

DISBURSEMENT QUOTA FORMULA UNDER BILL C-33 (MARCH 2004 FEDERAL BUDGET ENABLING LEGISLATION)

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A. INTRODUCTION

Draft amendments to the *Income Tax Act* (the “Act”) implementing the March 2004 Federal Budget (“2004 Budget”) were released on September 16, 2004 (“September 2004 Amendments”), and further amended and consolidated by a *Notice of Ways and Means Motion* tabled by the Minister of Finance in the House of Commons on December 6, 2004 (“December 2004 Amendments”). As a result, Bill C-33, *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 23, 2004* was passed by Parliament on February 25, 2005 and received first reading in the Senate on March 7, 2005. These amendments introduced a new regulatory regime for charities, new intermediate sanctions, a more accessible appeals regime, improved transparency and more accessible information, as well as new disbursement quota rules for charities. The proposed September 2004 Amendments have already been discussed in *Charity Law Bulletin* Nos. 54, 55, 56 and 59.¹ The proposed December 2004 Amendments have been discussed in *Charity Law Bulletin* No. 61.² As explained in these previous *Charity Law Bulletins*, the proposed new

¹ See *Charity Law Bulletin* No. 54 dated October 29, 2004, *Charity Law Bulletin* No. 55 dated October 30, 2004, *Charity Law Bulletin* No. 56 dated October 31, 2004, and *Charity Law Bulletin* No. 59, dated November 26, 2004, all of which are available on our website at www.charitylaw.ca.

² See *Charity Law Bulletin* No. 61 dated January 12, 2005, available on our website at www.charitylaw.ca.

disbursement quota rules for charities are complicated and, as such, it is anticipated that they will be challenging for charities to comprehend and comply with. This *Charity Law Bulletin* is intended to summarize these new rules in both a table and flow chart format in order to assist charities and their advisors in developing a better understanding of the new rules.

B. SUMMARY OF THE PROPOSED NEW DISBURSEMENT QUOTA RULES

In the December 2004 Amendments, the algebraic formula for calculating the disbursement quota was revised as follows:

$$A + A.1 + B + B.1$$

The calculation of the disbursement quota under this proposed new disbursement quota formula is explained in detail in *Charity Law Bulletin* Nos. 59 and 61 and the readers are encouraged to review those *Charity Law Bulletins* for a detailed explanation.

Set out below are a table and a flow chart summarizing the calculation of the disbursement quota. The table below has previously been included in both *Charity Law Bulletin* Nos. 59 and 61. For ease of reference, the flow chart has been color coded to reflect the effect of gifts of different types of property and property transfers between charities on the disbursement quota calculation. Both the table and flow chart are intended to be self-explanatory.

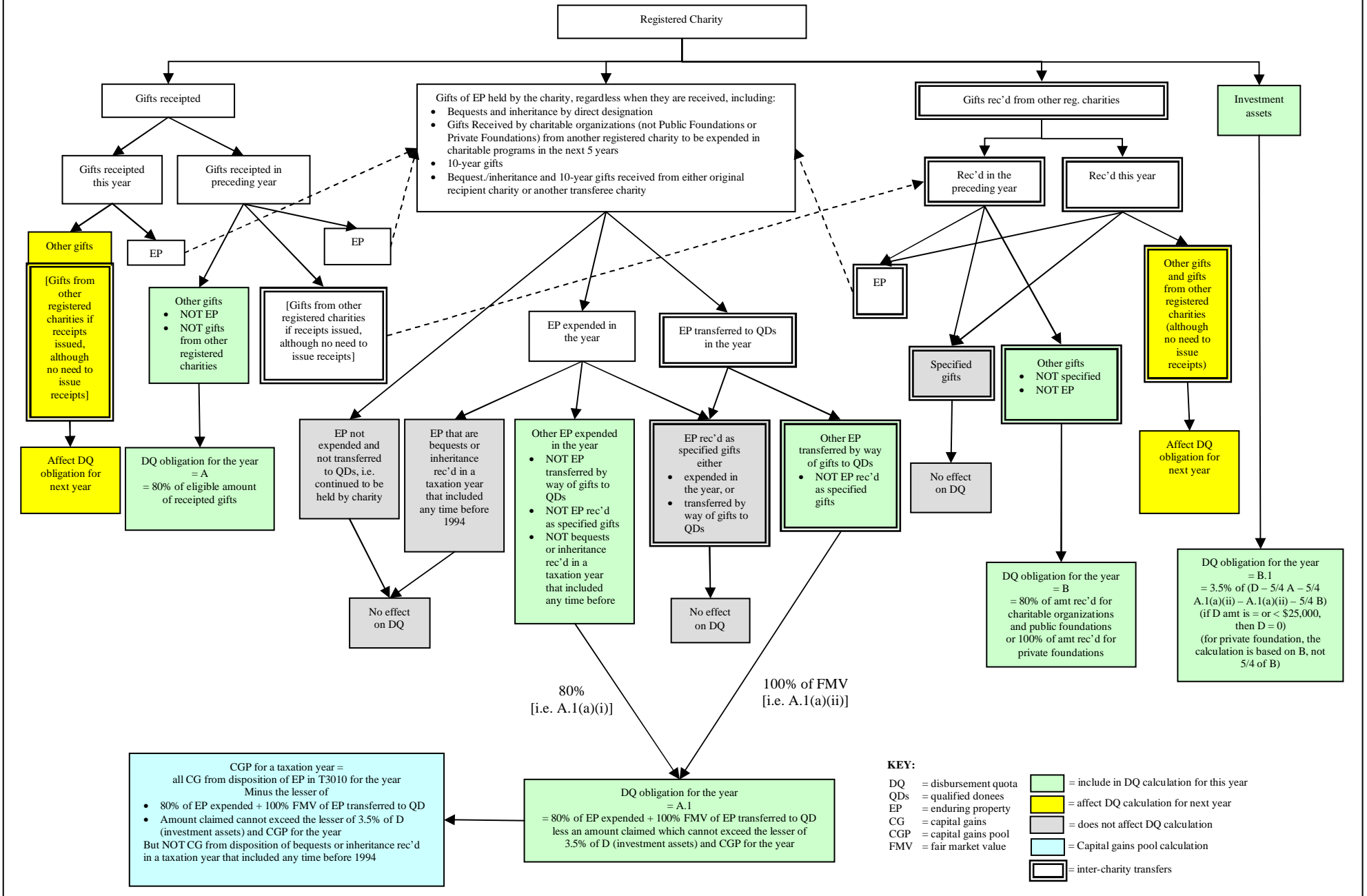
Calculation of disbursement quota under Bill C-33				
Registered Charities	Proposed Disbursement Quota = A + A.1 + B + B.1			
	"A"	"A.1"	"B"	B.1
Charitable Organizations and Public Foundations	<p>80% of all eligible amount of gifts for which the charity issued donation receipts in its immediately preceding taxation year, other than:</p> <p>(a) gifts of enduring property;</p> <p>(b) gifts received from other registered charities.</p> <p>"Enduring properties" include properties that are:</p> <p>(a) gifts of bequest or inheritance, including life insurance proceeds, RRSPs, and RRIFs by direct beneficiary designation</p> <p>(b) gifts received by a charitable organization from another registered charity, where the majority of directors and trustees of the donor charity deal at arm's length with the recipient charitable organization, provided that the gift is subject to a trust or direction requiring that the gift be utilized over a period not exceeding five years in the course of a program of charitable activities or for the purpose of acquiring capital property to be used directly in the charitable activities (Note that this paragraph does not apply to gifts received by public foundations)</p> <p>(c) ten-year gifts</p> <p>(d) gifts received by the charity as a transferee of enduring property that are gifts of bequest or inheritance and ten-year gifts from either an original recipient charity or another transferee charity, provided that if the gifts are ten-year gifts, the gifts are subject to the same terms and conditions under the trust or direction</p>	<p>The amount by which</p> <p>(a) the total of</p> <p>(i) 80% of the amount by which the total amount of enduring property owned by the charity to the extent that they are expended in the year, and</p> <p>(ii) the fair market value (at the time of the transfer) of enduring property (other than enduring property that was received by the charity as a specified gift) transferred by the charity in the taxation year by way of gift to qualified donees</p> <p>exceeds</p> <p>(b) the amount claimed by the charity that may not exceed the lesser of</p> <p>(i) 3.5% of the amount determined for "D" and</p> <p>(ii) the capital gains pool of the charity for the taxation year (defined in the note to the table)</p> <p>NOTE:</p> <p>"Enduring property" not included in subparagraph (a)(i) of "A.1" =</p> <p>(a) enduring properties described in subparagraph (a)(ii) of "A.1" ;</p> <p>(b) enduring properties received by the charity as "specified gifts"; and</p> <p>(c) bequests or inheritance received by the charity in a taxation year that included any time before 1994</p>	<p>80% of all amounts received from other registered charities in its immediately preceding taxation year, other than specified gifts and enduring property</p>	<p>$B.1 = C \times 0.035 [D - (E + F)] / 365$</p> <p>♦ "C" = number of days in the taxation year</p> <p>♦ "D" =</p> <p>(a) 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, if that amount is greater than 25,000</p> <p>(b) in any other case, it is nil</p> <p>♦ "E" = "A.1"(a)(ii) + 5/4 of ("A" + "A.1"(a)(i))</p> <p>♦ "F" = 5/4 of "B" which is = 100% of all amounts received from registered charities in its immediately preceding taxation year</p>
Private Foundations	same as above	same as above	Same as above, except 100%, rather than 80%	Same as above, except that "F" = "B", not 5/4 of "B"

NOTE: "Capital gains pool" of a registered charity for a taxation year = the total of all capital gains of the charity from the disposition of enduring properties after March 22, 2004 that are declared by the charity in its T3010 Information Return for the taxation year during which the disposition occurred, that exceeds the lesser of the following two amounts:

- The amount determined according to paragraph (a) of variable "A.1", i.e. the total of 80% of enduring property expended by the charity under subparagraph (a)(i) and the full fair market value of enduring property transferred by the charity to a qualified donee under subparagraph (a)(ii).
- The amount claimed by the charity according to paragraph (b) of variable "A.1", i.e. the amount claimed by the charity that may not exceed the lesser of 3.5% of the charity's investment assets and its capital gains pool.

However, the capital gain from the disposition of a bequest or inheritance received by the charity before 1994 is not included.

Calculation of Disbursement Quota under Bill C-33



C. CONCLUSION

It is the intention of the authors that the table and the flow chart will serve as helpful visual aids to assist charities and their advisors in understanding the calculation of the disbursement quota. The implication of inter-charity transfers of various types of property on the disbursement quota obligation and satisfaction of disbursement quota of both the transferor charities and the transferee charities will be explained in a subsequent *Charity Law Bulletin*.