Federal Budget 2019 – Impact on Charities and Non-profit Organizations

March 20, 2019

The Government's 2019 Federal Budget was tabled yesterday. There were no tax measures affecting charities and non-profit organizations, including no mention of the Government's proposed review of the income tax exemption for non-profits. However, the Government's Fall Economic Statement 2018 had already announced the changes to the rules governing charities' political activities and the establishment of a permanent Advisory Committee on the Charitable Sector.

The following proposals in Budget 2019 may be of interest to the charitable sector:

Donations of Cultural Property

The Government of Canada provides certain enhanced tax incentives to encourage donations of cultural property to certain designated institutions and public authorities in Canada, in order to ensure that such property remains in Canada for the benefit of Canadians. The enhanced tax incentives include a charitable donation tax credit (for individuals) or deduction (for corporations), which may eliminate the donor's tax liability for a year, and an exemption from income tax for any capital gains arising on the disposition.

To qualify for the incentives, a donated property must be of "outstanding significance" by reason of its close association with Canadian history or national life, its aesthetic qualities or its value in the study of the arts or sciences. In addition, it must be of "national importance" to such a degree that its loss to Canada would significantly diminish the national heritage. These requirements are set out in the Cultural Property Export and Import Act and are also used to regulate the export of cultural property out of Canada.

A recent court decision related to the export of cultural property interpreted the "national importance" test as requiring that a cultural property have a direct connection with Canada's cultural heritage. This decision has raised concerns that certain donations of important works of art that are of outstanding significance but of foreign origin may not qualify for the enhanced tax incentives.

To address these concerns, Budget 2019 proposes to amend the Income Tax Act and the Cultural Property Export and Import Act to remove the requirement that property be

of "national importance" in order to qualify for the enhanced tax incentives for donations of cultural property. No changes are proposed that would affect the export of cultural property.

Qualified Donee Status

The Government of Canada provides support to certain categories of organizations, including charities, that are referred to in the Income Tax Act as "qualified donees" and that operate for some broad public purpose. Canadians may claim the charitable donation tax credit (for individuals) or deduction for donations (corporations) for donations to qualified donees. Qualified donees can also receive gifts from Canadian registered charities.

Budget 2019 proposes to add registered journalism organizations as a new category of tax-exempt qualified donee. In order to qualify for registration, a [Qualified Canadian Journalism Organization (QCJO)] will be required to apply to the Canada Revenue Agency (CRA) to be registered as a qualified donee and meet certain additional conditions, as described below.

Registered journalism organizations will be required to be corporations or trusts and to have purposes that exclusively relate to journalism. Any business activities carried on by these organizations will be required to be related to their purposes. For example, the sale of news content and advertising would be considered activities related to journalism. These organizations will not be permitted to distribute their profits, if any, or allow their income to be available for the personal benefit of certain individuals connected with the organization.

To ensure that registered journalism organizations are not used to promote the views or objectives of any particular person or related group of persons, a registered journalism organization:

- will be required to have a board of directors or trustees, each of whom deals at arm's length with each other;
- must not be factually controlled by a person (or a group of related persons); and
- must generally not, in any given year, receive gifts that represent more than 20 per cent of its total revenues, including donations, from any one source (excluding bequests and one-time gifts made on the initial establishment of the particular registered journalism organization).

To provide transparency, the names of all registered journalism organizations will be listed on the website of the Government of Canada. Registered journalism organizations will be required to file an annual return with the CRA containing information on their activities. In addition, registered journalism organizations will be required to disclose, in their information returns, the name(s) of any donors that make donations of over $5,000 and the amount donated. Similar to registered charities and registered Canadian amateur athletic associations, these information returns will be made public along with certain additional information.

Qualified donees are required to issue official donation receipts in accordance with the Income Tax Act, to maintain proper books and records and to provide access to them upon request by the CRA. As qualified donees, these rules will apply to registered

journalism organizations, including the regulatory sanctions for failing to follow these rules (i.e., a monetary penalty, the suspension of its qualified donee status and the revocation of registration).

Where a registered journalism organization no longer meets the requirements for registration as a qualified donee (including because it fails to qualify as a QCJO), the CRA will have the authority to revoke its registration. Where a journalism organization's registration is revoked, it will no longer be exempt from income tax as a registered journalism organization and will no longer be entitled to issue charitable donation receipts.

By

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