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GENERAL FACSIMILE

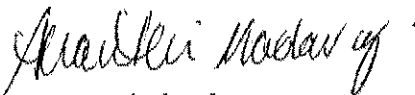
FILE REF: [FILE NO.]

TO:	Mr Mark Fowler	FROM:	Shanthi Nadaraj
ORGANISATION:	C/- Neumann & Turnour Lawyers	BUSINESS LINE:	S&ME
PHONE NUMBER:	07 3837 3600	PHONE NUMBER:	
FAX NUMBER:	07 3211 3686	FAX NUMBER:	
PAGES:	9		
SUBJECT:	Private Ruling – Queensland Affordable Housing Consortium Limited		

Dear Mr Fowler

Further to your conversations with Ms Gianna Cammarano today, please find attached a private ruling for Queensland Affordable Housing Consortium Limited dated 30 April 2010.

Thank you



Shanthi Nadaraj
Interpretative Advice - S&ME Non-Profit Centre
Australian Taxation Office
Phone: 08 9268 5773 | Fax: 08 9268 6400

IN CONFIDENCE

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Australian Government
Australian Taxation Office

Queensland Affordable Housing Consortium Limited
C/- Mr Mike Myers
368 Montague Road
WEST END QLD 4101

Reply to: PO Box 3000
PENRITH NSW 2740
Our reference: 1-21KNQLA
Contact officer: Michael Hardy
Phone: 02 6216 1798

ABN: 30 132 604 552

30 April 2010

Authorisation Number: 1011421999301
Authorising Officer: Michael Hardy

Dear Mr Myers

You requested a private ruling relating to an arrangement associated with the National Rental Affordability Scheme.

This is our response, which contains:

- your *Notice of private ruling*,
- the reasons for our decision, and
- a fact sheet giving information about private rulings including how to have the decision reviewed by objecting.

You have:

- 60 days to object to the private ruling if you disagree with it and have not had an assessment for the relevant period.

Please see the *Private rulings* fact sheet for more information.

Notice of private ruling

This ruling applies to:

QUEENSLAND AFFORDABLE HOUSING ABN 30 132 604 552
CONSORTIUM LTD

Question 1

Will owner/investors involved in an arrangement with Queensland Affordable Housing Consortium Limited (QAHCL) under the National Rental Affordability Scheme (NRAS) be entitled to the tax offset available under the scheme?

Answer

Yes, under the proposed Administrative Solution.

This ruling applies for the following period/s:

Income year ended 30 June 2010

Income year ended 30 June 2011

Income year ended 30 June 2012

The scheme commences on:

1 July 2009

Relevant facts and circumstances

This ruling is based on the facts stated in the description of the scheme that is set out below. If your circumstances are materially different from these facts, this ruling has no effect and you cannot rely on it. The fact sheet has more information about relying on your private ruling.

Relevant facts

The QAHC has been endorsed as a charitable institution under Division 50 of the *Income Tax Assessment Act 1997* (ITAA 1997).

The QAHC is considered an approved participant under the National Rental Affordability Scheme Regulations 2008.

Private Binding Ruling authorisation number 93345 examined arrangements where, in brief, QAHC is a party to a series of arrangements with individual investors which utilises a head lease/sub lease structure. The ATO considers these individual arrangements constitute *non entity joint ventures* as defined in section 995-1 of the ITAA 1997. This previous ruling forms part of and is to be read with this description.

Assumptions

1. Where the Housing Secretary has issued a certificate in accordance with the provisions of the *National Rental Affordability Scheme Act 2008* (NRAS Act) in conformance with section 380-5 of the ITAA 1997 where an owner/investor is an individual, corporation or superannuation fund.
2. Where the Housing Secretary has sought information from an owner/investor which is a partnership or trust identifying an individual, corporate tax entity or superannuation fund who is a partner of the partnership or the beneficiary of a trust and instead issue a certificate to them under the provisions of the NRAS Act in conformance with section 380-5 of the ITAA 1997.

Relevant legislative provisions

Income Tax Assessment Act 1997 - Division 50
Income Tax Assessment Act 1997 - Division 380
National Rental Affordability Scheme Act 2008
National Rental Affordability Scheme Regulations 2008

More information

If you have any questions or want to discuss your ruling, please contact Michael Hardy on 02 6216 1798.

Please have your reference number 1-21KNQLA ready to help us to access your case details more quickly.

Yours faithfully

Mark Konza
Deputy Commissioner of Taxation

Per
(Michael Hardy)

Reasons for decision

These reasons for decision accompany the *Notice of private ruling* for QUEENSLAND AFFORDABLE HOUSING CONSORTIUM LTD.

While these reasons are not part of the private ruling, we provide them to help you to understand how we reached our decision.

QAHC is seeking confirmation that owner / investors participating in its scheme will be eligible to the tax offset under the NRAS.

What is the NRAS?

The National Rental Affordability Scheme (NRAS) is an initiative of the Australian Commonwealth Government intended to assist low to middle income earners secure affordable rental accommodation.

In brief, NRAS approved rental dwellings are rented to eligible residential tenants for at least 20% below market value rent.

Upon satisfactory compliance with the National Rental Affordability Scheme Regulations 2008, participants in the scheme may be eligible to receive a Commonwealth Government and State Government incentive in respect of the approved rental dwelling.

The Commonwealth Government incentive, for the purposes of the current application, is a tax offset – refer to Division 380 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Subsection 380-10 of the ITAA 1997

Section 380-10 of the ITAA 1997 provides that, in certain circumstances, a party to a *non-entity joint venture* (NEJV) is entitled to a tax offset when they derive NRAS rent and the NEJV is issued with a certificate from the Housing Secretary under the *National Rental Affordability Scheme Act 2008* (NRAS Act).

In head lease/sub lease arrangements, the individual investor is not considered to be deriving NRAS rent; it is the head lessor who is deriving the NRAS rent (ATO Interpretive Decision 2009/146).

The Administrative Solution

It is our understanding that the Housing Secretary is unable to issue a certificate to a NEJV, which means that no party to a NEJV will have an entitlement to the tax offset as they will not be able to meet the requirements of section 380-10 of the *Income Tax Assessment Act 1997* (ITAA 1997). It may also be the case that a party to a NEJV which has entered into a head lease with the manager of the NEJV does not have an entitlement to the tax offset as it does not derive NRAS rent (see ATO Interpretive Decision ATO ID 2009/146 for further details).

The Commissioner of Taxation understands that the Housing Secretary will implement an administrative solution to enable the parties to a NEJV to access the tax offset. The administrative solution will be based on the Housing Secretary issuing certificates under the NRAS Act directly to the parties to a NEJV. While this process has been described as an administrative solution, it accords with the existing tax law. The administration elements are about issuing NRAS certificates

which allow section 380-5(1) of the ITAA 1997 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 ITAA 1997 a party to a NEJV 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 party is not an individual, corporate tax entity or a superannuation fund, for example, where the party is a partnership or the trustee of trust. In these circumstances, the Housing Secretary may choose to obtain information about an individual, corporate tax entity or superannuation fund who is a partner of the partnership or the beneficiary of a trust and instead issue a certificate to them. If so, that individual, corporate tax entity or superannuation fund would be entitled to claim the tax offset under subsection 380-5(1).

Application of administrative solution

If the Housing Secretary issues a certificate to a party to a NEJV, and that party is an individual, a corporate tax entity or a superannuation fund, the party will be entitled to a tax offset for the relevant income year. The party will claim their entitlement when lodging their income tax return at the end of the relevant income year.

Where the party is a trustee or a partnership, the Housing Secretary may choose to seek information about an individual, corporate tax entity or superannuation fund who is a partner of the partnership or a beneficiary of the trust and issue a certificate to them. This is at the discretion of the Housing Secretary and you may need to discuss this further with the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The individual, corporate tax entity or superannuation fund issued with a certificate will claim their entitlement when lodging their tax return at the end of the relevant income year.

The Commissioner of Taxation cannot provide an assurance that the Housing Secretary will issue valid certificates to parties to a NEJV in a form that accords with the requirements of subsection 380-5(1) of the ITAA 1997: you may wish to discuss this further with FaHCSIA. However, if the Housing Secretary does issue such certificates, the ATO is required to allow these parties to claim the tax offset when they lodge their own income tax returns (irrespective of whether they are approved participants or not).

Fact sheet

Private rulings

Income tax, Medicare levy and franking tax

HOW DOES YOUR PRIVATE RULING PROTECT YOU?

Your ruling only applies in the circumstances set out in the 'Relevant facts and circumstances' section of the ruling.

If you 'rely' on your ruling, that is, conduct your tax affairs in a way that is consistent with your ruling, we must apply the law to you in the way set out in the ruling.

If we find out later that your ruling is incorrect – for example, it does not correctly set out how the law applies, and you would have to pay more tax under the correct interpretation – you can rely on the ruling and will not have to pay any more tax. The ruling also protects you from penalties and from paying any interest. This protection applies to the period specified in the notice.

However, if the correct interpretation of the law is to your advantage, we will apply the law to give you the advantage (unless a time limit prevents us from doing so).

You will not have this protection if:

- you already have a ruling on the same matter and for the same period, and you have not told us about it (then the later ruling is taken not to have been made), or
- another ruling revises or changes this ruling before you begin the arrangement described in the ruling, and before any income year or other period stated in the ruling starts (then this ruling does not apply).

DO YOU HAVE TO FOLLOW THE RULING?

If you disagree with this ruling, you can choose not to follow it. You can change your mind at any time (subject to time limits imposed by the law).

If you choose not to follow your ruling and your tax position is later found to be incorrect, you will owe any tax shortfall, plus interest. That is, if you have not followed it, merely having a ruling does not protect you from having to pay more tax.

You may also have to pay penalties unless you can show that you have exercised reasonable care in deciding to adopt your tax position or have adopted a 'reasonably arguable' tax position.

DOES THE RULING AFFECT A TAX ASSESSMENT?

If your ruling affects a tax assessment you have already received, you may need to ask us for an amendment. We do not amend your assessments automatically because you may choose not to follow the ruling.

If you choose to rely on your private ruling, and think you may need an amendment, advise your contact officer.

DO YOU DISAGREE WITH THE RULING?

If you are not satisfied with this ruling you can ask us to review it. There are two ways of doing this, depending on whether or not you have a tax assessment for the matter (or period) that your ruling covers. If you:

- don't have an assessment, you may object to the ruling itself within
 - 60 days of the date of the ruling, or
 - two years after the last day for lodging the

- relevant return (four years in some circumstances), if that is later.
- * have an assessment, you object to the assessment rather than the ruling. You have at least two years after the date of the assessment to object to it, and up to four years in some circumstances.

How to object to a ruling

You must make your objection in writing and it must:

- * be signed and dated
- * state fully and in detail the grounds you are relying on.

You can submit your objection:

- * via the tax agent or business portals
- * by fax to (02) 6225 0906, or
- * by mail to:

Australian Taxation Office
SME Provision of Advice
PO Box 3000
PENRITH NSW 2740

Please quote the authorisation number of the ruling in your objection. This is located towards the top right hand corner of the first page of the ruling.

Our website has more information on how to lodge an objection. Go to www.ato.gov.au and type 'objection' in the search box.

Alternatively, phone 13 28 69 between 8.00am and 5.00pm, Monday to Friday, and ask to speak to the contact officer named in your *Notice of private ruling*.

- 1** If you are not satisfied with our decision on your objection you may be able to:
- * have it reviewed by the Administrative Appeals Tribunal, or
 - * appeal to the Federal Court.

We will include more information about these processes when we give you our decision.

PUBLISHING YOUR RULING ON OUR WEBSITE

To ensure the integrity of our advice, we publish a version of every private ruling on our website www.ato.gov.au in the *Register of private binding rulings*.

Before we publish, we edit each ruling to remove all identifying details. This ensures that your privacy is protected. A copy of this edited version is included with your ruling.

Do you want to change the edited version?

If you are concerned that the edited version may still allow you to be identified, contact us within **28 days** of the date of your ruling at:

Practice Management Unit
Australian Taxation Office
PO Box 9990
NEWCASTLE NSW 2300

If you do not contact us within 28 days, we will publish the edited version in the *Register of private binding rulings*.