



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

COMMUNITY DEVELOPMENT EQUITY TAX CREDIT ACT GENERAL REGULATIONS

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COMMUNITY DEVELOPMENT EQUITY TAX CREDIT ACT

Chapter C-13.01

GENERAL REGULATIONS

Pursuant to section 17 of the *Community Development Equity Tax Credit Act R.S.P.E.I. 1988*, Cap. C-13.01, Council made the following regulations:

1. Definitions

(1) In these regulations

- (a) “**Act**” means the *Community Development Equity Tax Credit Act R.S.P.E.I. 1988*, Cap. C-13.01;
- (b) “**defined community**” means a group of persons situated within the Province that may be reasonably distinguished by common geographic, economic or cultural characteristics;
- (c) “**eligible business entity**” means a business entity
 - (i) that is
 - (A) a company or an association, and
 - (B) a taxable corporation, and
 - (ii) that meets the criteria set out in subsection 5(2) of the Act applicable to
 - (A) a taxable corporation, if the business entity is a company, or
 - (B) an association, if the business entity is an association;
- (d) “**individual**” does not include a trust except a trust governed by a registered retirement savings plan where
 - (i) the individual makes contributions to the trust and those contributions, and no other funds, can reasonably be considered to have been used by the trust to acquire or subscribe for the share, and
 - (ii) the annuitant under the plan is the individual or a spouse of the individual;
- (e) “**voting share**” means, where that share refers to an association, a share that would, if it were the only share owned by the member, entitle the member to a vote in the affairs of the association.

Equivalent of one hundred employees, defined

- (2) For the purpose of clause 5(2)(c) of the Act, “equivalent of one hundred employees” means one hundred employees that are employed on a full-time, year-round basis. (*EC130/11; 58/19*)

2. Community economic-development plan

For the purposes of clause 1(e) of the Act, a community economic- development plan shall contain or make provisions for at least the following:

- (a) a mission statement outlining the economic-development strategy of the community economic-development business and the defined community it intends to serve;
- (b) in the case of a company,
 - (i) the amount of equity capital to be raised under the plan, and
 - (ii) that the shares issued under the plan
 - (A) are equity shares,
 - (B) are of only one class without series and have never previously been issued,
 - (C) will only be issued from the treasury of the corporation on being fully paid for in cash,
 - (D) will, immediately following their issue, be registered in the name of each shareholder that purchases them or in the name of a trustee, if the shares are held by the trustee for the benefit of a shareholder, and
 - (E) do not have any rights or restrictions that are prohibited by the Act or these regulations;
- (c) in the case of an association,
 - (i) the amount of equity capital to be raised under the plan, and
 - (ii) that the shares issued under the plan,
 - (A) are membership shares any of which would entitle the member to vote in the affairs of the association if it were the only share owned by the member, and
 - (B) do not have any rights or restrictions that may be prohibited by the Act or these regulations;
- (d) a statement that, if a share certificate is not required to be issued to each new shareholder under the plan, an investment confirmation will be issued to each new shareholder within 30 days of share registration, setting out at least the following:
 - (i) the number of shares acquired,
 - (ii) the price paid per share,
 - (iii) the total amount paid,
 - (iv) the procedure for obtaining the tax credit receipt pursuant to the Act. *(EC130/11)*

3. Application for registration, content

For the purposes of clause 2(1)(d) of the Act, an application shall contain the following information:

- (a) the amount of equity to be raised by the specified issue;
- (b) the proposed use of funds raised by the specified issue;
- (c) a summary of the major business activities of the company or association, including major revenue sources;
- (d) a listing of the Directors of the company or association including their names, addresses and background information. *(EC130/11)*



4. Registration, prescribed conditions

For the purposes of clause 2(2)(e) of the Act, the prescribed conditions for the registration for a community economic-development business are that the company or association

- (a) has a constitution that
 - (i) restricts the business of the company or association to
 - (A) operating or carrying on business that is an active business or to evaluating and making eligible investments in one or more active businesses based on a set of criteria defined by the company or association,
 - (B) providing information to and educating investors in the defined community as to the role of capital in business, the value of equity investments to the defined community and the rights and obligations of companies, associations and shareholders,
 - (C) investing the capital raised, to which a tax credit pursuant to the Act has been issued, in eligible business entities located within the defined community,
 - (D) exercising ownership rights with respect to the eligible investments made by the company or association, and
 - (E) providing the administrative support necessary to carry on the business of the company or association, including preparation of annual reports and the holding of meetings of shareholders and the Board of Directors,
 - (ii) describes the defined community for which the company or association was formed, and
 - (iii) makes provisions for annual general meetings of the shareholders;
- (b) has a Board of Directors, elected by the shareholders at a general meeting of the shareholders, consisting of not less than six individuals who are residents of the defined community in which the company or association carries on business; and
- (c) is not a non-profit, charitable or non-taxable company or association. *(EC130/11)*

5. Association to be a taxable corporation and to carry on active business

For the purposes of clause 3(e) of the Act, an association shall carry on business or operations in such activity or activities that

- (a) the association is a taxable corporation; and
- (b) all or substantially all of the fair market value of the property of the association is attributable to property used in an active business or shares of a body corporate where all or substantially all of the fair market value of the property of that body corporate is attributable to property used in an active business. *(EC130/11)*

6. Revocation of a certificate of registration

(1) For purposes of clause 4(1)(f) of the Act, the Minister may revoke a certificate of registration of a community economic-development business where the community economic-development business

- (a) has not invested
 - (i) at least 40 per cent of the equity capital raised in the Province in an eligible business entity within 12 months after the closing date of a specified issue,

- (ii) at least 60 per cent of the equity capital raised in the Province in an eligible business entity within 24 months after the closing date of a specified issue, or
- (iii) at least 80 per cent of the equity capital raised in the Province in an eligible business entity within 36 months after the closing date of a specified issue;
- (b) has purchased, redeemed or otherwise acquired shares issued by it if
 - (i) without the prior written approval of the Minister, the cost of the purchase, redemption or acquisition exceeds 20 per cent of the corporation's retained earnings, or
 - (ii) the purchase, redemption or acquisition results in the corporation being unable to pay its liabilities as they become due;
- (c) fails to comply with the requirements of the provisions of the *Securities Act* R.S.P.E.I. 1988, Cap. S-31, its regulations or its rules;
- (d) fails to provide the applicable information or returns as provided in clause 10(c) or (d).

Penalty

- (2) In lieu of revoking a certificate under subsection (1), the Minister may, if a community economic-development business does not meet the requirements of clause 1(a), assess a penalty equal to 1/6 of any shortfall unless imposition of the penalty would result in the bankruptcy of the community economic-development business. (EC130/11)

7. Total assets of an eligible business

- (1) For the purposes of clause 5(2)(d) of the Act, the total assets of an eligible business at the end of a taxation year as shown in its financial statements, means the aggregate of the following amounts shown in those financial statements:
 - (a) the amounts which are the net carrying costs of assets, other than assets the cost of which is depreciated or amortized, excluding any sinking funds established for the retirement of shares; and
 - (b) the amounts which are the depreciated cost and amortized cost of those assets, net of government assistance, the cost of which is depreciated or amortized.

No duplication of amounts included in calculation

- (2) There shall be no duplication in calculating the amounts referred to in subsection (1).

Appraisal surplus

- (3) If any portion of the appraisal surplus in respect of any assets shown in the financial statements has been depreciated or amortized by the corporation, the amount referred to in subsection (1) shall be the amount of the appraisal surplus in respect of the asset, less the amount of all depreciation or amortization taken in respect of such appraisal surplus. (EC130/11; 58/19)

8. Association to be a taxable corporation

For the purposes of clause 5(2)(g) of the Act, an association shall carry on business or operations in such an activity or activities that the association is a taxable corporation. (EC130/11)



9. Application for tax credit certificate

For the purposes of subsection 6(1) of the Act, a community economic-development business shall make an application for a tax credit certificate, on or before the 10th day of the month following the month in which a share was issued, as part of a specified issue for which the tax credit is being requested. (EC130/11)

10. Repayment

(1) For the purpose of clause 7(2)(b) of the Act,

- (a) no repayment of the amount referred to in clause 7(2)(a) of the Act is required where the disposition is
 - (i) a result of the death of the person who held the share,
 - (ii) to a registered retirement savings plan or a registered retirement income fund pursuant to the *Income Tax Act* (Canada),
 - (iii) a result of the company or association that issued the share ceasing to conduct business because of, in the opinion of the Minister, the financial failure of the company or association, or
 - (iv) a result of an exchange of a share of one series in a class of shares for a share of a different series in the same class of shares, if each series of shares within the class meets the eligibility requirements of the Act; and
- (b) where the disposition is a result of the wind-up or dissolution of the company or association that issued the share for reasons other than as provided in subclause (a)(iii), repayment to the Minister shall be in the amount that is determined by multiplying the total amount of the tax credits received in respect of the shares by 60 minus the number of months the shares have been held, divided by 60 months.

Date share deemed acquired

(2) A share acquired in accordance with subclause (1)(a)(iv) is deemed to have been acquired on the date on which the original share that was held before the exchange was acquired.

Waiving or prorating repayment

(3) Upon application, the Minister may waive or prorate repayment of an amount referred to in subsection 7(2) of the Act. (EC130/11)

11. Register, contents

For the purposes of section 9 of the Act, the register must contain the name, address and registration certificate number of each company or association registered pursuant to the Act. (EC130/11)

12. Annual return, format contents

For the purposes of section 10 of the Act, the annual return shall be filed on a form acceptable to the Minister and contain at least the following information:

- (a) a copy of all forms and schedules required to be filed for the purposes of the *Income Tax Act* (Canada), including financial statements required by that Act;
- (b) a list of all individuals who have made an investment in the company or association, as the case may be, in the taxation year and such list shall include the individual's name, social insurance number, address, amount of investment made and the date of the investment;

- (c) details of investments, including financial statements of investees, made by a community economic-development business sufficient to determine compliance with clause 6(1)(a); and
- (d) details of any purchase, redemption or acquisition of its shares by a community economic-development business sufficient to determine compliance with clause 6(1)(b). *(EC130/11)*

