

## ENHANCED REGULATORY REGIME FOR QUALIFIED DONEES

By Karen J. Cooper\*

### A. INTRODUCTION

With the Royal Assent to the federal budget<sup>1</sup> occurring on December 15, 2011,<sup>2</sup> the New Year began with a new regulatory regime for qualified donees, which came into force on January 1, 2012. Under the *Income Tax Act* (“ITA”),<sup>3</sup> qualified donees are organizations that can receive gifts from registered charities and can issue official donation receipts for gifts they receive from individuals and corporations.<sup>4</sup> While registered charities and registered Canadian amateur athletic associations (RCAAAs) are the more commonly known qualified donees, this designation also applies to:

- Low-cost housing corporations for the aged;
- Canadian municipalities;
- Municipal or public bodies performing a function of government in Canada;
- Prescribed universities outside Canada;
- Charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift (hereinafter “charitable organizations outside Canada”);
- Her Majesty in right of Canada or a province; and

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<sup>1</sup> See Karen Cooper, “Ineligible Individuals - New Governance Provisions for Charities”, *Charity Law Bulletin No.269*, online: Carters Professional Corporation <<http://www.carters.ca/pub/bulletin/charity/2011/chylb269.htm>>; Theresa Man, Karen Cooper & Terrance Carter, “2011 Will Have Broad Impact on the Charitable Sector”, *Charity Law Bulletin No. 245*, online: Carters Professional Corporation <<http://www.carters.ca/pub/bulletin/charity/2011/chylb245.htm>>.

<sup>2</sup> Bill C-13, *An Act to Implement Certain Provisions of the 2011 Budget as Updated on June 6, 2011 and Other Measures*, 1st Sess, 41st Parl, 2011 (see <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?billId=5145722&Mode=1&Language=E> ).

<sup>3</sup> RSC 1985, c1 (5th Supp) [ITA].

<sup>4</sup> *Ibid* s 149.1(1).

- The United Nations and its agencies.

Changes to the regulatory regime affecting these entities, but not including Her Majesty in right of Canada or a province or the United Nations and its agencies, generally require that these entities be identified on a list established by the Charities Directorate of the Canada Revenue Agency (“CRA”) as well as impose record-keeping and receipting requirements comparable to the requirements already imposed on registered charities. Other changes affecting registered charities and RCAAAs are discussed in detail in *Charity Law Bulletins* #245 and #269.<sup>5</sup>

## B. REGISTRATION PROCESS

The new provisions in the ITA now require that certain types of entities (low-cost housing corporations for the aged, Canadian municipalities, municipal or public bodies performing a function of government in Canada, prescribed universities outside Canada and charitable organizations outside Canada) to be registered as qualified donees and identified on publicly available lists that are maintained by CRA in order to be able to issue charitable donation receipts. Different registration processes will apply depending on the category of the qualified donee. Some types of qualified donees will have to apply to be registered and others will be registered and listed by CRA without any obligation imposed on the organization.

### 1. Municipalities and prescribed universities

Municipalities and prescribed universities outside Canada do not have to take any additional action to be placed on the applicable list of registered qualified donees. CRA will obtain information on recognized municipalities from provincial governments and will be preparing the list of qualified donee municipalities based on that information.<sup>6</sup> Prescribed universities outside Canada are already listed in Schedule VIII of the *Income Tax Regulations*. Prescribed universities that are on the Schedule VIII list will be automatically added to the list of qualified donees.<sup>7</sup>

### 2. Charitable organizations outside Canada

A charitable organization outside Canada must demonstrate that it was the recipient of a gift from Her Majesty in right of Canada and that it would meet the requirements for registration as a charitable

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<sup>5</sup> See *supra* note 1.

<sup>6</sup> See <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplts-eng.html>.

<sup>7</sup> See <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/prscrbdnvrsts-eng.html>.

organization in Canada in order to be added to the list of qualified donees.<sup>8</sup> The federal department that made the payment, or the recipient organization itself, should forward the following information to the Charities Directorate:

- A copy of the governing document of the foreign entity
- A description of the foreign entity's activities
- A copy of the letter or certificate issued by the foreign authority granting the foreign entity charitable status
- Copies of correspondence, agreements, or other documents related to the Crown gift; and
- Proof that the gift has been made (for example a copy of the cheque).

Once CRA has determined whether a charitable organization outside Canada has met the requirements to be a qualified donee, it will provide confirmation in writing.<sup>9</sup> CRA currently maintains such a list, which can be accessed here: <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/gftsfrmhrmjsty-lst-eng.html>.

### 3. Public bodies and low-cost housing corporations

Municipal or public bodies performing a function of the government in Canada and low-cost housing corporations for the aged will have to apply to CRA to be on the list. Municipal or public bodies performing a function of government include organizations such as municipal authorities, First Nations governments, school boards and public transit authorities.<sup>10</sup> Low-cost housing corporations for the aged must be resident in Canada, constituted exclusively for the purpose of providing low-cost housing accommodation for the aged and must not have any income payable to a proprietor, member or shareholder.<sup>11</sup>

The process by which these organizations must apply to be registered and listed has not yet been developed by CRA. Organizations will continue to be qualified donees until the process is finalized, at which time they will have to apply.<sup>12</sup> However, the Charities Directorate of CRA has advised that the application process for public bodies will not involve any scrutiny by CRA, but will be simply a

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<sup>8</sup> *ITA*, *supra* note 3 at s 149.1(1) (new definition of “qualified donee”).

<sup>9</sup> See <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/gftsfrmhrmjsty-eng.html>.

<sup>10</sup> *ITA*, *supra* note 3, at s 149(1)(c).

<sup>11</sup> *Ibid* subsection 149.1(1), definition of “qualified donee”.

<sup>12</sup> See <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplpblcbds-eng.html> and <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/lwcsthsng-eng.html>.

process to record which organizations are self-determining to be public body or low-cost housing corporation.

## C. ISSUING OFFICIAL DONATION RECEIPTS

A considerable advantage to being a qualified donee is that an organization can then issue charitable donation receipts eligible for a tax deduction or credit, as the case may be. The new regulatory regime provides CRA with the power to suspend receipting privileges of qualified donees or revoke qualified donees status if receipts are not issued in accordance with the *Income Tax Act* and its regulations.<sup>13</sup>

As such, qualified donees must take care to properly issue donation receipts. Official donation receipts can be issued only for transactions that qualify as gifts (see <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/gfts/whts-eng.html>). Official donation receipts must include the following information, which must be legible and unaltered:<sup>14</sup>

- a statement that it is an official receipt for income tax purposes;
- the name and address of the qualified donee;
- the serial number of the receipt;
- the place or locality where the receipt was issued;
- the day or year the donation was received;
- the day on which the receipt was issued if it differs from the day of donation;
- the full name, including middle initial, and address of the donor;
- the eligible amount of the gift;
- the signature of an individual authorized by the qualified donee to acknowledge donations; and
- the name and Web site address of the CRA - [www.cra.gc.ca/charitiesandgiving](http://www.cra.gc.ca/charitiesandgiving).

Further, the value of non-cash must be properly ascertained. Receipts for such gifts must include a brief description of the property transferred, the name and address of the appraiser (if the property was appraised) and the fair market value of the property at the time the gift was made.

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<sup>13</sup> ITA, *supra* note 3 at s 149.1(4.3) and s 188.2(2) (new subsections)

<sup>14</sup> *Income Tax Regulations*, CRC, c 945, s 3501(1.1).

## D. BOOKS AND RECORDS

The new regime also creates a new requirement that qualified donees maintain proper books and records and provide CRA with access to these books and records upon request.<sup>15</sup> Qualified donees that fail to keep adequate books and records or fail to provide the books and records to CRA upon request may have their receipting privileges suspended or their qualified donee status revoked. Books and records must contain:

- Information to allow the CRA to verify revenues for which donors can claim tax credits or deductions
- Information to allow the CRA to confirm that they meet the requirements for qualified donee status under the *Income Tax Act*; and
- A duplicate of each receipt containing prescribed information for each donation received.

## E. CONCLUSION

The new compliance requirements for qualified donees will create additional obligations for many entities seeking to be able to issue charitable donation receipts and these obligations vary depending upon the type of entity. Though some qualified donees will have to apply to be on the lists, this application appears to be more of a compilation process and less of a screening process. Organizations seeking confirmation of their status as a municipal or public body performing a function of government in Canada may want to consider other options for confirming their status.

The major impact that these changes will have is the risk to qualified donees that do not keep adequate books and records or that are careless with their receipting. Qualified donees must therefore ensure that they comply with the requirements of the *Income Tax Act* or they risk a suspension of receipting privileges or a loss of eligible donee status. For more information on this issue, and to keep abreast of the listing process for municipal or public bodies performing a function of the government or low-cost housing corporations for the aged, please see <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/menu-eng.html>.