

BILL C-32 WILL INCREASE DQ, AFFECT TRUST REPORTING, AND MAKE OTHER CHANGES TO THE INCOME TAX ACT

*By Terrance S. Carter, Theresa L.M. Man and Jacqueline M. Demczur**

A. INTRODUCTION

THE FALL ECONOMIC STATEMENT 2022 was released on November 3, 2022, focusing heavily on recovery from the COVID-19 economic downturn and weathering the ongoing global financial slump. The next day, on November 4, 2022, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022* (“Bill C-32”)¹ was introduced in the House of Commons. Bill C-32 will implement certain provisions of the Fall Economic Statement and the April 2022 Federal Budget. A number of aspects of Bill C-32 are relevant to charities.

B. ELEMENTS OF BILL C-32 ANNOUNCED IN FALL ECONOMIC STATEMENT AND THE APRIL 2022 FEDERAL BUDGET

BILL C-32 CONTAINS much of the content included in draft legislation released by the Department of Finance on August 9, 2022 (“Draft Legislation”), as reported in greater detail in *Charity & NFP Law Bulletin No. 515*.² A significant but expected change is the increase in the disbursement quota (“DQ”) for

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¹ Bill C-32, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022*, 1st Sess, 44th Parl, 2022 (second reading completed 22 November 2022) [Bill C-32].

² Terrance S. Carter, Jacqueline M. Demczur & Theresa L.M. Man, *Charity & NFP Law Bulletin No. 515*, “Draft Budget Implementation Legislation Will Increase DQ And Affect Trust Reporting” (24 August 2022) online: *Carters Professional Corporation* <<https://www.carters.ca/pub/bulletin/charity/2022/chylb515.pdf>>

registered charities.³ All registered charities with investments of over \$1 million will be subject to a DQ of \$35,000 plus 5% of the value of their investments which exceed \$1 million as a result of an amendment to the definition of “disbursement quota” in subsection 149.1(1) of the *Income Tax Act* (“ITA”). New paragraph 149(1.1)(d) will provide that administration and management expenses do not satisfy DQ obligations. Subsection 149.1(5) will be amended to allow the Canada Revenue Agency (“CRA”) to deem a charity’s DQ obligation to be reduced upon an application to CRA. New paragraph 241(3.2)(i) will permit the CRA to release information about such applications, information filed in support of the application, and the CRA’s letter in response to the application. Subsection 149.1(8) concerning accumulation of property will be repealed. These changes will come into effect on January 1, 2023.

Reporting requirements for trusts proposed in the Draft Legislation are also contained in Bill C-32. Generally, the new amendments to the ITA will require more trusts to file T3 trust returns, namely “express trusts” or, in the civil law context, a trust that is not established by law or judgment. Exceptions to this expanded reporting requirement are set out in subsection 150(1.2),⁴ which includes trusts that are registered charities, and clubs, societies or associations described in paragraph 149(1)(l) (*i.e.*, non-profit organizations). It remains unclear if the changes will require internal trusts of charities to file separate returns, which would be a reversal of a longstanding CRA administrative policy. These new reporting requirements apply for taxation years that end after December 30, 2023, as opposed to December 30, 2022 as had been stated in the Draft Legislation.

Bill C-32 also includes a new section 146.6 which provides for a framework for first home savings account (“FHSA”), a proposal from the Draft Legislation. Of relevance for charities is that subsection 146.6(1) allows for qualified donees to receive a distribution from a FHSA upon the death of its holder. These changes come into effect on April 1, 2023.

C. EXPANDED CRA AUDIT POWERS

BILL C-32 CONTAINS proposed amendments to expand the CRA’s powers to gather information on audits. These changes were first announced in the 2021 Federal Budget, and later contained in draft legislation released by the Department of Finance on February 4, 2022.

³ Bill C-32, *supra* note 1 at cl 34.

⁴ *Ibid*, cl 35.

Section 231.1 of the ITA will be amended to expand the audit, examination and entry powers given to authorized persons to administer and enforce the ITA, as well as their powers to require a taxpayer or other persons to give all reasonable assistance and to answer all proper questions.⁵ Paragraph 231.1(1)(c) allows the CRA to enter into any premises or place for audit purposes, and it will be amended to include restrictions upon the entry by authorized persons into a dwelling house, which is consistent with those contained in existing subsection 231.1(2) of the ITA (which will be consequentially repealed).

Paragraph 231.1(1)(d) empowers authorized persons to be given all reasonable assistance and that all their proper questions be answered. This paragraph will be amended to make clear that a taxpayer, or any other person, will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of the ITA. Paragraph 231.1(1)(d) will also be amended to require a taxpayer or any other person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and to answer questions orally. In addition, authorized persons may require that questions be answered in writing and in any form that they specify. These amendments come into force on Royal Assent.

D. CONCLUSION

THESE VARIOUS AMENDMENTS introduced by Bill C-32 will no doubt have long term implications for charities. The increase of the DQ will mean that some charities will need to rethink their DQ strategy, particularly public and private foundations with significant investment portfolios. Expanded reporting requirements for trusts could result in significant administrative costs for some charities if these provisions are applied to internal trusts of charities, such as endowments. In addition, new and expanded CRA audit powers will affect how the audits of charities and non-profits will be carried out in the future.

⁵ *Ibid*, cl 54.