
MINISTER OF FINANCE REINTRODUCES BUDGET 2011

*By Theresa L.M. Man, Karen J. Cooper and Terrance S. Carter and Ryan M. Prendergast**

A. INTRODUCTION

On June 6, 2011, the 2011 federal Budget (the “Budget”) was reintroduced by the Minister of Finance and was subsequently passed by the House of Commons on June 7, 2011.¹ The stated purpose of the Budget is to equip Canada Revenue Agency (“CRA”) as the administrator of the tax system related to the charitable sector with “an effective set of compliance tools to safeguard the donation of Canadian taxpayers and act against any organization that does not follow the rules.” The original Budget was tabled by the government on March 22, 2011, but it was not adopted as a result of the dissolution of Parliament on March 26, 2011. The 2011 Budget proposes sweeping changes to the regulatory regime affecting registered charities and qualified donees, and in particular Canadian Registered Amateur Athletic Associations (“RCAAs”). For an overview of the various proposals contained in the Budget, please refer to *Charity Law Bulletin No. 245* available online at <http://www.carters.ca/pub/bulletin/charity/2011/chylb245.pdf>. This *Charity Law Bulletin* outlines the few differences in the recent Budget of June 6, 2011 compared to the proposed Budget from March 22, 2011, as well as providing a brief summary of Canada Revenue Agency’s (“CRA’s”) recent commentary on the Budget.

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¹ A Notice of Ways and Means Motion to implement certain tax measures in the updated 2011 Federal Budget was tabled as part of Bill C-3, *Supporting Vulnerable Seniors and Strengthening Canada's Economy Act*, on June 14, 2011

B. NEW CHANGES TO THE BUDGET

The Budget remains the same as the proposed Budget save and accept for the following new changes.

1. Motion 559

The Budget includes Motion 559 which was adopted by the House of Commons on March 2, 2011. This Motion was sponsored by the Honourable Peter Braid, the Member of Parliament for Kitchener-Waterloo, and is now being supported by the government. The Motion calls for the House Standing Committee on Finance to study charitable donation incentives. The Government will ask the House Standing Committee on Finance to undertake this study in the first session of this Parliament.² What this review will lead to remains to be seen, but obviously the charitable sector will want to be actively involved in the ensuing discussion.

2. Date Changes

Under the section of the Budget, “Regulatory Framework for Registered Canadian Amateur Athletic Associations-Exclusivity of Purpose and Function,” the final date that stakeholders are invited to provide feedback on the introduction of an ‘exclusivity of purpose and function’ test for RCAAAs has been changed. The final date is now August 31, 2011, instead of June 30, 2011.

Also, the date that certain measures within the Budget will apply has been changed from ‘on or after Budget Day’ to ‘on or after March 22, 2011.’

C. COMMENTS BY CANADA REVENUE AGENCY

The Charities Directorate of the CRA recently posted an informational resource for charities and qualified donees that are affected by the recent changes brought by the Budget.³ CRA stated that it will be responding to the Budget changes as quickly as possible and they are requesting comments from the public. CRA has listed several questions with answers on their Charities and Giving web pages dealing with the relevant topics in the Budget affecting charities, and will continue answering questions from the public through their Client Services Section.

² See <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4996789&Language=E&Mode=2&Parl=40&Ses=3> for the rest of the motion.

³ See <http://www.cra-arc.gc.ca/chrts-gvng/chrts/bdgt/2011/menu-eng.html>.

Although there are still many unanswered questions concerning the Budget, the questions and answers available on the Charities and Giving web pages provide some clarification with respect to each of the matters contained in the Budget previously as outlined in *Charity Law Bulletin* No. 245 referred to above.

1. Changes to the regulatory regime for qualified donees

The Budget affects the regulatory regime of certain types of qualified donees. There is already a public list for prescribed universities outside Canada (published in Schedule VIII of the *Income Tax Regulations*) and charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift (CRA publishes a list for these entities). The Budget also requires that a list be published for other qualified donees, namely municipalities, municipal or public bodies performing a function of the Government in Canada, and low-cost housing corporations for the aged. CRA confirmed that each of these types of qualified donees will be on a publicly available list maintained by CRA.

CRA also clarified that municipalities, public bodies performing a function of the Government in Canada and low-cost housing corporations for the aged will not have to take any action at the present time to be on the public list to be maintained by CRA. However, CRA will be releasing guidance on how public bodies performing a function of the Government in Canada and low-cost housing corporations for the aged can be included in the public list.

Lastly, with respect to low-cost housing corporations for the aged, CRA reminded that under the *Income Tax Act (Canada)* (“ITA”), they are also required to be resident in Canada, be constituted exclusively for the purpose of providing low-cost housing for the aged, and not to make any part of their income available to their proprietors, members or shareholders.⁴

2. Eligibility requirements for individuals who are directors and officers for charities and RCAAAs

With respect to how CRA will be applying its administrative discretion to the application of the new eligibility rules for directors, trustees, officers, like officials, or those who manage or control a charity, CRA states that they will be providing detailed guidance on this new requirement.

⁴ In accordance with paragraphs 110.1(1)(a) and 149(1)(i) of the ITA.

With regards to what would constitute a “relevant criminal offence” or “relevant offence” for the purposes of determining this new eligibility requirement, CRA states that in more limited cases the offence might not involve financial dishonesty, but is nonetheless relevant to the operation of the charity or RCAA (e.g., an offence which if repeated by the individual could inflict harm on the organization or its beneficiaries). CRA also clarified that although charities and RCAs should be conducting criminal records checks on prospective directors, officers and employees as a matter of good governance, the ITA will not require that these organizations do so.

CRA also indicated that it may refuse an application for registration by a charity or RCAA if it involves any ineligible individuals as directors, trustees, officers, like officials, or those who manage or control the organization.

In addition, CRA provided clarification on how it will administer this new requirement. Specifically, if CRA has concerns involving an ineligible individual having control over the financial management of the organization, and whether reasonable safeguards had been put in place to prevent abuse, CRA will first explain its concerns to the organization in question. The organization will be given an opportunity to respond to CRA’s concerns. A charity or RCAA that fails to adequately address CRA’s concerns will risk being sanctioned or having their registration revoked.

3. New requirements for RCAs

In addition to the new eligibility rules for individuals who are directors, trustees, officers or like officials or who manage or controls RCAs explained above, CRA indicated that it will provide the public with further information concerning the governing documents, names of directors, and notifications of registration or revocation for RCAs, as is currently done with registered charities.

The Budget proposes that RCAs be required to have the promotion of amateur athletics in Canada on a nation-wide basis as their *exclusive* purpose and exclusive function, rather than their primary purpose and primary function. As such, CRA recommends that RCAs review their purposes and activities to determine if they are functioning exclusively to promote amateur athletics in Canada on a nation-wide basis. CRA indicated that it will also allow additional time after the effective date of this

new requirement to allow an RCAA to change its formal purposes, provided that the RCAA is able to demonstrate that it is taking reasonable steps to become compliant.

Where RCAAs are unable to conform to the new requirements, CRA stated that they may seek voluntary revocation from CRA and they might operate as tax-exempt non-profit organizations under paragraph 149(1)(l) of the ITA if they meet the applicable requirements for non-profit organizations. If so, then the organizations will be able to retain their assets.

4. New rules regarding tax assistance for returned property

CRA indicates that replacement receipts for returned property should be filed with the Audit Section, Compliance Division of CRA's Charities Directorate. CRA also confirmed that the ITA provisions concerning the funding of non-qualified donees have not changed and that a charity that returns charitable property may be found to have done so in contravention of the ITA by giving charitable property to a non-qualified donee.

5. Technical amendments

CRA reminded charities of the anti-avoidance rules in the Budget concerning non-qualifying securities ("NQS's"). Where a qualified donee has received a gift of an NQS, no receipt may be issued unless and until the NQS has been disposed of in exchange for property that is not another NQS of any party not circumvented in order that the rules concerning NQSs are not circumvented.

With regard to the granting of options to qualified donees, the questions and answers provide little in the way of new information, other than to confirm that no official donation receipt may be issued until such time as the qualified donee receives value for the option.

Lastly, the same comment can be made concerning donations of publicly-listed flow through shares, in that CRA confirmed that the change introduced by the Budget in that exemption from capital gains tax on donations of publicly listed securities available in respect of subsequent donations will only remain to the extent that the capital gain exceeds the threshold amount. In this regard, the threshold amount will be considered by CRA to be the amount paid by the donor to acquire the security under the arrangement.

For more information on how to submit questions or comments to CRA with respect to the new measures, please visit <http://www.cra-arc.gc.ca/chrts-gvng/chrts/bdgts/2011/menu-eng.html>.

D. CONCLUSION

The Budget remains in essence the same as the proposed budget from March 22, 2011. All of the proposals from the original Budget have reappeared in the current Budget, with slight modifications. These changes will have a broad impact on the charitable sector and bring sweeping changes to the regulatory regime affecting registered charities, qualified donees and RCAAs in the future.