

Budget 2013 – No News is Good News

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Despite bearing relatively little news for charities this in itself is probably good news for charities.

First Time Donor's Credit

Those in the sector will know that Imagine Canada has been pushing for the Stretch Tax Credit as a way to increase the overall donor base and encourage those who have never before made a donation. In fact, the Finance Committee in its hearings on charitable donation tax incentives was overwhelmed by the number of proponents of the idea. (This was not necessarily a positive as many in the Committee wondered why they did not hear a broader assortment of ideas). And, in the final result, the Finance Committee recommended the stretch tax credit to the Minister of Finance for consideration.

Budget 2013 serves as the official answer of the Government to the Finance Committee and it would appear that the First Time Donor's Credit (the "FTDC") is its specific response to the Stretch Tax Credit (although those that follow such things will recognize that the FTDC is more similar to the Cardus plan than the Imagine Canada plan).

The FTDC will increase the value of the federal Charitable Donations Tax Credit by 25 percentage points if neither the taxpayer nor their spouse has claimed the credit since 2007. The FTDC will apply on up to \$1,000 in cash donations claimed in respect of any one taxation year from 2013 to 2017.

So whereas the Federal credit on the first \$200 of donations used to be \$30 (15%), now it will be \$80 (40%); and for the amount between \$200 and \$1000 the amount used to be \$282 (29%) and now will be \$ 432 (54%).

The enhanced credit will only be available in the first year a donor or spouse (including common law) claim it. And if claimed for say \$20 the credit will presumably no longer be available for the remaining \$980.

Apparently, the Stretch Tax Credit was unacceptable to the government and so it put in place its own plan to accomplish the same goals. While we do not know why the Stretch Tax Credit was rejected, it was critiqued as having some difficulties in its administration and even in it achieving its own stated goals. Nevertheless, the FTDC will have its own administrative difficulties in the administration. For example, to maintain the integrity of the income tax collection system the CRA will have to track the donations made by each Canadian, their spouses – and their common law spouses – along with divorces to ensure that neither the particular taxpayer nor their spouse has claimed a tax credit since 2007. (We are unsure why 2007 was chosen but one would imagine the CRA already started keeping such records since 2007 and so that was the furthest back they could practically go). And all this tracking for rather paltry amounts.

The fact that the FTDC is temporary is interesting from two perspectives. On the one hand, originally the exemption from tax on the donation of publicly traded securities was also intended to be temporary as a

way to judge the impact of the move on the treasury. Now, of course, the provision is here to stay. On the other hand, a cynic might say that the sector has become so loud in its advocating for the Stretch Tax Credit that a temporary measure to quiet the noise may be a deft political maneuver.

Reassessment Period Extended for those Donating to Charities as Part of a Tax Shelter

Most readers will know that the CRA has been targeting any and all individuals and organizations involved in leveraged donation tax arrangements. Budget 2013 includes a new measure to help the CRA in their work in this area.

Generally, the CRA has three years from the issuance of the Notice of Assessment to issue a Notice of Reassessment changing its position on the taxpayer's amount owing. At the same time, the Income Tax Act requires tax shelter programs to register with the CRA. Registration results in a tax shelter number which must be included on the tax shelter's materials. The number makes it easier for the CRA to track down all the participants in a program which they later find to be objectionable.

In a situation where the tax shelter is late in registering the time limits regarding the reassessment of the taxpayer nevertheless continues to progress. Budget 2013 effectively extends the deadline to reassess participants in the program to three years from the date the registration is made (if made late). The change gives the CRA sufficient time to evaluate the structure and proceed with (potentially massive) reassessments.

While the government's intention in proposing this change is understandable, it is reasonably foreseeable that it is small time donors who will be paying the price for a tax shelter promoter's malfeasance. In the past, a taxpayer could rely on the three year deadline to generally put his or mind to rest that there were no outstanding liabilities related to a particular taxation year. Given that most participants in tax donation programs will not know whether a registration is required they may be surprised several years later when the government takes the position that it was, and they are being reassessed beyond the normal reassessment period.

New Collection Action Mechanisms

Generally speaking, the CRA is prohibited from taking collection action against a taxpayer until all the taxpayer's avenues of appeal have been exhausted. This is true even when, as recently, the length of time from the reassessment to a final disposition of the matter can take many years. Recently, the CRA just assumed for itself the power to withhold tax refunds where there were certain amounts in dispute – but the legality of that was questioned by many.

Budget 2013 proposes that where a donor makes a donation to a charity involved in a tax shelter the CRA will be permitted, to collect 50 per cent of the disputed tax, interest or penalties pending the dispute's ultimate outcome.

We would point out that this ultimate outcome could take several years and the CRA itself may be the obstacle to resolving a dispute quickly. In the meantime, the CRA has access to its panoply of collection mechanisms – including the seizure of assets – to pay half a tax debt not yet proven. Moreover, the

interest paid to the taxpayer if the items are returned is less than the interest that is charged on amounts owing.

Other Items of Interest

GST on Paid Parking

While rather technical, it seems that some charities that generally produce items that are not taxable have been able to avoid charging GST / HST on their supply of parking. Budget 2013 now requires them to charge and remit GST / HST on the amount collected from parking.

CIDA

Budget 2013 proposes to merge the Canadian International Development Agency with the Department of Foreign Affairs. While ostensibly this will leverage the connections between development and foreign affairs it will also have consequences for those charities that co-ordinate their efforts with CIDA.

Flow Through Credit

While the large scale donation of flow through shares has been stymied due to previous budgets there is still benefit to such donations. Part of the benefit relates to a super credit which is reviewed each year by the Federal government. Budget 2013 extends the previous credits.

Lifetime Capital Gains Exemption

The capital gains exemption exists for individuals who dispose of shares of certain types of small businesses. Until Budget 2013 the Income Tax Act allowed the first \$750,000 of appreciation in the shares value to occur tax free. The amount is now \$800,000. However, donors who donate shares of private companies are still subject to the rules involving the donation of non-qualified securities.

Support for Social Finance

Budget 2012 promised that the Government would look into greater use of social finance. Budget 2013 states that they actually did this.

Certain Gifts to Other Charities

Finally, the government has proposed certain other spending.

The Endowment Incentive component of the Canada Cultural Investment Fund which matches corporate philanthropy and private investment in the arts will increase to a maximum benefit of \$15 million over the life of the program, an increase of 50%.

Budget 2013 also proposes specific gifts to Massey Hall, the Canadian National Institute for the Blind, the Nature Conservancy of Canada and the Pacific Salmon Foundation.