



Fact Sheet: Changes for Charities in Budget 2022

September 2, 2022

The following fact sheet summarizes the amendments to the Income Tax Act (Canada) (the “ITA”) that have been enacted by the Budget Implementation Act, 2022, No. 1 (the “BIA”), as well as the amendments that have been proposed in the Federal Budget 2022.

Qualifying Disbursement Rules

The Federal Budget 2022 proposed new rules to permit a charity to disburse funds to a non-qualified donee. Parliament enacted these changes on June 20, 2022. These rules create a new category of permitted granted. They do not replace current “own activities” rules. Rather they expand the way charities can do their work. Charities can decide how to operate by choosing to:

1. carry out their ‘own activities’;
2. make grants to qualified donees; and/or
3. make grants to non-qualified donees that meet certain specific requirements.

Both category 2 and 3 are referred to as ‘qualifying disbursements’. Regarding the new category (#3), registered charities are now permitted to make disbursements by way of gifts or by otherwise making resources available to a non-qualified donee (also referred to as a “grantee organization”) so long as:

- (i) the disbursement is in furtherance of a charitable purpose of the charity;
- (ii) the charity ensures that the disbursement is exclusively applied to charitable activities in furtherance of a charitable purpose of the charity; and
- (iii) the charity maintains documentation sufficient to demonstrate:
 - (a) the purpose for which the disbursement is made, and
 - (b) that the disbursement is exclusively apply by the grantee organization to charitable activities in furtherance of a charitable purpose of the charity.

Canada Revenue Agency (“**CRA**”) has not yet released its administrative guidance on these new rules. The guidance, when released, will provide more insight into CRA’s interpretation of what is required to comply with the new regime, including what steps CRA expects charities to take to



ensure the disbursement to a non-qualified donee is applied to a charitable activity in furtherance of a charitable purpose and what documentation CRA expects charities to maintain.

CRA has indicated it hopes to release its draft guidance on qualifying disbursements this fall, and will be seeking public comments at that time. While the qualifying disbursements rules are now in force, it is difficult for anyone to be sure what CRA will expect a charity to do to satisfy the requirements. We at Miller Thomson are currently advising our clients to proceed cautiously and, in most cases, suggesting clients not make significant changes to their operations until CRA's guidance is published. Charities can continue to operate under the "own activity" rules when working with non-qualified donees by using intermediary arrangements which continue to be available. Charities that are working on new projects and would like to rely on the new qualifying disbursement rules should do so having sought the input of legal counsel.

A secondary issue which also needs to be resolved is to determine whether foundations that have charitable purposes that allow the foundation to provide grants to other qualified donees need to make any changes before relying on these rules. While there are arguments against that conclusion, it would be helpful to have CRA commentary that confirms the ability to make distributions to non-qualified donees is available to foundations whose purposes permit them to make grants to all charities. We will provide further information about this issue as it becomes available.

Anti-Directed Giving Rules

Changes aimed at "directed giving" were also introduced by Parliament. This new rule provides that the Minister of National Revenue may revoke a charity if the charity accepts a gift, the granting of which was expressly or implicitly conditional on the charity making a gift to a person other than a qualified donee. We do not understand the reason or intent behind this change, particularly in light of the new 'qualifying disbursement' category, which seems to permit such gifts. In light of these new rules, charities should be careful and avoid accepting donations under a clear direction that the gifts "flow-through" the charity to a non-qualified donee. We anticipate that CRA will publish its position on how this change will be applied in the upcoming guidance on qualifying disbursements.

Disbursement Quota

The Federal Budget 2022 also proposed a number of changes to the Disbursement Quota ("DQ") rules for registered charities. These rules were not enacted by Parliament in June but draft legislation has now been tabled. The changes to the DQ apply to taxation years beginning on or after January 1, 2023. The proposed changes are described as follows:



- increasing the DQ rate from 3.5% to 5% for the portion of a registered charity's property not used in charitable activities or administration that exceeds \$1 million;
- giving CRA the discretion to reduce a charity's DQ obligation for any particular tax year, and allowing CRA to publicly disclose these decisions; and
- removing the accumulation of property rule.

Currently, the ITA allows charities to apply to CRA to accumulate property for a particular purpose. The amount accumulated is then not included in the asset base for purposes of the calculation of the charity's DQ (the accumulation of property rule). The federal government suggests this rule is no longer necessary in light of the proposed provisions, which will allow CRA to provide relief from the DQ obligation.

Administration and Management Expenditures

The draft legislation also introduces a change to clarify that “expenditures on administration and management of the charity” are excluded from the calculation of qualifying expenditures for the purpose of satisfying the charity's DQ. This proposed change is to apply to taxation years beginning on or after January 1, 2023.

The Federal Budget 2022 frames this change as a *clarification*, implying that it has always been the government's position that administration and management expenditures do not qualify as expenditures toward satisfying a charity's DQ. In its guide to completing form T3010 Registered Charity Information Return, CRA has indicated that “some expenditures can be considered partly charitable and partly management and administration, such as salaries and occupancy costs.” For the purposes of completing the T3010, CRA indicates that such expenditures should be divided between “expenditures on charitable programs” and “administration and management expenditures.” As the line between these two categories can be blurry, and somewhat artificial, we have heard that the CRA may be providing consultation and information sessions on this topic to mitigate the confusion. In other words, there will be more to follow from CRA on this change, but this change codifies in the ITA an administrative policy of CRA which was probably not consistently applied. This change will likely lead to greater clarity and consistency on which expenditures fall into which category.

This factsheet was created for community foundations by Miller Thomson

