



2015 Canadian Federal Budget - How will it affect the Canadian charitable sector?

By Mark Blumberg¹ (April 21, 2015)

There are over 500 pages of material in the 2015 Federal budget. About 20 of those pages relate to Canadian non-profits and charities directly. Here are some relevant excerpts from the budget that affect non-profits and charities and I will be placing further information on www.canadiancharitylaw.ca

Supporting the Charitable and Non-Profit Sector

- Exempting donations involving private shares and real estate from capital gains tax.
- Providing charities with more flexibility to diversify their investments.

The Government of Canada recognizes that the charitable and non-profit sector makes an enormous social and economic contribution to Canada. Organizations working in areas as diverse as health care and research, education, the arts, overseas development, environmental conservation and stewardship, amateur

¹ Mark Blumberg is a partner at Blumberg Segal LLP in Toronto and works almost exclusively on Canadian charity law and philanthropy. Mark writes about and advises charities on legal and ethical issues and is editor of www.canadiancharitylaw.ca and www.globalphilanthropy.ca

sport, and religious observation help to create the communities in which Canadians want to live. The charitable and non-profit sector is also an engine of economic activity, employing some two million Canadians across the country. Economic Action Plan 2015 proposes measures that build on existing support for Canada's charitable sector by permitting charities to invest in limited partnerships and by providing a capital gains tax exemption for individual and corporate donors on the disposition of private shares or real estate.

Economic Action Plan 2015 also confirms the Government's commitment to support social entrepreneurs through the social finance accelerator initiative.

Supporting the Charitable Sector

Charities receive significant assistance through the tax system. In particular, registered charities are exempt from tax on their income and may issue official donation receipts for gifts received. Individual donors can claim a tax credit, and corporations a deduction, for their charitable donations.

Since 2006, the Government has introduced a number of measures to encourage charitable giving and to reduce administrative complexity for the charitable sector. For instance:

Donations of publicly listed securities and ecological gifts have been fully exempted from capital gains tax.

A temporary First-Time Donor's Super Credit is available on cash donations of up to \$1,000 made before 2018, to encourage young Canadians and first-time donors to give to charity.

To reduce the administrative burden on charities, the Government eliminated a number of disbursement quota requirements, allowing charities to focus more of their time and resources on charitable activities.

The credit card fee reductions that the Government accepted from Visa and MasterCard in the fall of 2014 were targeted to help small businesses and charities.

*We are delighted that Canada's charities are meant to benefit from a reduction in interchange fees, thereby ensuring that a higher percentage of donated funds, intended to support community initiatives, will assist a wide range of causes. This landmark agreement will both satisfy the intentions of donors and provide an injection of much needed funds to charitable organizations. **Bruce Macdonald, President and Chief Executive Officer, Imagine Canada***

Building on these actions, Economic Action Plan 2015 proposes additional measures to support the charitable sector. The two measures described below respond further to the 2013 report of the House of Commons Standing Committee on Finance on charitable donation tax incentives. The Government looks forward to continuing to work with Imagine Canada and charities across Canada to find ways to help the sector thrive.

Exempting Donations Involving Private Shares and Real Estate From Capital Gains Tax

Economic Action Plan 2015 proposes a capital gains exemption in respect of private shares or real estate when sold and the proceeds donated to charity.

At present, donations of private shares and real estate to registered charities and other qualified donees can give rise to taxable capital gains. To help Canadians provide more gifts, Economic Action Plan 2015 proposes to exempt individual and

corporate donors from tax on the sale of private shares or real estate to an arm's length party if the proceeds are donated within 30 days. If a portion of the proceeds is donated, the exemption from capital gains tax would apply to that portion. This measure will apply to donations in respect of dispositions occurring after 2016.

[Broadening the tax exemption on capital gains] would benefit charitable organizations of all types – everything from hospitals, universities and cultural groups to the vast network of social service agencies funded by the United Way across the country. It's a cost-effective way of unlocking more private wealth for the public good.

Editorial, Toronto Star, January 2, 2015

This new measure will build on previous measures by providing a significant new incentive to donate. It is estimated that this measure will reduce federal revenues by about \$265 million over the 2016–17 to 2019–20 period.

Providing Charities With More Flexibility to Diversify Their Investments

Economic Action Plan 2015 proposes to permit charities to invest in limited partnerships.

Canadian charities, especially foundations, often invest a portion of their resources in long-term investments. Economic Action Plan 2015 proposes to permit charities to invest in limited partnerships. This would allow charities to diversify their investment portfolios to better support their charitable purposes. In addition, since limited partnerships are also used to structure some social impact investments, allowing investments in limited partnerships would give charities the flexibility to use more innovative approaches to address pressing social and economic needs in Canada. This proposal will also apply to registered Canadian amateur athletic associations.

It is estimated that this measure will reduce federal revenues by a small amount each year.

Social Finance Accelerator Initiative

Economic Action Plan 2015 confirms the Government's commitment to support social entrepreneurs with innovative solutions and announces the implementation of a social finance accelerator initiative to help develop promising social finance proposals.

The Government recognizes that social entrepreneurs can be instrumental in addressing complex societal issues. Social finance is an innovative approach to mobilizing multiple sources of capital that delivers both a social value and an economic return. Facilitating new partnerships through social finance initiatives can help leverage expertise and innovation for the achievement of sustainable, long-term results in improving social and economic outcomes for Canadians.

Employment and Social Development Canada will implement a social finance accelerator initiative to help promising social finance proposals become investment-ready, attract private investment and turn social entrepreneurs' proposals into action. Through this initiative, workshops, advisory services, mentorship, networking opportunities and investor introductions will help to fast-track promising social finance ventures to a greater stage of investment readiness.

Supporting the Most Vulnerable in Communities

Economic Action Plan 2015 builds on previous actions by the Government to support the most vulnerable members of our communities through targeted investments to support social housing and youth who are victims of crime.

Cooperative and Non-Profit Social Housing

Economic Action Plan 2015 proposes to provide \$150 million over four years, starting in 2016–17, to support social housing in Canada by allowing social housing providers to prepay their long-term, non-renewable mortgages without penalty.

The Government recognizes the need for low-income families and other vulnerable Canadians to have access to quality and affordable housing options, including co-operative and non-profit housing units. However, many co-operative and non-profit social housing providers hold long-term, non-renewable loans at interest rates well above the current national average, making it difficult for them to refinance their outstanding mortgage balance and access additional funds for capital repairs without incurring significant penalties.

Building upon the prepayment flexibilities for co-operative and non-profit social housing providers announced in 2013, Economic Action Plan 2015 proposes to provide further support to social housing providers by eliminating the mortgage prepayment penalty on long-term, non-renewable loans held with Canada Mortgage and Housing Corporation. This initiative will enable eligible co-operative and non-profit social housing providers to access private sector loans with more favourable interest rates, significantly reducing their mortgage expenses. For example, a social housing provider with an outstanding mortgage balance of \$450,000 with an interest rate of 9 per cent that is able to refinance at an interest rate of 5 per cent will see a reduction in their annual mortgage expenses of over \$11,000 in the first year without incurring a prepayment penalty. Lower mortgage expenses will assist social housing providers to undertake capital repairs and renovations to help improve the condition and quality of affordable housing units.

Ensuring That Canadians Have Access to Safe, Reliable and Lower-Cost Remittance Services

Economic Action Plan 2015 proposes to provide \$6 million over five years, starting in 2015–16, to introduce measures that will help ensure Canadians have access to safe, reliable and lower-cost remittance services.

Remittances represent an important source of income for families in the developing world and can help pay for essential needs such as nutrition, education and health care. Economic Action Plan 2015 proposes to provide \$6 million over five years, starting in 2015–16, to introduce measures that help ensure Canadians have access to safe, reliable and lower-cost remittance services when sending money to family and friends living in developing countries. This includes establishing a remittance price comparison website that will increase transparency by providing information on fees charged across service providers, allowing users to make informed decisions. In addition, through Statistics Canada and the Department of Foreign Affairs, Trade and Development, the Government will take steps to gather data on remittance flows from Canada to better understand the needs of Canadian remitters. The Government will also work with financial institutions to evaluate possible collaboration opportunities to expand access to lower-cost remittance services.

Remittance Flows to Countries That Benefit From Canada's International Assistance

Corridor	Volume from Canada
(\$US millions)	

Philippines	2,075
Vietnam	843
Sri Lanka	482
Nigeria	410
Pakistan	437
Jamaica	286
Egypt	264
El Salvador	133
Haiti	119
Morocco	109
Ukraine	103
Guatemala	98
Kenya	98
Bangladesh	91
Colombia	86
South Africa	61
Peru	50
Jordan	42
Indonesia	32
Honduras	30

Source: World Bank bilateral remittance data , 2014 (most recent available data).

Support for Arts and Culture

The Government has consistently shown a commitment to provide strong support to Canadian arts and culture to help ensure that all Canadians have the opportunity to participate in shared artistic and cultural experiences. Examples include:

In November 2014, the Government announced funding of \$80.5 million to repair, retrofit and renovate the Canada Science and Technology Museum. In December 2014, the Government announced an investment of \$110.5 million for the architectural renewal of the National Arts Centre to transform it into a world-class facility.

Economic Action Plan 2014 provided ongoing funding of \$105 million per year in support of culture-related programs, in addition to \$9 million per year for the Canada Book Fund and \$8.8 million per year for the Canada Music Fund.

Economic Action Plan 2013 increased the Endowment Incentive component of the Canada Cultural Investment Fund to a maximum benefit of \$15 million over the life of the program to help promote corporate philanthropy and private investment in the arts. In addition, funding of \$8 million was provided to help support the restoration and revitalization of Massey Hall to support Canada's current and future artists.

Economic Action Plan 2012 announced support for major exhibitions at Canadian museums and galleries by modernizing the Canada Travelling Exhibitions Indemnification Program to help attract new exhibitions.

Economic Action Plan 2011 provided \$15 million per year to the Canada Periodical Fund to support a broad range of publications and ensure a diversity of Canadian content. In addition, to mark the 100th anniversary of the Grey Cup and the

Calgary Stampede, \$5 million was provided to each of these anniversary celebrations.

Economic Action Plan 2009 provided targeted two-year funding of \$60 million to support infrastructure-related costs for local and community cultural and heritage institutions such as local theatres, libraries and small museums.

Moving forward, Economic Action Plan 2015 proposes to provide \$210 million over four years to support activities and events, including festivals and concerts, to celebrate Canada's 150th anniversary in 2017. Economic Action Plan 2015 also proposes to provide \$25 million over five years, beginning in 2016–17, to renew support for the Harbourfront Centre, which delivers arts, culture and recreation programming. Economic Action Plan 2015 also proposes to amend the Copyright Act to extend the term of protection of sound recordings and performances from 50 to 70 years following the first release of the sound recording, so that performers and record labels are fairly compensated for the use of their music for an additional 20 years.

Promoting Arts and Culture at Toronto's Harbourfront Centre

Economic Action Plan 2015 proposes to provide \$25 million over five years, beginning in 2016–17, to renew the Harbourfront Centre Funding Program.

Harbourfront Centre is a not-for-profit organization on the Toronto waterfront that delivers arts, culture and recreation programming. Economic Action Plan 2015 proposes to provide \$25 million to renew the Harbourfront Centre Funding Program from 2016–17 to 2020–21. This program supports the Harbourfront Centre's operating expenses, making it possible for the Centre to provide high-quality programs for residents and visitors to the city.

Programs at Toronto’s Harbourfront Centre

Harbourfront Centre is a national showcase for the contemporary visual arts, crafts, literature, music, dance and theatre for adults and children. Its innovative programs and venues include:

- The Power Plant Contemporary Art Gallery, a leading public gallery devoted exclusively to contemporary visual art.
- Harbourfront Centre’s World Stage, which presents theatre, dance and performance art.
- HarbourKIDS, a series of family-friendly events from skating to circus festivals.
- Harbourfront Centre’s Artist-in-Residence post-graduate program, which provides creative and business training to assist emerging designers and craftspeople in establishing professional careers.

Table 4.2.1

Strong Communities (millions of dollars)

Supporting the Charitable and Non-Profit Sector

Exempting Donations Involving Private Shares and Real Estate from Capital Gains Tax

2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2019–2020	Total
		5	75	95	90	265

Subtotal—Supporting the Charitable and Non-Profit Sector

2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2019–2020	Total
		5	75	95	90	265

BDC is developing new initiatives to:

- Help high-impact small and medium-sized enterprises, which show a strong ambition to grow and succeed, to achieve their full potential. In the coming years, BDC will gradually implement a plan to facilitate access by these firms to tailored solutions at each stage of their development. With a strong pan-Canadian network of partners and a deep knowledge of opportunities and challenges facing entrepreneurs, BDC will leverage expertise drawn from the private sector, governments and other service providers, such as relevant non-profit organizations and academic institutions.

Charities

Donations Involving Private Corporation Shares or Real Estate

Donations to registered Canadian charities and other qualified donees are eligible for a charitable donation tax credit (if the donor is an individual) or deduction (if the donor is a corporation). In addition, donations of publicly listed securities to qualified donees are exempt from capital gains tax. Donations of ecologically sensitive land and certified cultural property to certain qualified donees are also exempt from capital gains tax. In contrast, taxable capital gains can arise on donations of private corporation shares or other types of real estate.

To increase support for charities, Budget 2015 proposes to provide an exemption from capital gains tax in respect of certain dispositions of private corporation shares and real estate. The exemption will be available where:

- cash proceeds from the disposition of the private corporation shares or real estate are donated to a qualified donee within 30 days after the disposition; and
- the private corporation shares or real estate are sold to a purchaser that is dealing at arm's length with both the donor and the qualified donee to which cash proceeds are donated.

The exempt portion of the capital gain will be determined by reference to the proportion that the cash proceeds donated is of the total proceeds from the disposition of the shares or real estate.

Anti-avoidance rules will ensure that the exemption is not available in circumstances where, within five years after the disposition:

- the donor (or a person not dealing at arm's length with the donor) directly or indirectly reacquires any property that had been sold;
- in the case of shares, the donor (or a person not dealing at arm's length with the donor) acquires shares substituted for the shares that had been sold; or
- in the case of shares, the shares of a corporation that had been sold are redeemed and the donor does not deal at arm's length with the corporation at the time of the redemption.

Where the anti-avoidance rules apply, the exemption will be reversed by including the previously exempted amount in the income of the donor in the year of the re-acquisition by the donor (or the non-arm's length person) or the redemption.

This measure will apply to donations made in respect of dispositions occurring after 2016.

Investments by Registered Charities in Limited Partnerships

Charitable organizations and public foundations are permitted to engage in business activities to raise revenues, provided that the activities qualify as a related business. A related business includes a business that is linked to a charity's purpose and that is subordinate to that purpose, as well as a business that is run substantially by volunteers. Private foundations are not permitted to engage in any business activities.

Under provincial law, a partnership is generally considered to be a relationship among persons carrying on business in common with a view to profit. As a result, a charity which holds an interest in a partnership is considered to be carrying on a business. Charitable organizations and public foundations can only engage in related businesses, with the result that few are in a position to hold interests in a partnership. Private foundations cannot engage in any business activities, meaning that they cannot hold an interest in a partnership.

Partnerships are used extensively as investment vehicles to pool funding received by institutional and other large investors in order to invest in private market opportunities. Allowing registered charities to invest in limited partnerships would permit them to access a wider range of investment opportunities and diversify their investment portfolios. Since limited partnerships can also be used to structure social impact investments, allowing registered charities to invest in limited partnerships would also provide them the flexibility to use more innovative approaches to address pressing social and economic needs in Canada. Budget 2015 therefore proposes to amend the Income Tax Act to provide that a registered charity will not be considered to be carrying on a business solely because it acquires or holds an interest in a limited partnership.

To ensure that a registered charity's investment in a limited partnership remains a passive investment, the measure will apply only if:

- the charity – together with all non-arm’s length entities – holds 20 per cent or less of the interests in the limited partnership; and
- the charity deals at arm’s length with each general partner of the limited partnership.

These rules would not apply where a charitable organization or public foundation carries on a related business through a limited partnership.

Registered Canadian amateur athletic associations and charitable organizations are subject to similar tax rules, including restrictions on business activities. Accordingly, the amendments are proposed to also apply in respect of investments in limited partnerships by registered Canadian amateur athletic associations.

The excess corporate holdings rules, which place limits on shareholdings by private foundations, will be amended to “look through” limited partnerships. The non-qualifying security rules and the loanback rules that apply to donations of shares will also apply to donations of interests in limited partnerships.

This measure applies in respect of investments in limited partnerships that are made or acquired on or after Budget Day.

Gifts to Foreign Charitable Foundations

Canadian registered charities are “qualified donees” under the Income Tax Act and donations made to them by Canadian taxpayers are eligible for the charitable donation tax credit or deduction. In addition, Canadian registered charities are permitted to make gifts to other qualified donees.

Budget 2015 proposes to amend the Income Tax Act to allow foreign charitable foundations to be registered as qualified donees if they receive a gift from the Government and if they are pursuing activities related to disaster relief or urgent

humanitarian aid or are carrying on activities in the national interest of Canada. The Minister of National Revenue may, in consultation with the Minister of Finance, grant qualified donee status to a foreign charitable foundation that meets these conditions. Qualified donee status will be granted for a 24-month period that begins on the date chosen by the Minister of National Revenue, which normally would be no later than the date of the gift from the Government, and registered foreign charitable foundations will be included on the list of registered foreign charities maintained on the Canada Revenue Agency's website.

This measure will apply on Royal Assent to the enacting legislation.

ANNEX 5 - Tax Measures:

NOTICE OF WAYS AND MEANS MOTION TO AMEND THE *INCOME TAX ACT* AND OTHER TAX LEGISLATION

That it is expedient to amend the *Income Tax Act* ("the Act") and other tax legislation as follows:

Donations Involving Private Corporation Shares or Real Estate

17. The Act is modified to give effect to the proposals relating to Donations Involving Private Corporation Shares or Real Estate described in the budget documents tabled by the Minister of Finance in the House of Commons on Budget Day.

Investments in Limited Partnerships by Registered Charities

18. (1) Section 149.1 of the Act is amended by adding the following after subsection (10):

(11) For the purposes of this section and sections 149.2 and 188.1, each member of a

- partnership at any time is deemed at that time to own the portion of each property of the
- partnership equal to the proportion that the fair market value of the member's interest in the
- partnership at that time is of the fair market value of all interests in the partnership at that time.

(2) Subsection (1) is deemed to have come into force on April 21, 2015.

19. (1) Section 253.1 of the Act is renumbered as subsection 253.1(1) and is amended by adding the following:

(2) For the purposes of section 149.1 and subsections 188.1(1) and (2), if a registered charity or a registered Canadian amateur athletic association holds an interest as a member of a partnership, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business of the partnership if

(a) by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited;

(b) the member deals at arm's length with each general partner of the partnership; and

(c) the member, or the member together with persons and partnerships with which it does not deal at arm's length, holds interests in the partnership that have

a fair market value of not more than 20% of the fair market value of the interests of all members in the partnership.

(2) Subsection (1) applies in respect of investments in limited partnerships that are made or acquired after April 20, 2015.

Gifts to Foreign Charitable Foundations

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

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

(2) The portion of subsection 149.1(26) of the Act before subparagraph (b)(i) is replaced by the following:

(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 charity for a 24-month period that includes the time at which Her Majesty in right of Canada has made a gift to the foreign charity, if

(a) the foreign charity is not resident in Canada; and

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

(3) Subsections (1) and (2) apply to applications made on or after the day on which the enacting legislation receives royal assent.

Mark Blumberg is a lawyer at Blumberg Segal LLP in Toronto, Ontario. He works in the area of non-profit and charity law. He can be contacted at mark@blumbergs.ca or at 416-361-1982 To find out more about legal services

that Blumbergs provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca or www.globalphilanthropy.ca

This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.