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SUMMIT**

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UPDATE ON CHARITY LAW

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OVERVIEW

- 2016 Federal Budget Highlights
- Income Tax Changes Regarding Estate Gifts
- Recent CRA Publications and Website Updates
- Recent Tax Decisions, Rulings, and Interpretations Involving Charities
- Corporate Law Update
- Provincial Legislation Update
- Other Case Law of Interest

2016 FEDERAL BUDGET HIGHLIGHTS

- Federal Budget Legislative Development
 - March 22, 2016 Federal Budget Introduced
 - Budget Implementation Act 2016, No.1, Received Royal Assent June 22, 2016
 - Budget Implementation Act 2016, No.2, Introduced October 25, 2016
- Donation of Sale Proceeds of Real Estate and Shares of Private Corporations
 - Budget announced that it is not proceeding with proposal to provide exemption from capital gains for dispositions involving private company shares or real estate where cash proceeds are donated to qualified donee within 30 days

- Consultation with Sector on Political Activities
 - November 13, 2015, Minister's Mandate Letter
 - January 20, 2016, wind down of charity audit program involving political activities announced
 - September 27, 2016, Minister announced public consultation to clarify the rules on political activities by charities
- Acquisition of Interest in Limited Partnerships by Registered Charities
 - Confirm announcement in Budget 2015
 - Allows registered charities, including private foundations and RCAAAs, to passively invest in limited partnerships without being considered to be carrying on the business of the partnership

- Amendments to Donation Tax Credits for Trusts
 - With increase in the top marginal rate to 33% in December 2015, a corresponding 33% charitable donation tax credit was announced in the Budget for trusts, as well as other taxpayers
- Sales and Excise Tax Measures
 - Where a charity receives a donation and provides a property or service to the donor in return, that part of the donation that exceeds the value of property or services will not be subject to HST/GST

INCOME TAX CHANGES REGARDING ESTATE GIFTS

- There have been significant changes to rules relating to testamentary charitable gifting as of January 1, 2016
- Testamentary donation regime changed from donation by deceased individual immediately before death to donation by estate at time of transfer to charity
- Donation tax receipt is for fair market value at time of transfer to charity
- New concept of graduated rate estate (GRE) is important
 - GRE is testamentary trust which arises on death of an individual and can last up to 36 months

- Two of the more important benefits for testamentary charitable gifting are:
 - (a) If donation made during GRE period or up to 24 months thereafter by what was GRE then donation tax credit can be carried back over 5 time periods...the 36 months of the GRE and more importantly the year of death and the year prior to death
 - (b) Gifts of publicly traded shares have nil inclusion rate (i.e. no deemed disposition on death) if made by GRE or former GRE within 60 months
- For more details, see later presentation by Sheila Crummey on “Tax Update for Estate Practitioners”

RECENT CRA PUBLICATIONS AND WEBSITE UPDATES

- New Guidance on Becoming a Qualified Donee: Low-Cost Housing Corporations for the Aged
 - “Aged” means 55 years of age or over
 - Comfortable but modest rental accommodation at relatively low rents
- Updated Charities Audit Statistics for 2015-2016
 - CRA audits roughly 1% of charities each year
 - Website reflects the following audit outcomes:

2016 CRA AUDIT OUTCOMES

No Change	40
Education	444
Compliance Agreement	111
Voluntary Revocation	22
Penalty/suspensions	4
Notice of intent to Revoke Issued	21
Annulment	59
Other (includes other audit activities such as pre-registration and Part V audits)	25
Total	726

- New Guidance on Requirements for Foreign Charities to Become Qualified Donees
 - New Guidelines issued on June 16, 2016
 - If foreign charity meets criteria in the Guidance it has been registered, the foreign charity will be a qualified donee for a period of 24 months from the date that it receives the gifts from the Canadian government
- Length of Retention for Church Offering Envelopes Changes
 - Church offering envelopes must be kept for 6 years
 - Previously only 2 years was required

- New Infographic to Assist Charities Calculate When Their T3010 is Due Each Year



RECENT TAX DECISIONS, RULINGS, AND INTERPRETATIONS INVOLVING CHARITIES

- FCA Revokes Charitable Status Based on Failure to Maintain Proper Books & Records (*Al Uloom* Decision)
 - Failed to maintain books and records and failed to file annual information return
 - Charity asserted that given remedial actions that it had taken that revocation was too extreme
 - FCA disagreed and found that failure to maintain books and records was serious and revocation was justified
 - Underscores the importance of maintaining books and records

- FCA Dismisses Revocation Appeal (*Opportunity for the Disabled Foundation*)
 - Previous audit led to compliance agreement
 - Current audit found similar problems identified in compliance agreement
 - No second chance given by FCA on failure to comply
 - Therefore revocation
 - Underscores the importance of complying with a compliance agreement and that all board members monitor its compliance
 - Loss of charitable status can lead to directors being found to be “ineligible individuals”

- Ontario Court Rules that CRA Does Not Owe Duty of Care for Disallowed Tax Shelters (*Deluca v. The Queen*)
 - The Court found that there is no duty to warn tax payers away from participating in tax shelter schemes that prove unsuccessful
- FCA Holds That Prevention of Poverty is Not a Charitable Purpose (*Credit Counselling Decision*)
 - There is no charitable purpose at common law recognizing “prevention of poverty” as a charitable purpose
 - For relief of poverty, the person receiving the assistance must be a person then in poverty
 - For annulments, the Court held that the same standard applies as in a revocation appeal

CORPORATE LAW UPDATE

- Corporate Canada Postings Re: *Canada Not-for-Profit Corporations Act*
 - January 16, 2016, notice confirms that information about federal corporations is public even after dissolution
 - January 15, 2016, notice explains policy on how corporations may apply to extend time for calling an annual meeting of members
- Technical Amendments to the *Canada Not-for-Profit Corporations Act* (September 28, 2016)
 - Includes definition of person who has become “incapable”
 - Requires Director to publish notice of certain decisions under the CNCA

- Update on *Ontario Not-for-Profit Corporations Act*
 - No change since September 2015
 - As such, ONCA will not be proclaimed until at least 24 months after technical amendments have passed
 - Best to proceed with necessary amendments under OCA now rather than wait for ONCA
- Unfair Proxy Form for Members’ Meeting Revised by Ontario Court (*Ontario Medical Association*)
 - Court will intervene if proxy would likely compromise the fair conduct of a meeting

PROVINCIAL LEGISLATION UPDATE

- Ontario Legislation on Forfeited Property to Come into Force on December 10, 2016
 - *Forfeited Corporate Property Act, 2015*
 - *Escheats Act, 2015*
 - Both Acts have application to incorporated charities and not-for-profits in Ontario facing either intentional or unintentional dissolution of their corporate status, including involuntary dissolution under the CNCA for failure to continue
- Quebec Ends Duplicate Registration Process for Registered Charities
 - March 16, 2016, Quebec announced that it is ending duplicate charitable registration process

- Amendments to the *Ontario Lobbyists Registration Act* Come into Effect July 1, 2016
 - In house lobbyist rules means that any organization, including a charity or a not-for-profit, which has employees collectively spending 50 hours or more on lobbying must now register
 - Duty to register is placed upon the senior officer of the organization as opposed to the individual
 - Significant penalties apply, \$25,000 for first offence and \$100,000 for subsequent offences

OTHER CASE LAW OF INTEREST

- Discriminatory Will Provision Ruled Invalid (*Royal Trust v. University Western Ontario*)
 - Award for “Caucasian (white) male, single heterosexual students” ruled discriminatory
 - Award for “Caucasian (white) girl who is not a feminist or a lesbian” ruled discriminatory
- Affiliation Agreement Upheld by BC Court of Appeal (*Habitat for Humanity Decision*)
 - The court will uphold reasonable terminal provisions in affiliation agreements
 - However, important to comply with process for disaffiliation set out in agreement

- Alberta Court of Appeal Affirms Court’s Jurisdiction to Review Unfair Church Discipline (*Wall v. Jehovah’s Witnesses*)
 - Court exercised jurisdiction to review decision made by religious organization where discipline or expulsion was carried out in a manner that does not reflect the principles of natural justice
 - The member was not provided with details of the allegations or explanation of the disciplinary process, or written reasons for being “disfellowshipped”