of the *Income Tax Act* (Canada) (the “**Tax Act**”), would, in and of itself, cause the Charity to lose its status as a registered charity.

This document is confidential and intended for the sole use of the addressee. The advice contained herein is not intended to be, and may not be, relied upon or released to any person other than the addressee without the express written consent of *Gowling WLG (Canada) LLP*.

Our comments herein are based on the provisions of the Tax Act and the regulations thereto (“**Regulations**”) as they presently read, proposed amendments to the Tax Act and the Regulations announced by the Department of Finance (Canada) to the date hereof, applicable jurisprudence and our understanding of the current publicly available administrative practices and policies of the Canada Revenue Agency (“**CRA**”), all of which are subject to change from time to time. There is a possibility that such change(s) may be made, including with retroactive or retrospective effect, in which case our comments may cease to be accurate. *Gowling WLG (Canada) LLP* assumes no responsibility to update this opinion in the event of such change(s).

Executive Summary

Subject to the qualifications noted above, and the articles, objects and governing documents of a particular Charity, the particular Charity should not cease to qualify as such solely because of the Exchange.

Tax Analysis

Generally, a Charity includes a “charitable organization”, for purposes of the Tax Act, that (i) is resident in Canada, also for purposes of the Tax Act, (ii) was either created or established in Canada, and (iii) has applied to CRA in prescribed form for registration (and qualified as a charitable organization at the time of registration).

Generally, a “charitable organization” includes an organization “all the resources of which are devoted to charitable activities¹ carried on by the organization itself”. A charitable organization that carries on a business may have its registration revoked.² There are other requirements to be a charitable organization but we would not expect any of these requirements to be impacted, one way or another, solely by the Exchange.

In numerous published rulings CRA has indicated that it is permissible for a Charity to passively hold investments, such as the Debt and Shares. For example, CRA has stated on separate occasions:

Charities need to invest their capital and any funds not required for their current operations. Charity law dictates that a charity's assets be managed so as to obtain the best return within the bounds of prudent investment principles. As long as a charity manages its investments prudently, this function would generally be regarded as a necessary administrative function and not a business activity.³

On principle, and by analogy with individual taxpayers carrying on the same activity, managing one's own investment portfolio generally does not constitute a business activity.⁴

It is a question of fact whether the relationship between the charitable organization and the subsidiary corporation is suggestive of activities that are other than passive in nature.⁵

Based on the foregoing, provided the holding of the Debt would not have caused a particular Charity to necessarily lose its status as a Charity, merely exchanging such Debt for Shares should not, in and of itself, cause the particular Charity to lose its status as a Charity.

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¹ Generally, charitable activities includes advancement of religion. See *Vancouver Society of Immigrant & Visible Minority Women*, [1999] 2 C.T.C. 1 (SCC).

² See paragraph 149.1(2)(a) of the Tax Act.

³ See paragraph 15 of CRA's Registered Charities Policy Statements, CPS-019 – What is a Related Business?

⁴ See paragraph 2 of CRA's Registered Charities Policy Commentaries, CPC-023 – Private foundations – Whether the management of an investment portfolio constitutes a business activity.

⁵ See CRA technical interpretation 2009-0306691E5.