



# 2011 Canadian Federal Budget - How will it affect the Canadian charitable sector?

By Mark Blumberg<sup>1</sup> (March 22, 2011)

There is about 20 pages of material in the budget dealing with Canadian charities and other qualified donees, which are groups that can issue tax receipts. Here are different parts of the budget and I will be placing further information on [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

## Supporting Vibrant Communities

The Next Phase of Canada's Economic Action Plan announces additional support for culture and communities with new budget measures, including support for Aboriginal people, such as:

- Attracting more health care workers to under-served rural and remote communities by forgiving a portion of the federal component of Canada Student Loans for new family physicians, nurse practitioners and nurses who practise in these communities.
- Improving the regulatory framework of the charitable sector to give confidence to Canadians who make donations.

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□ Providing \$25 million over five years to renew funding for the Harbourfront Centre.

Since 2006, the Government has taken action to support families and help meet the needs of all Canadians, including:

....

- A series of measures to support our charitable sector, introduced over four budgets starting with Budget 2006, to improve tax incentives for donations by exempting capital gains tax on donations of publicly listed securities and exchangeable shares, as well as donations of ecologically sensitive land to public conservation charities, and to reduce the administrative burden on charities through disbursement quota reform.

### **Ensuring a Strong and Effective Charitable Sector**

The charitable sector plays an essential role in the Canadian economy and society through the valuable services provided to Canadians, including to the most vulnerable in society. The Government recognizes that charities rely on the generosity of Canadians and has taken action to encourage it. Tax support for registered charities in Canada is considered to be among the most generous in the world, providing almost \$2.7 billion in tax assistance in 2010. The Government also supported Motion 559, sponsored by the Member of Parliament for Kitchener-Waterloo and adopted by the House of Commons on March 2, 2011, which called for the House Standing Committee on Finance to study charitable donation incentives. The Government looks forward to the results of the study.

Canadians have shown that they are willing to give generously to charities, but want to have confidence that donations of their hard-earned dollars support legitimate charities and are used for charitable purposes. While the vast majority of charities and qualified donees use tax-assisted donations in an appropriate manner, the generosity of the existing tax regime makes it an attractive target for abuse by some individuals. The Canada Revenue Agency (CRA), as administrator of the tax system, must have an effective set of compliance tools to safeguard the donations of Canadian taxpayers and act against any organization that does not follow the rules.

Accordingly, to ensure that tax assistance for this sector is as effective as possible and that the CRA has the means to ensure compliance, Budget 2011 will:

- Enhance transparency and strengthen compliance requirements with respect to certain organizations entitled to issue official donation receipts, and extend the regulatory regime that currently applies to registered charities to registered Canadian amateur athletic associations.
- Provide the CRA the authority to refuse to register a charity or Canadian amateur athletic association, or act against an already registered one, where there is a high risk of abuse as a result of individuals being involved in the management of the organization who have a history of fraud, misuse of charitable resources or other related contraventions. Budget 2011 also proposes to clarify existing legislation and limit unintended or excessive benefits. Further information is provided in Annex 3.

### **Tax Fairness—Closing Tax Loopholes**

Budget 2011 follows through on the Government's commitment in the 2010 Speech from the Throne to improve the integrity and fairness of the tax system by closing loopholes that allow a few businesses and individuals to avoid paying their fair share of tax. These proposed measures will protect the Government's revenue base—which helps keep tax rates low—and reaffirm the Government's ongoing commitment to tax fairness.

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- A package of integrity measures for charities will be introduced to help combat fraud and abuse of the charitable donations incentives, thereby protecting the tax base and ensuring that more resources are available for legitimate charities.
- Rules will be introduced to limit excessive tax benefits that can result on the donation of flow-through shares as a result of the interaction between the exemption from capital gains tax on the donation of publicly listed securities and the tax incentives for flow-through shares.

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**Strengthening the Charitable Sector**

The charitable sector plays an essential role in Canadian society through the valuable services it provides to Canadians, including to the most vulnerable in society. Canadians have shown that they are willing to give generously to charities, but want to have confidence that donations of their hard-earned dollars support legitimate charities and are used for charitable purposes.

While the vast majority of charities and other qualified donees use tax-assisted donations in an appropriate manner, the generosity of the existing tax regime makes it a potential target for abuse. Budget 2011 proposes measures to enhance the ability of Canadians to give with confidence to charities, and to help ensure that more resources are available for legitimate charities.

To ensure that organizations given the privilege of issuing official donation receipts operate in compliance with the law, to clarify existing legislation and to limit unintended or excessive benefits, Budget 2011 proposes a number of measures.

**Enhance the Regulatory Regime for Qualified Donees**

The *Income Tax Act* grants the privilege of issuing official donation receipts to certain types of organizations referred to as “qualified donees”. Registered charities are the most common type of qualified donee.<sup>4</sup> Registered national arts service organizations are deemed to be “registered charities” for specific purposes of the *Income Tax Act* including the definition of qualified donee.

To safeguard the tax system from abuse and to ensure compliance by those organizations given the privilege of issuing official donation receipts, Budget 2011 proposes to extend to the following qualified donees certain regulatory requirements that apply to registered charities in the interest of fairness and consistency:

- registered Canadian amateur athletic associations (RCAAs);
- municipalities in Canada;
- municipal and public bodies performing a function of government in Canada;<sup>5</sup>  
[5 The addition of municipal or public bodies performing a function of government in Canada to the list of qualified donees remains the subject of proposed technical amendments to the *Income Tax Act* (see July 16, 2010 draft legislation). These amendments will be introduced as a part of these proposals.]
- housing corporations in Canada constituted exclusively to provide low-cost housing for the aged;
- universities outside of Canada, the student body of which ordinarily includes students from Canada; and
- certain other charitable organizations outside of Canada that have received a gift from Her Majesty in right of Canada.<sup>6</sup>

[6 The Government of Canada, provincial and territorial governments in Canada, and the United Nations and its agencies are also qualified donees. These proposals will not apply to these entities. For the purposes of these measures, the term “qualified donee” will only refer to the above list.]

In addition, Budget 2011 proposes to extend to RCAAs additional regulatory requirements that apply to registered charities. These measures, described in more detail below, will apply on or after the later of January 1, 2012 and Royal Assent to the enacting legislation.

## **New Rules for Qualified Donees**

### Enhancing Transparency and Accountability

To enhance transparency and accountability and provide greater certainty to donors, Budget 2011 proposes that qualified donees be required to be on a publicly available list maintained by the Canada Revenue Agency.

As is the case for registered charities, these measures will enable members of the public to determine which organizations may issue an official donation receipt and will enable registered charities, which may only make gifts to qualified donees, to determine whether an organization is a qualified donee for grant-making purposes.

The majority of qualified donees are already identified on publicly accessible lists.<sup>7</sup> [7 Technical amendments to the *Income Tax Act* are already proposed to authorize the CRA to release the name, registration number and other relevant information with respect to RCAAs (see July 16, 2010 draft legislation).]

Accordingly, these proposals will not impose any new requirements on these organizations. For those qualified donees that are not currently on publicly accessible lists, these proposals will require that they be on a list maintained by the CRA in order to be eligible to issue official donation receipts.<sup>8</sup> [8 This will include a listing of municipalities in Canada; municipal and public bodies performing a function of government in Canada; universities outside of Canada the student body of which ordinarily includes students from Canada; and housing corporations in Canada constituted exclusively to provide low-cost housing for the aged.]

### Official Donation Receipts

Registered charities must abide by rules that relate to the issuance of official donation receipts and are subject to sanctions if they fail to comply. These rules include the requirement to:

- issue receipts only for transactions that qualify as gifts;
- properly establish the fair market value of donated property; and
- ensure that receipts contain accurate and complete information.

Budget 2011 proposes that, if a qualified donee issues a donation receipt other than in accordance with the *Income Tax Act* and its regulations, then the CRA be authorized to suspend the receipting privileges of the qualified donee or revoke its qualified donee status. Budget 2011 also proposes that the monetary penalties associated with improper issuance of receipts that apply to registered charities be extended to RCAAAs.

### Books and Records

Registered charities and RCAAAs are required to maintain proper books and records to allow the CRA to verify donations and to provide access to these books and records upon request by the CRA. Registered charities and RCAAAs are subject to sanctions if they fail to do so.

To ensure fair and consistent treatment, Budget 2011 proposes that a qualified donee be required to maintain proper books and records and provide access to those books and records to the CRA when requested.

If a qualified donee fails to do so, the CRA would be authorized to suspend the receipting privileges of the qualified donee or revoke its qualified donee status.

Budget 2011 also proposes that the monetary penalties associated with failing to file an information return that apply to registered charities be extended to RCAAAs.

### **Regulatory Framework for Registered Canadian Amateur Athletic Associations**

In addition to the measures described above, to ensure fair and consistent treatment, Budget 2011 proposes to extend to RCAAAs other key regulatory requirements that apply to registered charities.

#### **Exclusivity of Purpose and Function**

Registered charities are required to operate exclusively for charitable purposes. By comparison, RCAAAs currently need have only the promotion of amateur athletics in Canada on a nation-wide basis as their primary purpose and primary function.

Budget 2011 proposes that RCAAAs be required to have the promotion of amateur athletics in Canada on a nation-wide basis as their exclusive purpose and exclusive function rather than their primary purpose and primary function. These changes will not prevent RCAAAs from staging or engaging in international events and competitions, as such activities would normally be consistent with the promotion of amateur athletics in Canada, given the participation of Canadian teams and athletes in such events.

Consistent with the regime for registered charities, certain related activities will be permitted. RCAAAs will be permitted to carry on related business activities, such as selling merchandise related to their sport, and to engage in limited non-partisan political activities.

Under this proposal, RCAAAs will be subject to the same regulatory sanctions as registered charities for breach of these requirements, namely a monetary penalty, the suspension of qualified donee status or the revocation of registration.

Stakeholders are invited to provide feedback on or before June 30, 2011 on the introduction of an “exclusivity of purpose and function” test for RCAAAs.

#### **Undue Benefits**

A registered charity may be subject to a monetary penalty, have its receipting privileges suspended or have its registration revoked if it provides an undue benefit to any person. This includes situations where the charity pays excessive compensation to staff, a professional fundraising company or any individual or company with whom it does business. RCAAAs are not subject to such requirements.

Budget 2011 proposes that, if an RCAA provides an undue benefit to any person, the CRA be authorized to apply monetary penalties, suspend its receipting privileges or revoke its registration in the same manner as currently applies to registered charities, which will help ensure fair and consistent treatment.

### **Public Access to Information Returns and Other Documents**

The public is provided access to significant information relating to registered charities such as governing documents, annual information returns, applications for registration and the names of directors. The availability of this information helps registered charities demonstrate that they are established for charitable purposes and are spending their funds appropriately.

To improve the information available to donors, Budget 2011 proposes that the CRA be authorized to make available to the public certain information and documents in respect of RCAAAs, in the same manner as applies to registered charities. The CRA will consult with stakeholders in developing administrative guidance regarding the application of the proposed measures.

### **Safeguard Charitable Assets through Good Governance**

The CRA is responsible for auditing registered charities and registered Canadian amateur athletic associations and reviewing applications for their registration. In some cases, applications may be submitted by individuals who have been involved with other charities or associations that have had their registered status revoked for serious non-compliance, for example, for issuing fraudulent donation receipts. Concerns may also arise if an individual, with significant influence with respect to an organization, has a criminal record involving a breach of public trust, such as fraud or misappropriation. The *Income Tax Act* does not currently allow consideration of the criminal history or other past misconduct by such individuals as grounds for refusal to register the organization or to revoke its

registration. As a result, the CRA may be unable to refuse or revoke the registration of an organization, even when there is a high risk of abuse.

Budget 2011 proposes to give the Minister of National Revenue the discretion to refuse or to revoke the registration of an organization, or to suspend its authority to issue official donation receipts, if a member of the board of directors, a trustee, officer or equivalent official, or any individual who otherwise controls or manages the operation of the organization:

- has been found guilty of a criminal offence in Canada or an offence outside of Canada that, if committed in Canada, would constitute a criminal offence under Canadian law, relating to financial dishonesty (including tax evasion, theft or fraud), or any other criminal offence that is relevant to the operation of the organization, for which he or she has not received a pardon;
- has been found guilty of an offence in Canada within the past five years, or an offence committed outside Canada within the past five years that, if committed in Canada, would constitute an offence under Canadian law, relating to financial dishonesty (including offences under charitable fundraising legislation, convictions for misrepresentation under consumer protection legislation or convictions under securities legislation) or any other offence that is relevant to the operation of the organization;
- was a member of the board of directors, a trustee, officer or equivalent official, or an individual who otherwise controlled or managed the operation of a charity or Canadian amateur athletic association during a period in which the organization engaged in serious non-compliance for which its registration has been revoked within the past five years; or
- was at any time a promoter of a gifting arrangement or other tax shelter in which a charity or Canadian amateur athletic association participated and the registration of the charity or association has been revoked within the past five years for reasons that included or were related to its participation.

The CRA will consider the particular circumstances of a charity or Canadian amateur athletic association in applying the proposed measures. For example, notwithstanding the involvement of a particular individual in the activities of a charity or association, the CRA will take into account whether appropriate safeguards have been instituted to address any potential concerns.

The proposed measures will not require a charity or Canadian amateur athletic association to obtain background checks. However, after a charity or association has been made aware of concerns on the part of the CRA in respect of an individual, failure to take adequate remedial action could result in the denial of the application for registration, suspension of receipting privileges or revocation of registered status, as the case may be.

The CRA will consult with stakeholders in developing administrative guidance regarding the application of the proposed measures. These measures will apply on and after the later of January 1, 2012 and Royal Assent to the enacting legislation.

### **Recover Tax Assistance for Returned Gifts**

In some circumstances where a qualified donee receives property from a taxpayer and issues an official donation receipt but subsequently returns the property to the taxpayer, the Minister of National Revenue is not able to reassess the taxpayer for the Charitable Donations Tax Credit or Deduction previously claimed. To ensure that tax assistance is not improperly retained, Budget 2011 proposes to permit reassessments to disallow a taxpayer's claim for a credit or deduction, as the case may be, in any case where property is returned to a donor. In some circumstances, other consequential adjustments will be made for tax purposes. When property for which the taxpayer received an official donation receipt is returned, the qualified donee must issue to the taxpayer a revised receipt. Budget 2011 proposes that in these circumstances the qualified donee be required to send a copy of the revised receipt to the CRA when the amount of the receipt has changed by more than \$50. This measure will apply in respect of gifts or property returned on or after Budget Day.

### **Gifts of Non-Qualifying Securities**

Various provisions in the *Income Tax Act* reflect the policy that a Charitable Donations Tax Credit or Deduction generally should not be available to a donor until such time as the use and benefits of the donor's property have been transferred to a registered charity or other qualified donee. One of these provisions applies in the case of donations of non-qualifying securities of the donor. For this purpose, a non-qualifying security (NQS) of a taxpayer is

defined, generally, as a share, debt obligation or other security issued by the taxpayer or by a person not dealing at arm's length with the taxpayer.

Obligations of financial institutions to repay an amount deposited with the institution, as well as shares, debt obligations and other securities listed on a designated stock exchange, are excluded from the definition of NQS.

Budget 2011 proposes that tax recognition of the donation of an NQS of a donor, for the purpose of determining eligibility for a Charitable Donations Tax Credit or Deduction to the donor, will be deferred until such time, within five years of the donation of the NQS, as the qualified donee has disposed of the NQS for consideration that is not, to any person, another NQS. Budget 2011 also proposes an anti-avoidance rule to ensure that, if as a result of a series of transactions:

- a particular person holds an NQS of a donor; and
- the donee has acquired, directly or indirectly, an NQS of the particular person or of the donor, the gift of the donor will be subject to the NQS rules until such time (within five years of the donation) as the donee has disposed of the NQS for consideration that is not, to any person, another NQS. These measures will apply in respect of securities disposed of by donees on or after Budget Day.

### **Granting of Options to Qualified Donees**

The *Income Tax Act* has rules that provide certainty as to the tax consequences arising on the granting of options in a commercial context, but the application of these rules is unclear in respect of an option granted by a person, to a qualified donee, to acquire a property of that person. Budget 2011 proposes to clarify that the Charitable Donations Tax Credit or Deduction is not available to a taxpayer in respect of the granting of an option to a qualified donee to acquire a property of the taxpayer until such time that the donee acquires property of the taxpayer that is the subject of the option. The taxpayer will be allowed a credit or deduction at the time of acquisition by the donee based on the amount by which the fair market value of the property at that time exceeds the total of amounts, if any, paid by the donee for the option and the property. Consistent with previously proposed measures concerning split receipting, a Charitable Donations Tax Credit or Deduction generally will not be available to the taxpayer if the total amount paid by the qualified donee for the property and the option exceeds 80 per cent of the fair market value of the property at the time of acquisition by the

donee. This measure will apply in respect of options granted on or after Budget Day.

### **Donations of Publicly Listed Flow-Through Shares**

Budget 2011 proposes, in general terms, to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after Budget Day only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flowthrough shares.

Budget 2006 introduced tax assistance for donations of publicly listed securities by eliminating any capital gains tax on such donations to public charities. Budget 2007 introduced an extension of this measure to donations of publicly listed securities to all registered charities. These measures provide an incentive to donate listed securities which have appreciated in value and carry unrealized capital gains.

Flow-through shares allow corporations in the oil and gas, mining and renewable energy sectors to renounce or “flow-through” tax expenses associated with eligible exploration, development and project start-up expenses to investors, who can deduct these expenses in calculating their own taxable income. Flow-through shares are treated as having a cost of zero for the purpose of calculating any gain or loss on their disposition. As a result, when an investor holding only flow-through shares sells them, the full amount of the proceeds received is recognized as a capital gain for tax purposes. Taxation as a capital gain of the proceeds up to the amount of the original cost represents a partial recovery of the tax benefit provided by the deduction for the original cost of the share, rather than a gain resulting from an appreciation in the share’s value. The exemption from capital gains tax on donations of publicly listed securities allows taxpayers to avoid this second stage of the normal flow-through share rules.

Under current rules, when publicly listed flow-through shares are donated, the donor benefits from:

- the deduction for the expenses flowed through from the corporation;
- applicable federal and provincial mineral exploration flow-through share tax credits;
- the Charitable Donations Tax Credit or Deduction in respect of the value of the shares; and
- relief from capital gains tax, including tax on the portion of the gain attributable to the zero cost for the shares.

The net result is that a taxpayer can often acquire and donate flow-through shares at little after-tax cost.

For illustrative purposes, this table sets out a hypothetical flow-through share donation by an Ontario taxpayer in the top income tax bracket. (Results can vary depending on factors including the purchase price of the shares, their value at the time of donation, the province of residence of the donor, the donor's marginal tax rate, and the availability of federal and provincial flow-through share tax credits.) In this example, all of the benefit due to the capital gains exemption is assumed to accrue to the donor.

This example assumes that the donated flow-through share is eligible for the federal and provincial mineral exploration tax credits (15% and 5% respectively) and that it is issued at a 20% premium to the \$100 value at which ordinary shares of the class in which it is issued are trading. It also assumes that after the flow-through deductions have been claimed by the taxpayer, he or she donates the share to charity at its fair market value of \$100 (the flow-through share premium generally drops out of the price once the flow-through deductions have been claimed).

Price paid for flow-through share (20% premium) \$120.00

Less:

Value of flow-through share deductions (fed/prov) -\$55.70

Net value of flow-through share tax credits (fed/prov) -\$12.90

Capital gains tax on disposition of shares (fed/prov) 0.00

Value of charitable donation credit (fed/prov) -\$46.40 -\$115.00

**Net after-tax cost \$5.00**

Donation amount \$100.00

**Government tax support as % of donation 95%**

Budget 2011 proposes that if a share, or a right to acquire a share, of a particular class of the capital stock of a corporation (such share or right being referred to below as a "flow-through share") is issued to a taxpayer under a flow-through share agreement entered into on or after Budget Day, the exemption from capital gains tax on donations of publicly listed securities will be available in respect of a subsequent donation by the taxpayer of a share of that class only to the extent that the capital gain on the donation exceeds a threshold amount (the "exemption threshold") at the time of the donation. The proposed rules will apply as well to a right to acquire a share of that class, and to any other property that is identical to the share or right. The exemption threshold of a taxpayer in respect of a

particular class of shares at any particular time will be equal to the amount by which:

the sum of the original cost (that is, determined without regard to the deemed zero cost of flow-through shares) of all flow-through shares of the particular class issued to the taxpayer on or after Budget Day and before the particular time, exceeds the amount of each capital gain realized by the taxpayer on a disposition, before the particular time and after the first time on or after Budget Day on which flow-through shares of the particular class were issued to the taxpayer, of any shares of the particular class, not exceeding the amount of the exemption threshold immediately before the time of the disposition.

A taxpayer's exemption threshold in respect of a particular class of shares will be reset at nil at any time that the taxpayer no longer holds any shares of that class. As well, an anti-avoidance rule will apply to the donation of property acquired by a donor in a tax-deferred transaction (a "rollover"). The proposed rules will apply where a taxpayer acquires shares issued pursuant to a flow-through share agreement entered into on or after Budget Day.

## **Strengthening the Charitable Sector**

### **Enhance the Regulatory Regime for Qualified Donees**

(29) That, effective on and after the later of January 1, 2012 and the date of Royal Assent to the enacting legislation, the Act be amended to provide that

(a) a qualified donee, in respect of whom gifts are eligible for a charitable donations tax credit or deduction for a taxation year, be a person that is

i. a registered charity or registered Canadian amateur athletic association, unless that registration has been revoked,

ii. a municipality in Canada included on a list maintained by the Minister of National Revenue, unless its status as a qualified donee has been revoked by that Minister,

iii. a university outside of Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, and that is included on a list maintained by the Minister of National

Revenue, unless its status as a qualified donee has been revoked by that Minister,

iv. a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12-month period preceding the year, and that is included on a list maintained by the Minister of National Revenue, unless its status as a qualified donee has been revoked by that Minister,

v. a municipal or public body performing a function of government in Canada, or a housing corporation resident in Canada and described in paragraph 149(1)(j) of the Act, that has applied for registration as a qualified donee and is included on a list maintained by the Minister of National Revenue, unless its status as a qualified donee has been revoked by that Minister, and

vi. Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations;

(b) a registered Canadian amateur athletic association be required, as a condition for registration,

i. to have, as its exclusive purpose and its exclusive function, the promotion of amateur athletics in Canada on a nation-wide basis, and

ii. to devote all of its resources to the exclusive purpose and exclusive function of the association, except to the extent permitted by subsection 149.1(6.2) as it applies to registered charities in respect of political activities;

(c) in respect of a registered Canadian amateur athletic association, the Minister be authorized, in the manner that applies to registered charities,

i. to apply a monetary penalty and to suspend the authority of the association to issue an official receipt if the association issues a receipt that is not in accordance with the requirements of the Act,

ii. to suspend the authority of the association to issue an official receipt if the association contravenes any of sections 230 to 231.5 of the Act,

iii. to apply a monetary penalty, to suspend the authority of the association to issue an official receipt and to revoke the association's status as a qualified donee if the association provides an undue benefit to any person or carries on a business that is not a business related to the purpose and function of the association,

iv. to apply a monetary penalty if the association fails to file a return under the Act, and

v. to make available to any person the information described in subsections 149.1(15) and 241(3.2) of the Act;

(d) a qualified donee referred to in sub-subparagraphs (a)(ii) to (v) be required to maintain records and books of account in the manner described in subsection 230(2) of the Act; and

(e) in respect of a qualified donee that is referred to in sub-subparagraphs (a)(ii) to (v), the Minister of National Revenue be authorized, in the manner that applies to registered charities, to suspend the receipting authority of the qualified donee or to revoke its status as a qualified donee, if the qualified donee issues a receipt that is not in accordance with the requirements of the Act or contravenes any of sections 230 to 231.5 of the Act.

### **Safeguard Charitable Assets through Good Governance**

(30) That, on or after the later of January 1, 2012 and the date of Royal Assent to the enacting legislation,

(a) subsection 149.1(1) of the Act be amended by adding the following definitions in alphabetical order:

“ineligible individual”, in relation to a charity or Canadian amateur athletic association, means an individual who, at a particular time, has been

(a) found guilty of a relevant criminal offence for which a pardon has not been granted,

(b) found guilty of a relevant offence within five years preceding the particular time,

(c) a director, trustee, officer or like official of a registered charity or registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that may reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked within five years preceding the particular time,

(d) an individual who controlled or managed, directly or indirectly in any manner whatever, a registered charity or registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that may reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked within five years preceding the particular time, or

(e) a promoter in respect of a tax shelter that involved a gift to a registered charity or registered Canadian amateur athletic association the registration of which was revoked within five years preceding the particular time for reasons that included or were related to participation in the tax shelter;

**“promoter”** has the meaning assigned by section 237.1;

**“relevant criminal offence”** means a criminal offence under the laws of Canada, and an offence that would be a criminal offence if committed in Canada, that

(a) relates to financial dishonesty, including tax evasion, theft and fraud, or

(b) in respect of a particular charity or Canadian amateur athletic association, is relevant to the operation of the charity or association;

**“relevant offence”** means an offence, other than a relevant criminal offence, under the laws of Canada or a province, and an offence that would be such an offence if committed in Canada, that

(a) relates to financial dishonesty, including an offence under charitable fundraising legislation, consumer protection legislation and securities legislation, or

(b) in respect of a particular charity or Canadian amateur athletic association, is relevant to the operation of the charity or association;

(b) subsection 149.1(4.1) of the Act be amended to provide the Minister of National Revenue with the authority to revoke the registration of a registered charity if an ineligible individual controls or manages the charity, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the charity;

(c) section 149.1 of the Act be amended to provide the Minister of National Revenue with the authority, in the manner described in subsection 149.1(22) of the Act, to refuse to register an entity that has applied for registration as a registered charity if

- i. the application for registration is made by an ineligible individual, or
- ii. an ineligible individual controls or manages the entity, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the entity;

(d) subsection 188.2(2) of the Act be amended to provide the Minister of National Revenue with the authority to notify a charity, in the manner described in that subsection, that the charity's authority to issue an official receipt is suspended if an ineligible individual controls or manages the charity, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the charity; and

(e) the Act be amended to include provisions, similar to those in subparagraphs (b) to (d), that will apply, with such modifications as the circumstances require, to Canadian amateur athletic associations.

## **Recover Tax Assistance for Returned Gifts**

(31) That, for transfers of property from a qualified donee to a person on or after Budget Day, the Act be amended to provide that,

(a) if a qualified donee has issued to a person an official donation receipt in respect of a transfer of property and the donee subsequently returns to the

person the property, an identical property, or any other property that may reasonably be considered to be transferred as compensation for or in substitution for, in whole or in part, the original property, then to the extent of the property returned,

i. if the transfer of the original property was a gift, the person is deemed not to have made a gift of the original property nor to have disposed of the property at the time the gift was made,

ii. if the transfer of the original property was not a gift, for greater certainty, the person is considered not to have disposed of the original property at the time that it was provided to the qualified donee,

iii. if the returned property is identical to the original property, the returned property is deemed to be the original property, and

iv. if the returned property is not the same property or identical property, the person is deemed to have disposed of the original property at the time that the person acquires the returned property;

(b) if the value of the returned property is greater than \$50, then the qualified donee must provide the person with a revised official donation receipt containing prescribed information with respect to the transfer of the original property and the related return of property and file a copy with the Minister of National Revenue; and

(c) the Minister of National Revenue have the authority to reassess a return of income of any person to the extent that the reassessment can reasonably be regarded as relating to a return of property from a qualified donee to a person.

### **Gifts of Non-Qualifying Securities**

(32) That, for dispositions of securities by donees on or after Budget Day,

(a) paragraph 118.1(13)(c) of the Act be replaced by the following:

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property

at the time of the disposition and the fair market value of that gift is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of any person) received by the donee for the disposition and the amount of the gift made at the particular time that would, but for this subsection, have been included in the individual's total charitable gifts or total Crown gifts for a taxation year; and

(b) section 118.1 of the Act be amended by adding the following after subsection (13):

(13.1) Subsection (13.2) applies if, as part of a series of transactions,

(a) an individual makes, at a particular time, a gift of a particular property to a donee,

(b) a particular person holds a non-qualifying security of the individual, and

(c) the donee acquires, directly or indirectly, a non-qualifying security of the individual or of the particular person.

(13.2) If this subsection applies,

(a) for the purposes of this section, the fair market value of the particular property is deemed to be reduced by an amount equal to the fair market value of the non-qualifying security acquired by the donee, and

(b) for the purposes of subsection (13),

(i) if the non-qualifying security acquired by the donee is a non-qualifying security of the particular person, it is deemed to be a non-qualifying security of the individual,

(ii) the individual is deemed to have made, at the particular time, a gift of the non-qualifying security acquired by the donee, the fair market value of which does not exceed the amount, if any, by which

(A) the fair market value of the particular property determined without reference to paragraph (a)

exceeds

(B) the fair market value of the particular property determined under paragraph (a), and

(iii) paragraph (13)(b) does not apply in respect of the gift.

(13.3) For the purposes of subsections (13.1) and (13.2), if, as part of a series of transactions, an individual makes a gift to a donee and the donee acquires a non-qualifying security of a person (other than the individual or particular person described in subsection (13.1)) and it may reasonably be considered, having regard to all the circumstances, that one of the purposes or results of the acquisition of the non-qualifying security by the donee was to facilitate, directly or indirectly, the making of the gift by the individual, then the non-qualifying security acquired by the donee is deemed to be a non-qualifying security of the individual.

(c) subsection 110.1(6) of the Act be replaced by the following:

(6) Subsections 118.1(13) to (14) and (16) to (20) apply to a corporation as if the references in those subsections to an individual were read as references to a corporation and as if a non-qualifying security of a corporation included a share (other than a share listed on a designated stock exchange) of the capital stock of the corporation.

## **Granting of Options to Qualified Donees**

(33) That, for options granted to qualified donees on or after Budget Day,

(a) section 110.1 of the Act be amended by adding the following after subsection (9):

(10) Subject to subsections (12) and (13), if a corporation has granted an option to a qualified donee in a taxation year, no amount in respect of the option is to be included in computing an amount under any of paragraphs (1)(a) to (d) in respect of the corporation for any year.

(11) Subsection (12) applies if

(a) an option to acquire a property of a corporation is granted to a qualified donee;

(b) the option is exercised so that the property is disposed of to the qualified donee at a particular time; and

(c) either

(i) the amount that is 80 per cent of the fair market value of the property at that time is greater than the total of

(A) the consideration received by the corporation from the qualified donee to acquire the property, and

(B) the consideration received by the corporation from the qualified donee to acquire the option; or

(ii) the corporation establishes to the satisfaction of the Minister that the granting of the option or the disposition of the property was made by the corporation with the intention to make a gift to the qualified donee.

(12) If this subsection applies, for the purposes of the Act and notwithstanding subsection 49(3),

(a) the corporation is deemed to have received proceeds of disposition of the property equal to the property's fair market value at the particular time; and

(b) there shall be added to the total referred to in paragraph (1)(a), for the corporation for the taxation year that includes the particular time, the amount by which the fair market value exceeds the total described in subparagraph (11)(c)(i).

(13) If an option to acquire a property of a corporation is granted to a qualified donee and the option is disposed of by the qualified donee at a particular time, for the purposes of the Act

(a) the corporation is deemed to have disposed of a property at the particular time

(i) the cost of which to the corporation immediately before the particular time is equal to the consideration, if any, paid by the donee to acquire the option, and

(ii) the proceeds of disposition of which are equal to the fair market value of any consideration (other than a non-qualifying security of any person) received by the donee at the particular time; and

(b) there shall be added to the total charitable gifts of the corporation for the taxation year that includes the particular time the amount, if any, by which the proceeds of disposition as determined by paragraph (a) exceed the consideration, if any, paid by the donee to acquire the option;

and

(b) section 118.1 of the Act be amended by adding the following after subsection (20):

(21) Subject to subsections (23) and (24), if an individual has granted an option to a qualified donee in a taxation year, no amount in respect of the option is to be included in total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of the individual for any year.

(22) Subsection (23) applies if

(a) an option to acquire a property of an individual is granted to a qualified donee;

(b) the option is exercised so that the property is disposed of to the qualified donee at a particular time; and

(c) either

(i) the amount that is 80 per cent of the fair market value of the property at that time is greater than the total of

(A) the consideration received by the individual from the qualified donee to acquire the property, and

(B) the consideration received by the individual from the qualified donee to acquire the option; or

(ii) the individual establishes to the satisfaction of the Minister that the granting of the option or the disposition of the property was made by the individual with the intention to make a gift to the qualified donee.

(23) If this subsection applies, for the purposes of the Act and notwithstanding subsection 49(3),

(a) the individual is deemed to have received proceeds of disposition of the property equal to the property's fair market value at the particular time; and

(b) there shall be added to the individual's total charitable gifts, for the taxation year that includes the particular time, the amount by which that fair market value exceeds the total described in subparagraph (22)(c)(i).

(24) If an option to acquire a property of an individual is granted to a qualified donee and the option is disposed of by the qualified donee at a particular time, for the purposes of the Act

(a) the individual is deemed to have disposed of a property at the particular time

(i) the cost of which to the individual immediately before the particular time is equal to the consideration, if any, paid by the donee to acquire the option, and

(ii) the proceeds of disposition of which are equal to the fair market value of any consideration (other than a non-qualifying security of any person) received by the donee at the particular time; and

(b) there shall be added to the total charitable gifts of the individual for the taxation year that includes the particular time the amount, if any, by which the proceeds of disposition as determined by paragraph (a) exceed the consideration, if any, paid by the donee to acquire the option.

## Donations of Publicly Listed Flow-Through Shares

(34) That, for dispositions of property by taxpayers made on or after Budget Day, the Act be amended

(a) to add the following after section 38:

**38.1** If a taxpayer acquires a property (the “acquired property”) that is included in a flow-through share class of property in the course of a transaction to which any of section 51, subsections 73(1), 85(1) and (2) and 85.1(1) and sections 86 and 87 applies

(a) if the transfer of the property is part of a gifting arrangement (within the meaning assigned by section 237.1) or the transferor is a person with whom the taxpayer was, at the time of the acquisition, not dealing at arm’s length, there shall be added, at the time of the transfer, to the taxpayer’s exemption threshold in respect of the flow-through share class of property, and deducted from the transferor’s exemption threshold, the amount determined by the formula

$$A \times B$$

where

A is the amount by which the transferor’s exemption threshold in respect of the flow-through share class of property immediately before that time exceeds the capital gain, if any, realized by the transferor as a result of the transfer, and

B is the amount that is the proportion that the fair market value of the acquired property immediately before the transfer is of the fair market value of all property of the transferor immediately before the transfer that is included in the flow-through share class of property, and

(b) if the transferor receives particular shares of the capital stock of the taxpayer that are listed on a designated stock exchange or are shares of a mutual fund corporation, as consideration for the transferred shares, for the purpose of this section and subsection 40(12) the particular shares are deemed to be flow-through shares of the transferor and there shall be added to the transferor’s exemption threshold in respect of the flow-through share

class of property that includes the particular shares the amount that is determined under paragraph (a), or that would be so determined if paragraph (a) applied to the taxpayer,

(b) to add in section 40 the following after subsection (11):

Donated flow-through shares

(12) If at a particular time in a taxation year a taxpayer disposes of a capital property that is included in a flow-through share class of property, and subparagraph 38(a.1)(i) or (iii) applies to the disposition (in this subsection referred to as the “actual disposition”), then the taxpayer is deemed to have a capital gain from a disposition at that time of another capital property equal to the lesser of

(a) the amount of the taxpayer’s exemption threshold at that time in respect of the flow-through share class of property; and

(b) the total of the capital gains from each such actual disposition at that time by the taxpayer (for greater certainty, calculated without reference to this subsection),

(c) to add the following definitions in section 54 in alphabetical order:

“exemption threshold”, of a taxpayer, in respect of a flow-through share class of property at a particular time, means the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is the amount that would be the cost to the taxpayer, computed as if this Act were read without reference to subsection 66.3(3), of a flow-through share that was included at any time before the particular time in the flow-through share class of property and that was issued by a corporation to the taxpayer on or after the taxpayer’s fresh-start date in respect of the flow-through share class of property at that time, other than a share

that the taxpayer was obligated before Budget Day to acquire pursuant to the terms of a flow-through share agreement entered into between the corporation and taxpayer before Budget Day, and

B is the total, if any, of all amounts, each of which is the lesser of

(a) the total of all amounts, each of which is a capital gain on a disposition at an earlier time (and after the first time after the taxpayer's fresh-start date, in respect of the flow-through share class of property at that time, that the taxpayer acquired a flow-through share referred to in the description of A) of a property included in the flow-through share class of property, other than a capital gain on a transfer to which paragraph 38.1(a) applies, and

(b) the exemption threshold of the taxpayer in respect of the flow-through share class of property immediately before that earlier time;

“flow-through share class of property” means a group of properties each of which is

(a) a share of a class of the capital stock of a corporation, if any share of that class or any right described in paragraph (b) is, at any time, a flow-through share to any person,

(b) a right to acquire a share of the class, if any share of that class or any right described in this paragraph is, at any time, a flow-through share to any person, or

(c) a property that is an identical property of a property described in paragraph (a) or (b);

“fresh-start date”, of a taxpayer, in respect of a flow-through share class of property, at a particular time, means the day that is the later of

(a) Budget Day, and

(b) the last day, if any, before the particular time, on which the taxpayer disposed of a property that is included in the flow-through share class of property and at the end of which the taxpayer held no such property;

(d) to replace clause (a)(i)(A) of the definition “capital dividend account” in subsection 89(1) with the following:

(A) the amount of the corporation’s capital gain from the disposition (other than a disposition under subsection 40(12) or a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)) of a property in the period beginning at the beginning of its first taxation year (that began after the corporation last became a private corporation and that ended after 1971) and ending immediately before the particular time (in this definition referred to as “the period”)

and

(e) to strike out “and” after clause (a)(i)(B) of the definition “capital dividend account” in subsection 89(1) of the Act and to add the following after that clause:

(B.1) the amount of the corporation’s taxable capital gain in respect of a capital gain in the period under subsection 40(12), and.

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