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## CRA RELEASES NEW T3010(13)

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*By Terrance S. Carter\**

### A. INTRODUCTION

Canada Revenue Agency (“CRA”) released on January 24, 2013, a new T3010(13) *Registered Charity Information Return*,<sup>1</sup> along with updated schedules and other forms<sup>2</sup>. Revision of the T3010 was necessary following legislative changes in Bill C-38, *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures*<sup>3</sup> (“Budget 2012”) pertaining to charities carrying out political activities. Registered charities will need to complete the new T3010(13) when filing for years ending **on or after January 1, 2013**. CRA has also revised the accompanying Guide T4033, *Completing the Registered Charity Information Return*<sup>4</sup> (“the Guide”).

This *Charity Law Bulletin* provides a brief summary of the background to the changes made in Budget 2012 that necessitated the new T3010(13), a description of the changes in the T3010(13), how CRA recommends that the new portions of the form be completed, as well as a few general observations about T1030(13) in the concluding comments.

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<sup>1</sup> Canada Revenue Agency. Available online at: <http://www.cra-arc.gc.ca/E/pbg/tf/t3010/README.html>.

<sup>2</sup> Form T1236, *Qualified Donees Worksheet/Amounts Provided to Other Organizations* received minor changes.

<sup>3</sup> First Sess., Forty-first Parl. (Assented to 29 June 2012). Available online at: Parliament of Canada <<http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5686008&file=4>>.

<sup>4</sup> Canada Revenue Agency. Available online at: <http://www.cra-arc.gc.ca/E/pub/tg/t4033/t4033-e.html>.

**B. BACKGROUND**

As a matter of background, in the six months leading up to the 2012 Budget, numerous allegations were made against environmental charities regarding the use of donations claimed to have been received from foreign sources.<sup>5</sup> Specifically, various politicians questioned the appropriateness of foreign funding of environmental charities in Canada if those funds would be used to lobby the government.

Of particular significance was the Senate inquiry that was initiated by Senator Nicole Eaton on February 28, 2012, to study the foreign funding of charities in Canada. This inquiry was largely based on claims by Senator Eaton that such funding was improperly influencing policy discussion in Canada, presumably with regard to governmental projects, such as the Northern Gateway Pipeline.<sup>6</sup> Such accusations lacked credibility given the fact that there are many other segments of the charitable sector in Canada that receive large scale funding from foreign sources each year (such as universities, hospitals and religious organizations) for which the Senator did not allege might be used for political activities. Given these allegations, many expected that Budget 2012 would crack down on charities conducting political activities. However, this did not occur. In fact, Budget 2012 did not significantly impact the ability of charities to become involved in political activities.

Nonetheless, Budget 2012 did make some changes that impacted charities with regard to political activities,<sup>7</sup> two of which are evident in the new T3010(13). The first of these changes was the amendment to the definition of “political activity” under subsection 149.1(1) of the *Income Tax Act* (“ITA”), which was changed to include “the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee”.<sup>8</sup> The second change was the requirement that charities disclose more information concerning their political activities.

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<sup>5</sup> For more information see: Charity Law Bulletin No. 286 by Terrance S. Carter and Karen J. Cooper. *Playing by the Rules Political Activities Fair Game for Charities*. Available online at: [http://www.carters.ca/pub/bulletin/charity/2012/chylb286.htm#\\_ftn2](http://www.carters.ca/pub/bulletin/charity/2012/chylb286.htm#_ftn2).

<sup>6</sup> For Senator Eaton’s statement in the Senate see [http://www.parl.gc.ca/Content/Sen/Chamber/411/Debates/054db\\_2012-02-28-e.htm#70](http://www.parl.gc.ca/Content/Sen/Chamber/411/Debates/054db_2012-02-28-e.htm#70). For a discussion about the launch of the inquiry, see [http://www.huffingtonpost.ca/2012/02/28/nicole-eaton-green-charity-oil-sands-canada\\_n\\_1307440.html?view=print&comm\\_ref=false](http://www.huffingtonpost.ca/2012/02/28/nicole-eaton-green-charity-oil-sands-canada_n_1307440.html?view=print&comm_ref=false).

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Ibid*, at s. 7(3).

## C. DESCRIPTION OF CHANGES TO THE T3010(13)

The expanded definition of “political activity” and the increased reporting requirements for political activities are now found in section C5 of the new T3010(13), as well as the new Schedule 7, *Political Activities*, both of which are described below.

### 1. Questions Under Section C5

While the questions under section C5 in the previous T3010 only required a registered charity to disclose whether it had carried on any political activities during the fiscal year (line 2400) and the total amount it spent on those activities (line 5030), the new form includes more questions and requires more detail to be given.

In the new T3010(13), line 2400 now asks if the charity carried on any political activities during the fiscal year, “including making gifts to qualified donees that were intended for political activities.”<sup>9</sup> This addition derives from Budget 2012’s amendment to the definition of “political activity.” A charity that checks “yes” to participating in this more expansive definition of political activities will be required to complete Schedule 7, which is described below.

Line 5300 is substantively the same in the new T3010(13) as it was previously, asking for “the total amount spent by the charity of these political activities.”<sup>10</sup> However, charities are now asked two additional questions that were not in the previous form. On line 5031, charities are asked how much of the amount reported on line 5030 constituted gifts to qualified donees. In this regard, the Guide states:

The charity should only report on gifts to other qualified donees that were intended for political activities. The charity is not responsible for tracking and reporting on how the funds were actually spent. Further, regardless of whether the funds were ultimately used for political activities, if a purpose of the gift was to fund political activity, it should be reported in line 5031.<sup>11</sup>

Given this new requirement, a charity making a gift to a qualified donee that is not intended to be used for political activities may want to confirm this intention by designating in writing that the gift is not to be used for political activities. As well, charities may want to avoid multi-purpose gifts, since Budget 2012 refers to

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<sup>9</sup> *Supra* note 1.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Supra* note 4.

“a purpose” as opposed to “the purpose.” The lack of detail concerning what a “purpose” means could expose the charity to the risk that any political purpose for any part of the gift could possibly taint the whole gift.

Line 5032 requires a charity to report the total amount it received from outside Canada that was “directed to be spent on political activities”<sup>12</sup> and states that if the charity has entered an amount on line 5032, it must complete Table 3 of Schedule 7. As with line 5031, the Guide notes that line 5032 relates exclusively to the donor’s intended purpose of the funds, requiring the charity to report the total amount that the foreign donor directed it to spend on political activities, irrespective of whether the charity actually spent those funds for such purposes.

## 2. Schedule 7, Political Activities

Schedule 7, consists of three tables. Table 1 requires a charity to describe its political activities, including any gifts that it made to qualified donees that are intended for political activities, and to explain how these political activities relate to its charitable purpose. The Guide provides further detail, stating that charities should complete this table by specifying how the law, policy, or decision of government that the charity tried to influence relates to the charity’s purpose. The Guide provides the following example:

ABC charity is established to promote health by giving medication to cancer patients in Canada. The charity wants the Canadian government to change the drug review process to establish an open border North American standard that would allow drugs currently only approved in the US to be readily sold in Canada.<sup>13</sup>

Table 2 of Schedule 7 requires a charity to disclose how it has conducted its political activities. The charity is required to tick-off whether it has allocated resources in the form of staff, volunteers, finances or property to conduct political activities through any of the following means:

- Media releases and advertisements;
- Conferences, workshops, speeches, or lectures;
- Publications (printed or electronic);
- Rallies, demonstrations, or public meetings;

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<sup>12</sup> *Supra* note 1.

<sup>13</sup> *Supra* note 4.

- Petitions, boycotts (calls to action);
- Letter writing campaign (printed or electronic);
- Internet (Web site, social media (Twitter, YouTube));
- Gifts to qualified donees for political activities; or
- Other (specify).

The Guide provides the following example:

ABC charity organized a rally on Parliament Hill to urge the government to change the drug review process. It used staff to organize and plan the rally and financial resources to rent buses to transport supporters to the rally. In this scenario, in the column marked “Rallies, demonstrations, or public meetings,” tick the boxes under “Staff” and “Financial.”<sup>14</sup>

Lastly, a charity that entered an amount on line 5032 is required to disclose in Table 3 the political activity that the funds were intended to support, the amount received from each country outside Canada, and the corresponding country code. However, there is no requirement that the charity must identify the name of the foreign donors. The Guide states that the charity must report the total amount that the foreign donor directed it to spend, rather than just the amount that it actually spent, and provides the following example:

ABC charity received \$5,000 from an organization in the United States and \$10,000 from an individual in France with a direction from both that the funds are to be spent for the purpose of urging the government to change the drug review process to enable US approved drugs to be readily sold in Canada.<sup>15</sup>

Political Activity	Amount	Code
Urge the government to change to drug review process to enable US approved drugs to be readily sold in Canada.	\$5,000	US
Urge the government to change to drug review process to enable US approved drugs to be readily sold in Canada.	\$10,000	FR

## D. ENFORCEMENT

In addition to these changes, Budget 2012 allocated \$8 million in additional funding to CRA for the purpose of enforcing charities’ compliance with the new rules and empowered CRA with new enforcement

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

mechanisms, including the authority to suspend the tax-receipting privileges of a charity for exceeding the limits in the ITA for political activities (generally 10% of its total resources for a year) or providing inaccurate or incomplete information on its information return. As such, charities are advised to familiarize themselves with the new rules involving political activities before undertaking such activities and take careful steps to keep detailed and consistent books and records.

## E. CONCLUDING COMMENTS

The new T3010(13) fulfils the Budget 2012 mandate that charities are to disclose more information concerning their political activities. However, other than the question in Schedule 7 requiring charities to describe their political activities and how those activities relate to the charitable purpose of the charity, it is not clear how this additional information addresses the only question that really matters under Subsection 149.1(6.1) and (6.2) of the ITA; that being, whether the charity has exceeded 10% (subject to certain remedial provisions under CRA's *Political Activities Policy Statement*, CPS-022<sup>16</sup>) of the total resources of the charity for the fiscal year in pursuing political activities. What the resources of a charity consist of and how a charity is to calculate the 10 % resource limit is not addressed in either the new T3010(13) or in the Guide. As such, it is uncertain how CRA is going to enforce the 10% resource limit when charities lack clear guidance on how to calculate whether they are within the limit. Hopefully, the new T3010(13) will not contribute to creating a reverse onus situation where a charity under CRA audit will be expected to prove that it has not exceeded its 10% resource limit when the charity lacks the tools to make that calculation in the first place, as such a result would be manifestly unfair. Hopefully CRA will avoid such measures in pursuing their compliance initiatives.