

NO.: **IT-304R2**

DATE: June 2, 2000

SUBJECT: INCOME TAX ACT
Condominiums

REFERENCE: Paragraphs 20(1)(a), 149(1)(l) and 150(1)(a) of the *Income Tax Act* (also paragraph 20(1)(aa) of the Act, Class 1 of Schedule II of the *Income Tax Regulations* and subsections 1100(11), 1100(14), 1101(1ac) and 1100(1ae) of the Regulations)

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Application

This bulletin cancels and replaces Interpretation Bulletin IT-304R, dated May 13, 1991, formerly called *Capital Cost Allowance – Condominiums*.

Summary

This bulletin provides a brief overview of the condominium system of ownership in Canada. It explains, in general terms, the purpose and function of a condominium corporation created under provincial or territorial legislation. Also, it indicates the type of returns that a condominium corporation has to file for federal income tax purposes.

The bulletin also comments on the classification, for capital cost allowance and other purposes, of the costs incurred in the acquisition of a condominium unit. It comments on the tax treatment of the taxpayer's share of the costs incurred in maintaining the common property of a condominium development. These comments are pertinent in calculating the income or loss from the use of the condominium in the course of earning income from a business or property, but do not apply to an individual who owns and occupies the unit as a personal or vacation residence.

Discussion and Interpretation

Legal Basis of the Condominium

¶ 1. Each of Canada's ten provinces and three territories have statutes which recognize the condominium system of ownership, that is, the separate ownership of a condominium unit combined with shared ownership of common property within the condominium development. In this bulletin, we refer to terms used in the Condominium Acts of Ontario and British Columbia, which are representative of the terminology likely to be encountered in most other provincial and territorial legislation. (However, refer to ¶ 9 for the situation in the Province of Quebec.)

¶ 2. A condominium combines two distinct types of property ownership. A unit owner normally owns the unit in fee simple and shares ownership of the common areas of the condominium property with all the other unit owners. A condominium is legally created by the acceptance and registration of a "declaration" and "description" or a "strata plan" in the appropriate land registry or land titles office. Generally, the legal consequences of such registration are as follows:

- (a) A condominium corporation, as discussed in ¶ 3, comes into existence and its members become the owners of the "units" or "strata lots" so created as a result of the incorporation (collectively referred to as units in this bulletin).
- (b) Units may be dealt with and regarded as real property and are held in fee simple by the owner. A unit is either the separate unit structure or that portion of a multi-unit structure which consists of all the space between the partitions, floors and ceilings separating it from other units and from the common elements or common property.
- (c) Each such owner shares ownership of the "common elements" or "common property," which is all that part of the land and buildings not included within any units. Such common elements or property include parking lots, landscaped areas, laundry rooms, hallways, elevators, and stairwells. The proportional interest in the common elements or property is established in the documents filed in the land registry or land titles office.

Although the term condominium is usually associated with a residential development, a condominium may also be a commercial, industrial, resort or mixed-use development. The purpose and type of any condominium development will be set out in its declaration, by-laws and rules.

Condominium Corporation

¶ 3. A condominium corporation created under Canadian provincial or territorial legislation is a corporation without share capital whose members are the owners. The objects of such a corporation include, among other things, the management of the real property and any other assets of the corporation. The corporation also has a duty to control, manage and administer the common elements and assets of

the corporation, and to ensure that the unit owners comply with the corporation's registered condominium documents, its by-laws and the provisions of the relevant condominium legislation. Provided that they are not contrary to relevant condominium legislation or the registered condominium documents, the board of the corporation may pass by-laws to govern, among other things:

- the management of the property;
- the maintenance of the common elements;
- the use and management of the assets of the corporation; and
- the assessment and collection of condominium fees and contributions towards the common expenses.

Generally, the expenditures of such a corporation are met by its members on a proportionate basis. Any excess of the members' condominium fees and contributions over the corporation's expenditures for the year is not considered to be income of the corporation. Income from other sources or activities, such as interest earned on the corporation's operating or reserve funds or rental and other incidental income is income of the corporation (however, see ¶ 4 for comments on the status of a residential condominium corporation as a non-profit corporation). If a condominium corporation carries on a business, any profits from that business must be included in its income and it will not be considered a non-profit corporation.

¶ 4. Paragraph 150(1)(a) requires all corporations, including condominium corporations, to file an income tax return each year, even if they are exempt from paying tax under Part I. A residential condominium corporation that qualifies as a non-profit organization under paragraph 149(1)(l) is exempt from Part I tax on its taxable income but is required to file Form T1044, *Non-Profit Organization (NPO) Information Return*, with its T2 tax return. Although it is a question of fact whether a particular condominium corporation qualifies for an exemption under paragraph 149(1)(l), most residential condominium corporations qualify as non-profit organizations within the meaning of this paragraph. For information on the conditions necessary to qualify as a tax-exempt non-profit organization, see the current version of IT-496, *Non-Profit Organizations*.

Condominium Unit Used to Earn Business or Rental Income

General

¶ 5. The following comments apply when a condominium unit is used in a business or is rented to other persons, but do not apply when it is used primarily as a personal residence (either as a principal residence or a vacation residence) of the owner. When a condominium is rented to others during the time it is not used personally by the owner, the comments which follow are only applicable if the owner has a reasonable expectation of profit from the rental of the condominium.

Capital Cost Allowance

¶ 6. For capital cost allowance (CCA) purposes, when a unit includes land, the usual allocation of cost between land and building must be made (see the current version of IT-220, *Capital Cost Allowance – Proceeds of Disposition of Depreciable Property*). This allocation is necessary, for example, where a ground floor apartment unit includes an outdoor patio, or where a detached single-family condominium unit includes a front or back yard which is not part of the common elements. As indicated in ¶ 2(c), when a unit is purchased the purchaser also acquires a proportionate interest in the common elements pertaining to the unit. An allocation between land, building and other depreciable property (such as a parking lot) is also required in respect of the costs attributable to the common elements. As a result, the capital cost of a unit includes the cost of acquisition and capital expenditures related to the building portion of the unit as well as any costs attributable to the unit holder's proportionate interest in the common elements of any depreciable property held by the corporation. For units acquired after 1987, the capital cost of a condominium unit (building portion) is generally included in Class 1 of Schedule II to the Regulations for CCA purposes. However, if the unit was acquired before 1988, it may have qualified for inclusion in Class 3, Class 6, Class 31 or Class 32. For more details see the current version of IT-79, *Capital Cost Allowance – Buildings or Other Structures*.

CCA Restriction and Separate Class Rule

¶ 7. Subsection 1100(11) of the Regulations restricts the amount of CCA that may be claimed on rental properties. A condominium unit which meets the definition of "rental property" in subsection 1100(14) is subject to this restriction with the result that a unit owner cannot create or increase a net loss from the rental of property. In addition, subsection 1101(1ac) of the Regulations requires the establishment of a separate class for each rental property with a capital cost of at least \$50,000. However, if the taxpayer owns two or more units or lots in the same building with an aggregate capital cost of at least \$50,000, all such units or lots in the same building are considered to be a single rental property in a separate prescribed class.

Repairs and Renovations

¶ 8. Usually, a part of the condominium fee paid by the unit owner goes into the condominium corporation's reserve fund for maintenance, repairs, improvements or additions to the common elements. Furthermore, a unit owner may be charged an extraordinary levy by the condominium

corporation for a portion of the costs relating to repairs or renovations required to be made to the common elements. In either case, no deduction or capitalization of the expense is permitted until the amount is laid out to earn income by the condominium corporation. This is because prepaid expenses, or expenses which are paid before they are actually incurred, are not deductible as explained in the current version of IT-417, *Prepaid Expenses and Deferred Charges*. Whether the unit owner deducts the amount as a current expense or capitalizes it depends on the nature of the work done. Refer to the current version of IT-128, *Capital Cost Allowance – Depreciable Property* for further details on how such costs are classified. Certain capital expenditures incurred for disability-related devices or modifications to a building to accommodate disabled individuals are deductible under paragraph 20(1)(qq) or 20(1)(rr) in the year the expense is paid. The devices and modifications which qualify under these provisions are listed in sections 8800 and 8801 of the Regulations. Capital expenditures incurred in respect of the land do not form part of the capital cost of the building portion of the unit and are not deductible in computing income except as specifically provided for in the Act. The cost of landscaping, for example, may be deductible under paragraph 20(1)(aa).

Quebec

¶ 9. In the province of Quebec, the condominium system of ownership is recognized in the Civil Code of Quebec. It contains articles dealing with the "divided co-ownership of immovables" which are analogous to the condominium legislation in effect in the other provinces and territories. These provisions provide for the direct ownership of condominium units (called "fractions"). Each fraction includes a portion of the land and building which is the property of a specific co-owner and is reserved for the sole use of that co-owner (called "*les parties privatives*") and an undivided interest in the common areas of the land and building (called "*les parties communes*"). When a declaration of co-ownership is published, a syndicate is established as a legal person responsible for protecting the rights of the co-owners and managing and maintaining the common portions of the condominium. For income tax purposes, such a syndicate is considered to be a corporation. Allowing for these differences, the comments in this bulletin apply equally to condominiums established under the Civil Code of Quebec.

Explanation of Changes

Introduction

The purpose of the *Explanation of Changes* is to give the reasons for the revisions to an interpretation bulletin. It outlines the revisions we have made as a result of changes to the law, as well as changes reflecting new or revised interpretations.

Reason for the Revision

This revision was undertaken as a result of a change in the Canada Customs and Revenue Agency's position with respect to condominium corporations as announced in the last article of *Income Tax Technical News* No. 4, dated February 20, 1995. The bulletin explains, in general terms, the purpose and function of a condominium corporation (a syndicate in Quebec) and describes the types of returns which must be filed by the condominium corporation for income tax purposes. It also discusses the unit owner's deduction of certain expenses, including CCA, applicable when a condominium unit is used to earn income from a business or from the rental of the unit. The bulletin was also modified to reflect changes to the *Income Tax Act* resulting from S.C. 1994, c. 7 Sch. VIII (1993, c. 24) and to the CCA classes for buildings. Comments concerning multiple unit residential buildings (MURBs) have been deleted because the tax incentives applicable to such buildings are no longer available.

Legislative and Other Changes

The Summary has been expanded and the reference to Information Circular 79-7, *The Condominium Corporation and Its Members*, was deleted because this circular was cancelled (see *Income Tax Technical News* No. 4, dated February 20, 1995).

¶ 2 was revised to indicate that condominiums may be created for other than residential purposes and lists the other types of condominium developments.

New ¶ 3 was added to explain in general terms the purpose and function of a condominium corporation. It also provides examples of the types of income a condominium corporation may earn.

New ¶ 4 explains that all condominium corporations, whether or not they are taxable, are required to file an income tax return each year. It also indicates that a

residential condominium corporation can qualify as a tax-exempt non-profit organization and, if so, it may have to file a non-profit information return as well as an income tax return.

New ¶ 6 brings forward the information contained in former ¶ 3 and ¶ 4. It has been expanded to indicate that for capital cost allowance purposes the building portion of a condominium unit that was purchased after 1987 is included in Class 1. A reference to the current version of IT-79, *Capital Cost Allowance – Buildings or Other Structures*, was added because it explains Class 1, Class 3 and Class 6 of Schedule II of the *Income Tax Regulations* in more detail.

¶ 7 was revised to add a reference to subsections 1100(11) and 1100(14) of the Regulations, which prevent the creation or increase of a rental loss by claiming CCA on a condominium unit that is a rental property.

¶ 8 was revised to reflect the addition of subsections 20(1)(qq) and 20(1)(rr) as a result of S.C. 1994, c. 7 Sch VIII (1993, c. 24).

¶ 9 was revised to reflect certain changes concerning condominium developments in Quebec that were incorporated into the Civil Code of Quebec, which came into effect on January 1, 1994.

Former ¶ 5 indicated that two or more condominium units owned by a taxpayer in the same building are considered to have a single capital cost for the purpose of the addition to Class 6, 31 or 32 of Schedule II of the Regulations. The comments in former ¶ 5 are no longer applicable because a condominium unit acquired after 1987 falls within Class 1 or 3. Unlike the description of Classes 6, 31 and 32, the description of Class 1 and Class 3 includes property which is an interest in a building.

Former ¶ 6 was eliminated because the tax incentives relating to MURBs are no longer available. That is, after 1993, CCA on a Class 31 or 32 property cannot create or increase a rental loss.

Throughout the bulletin, we have made minor changes for clarification or readability purposes.

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