

budget 2011 – significant tax measures affecting the charitable sector

Budget 2011 includes several measures that relate to charities and other similar organizations. These measures fall into two categories. First, there are measures that will expand the authority of the Canada Revenue Agency (the “**CRA**”) to supervise these organizations. Second, there are new rules that address certain perceived abuses of the existing rules. These measures are outlined briefly below.

CRA’s supervisory authority

new rules for “qualified donees” that are not registered charities

Under the existing rules, certain organizations that are not registered charities may issue official donation receipts. These other organizations include:

- Registered Canadian amateur athletic associations (“**CAAAs**”)
- Canadian municipalities
- Municipal and public bodies performing a function of government in Canada
- Non-Canadian universities, the student body of which ordinarily includes Canadian students
- Certain non-Canadian charities that have received a gift from the Canadian government

Charities and these other organizations are referred to as “qualified donees.”

Budget 2011 proposes to (i) extend compliance, record keeping and certain other requirements that currently apply to registered charities to qualified donees that are not registered charities, and (ii) authorize the CRA to impose sanctions on these other qualified donees if they fail to comply with these requirements. Under the proposed rules:

- All qualified donees will be required to be identified on a publicly available list maintained by the CRA before they are eligible to issue official donation receipts (The CRA already maintains and publishes lists of some of these types of organizations; the proposed measures will not impose any new requirements).
- The CRA will be authorized to suspend the receipting privileges, or revoke the status of, any qualified donee if it issues an official receipt that does not comply with the requirements in the *Income Tax Act* (Canada) (the “**Tax Act**”). Examples of these requirements provided in the Budget Papers include the requirement to “properly establish” the value of an in-kind donation and the requirement that receipts only be issued for transactions that qualify as “gifts.”
- All qualified donees will be required to maintain books and records that allow the CRA to verify donations and provide the CRA with access to them on request. The CRA will be authorized to suspend the receipting privileges or revoke the status of any qualified donee that fails to comply with this requirement.
- Registered CAAs will be subject to the monetary penalties that currently apply to registered charities for issuing improper donation receipts or failing to file information returns.

These measures will apply on or after the later of January 1, 2012, and Royal Assent to the enacting legislation.

governance measures

Budget 2011 proposes that the Minister of National Revenue be granted the discretion to refuse to register an applicant for charitable status, or to suspend the receipting privileges or the registered status of an existing charity, if an individual who has a

history of misconduct or has a criminal record involving “a breach of public trust” is a director, officer or trustee of the organization or otherwise controls or manages the organization. The rationale for these proposed changes, as set out in the Budget Papers, is that there may be a high risk of abuse where these individuals are involved in the management of an organization, and the CRA should be able to use the past conduct of these individuals as grounds for refusing to register an applicant or revoking the registered status or the receipting privileges of an existing charity.

The CRA will generally be entitled to exercise this discretion where a director, officer, trustee or other individual who controls or manages an organization (an “**ineligible individual**”):

- Has been convicted of a criminal offence relating to financial dishonesty (including tax evasion, theft or fraud), or any other criminal offence that is relevant to the operation of the organization.
- Has been convicted of an offence within the previous five years relating to financial dishonesty (including offences under charitable fundraising legislation, convictions for misrepresentation under consumer protection legislation or convictions under securities legislation) or any other offence that is relevant to the operation of the organization.
- Was a director, trustee, officer or equivalent official, or an individual who otherwise controlled or managed the operation of a charity or a CAAA during a period in which the organization engaged in conduct that may reasonably be considered to have been a serious breach of the registration requirements in the Tax Act and that resulted in the revocation of its registration within the previous five years.
- Was the promoter of a “gifting arrangement” or other “tax shelter” in which a charity or a CAAA participated and the registration of the charity or CAAA has been revoked within the previous five years for reasons that included or were related to its participation.

The Budget Papers state that the CRA will be required to take into account the “particular circumstances” of a charity or CAAA, including any measures that have been put in place to address

potential concerns raised by the involvement of an ineligible individual in its activities, in deciding whether to exercise this discretion. They also state that the CRA will consult with stakeholders in developing administrative guidance relating to application of the proposed measures.

According to the Budget Papers, a charity or CAAA will not be required to obtain background checks in order to provide the CRA with assurances that there are no ineligible individuals involved in its activities. However, if a charity or CAAA fails to take remedial action after the CRA has identified concerns about particular individuals, the CRA will be entitled to exercise its discretion to deny the application for registration or to suspend receipting privileges or revoke registered status.

These measures will apply on and after the later of January 1, 2012, and Royal Assent to the enacting legislation.

CAAAs

Under the current rules, registered CAAAs can issue official donation receipts, but few of the reporting and compliance rules that apply to registered charities apply to CAAAs. Budget 2011 proposes measures that will extend much of the regulatory regime that applies to charities to registered CAAAs.

The proposed measures also propose to change the test for registration of a CAAA from a “primary purpose and primary function” test to a test that requires a CAAA have as its “exclusive purpose and exclusive function” the promotion of amateur athletics in Canada on a nation-wide basis. Interested stakeholders are invited to provide feedback on this proposed change before June 30, 2011.

specific transactions

gifts of “non-qualifying securities”

Budget 2011 proposes that the tax recognition of a donation of a non-qualifying security to a charity will be deferred until the recipient disposes of it for consideration that is not another non-qualifying security. If a non-qualifying security is not disposed of by the charity within the five-year period following the date of the

gift, there will be no tax recognition of the gift. A “non-qualifying security” is a share, a debt obligation or other security issued by a taxpayer or by a person not dealing at arm’s length with a taxpayer (a corporation controlled by the taxpayer, for example). Excluded from the definition are publicly listed securities and deposit obligations of financial institutions.

The proposed measures extend existing rules that relate to donations of non-qualifying securities to private foundations and other charities that are not at arm’s length with the donor to all charities and will generally apply to donations of securities made after March 22, 2011.

gifts returned to the donor

Budget 2011 proposes to permit reassessments to disallow a taxpayer’s claim for a charitable tax credit or deduction where donated property is returned to a donor.

A qualified donee will be required to issue a revised receipt when donated property is returned and, where the amount of the receipt has changed by more than \$50, to send a copy of the revised receipt to the CRA.

This measure will apply for gifts or property returned on or after March 22, 2011.

granting of options to qualified donees

Under the measures proposed in Budget 2011, a tax credit or deduction will not be available to a taxpayer who has granted an option to a qualified donee to acquire a property of the taxpayer until the donee exercises the option. At that time, the taxpayer will be allowed a credit or deduction based on the amount by which the then fair market value of the property exceeds the total amounts, if any, paid by the donee for the option and the property. A credit or deduction will generally not be available to the taxpayer if the total amount paid by the donee for the property and the option exceeds 80% of the fair market value of the property at the time the option is exercised.

This measure will apply to options granted on or after March 22, 2011.

donations of publicly listed flow-through shares

Under the existing rules in the Tax Act, a taxpayer can acquire “flow-through shares” issued by corporations in the oil and gas, mining and renewable energy fields and claim the benefit of “flow-through” deductions of eligible exploration, development and project start-up expenses. When flow-through shares are sold, the full amount of the proceeds of disposition are taxed as a capital gain with the result that the tax benefit of the flow-through deductions is partially eroded. If the flow-through shares are donated to a charity, however, the taxpayer gets the benefit of a tax credit or deduction based on the value of the share at the time of the donation and can claim the benefit of the exemption from capital gains tax on donations of public securities. In many circumstances, this series of transactions substantially reduces or virtually eliminates the after-tax cost of making the charitable donation.

Under measures proposed in Budget 2011, where flow-through shares of a particular class are issued to a taxpayer after March 22, 2011, the relief from capital gains tax in respect of such flow-through shares donated to a charity will only be available to the extent the capital gain realized on the donation exceeds a “threshold amount” equal to the amount by which, in highly simplified terms, the original cost of such subsequently issued flow-through shares exceeds the amount of any capital gains realized (and taxed) on shares of the same class after March 22, 2011, and before the time of the determination.

The proposed rules will apply to flow-through shares issued to a taxpayer under a flow-through share agreement entered into on or after March 22, 2011.

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[a cautionary note](#)

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