
**RECENT *INCOME TAX ACT* AMENDMENTS
THAT AFFECT CHARITIES**

*By Theresa L.M. Man**

On July 16, 2010, Finance released draft legislative proposals to implement outstanding income tax technical measures (the “July 2010 Amendments”). Included within the July 2010 Amendments are proposed changes that will substantially impact the operations of registered charities in Canada, including changes to the definition of “gift,” split-receipting, designation of charitable organizations and public foundations, revocation of charitable registrations, etc.¹ However, the July 2010 Amendments do not include the proposed changes to the disbursement quota announced in the March 4, 2010 federal budget, repealing the 80% disbursement quota.²

Many of the proposed changes included in the July 2010 Amendments were first introduced by Finance on December 20, 2002. These amendments underwent various incarnations over the years, namely on December 5, 2003, February 27, 2004, July 18, 2005, and were introduced as Bill C-33 on November 29, 2006, which died on the Order Paper since Parliament was prorogued on September 14, 2007. The changes were re-introduced as Bill C-10 on October 29, 2007, but Bill C-10 again died on the Order Paper on September 7, 2008 when Parliament was dissolved after an election was called.

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¹ See Department of Finance Canada <http://www.fin.gc.ca/drleg-apl/itaJuly10-eng.asp>.

² See Department of Finance Canada, “Budget 2010” at <http://www.budget.gc.ca/2010/plan/anx5a-eng.html> for entire *Notices of Ways and Means Motion*.

Although these proposed changes have yet to be enacted into law, many have already been implemented by Canada Revenue Agency in their administrative policies. For example, Canada Revenue Agency has been enforcing the split-receipting rules since 2002;³ and has begun reviewing applications for charitable status and for re-designation using the proposed new definitions for charitable organization and public foundation.

A thorough review of the proposed changes contained in the July 2010 Amendments relating to charities is outside the scope of this Bulletin, but the following is a list of some of the key amendments relating to charities:

- The split-receipting rules would allow a donor to receive a limited advantage in respect of a gift having been made. Only the “eligible amount” of a gift may be receipted.
- The broad definition of “advantage” would reduce the eligible amount of a charitable receipt where the donor received an advantage.
- The complicated rules to curtail abusive donation tax shelter schemes may result in reduction of the eligible amount on charitable receipts for gifts.
- 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 3 years before making the gift, the value of the donated 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.
- The “deeming” provision does not apply to certain gifts, such as inventory, real property situated in Canada, certified cultural property, publicly-traded shares, ecological gifts, and gifts made as a consequence of the death of the donors. Other exemptions relate to circumstances involving a shareholder transferring property to a controlled corporation in exchange for shares issued by the corporation, and then donating the shares to a charity, or having the corporation donate the shares to a charity.

³ For example, CRA’s *Registered Charities Newsletter* No. 25 in 2005 said that split receipting is to be followed; CRA released sample receipts in 2009 that reflects split receipting; and, CRA’s webpage states that “Split receipting is the method used for calculating the eligible amount of a gift for receipting purposes when the donor has received an advantage (consideration) in return for his or her donation” (<http://www.cra-arc.gc.ca/tx/chrts/prtng/rcpts/splt-eng.html>).

- Where donated property was acquired less than 10 years before making the gift, and where 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 not dealing at arm’s length with the donor within the said 3-year or 10-year periods would also impact how the fair market value of the donated property is determined.
- The split-receipting rules do not apply to inter-charity transfers.
- The new definitions for charitable organization and public foundation would replace the contribution test (not more than 50% of the capital contributed to a charitable organization or public foundation can be from one donor) with the control test, permitting a charity to receive contributions of more than 50% of its capital from a donor, provided that the donor does not control the charity or represent more than 50% of the directors and trustees of the charity.
- Gifts made by a charity to a non qualified donee would become cause for revocation of the charity’s status.
- Municipal or public bodies performing a function of government in Canada would also qualify as a qualified donee.

In general, the provisions contained in the July 2010 Amendments relating to charities are substantially the same as the amendments seen in Bill C-10, with minor revisions, except for the following amendments that are not contained in Bill C-10:

- The 2007 federal budget (Bill C-28, received Royal Assent on December 14, 2007) introduced new paragraph 110.1(1)(a.1) for a special tax incentive for corporations that make donations of medicine to registered charities for use in the developing world. Section 96 of Bill C-28 further amends the new paragraph 110.1(1)(a.1) by adding references to the “eligible amount” of a gift to match the new split-receipting rules, with the new wording to take effect once the amendments to the ITA introducing the new split-receipting rules receives Royal Assent. This new wording is now included in the 2010 July Amendments.

- In relation to the proposed rule deeming the value of the donated property to be a lesser amount in certain situations, the July 2010 Amendments propose that in situations involving a gift of a life insurance policy where the donor is the policy holder, the value of the donated property would be deemed to be the lesser of the fair market value and the adjusted cost base to the donor immediately before making the gift.⁴
- The deeming provision does not apply to gifts of publicly-traded shares [pursuant to paragraph 38(a.1)].⁵ The deeming provision generally only applies to gifts made before 6 p.m. (Eastern Standard Time) on December 5, 2003. However, subparagraph 38(a.1)(i) was amended by the 2007 federal budget (Bill C-28) effective in respect of gifts made after March 18, 2007 to eliminate the taxation of capital gains arising from donations of publicly-listed securities to private foundations.⁶ The July 2010 Amendments further revised proposed paragraph 248(37)(d) to coordinate with this change.

It is important to note that the effective date for the various rules is different; it is important for charities to be aware of them in order to comply appropriately. For example, the new definitions for charitable organization and public foundation are retroactive to January 1, 2000; subsections 248(30), (31) and (33) (concerning intention to give, eligible amount of a gift, and the cost of property acquired by the donor) apply to gifts made after December 20, 2002; subsection 248(32) (concerning amount of advantage) applies to gifts made after December 20, 2002, except that subparagraph 248(32)(a)(iii) (concerning an advantage that is in any other way related to the gift) applies to gifts made on or after 6 p.m. Eastern Standard Time on December 5, 2003; subsection 248(35)(b) (concerning limited-recourse debt) applies to gifts made on or after February 19, 2003; and subsection 248(34) (concerning repayment of limited-recourse debt) applies to gifts made on or after February 19, 2003; etc., to name a few.

The above amendments are still subject to change as they continue through the legislative process. Interested parties may provide comments to Finance by September 17, 2010. It is important that charities and their advisors continue to monitor the development of these proposed changes.

⁴ Proposed subsection 248(35).

⁵ Proposed paragraph 248(37)(d).

