



Mr. Simon Cheung
Gardiner Roberts LLP
Suite 3600, East Tower, Bay Adelaide Centre
22 Adelaide Street West
Toronto ON M5H 4E3

Your file

Our file
GC 341217

December 12, 2018

Dear Mr. Cheung:

Subject: Request for advice

We are writing in response to your correspondence requesting advice on the application of subsection 188.1(3.2) of the Income Tax Act to a plan by a private foundation (the foundation). We received your correspondence on November 13, 2018. This letter is also further to our telephone conversation on December 7, 2018.

We understand that the foundation, a registered charity, has been bequeathed with shares of a private corporation (the corporation), and the foundation now plans to dispose of these shares to the corporation, in exchange for a promissory note to pay for the shares by the corporation. We also understand that the plan is being considered in connection with the foundation's divestment obligation for excess corporate holdings.

You ask whether the "interest" that will be held by foundation in the corporation, as a result of the above plan, falls within the "direct or indirect interest in a corporation, other than shares" referred to in subsection 188.1(3.2). You also ask whether the said interest is limited to some form of participating equity interest in the corporation, such as stock options or other rights to acquire shares.

We find no specific or comprehensive definition of the above "interest" in the Act. As such, we take the said term to include (in a broad, general sense) any right to have the advantage accruing from anything, and any right in the nature of property (such as a right of a creditor for repayment from the debtor's assets, as in the foundation's case), and not limited to stock options or other rights to acquire shares (and those that come with owning the shares). This also means that the foundation would have to find some other ways of meeting its divestment obligation.

We trust the above has been helpful.

For more information about the obligations of registered charities and other qualified donees, go to **canada.ca/charities-giving**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ramiro G. Herrera', written in a cursive style.

Ramiro G. Herrera
Technical Policy Advisor
Client Service Section
Charities Directorate