BUDGET 2016: REVERSAL OF PREVIOUSLY ANNOUNCED TAX EXEMPTION FOR CHARITABLE DONATIONS

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In Budget 2016, the new federal Government announced its intention to abandon certain legislative proposals, previously announced in Budget 2015, that would have provided an exemption from capital gains tax in respect of certain dispositions of real property and private corporation shares, where cash proceeds from the disposition were donated to a registered charity or other qualified donee (collectively, "**Charities**") within 30 days of the disposition (the "**Original Proposal**").

McMillan prepared a bulletin in April 2015 describing the Original Proposal in greater detail. The Ministry of Finance supplemented the Original Proposal with draft legislative measures, released on July 31, 2015, that would have substantially enacted the Original Proposal if passed into law (the "**Draft Legislation**").

The Original Proposal did not propose amendments to the existing regime under which taxpayers are generally eligible for a tax credit, in the case of individuals, or a tax deduction, in the case of corporations, in respect of donations to Charities. Under current law, taxpayers may also be exempt from capital gains tax that would otherwise arise on the direct donation of shares, debt obligations or rights listed on a designated stock exchange, as well as certain other specified types of property, including units of mutual fund trusts and shares of mutual fund corporations, (collectively, "**Publicly Traded Securities**") to a Charity.

It was understood that the Original Proposal was intended to further incentivize charitable giving, while also addressing a perceived inequity in the treatment of donations of Publicly Traded Securities as compared with donations made in connection with the sale of real estate or private corporation shares.

Budget 2016 did not provide an explanation for why the Government was abandoning the Original Proposal. The Government estimated that the Original Proposal would have cost the federal treasury approximately $90 to 95 million per year in foregone revenue once fully implemented. It is speculated that the challenging fiscal circumstances facing the Government in 2016 may have, in part, been the motivation for the Government's decision not to advance the Original Proposal.

Budget 2015 indicated that the Original Proposal was to have effect in respect of dispositions occurring after 2016. However, the Draft Legislation indicated that the provisions were to apply to the 2017 and subsequent taxation years. While these timelines are equivalent in the case of individuals (other than trusts) and certain other taxpayers whose taxation years are deemed by the *Income Tax Act* to correspond to the calendar year, certain other taxpayers, such as most corporations, are permitted to have taxation years that do not align with the calendar year, such that the 2017 taxation year of said taxpayers could have commenced prior to the Budget date. Budget 2016 is silent as to whether any transitional relief will be available to corporate or other taxpayers that made donations prior to the Budget date with the understanding that the Draft Legislation would be applicable.

This announcement will no-doubt disappoint many in the charitable sector. Charities can take some solace, however, in Budget 2016's confirmation that it is still the Government's intention to enact legislation permitting the acquisition or holding of limited partnership interests by registered charities, as originally proposed in Budget 2015 and summarized in the above-referenced McMillan bulletin.

by Andrew Stirling

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.