



The Modernization of Charitable Planning: Bringing Old Supports into a New World



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STEP CANADA 25TH ANNIVERSARY
JUNE 19-20, 2023 | TORONTO

The Modernization of Charitable Planning: Bringing Old Supports into a New World



- A. The New Qualifying Disbursement Regime and its Practical Impact on Charities
- B. Increased Disbursement Quota for Charities: Changes and Challenges

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A. The New Qualifying Disbursement Regime and its Practical Impact on Charities

1. Resource Materials



- Terrance S. Carter & Theresa L.M. Man, "Bill C-19 *Budget Implementation Act, 2022, No. 1* Proposes Major Changes to Legislative Framework Governing Charities" *Charity & NFP Law Bulletin No. 511* (25 May 2022) https://www.carters.ca/index.php?page_id=494
- Terrance S. Carter & Theresa L.M. Man, "Bill C-19 is Amended to Simplify Funding of Non-Qualified Donees" *Charity & NFP Law Bulletin No. 513* (28 June 2022) https://www.carters.ca/index.php?page_id=503
- Terrance S. Carter, Theresa L.M. Man & Lynne M. Westerhof, "CRA Releases Draft Guidance on Charities Making Grants as Qualifying Disbursements" *Charity & NFP Law Bulletin No. 518* (7 December 2022) https://www.carters.ca/index.php?page_id=3085
- Terrance S. Carter, Theresa L.M. Man & Lynne M. Westerhof, "Draft Qualifying Disbursement Guidance Poses Practical Challenge for Charities" *Charity & NFP Law Bulletin No. 519* (26 January 2023) https://www.carters.ca/index.php?page_id=3075



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2. Key Changes to the ITA Introducing Qualifying Disbursements



a) Before Bill C-19 Amended the *Income Tax Act* (“ITA”) on June 23, 2022

Canadian registered charities could only use their resources in one of two ways:

1. Conducting their own activities by devoting their resources to charitable activities carried on by their own staff and volunteers or through intermediaries

2. Making gifts to qualified donees (“QDs”)

If a charity wanted to work with an organization that was not a QD, it had to demonstrate that it was conducting its own activities by exercising direction and control over the non-QD organization concerning how it utilized any funds or other resources provided by the charity



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2. Key Changes to the ITA Introducing Qualifying Disbursements



b) Bill C-19, *Budget Implementation Act, 2022, No. 1* and CRA Draft Guidance
April 7, 2022 – Federal Budget 2022

April 26, 2022 – Notice of Ways and Means Motion introduced

April 28, 2022 – Bill C-19 received First Reading in the House of Commons

June 23, 2022 – Bill C-19 received Royal Assent

Bill C-19 is currently the law even though the final version of the CRA Draft Guidance about qualifying disbursements is still pending



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2. Key Changes to the ITA Introducing Qualifying Disbursements



c) Bill C-19 Introduces Qualifying Disbursement Regime in ss.149.1(1)

qualifying disbursement means a disbursement by a charity, by way of a gift or by otherwise making resources available,

(a) subject to subsection (6.001), to a qualified donee, or

(b) to a **grantee organization**, if

- (i) the disbursement is in furtherance of a charitable purpose (determined without reference to the definition charitable purposes in this subsection) of the charity,
- (ii) the charity ensures that the disbursement is exclusively applied to charitable activities in furtherance of a charitable purpose of the charity, and
- (iii) the charity maintains documentation sufficient to demonstrate
 - (A) the purpose for which the disbursement is made, and
 - (B) that the disbursement is exclusively applied by the grantee organization to charitable activities in furtherance of a charitable purpose of the charity;

“grantee organization” includes a person, club, society, association or organization or prescribed entity, but does not include a qualified donee;



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2. Key Changes to the ITA Introducing Qualifying Disbursements



After Bill C-19 received Royal Assent, Canadian registered charities may use their resources in one of two ways:

1. Conducting their own activities by devoting their resources to charitable activities carried on by their own staff and volunteers or through intermediaries
2. Make qualifying disbursements by way of gifts or “otherwise making resources available” to both QDs and non-QD grantee organizations

Therefore, charities are no longer restricted to just conducting their own activities or making gifts to qualified donees – they can now make qualifying disbursements by way of gifts or by making resources available to QDs and non-QD grantee organizations

The Draft Guidance focuses mainly on qualifying disbursements by way of gifts or otherwise making resources available to non-QD grantee organizations



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3. Practical Impact of Qualifying Disbursement Regime on Charities



a) Gift means a "Gift"

The ITA refers to a "gift" rather than to a "grant" or "transfer" as the Draft Guidance has done. It is best when making a qualifying disbursement by means of a gift to ensure that the common law definition of a "gift" is met, *i.e.* that there is a voluntary transfer of property without consideration.

b) Unclear Explanation of "Otherwise Making Resources Available"

A qualifying disbursement includes "otherwise making resources available" in addition to making a "gift".

However, there is nothing in Bill C-19 or the Draft Guidance that explains what "otherwise making resources available" means.

Hopefully the final form of the Guidance will provide clarity on this issue.



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3. Practical Impact of Qualifying Disbursement Regime on Charities



c) Need to Review Charitable Purposes of the Charity

A qualifying disbursement is about furthering the charitable purpose of the donor charity and cannot be done if it is outside of the donor charity's charitable purposes.

Foundations that have only a single purpose of making gifts to QDs will not be able to make qualifying disbursements to grantee organizations since they are not QDs.

- Therefore, foundations with single purpose of making gifts to QDs may need to review and possibly update their charitable purposes.

- However, it will be important to see if the final form of the Guidance will provide a simplified process to do so.



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3. Practical Impact of Qualifying Disbursement Regime on Charities



d) Draft Guidance Imposes Additional Requirements

Focus on Risk Matrix

- “Risk” is mentioned 62 times in the Draft Guidance but is not mentioned at all in s 149.1 of the ITA
- No indication of what the “risk” is that is to be avoided, so it is difficult to know how to assess risk factors
- Risk matrix says that grants outside Canada and over \$25,000 are high risk but no explanation is provided to explain why \$25,000 is a high risk threshold
- Risk matrix is very similar to FATF and US Treasury Risk Matrix for purpose of anti-terrorist financing avoidance
- Hopefully, the Risk Matrix will be removed from the final form of the Guidance



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3. Practical Impact of Qualifying Disbursement Regime on Charities



Accountability Requirements and Tools

- “Accountability” is mentioned 46 times in the Draft Guidance but is not mentioned at all in s 149.1 of the ITA
- Suggested accountability tools are similar to the requirements for “expenditure responsibility” for US private foundations
- The accountability tools are similar to the requirements in proposed ITA regulations that were removed from Bill C-19
- Hopefully, the final form of the Guidance will have a less onerous approach to the issue of “accountability”



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4. Qualifying Disbursement Limitations that Impact Charitable Organizations



a) Subsection 149.1(6.001) of the ITA – Qualifying Disbursement Limit

149.1 (6.001)

In any taxation year, disbursements of income of a charitable organization by way of gifts to a qualified donee (other than disbursements of income to a registered charity that the Minister has designated in writing as a charity associated with the charitable organization) in excess of 50% of the charitable organization's income for that year are not qualifying disbursements.



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4. Qualifying Disbursement Limitations that Impact Charitable Organizations



b) Consequences of subsection 149.1(6.001)

This qualifying disbursement limit:

- Only applies to the income of a charitable organization, not to a public or private foundation
- Does not apply to gifts of capital, but there remains the challenge of distinguishing between what is income and what is capital
- Only applies to gifts to qualified donees, not gifts to grantee organizations (*i.e.* non-qualified donees) or to “otherwise making resources available”

If the excess is not deemed a qualifying disbursement, then what is it?

- Will the excess result in revocation of charitable status under paragraph 149.1(2)(c) of the ITA?



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5. Anti-Directed Giving Provision



a) Paragraph 168(1)(f) of the ITA – Notice of Intent to Revoke Registration

168 (1) The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition qualified donee in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

[...]

(f) in the case of a registered charity, registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee.



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5. Anti-Directed Giving Provision



b) Issues to Consider

No explanation of what “implicitly conditional” mean

168(1)(f) requires acceptance of a gift by charity

Only applies to making “gifts” to non-qualified donees, so query whether a charity can receive a conditional gift but then transfer it to a non QD under the “own activities/ direction and control” regime to avoid making a gift

The Draft Guidance attempts to give a “light touch” by trying to equate the prohibited “anti-directed giving” with acting as a “conduit”

- However, the two concepts are different - the term “conduit” is not well-defined and is used elsewhere by the CRA in the context of the “own activities/ direction and control” regime, rather than in relation to gifts
- The ITA would prevail over what is in a CRA Guidance in any event



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B. Increased Disbursement Quota for Charities: Changes and Challenges

1. Resource Materials



Terrance S. Carter, Jacqueline M. Demczur & Theresa L. M. Man, "Complexities of the Disbursement Quota Calculation: More Than Just a Number" *Charity & NFP Law Bulletin No. 498*, 25 August 2021
<https://www.carters.ca/pub/bulletin/charity/2021/chylb498.pdf>

Terrance S. Carter & Theresa L.M. Man, "Reminder for Charities to take the Necessary Steps to Meet the DQ" *Charity & NFP Law Bulletin No. 507*, 24 February 2022 https://www.carters.ca/index.php?page_id=456

Terrance S. Carter, "Disbursement Quota Reform: Stabilizing a Three-Legged Stool" *Perspectives on Tax Law & Policy*, vol 3, no 1, March 2022 <https://www.ctf.ca/CTFWEB/EN/NEWSLETTERS/PERSPECTIVES/2022/1/220106.aspx>

Terrance S. Carter, Theresa L.M. Man & Jacqueline M. Demczur, "Draft Budget Implementation Legislation Will Increase DQ and Affect Trust Reporting" *Charity & NFP Law Bulletin No. 515*, 24 August 2022
https://www.carters.ca/index.php?page_id=520

Terrance S. Carter, Theresa L.M. Man & Jacqueline M. Demczur, "Bill C-32 Will Increase DQ, Affect Trust Reporting, and Make Other Changes to the Income Tax Act" *Charity & NFP Law Bulletin No. 517*, 23 November 2022
https://www.carters.ca/index.php?page_id=554



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2. New Changes to the Disbursement Quota as of January 1, 2023



a) 5% DQ for Amounts in Excess of \$1 Million

- Bill C-32, *Fall Economic Statement Implementation Act, 2022* ("Bill C-32") received Royal Assent on December 15, 2022, and amended the ITA to increase the DQ rate from 3.5% to 5% for eligible property held by a charity in excess of \$1 million
- The increased DQ applies to taxation years beginning on or after January 1, 2023



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2. New Changes to the Disbursement Quota as of January 1, 2023



Types of Charity and Value of Property* Held by the Charity	Former DQ Obligation	New DQ Obligation
Charitable Foundation with ≤\$25,000 of property	Nil	Nil
Charitable Organization with ≤\$100,000 of property	Nil	Nil
Charitable Foundation with >\$25,000 and ≤\$1,000,000 of property	3.5% of property	3.5% of property
Charitable Organization with >\$100,000 and ≤\$1,000,000 of property	3.5% of property	3.5% of property
Charitable Foundation with >\$1,000,000 of property	3.5% of property	\$35,000+ 5% of the amount of property which exceeds \$1M
Charitable organization with >\$1,000,000 of property	3.5% of property	\$35,000+ 5% of the amount of property which exceeds \$1M

* "property" refers to "property owned by the charity in the preceding 24 months that is not used directly in charitable activities or administration as determined under sections 3701 and 3702 of the Regulations



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2. New Changes to the Disbursement Quota as of January 1, 2023



c) Administration and Management Expenses

Bill C-32 added paragraph (d) to subsection 149.1(1.1) of the ITA to provide that administration and management expenditures are deemed not to satisfy the disbursement quota requirements

d) DQ Obligation Reduction

Prior to Bill C-32 coming into force, subsection 149.1(5) of the ITA allowed the CRA to deem a specified amount expended by a charity to be an amount expended by a charity on its own charitable activities in satisfaction of the DQ

Bill C-32 amended subsection 149.1(5) to allow the CRA to instead deem a charity's DQ obligation to be reduced upon application by the charity



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2. New Changes to the Disbursement Quota as of January 1, 2023



e) Other DQ Changes

Bill C-32 also amended the ITA to:

Allow the CRA to release information pertaining to a charity's application to reduce its DQ obligation, under s. 241(3.2) of the ITA

Repeals s. 149.1(8) which formerly allowed charities to apply for permission to accumulate property

Retroactively amended a typo in s. 149.1(4.1)(d) where reference was made to "qualified disbursements" instead of the correct "qualifying disbursements"



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3. What are the Challenges Posed by Changes in the DQ?



a) Charitable versus Management & Administration Activities

- The CRA has not yet provided guidance about how charities should calculate which expenditures are used in administration & management of the charity
- Unanswered questions include:
 - Can amounts be allocated on a percentage basis, similar to fundraising expenses?
 - *e.g.* If an employee spends 90% of time engaged in carrying out charitable activities and 10% doing administrative work, is substantially all of the work charitable for purposes of the DQ, as is the case with fundraising expenses?



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3. What are the Challenges Posed by Changes in the DQ?



b) Determining what is an Eligible Qualifying Disbursement

Bill C-19 amended the ITA so that “gifts made by [a charity] that are qualifying disbursements” will satisfy the DQ

- See, e.g., ss. 149.1(2)(b), (3)(b), and (4)(b)
- Since qualifying disbursements are disbursements “by way of a gift or by otherwise making resources available” it does not appear that “making resources available” will satisfy the DQ as only gifts will count
- However, if only gifts are counted towards the DQ, this will exclude “making resources available” to qualified donees and non qualified donees, including:

Building
Space

Staff &
Volunteers

Use of
Intellectual
Property

Publishing
Resources

Program
Related
Investments



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3. What are the Challenges Posed by Changes in the DQ?



c) Challenges for Charities with Endowments to Meet 5% DQ

- For charities, and in particular, foundations with endowments or other funds that have restrictions concerning how or when capital can be expended, it may be difficult to meet a 5% DQ with only income generated from the investment available for disbursement
- Charities may need to apply to court for an order granting permission to encroach on the capital or realized capital gains of an endowment
 - Unfortunately, court applications can be costly and time consuming and success is not guaranteed
- Difficulty meeting the DQ may prompt charities to possibly pursue riskier investments to obtain a higher rate of return. This might be contrary to their fiduciary obligations under provincial *Trustee Act* legislation



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3. What are the Challenges Posed by Changes in the DQ?



d) Compliance with non-arm's length and anti-avoidance rules

- Charities must comply with anti-avoidance rules when gifts to qualified donees are made between non-arm's length charities:

Non-Arm's Length Transfer Rule

- A charity that receives a gift from a non-arm's length charity must use 100% of the gift on its own charitable activities or gifts that are qualifying disbursements to qualified donees or grantee organizations with which it deals at arm's length in the fiscal period the gift was received or in the following fiscal period
 - Underlined sections reflect changes from BIA 1 to s. 149.1(4.1)(d)
- Failure to do so could result in a 110% tax on the unexpended amount or the revocation of the receiving charity's registered status

Designated Gift

- Alternatively, the donor charity may make a designated gift (a gift that is not counted in meeting the donor charity's own DQ obligation)
- The recipient charity then does not have to spend 100% of the designated gift by the end of the next fiscal period



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3. What are the Challenges Posed by Changes in the DQ?



- Even where charities are arm's length, charities must still comply with a broader anti-avoidance rule:

Anti-Avoidance

- A charity that enters into a transaction (which may include an inter-charity gift) where it "may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities" could face a 110% penalty or possibly revocation
 - See paragraph 149.1(4.1)(a) of the ITA
 - Note that this provision was not modified by Bill C-19, but the concept of a "transaction" may now include qualifying disbursements
- If an inter-charity transfer is involved, both charities are jointly and severally, or solitarily liable for the 110% penalty and risk revocation



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3. What are the Challenges Posed by Changes in the DQ?



- e) Importance of Properly Completing the T3010
- Budget 2022 indicated that the CRA will “improve” the collection of information to better identify whether charities are meeting the DQ, as well as “information related to investments and donor-advised funds held by charities”, although it is not clear what that will entail
 - This suggests that the T3010 will be amended in the future to allow the CRA to collect this information
 - With the renewed focus on the DQ, charities will want to ensure that they properly and fully complete the DQ portion of the T3010 (i.e. lines 5900 and 5910) and that they are, in fact, meeting their DQ obligation year by year



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- C. Differences between private foundations and donor-advised, donor-restricted, and donor-endowed gifts
- D. Are gift agreements and donor-advised funds reportable as trusts?
- E. Changes to the AMT
- F. Cross-border gifts — how can they be made tax-effectively?
- G. Valuation and delivery of charitable gifts in kind

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C. Differences between Private Foundations, DAFs and Restricted Gifts

1. Introduction



- Recent CAGP research on the evolution of estate giving in Canada (2022):
 - 1.2 million Canadians (8% - up from 5% in 2019) have left a gift in their will resulting in an expected \$37 billion in future donations
 - Unexpected demographic shift: 6% of 50+ 10% of under 50
- **Top 20 Canadian Charities by Received donations**
 - Private Foundations (4)
 - Foundations with Donor Advised Funds (8) – total in Canada of about 120
 - Donors looking to give more for longer, looking for more involvement but less paper
 - Special Senate Committee on the Charitable Sector (2019) – government to consider means of ensuring that donations “do not languish”



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2. Basics - Private Foundation



3 types of Registered Charities: **Charitable Organization, Public Foundation and Private Foundation**

Private Foundation

- More than 50% capital contributed by a single person or group of related persons
- More than 50% of the board composed of individuals related to that person or group of related persons
- Separate legal entity - can be either a corporation or a trust
- Minimum of 2 directors/trustees



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2. Basics - Private Foundation



- Rules similar to those of any registered charity except:
 - it cannot engage in any business activities – no social enterprise
 - limited capacity to incur debt
 - no excess corporate holdings - must report if more than 2% of the shares and divest if more than 20%
- **Advantages:** perpetual existence, complete control, limited liability (corporation)
- **Disadvantages:** accounting and legal, lack of anonymity



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3. Basics - Donor Advised Fund



Donor Advised Fund (“DAF”)

- Not a registered charity or separate legal entity (maybe)
- Not defined in Canadian law, each foundation has own agreement and policies
- It is a restricted fund **owned** by another registered charity, usually a public foundation (community foundations, financial institutions, special purpose foundations), often referred to as “sponsor”
- Typically funded by a single person or family
- Terms usually enable the donor(s) to designate/direct or make recommendations regarding donations to other registered charities, purpose or use not usually identified at outset.



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3. Basics - Donor Advised Fund



- Foundation must approve grants - Foundation should control compliance with CRA rules, disbursements, investment and management of fund
- DAF can do whatever the Foundation can do: grants to charities and qualified donees, endowed/flow-through, hold various kinds of property, perpetual (many generations can direct), fund activities, be funded during life and/or by estate
- **Advantages:** Anonymity, no administrative burden, easy to establish, flexibility in structuring
- **Disadvantages:** Control by owner foundation (often unclear to donors), fees, common law gift?



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4. Basics - Donor Restricted/Endowed Gift



Donor Restricted/Endowed Gift

- **Not a DAF** – maybe only because it has not been called that, blurred lines but usually purpose/use identified
- Unrestricted charitable gifts must be applied by a charity to its charitable purposes, and are not subject to any other donor restrictions
- Restricted charitable gifts are subject to “restrictions, limitations, terms of reference, directions, or other restricting factors” imposed by the donor that limit the charity’s ability to use the gift
- May include a reporting requirements and some ongoing consultation



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4. Basics - Donor Restricted/Endowed Gift



- Restrictions can be imposed regarding use, e.g. build a building, buy indigenous art, etc.
- Restrictions can be imposed regarding quantum of disbursements:
 - Endowed – hold the capital in perpetuity and spend only the income each year
 - Spend-down - distribute both income and capital at a prescribed rate. The donated capital is invested with the intent to grant the entire amount until it is fully depleted
- Generally considered akin to a charitable trust, resulting in breach of trust if recipient does not respect the restrictions
- **Advantages:** No ongoing obligations for donors, anonymity, simplicity
- **Disadvantages:** Little ongoing involvement, harder to call it a “legacy”



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5. Comments



- Changes to Disbursement Quota in part a response by Department of Finance to Senate concern regarding “languishing assets” in DAFs
- DAFs sometimes criticized as further commercialization and/or commodification of philanthropy
- Concerns regarding lack of regulation of DAFs
- As estate planners, it is important that donors be aware of the requirements and limitations of the various options
- Most importantly, to qualify as gifts eligible for the donation tax credit, a donor’s capacity to exercise ongoing control is constrained



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D. New Trust Reporting Rules



- Recent ITA amendments require that all express trusts resident in Canada file a T3 trust return, even if they were not previously obligated to do so
- CRA considers an express trust to be one created with the settlor's express intent and usually made in writing; this would exclude trusts established by law or judgment, but would include bare trust arrangements
- Exceptions for GREs, registered charity trusts or a trust that is a NPO, etc.
- **Could apply for filings due as early as March 31, 2023**



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D. New Trust Reporting Rules



- CRA has an administrative policy that does not require trusts within a registered charity to report separately
- The theory is that they are a trust within a trust or a charity within a charity
- Has this been reversed? Waiting for guidance
- Are DAFs and donor restricted/endowed gifts express trusts? Unclear, will be determined on a case-by-case basis if CRA policy no longer applies
- If so, will eliminate some of the advantages of DAFs
- What about charitable remainder trusts?
- Problems with year ends – Calendar for trusts, but charities may have a different year end.



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E. Budget 2023 Changes to AMT



- The alternative minimum tax (“**AMT**”) is an alternative method to calculate income tax liability
- Limits availability of tax preferences (i.e., exemptions, deductions, and credits)
- Applicable to high-income individuals and certain types of trusts
- Introduced in 1986 with no significant reform until now
- Budget 2022 committed to reforming the AMT regime
 - To address issue: 28% of those with gross income above \$400,000 paid an average federal personal income tax of 15% or less
- Budget 2023 AMT changes focus on capital gains



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E. Budget 2023 Changes to AMT



- Budget 2023 AMT Changes
- Broadens AMT Base by further limiting tax preferences
 - Capital gains on **donations of publicly listed securities** 30% included
 - Other capital gains 100% included
- 50% of non-refundable tax credits (personal credit, spouse credit, medical expense and the **donation credit**) will not reduce AMT tax payable.
- Standard exemption increases from \$40,000 to \$173,000
 - Intent to exclude the middle-class from the AMT
- The AMT rate increases from 15% to 20.5%
- No changes to the treatment of trusts



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E. Budget 2023 Changes to AMT



Potential impact on significant gifts

For example:

a donation of \$1 million of publicly-traded securities will reduce federal tax by \$330,000 –
ACB of \$500,000, assume income in excess of \$1.34 million (75% donation tax credit limit) –
tax on \$340,000 = **\$89,095**

AMT will see	add-back of 50% of \$330,000 = \$165,000	
	add back of 30% of \$500,000 = <u>\$150,000</u>	
	Total	\$315,000
	Rate of 20.5%	AMT = \$64,575

Disincentive for significant donations, particularly re. a special event such as sale of real estate or a business from which significant capital gains arise



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F. Cross-Border Gifts



- Canada-U.S. Tax Treaty - donation to U.S. registered charities eligible for tax relief of up to 75% of U.S. source income. Without U.S income no tax relief
- Special tax credit for persons living near the border and commuting to a principal workplace in the U.S.
- Donation tax credit to foreign organizations considered to be qualified donees:
 - Prescribed Universities
 - UN and its Agencies
 - Foreign Charity that has received funds from Canadian government
- Donation to Canadian “friends of” organization.



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G. Valuations – Gifts in Kind



- If a receipt is being issued for a non-cash gift, it must reflect the fair market value (FMV) of the gift.
- CRA considers the FMV normally to be “the highest price, expressed in dollars, that the property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.
- If the FMV is more than \$1,000, CRA “strongly recommends” a professional appraisal.
- If the property is appraised, the name and address of the appraiser must be included on the official donation receipt.
- Certified valuations for ecological gifts and gifts of cultural property.



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G. Valuations – Gifts in Kind



Private Corporation Shares

- An appraisal of the value of the shares is required.
- Circumstances surrounding the gift may impact the value and should be considered.
- Shares held for only a short period of time before they are donated may be subject to anti-avoidance rules that would limit the donation amount to the ACB of the property; exceptions are available for shares received as part of an estate freeze.



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G. Valuations – Gifts in Kind



Cryptocurrency

- An appraisal of the value of the specific currency is required.
- CRA has indicated they will be looking closely at charities and cryptocurrency. In February 2021 they said “Directorate developments include: ... projects, such as the review of ... cryptocurrency usage within the charitable sector”.
- Critically important to assess the cryptocurrency exchange platform used to determine FMV.
- Anti-avoidance rules will also apply if held for less than 3 years.
- Recommend that donation be handled through a platform that accepts and converts to cash.



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The Modernization of Charitable Planning



Malcolm Burrows
Head, Philanthropic Advisory Services
Scotia Wealth Management



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H. Estate Donations and GRE Status



- Since 2016, estate donation have been intertwined with the Graduated Rate Estate (GRE) regime
- Estate donations include gifts by will and direct designation of RRSPs, RRIFs, Life Insurance proceeds and RESPs
- Claim period extends to up to 7 tax returns if a GRE is declared
- Claim period reduced to final two lifetime returns if the estate is not declared a GRE



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Estate Donation Rules



Post GRE Rules (after 2016)

- Designated an “estate donation”, not a lifetime gift
- No tax relief without funds being transferred to a charity
- Tax receipt is issued for fair market value (FMV) received by charity
- Estate must transfer donation within **60 months** of death to receive extended claim period
- Deemed disposition at death remains, creating an immediate tax liability
- Property transferred must be property held by deceased at death or property substituted - eliminates borrowing for donation

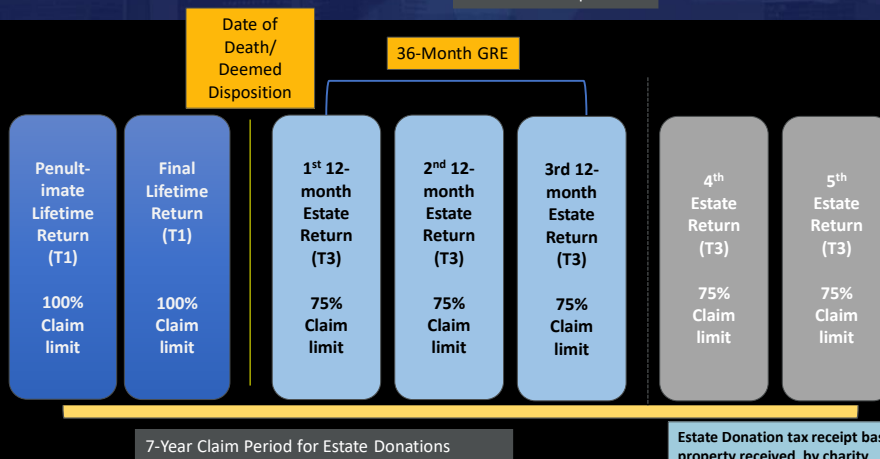


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Estate Donation Claim Period



5-Year transfer period



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Estate Donations Tips



- What can be done to maximize GRE Status?
 - Be mindful of the 60-month transfer deadline
 - Make earlier distributions to increase claim on Terminal T1 and reduce initial tax liability
 - To avoid “estate donation loop” – aka multiple refilings arising from residual donations – consider providing legacies/specific bequests to charities
 - Plan for illiquid property – pipeline planning and private company share donations



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I. Post-mortem gift agreements



- Estate donors may have specific charitable wishes or purposes that aren't documented in the will
- For example, a purpose restricted fund, an endowment, or memorial recognition
- Can donation agreements be implemented after the death of the donor by the executor?
- On what legal basis?



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Post-Mortem Agreement Options



1. Lifetime Agreement between Donor & Charity funded by estate donation

2. Post-Mortem Agreement: unrestricted estate donation and dependence on charity goodwill (informal)

Goal:
Gift for Defined Purpose

3. Post-Mortem Agreement: Executor discretion provided in will to implement agreement with named charity

4. Use of legacy donor advised fund
Estate donation to Foundation with fund; Foundation negotiates grant with charity



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J. Corporate Foundations



- Canadian corporations are establishing foundations to knit together CSR, brand and community fundraising
- Established trend in food, sport and retail
- Started with point-of-sale fundraising – small donations with no receipts
- Get customer buy-in, but may reduce direct corporate giving
- Alignment of corporate brand and cause
- Corporate foundations help manage fundraising requests from charities



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Corporate Foundations: Thoughts



- Best for granting to Canadian registered charities
- Impractical for non-Canadian giving
- Under some circumstances, foundations may now grant “non-qualified donees”, such as NFP organizations or unincorporated entities
- Knowledge of charity rules and regulations is important
- Potential reputational risk for corporation due to public T3010 if marketing or fundraising costs are high
- Fundraising competition for community charities?



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Questions & Answers
Thank You!



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