



This January and February are presenting some challenges that are new to the Property Management industry and Condominium Managers in particular. Specifically it is trying to decipher the rules surrounding the Home Renovation Tax Credit (HRTC) which was introduced by the Federal Government as part of the stimulus plan in the 2009 Federal budget.

An overview of the HRTC is too long to include as part of this information bulletin, and most if not all of you are aware of the purpose of the credit and the rules surrounding it. For those interested in reviewing the rules and guidelines you can visit <http://www.cra-arc.gc.ca/hrtc> to view the Canada Revenue Agency (CRA) website.

After reviewing the site you may have questions regarding how this tax incentive affects Condominium Management firms. On behalf of the ACMO2000 Corporate Members, and in conjunction with CCI Toronto & Area Chapter, ACMO retained a lawyer specializing in tax law to coordinate a meeting with CRA representatives in order to address many question submitted by our members regarding the legal interpretation of the HRTC rules and how they affect the practical management of Condominium Corporations. This meeting was also attended by an Auditor specializing in condominium accounting and taxation.

Listed below are the 15 questions which formed the basis of our discussion and a summary of the answers that CRA representatives provided.

Notes:

1. For the purposes of clarity in the questions and answers listed below the word "Invoice" refers to the invoices received from service providers regarding a payment owing for services rendered. The term "Receipt" refers to an income tax receipt or summary of eligible expenses prepared by a condominium corporation or property management firm for use by an owner in supporting and HRTC claim on their personal income tax return.

2. This bulletin is provided to ACMO members for informational purposes. It is understood that the legislation is subject to interpretation and its application and enforcements has yet to be tested in the Courts. Moreover, CRA employees can not be held responsible for an incorrect interpretation of the law.

1. Do condominium corporations have to provide an HRTC receipt to condominium owners?

No. A condominium Corporation is not obligated to provide a receipt summarizing the eligible expenses incurred by the Condominium Corporation on behalf of all owners. However, the owners are entitled to claim their portion of qualifying expenses as part of their HRTC credit. Owners are therefore entitled to request to review copies of the invoices for work which they think is eligible and submit as part of their HRTC claim their proportionate share in accordance with Schedule D of the declaration.

2. Do Management companies have the obligation to provide these receipts on behalf of their clients?

No. There is no legal requirement for Condominium Management companies to provide these receipts since there is no requirement for the Condominium to provide the receipts to its owners. If the Corporation chooses to prepare these invoices for their owners, it stands to reason that the contract between the management company and the Condominium Corporation would determine the obligation of the management company to provide this service.

3. Are condominium corporations (and by extension Condominium Management companies) justified in taking the position that the receipt will be issued to the owner of record on January 31, 2010 for all eligible expenses incurred between January 27, 2009 and January 31, 2010? (this would address the issue of ownership changes during the 2009 calendar year.)

As currently written the answer to this question is “no”, the right to the credit belongs to the owner of record at the time that the expense was incurred by the Corporation. The impracticality of this was explained from a legal and financial reporting standpoint.

The Act requires that the owner that paid the funds should receive the credit, without recognition of exceptional circumstances surrounding condominium ownership. In the condominium industry the asset that is the reserve fund is sold with the unit. It is the position of ACMO and CCI that the credit that results from the expenditure of those funds should also be transferred to the new owner.

ACMO and CCI have petitioned CRA to make an advance ruling on this matter and, given the urgency surrounding the matter, we are hopeful that CRA will move to rule quickly and in agreement with our position. If CRA maintains their current position, then the obligation falls onto the homeowner / taxpayer to only claim for the eligible period.

The results of that ruling will be communicated as soon as it is available.

4. Must receipts be provided by February 28, 2010 for all eligible expenses incurred between January 27, 2009 and January 31, 2010?

Since there is no requirement to provide the receipts on behalf of the Condominium the answer is no – there is no deadline. From a client service perspective, if receipts are to be issued it is recommended that owners receive their report in sufficient time to meet the April 30th filing deadline for the 2009 taxation year. If issued after February 28, 2010, CRA has advised that taxpayers have the right to file and request for an adjustment. There is also a period of 10 years to file a claim for the HRTC credit.

5. With the exception of furnishings and other clearly ineligible expenses, do reserve fund expenditures (in spite of the fact that some would call them planned maintenance) qualify as eligible expenses?

Generally “yes”. The spirit of the law is that if the renovation is an enduring improvement to the dwelling including the land that forms part of the dwelling (and not an annual, routine or recurring renovation) it is eligible. It is important to make the determination of what is an eligible expense separate from whether it was paid from the Reserve or Operating fund.

The CRA website states that, “The **expenses are eligible** when they are incurred in relation to a renovation or alteration to an eligible dwelling (including the land that forms part of the eligible dwelling) and are of an enduring nature and integral to the dwelling. As a general rule, if the item you purchase will not become a permanent part of your eligible dwelling, it is not eligible.”

6. Do ancillary expenditures related to eligible expenses (professional engineer fees, security costs related to eligible work etc.) qualify as eligible expenditures?

Yes. Any costs associated with the completion of a project that is an eligible expense is eligible to be included in the calculation of the HRTC. An example of engineering fees incurred to supervise, tender or consult on a project that is eligible was given to representatives of CRA and their response was that these costs can be included in the claim.

7. Are condominium corporations (and by extension Condominium Management companies) protected by placing a disclaimer on the receipt in the event that an expense deemed eligible by the corporation is subsequently deemed ineligible by CRA?

From the standpoint of CRA the reporting relationship that exists is between the individual taxpayer and the Canada Revenue Agency.

A condominium that makes an honest error in judgment in determining whether an expense is eligible can expect no penalties by CRA. That does not hold true necessarily for Condominiums that intentionally or fraudulently misrepresent the eligible expenses in order to increase the amount of the claim by its owners. ACMO will prepare a draft disclaimer for those that wish to use it.

8. In the event of expenses incurred by shared facilities of two or more condominium corporations, does the responsibility of the SF management company end at providing the total of the eligible expenses for the SF to the management company of the condominium corporations that contribute to SF (based on the % of their contribution)?

The short answer is yes. This is in keeping with the philosophy that since the condominium corporation contributed to those expenses based on their proportionate share the owners who provided those funds to the Corporation are entitled to claim the portion of the funds that they provided.

9. Do condominiums (and by extension Condominium Management companies) need to supply copies of the invoices being claimed as eligible expenses to each owner along with a copy of schedule D of the declaration for that condominium corporation? Do those need to be submitted with the tax return of each unit owner making a claim?

CRA is not expecting each unit owner to provide copies of the contracts entered into by the Condominium Corporation as proof of eligible expenses. If the Condominium Corporation provides a receipt or summary of eligible expenses incurred on behalf of all owners, then the unit owner can rely on that summary and the Condominium Corporation is responsible to maintain the records and proof of expenses to support the summary which it provided to owners. It is important to note from an administration standpoint, that corporations need to maintain those records in the event the taxpayer gets audited.

10. Should condominium corporations (and by extension Condominium Management companies) issue their receipts based on the total expenses or only those expenditures over \$1,000? Is the reduction of the \$1,000 from the total expenses the responsibility of the owner at the time of filing their tax return or should the Condominium Corporation make that reduction in the total amount before issuing a receipt?

There is no minimum amount on which corporations should report.

The deduction of \$1,000 from the total eligible expenses is done by the individual taxpayer when completing Schedule 12 of their personal 2009 Income Tax Return.

11. Holdback on a project that has been completed but the holdback not released as at January 31, 2010?

The eligible expenses include the value of any work completed as at January 31, 2010. Therefore if work on a project was completed prior to January 31, 2010 then the entire value of the contract is an eligible expense.

Note: If a condominium is in the midst of a large project that is eligible it would be beneficial to have the consultant prepare a draw report or statement indicating the percentage of the project completed as close to January 31, 2010 as possible.

12. Are the common element portions for parking spaces and lockers included in the portion of eligible expenses assigned to an individual unit which owns those parking spaces and lockers?

The proportionate interest in common elements which determines the percentage of contributions to Common Area Maintenance (including parking and locker percentages, if applicable) dictate the percentage of the eligible expenses that an individual unit owner can claim.

13. What are the reporting responsibilities for Condominiums without any eligible expenses?

Technically there is no responsibility on the part of the Condominium Corporation although a letter to unit owners indicating that the Corporation has not incurred any eligible expenses is advisable.

14. Can the Corporation include as an eligible expense the consulting fees for work which has not been started or has not been contracted as at January 31, 2010?

Yes, provided the consulting or engineering work is in relation to an eligible expense and the services for which the claim is being made were received prior to January 31, 2010.

15. If it is determined subsequent to releasing the receipts to the owners that an expense should be included or excluded by way of reporting error or CRA audit, what will be the obligation of the Condominium with respect to revising the receipts previously issued. For instance will the revisions require the owners to revise their 2009 income tax returns or could the revision be reported for the next tax year ie 2010?

No. In the event that an error is discovered that alters the amount of the claim made by owners in relation to the HRTC claim the owners should be notified as soon as possible and they should forward the information on the correction to CRA in order to have their personal income tax return re-assessed.

16. Is there any reporting obligation to CRA direct from the Condominium Corporation for the record of receipts issued?

No. There is no summary or detail required to be filed with CRA in connection with the HRTC other than the requirement to maintain the records in the event that CRA chooses to further investigate any claims made by unit owners in connection with the Condominium Corporation's eligible expenses.

Chris Antipas, RCM, ACCI
President,
ACMO