

Special Government Relations Bulletin

The 2011 federal budget was tabled in the House of Commons yesterday afternoon in Ottawa, Ontario. This budget proposes numerous changes that will affect charities, qualified donees, donors and other non-profits.

Thank you to our Government Relations Chair, Susan Manwaring and her colleagues at Miller Thompson, Robert B. Hayhoe, Kate Lazier, Amanda Stacey and Andrew Valentine for providing a summary of the changes below. For a more detailed review of these changes, see the [Budget Edition](#) of the Miller Thomson Charities & Not-for-Profit Newsletter.

Changes Affecting Charities and Non-Profits

(a) *Flow-through shares*

Budget 2011 proposes to limit the availability of the exemption from tax on capital gains where flow-through shares are donated to a qualified donee. Prior to this change it was possible to combine the charitable donation tax recognition with the flow-through share tax incentives to reduce the cost of charitable giving dramatically.

Effective immediately, the exemption from tax on the gain from donating the shares will only apply to the extent that the cumulative capital gains in respect to the gift or disposition of the shares exceed the original cost of the flow-through shares. This will have the effect in most provinces of causing a donation of flow-through shares to be no more attractive than a cash gift.

(b) *Regulatory changes affecting qualified donees*

Budget 2011 has proposed significant changes to the regulatory regime that applies to qualified donees other than registered charities. The *Income Tax Act* provides that official donation receipts can be issued not only by registered charities, but also by other organizations that meet the definition of "qualified donee", including registered Canadian amateur athletic associations (RCAAs), Canadian municipalities, and prescribed foreign universities. Historically, these organizations have been subject to less stringent regulatory rules than registered charities. The Budget proposes to close this gap significantly and extend most of the regulatory rules and associated penalties that currently apply only to registered charities to RCAAs. In addition, most qualified donees would be made subject to the rules governing record-keeping and the issuing of donation receipts (as well as to penalties for non-compliance, including revocation of qualified donee status). The Budget also proposes to require that all qualified donees be included on a publicly available list maintained by CRA.

The Budget proposes several additional changes that will apply specifically to RCAAs. It proposes to change the test which must be met by an RCAA in order to qualify for qualified donee status. RCAAs are currently required to be established with the promotion of amateur athletics in Canada on a nation-wide basis as their *primary* purpose and function. The Budget proposes that RCAAs be required to have the promotion of amateur athletics in Canada on a nation-wide basis as their *exclusive* purpose and function.

(c) *CRA Governance control*

Budget 2011 also proposes, effective 2012, that the CRA be given discretionary power to refuse or revoke registration for a charity where one of its directors has been convicted of a financial or otherwise relevant crime, has been convicted in the past 5 years of a similar regulatory offence (including a violation of fundraising licensing rules), was a director of another charity revoked for cause in the past five years, or was a promoter of a donation tax shelter for which any charity was revoked. We expect, notwithstanding Finance's suggestion

to the contrary in the Budget materials, that this will cause charities to begin background checks against directors and senior staff.

(d) Returning Gifts

The 2011 Budget added rules to address the situation where a qualified donee, such as a charity, returns a gift. We note that it is rare for a charity to be able to return a gift legally. However, if this occurs the new rules deem the gift not to have occurred. If the returned property is not identical property, then the person is deemed to have disposed of the original property at the time the person acquires the returned property. For returned amounts above \$50, charities will be required to issue replacement receipts and file them with CRA. CRA will have the authority to late reassess a return of income in respect of a return of a gift past statute barred years.

(e) Non-Qualifying Security Anti-Avoidance Rules

The 2011 Budget proposed anti-avoidance provisions to broaden the non-qualifying security rules. These rules prevent a person from receiving a donation tax receipt where the person's gift to a qualifying donee is a security, debt obligation or other security of the person or of a person not at arm's length from the person, known as a non-qualifying security (a "NQS"), until the NQS is sold or is no longer a NQS. The Budget proposes that where a charity sells the NQS, the donor will not get a receipt if the consideration for the sale is another NQS of any person. Second, the Budget proposed new rules to catch situations where through a series of transactions a donor avoids the application of these rules, but at the end of the series of transactions the qualifying donee holds a NQS of the donor.

(f) Gifts of options

The Federal Budget has introduced provisions designed to delay the recognition of a gift where an option to acquire a property is granted to a qualified donee. Prior to the introduction of these provisions, where a donor granted an option in a property to a qualified donee, a receipt could be issued and the gift was recognized immediately for the value of the option.

Now, where a donor issues an option to a qualified donee, the recognition of the resulting gift is delayed until the option is exercised by the qualified donee.

These rules are designed to be in keeping with the (still proposed) split-receipting 80/20 rule that provides that where an advantage associated with a gift exceeds 80 per cent of the value of the property transferred, there is no gift. As such, where 80 per cent of the fair market value of the underlying property exceeds the total of total any consideration paid for either the option or the property by the qualified donee, the exercise of the option will not be considered to be a gift unless the donor can establish that the granting of the option and the exercise thereof was made with the intention of making a gift to a qualified donee. The proposed provisions also deal with the value of the gift for receipting purposes where the option is exercised, and where the option is disposed of by the qualified donee prior to being exercised, the proceeds of disposition to the donor and the value of the gift for receipting purposes.

Thank you to the CAGP-ACPDTM Government Relations Committee for their pre-budget efforts to ensure that charitable giving is in the face of our decision makers. We will continue to work with government throughout the year to enable more effective charitable giving in Canada.

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