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# FEDERAL BUDGET 2017: IMPACT ON CHARITIES AND NOT-FOR-PROFITS

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## A. INTRODUCTION

On March 22, 2017, federal Finance Minister Bill Morneau tabled the second budget of the Liberal majority Federal Government ("Budget 2017"). While Budget 2017 again emphasizes the Liberal election platform focusing on economic growth, job creation and supporting a strong middle class, Budget 2017, like Budget 2016, does not include any new tax incentives for the charity and not-for-profit ("NFP") sector, as has been enjoyed in previous federal budgets.

The significant developments for the charitable and NFP sector in Budget 2017 include several measures intended to protect gifts of ecologically sensitive land under the ecological gifts program, repeal of the "additional" deduction available to corporations that donate medicine to eligible registered charities (although donor corporations will continue to be able to deduct the fair market value of donated medicine), and confirmation that the First-Time Donor's Super Credit will expire in the year 2017 as planned. Rather than incentives, Budget 2017 focuses on providing funding commitments to certain parts of the charity and NFP sector, including investments in affordable housing, investment in programs to support youth education, and others. As well, Budget 2017 proposes amendments that purport to strengthen Canada's anti-money laundering and anti-terrorist financing regime.

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This *Charity Law Bulletin* provides a summary and commentary of these and other provisions from Budget 2017 that impact charities and NFPs.

### B. ECOLOGICAL GIFTS

The *Income Tax Act* ("ITA") provides for an ecological gifts program where certain donations of ecologically sensitive land or easements, covenants and servitudes on such land ("Ecogifts") give donors enhanced tax incentives. Budget 2017 proposes a number of measures in order to better protect Ecogifts.

Currently, the ITA permits individual donors of Ecogifts to claim a charitable donation tax credit and corporate donors to claim a charitable donation tax deduction. In this regard, the amount of the donation (up to 100% of net income) may be claimed in a year and unused amounts may be carried forward for up to ten years. In addition, any capital gains associated with the donation of Ecogifts (other than a donation to a private foundation) are exempt from tax. In order to qualify for the Ecogifts program, the Minister of Environment and Climate Change Canada ("ECCC") must: (a) certify that the land is ecologically sensitive and that its conservation and protection is important to the preservation of Canada's environmental heritage; (b) approve the organization that will receive the gift if it is a registered charity (but approval is not necessary if the organization is the government of Canada, a province, a municipality in Canada, or a municipal or public body performing a function of government in Canada); and (c) certify the fair market value of the donation. In addition, any easements, covenants or servitudes involved must run in perpetuity. As well, in order to ensure donated land is not subsequently used for other purposes, the ITA imposes a 50% tax of the fair market value of the land upon a recipient who changes the use of the property or disposes of it without the consent of the Minister of ECCC.

Budget 2017 proposes the following changes to apply to transactions or events that occur on or after March 22, 2017:

- Where Ecogifts are transferred between organizations for consideration, the protection offered by the 50% tax may be inappropriately lost. To ensure that transfers of Ecogifts from one organization to another do not result in the loss of this protection, Budget 2017 proposes that the transferee of the property in such a situation be subject to the 50% tax if the transferee changes the use of the property, or disposes of the property, without the consent of the Minister of ECCC.

- Budget 2017 proposes to clarify that the Minister of ECCC has the ability to determine whether proposed changes to the use of lands would degrade conservation protections.

- Currently, an Ecogift that is proposed to be made to a registered charity must be approved by the Minister of ECCC on a gift-by-gift basis. However, approval is not necessary if the recipient organization is the government of Canada, a province, a municipality in Canada, or a municipal or public body performing a function of government in Canada. Budget 2017 proposes to extend the Ministerial approval requirements, on a gift-by-gift basis, to recipients that are municipalities as well as municipal and public bodies performing a function of government. However, Ecogifts proposed to be made to government of Canada or a province would still not require Ministerial approval.

- Budget 2017 proposes that private foundations will no longer be eligible to receive Ecogifts in order to prevent potential conflict of interest. An example of a scenario that may give rise to a conflict is where a director of a private foundation donates an easement in respect of a property to the private foundation so that the individuals responsible for enforcing the private foundation's rights under the easement would be the same persons as those against whom the rights must be enforced.

- In Quebec, where civil law applies, only real servitudes may be donated under the Ecogift program but not personal servitudes because they cannot run in perpetuity. As such, since the conditions associated with real servitudes can be difficult to meet, such donations are infrequently made. To encourage more Ecogifts in Quebec, Budget 2017 proposes that certain donations of personal servitudes may qualify as Ecogifts if they meet a number of conditions, including a requirement that the personal servitude run for at least 100 years.

In this regard, Budget 2017 proposes to amend various sections of the ITA, including subsection 43(2), paragraph 110.1(1)(d), the definition of "total ecological gifts" in subsection 118.1(1), and 207.31.

## C. ELIMINATION OF SPECIFIC TAX CREDITS AND DEDUCTIONS

While Budget 2017 provides a number of measures as outlined above to protect gifts of ecologically sensitive lands, it also removes certain donation credits and deductions as a means of eliminating "inefficient tax measures", including the additional deduction available to corporations that donate medicine to eligible registered charities, together with the First-Time Donor's Super Credit. These eliminations are outlined in more detail below.

1. Repeal of Additional Corporate Donation Deductions on Medicine for International Aid

A special deduction for corporations was first introduced in the 2007 Budget to allow corporations that make donations of medicines from their inventory to claim a special additional deduction equal to the lesser of 50 percent of the amount, if any, by which the fair market value of the donated medicine exceeds its cost and the cost of the donated medicine. The goal of this deduction was to encourage corporations to provide medicines for the purpose of international aid.

Budget 2017 states that this measure will be repealed, "given the high compliance costs for charities and very low take-up." However, no changes are being made with regard to the normal ability for a corporation to deduct the fair market value of donated medicine.

While it is not clear what is meant by the "high compliance costs" for charities, in order for corporations to claim an eligible medical gift, a charity had to have applied to the Minister for International Development in order to be assessed concerning whether it met specific requirements under regulation 3505, including, among other requirements, that it have "sufficient expertise in delivering medicines for use in charitable activities carried on outside Canada".

In this regard, Budget 2017 proposes to repeal paragraph 110.1(1)(a.1) and subsections 110.1(9) and (9), as well as amend subsection 149.1(15) of the ITA to remove the additional deduction for gifts of medicine. This repeal will apply in respect of gifts made on or after March 22, 2017.

2. Farewell First-Time Donor's Super Credit, We Hardly Knew You

Budget 2017 also confirms that the First-Time Donor's Super Credit ("FDSC") "…will be allowed to expire in 2017 as planned, due to its low take-up, small average amount donated, and the overall generosity of existing tax assistance for charitable donations". This is not surprising given that the FDSC, first introduced in Budget 2013, was announced as a temporary tax-credit for the 2013 to 2017 taxation years, and *Economic Action Plan 2013 Act, No. 1*, which implemented the FDSC, included their repeal for the 2018 and subsequent taxation years. As a result, those hoping that the FDSC might be extended beyond

2017 will no doubt be disappointed that the eventual repeal of subsections 118.1(3.1), (3.2) and the definition of "first-time donor" in the ITA will proceed in 2018.

### D. AMENDMENTS TO ANTI-TERRORISM LEGISLATION ANNOUNCED

While no specifics were included, Budget 2017 announced the intention of the Government to introduce amendments to "strengthen" the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* in order to:

- Expand the list of disclosure recipients that can receive financial intelligence related to threats to the security of Canada to include the Department of National Defence and the Canadian Armed Forces.
- Support more effective intelligence on beneficial owners of legal entities.
- Make various technical and other changes to: strengthen the framework, support compliance, improve the ability of reporting entities to operationalize the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and ensure the legislation functions as intended.

With regard to the second bullet point above, Budget 2017 also forecasts proposals that would strengthen transparency concerning corporate and beneficial ownership in order to, "provide safeguards against money laundering, terrorist financing, tax evasion and tax avoidance". Specifically, Budget 2017 notes that:

- The Government will collaborate with provinces and territories to put in place a national strategy to strengthen the transparency of legal persons and legal arrangements and improve the availability of beneficial ownership information.
- The Government is also examining ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information.

While developing a regime for greater transparency of beneficial ownership concerning corporate entities is an important initiative, the proposals purporting to "strengthen" the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* appear to be expanding Canada's already existing robust information collecting and sharing regime, which was most recently bolstered by Bill C-51 that the Liberal Party had campaigned to amend. In this regard, it will be important for registered charities and NFPs in Canada that operate or provide funding to entities outside of Canada to carefully monitor any legislative amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and related statutes to determine how the proposed amendments may impact their compliance procedures and reporting requirements.

## E. INCREASED FUNDING FOR CHARITABLE AND NFP SECTOR

Certain charities and NFPs can expect to see an increase in revenue as a result of the proposals in Budget 2017 proposals. The Federal Government has pledged to spend money on infrastructure and programs in a number of areas as summarized below.

### 1. National Housing Strategy

Budget 2017 proposes to invest more than $11.2 billion over 11 years on a variety of programs designed to build, renew and repair housing to support the availability of affordable housing in cities, rural and remote communities under the National Housing Strategy. Key elements of the Strategy include a renewed partnership between the federal, the provincial, and territorial governments to better support housing initiatives; the creation of a new $5 million National Housing Fund to address critical housing issues; better support for vulnerable citizens; provision of targeted support for northern housing and targeted housing support for Indigenous Peoples not living on reserves; as well as initiatives to combat and prevent homelessness.

### 2. Protection for Communities at Risk

The Budget also proposes funding of $5 million over five years, beginning in 2017-2018 to support the "Communities at Risk: Security Infrastructure Program." This program provides funding to NFP organizations to make security infrastructure improvements, such as the installation of outdoor lighting and security cameras. The funding is being provided in recognition that "[h]ate-motivated crime has no place in Canadian society, and Canadians should feel safe when they gather at places of worship, educational institutions and community centres."

### 3. Investments in Research

Budget 2017 confirms the Federal Government's commitment to support post-secondary research and research training. The Budget outlines a number of investments that were made in the year 2016-2017, including approximately $340 million in support for equipment and various facilities for post-secondary institutions, research hospitals and other NFP institutions. Recipients of the support include Compute Canada and CANARIE, which provide an ultra-high speed network for researchers, as well as Canada Foundation for Innovation which supports research infrastructure.

In addition, Budget 2017 proposes a number of investments to support innovation and economic growth. This includes the renewal of $6 million worth of funding in 2018-2019 to the Stem Cell Network, a national NFP organization that helps translate stem cell research into clinical applications and commercial products, as well as shape public policy.

4. Investments in Youth and Education

The Budget also proposes to renew the Federal Government's support for Pathways to Education Canada, a charity that works with local community partners to provide youth from lower-income neighborhoods with access to the academic, social and financial support they require in order to successfully complete high school. The Federal Government will provide Pathways with $38 million over four years beginning in 2018-2019.

Indspire is an Indigenous-led organization which provides First Nations, Inuit and Métis students with the financial assistance required to complete their post-secondary education and obtain employment. Budget 2017 proposes to provide Indspire with $5 million per year for five years, on the condition that Indspire raises $3 million per year in matching funds from the private sector. Beginning in the 2017-2018 academic year, it is expected this would provide $40 million over five years in bursaries and scholarships for over 12,000 First Nations, Inuit and Métis students.

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