
UNIVERSITY OF OTTAWA

October 23, 2006

Disbursement Quota Issues

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UNIVERSITY OF OTTAWA
Introduction to the Law of Charities
& Non-Profit Organizations
October 23, 2006

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RESOURCE MATERIALS

This power point presentation consists of excerpts from:

- A paper entitled "New Disbursement Quota Rules Under Bill C-33" dated May 6, 2005
- Charity Law Bulletins #54, #55, #56, #59, #67, #69, #80 and #85

all available at www.charitylaw.ca

INTRODUCTION

- What is disbursement quota ("DQ")?
 - A prescribed amount that registered charities must disburse each year in order to maintain their charitable registration
 - In general, a charity must expend
 - 80% of gifts received in the previous year
 - 3.5% (formerly 4.5%) of its investment assets
 - Defined in subsection 149.1(1) of the Act

INTRODUCTION (cont'd)

- **Purpose of DQ**
 - **To ensure charities use charitable funds on charitable/activities**
 - **To discourage charities from spending excessive amounts on fundraising, management or administration**
 - **To discourage charities from accumulating excessive funds**

4

INTRODUCTION (cont'd)

- **Importance of DQ**
 - **For charities, donors, advisors**
 - **Inter-charity transfers**
 - **Nature of property gifted**
 - **Nature of restrictions imposed**
 - **Source of the gift**
 - **Nature of the proposed recipient charity**

5

LEGISLATION IMPLEMENTING REGULATORY REFORM AND DQ RULES

- **March 23, 2004 - federal budget**
- **September 16, 2004 - draft legislation**
- **December 6, 2004 - ways and means motion - Bill C-33 from March 2004 federal budget**
- **May 13, 2005 - Passage of Bill C-33**

6

DQ RULES PRIOR TO THE AMENDMENTS
 $A + A.1 + B + \{C \times 0.045 [D - (E + F)]\} \div 365 + G$

Charitable organizations

- 80% of received donations in preceding year, except:
 - i. gifts of capital received as bequest or inheritance
 - ii. ten-year gifts
 - iii. gifts received from other registered charities
- 80% of amounts previously excluded under (i) and (ii) but which are spent in the year

7

DQ RULES PRIOR TO THE AMENDMENTS (cont'd)

Public Foundations and Private Foundations

- 80% of received donations in preceding year, except:
 - i. gifts of capital received as bequest or inheritance
 - ii. ten-year gifts
- 80% of amounts previously excluded under (i) and (ii) but which are spent in the year
- 80% of gifts received from other charities, other than specified gifts (100% for private foundations)
- 4.5% of average value of investment property

8

NEW DQ FORMULA $A + A.1 + B + B.1$

- The same rules apply to charitable organizations, public foundations and private foundations, except one minor difference between public foundations and private foundations
- More complicated rules
- Reduced the 4.5% DQ on investment assets to 3.5%
- Extended the application of the 3.5% DQ to charitable organizations

9

NEW DQ FORMULA (cont'd)

- Introduced new concepts of “enduring property” and “capital gains pool”
- The 80% DQ can be delayed through utilizing “enduring property,” including ten-year gifts
- Inter-charity transfers have become more complicated
- Uncertainty on its application

10

NEW DQ FORMULA (cont'd)

- Generally applies to taxation years that begin after March 22, 2004
- For charities registered before March 23, 2004, some changes apply for taxation years beginning after December 31, 2008
- See colour DQ chart in *Charity Law Bulletin #67* for more detail

11

NEW DQ FORMULA (cont'd)

- A + A.1 + B + B.1
- A: deals with gifts for which the charity issued donation receipts in its immediately preceding taxation year
- A.1: deals with gifts of enduring property expended or transferred to another charity in the year
- B: deals with gifts received from other charities in its immediately preceding taxation year
- B.1: deals with investment assets of the charity

12

VARIABLE A

- A = 80% of gifts for which the charity issued donation receipts in its immediately preceding taxation year (excluding gifts of enduring property and gifts from other charities)
- Gifts of enduring property are dealt with under A.1
- Gifts from other charities is dealt with under B
- Gifts received in this taxation year affects the DQ in the following year
- Unreceived gifts are not included

13

VARIABLE B

- Deals with gifts received from other charities
- For charitable organizations and public foundations, B = 80% of all amounts received from other registered charities in its immediately preceding taxation year
- For private foundations, B = 100%, instead of 80%
- Gifts received by charitable organizations used to be exempt from DQ requirements
- Donation receipts should not be issued for gifts received from other charities
- Not include specified gifts and enduring property

14

VARIABLE B (cont'd)

- A “specified gift” is a gift made by a charity to another charity and is designated by the transferor charity as a specified gift in its information return (T3010)
- The transferor charity cannot use the specified gift to meet its own DQ obligation
- The transferee charity is not required to include the specified gift received in its DQ calculation, i.e. the transferee charity is not required to expend any portion of the specified gift
- When the transferee charity expends the specified gift, it can be used to meet its DQ obligation

15

VARIABLE A.1

- Deals with gifts of enduring property
- Allows charities to hold certain property without the need to expend 80% of it in the following year after receipt
- Enduring property is exempt from A, so that it is not required to be expended in the year following it was received and received

16

VARIABLE A.1 (cont'd)

- Gifts of enduring property do not affect the DQ of the recipient charity until they are either expended or transferred to another charity, at which time, the expenditure or transfer is added to the DQ calculation for that year
- Purpose of A.1 is to ensure that charities cannot meet their DQ simply by spending enduring property that was previously exempt from its DQ calculation

17

VARIABLE A.1 (cont'd)

- A.1 = (a) – (b)
- (a) = sum of (i) + (ii)
 - (i) 80% enduring property expended in year (except for (1) specified gifts, (2) pre-1994 bequests or inheritances and (3) property described in (ii))
 - (ii) total enduring property gifts transferred to qualified donees (except specified gifts)

18

VARIABLE A.1 (cont'd)

- **A.1(a) may be reduced by A.1(b), i.e. an amount claimed by charity that may not exceed the lesser of**
 - **3.5% of investment assets and**
 - **capital gains pool for the year (explained below)**

19

VARIABLE A.1 - “enduring property”

- **New term “enduring property”**
- **Enduring property are gifts intended by the donor that the charity hold it for some time, without the need to expend 80% of it in the year following receipt, e.g. to form the charity’s endowment**
- **Defined in subsection 149.1(1)**

20

VARIABLE A.1 - “enduring property” (cont'd)

- **Includes 4 types of gifts or transfers**
 - 1. Gifts by way of bequest or inheritance, including RRSPs, RRIFs and life insurance**
 - 2. Inter-charity gifts received by an arm’s length charitable organization to be expended in the next 5 years or less on its charitable activities**
 - 3. Ten-year gifts**
 - 4. Inter-charity transfer gifts by way of bequest or inheritance (#1 above) and ten-year gifts (#3 above), but not #2 above**

21

VARIABLE A.1 - “enduring property” (cont’d)

1. Gifts by way of bequest or inheritance

- Includes bequests or inheritances from a donor
- Also includes direct designation of a charity as a beneficiary of an RRSP, RRIF or life insurance policy
- Applies in respect of deaths after 1998, which retroactivity may lead to hardship for charities that relied on the earlier position of CRA that such direct designations would not be included in the charities’ DQ from 2000 to the present

22

VARIABLE A.1 - “enduring property” (cont’d)

- Under the previous DQ rules, “gifts of capital” received by way of bequests or inheritance are not subject to the 80% DQ rules
- Now, these gifts will no longer be limited to “gifts of capital” received by way of bequests or inheritance, but also include gifts of income - therefore a testamentary income interest received by a charity would be included

23

VARIABLE A.1 - “enduring property” (cont’d)

2. Inter-charity gifts received by a charitable organization to be expended in the next five years in its charitable activities

- Gifts received by charitable organizations from other registered charities (cannot be gifts received by foundations)
- More than 50% of the directors of the transferor charity must deal at arm’s length with each director of the transferee charitable organization

24

VARIABLE A.1 - “enduring property” (cont’d)

- **The gift must be subject to a trust or direction by the transferor charity requiring that the gift be utilized by the transferee charity within five years**
 - (i) to acquire a tangible capital property of the charitable organization to be used directly in charitable activities or administration,**
 - (ii) in the course of a program of charitable activities of the charitable organization that could not reasonably be completed before the end of the first taxation year of the charitable organization ending after the taxation year in which the gift was received, or**
 - (iii) any combination of (i) and (ii)**

25

VARIABLE A.1 - “enduring property” (cont’d)

3. Ten-year gifts

- **A gift from a donor to a registered charity subject to a trust or a direction that the gift is to be held for at least ten years, i.e. endowment**
- **A ten-year gift cannot be created by a charity transferring a gift to another charity**
- **The trust or direction may permit the original recipient charity to transfer the ten-year gift to another charity**

26

VARIABLE A.1 - “enduring property” (cont’d)

- **The trust or direction may permit the original recipient charity or a transferee charity to expend realized capital gains from the ten-year gift before the end of the hold period required by the donor**

27

VARIABLE A.1 - “enduring property” (cont’d)

- 4. Inter-charity transfer of ten-year gifts and gifts by way of bequest or inheritance**
 - Gifts by way of bequest or inheritance and ten-year gifts (but not 5-year gifts) from either an original recipient charity or another transferee charity
 - If the gift is a ten-year gift, the gift must be subject to the same terms and conditions under the trust or direction after the transfer

28

VARIABLE A.1 - “capital gains pool”

- Introduced new concept “capital gains pool”, which is a notional account to keep track of the amount of capital gains realized by a charity from the disposition of enduring property
- Defined in subsection 149.1(1)
- To allow encroachment of enduring property, i.e. to allow charities to use realized capital gains of enduring property to meet the 3.5% DQ
- A.1(a) may be reduced by A.1(b), which is an amount claimed by a charity that may not exceed the lesser of 3.5% of investment assets and the capital gains pool for the year

29

VARIABLE A.1 - “capital gains pool” (cont’d)

- capital gains pool of a charity for a taxation year is
 - (a) the total of all capital gains of the charity from the disposition of enduring property after March 22, 2004 and before the end of the taxation year that is declared by the charity in its information return for the taxation year during which the disposition occurred (other than a capital gain from a disposition of a bequest or an inheritance received by the charity in a taxation year that included any time before 1994),
 - less
 - (b) the total of all amounts, each of which is the amount, determined for a preceding taxation year of the charity that began after March 22, 2004, that is the lesser of the amount determined of the charity’s DQ under A.1(a) and the amount claimed by the charity under paragraph A.1(b)

30

VARIABLE A.1 - “capital gains pool” (cont’d)

- Charities are now able to encroach on the realized capital gains from enduring property, provided that the terms of the gift permit such encroachment, but only up to the lesser of the amount of the 3.5% DQ and the amount in the capital gains pool
- Charities will need to decide how much to claim within the permitted encroachment limit of the capital gains pool
- Charities should track their capital gains pool each year on their T3010A
- Difficult to decide what is capital gain for some property, e.g. mutual funds

31

VARIABLE A.1 - “capital gains pool” (cont’d)

- Any encroachment above the permitted encroachment limit (i.e. 3.5% DQ for that year) will be subject to an 80% DQ under A.1(a)(i) and therefore only the remaining 20% would be available to be used to meet the 3.5% DQ (or 100% DQ under A.1(a)(ii), with nothing left to meet the 3.5% DQ)
- The combination of the yearly tracking requirement for the capital gains pool and the determination of what is a capital gain will make the calculation of the disbursement quota challenging for charities to comply with

32

VARIABLE B.1

- A charity must expend 3.5% of assets not used directly in its charitable activities or administration
- $B.1 = C \times .035 [D - (E + F)]$
365
- C = number of days in the taxation year
 - To prorate B.1 if there are less than 365 days in the charity’s taxation year

33

VARIABLE B.1 (cont'd)

- Amount of D
 - The 3.5% DQ is in general based on “D”
 - D = average value of the charity’s assets in the 24 months immediately preceding the taxation year that were not used directly in charitable activities or administration of the charity

34

VARIABLE B.1 (cont'd)

- D must be greater than \$25,000, otherwise the 3.5% DQ does not apply, i.e. *de minimis* threshold
- *de minimis* threshold is intended to provide relief to small charities, although it is generally considered too low for an effective threshold

35

VARIABLE B.1 (cont'd)

- Valuation of assets
 - The calculation of the value of the charity’s assets referred to in D is set out in Regulations 3700 to 3702 of the *Income Tax Regulations*
 - Average value of the charity’s assets in the 24 months immediately preceding the taxation year – need to divide the prior 24-month period into 2 to 8 equal periods, compute the value of the asset at the end of each period, add the value for each period, divide the total by the number of periods chosen

36

VARIABLE B.1 (cont'd)

- Once the number of periods is chosen, will require CRA's approval to change it
- Different valuation for different types of property
- E.g. for private company shares – the fair market value on the last day of each period
- E.g. shares listed on a prescribed stock exchange – the closing price or the average of the bid and asked prices on the last day of each period (or the last preceding day for which there was a closing price or bid and asked prices)

37

VARIABLE B.1 (cont'd)

- **D – (E + F)**
 - In order not to require an additional 3.5% disbursement of the property already required to be disbursed under A and A.1, it is necessary to deduct those amounts from D before calculating the 3.5% DQ
 - Must deduct from D two amounts (i.e. E and F) before calculating 3.5% DQ

38

VARIABLE B.1 (cont'd)

- $E = A.1(a)(ii) + 5/4$ of $(A + A.1(a)(i))$
- i.e. the full amount of the following:
 - enduring property transferred to another charity in the year, i.e. A.1(a)(ii)
 - gifts received in the preceding year, i.e. $5/4$ of A
 - enduring property expended in the year, i.e. $5/4$ of A.1(a)(i)
- $F = 5/4$ of B, i.e. 100% of all amounts received from registered charities in its immediately preceding taxation year

39

VARIABLE B.1 (cont'd)

- **Application to charitable organizations**
 - Only public and private foundations had been subject to the 4.5% DQ
 - The reduced 3.5% DQ now also applies to charitable organizations
 - Because charitable organizations can also hold capital endowments from which investment income is generated
 - Removes a key difference between charitable organizations and foundations

40

VARIABLE B.1 (cont'd)

- For charitable organizations registered after March 22, 2004, the 3.5% DQ will apply to their taxation years that begin after March 22, 2004
- For charitable organizations registered before March 23, 2004, the 3.5% DQ will apply to their taxation years that begin after 2008, to allow charitable organizations time to adjust to the new rule

41

VARIABLE B.1 (cont'd)

- **3.5% DQ rate**
 - 4.5% DQ reduced to 3.5%
 - Based on the current real rate of return minus 20% attributable to administrative costs
 - More representative of historical long-term real rates of return earned
 - Rate to be reviewed periodically (but amendment of the Act is required)

42

VARIABLE B.1 (cont'd)

- Must disburse 3.5% regardless of whether the return is actually 3.5%
- If a charity's actual return on its investments exceeds 3.5%, it can continue to accumulate it if it chooses to (there is no obligation to expend it)

43

VARIABLE B.1 (cont'd)

- If a charity's actual return on its investments is less than 3.5% (including no return or loss), it may:
 - encroach on its realized capital gains from its capital gains pool (see below)
 - utilize 20% of receipted donation (which is not included in DQ)
 - utilize other unreceipted income (which is not included in DQ)
 - utilize disbursement excess from the previous 5 years or in the following year

44

EXPENDITURES THAT COUNT TOWARDS SATISFYING DQ

- Paragraphs 149.1(2)(b), (3)(b), (4)(b)
- The following expenditure may be counted toward satisfying a charity's DQ
 - Expenditures on charitable activities carried on by the charity itself
 - Gifts made by the charity to qualified donees

45

EXPENDITURES THAT COUNT TOWARDS SATISFYING DQ (cont'd)

- “Qualified donees” are defined in subsection 149.1(1) to be entities that can issue official donation receipts for gifts from individuals and corporations, including
 - registered charities in Canada
 - registered Canadian amateur athletic associations
 - registered national arts service organizations
 - housing corporations resident in Canada constituted exclusively to provide low-cost housing for the aged
 - Canadian municipalities
 - the United Nations and its agencies

46

EXPENDITURES THAT COUNT TOWARDS SATISFYING DQ (cont'd)

- universities outside Canada listed in Schedule VIII of the Income Tax Regulations
- charitable organizations outside Canada to which Her Majesty in right of Canada (the federal government or its agents) has made a gift during the fiscal period or in the 12 months immediately preceding the period
- Her Majesty in right of Canada or a province (that is, the federal government, a provincial government, or their agencies)
- municipal or public bodies performing a function of government in Canada (proposed addition on February 27, 2004, not enacted yet)

47

EXPENDITURES THAT COUNT TOWARDS SATISFYING DQ (cont'd)

- The following are deemed not to be expenditures on charitable activities or gifts to qualified donees (subsection 149.1(1.1))
 - Specified gifts
 - Expenditures on political activities
 - Transfers to other registered charities to satisfy penalties under Part V of the Act

48

NOT SPENDING ENOUGH TO MEET DQ

- If a charity does not spend enough to meet its DQ, it may be met by:
 - utilizing 20% of receipted donations (which the charity is not required to disburse)
 - utilizing other unreceipted income (which the charity is not required to disburse)
 - utilizing disbursement excess from the previous 5 years or in the following year
 - if it does not meet the 3.5% DQ - encroaching on its realized capital gains from its capital gains pool

49

NOT SPENDING ENOUGH TO MEET DQ (cont'd)

- A charity may apply under subsection 149.1(5) to have its DQ reduced for the particular taxation year (form T2094) if:
 - (1) the charity has used its disbursement excess from prior years and
 - (2) the disbursement shortfall is due to extraordinary circumstances beyond the charity's control.
- Such a relief would only be granted to allow a charity to correct a deficiency in meeting its DQ, and would not be granted for an indefinite period.

50

NOT SPENDING ENOUGH TO MEET DQ (cont'd)

- Failure to meet DQ may lead to revocation of charitable status (paragraphs 149.1(2)(b), (3)(b), (4)(b))

51

ACCUMULATIONS

- A charity may apply to CRA for permission to accumulate property over a specified period of time for a specified purpose (subsection 149.1(8))
- The accumulated property and the income earned are deemed to have been expended on charitable activities in the year in which they are accumulated

52

ACCUMULATIONS (cont'd)

- If the charity fails to use the property for the intended purpose, the property and the income shall be deemed to be receipted revenue of the charity, and be subject to the 80% DQ to be disbursed in the following year
- Alternatively, a charity can encourage its donors to donate enduring property to the charity in order to be able to accumulate funds, since the disbursement of enduring property is delayed until it is actually expended or transferred to another charity

53

DISBURSEMENT EXCESS

- Where a charity disburses funds in its charitable activities and/or made gifts to qualified donees in excess of the required DQ, the disbursement excess can be:
 - carried back 1 year to meet DQ shortfall in that year and
 - carried forward 5 years and applied toward DQ obligation for those years
- Subsection 149.1(20)

54

INTER-CHARITY TRANSFERS

- **Gifts transferred to charitable organizations**
 - Previously, only transfers from registered charities to public and private foundations were subject to the 80% DQ
 - i.e. transfers from registered charities to charitable organizations were exempt from the 80% DQ
 - Now, all transfers of funds from one charity to another (but excluding enduring property) will be subject to the 80% disbursement obligation, i.e. 80% of the gift must be expended in the following taxation year

55

INTER-CHARITY TRANSFERS (cont'd)

- Exception for a “specified gift” will continue to apply
- Apply to transfers received by charitable organizations in taxation years that begin after March 22, 2004

56

INTER-CHARITY TRANSFERS (cont'd)

- **Three categories of property transfers**
 - Ordinary gifts (i.e. not specified gifts, not enduring property)
 - Specified gifts
 - Enduring property that has not been designated as specified gifts by the transferor charity

57

INTER-CHARITY TRANSFERS (cont'd)

Transfer of ordinary gifts

- i.e., neither specified gifts nor enduring property
- For the transferor charity, the transfer can be used to satisfy its DQ obligation
- For the transferee charity, there will be an obligation to expend the gift in the following year (because of variable B in DQ formula)
- If the transferee charity is either a charitable organization or a public foundation, the DQ obligation is 80% of the gift

58

INTER-CHARITY TRANSFERS (cont'd)

- If the transferee charity is a private foundation, the DQ obligation is 100% of the gift
- For example: \$100 ordinary gift transferred from Charity A to Charity B

59

INTER-CHARITY TRANSFERS (cont'd)

	Transferor Charity A		Transferee Charity B	
	DQ obligation	DQ satisfaction	DQ obligation	DQ satisfaction
Year 1	N/A	\$100 expended can be used to satisfy its DQ obligations of Charity A in year 1	•Charitable organizations and public foundations have to expend \$80 in year 2 •Private foundations have to expend \$100 in year 2	N/A

60

INTER-CHARITY TRANSFERS (cont'd)

- When Charity B expends the ordinary gift in the following year, Charity B can use the expenditure to satisfy its DQ obligation in year 2 mentioned above

	Transferee Charity B	
	DQ obligation	DQ satisfaction
Year 2	N/A	The \$ expended can be used to satisfy DQ obligation in year 2

61

INTER-CHARITY TRANSFERS (cont'd)

Transfer of specified gifts

- For the transferor charity, the transfer cannot be used to satisfy its DQ obligation
- For the transferee charity, there is no obligation to expend the specified gift in the following year

62

INTER-CHARITY TRANSFERS (cont'd)

- For example: \$100 specified gift transferred from Charity A to Charity B

	Transferor Charity A		Transferee Charity B	
	DQ obligation	DQ satisfaction	DQ obligation	DQ satisfaction
Year 1	N/A	--- Charity A cannot use the \$100 to satisfy its DQ obligation in year 1	--- Charity B is not obligated to expend any of the \$100 in year 2	N/A

63

INTER-CHARITY TRANSFERS (cont'd)

- When Charity B expends the specified gift in a subsequent year, Charity B can use the expenditure to satisfy its other DQ obligations in that year

	Transferee Charity B	
	DQ obligation	DQ satisfaction
Subsequent Year	N/A	\$100 expended can be used to satisfy DQ obligations in that year

64

INTER-CHARITY TRANSFERS (cont'd)

Transfer of enduring property

- The following rules do not apply to enduring property received as specified gifts
- For the transferor charity, there will be a DQ obligation to expend 100% of the enduring property in the year
- The DQ obligation is met by the transfer itself
- For the transferee charity, there is no obligation to expend the enduring property in the following year

65

INTER-CHARITY TRANSFERS (cont'd)

- For example: \$100 enduring property transferred from Charity A to Charity B

	Transferor Charity A		Transferee Charity B	
	DQ obligation	DQ satisfaction	DQ obligation	DQ satisfaction
Year 1	Charity A will be obligated to expend 100% of the fmv of the enduring property in year 1	The DQ obligation created by the transfer is met by the transfer itself	--- no effect on DQ (b/c enduring property is exempt from B in DQ formula)	--- no effect on DQ until Charity B expends the gift

66

INTER-CHARITY TRANSFERS (cont'd)

- When Charity B expends the enduring property in a subsequent year, Charity B will be obligated to expend 80% of the enduring property
- The DQ obligation for that year would be met by the expenditure of the enduring property

	Transferee Charity B	
	DQ obligation	DQ satisfaction
Subsequent Year	Charity B will be obligated to expend 80% in the year	The \$ expended can be used to satisfy DQ obligation in the year

67

INTER-CHARITY TRANSFERS (cont'd)

- However, if Charity A designates the enduring property as a specified gift, then Charity A would not be able to use the expenditure to satisfy its DQ obligation in the year of transfer
- Charity B would receive the enduring property as a specified gift, which would not create any DQ obligation to expend the specified gift
- When Charity B expends the gift in a subsequent year, Charity B would be able to use the expenditure to satisfy its other DQ obligations in that year
- Limited reasons for the transferor charity to agree to transfer the enduring property as a specified gift

68

INTER-CHARITY TRANSFERS (cont'd)

	Transferor Charity A		Transferee Charity B	
	DQ obligation	DQ satisfaction	DQ obligation	DQ satisfaction
Year 1	Charity A will be obligated to expend \$100 in year 1	Charity A cannot use the \$100 to satisfy its DQ obligation in year 1	Charity B is not obligated to expend any of the \$100 in the following year	N/A
Subsequent Year	N/A	N/A	N/A	\$100 expended can be used to satisfy other DQ obligations in that year

69

INTER-CHARITY TRANSFERS (cont'd)

Transfer as a result of penalty

- A transfer to another registered charity for a penalty under Part V of the *Income Tax Act* does not qualify as an expenditure for the purposes of calculating the transferor's DQ
- Applies in respect of notices of intention to revoke the registration of a charity and to notices of assessment issued by the Minister after the day that is 30 days after Royal Assent

70

SOME SUGGESTIONS

- Inter-charity transfers – transferor should not designate an enduring property as a specified gift unless it serves a purpose
- It is not necessary to issue a charitable receipt on inter-charity transfers
- Recipient charity should do due diligence
 - Ascertain source of a gift (from individual? from a private foundation?)
 - Ask if gift is ordinary gift, enduring property or specified gift

71

SOME SUGGESTIONS (cont'd)

- Donor charity should consider how to designate the gift having regard to its own DQ
- Donor agreements
 - follow the formal requirements for an enduring property direction (name and address of donor; identify donee charity including name and charity registration number; indicate amount of gift; serial number of official donation receipt)
 - specify if capital to be retained for 10 years or in perpetuity

72

SOME SUGGESTIONS (cont'd)

- specify what is to happen to capital after the hold period for ten-year gifts if it is not to be held in perpetuity
- provide for flexibility to permit encroachment of capital to satisfy DQ test and also to take into account possible changes to the DQ in the future
- permit transfer to another charity by change of trustee if possible that might transfer whole endowment to another charity

73

SOME SUGGESTIONS (cont'd)

- Capital gains pool - track capital gains on annual basis: issues re income trusts, mutual funds etc.
- With respect to 5-year gifts
 - these can only be between two charities
 - the recipient charity must be a charitable organization
 - must be expended within 5 years

74

CONCLUSION

- Attempt by the Department of Finance to address a number of problems facing charities involving DQ
- Very complex new DQ rules - difficult, if not impossible, for the average charity to understand, let alone comply with
- Concerns about removing key differences between charitable organizations and public foundations

75

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