
2012 FEDERAL BUDGET: INCLUDING NEW RULES AND SANCTIONS FOR CHARITIES CONDUCTING POLITICAL ACTIVITIES

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

A. INTRODUCTION

On March 29, 2012, the Federal Government introduced the 2012 Federal Budget (“Budget 2012”). The Budget can be viewed online at: <http://www.budget.gc.ca/2012/plan/toc-tdm-eng.html>. While the 2011 Federal Budget had introduced extensive changes affecting registered charities, Canadian amateur athletic associations and other qualified donees, Budget 2012 focuses largely on measures dealing with the perceived lack of transparency and accountability concerning charities devoting their resources to political activities. However, Budget 2012 did not include any hoped for donation tax incentives, such as the charitable donation stretch tax credit that had been proposed by Imagine Canada. Some of the more important proposals affecting registered charities in Budget 2012 are summarized below.

B. NEW RULES AND SANCTIONS INVOLVING POLITICAL ACTIVITIES

Many of the changes in Budget 2012 deal with enhancing compliance and disclosure requirements for charities and Canadian amateur athletic associations regarding political activities. In this regard, Budget 2012 states that “concerns have been raised that some charities may be exceeding these limitations and that there is currently no requirement for a charity to disclose the extent to which it receives funding from foreign

* Ryan M. Prendergast, B.A., LL.B., is an associate of Carters Profession Corporation. Theresa L.M. Man, B.Sc., M. Mus., LL.B., LL.M., is a partner at Carters Professional Corporation, practicing in the area of charity and not-for-profit law. Karen J. Cooper, LL.B., LL.L., TEP, is a partner at Carters Professional Corporation, also practicing charity and not-for-profit law with an emphasis on tax issues. Terrance S. Carter, B.A., LL.B., Trade-Mark Agent, is managing partner of Carters Professional Corporation, and counsel to Fasken Martineau DuMoulin LLP on charitable matters.

sources for political activities.” These comments are in reference to recent media coverage concerning the debate in the Senate around alleged donations to Canadian registered charities by foreign donors that purportedly may use those funds for political activities.

In response, Budget 2012 will provide CRA with the authority to suspend for one year the tax-receipting privileges of charities which exceed the limitations contained in the ITA on political activities. In addition, a one year tax-receipting suspension can also be applied by CRA to charities which provide inaccurate or incomplete information on their T3010-1 annual returns. While this amendment does not refer explicitly to political activities, it can be assumed that this will provide CRA with a new sanction to apply to charities which inaccurately report their political activities or fail to disclose gifts received from foreign donors. As well, Budget 2012 indicates that charities will be required to provide more information concerning their political activities, including the extent to which they may be funded by foreign sources, although no details are provided concerning what this requirement will actually involve.

Budget 2012 also proposes to amend the ITA in order to restrict the perceived funding of political activities by registered charities through gifts to other qualified donees. In order to do so, Budget 2012 proposes to amend the definitions of both “charitable purposes” and “political activity”, as well as other collateral amendments to the ITA. Specifically, the definition of “political activity” will be amended to indicate that it “includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee”. The definition of charitable purposes is also proposed to be amended so that it excludes a gift, “the making of which is a political activity”. However, there is no indication what the phrase “can reasonably be considered” will actually mean in practice.

All of these changes will apply on Royal Assent to the enacting legislation.

C. CHANGES TO REGISTRATION OF CHARITABLE ORGANIZATIONS OUTSIDE CANADA TO WHICH HER MAJESTY IN RIGHT OF CANADA HAS MADE A GIFT

Currently, the *Income Tax Act* (Canada) (“ITA”) recognizes as qualified donees certain registered foreign charitable organizations outside Canada that have received a gift from Her Majesty in right of Canada. In accordance with the 2011 Federal Budget, a listing of these organizations (listed in Attachment to IC84-3R,

Gifts to Certain Charitable Organizations Outside Canada) is now also maintained by the Charities Directorate at <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/gftsfrmhrmjsty-lst-eng.html>.

However, Budget 2012 proposes to modify the rules for the registration of foreign charitable organizations that have received gifts from the Government of Canada, by replacing organizations outside of Canada that have received a gift from Her Majesty in right of Canada with designated foreign organizations. In this regard, Budget 2012 proposes that foreign charitable organizations that receive a gift from the Government of Canada may apply for qualified donee status if they pursue activities:

- related to disaster relief or urgent humanitarian aid; or
- in the national interest of Canada.

In addition, the Minister of National Revenue will have the discretionary power, after consultation with the Minister of Finance, to grant qualified donee status to foreign charitable organizations that meet the above criteria. Budget 2012 states that guidance from Canada Revenue Agency (“CRA”) will be forthcoming on these measures. These measures will apply to applications made by foreign charitable organizations on or after the later of January 1, 2013 and Royal Assent of the enacting legislation.

D. ADMINISTRATIVE CHANGES TO TAX SHELTERS AND INCREASED PENALTIES FOR CHARITABLE DONATION TAX SHELTERS

While of less importance to most registered charities and non-profit organizations, Budget 2012 also proposes certain amendments to the ITA to encourage registration and reporting of tax shelters. However, Budget 2012 also seeks to address an imbalance in penalties applying to promoters of charitable donation tax shelters, as the cost to participants in charitable donation tax shelters is generally small in relation to the tax savings a tax shelter promoter may assert are available. In this regard, Budget 2012 proposes that, in cases dealing with charitable donation tax shelter, the penalty to the promoter will be the greater of the amount determined under the existing rules and 25 per cent of the amount asserted by the promoter to be the value of property that participants in the tax shelter can transfer to a donee.

E. NEW GST REBATE FOR PRESCRIBED LITERACY ORGANIZATIONS

Lastly, in an effort to promote literacy, Budget 2012 proposes to allow charities and other prescribed qualifying non-profit literacy organizations whose primary purpose is the promotion of literacy to claim a

rebate of the GST (and the federal portion of the HST) for books purchased for the purpose of giving them away, i.e., for low-income households. Budget 2012 states that this measure will apply to the acquisition and importation of printed books in respect of which tax becomes payable after Budget Day or March 29, 2012.

F. CONCLUDING COMMENTS

While Budget 2012 is not as sweeping in scope as was the 2011 Federal Budget, there will be nonetheless new challenges for registered charities to be concerned about in conducting political activities. In particular, it is not clear how proposed amendments to the ITA which will deem certain charitable activities to be political activities will apply, or what kind of due diligence will now be necessary for charities making a gifts to other qualified donees to ensure that the charity is not caught by the deeming provision, or what sort of reporting requirements will be required of charities concerning political activities, including disclosing “funding from foreign sources”.

Although restricting the designation of foreign organizations to only those that have received a gift from Her Majesty in right of Canada to only those that are either related to disaster relief or urgent humanitarian aid or in the national interest of Canada would not affect those organizations that are currently listed on Attachment to IC84-3R, Gifts to Certain Charitable Organizations Outside Canada, until the expiration of the period of their current status, some of them may no longer qualify after that time. As well, this new restriction will limit the type of organizations that would qualify, making an already short list even shorter.

The amendments in Budget 2012 will be discussed in more detail in future *Charity Law Bulletins*.