



## SEPTEMBER 2011 EXECUTIVE TAXBRIEFS

### NEW LEGISLATION

#### 10. Condo Corporations

[TI2011-040554117](#) - 2011/07/13 - Financial Sector and Exempt Entities Division of the Rulings Directorate

We have seen this issue arise before in the context of suites rented out by Strata Corporations. In this TI the question is whether a cell tower arrangement jeopardizes the tax-exempt status of a condominium corporation?

Interestingly the answer is fairly technical in that CRA concludes that it is not a problem as long as the income is the income of the unit owners and not the condo corporation. As CRA points out, "in most situations the space being rented does not belong to the corporation; rather, the corporation may be better viewed as acting as an agent for the unit owners in entering into any cell tower arrangements." CRA concludes that if this is the case, then such arrangements generally would not jeopardize the tax-exempt status of the corporation, although the related profit would have to be allocated appropriately among unit owners for tax purposes. Of course the exact nature of the legal arrangement will depend on the legislation of the province in which the strata title is created.

However, this brings into focus a very important point: none of the revenues or expenses in the circumstances described belong to the Strata Corporation which is really just an agent created by statute to protect the owners and facilitate the operations of the strata property. The Strata Corporation is specifically charged under s.2 of the BC Strata Property Act to be "...responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners." Accordingly, all of the expenses and revenues legally belong to the Owners based on their pro rata entitlements as set out under their specific strata plan. While a Strata Corporation may be required by law to budget for and account for revenues and expenses of the owners in conjunction with operating the Strata, the revenue and expenses they report on those statements do not belong to the corporation which in fact an agent acting in this regard.

At paragraph 3 of IT-304R2, CRA states as follows: "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." It would seem that this statement clearly misses the point. Condo corps have no assets and are merely agents. Their activities are those of their principals, the strata property owners. So in fact all of these inquiries are misguided as is CRA's assessment policy.

We would be interested to hear from any of you as to your experiences with CRA assessments in this regard as it seems that CRA is off the mark on this one.