FINANCIAL PLANNING

CHARITABLE GIVING: Sweeping amendments are in place

By THERESA MAN
and TERRANCE CARTER

Over the past year there have been a number of important changes to tax rules affecting charitable giving. Sweeping amendments to the *Income Tax Act* were enacted by Bill C-33, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 23, 2004,* which came into force on May 13, 2005.

Then, on July 18, 2005, the Department of Finance again released legislative proposals to amend the Act which consolidate and further amend previously proposed amendments introduced in 2002, 2003 and 2004. The following summary of changes is provided as a resource tool and does not contain any detailed explanation or analysis.

Summary of changes enacted by *Bill C-33* and in effect as of May 13, 2005

- 4.5 per cent DQ is reduced to 3.5 per cent.
- 3.5 per cent DQ is extended to charitable organizations for their taxation years that begin after March 22, 2004 (applies after 2008 for those registered before March 23, 2004).
- 3.5 per cent DQ does not apply where investment assets are $25,000 or less.
- Gifts transferred to charitable organizations from other charities are now subject to 80 per cent DQ.
- 80 per cent DQ can be delayed through a transfer of "enduring property," which includes (1) 10-year gifts, (2) five-year gifts received by a charitable organization from another registered charity, (3) gifts of life insurance proceeds, RRIFs or RRSPs as a result of direct beneficiary designation, and (4) inter-charity transfers of (1) and (3) above.
- Inter-charity transfers are more complicated.
- Intermediate sanctions and penalties were introduced as an alternative to revocation.
- Conferring "undue benefit" at the direction or with the consent of the charity, on any person will lead to intermediate penalties for the charity.
- New internal appeals process is available and appeals of taxes and penalties to the Tax Court of Canada have been extended to charities.
- The minister now has the explicit authority to annul an organization's charitable 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.
- New rules were introduced to ensure unused charitable donation deductions cannot be traded.

MAN CARTER

Summary of changes proposed July 18, 2005

- Split-receipting rules will allow a donor to receive a limited advantage in respect of a gift having been made.
- The broad definition of advantage may reduce the eligible amount of a charitable receipt.
- Complicated new rules will curtail abusive tax shelter donation schemes.
- Where (1) donated property was acquired by the donor through a tax shelter arrangement regardless of when it was acquired, or (2) donated property was acquired by the donor less than three years before making the gift, the value of the property would be deemed to be the lesser of (i) the fair market value otherwise determined and (ii) the cost of the property to the donor immediately before making the gift.
- Where donated property was acquired less than 10 years before making the gift, and it is "reasonable to conclude" that one of the main reasons for acquiring the property was to make a gift to a qualified donee, the deeming provision also applies.
- The acquisition of a donated property by a person dealing non arm's-length with the donor within the said three-year or 10-year periods would also impact the eligible amount of the gift.
- Charities will need to make reasonable inquiries of donors before issuing receipts for more than $5,000, whether gifts in kind or cash, as to the existence of any circumstances involving the gift such as whether there is any advantage, whether the donated property was acquired through a tax shelter, and whether the donated property was acquired by the donor or any non arm's- length party within the last three years or 10 years and their cost of acquisition.
- New definitions of charitable organizations and public foundations will apply so that a charity may receive contributions of more than 50 per cent of its capital from one person or group of persons, provided that the donor does not control the charity or represent more than 50 per cent of the directors and trustees of the charity retroactively to January 1, 2000.

These new rules bring sweeping changes that affect charitable giving in many ways. It is important that financial planners become familiar with these changes in order to provide sound advice.

There are many areas where the July 2005 proposal is not clear; it is hoped that these will be clarified either by remedial amendments to the Act or by the CRA providing administrative guidelines on how they will interpret these statutory provisions and how charities may be required to comply with them.

* More details regarding the various amendments are available in Charity Law Bulletins at *www.charitylaw.ca.*

***Theresa Man** practices at Carter & Associates in charity and not-for-profit law with and is currently pursuing an LL.M. in tax law.*
***Terrance Carter** practices at Carter & Associates and is counsel to Fasken Martineau DuMoulin LLP on charitable matters. He is also a member of the CRA's Charities Advisory Committee and editor of: www.charitylaw.ca.*

Asia top investing region

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become more routine as investment activity in certain parts of the world continues to pick up in the coming years."

Asia was ranked the most popular region for investment. Nearly 70 per cent of respondents said their firm has made at least one investment in Asia in the past five years or plans to invest in the region over the next three years. Second-ranked Eastern Europe lagged 32 percentage points behind, followed by Latin America, the Middle East, Africa and Russia.

In ranking specific attributes most likely to encourage investment in an emerging market, two-thirds of respondents cited an improved regulatory climate as the top measure to be implemented by a host government. That was followed by an improved judicial regime, tax incentives, bilateral trade agreements and relationship with incumbent governments.

Further emphasizing the need and importance of background checks, the Deloitte FAS survey results ranked poor integrity of prospective partners/and or customers as the leading surprise factor in emerging markets.

Other potential factors included sudden change in government policy, currency devaluation and business culture differences. Organized crime connections emerged as the least-common unforeseen challenge.