



Mr Mike Myers
Chief Executive Officer
Queensland Affordable Housing Consortium Ltd.
368 Montague Road
West End QLD 4101

Dear Mr Myers,

NRAS - ATO Treatment of NRAS certificates issued directly to owners/investors

Following correspondence with Mr Mark Fowler of Neumann and Turnour Lawyers, I understand that the Queensland Affordable Housing Consortium Ltd (QAHC) would be interested in more particular guidance as to how the taxation aspects of the administrative solution proposed to you by Ms Susan Finnigan, Branch Manager of the Affordable Housing Branch of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) in a letter dated 8 February 2010, will apply to the particular circumstances of the QAHC and investors in the QAHC model.

I understand that the Australian Taxation Office (ATO) has separately advised QAHC that their business model, of securing head leases from owner/investors and then sub leasing the residential properties to National Rental Affordability Scheme (NRAS) qualified tenants is regarded as a non entity joint venture (NEJV) for NRAS purposes.

The Australian Business Register also records that QAHC is endorsed by the ATO as a charitable institution from 6 August 2008.

Ms Finnigan outlined the administrative solution as being that the Housing Secretary would issue certificates under the *National Rental Affordability Scheme Act 2008* (NRAS Act) directly to the owners/investors. While this process has been described as an administrative solution, it accords with the existing legislation. The administration elements are about issuing NRAS certificates which allow section 380-5(1) of the Income Tax Assessment Act 1997 (ITAA 97) to be followed, rather than section 380-10, which would more usually apply to NEJVs.

Subsection 380-5(1) of the ITAA97

Under subsection 380-5(1) of the ITAA97 an entity (for the purpose of this administrative solution, the owner/investor) is entitled to a tax offset for an income year if:

- (a) the entity is an individual, a corporate tax entity or a superannuation fund;
- (b) the Housing Secretary has issued the entity with a certificate under the NRAS Act; and
- (c) the income year begins in the NRAS year to which the certificate relates.

Subsection 380-5(1) will not give rise to an entitlement where the owner/investor is not an individual, corporate tax entity or a superannuation fund, for example, where the owner/investor is a trustee of family trust or a husband and wife partnership.

In this circumstance, the Housing Secretary may choose to obtain information about an individual who is a partner of a partnership, or an individual who is a trustee of a trust, for example, and issue a certificate to them. In this circumstance that individual that is a partner or a trustee would be entitled to claim the tax offset.

Application of administrative solution

In broad terms, we understand the QAHC model to be, relevantly:

- a) the QAHC is a charitable institution;
- b) the QAHC secures head leases from owner/investors over properties which are suitable for NRAS;
- c) the QAHC sub leases these properties to NRAS qualified tenants;
- d) the arrangements between the QAHC and owner/investors is considered a NEJV for NRAS purposes;
- e) the QAHC derives the NRAS rent from NRAS tenants; and
- f) the QAHC makes payments to owner/investors under the head lease. These payments are not NRAS rent.

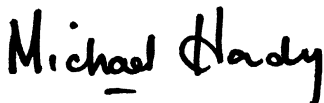
Under the QAHC model, if the Housing Secretary issues a certificate to an owner/investor (and it is our understanding from discussions with FaHCSIA that the Housing Secretary will be doing this), and that owner/investor is an individual, a corporate tax entity or a superannuation fund, the owner/investor will be entitled to a tax offset for the relevant income year. The owner/investor will claim their entitlement when lodging their tax return at the end of the relevant income year.

Where the owner/investor is a trust or a partnership, the Housing Secretary may choose to seek information about an individual who is a partner of a partnership or a trustee of a trust and issue a certificate to that individual. This is at the discretion of the Housing Secretary and you may need to discuss this further with FaHCSIA.

In short, if (as we expect will be the case) the Housing Secretary issues valid certificates to owner/investors and the other requirements of subsection 380-5(1) of the ITAA97 are met, the ATO is required to allow those investors to claim the tax offset when they lodge their own income tax returns (irrespective of whether they are approved participants or not).

I hope that this advice has been of assistance to you.

Regards,



Michael Hardy
Assistant Commissioner
Small and Medium Enterprises
Australian Taxation Office

24 March 2010