

FEDERAL BUDGET 2024: IMPACT ON CHARITIES AND NOT-FOR-PROFITS

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A. INTRODUCTION

FINANCE MINISTER CHRYSTIA FREELAND tabled the eighth budget of the Liberal federal government (“Budget 2024”) on April 16, 2024.¹ Budget 2024 is comprised of eight chapters and three annexes, with the relevant proposed tax measures being summarized in “Tax Measures: Supplementary Information” that includes a Notice of Ways and Means Motion to Amend the *Income Tax Act* (“ITA”) setting out the specific proposed amendments to the ITA.

This *Charity & NFP Law Bulletin* provides a brief summary and commentary on relevant provisions proposed in Budget 2024 that impact the charitable and not-for-profit (“NFP”) sector. Budget 2024 includes a number of legislative proposals that will directly affect charities and NFPs, including a degree of relief to the Alternative Minimum Tax involving gifts to charities, as well as “improv[ing] the operations of the rules related to registered charities and other qualified donees” concerning the

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¹ “Budget 2024: Fairness for every generation” (16 April 2024), online: *Government of Canada*: <https://budget.canada.ca/2024/report-rapport/toc-tdm-en.html>.

requirements to be a registered foreign charity, communication and services to charities, and donation receipts, as well as expanding the powers of the Canada Revenue Agency (“CRA”). In addition, Budget 2024 includes an announcement that legislative amendments will be made to expand the capabilities of the federal government to share information in order to combat money laundering and terrorist financing. Finally, of note, Budget 2024 includes program funding initiatives and grants of interest to the charity and NFP sector, including affordable housing, post-secondary institutions, community organizations, and not-for-profit child care.

B. PARTIAL RELIEF TO ALTERNATIVE MINIMUM TAX FOR DONATIONS TO CHARITIES

In August 2023, the Department of Finance proposed draft legislative changes to the Alternative Minimum Tax (“AMT”) rules, which are aimed at certain high-income individuals, estates and trusts. The proposed changes to the AMT regime included raising the basic exemption amount from \$40,000 to \$173,000 and increasing the minimum tax rate from 15% to 20.5%, so that taxpayers subject to the AMT would pay more taxes.

The proposed changes to the AMT would also have significantly reduced the tax benefits available to taxpayers who make donations of publicly listed securities to charities. Prior to the proposed changes announced in August 2023, donors subject to the AMT did not have to pay any taxable capital gains on donations of publicly listed securities and would have been entitled to a donation tax credit for the full value of the gifted shares. Under the proposed AMT changes, however, taxpayers subject to the AMT would have been restricted to claiming only 50% of the charitable donation tax credit and, instead of such donations being free of capital gains, donors would have had to include 30% of capital gains in the calculation of AMT.

Following the release of the proposed legislation in August 2023, many stakeholders expressed concern that since these changes to the AMT would significantly reduce the tax benefits of donating publicly listed securities and capital property to charities, they would be a disincentive to donors making such donations, to the detriment of the entire charitable sector.

In response to those concerns, Budget 2024 partially relieves some of the concerns related to the previously proposed AMT changes by allowing taxpayers subject to the AMT to claim 80% of the charitable donation tax credit when calculating the AMT, instead of the previously proposed limit of 50%.

However, the Budget provides no relief on the inclusion of 30% of capital gains on donations of publicly traded shares.

Budget 2024 also provides an exemption from the AMT for certain trusts established under federal or provincial law for the benefit of an Indigenous group, community or people that holds rights recognized and affirmed under section 35 of the *Constitution Act* (hereinafter an “Indigenous Group”) or established under a treaty or settlement agreement between Canada or a province and an Indigenous Group, provided that all or substantially all of the contributions to the trust made before the end of the year are paid under the law, treaty, or settlement agreement or are reasonably traceable to those amounts.

Other trusts may also be exempted from the AMT where the beneficiaries are any combination of the following:

- a) all of the members of an Indigenous Group;
- b) a public body performing a function of government in Canada (within the meaning of the ITA) in relation to an Indigenous Group;
- c) a registered charity or a non-profit organization that is organized and operated primarily for health, education, social welfare, or community improvement for the benefit of the members of an Indigenous Group;
- d) a corporation, all of the shares or capital of which are owned by any combination of persons or entities described in paragraph (b) or (c) above, a Settlement Trust, or another corporation meeting this definition; or;
- e) a Settlement Trust.

The AMT amendments would apply to taxation years that begin on or after January 1, 2024.

The government is interested in stakeholders' views on these proposed exemptions for Indigenous settlement and community trusts. Interested parties are invited to send written representations to the Department of Finance Canada, Tax Policy Branch at consultation.legislation@fin.gc.ca by June 28, 2024.

C. CHANGES TO REQUIREMENTS FOR FOREIGN CHARITIES THAT ARE QUALIFIED DONEES

As with previous federal budgets, Budget 2024 further adjusts the provisions of the ITA applicable to foreign charities that are registered as qualified donees. In this regard, currently the ITA permits foreign charities that have received a gift from the Government of Canada to apply for status as a qualified donee provided the foreign charity is not resident in Canada and is either carrying on relief activities in response to disaster, providing urgent humanitarian aid, or carrying on activities in the national interest of Canada.

At present a foreign charity that is registered as a qualified donee will have this status for a 24-month period chosen by the CRA that must include the date it received the gift from the Government of Canada. Budget 2024 proposes to extend this period from 24 to 36 months. This is accomplished by amending the ITA to include a new definition for “registered foreign charity” and amending existing subsection 149.1(26) of the ITA to provide for a 36-month registration period. It is proposed that this would apply to registrations after Budget Day, so existing foreign charities that are qualified donees would still be subject to the previous 24-month registration period.

While extending the registration period for qualified donee status is likely good news to foreign charities that qualify, Budget 2024 also proposes to require registered foreign charities to file an information return similar to registered charities or registered journalism organizations that, “includes the total amount of receipts issued to Canadian donors, the total amount of gifts received from qualified donees, and information on how those funds were used.” The information return must be filed, “within six months from the end of each taxation year of the charity.”

While registered foreign charities were already subject to the requirements of the ITA concerning maintaining books and records and issuing receipts, they have not previously had to file a public information return. While public information concerning registered foreign charities is welcome, Budget 2024 will also propose to amend the ITA so that registered foreign charities can be subject to the same penalties related to registered charities for non-filing, such as revocation of their qualified donee status and suspension of receipting privileges.

Currently there are only three foreign charities registered as qualified donees [listed by the CRA](#). Previously registered foreign charities can also be seen on the same list. Why Canada’s shortest list of qualified donees requires additional compliance is unclear, but Budget 2024 proposes that the ITA amendments

concerning the requirement to file an information return will be deemed to have come into force on the day after Budget Day and apply to taxation years that begin after that day.

D. MODERNIZING SERVICES BY THE CRA

Budget 2024 proposes various amendments to the ITA to simplify and modernize the way in which the CRA provides services and communicates information relating to registered charities and other qualified donees to the sector and the public in general.

Specifically, Budget 2024 proposes to permit the CRA to communicate certain official notices digitally, where the charity has opted to receive information from the CRA electronically. Registered charities that have not opted to receive information electronically would receive official notices, other than compliance-related notices, by regular mail. Those charities would continue to receive compliance-related notices, including notices of intention to revoke, annul, or suspend a charity's registration, by registered mail. Examples of changes include:

- Amending subsection 149(6.3) to allow the CRA to send electronic notices designating the charity to be a charitable organization, private foundation or public foundation;
- Amending subsection 149.1(22) to allow the CRA to send electronic refusal for registration as a registered charity, or other qualified donee status;
- Amending subsection 149.1(23) to allow the CRA to send electronic notice for annulment of charitable status; and
- Amending subsection 168(1) to allow the CRA to send notice of intention to revoke charitable registration.

Budget 2024 also proposes to remove the requirement of publication in the *Canada Gazette* in order to revoke registration of charities and other qualified donees. In this regard, currently, the revocation of registration is effective upon publication in the *Canada Gazette*. Budget 2024 proposes to amend subsection 168(2) so that the revocation of registration would become effective upon the publication of an official notice of revocation on the CRA's webpage.

Subsection 189(8) of the ITA allows an objection to be filed to the revocation tax, penalties and suspension of a charity's receipting privileges; as well as allows appeals of these matters to the Tax Court. Budget 2024 proposes to amend paragraph 189(8)(b) and to add a new paragraph 189(8)(c) to remove the

requirement that certain objections be addressed directly to the Assistant Commissioner of the CRA's Appeals Branch.

These changes will come into force upon Royal Assent.

E. CHARITABLE DONATION RECEIPTS

Qualified donees (which include registered charities, registered journalism organizations, registered municipal or public bodies performing a function of government in Canada, and other entities defined in the ITA) can issue official donation receipts for gifts that they receive. The ITA and the *Income Tax Regulations* contain certain minimum requirements for official donation tax receipts to be valid and the processes that must be followed when issuing receipts. An official receipt must contain all the information specified in section 3501 of the *Income Tax Regulation*. Examples of information that must be included in receipts include the name and address of the qualified donee, serial number of the receipt, the place or locality where the receipt was issued, *etc.*).

Budget 2024 proposes various changes to simplify the issuance of official donation receipts and to align the process for issuing receipts with modern practices of charities by:

- Removing the requirement that official donation receipts must contain the place of issuance of the receipt; the name and address of the appraiser, if an appraisal of the donated property has been done; and the middle initial of the donor.
- Allowing charities to mark a donation receipt as “void”, as an alternative to the term “cancelled”, when a receipt has been spoiled; and removing the requirement that the cancelled receipt be stored with a duplicate copy.
- Expressly permitting charities to issue official donation receipts electronically, provided that they contain all required information, they are issued in a secure and non-editable format, and the charity maintains an electronic copy of the receipts.

These changes will come into force upon Royal Assent.

F. EXTENDING GST RELIEF TO STUDENT RESIDENCES THAT OPERATE ON A NOT-FOR-PROFIT BASIS

The government announced a temporary removal of the Goods and Services Tax (“GST”) from new purpose-built rental housing projects, including those for student housing, on September 14, 2023. This is

being implemented through an Enhanced (100%) GST Rental Rebate for new qualifying purpose-built rental housing projects. However, universities, public colleges, and school authorities are ineligible for this rebate under the existing GST/Harmonized Sales Tax (“HST”) rules in the *Excise Tax Act* due to the temporary nature of student residences, as one of the main eligibility conditions for a GST Rental Rebate is that the unit is for long-term rental, but the *Excise Tax Act* generally requires that the unit’s first use be as the primary place of residence for an individual under a lease for a period of at least 12 months.

In addition, when universities, public colleges, and school authorities build a new residence for their students, they are subject to a special set of relieving GST/HST rules under which they only incur GST/HST on their construction inputs, because of which there is no final tax amount, which is the amount on which the GST Rental Rebates are based, disqualifying them from the Enhanced (100%) GST Rental Rebate.

Budget 2024 proposes modifications to allow universities, public colleges, and school authorities to claim the Enhanced (100%) GST Rental Rebate by aligning their tax treatment with other builders and relaxing rebate conditions for NFP educational institutions. This would be done by amending the *Excise Tax Act* to allow them to apply the normal GST/HST rules that apply to other builders by paying GST/HST on the final value of the building in respect of new student housing. In addition, Budget 2024 proposes to amend the *Excise Tax Act* and its regulations to relax the rebate conditions for new student housing provided by these entities operating on a not-for-profit basis, which are generally educational institutions that would currently qualify for the Public Service Body rebates under the GST/HST.

The relaxed rebate conditions would allow these entities to claim the Enhanced (100%) GST Rental Rebate in respect of any new student residence that they acquire or construct between September 13, 2023, and 2031, and that complete construction before 2036, provided it is primarily for the purpose of providing a place of residence for their students and removing the requirement that the unit’s first use be as the primary place of residence for an individual under a lease for a period of at least 12 months. However, these relaxed rebate conditions are not extended to universities, public colleges, and school authorities that operate on a for-profit basis.

G. EXPANDED AUDIT AND INFORMATION GATHERING POWERS OF THE CRA

Budget 2024 introduces new measures aimed at further expanding the CRA’s audit and information gathering capabilities, which would include charities and NFPs. These expanded powers can generally be

summarized as follows, although they are complex and would need a careful review by legal counsel to determine how they might apply on an audit of a charity or an NFP:

- The CRA would be able to issue a new type of notice referred to as a “notice of non-compliance” to a person that has not complied with a requirement or notice to provide assistance or information issued by the CRA. The issuance of the notice is reviewable by the CRA at the request of the person and then a further statutory right of review by the Federal Court.
- Where a taxpayer seeks judicial review of “any requirement or notice issued to the taxpayer by the CRA in relation to the audit and enforcement process or during any period that a notice of non-compliance is outstanding”, then the “stop the clock” rules would apply so that the reassessment or compliance period would be extended by the time required to dispose of the judicial review.
- To further improve compliance with information requests by the CRA, the person that has been issued a notice of non-compliance would be subject to a penalty of \$50 per day when the notice is outstanding, up to a maximum of \$25,000, unless the notice is vacated by the CRA or a court.
- The CRA would be allowed to include in a requirement or notice that any required oral or written information be provided under oath or affirmation.
- A penalty would be imposed when the CRA obtains a compliance order from court against a taxpayer for failure to comply with an information request where the amount of tax owing in respect of the compliance order exceeds \$50,000 in a taxation year. The penalty would be 10% of the aggregate tax payable by the taxpayer in respect of the taxation year or years to which the compliance order relates.
- The CRA would be allowed to seek a compliance order for failure to comply with a requirement to provide foreign-based information or documents.

These changes will come into force upon Royal Assent.

H. PROGRAM FUNDING AND GRANTS

A number of program funding initiatives and grants are proposed by Budget 2024 which will provide support and funding to the charitable and NFP sector. The following list outlines some of the notable initiatives:

- Budget 2024 proposes a total of \$647.6 million dollars over five years for Public Services and Procurement Canada and the Canada Mortgage and Housing Corporation, to “unlock more public lands” to build 250,000 new homes by 2031, partnering with NFPs, and co-ops on federal sites, along with homebuilders.
- Another \$19 million over five years, and \$5 million per year ongoing, is planned to incentivize NFP universities, public colleges, and school authorities to build more student housing by relaxing the eligibility conditions for the removal of GST on new student residences that begin construction after September 13, 2023 and before 2031 and complete construction before 2036, as discussed in detail above.
- A new \$1.5 billion Canada Rental Protection Fund, to be administered by the Canada Mortgage and Housing Corporation, will help “mobilize investments and financing from the charitable sector, private sector, and other orders of government” according to Budget 2024. The fund’s purpose would be to “protect the stock of affordable housing in Canada” by providing loans and contributions to support affordable housing providers acquire units and preserve rents at “stable levels for decades to come” and prevent affordable housing from being developed into luxury condos.
- “Flexibilities” would be introduced to the Federal Community Housing Initiative, according to Budget 2024, so that “eligible housing providers can access funding to maintain housing affordability for low-income tenants and co-op members.”
- Budget Canada proposes to provide \$60 million over a period of 5 years to Prosper Canada, a charity that provides financial advice to low to moderate income Canadians, which is slated to assist these communities receive approximately \$2 billion in unclaimed tax and benefit income.
- An Advisory Council on Science and Innovation will be created, that will include leaders from the academia, industrial, and NFP sectors, and lead the development of a national science and innovation strategy to steer priority decisions and enhance the effectiveness of substantial federal investments in this domain.
- \$176 million to be allocated over five years starting in 2025-26 allocated to CANARIE, a national non-profit managing Canada’s ultra high-speed network, to boost connectivity among researchers, educators, and innovators and enhance network speeds for Canada’s post-secondary institutions.

- Budget 2024 proposes \$14.5 million over two years, starting in 2024-25, to support the Innovation Asset Collective’s (a NFP entity) patent collective pilot program, assisting small- and medium-sized enterprises in the clean tech sector with intellectual property creation and retention, as part of the National Intellectual Property Strategy.
- \$60 million proposed over five years, starting in 2024-25, for Futurpreneur Canada, a national NFP organization. This funding aims to empower young entrepreneurs by providing access to financing, mentorship, and other business supports, building on over two decades of federal support totaling \$161.5 million, which has already helped over 17,700 young entrepreneurs launch more than 13,900 businesses across the country.
- Budget 2024 proposes \$15 million over two years, beginning in 2024-25, to the Department of Canadian Heritage to bolster public interest programming services, including support for NFP media organizations like the Aboriginal Peoples Television Network (“APTN”) which amplifies Indigenous voices and covers Indigenous news crucial for Indigenous communities nationwide.
- The proposed Child Care Expansion Loan Program aims to enhance the availability of NFP and public child care spaces in Canada by offering \$1 billion in low-cost loans and \$60 million in non-repayable contributions to support the construction and renovation of child care centers, ensuring they meet the diverse needs of Canadian families, including those from vulnerable and underrepresented communities.
- Budget 2024 also proposes \$60 million over two years, beginning in 2024-25, to support Friendship Centres nationwide, which offer vital services and supports to urban Indigenous Peoples across various areas, such as health, housing, education, recreation, language, justice, employment, economic development, culture, and community wellness to members of their communities.

I. EXPANDING CANADA’S ANTI-MONEY LAUNDERING AND ANTI-TERRORISM INFORMATION COLLECTION AND SHARING REGIME

Within Budget 2024 is yet another call for the further expansion and development of Canada’s Anti-Money Laundering and Anti-Terrorism regime. Ever since *The Anti-Terrorism Act*, Canada’s central legislative response to 9/11, was passed into law in 2001, there has been significant and continuing expansion of Canada’s fight against money laundering and terrorism through substantial additions and expansions to the *Criminal Code*, *Proceeds of Crime (Money Laundering)* and *Terrorist Financing Act*

(“PCMLTFA”), and the ITA, among other legislation, as well as the creation of new legislation, such as the *Charities Registration (Security Information) Act*. Initially brought together under the *Anti-Terrorism Act*, with years of expansion through related amendments, Canada has created a monolith of information collection and sharing, particularly involving personal and financial information, both within Canada between government agencies and with foreign governments, among others (collectively the “Information Regime”).

In this regard, Budget 2024 proposes that changes to the Information Regime are needed purportedly to “keep pace with evolving financial crimes threat”. In the past few years, the government’s expansion of the Information Regime has focussed on non-traditional currency or asset transfers, like decentralized cryptocurrencies. Budget 2024 details that the government intends to (among other measures) enhance the Information Regime by “enhancing the ability of reporting entities under the PCMLTFA to share with each other to detect and deter money laundering, terrorist financing and sanctions evasions”.

The “Reporting entities” under the PCMLTFA, the definition of which mainly centres around Canada’s private financial institutions, are going to be “enhanced” in their ability to share information with each other. The Budget makes reference to “maintain privacy protections for personal information”, including by an enhanced role for the Office of the Privacy Commissioner, but until the details of these oversight powers to protect personal information become available, it is not possible to comment on whether the Privacy Commissioner will be able to take effective steps to prevent governmental or private financial institutions from threatening fundamental privacy rights with respect to personal and financial information.

In addition, the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), an agency that collects and disseminates much of the information gathered from reporting entities, will now be able to “disclose financial intelligence to provincial and territorial civil forfeiture offices” to support efforts to seize property linked to “unlawful activity” and will apparently even impact the immigration, refugee and citizenship process. However, Budget 2024 provides no specifics as to how this will be implemented or how “the integrity of Canada’s citizenship process” will be “strengthened”.

The proposed amendments to the Information Regime also include amendments to the Criminal Code to allow law enforcement to seek orders to require that financial institutions “keep an account open to assist in the investigation of a suspected criminal offence”. Similarly, law enforcement will be able to request

that the courts issue a “repeating production order to authorize law enforcement to obtain ongoing, specified information” in “a [single] account or multiple accounts connected to a person of interest in a criminal investigation”. The broad language of allowing law enforcement to seek orders to glean financial information from entities that are apparently “connected to a person of interest in a criminal investigation” is a sweeping and general information collection power involving not just those actually charged in criminal investigations, but also those individuals or entities that are somehow “connected” to a person of interest in an investigation.

Without further particulars, it is difficult to comment on the stated priorities in Budget 2024, but it is clear that the government intends to continue to expand Canada’s information collection and sharing regime, both in the type of information able to be collected and the entities that can review this personal information. Seeing if a balance can be struck between the privacy rights of Canadians and the fight against money laundering and terrorist financing will continue to be an important matter of concern requiring ongoing careful monitoring.



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