



Charity Parts of the Finance Notice of Ways and Means Motion for the 2012 Canadian Federal Budget

By Mark Blumberg (April 23, 2012)

The Minister of Finance has published the Notice of Ways and Means Motion for the 2012 Canadian Federal Budget as well as explanatory notes. In this note, I have placed excerpts which are more relevant to registered charities.

For the full Notice of Ways and Means Motion see

<http://www.fin.gc.ca/drleg-apl/bia-leb0412-eng.asp>

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[HTTP://WWW.FIN.GC.CA/DRLEG-APL/BIA-LEB0412N-ENG.ASP#PART1](http://www.fin.gc.ca/DRLEG-APL/BIA-LEB0412N-ENG.ASP#PART1)

**EXPLANATORY NOTES RELATING TO THE INCOME TAX ACT, THE EXCISE
TAX ACT AND RELATED ACTS AND REGULATIONS**

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MINISTER OF FINANCE

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PREFACE

**THESE EXPLANATORY NOTES DESCRIBE PROPOSED AMENDMENTS TO THE
INCOME TAX ACT, THE EXCISE TAX ACT AND RELATED ACTS AND
REGULATIONS. THESE EXPLANATORY NOTES DESCRIBE THESE PROPOSED
AMENDMENTS, CLAUSE BY CLAUSE, FOR THE ASSISTANCE OF MEMBERS OF
PARLIAMENT, TAXPAYERS AND THEIR PROFESSIONAL ADVISORS.**

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MINISTER OF FINANCE

THESE NOTES ARE INTENDED FOR INFORMATION PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS AN OFFICIAL INTERPRETATION OF THE PROVISIONS THEY DESCRIBE.

PART 1

AMENDMENTS TO THE INCOME TAX ACT, A RELATED ACT AND THE INCOME TAX REGULATIONS

INCOME TAX ACT

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Clause 7

Qualified donees

ITA
149.1

Section 149.1 of the Act provides the rules that must be met for qualified donees to obtain and keep registered status. A qualified donee can issue receipts that entitle donors to claim tax relief in respect of their donations to the qualified donee.

Definitions

ITA
149.1(1)

Subsection 149.1(1) of the Act contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act.

“charitable purposes”

The definition “charitable foundation” in subsection 149.1(1) of the Act requires a corporation or trust to be constituted and operated exclusively for charitable purposes in order to be a charitable foundation.

Political activities are not considered to be charitable; however, the Act allows charitable foundations to be engaged incidentally in non-partisan political activities. In particular, subsection 149.1(6.1) provides that, for the purposes of the definition “charitable foundation” in subsection 149.1(1), a corporation or trust that devotes part of its resources to political activities will be considered to be constituted and operated for charitable purposes to the extent of its resources devoted to political activities, if the corporation or trust:

- devotes substantially all of its resources to charitable purposes (not including the part of those resources devoted to political activities);
- those political activities are ancillary and incidental to its charitable purposes; and
- those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.

The definition “charitable purposes” in subsection 149.1(1) provides that “charitable purposes” includes the disbursement of funds to qualified donees. This may be the case even if the disbursement is a gift that is made to support political activities of the recipient of the gift. As a result, a charitable foundation may be able to support political activities beyond what would normally be permitted by subsection 149.1(6.1) if the charitable foundation were to engage in those political activities directly.

The definition “charitable purposes” is amended to provide that charitable purposes includes the disbursement of funds to a qualified donee, other than a gift the making of which is a political activity. In this regard, the new definition “political activity” in subsection 149.1(1) provides that a political activity includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee.

This amendment to the definition “charitable purposes” is not intended to prevent charitable foundations from carrying on political activities within the limits permitted by subsection 149.1(6.1).

This amendment comes into force on Royal Assent.

“political activity”

The new definition “political activity” in subsection 149.1(1) provides that a political activity includes the making of a gift to a qualified donee if it can

reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee. The definition is introduced concurrently with amendments to the definition "charitable purposes" in subsection 149.1(1) and to paragraphs 149.1(6)(b) and (c) and subsection 149.1(10).

For further information, see the commentary for those amendments.

The new definition comes into force on Royal Assent.

"qualified donee"

The definition "qualified donee" in subsection 149.1(1) lists the entities that are eligible to issue receipts for the purposes of the charitable donations deduction under section 110.1 and the charitable donations tax credit under section 118.1. Subsection 248(1) provides that this definition applies for all purposes of the Act.

Subparagraph (a)(v) of the definition "qualified donee" provides that a charitable organization outside Canada is qualified donee for a period that ends 24 months after the time that Her Majesty in right of Canada made a gift to the organization if the organization is registered by the Minister of National Revenue as a qualified donee.

Subparagraph (a)(v) is amended to provide that a foreign organization is a qualified donee if it has applied to the Minister of National Revenue for registration and it has been so registered under new subsection 149.1(26). For further information, see the commentary for subsection 149.1(26).

This amendment comes into force on the later of the day on which the enabling legislation receives Royal Assent and January 1, 2013. A foreign organization registered before the later of those days will remain a qualified donee until the expiration of the period referred to above.

Devoting resources to charitable activity

ITA

149.1(6)(b) and (c) and 149.1(10)

The definition "charitable organization" in subsection 149.1(1) of the Act requires an organization to devote all of its resources to charitable activities carried on by the organization itself.

Political activities are not considered to be charitable; however, the Act allows charitable organizations to be engaged incidentally in non-partisan

political activities. In particular, subsection 149.1(6.2) provides that a charitable organization that devotes part of its resources to political activities will be considered to be devoting its resources to charitable activities to the extent of its resources devoted to political activities, if the organization:

- devotes substantially all of its resources to charitable activities carried on by it (not including the part devoted to political activities);
- those political activities are ancillary and incidental to its charitable activities; and
- those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office.

Paragraphs 149.1(6)(b) and (c) and subsection 149.1(10) provide that, under certain circumstances, when a charitable organization makes a disbursement to a qualified donee, the charitable organization will be considered to be devoting its resources to charitable purposes carried on by it. This may be the case even if the disbursement is a gift that is made to support political activities of the recipient of the gift. As a result, a charitable organization may be able to indirectly pursue political activities beyond what would normally be permitted by subsection 149.1(6.2) if the charitable organization were to engage in those political activities directly. Under the current rules:

- Paragraph 149.1(6)(b) provides that a charitable organization is considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.
- Paragraph 149.1(6)(c) provides that a charitable organization is considered to be devoting its resources to charitable activities carried on by it to the extent that it disburses income to a registered charity that the Minister of National Revenue has designated in writing as a charity associated with it.
- Subsection 149.1(10) provides that an amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization is deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it.

Paragraphs 149.1(6)(b) and (c) and subsection 149.1(10) are amended to so that they do not apply to disbursements by way of a gift the making of which is a political activity. In this regard, the new definition “political activity” in subsection 149.1(1) provides that a political activity includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee.

The amendments to paragraphs 149.1(6)(b) and (c) and subsection 149.1(10) are not intended to prevent charitable organizations from carrying on political activities within the limits permitted by subsection 149.1(6.2).

These amendments come into force on Royal Assent.

Designated foreign charitable organizations

ITA

149.1(26)

New subsection 149.1(26) of the Act provides the criteria under which the Minister of National Revenue, in consultation with the Minister of Finance, may register a foreign organization for the purposes of the definition “qualified donee” in subsection 149.1(1). The definition “qualified donee” in subsection 149.1(1) lists the entities that are eligible to issue receipts for the purposes of the charitable donations deduction under section 110.1 and the charitable donations tax credit under section 118.1.

Subsection 149.1(26) grants the Minister of National Revenue the discretion to register a foreign organization as a qualified donee for a 24-month period that includes the time at which Her Majesty in right of Canada has made a gift to the foreign organization, if:

- the organization is a charitable organization that is not resident in Canada; and
- the Minister of National Revenue is satisfied that the organization is
 - carrying on relief activities in response to a disaster,
 - providing urgent humanitarian aid, or
 - carrying on activities in the national interest of Canada.

The Minister of National Revenue may set the beginning and end of the 24-month period, but the 24-month period must include the time the gift was made by Her Majesty in right of Canada.

To maintain its registered status, a foreign organization must meet the requirements of subsection 168(1), which generally requires the organization to:

- continue to comply with the requirements of the Act for its registration;
- issue receipts only in accordance with the Act and the *Income Tax Regulations*; and
- comply with sections 230 to 231.5, relating to books and records.

This amendment comes into force on the later of the day on which the enabling legislation receives Royal Assent and January 1, 2013. A foreign organization registered before the later of those days will remain a qualified donee until 24 months after the time that Her Majesty in right of Canada made the gift to the organization that allowed the organization to be registered by the Minister of National Revenue as a qualified donee (i.e., the foreign organization will be subject to the existing rules).

Clause 13

Suspension of receipting privileges

ITA
188.2

Subsections 188.2(1) and (2) of the Act provide for the suspension, in certain circumstances, of the tax-receipting privileges of registered charities, registered Canadian amateur athletic associations and persons described in paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1). For a one-year period that begins seven days after notice of the suspension has been sent by the Minister of National Revenue, the qualified donee is prohibited from issuing official receipts, and other qualified donees are not permitted to provide them with gifts.

Subsections 188.2(1) and (2) do not currently allow the tax-receipting privileges of a registered charity or a registered Canadian amateur athletic association to be suspended if the charity or association devotes resources to political activities in excess of the limits set out under the Act, or if the charity or association provides inaccurate or incomplete information in its annual return filed with the Canada Revenue Agency.

Subsection 188.2(2) is amended to provide the Minister of National Revenue with the authority to suspend the tax-receipting privileges of a registered

charity or a registered Canadian amateur athletic association if the charity or association devotes resources to political activities in excess of the limits set out under subsections 149.1(6.1), (6.2) and (6.201).

New subsection 188.2(2.1) is added to provide for the suspension of the tax-receipting privileges of a registered charity or a registered Canadian amateur athletic association if the charity or association fails to report information that is required to be filed annually under subsection 149.1(14). Subject to rights of objection, appeal and postponement of the suspension (discussed below), tax-receipting privileges will be reinstated only if the Minister of National Revenue receives the required information.

Subsection 188.2(3) sets out the consequences of a suspension under subsection 188.2(1) or (2). During the period of suspension, the registered charity, registered Canadian amateur athletic association or other person described in paragraphs (a) to (c) of the definition "qualified donee", is deemed not to be a qualified donee for the purposes of the Act and no charitable donations deduction or tax credit may be claimed by any person who makes a gift to the donee during that period. However, official receipts may continue to be issued in respect of gifts made before that period. If offered a gift while under suspension, a charity must inform the potential donor of the suspension and that, if the gift is made during the suspension, no charitable donations deduction or tax credit may be claimed by the donor in respect of the gift.

Subsection 188.2(3) is amended so that it also applies in respect of a suspension under new subsection 188.2(2.1).

Subsection 188.2(4) provides that a charity may file an application to the Tax Court of Canada for a postponement of a suspension under subsection 188.2(1) or (2) if a notice of objection to the suspension has been filed. Subsection 188.2(4) is amended so that it also applies in respect of a suspension under new subsection 188.2(2.1).

These amendments come into force on Royal Assent.

Clause 14

Assessment

ITA
227(10)

Subsection 227(10) of the Act empowers the Minister of National Revenue to assess a person for various amounts including penalties and other amounts payable by the person in respect of the failure to comply with certain provisions of the Act.

Subsection 227(10) is amended to provide the Minister with the authority to assess a person or partnership who is liable to a penalty under new subsection 237.1(7.5) in respect of a failure to comply with reporting requirements for tax shelters.

This amendment comes into force on Royal Assent.

Clause 15

Tax Shelters

ITA
237.1

Section 237.1 of the Act provides administrative rules relating to tax shelters.

Sales prohibited

ITA
237.1(4)

Subsection 237.1(4) of the Act allows a person to sell, issue, or accept a contribution towards the acquisition of, an interest in a tax shelter only if an identification number for the tax shelter has first been obtained from the Minister of National Revenue.

Subsection 237.1(4) is amended to allow such sales, issuances and contributions only during the calendar year designated by the Minister as being applicable to the tax shelter identification number.

The amendment to subsection 237.1(4) generally applies in respect of tax shelters for which identification numbers have been applied for after March 28, 2012. If an identification number that is issued by the Minister was applied for before March 29, 2012, the person may sell or issue, or accept consideration in respect of, the tax shelter until the end of 2013.

Penalty

ITA
237.1(7.4)

Subsection 237.1(7.4) of the Act imposes a penalty on a person for filing false or misleading information in respect of an application for a tax shelter identification number under subsection 237.1(2). The penalty may also apply to any person (generally a promoter) acting as principal or agent who sells, issues, or accepts a contribution towards the acquisition of, an interest in a tax shelter, before obtaining an identification number as required under subsection 237.1(4). The penalty is equal to the greater of \$500 and 25% of the total of the costs to all persons who acquire interests in the tax shelter before the correct information is provided or before the identification number is issued, as the case may be.

Subsection 237.1(7.4) is amended such that for a tax shelter that is a gifting arrangement (as defined in subsection 237.1(1)) the penalty will be equal to the greater of the amount determined under the existing rules and 25% of the amount asserted by the promoter to be the value of property that participants in the tax shelter can transfer to a qualified donee.

This amendment applies in respect of applications for identification numbers made, sales or issuances of tax shelters made and consideration in respect of tax shelters accepted, after Royal Assent.

Penalty

ITA
237.1(7.5)

New subsection 237.1(7.5) of the Act introduces a penalty that applies if a person fails, in response to a demand by the Minister of National Revenue under section 233, to file an information return in respect of a tax shelter as required under subsection 237.1(7) of the Act. The new penalty also applies if a person fails to report in an information return the information required under paragraphs 237.1(7)(a) or (b).

The penalty is equal to 25% of the greater of:

- the total of the consideration received by the person from tax shelter participants in respect of whom information is required under paragraph 237.1(7)(a) or (b) but that has not been reported at or before the time the Minister issued the demand or the return was filed, as the case may be; and

- if the tax shelter is a gifting arrangement (as defined in subsection 237.1(1)), the total of all amounts asserted by the promoter to be the value of property that the tax shelter participants referred to above could transfer to a qualified donee.

New subsection 237.1(7.5) applies in respect of demands made, and information returns filed, after Royal Assent.

<http://www.fin.gc.ca/drleg-apl/bia-leb0412-eng.asp>

Notice of Ways and Means Motion to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures

MINISTER OF FINANCE

That it is expedient to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Jobs, Growth and Long-term Prosperity Act*.

PART 1

AMENDMENTS TO THE INCOME TAX ACT, A RELATED ACT AND THE INCOME TAX REGULATIONS

R.S., c. 1 (5th Supp.)

7. (1) The definition “charitable purposes” in subsection 149.1(1) of the Act is replaced by the following:

“charitable purposes”

« fins de bienfaisance »

“charitable purposes” includes the disbursement of funds to a qualified donee, other than a gift the making of which is a political activity;

(2) Subparagraph (a)(v) of the definition “qualified donee” in subsection 149.1(1) of the Act is replaced by the following:

(v) a foreign organization that has applied to the Minister for registration under subsection (26),

(3) Subsection 149.1(1) of the Act is amended by adding the following in alphabetical order:

“political activity”

« activité politique »

“political activity” includes the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee;

(4) Paragraphs 149.1(6)(b) and (c) of the Act are replaced by the following:

(b) it disburses income to qualified donees, other than income disbursed by way of a gift the making of which is a political activity, if the total amount of the charitable organization’s income that is disbursed to qualified donees in a taxation year does not exceed 50% of its income for the year; or

(c) it disburses income to a registered charity that the Minister has designated in writing as a charity associated with it, other than income disbursed by way of a gift the making of which is a political activity.

(5) Subsection 149.1(10) of the Act is replaced by the following:

Deemed charitable activity

(10) An amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization is deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it, unless the amount paid is a gift the making of which is a political activity.

(6) Section 149.1 of the Act is amended by adding the following after subsection (25):

Foreign charitable organizations

(26) For the purposes of subparagraph (a)(v) of the definition “qualified donee” in subsection (1), the Minister may register, in consultation with the Minister of Finance, a foreign organization for a 24-month period that includes the time at which Her Majesty in right of Canada has made a gift to the foreign organization, if

(a) the foreign organization is a charitable organization that is not resident in Canada; and

(b) the Minister is satisfied that the foreign organization is

(i) carrying on relief activities in response to a disaster,

(ii) providing urgent humanitarian aid, or

(iii) carrying on activities in the national interest of Canada.

(7) Subsections (2) and (6) come into force on the later of the day on which this Act receives royal assent and January 1, 2013, except that subparagraph (a)(v) of the definition “qualified

donee” in subsection 149.1(1) of the Act, as enacted by subsection (2), and subsection 149.1(26) of the Act, as enacted by subsection (6), do not apply in respect of registrations of charitable organizations outside Canada made before the later of those days.

...

13. (1) Subsection 188.2(2) of the Act is amended by striking out “or” at the end of paragraph (c) and by adding the following after paragraph (d):

(e) in the case of a registered charity that is a charitable foundation, if the foundation devotes resources to political activities that are not considered under subsection 149.1(6.1) to be devoted to charitable purposes;

(f) in the case of a registered charity that is a charitable organization, if the organization devotes resources to political activities that are not considered under subsection 149.1(6.2) to be devoted to charitable activities; or

(g) in the case of a registered Canadian amateur athletic association, if the association devotes resources to political activities that are not considered under subsection 149.1(6.201) to be devoted to its exclusive purpose and exclusive function.

(2) Section 188.2 of the Act is amended by adding the following after subsection (2):

Suspension – failure to report

(2.1) If a registered charity or a registered Canadian amateur athletic association fails to report information that is required to be included in a return filed under subsection 149.1(14), the Minister may give notice by registered mail to the charity or association that its authority to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended from the day that is seven days after the day on which the notice is mailed until such time as the Minister notifies the charity or association that the Minister has received the required information in prescribed form.

(3) The portion of subsection 188.2(3) of the Act before paragraph (a) is replaced by the following:

Effect of suspension

(3) If the Minister has issued a notice to a qualified donee under any of subsections (1) to (2.1), subject to subsection (4),

(4) Subsection 188.2(4) of the Act is replaced by the following:

Application for postponement

(4) If a notice of objection to a suspension under any of subsections (1) to (2.1) has been filed by a qualified donee, the qualified donee may file an application to the Tax Court of Canada for a postponement of that portion of the period of suspension that has not elapsed until the time determined by the Court.

14. Paragraph 227(10)(b) of the Act is replaced by the following:

(b) subsection 237.1(7.4) or (7.5) by a person or partnership,

15. (1) Subsection 237.1(4) of the Act is replaced by the following:

Sales prohibited

(4) A person may, at any time, whether as a principal or an agent, sell or issue, or accept consideration in respect of, a tax shelter only if

(a) the Minister has issued before that time an identification number for the tax shelter; and

(b) that time is before 2014.

(2) Paragraph 237.1(4)(b) of the Act, as enacted by subsection (1), is replaced by the following:

(b) that time is during the calendar year designated by the Minister as being applicable to the identification number.

(3) Paragraph 237.1(7.4)(b) of the Act is replaced by the following:

(b) 25% of the greater of

(i) the total of all amounts each of which is the consideration received or receivable from a person in respect of the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be, and

(ii) the total of all amounts each of which is an amount stated or represented to be the value of property that a particular person who acquires or otherwise invests in the tax shelter could donate to a qualified donee, if the tax shelter is a gifting arrangement and consideration has been received or is receivable from the particular person in respect of the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be.

(4) Section 237.1 of the Act is amended by adding the following after subsection (7.4):

Penalty

(7.5) Every person who is required under subsection (7) to file an information return and who fails to comply with a demand under section 233 to file the return, or to report in the return information required under paragraph (7)(a) or (b), is liable to a penalty equal to 25% of the greater of

(a) the total of all amounts each of which is the consideration received or receivable by the person in respect of the tax shelter from a particular person in respect of whom information required under paragraph (7)(a) or (b) had not been reported at or before the time that the demand was issued or the return was filed, as the case may be, and

(b) if the tax shelter is a gifting arrangement, the total of all amounts each of which is an amount stated or represented to be the value of property that the particular person could donate to a qualified donee.

(5) Subsection (1) is deemed to have come into force on March 29, 2012.

(6) Subsection (2) applies in respect of any tax shelter for which an application for an identification number has been made after March 28, 2012.

(7) Subsection (3) applies in respect of any application for an identification number made, any sale or issuance of a tax shelter made and any consideration in respect of a tax shelter accepted, on or after the day on which this Act receives royal assent.

(8) Subsection (4) applies in respect of any demand made, and any information return filed, on or after the day on which this Act receives royal assent.

R.S., c. G-9

