

Explanatory Notes

Legislative Proposals Relating to the Income Tax Act - Charities

These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Clause 1

Qualified Donees

ITA
149.1

Section 149.1 of the *Income Tax Act* (the “Act”) provides the rules that must be met for charities to obtain and keep registered status. A registered charity is exempt from tax on taxable income and can issue receipts which entitle donors to claim tax relief in respect of their donations to the registered charity.

Definitions

ITA
149.1(1)

Subsection 149.1(1) of the Act contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act. Certain definitions are amended or repealed for clarification purposes or as consequential amendments.

“charitable organization”

The definition “charitable organization” sets out the conditions that must be met for an organization to be a charitable organization. The definition is amended to clarify that a charitable organization must be constituted and operated exclusively for charitable purposes. Therefore, an organization that has a political purpose, or any other purpose that is not a charitable purpose (*e.g.*, a private-benefit purpose), is not a charitable organization.

This amendment is deemed to have come into force on January 1, 2008 in respect of organizations that are registered charities on Announcement Date. In any other case, the amendment applies as of Announcement Date.

“charitable purposes”

The definition “charitable purposes” provides that charitable purposes include the disbursement of funds to qualified donees, other than a gift the making of which is a political activity. Consequential on the amendments to subsections 149.1(6.1) and (6.2), the definition “charitable purposes” is amended to remove the exclusion of gifts the making of which is a political activity.

As a result of the amendment to the definition “charitable organization”, the definition “charitable purposes” will be relevant to the determination of whether an organization is a charitable organization.

“political activity”

The definition “political activity” is repealed consequential on the amendments to subsections 149.1(6.1) and (6.2).

The amendments to the definitions “charitable purposes” and “political activity” are deemed to have come into force on June 29, 2012 in respect of organizations, corporations and trusts that are registered charities on Announcement Date and in respect of associations that are registered Canadian amateur athletic associations on Announcement Date. In any other case, the amendments apply as of Announcement Date.

Exclusions

ITA
149.1(1.1)

Subsection 149.1(1.1) of the Act excludes certain amounts from being included in determining if a registered charity has satisfied its annual disbursement quota.

The preamble to subsection 149.1(1.1) is amended to correct a reference not previously updated. The existing incorrect reference to paragraph 149.1(21)(a) of the Act is corrected by changing that reference to subsection 149.1(21) of the Act.

This amendment applies on Royal Assent.

Paragraph 149.1(1.1)(b) of the Act is repealed consequential on the amendments to subsections 149.1(6.1) and (6.2).

This amendment applies as of January 1, 2008 in respect of organizations, corporations and trusts that are registered charities on Announcement Date. In any other case, this amendment applies as of Announcement Date.

Devoting resources to charitable activity

ITA
149.1(6)

The definition “charitable organization” in subsection 149.1(1) of the Act requires an organization to devote all its resources to charitable activities carried on by the organization itself. Subsection 149.1(6) of the Act provides that, under certain circumstances, when a charitable organization makes a disbursement to a qualified donee, the charitable organization will be considered to be devoting resources to charitable activities carried on by it.

Consequential on the amendments to subsections 149.1(6.1) and (6.2), paragraphs 149.1(6)(b) and (c) of the Act are amended to remove references to income disbursed by way of a gift the making of which is a political activity.

These amendments are deemed to have come into force on June 29, 2012 in respect of organizations that are registered charities on Announcement Date. In any other case, these amendments apply as of Announcement Date.

Charitable purposes

ITA

149.1(6.1)

The Act requires a charitable foundation to be constituted and operated exclusively for charitable purposes. Subsection 149.1(6.1) of the Act provides that a charitable foundation may use its resources, within defined limits, for ancillary and incidental political activities in support of its charitable purposes, as long as those activities do not involve the direct or indirect support of, or opposition to, a political party or candidate for public office.

Subsection 149.1(6.1) is amended to remove the reference in the provision to non-partisan political activities and to the “substantially all” condition in relation to the resources a charitable foundation may devote to political activities in furtherance of its charitable purposes. The effect of this amendment is that the extent to which a charitable foundation can engage in non-partisan political activities will be determined by reference to the common law rather than by using the “substantially all” condition set out in prior subsections (6.1) and (6.2). The prohibition against a charitable foundation devoting resources to the direct or indirect support of, or opposition to, any political party or candidate for public office is maintained.

This amendment is deemed to have come into force on January 1, 2008, in respect of corporations and trusts that are registered charities on Announcement Date. In any other case, this amendment applies as of Announcement Date.

Charitable purposes

ITA

149.1 (6.2)

Subsection 149.1(6.2) of the Act provides that a charitable organization may use its resources, within defined limits, for ancillary and incidental political activities in support of its charitable purposes, as long as those activities do not involve the direct or indirect support of, or opposition to, a political party or candidate for public office.

Subsection 149.1(6.2) is amended to remove the reference in the provision to non-partisan political activities and to the “substantially all” condition in relation to the resources a charitable organization may devote to political activities in furtherance of its charitable purposes. The effect of this amendment is that the extent to which a charitable organization can engage in non-partisan political activities will be determined by reference to the common law rather than by using the “substantially all” condition set out in prior subsections (6.1) and (6.2). The prohibition against a charitable organization devoting resources to the direct or indirect support of, or opposition to, any political party or candidate for public office is maintained.

This amendment is deemed to have come into force on January 1, 2008, in respect of organizations that are registered charities on Announcement Date. In any other case, this amendment applies as of Announcement Date.

Activities of Canadian amateur athletic associations

ITA

149.1(6.201)

A Canadian amateur athletic association has the promotion of amateur athletics in Canada on a nationwide basis as its exclusive purpose and exclusive function and is required to devote all its resources to that purpose and function. Subsection 149.1(6.201) of the Act provides that a Canadian amateur athletic association may engage in non-partisan political activities, within defined limits, that are ancillary and incidental to its promotion of amateur athletics in Canada on a nationwide basis.

Subsection 149.1(6.201) is amended to remove the reference in the provision to non-partisan political activities while maintaining the prohibition on a Canadian amateur athletic association devoting resources to the direct or indirect support of, or opposition to, any political party or to a candidate for public office.

This amendment is deemed to have come into force on January 1, 2012 in respect of Canadian amateur athletic associations that are registered on Announcement Date. In any other case, the amendment applies as of Announcement Date.

Deemed charitable activity

ITA

149.1(10)

The definition “charitable organization” in subsection 149.1(1) of the Act requires an organization to devote all its resources to charitable activities carried on by the organization itself. Subsection 149.1(10) of the Act provides that when a charitable organization pays an amount that is not out of the organization’s income to a qualified donee, the charitable organization will be considered to be devoting its resources to charitable activities carried on by it, unless the amount paid is a gift the making of which is a political activity.

Consequential on the amendments to subsections 149.1(6.1) and (6.2), subsection 149.1(10) is amended to remove the reference to amounts paid by way of a gift the making of which is a political activity.

This amendment is deemed to have come into force on June 29, 2012 in respect of organizations that are registered charities on Announcement Date. In any other case, the amendment applies as of Announcement Date.

Clause 2

Notice of suspension - general

ITA

188.2(2)

Subsection 188.2(2) of the Act provides for the suspension, in certain circumstances, of the tax-receipting privileges of registered charities, registered Canadian amateur athletic associations and persons described in paragraphs (a) to (c) of the definition “qualified donee” in subsection 149.1(1), including in

circumstances where the charity or association devotes resources to political activities in excess of the limits set out in subsections 149.1(6.1), (6.2) and (6.201).

Subsection 188.2(2) is amended to remove the general references in the provision to political activities while maintaining the Minister's authority to suspend the privileges of registered charities or Canadian amateur athletic associations in cases where a registered charity or a Canadian amateur athletic association devotes any of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office.

This amendment is deemed to have come into force on June 29, 2012, in respect of charities and Canadian amateur athletic associations that are registered on Announcement Date. In any other case, this amendment applies as of Announcement Date.