

Charities in Canada now have access to tax court

By KAREN COOPER

Bill C-33, an Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004, received Royal Assent on May 13, 2005 and is now in force with a new regulatory regime for registered charities.

The amendments to the *Income Tax Act* in Bill C-33 implement new rules concerning the taxation and administration of charities set out in the 2004 budget, including a more accessible appeals regime, new intermediate sanctions, improved transparency and more accessible information, as well as new disbursement quota rules for charities.

Prior to the tabling of the 2004 budget, the only sanction available to the CRA in regulating registered charities was the revocation of a charitable registration.

To provide an alternative to the revocation of charitable status for minor or unintended infractions, the Act now provides for intermediate sanctions, which include taxation of gross revenue derived from business activities, suspension of tax-receipting privileges, monetary penalties, and taxation of gifts and transfers to other registered charities. Some sanctions are progressive, increasing in severity for repeat infractions within a period of five years.

CRA also retains the ability to revoke the registration of a charity in the event of severe breaches of the Act.

Both monetary penalties imposed as part of the intermediate sanctions and the revocation tax may now be reduced by any amount transferred to an eligible donee, which essentially are compliant registered charities.

The Act also now provides CRA with explicit authority to annul an organization's registration if it was registered in error or if it has ceased to be a charity "solely as a result of a change in law." Annulled organizations will be deemed not to have been registered at all, the revocation tax will not apply, and official receipts issued prior to annulment will be accepted as valid.

Centralized internal appeals regime

Along with the new intermediate sanctions comes a new appeals regime, which is intended to make the appeal process more accessible and affordable for registered charities and unsuccessful applicants for charitable status.

Previously, the only route for challenging CRA's decisions on charitable matters was an appeal to the Federal Court of Appeal.

The amendments have extended the existing internal objection review process to notices of a decision by CRA regarding the revocation or annulment of a charity's registration, the designation of a charity as a private or public foundation or a charitable organization, the denial of applications for chari-

table status, suspension of tax-receipting privileges, and the imposition of monetary penalties or revocation tax against a registered charity.

Filing of a notice of objection is now a required step before an appeal may be brought to the courts.

In any of the above mentioned circumstances, a charity may file a notice of objection with the assistant commissioner of CRA's Appeals Branch within 90 days of the date of the decision's mailing (in income tax matters, objections are filed with the local chief of appeals.)

The notice of objection should identify the decision objected to, the reasons for the objection and all relevant facts.

If the objection relates to a suspension of tax-receipting privileges, a charity may also apply for a postponement of the suspension to the Tax Court of Canada.

Tax Court process

If a charity disagrees with CRA's decision resulting from an objection, appeals in respect of decisions concerning refusals to grant registered charitable status and revocation of registered charitable status will continue to be made to the Federal Court of Appeal.

However, with respect to the suspension of a charity's tax-receipting privileges or the imposi-

tion of the new monetary penalties or the revocation tax, a charity may appeal the decision to the Tax Court of Canada under either the informal (expected to apply if the amount of penalties or tax is less than \$12,000) or general procedure.

The Tax Court of Canada must receive the Notice of Appeal within 90 days of the date of mailing of the decision on the objection (or after 90 days from the day of filing of a notice of objection if CRA has not yet provided a decision.)

In order to resolve informal procedure appeals as quickly as possible, the Tax Court does not have to follow legal or technical rules of evidence.

However, judgments issued under the informal procedure will not be treated as precedents for other cases.

Additional provisions

CRA may now release to the public additional information, including grounds for revocation or annulment; financial statements; decisions of CRA regarding notices of objection; identification of registered charities which are subject to sanctions, the type of sanction imposed, and grounds for the sanction; information to support an application by a registered charity for special status or an exemption under the Act (e.g., a request for permission to accumulate assets); and reasons for denying the regis-

tration of organizations. With respect to the disbursement quota, the rate applicable to investment assets has been reduced from 4.5 per cent to a more manageable rate of 3.5 per cent.

The rate now also applies to charitable organizations (not only public and private foundations), while smaller charities of all types (investments of \$25,000 or less) are now exempt, new concepts of "enduring property" and a "capital gains pool" have been introduced, and most transfers from one registered charity to another will now be subject to the 80 per cent disbursement requirement.

The introduction of new intermediate sanctions and a new appeals regime are important changes for charities, providing more appropriate recourse for unintended or incidental breaches. However, the regulation of charities is ever increasing in scope and complexity, and will require careful review by charities and their advisors.

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