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FEDERAL BUDGET 2018: IMPACT ON CHARITIES AND NOT-FOR-PROFITS

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A. INTRODUCTION

On February 27, 2018, Finance Minister Bill Morneau tabled the third budget of the Liberal Federal Government ("Budget 2018"). Similar to the previous two budgets, Budget 2018 once again emphasizes the Liberal election platform to focus on economic growth, job creation and supporting a strong middle class, but this time with a focus on gender equality and Indigenous peoples. However, and also like the previous two budgets, Budget 2018 does not include any new tax incentives for the charitable and not-for-profit ("NFP") sector. In addition, Budget 2018 does not make any mention of the consultation on non-profit organizations ("NPOs") that was originally proposed in Budget 2014 but has never materialised.

While Budget 2018 contains little of significance with regard to charities and NFPs, it is expected that more will be forthcoming from the Government over the next year as indicated by the Federal Government's commitment in Budget 2018 to provide a response to the May 2017 report on political activities by charities, reviewed in *Charity & NFP Law Bulletin* No. 403,[1] as well as an anticipated report

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[1] Terrance S Carter, Jennifer M Leddy & Ryan Prendergast, *Charity & NFP Law Bulletin No. 43*, "Sweeping Changes Recommended in Report on Political Activities" online: Carters Professional Corporation <http://www.carters.ca/pub/bulletin/charity/2017/chylb403.pdf>.

of the newly formed Senate Special Committee on the Charitable Sector reviewed in the January 2018 *Charity & NFP Law Update*.[2]

What Budget 2018 does include are proposed amendments to the *Income Tax Act* (Canada) ("ITA") to permit property transfers to municipalities as qualifying expenditures for revocation tax purposes; removal of the requirement that registered universities outside of Canada be prescribed in the *Income Tax Regulations*; new reporting requirements for trusts subject to an exemption for charities and NPOs; support for local journalism, including possible charitable status for NFP journalism; as well as funding of various charitable and NFP sector initiatives. This Bulletin provides a summary and commentary of these and other provisions from Budget 2018 that impact charities and NFPs.

B. ELIGIBLE DONEES FOR PURPOSES OF REVOCATION TAX EXPANDED TO INCLUDE MUNICIPALITIES

Under the ITA, registered charities that have their status revoked, either voluntarily or for cause, are subject to a federal tax that is equivalent to the full value of its remaining assets, commonly referred to as the revocation tax. The tax is equivalent to 100% of the value of all remaining assets after all debts and liabilities have been paid. This federal tax generally means all of the net assets of the revoked charity will have to be paid to the government. However, under the ITA, registered charities can reduce the amount of revocation tax owing by transferring their assets to "eligible donees." As Budget 2018 notes, this process helps "ensure that a revoked charity's accumulated property stays within the charitable sector."

Currently, "eligible donees" are limited to entities described in subsection 188(1.3) of the ITA, *i.e.*, arm's length registered charities that have not had their ability to issue receipts suspended, do not themselves owe any taxes, have filed all T3010 annual information returns, and are not subject to a certificate under the *Charities Registration (Security Information) Act*. Budget 2018 recognizes that in some instances, a revoked charity may have difficulty finding a recipient that qualifies as an "eligible donee." Examples given in Budget 2018 include where a revoked charity operated in a rural location, or where the assets have value to the community, such as a cemetery or a fire hall.

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[2] Terrance S Carter, *January 2018 Charity & NFP Law Update*, "Legislation Update: Senate Adopts Motion to Appoint Special Committee on Charitable Sector" online: Carters Professional Corporation <http://www.carters.ca/pub/update/charity/18/jan18.pdf#tc1>.

Budget 2018 proposes to consider transfers of property made to municipalities by revoked charities as expenditures for the purposes of the revocation tax. However, municipalities will not automatically be eligible to be recipients of assets from registered charities that have had their status revoked, and Budget 2018 states that such transfers will be "subject to the approval of the Minister of National Revenue on a case-by-case basis."

In this regard, Budget 2018 proposes to amend subsection 188(1.3) of the ITA to include municipalities, "approved by the Minister", in the definition of qualified donee, and make other consequential amendments to the ITA. Budget 2018 proposes these changes to apply to transfers of property that occur on or after February 27, 2018.

C. QUALIFIED DONEE STATUS OF UNIVERSITIES OUTSIDE CANADA SIMPLIFIED

For many years, educational institutions that have been prescribed to be "universities outside Canada" have been eligible under the ITA to issue official donation receipts to donors in Canada and to receive gifts from registered charities. These prescribed universities are listed in Schedule VIII of the *Income Tax Regulations*.

However, the 2011 federal budget implemented a new regulatory regime for "qualified donees" under the ITA, including prescribed universities. Qualified donees are generally registered charities, registered Canadian amateur athletic associations, foreign charities that have received a gift from Her Majesty in right of Canada, low-cost housing corporations for the aged, municipal or public bodies, municipalities, prescribed universities outside Canada, and Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations. The purpose of this new regulatory regime was to extend some of the requirements registered charities already had to other qualified donees, as well as to permit the Canada Revenue Agency (the "CRA") to suspend or revoke qualified donee status where these requirements were not met. As a result, however, in addition to being listed in Schedule VIII of the *Income Tax Regulations*, prescribed universities were also required to be listed on the CRA's public list of qualified donees in order to maintain their qualified donee status.

In this regard, in order to reduce the administration to the CRA caused by maintaining duplicate lists, Budget 2018 proposes to amend the definition of "qualified donee" so that universities outside Canada are no longer required to be listed in Schedule VIII. As a consequence, section 3503 and Schedule VIII of the *Income Tax Regulations* would be repealed. This would mean that there would be only one list of universities outside Canada that are qualified donees for the CRA to maintain, and for the public to check to determine qualified donee status. As such, while Budget 2018 does not address this issue, the duplication of lists also led to confusion for universities outside Canada that wanted to verify that they continued to have qualified donee status. Budget 2018 proposes this change will apply as of February 27, 2018.

D. NEW REPORTING REQUIREMENT FOR TRUSTS

In an attempt to improve the collection of beneficial ownership information with respect to trusts, Budget 2018 proposes to require certain trusts to file a T3 return where one does not currently exist. The reporting will include the identity of all trustees, beneficiaries and settlors of the trust, as well as the identity of each person who has the ability (through the trust terms or a related agreement) to exert control over trustee decisions regarding the appointment of income or capital of the trust. New information collected on these filings will help the CRA assess the tax liability of trusts and their beneficiaries. The new reporting requirement will apply to express trusts that are resident in Canada and to non-resident trusts that are currently required to file a T3 return. An express trust is generally a trust created with the settlor's express intent, usually made in writing (as opposed to a resulting or constructive trust, or certain trusts deemed to arise under the provisions of a statute). Trusts that fail to comply with the new filing requirements will be subject to penalties. The proposed new reporting requirement will apply to returns required to be filed for the 2021 and subsequent taxation years.

Although trusts that qualify as NPOs or registered charities will be exempt from the new reporting requirement, this requirement will be become relevant for NPOs and charities that are established as trusts. Possible scenarios may include situations where the non-profit status of an organization was in question or where a registered charity was to lose its charitable status (such as revocation due to the inadvertent failure to file its annual information return, T3010).

E. FUNDING INITIATIVES TO SUPPORT THE CHARITABLE AND NFP SECTOR

Certain charities and NFPs can expect to see an increase in revenue as a result of Budget 2018 as indicated below:

1. Funding for Women's Program

Budget 2018 proposes to provide $100 million over five years to Status of Women Canada, a federal government organization that promotes equality for women and their full participation in the economic, social and democratic life of Canada. The funding is being provided to enhance the Women's Program, which has the objective of achieving full participation of women in the economic, social and democratic life of Canada. The funding is being provided to "ensure better funding for organizations focused on vulnerable women, including groups such as Indigenous women, women with disabilities, members of the LGBTQ2 communities, and newcomer and migrant women."

2. Supporting Local Journalism

In recognition that, "[a]s more and more people get their news online, and share their interests directly through social media, many communities have been left without local newspapers to tell their stories", Budget 2018 proposes to provide $50 million over five years, starting in 2018–19, to one or more independent non-governmental organizations that will support local journalism in underserved communities. This is being done in order to support the continued existence of news sources that provide "…trusted, local perspectives, as well as accountability in local communities." The organizations will have "full responsibility to administer the funds while ensuring that they respect the independence of the press."

In addition, over the next year, the Federal Government will be considering new models that will enable private giving and philanthropy for "trusted, professional, non-profit journalism and local news". This could include "new ways for Canadian newspapers to innovate and be recognized to receive charitable status for NFP provision of journalism, reflecting the public interest that they serve." No further details have been provided in the Budget concerning how these new models would be achieved.

3. Assisting Vulnerable People Access Government Funding

The Federal Government proposes to reallocate $7.8 million over five years, beginning in 2018–19, from Employment and Social Development Canada's existing resources, to help community organizations build the organizational capacity they require in order to apply for and receive funding from government contracts and grants. This is being done in recognition that while many organizations carry out important work to deliver social services to vulnerable persons in Canada including Indigenous Peoples, newcomers and persons with disabilities, a number of those organizations lack the organizational capacity to pursue government funding opportunities.

4. Community Based Support for Families Living with Dementia

Budget 2018 proposes to provide $20 million over five years, starting in 2018–19, and $4 million per year thereafter, to the Public Health Agency of Canada to support community-based projects that address the challenges faced by Canadian seniors and their families who are living with dementia. Programs could include provision of mental health support and information about self-care for family caregivers of seniors with dementia, as well as initiatives that help Canadians more easily locate resources in their communities concerning best practices for providing care for people living with dementia.

5. Support for Canadians Impacted by Autism Spectrum Disorder

In recognition that autism spectrum disorder is a complex, lifelong neurodevelopmental disorder that can have serious health, social and financial consequences for Canadian families, Budget 2018 proposes to provide $20 million over five years for two new initiatives to better support the needs of Canadians in that regard. The initiative includes the creation of an Autism-Intellectual-Developmental Disabilities National Resource and Exchange Network to develop online resources, an inventory of services, employment opportunities and local programming for families across the country, based on their specific needs.

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