
FEDERAL BUDGET 2016: IMPACT ON CHARITIES AND NOT-FOR-PROFITS

*By Terrance S. Carter, Theresa L.M. Man, Ryan M. Prendergast and Linsey E.C. Rains**

A. INTRODUCTION

On March 22, 2016, federal Finance Minister Bill Morneau tabled the first budget of the Liberal majority Federal Government (“[Budget 2016](#)”).¹ While Budget 2016 made good on the Liberal election platform to focus on economic growth, job creation and supporting a strong middle class, Budget 2016 does not include any new tax incentives for the charity and not-for-profit sector, as has been enjoyed in previous federal budgets. Budget 2016 also did not follow up on the 2014 Federal Budget announcement that there would be a review of the tax exemption status for non-profit organizations under paragraph 149(1)(l) of the [Income Tax Act](#) (“ITA”). The only development of significance is the Federal Government’s announcement that it will not be implementing a commitment made in last year’s federal budget to provide an exemption from capital gains tax related to certain dispositions of real estate and private corporate shares. Instead of incentives, Budget 2016 focuses on providing funding commitments to certain parts of the charity and not-for-profit sector, including international development, healthcare, arts and culture, and postsecondary education, as well as introducing some technical amendments to and cancellations of

* Terrance S. Carter, B.A., LL.B., TEP, Trade-Mark Agent, is the managing partner of Carters, and counsel to Fasken Martineau DuMoulin LLP on charitable matters. Theresa L.M. Man, B.Sc., M.Mus., LL.B., LL.M., is a partner practicing in the area of charity and not-for-profit law. Ryan M. Prendergast, B.A., LL.B., is an associate practicing in the area of charity and not-for-profit law. Linsey E.C. Rains, B.A., J.D. is an associate of Carters Professional Corporation, who practices charities and not-for-profit law at Carters’ Ottawa office. The authors would like to thank Tom Baker, B.A., M.A., J.D., Student-at-Law, and Shawn Leclerc, B.A., J.D., Student-at-Law, for assisting in preparing this bulletin.

¹ The full text of the Budget 2015 document is available at <http://www.fin.gc.ca/n16/16-032-eng.asp>.

donation tax credits with respect to charities, non-profit organizations trusts, and HST/GST rules concerning certain charitable donations.

This *Charity Law Bulletin* provides a summary and commentary of these and other provisions from Budget 2016 that impact charities and not-for-profits.

B. DONATION OF SALE PROCEEDS OF REAL ESTATE AND SHARES OF PRIVATE CORPORATIONS

One of the key provisions in Budget 2016 affecting the charitable sector is the announcement that the Federal Government does not intend to proceed with the proposal to provide an exemption, beginning in 2017, from capital gains tax for dispositions involving private corporation shares or real estate where cash proceeds are donated to a qualified donee within 30 days of disposition. This proposal was originally contained in the previous Federal Government's budget announced on April 21, 2015 ("[Budget 2015](#)"). Draft legislative proposals to amend the ITA were released on July 31, 2015, by the Department of Finance for consultation.² The decision of the current Federal Government not to proceed with this exemption is disappointing for the charitable sector, although the proposed rules were complicated and fraught with practical and implementation issues.

C. SALES AND EXCISE TAX MEASURES

Budget 2016 includes two charities related Goods and Services Tax/Harmonized Sales Tax ("GST/HST") measures. The purpose of the first proposed measure is to confirm that "[s]upplies of purely cosmetic procedures are not considered to be supplies of basic health care and are intended to be subject to the GST/HST, regardless of the status of the supplier." Accordingly, the Notice of Ways and Means Motion contains an amendment to section 1 of Part V.I of the Schedule V of the [Excise Tax Act](#) ("ETA"), i.e. the section of the ETA that excepts certain supplies of property and services from the general exemption of supplies by charities.

The definition of charity under the ETA is not the same as under the ITA. Under the ETA, a charity includes a registered charity or registered Canadian amateur athletic association under the ITA that is not a public institution. A public institution under the ETA is a registered charity under the ITA that is a school

² For an overview of the July 31, 2015, proposals, see *Charity Law Bulletin* No. 370, August 26, 2015, at <http://www.carters.ca/pub/bulletin/charity/2015/chylb370.pdf>.

authority, a public college, a university, a hospital authority or a local authority determined to be a municipal authority by the Minister of Revenue. In this regard, the proposed ETA amendment will except a charity's supply of "a service rendered to an individual for the purpose of enhancing or otherwise altering the individual's physical appearance and not for medical or reconstructive purposes or a right entitling a person to the service" made after Budget Day from being exempt from GST/HST. Such supplies by public institutions are already subject to GST/HST pursuant to section 2 of Part VI of Schedule V of the ETA.

The second proposed measure also applies to supplies made after Budget Day, but applies to both charities and public institutions. In particular, where a charity or public institution receives a donation and provides a property or service to the donor in return, the part of the donation "that exceeds the value of the property or services supplied is not subject to GST/HST." The intent of this measure is to ensure that the treatment of donations in exchange for supplies of property and services is similar under both the ITA and ETA.

As it currently stands, the ITA allows "split-receipting," which means a donor can receive an official receipt for the amount of the donation that exceeds any advantage received. However, under the ETA a donation that "exceeds the value of the offered property or services" is still subject to GST/HST on the full amount unless certain statutory exceptions apply. As such, the announced changes purport to propose:

a relieving change to provide that when a charity supplies property or services in exchange for a donation and when an income tax receipt may be issued for a portion of the donation, only the value of the property or services supplied will be subject to GST/HST. The proposal will apply to supplies that are not already exempt from GST/HST. It will ensure that the portion of the donation that exceeds the value of the property or services supplied is not subject to the GST/HST.

The proposed measure will result in the addition of section 164 to the ETA and related transitional relief to reflect the December 20, 2012, effective date of the implementation of the ITA's split-receipting rules.

D. CONSULTATION WITH SECTOR ON POLITICAL ACTIVITIES

Under the heading of "Improving Client Services at the Canada Revenue Agency", Budget 2016 announced that the Federal Government proposed committing \$185.8 million over 5 years, with \$14.6 million ongoing for [Canada Revenue Agency](http://www.cra-arc.gc.ca) ("CRA") to address a number of initiatives. Of note to the charitable and not-for-profit sector, one of these initiatives includes CRA and the Department of Finance

engaging with charities through “stakeholder groups and an online consultation” in order to clarify the rules concerning political activities.

This announcement follows the wind-down of the audit program directed at the political activities of charities announced on January 20, 2016. As well, the announcement is in keeping with the [mandate letter to the Minister of Finance released on November 13, 2015](#), which asked the Minister to “[w]ork with the Minister of National Revenue to allow charities to do their work on behalf of Canadians free from political harassment, and modernize the rules governing the charitable and non-for-profit sectors. This will include clarifying the rules governing ‘political activity’.”

In this regard, the proposal in Budget 2016 confirms the Federal Government’s support to consult with the charitable and not-for-profit sector to update the rules concerning charities conducting political activities. While this commitment to consult and the eventual reform will be welcome, in the interim charities should be aware of the current rules with regard to political activities and continue to follow them.

E. CHARITABLE DONATION TAX CREDIT FOR TRUSTS

Budget 2016 contains additional proposed consequential amendments necessary to dovetail the changes included in [Bill C-2 \(An Act to amend the Income Tax Act\)](#) tabled on December 9, 2015, to implement changes announced by the Federal Government on December 7, 2015, Bill C-2 proposed to reduce the second personal income tax rate to 20.5% from 22% and the introduction of a new 33% personal income tax rate on individual taxable income in excess of \$200,000, effective for the 2016 and subsequent taxation years. One of the consequential proposals contained in Budget 2016 is to provide a 33% charitable donation tax credit (on donations above \$200) to trusts that are subject to the 33% rate on all of their taxable income. This charitable donation tax credit measure will be limited to donations made after the 2015 taxation year. This measure will also extend the proposed 33% charitable donation tax credit contained in Bill C-2 (which applies to donations made after 2015) to be available for donations made by a graduated rate estate during a taxation year of the estate that straddles 2015 and 2016.

F. ACQUISITION OF INTEREST IN LIMITED PARTNERSHIPS BY REGISTERED CHARITIES

Budget 2016 confirmed the intention of the Federal Government to proceed with implementing “the acquisition or holding of limited partnerships interests by registered charities” announced in Budget 2015. Budget 2015 contained proposed amendments to ITA to allow all registered charities, including private foundations, and RCAAAs, to passively invest in limited partnerships.

On July 31, 2015, the Department of Finance had released draft legislative proposals to amend the ITA implementing certain tax measures from Budget 2015, including the proposed amendments concerning investment in limited partnerships by charities and RCAAAs. However, the proposed amendments were not legislated due to the calling of the election. It should be noted that Budget 2016 states that these proposals will be implemented, “as modified, to take into account consultations and deliberations since their announcement or release.” As such, it will be important for charities and other qualified donees impacted by these rules to follow their implementation to determine if any consultations following the proposed amendments had been taken into account.

G. ENHANCED INTERNATIONAL COMMITMENT

Budget 2016 reflects an enhanced commitment by the Federal Government to make “additional targeted investments to renew Canadian leadership on the world stage.” The Federal Government commitments in this regard impacting charities and not-for-profits include:

- **Restoring and Renewing International Assistance** - The Federal Government will be assessing Canada’s development, humanitarian and peace and security programming by conducting consultations with Canadians and international aid organizations to ensure that all perspectives are heard. The outcomes will then “inform Budget 2017, and will take into account the Federal Government’s international priorities as well as domestic considerations.”
- **Increasing the International Assistance Envelope** - The Federal Government will provide \$256 million over two years (2016-17 to 2017-18) in funding to Canada’s International Assistance Envelope

(“IAE”), which is “a dedicated pool of resources that enables Canada to deploy its international assistance quickly and responsively.”³

- **Promoting International Peace and Security** - Budget 2016 proposes to allocate up to \$586.5 million over three years, starting in 2016-17, for the renewal of key peace and security programs including \$450 million for the Global Peace and Security Fund, \$106.5 million for the International Police Peacekeeping and Peace Operations Program; and, \$30 million for the Counter-Terrorism Capacity Building Program - Sahel Envelope, which is a fund devoted to furthering counter-terrorism in the Sahel Region of Africa.⁴
- **Expanding Canada’s Intake of Syrian Refugees** - Budget 2016 proposes to provide \$245 million over five years, starting in 2016-17, for the identification, overseas processing, transportation and resettlement of the additional 10,000 Syrian refugees.

H. CHILDREN’S ART AND FITNESS TAX CREDITS

Budget 2016 announced that the Children’s Fitness and Arts Tax Credits will be eliminated for 2016. Accordingly, programs that were previously eligible for these tax credits offered by Registered Canadian amateur athletic associations, charities, and non-profit organizations will likely be affected.

I. EDUCATION AND TEXTBOOK TAX CREDITS

Budget 2016 also announced a proposal to eliminate the Education and Textbook tax credits effective January 2017. As such, certain post-secondary institutions, including various qualified donees, will likely face new reporting requirements for the T2202A, *Tuition, education, and textbook amounts certificate*.

³ Global Affairs Canada, Statistical Report on International Assistance 2013-2014 (13 April 2015), online:

<<http://international.gc.ca/development-developpement/dev-results-resultats/reports-rapports/sria-rsai-2013-14.aspx?lang=eng>>.

⁴ Department of Foreign Affairs, Trade And Development Canada, “Canada’s Anti-Crime Capacity Building Program (ACCBP)” (Presentation delivered at the SOCNORTH Symposium – SOF Role in Combatting Transnational Organized Crime, 8 April 2015), online at file:///C:/Users/tbaker/Downloads/2%20Francis%20Bedros%20AntiCrime%20Capacity%20Building%20(2).pdf.

J. INCREASED FUNDING FOR CHARITABLE AND NFP SECTOR

Certain charities and not-for-profits will potentially see an increase in revenue as a result of the 2016 Budget proposals. The Federal Government pledges to spend money on infrastructure in a number of areas including infrastructure for colleges, universities and research facilities, arts and culture, Aboriginal communities, as well as low-income housing infrastructure.

1. Strategic Infrastructure Investments at Post-Secondary Institutions

Budget 2016 proposes spending up to \$2 billion over three years for a new Post-Secondary Institutions Strategic Investment Fund. The fund will be designated to “support up to 50 percent of the eligible costs of infrastructure projects at post-secondary institutions and affiliated research and commercialization programs” for the modernization of research facilities on Canadian campuses. These investments are intended to be short term and targeted to collaborative projects with the provinces and territories.

2. Expanding Affordable Housing

Budget 2016 proposes to invest \$2.3 billion over two years in affordable housing. The aim of expanding affordable housing is to ensure safe, adequate, and affordable housing for all Canadians. As a result, Budget 2016 proposes to increase access to affordable housing as a reflection of “the Government’s commitment to invest in social infrastructure.”

3. Investing in Arts and Culture

Budget 2016 proposes \$1.3 billion over five years starting in 2016-2017 for longstanding arts and cultural organizations. The Canada Council for the Arts will receive an investment of \$550 million to provide grants to “professional Canadian artists and arts organizations.” Other funding includes \$22 million towards Canada’s audiovisual industry and \$13.5 million to the National Film Board to fund social-issue documentaries, animation, and digital content.

4. A Better Future for Indigenous Peoples

Budget 2016 proposes a number of social infrastructure initiatives for Indigenous communities. The Budget anticipates an investment of \$8.4 billion over five years beginning in 2016-2017 to improve the socio-economic conditions of Indigenous peoples. Investments in Indigenous communities include investments in education, affordable housing, construction of new shelters for victims of violence, repair and renovation of facilities used in early learning, cultural and recreational infrastructure, and construction, renovation, and repair of community health care facilities.