

THE CRA'S GUIDANCE ON JOURNALISM: CLARIFYING TAX CREDITS, QCJOs AND RJOs

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A. INTRODUCTION

Following up on the federal government's announcement in the *2018 Fall Economic Statement*¹ ("Economic Statement") and its commitment in the 2019 Federal Budget² ("Budget 2019"), the Canada Revenue Agency ("CRA") released its new *Guidance on the income tax measures to support journalism*³ ("Guidance") on December 20, 2019. The Guidance provides further information on the various tax measures introduced by the federal government to support local Canadian journalism through a new category of qualified donees for registered journalism organizations, and clarifies the requirements for designation as a "qualified Canadian journalism organization" ("QCJO"). This *Charity & NFP Law Bulletin* provides a brief overview of the Guidance.

B. BACKGROUND

In the 2018 Federal Budget⁴ ("Budget 2018"), the federal government proposed funding to support news sources in underserved communities that provide "trusted, local perspectives as well as accountability in

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¹ Canada, Department of Finance, "2018 Fall Economic Statement: Investing in Middle Class Jobs" (21 November 2018), online: <<https://www.budget.gc.ca/fes-eea/2018/docs/statement-enonce/fes-eea-2018-eng.pdf>> ["Economic Statement"].

² Canada, *Budget 2019: Investing in the Middle Class*, (19 March 2019) online: <<https://www.budget.gc.ca/2019/docs/plan/budget-2019-en.pdf>> ["Budget 2019"].

³ Canada Revenue Agency, *Guidance on the income tax measures to support journalism* (20 December 2019), online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/business-tax-credits/canadian-journalism-labour-tax-credit/guidance.html>> ["Guidance"].

⁴ Canada, *Budget 2018: Equality and Growth: A Strong Middle Class*, (27 February 2018) online:

local communities.”⁵ Further, Budget 2018 indicated that the government was considering new models to enable private giving and philanthropy for “trusted, professional, non-profit journalism and local news.”⁶ Further to Budget 2018, the Economic Statement announced various measures in support of local journalism. These measures included a new category of qualified donee for eligible non-profit journalism organizations, a refundable tax credit for qualifying news organizations, and a temporary non-refundable tax credit for subscribers of Canadian digital news media.⁷

Through Budget 2019, the government provided additional details on its measures to support local journalism, including the measures proposed in the Economic Statement. Subsequently, amendments to the *Income Tax Act*⁸ (“ITA”) introducing and implementing these tax measures were introduced through Bill C-97, *Budget Implementation Act, 2019, No. 1*⁹ (“Bill C-97”), which received Royal Assent on June 21, 2019 and are now in force. Additionally, the government indicated in Budget 2019 that it would “establish an independent panel of experts from the Canadian journalism sector to assist the Government in implementing these measures, including recommending eligibility criteria.”¹⁰

C. THE GUIDANCE

1. Qualified Canadian Journalism Organizations

The tax measures introduced through Bill C-97 will depend on whether or not a journalism organization is a QCJO. To be eligible for QCJO designation, an organization must first meet the criteria set out under subsection 248(1) of the ITA. The organization must be a corporation, partnership or trust incorporated or formed under Canadian federal, provincial or territorial laws, and must have certain other citizenship requirements which depend on the organization’s structure. The organization must also operate in Canada, which generally requires that its “content is edited,

<<https://www.budget.gc.ca/2018/docs/plan/toc-tdm-en.html>> [“Budget 2018”].

⁵ *Ibid* at 183. For more information, see Theresa LM Man, *et al*, *Charity & NFP Law Bulletin No. 417*, “Federal Budget 2018: Impact on Charities and Not-for-Profits” (28 February 2018) online: <<http://www.carters.ca/pub/bulletin/charity/2018/chylb417.pdf>>.

⁶ Budget 2018, *ibid* at 184.

⁷ Economic Statement, *supra* note 1 at 40. For more information, see Theresa LM Man & Terrance S Carter, *Charity & NFP Law Bulletin No. 435*, “Exciting Proposed Changes in Federal Government 2018 Fall Economic Statement” (30 November 2018) online: <<http://www.carters.ca/pub/bulletin/charity/2018/chylb435.pdf>>.

⁸ RSC 1985, c 1 (5th Supp) [“ITA”].

⁹ SC 2019, c 29.

¹⁰ [Budget 2019](#), *supra* note 2 at 173.

designed and, except in the case of digital content, published in Canada.”¹¹ However, an organization may not be a Crown or municipal corporation, or a government agency.

Subsection 248(1) also indicates that the organization must be “primarily engaged in the production of original news content [that is] primarily focused on matters of general interest and reports of current events, including coverage of democratic institutions and processes” and not on a particular, specific topic.¹² The Guidance clarifies that the “production of original news content” generally refers to at least 50% of an organization’s overall editorial content being original, *i.e.* researched, written, edited and formatted by and for the organization. Original news content should be based on journalistic processes and principles, including: (1) researching and verifying information prior to publication; (2) consistently providing rebuttal opportunity for those being criticized and presenting alternate perspectives, interpretations and analyses; (3) representing sources honestly; and (4) correcting errors. The “general interest” requirement for news content means that it must be aimed at a general audience, rather than at specialists in a particular field. The Guidance also clarifies what “democratic institutions” and “democratic processes” are.

As subsection 248(1) also requires that an organization “regularly employs two or more journalists who deal at arm’s length with the organization in the production of its content,”¹³ the Guidance clarified that “regularly employs” means regular and continuous employment on either a full-time or part-time basis, though there is leeway where one journalist leaves and the position is temporarily unfilled. Further, freelance journalists would be considered self-employed contractors, and would not count towards the minimum. With regard to the “arm’s length” requirement, the Guidance indicates that the organization and employees must be acting in their separate interests, and refers readers to the CRA’s Income Tax Folio S1-F5-C1, *Related Persons and Dealing at Arm’s Length*,¹⁴ as well as the definition of “arm’s length” in Guide T4002, *Self-employed Business, Professional, Commission, Farming, and Fishing Income*.¹⁵

¹¹ ITA, *supra* note 8, s 248(1)(iv). See also Guidance, *supra* note 3 at 2.21.

¹² ITA, *ibid*, s 248(1)(v); Guidance, *ibid* at 2.22-2.29.

¹³ ITA, *ibid*, s 248(1)(vi).

¹⁴ Canada Revenue Agency, *Folio 5 – Transfers of Income, Property or Rights to Third Parties*, online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-1-individuals/series-1-individuals.html>>.

¹⁵ See Canada Revenue Agency, *T4002 – Self-employed Business, Professional, Commission, Farming, and Fishing Income 2019*, online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4002.html>>.

Where an organization meets the above requirements, it may apply for designation by submitting Form T625, *Application for Qualified Canadian Journalism Organization Designation*.¹⁶ This will be reviewed by the CRA in consultation with an Independent Advisory Board, which will provide recommendations focused on original news content and journalistic processes and principles to the Minister of National Revenue. Organizations that meet the criteria will receive a QCJO designation number, while those that do not may request a reconsideration by the CRA.

2. Canadian Journalism Labour Tax Credit

The Canadian Journalism Labour Tax Credit is outlined in section 125.6 and subsection 248(1) of the ITA, and is available to “qualifying journalism organizations” effective as of January 1, 2019. The Guidance describes the credit as a tax credit for “25% of qualifying labour expenditure for a taxation year, in respect of an eligible newsroom employee of a qualifying journalism organization.”¹⁷ In addition to qualifying journalism organizations, the credit may also be available to “registered journalism organizations” (“RJOs”), as defined in subsection 248(1) and 149.1(1) of the ITA, where the RJO also meets the conditions of qualifying journalism organizations. Further details on RJOs is provided in section C.4, below.

A qualifying journalism organization is a QCJO that meets all of the conditions set out in subsection 125.6(1) of the ITA. These requirements include that it: (1) is primarily (*i.e.* more than 50%) engaged in the production of original written news content; (2) does not carry on a “broadcasting undertaking” pursuant to subsection 2(1) of the *Broadcasting Act*;¹⁸ (3) is not funded through the Aid to Publishers component of the Canada Periodical Fund during any taxation year in which it claims the credit; and (4) meets certain conditions in the subparagraph 19(5)(e)(iii) definition of “Canadian newspaper” in the ITA, where it is a share capital corporation.

With regard to the credit itself, qualifying journalism organizations and eligible RJOs are entitled to a 25% refundable credit on “qualifying labour expenditures” that they incur for each eligible newsroom employee. Qualifying labour expenditures are the amount of salary or wages, including vacation pay, statutory holiday pay, sick leave pay, and certain taxable benefits, payable to an

¹⁶ Canada Revenue Agency, *T625 Application for Qualified Canadian Journalism Organization Designation*, online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t625.html>>.

¹⁷ Guidance, *supra* note 3 at 3.4.

¹⁸ SC 1991, c 11.

eligible newsroom employee for a taxation year, less any assistance received or which can reasonably be expected to be received for their salary or wages.

The Guidance generally describes “eligible newsroom employees” as being employees who spent at least 75% of their time engaged in producing news content, who work a minimum of 26 hours per week, on average, for 40 consecutive weeks, and who meet any additional prescribed conditions. Concerning “assistance”, the Guidance indicates that this is “the amount that the organization has received, is entitled to receive or can reasonably be expected to receive (and that has not been repaid before the end of the year pursuant to a legal obligation to do so), in respect of the salary or wages payable by the organization to an eligible newsroom employee, and in respect of the portion of the taxation year throughout which the organization is a qualifying journalism organization.”¹⁹ This would include a “refund, reimbursement, contribution, or allowance, whether as a grant, subsidy, forgivable loan, deduction from tax, or any other form of inducement.”²⁰ Qualifying labour expenditures are capped annually at \$55,000, on a prorated basis, per eligible newsroom employee, though there is no limit on the maximum number of eligible newsroom employees.

The Guidance provides various helpful examples that outline how to calculate the qualifying labour expenditure and credit, and provides detailed instructions on claiming the credit and on the timing for filing tax returns.

3. Digital News Subscriptions

The digital news subscription tax credit is outlined in section 118.02 of the ITA, and is available to individuals who have paid qualifying subscription expenses to QCJOs after 2019 and before 2025. This non-refundable tax credit is calculated by “multiplying the lowest personal income tax rate (15%) by the total of all amounts paid by individuals for qualifying subscription expenses in the year up to \$500.”²¹ The Guidance indicates that a qualifying subscription expense is the amount that an individual pays during a year to a QCJO for a “digital news subscription.” A digital news subscription is an agreement that entitles individuals to access the digital content of a QCJO that is

¹⁹ Guidance, *supra* note 3 at 3.17.

²⁰ *Ibid* at 3.19.

²¹ *Ibid* at 4.2.

primarily engaged in producing original written news content, and that is not engaged in a broadcasting undertaking pursuant to subsection 2(1) of the *Broadcasting Act*.

Where a QCJO provides combined digital and newsprint subscriptions, or where the digital news subscription provides access to other content not provided by a QCJO, the eligible expense will only include the cost of a comparable stand-alone digital news subscription offered by the QCJO. Where no comparable stand-alone digital news subscription is available, then 50% of the paid amount is an eligible expense. To be eligible as a qualifying subscription expense, the organization must be a QCJO at the time the amounts are paid for a subscription.

The Guidance advises QCJOs that provide qualifying subscriptions to provide their subscribers with a receipt that includes the following information:

- the subscriber's full name;
- the date and amount of the total payment;
- the purpose of the payment;
- the qualifying subscription expense amount;
- the QCJO's name, address and QCJO designation number; and
- an authorized signature (unless the receipt is electronically produced).²²

Further, the Guidance directs individuals wanting to know whether their subscription qualifies to contact their subscription provider.

4. Registered Journalism Organizations

In Budget 2019, the government announced that RJOs would be a new type of qualified donee under the ITA, meaning that they would be exempt from tax, eligible to issue donation receipts, and receive gifts from registered charities. To become an RJO, an organization must apply for and receive designation as a QCJO, as discussed in section C.1, above. It must also submit Form T624, *Application to Register a Journalism Organization Under the Income Tax Act*,²³ along with supporting documents, to the CRA, and must meet additional criteria under subsection 149.1(1) of

²² *Ibid* at 4.6.

²³ Canada Revenue Agency, *T624 Application to Register a Journalism Organization Under the Income Tax Act*, online: Government of Canada <<https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t624.html>>.

the ITA for a “qualifying journalism organization,” which places restrictions on the organization’s structure, purposes and activities, its control, as well as its income distribution, in order to be registered as an RJO. Although this is a two-step application process that requires that an organization first be a QCJO, the Guidance indicates that the RJO application can be submitted simultaneously with the QCJO application.

With regard to its structure, purposes and activities, an RJO must be a corporation or a trust incorporated under federal, provincial, or territorial laws that is constituted and operated for purposes exclusively related to journalism. Its stated purposes in its incorporation or trust documents therefore must all be related to journalism, and the RJO must be “constituted and operated for purposes exclusively related to journalism.” The RJO is required to focus on producing original news content, although complementary content, such as financial reports, listings, calendars, comic strips, puzzles, horoscopes, *etc.*, may be acceptable according to the CRA if they are “subordinate” to publishing news content.

In accordance with the definition of “qualifying journalism organization,” an RJO is permitted to carry on business activities that are related to its purposes. Paragraph 5.11 indicates that an RJO must be able to demonstrate the link between the business activity and its purposes. Business activities that generate profits that fund the organization’s programs may not be considered related for that reason alone. The CRA states that, “RJOs may not carry on business activities that are not related to journalism,” *i.e.*, unrelated business. However, selling news content, advertising and subscriptions would be business activities related to journalism.

Further, if an RJO holds an interest in a partnership and it meets certain conditions outlined in paragraph 5.14 of the Guidance concerning its structure and control, it will not be considered to be carrying on business activities. These conditions are the same as those outlined in subsection 253.1(2) that are applicable to RJOs, which also apply to registered charities and registered Canadian amateur athletic associations as of the 2015 Federal Budget. Where these conditions are not met, it will be carrying on business activities, which must be related to journalism.

With regard to control, the Guidance states that “an RJO should not be used to promote the views or objectives of any particular person or related group of persons.”²⁴ An RJO’s trustees or board of directors therefore must all deal with each other at arm’s length, and the RJO cannot be controlled, directly or indirectly, by any person who is not at arm’s length. The term “person” here may refer to an individual, corporation, or a trust. Additionally, an RJO cannot accept gifts, including donations, from a single source within a taxation year where those gifts amount to greater than 20% of the RJO’s total revenue, except if those gifts were made by bequest or were made within one year after the RJO’s registration. In exceptional circumstances, where a considerable gift is not an ongoing source of revenue and where the RJO can demonstrate that the gifting source will not control the RJO, the CRA may approve such a gift, though this is on a case-by-case basis.

With regard to limitations on income distribution, an RJO cannot distribute its profits because it is required to use its resources to further its purposes exclusively related to journalism. Similar to registered charities and non-profit organizations, no part of an RJO’s income can be payable to, or available for the personal benefit of, any proprietor, member, shareholder, director, trustee, settlor or like individual, including during a dissolution or winding up. The Guidance advises that governing documents should therefore include a statement that addresses this limitation. Notwithstanding the above, and unlike registered charities in accordance with the common law, an RJO can provide fair and reasonable compensation to such individuals for services that they have provided for the RJO’s benefit, as long as those services were necessary for the RJO in carrying on its journalism activities. An RJO may also reimburse these individuals’ expenditures where they are incurred on behalf of the RJO.

Finally, the Guidance also discusses the requirements for maintaining RJO registration, which include continually meeting eligibility criteria discussed above, in addition to its other obligations as a qualified donee set out under the ITA. These obligations include filing an annual information return on time; proper bookkeeping and recordkeeping; ensuring that official donation receipts meet the ITA requirements; and not acting as a conduit by accepting gifts on the condition that the RJO gift it to another person or entity as is the case with registered Canadian amateur athletic associations.

²⁴ Guidance, *supra* note 3 at 5.16.

D. CONCLUSION

The federal government's introduction of QCJOs and RJOs is an encouraging step towards the promotion of local Canadian journalism. The Guidance is a helpful tool that provides additional clarity to complex measures announced in Budget 2018 and Budget 2019, as well as the Economic Statement, which were brought into force over the course of the past year. Canadian journalism organizations seeking support through these new measures are therefore encouraged to carefully read the Guidance to better understand what support they may be eligible for.



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