

Charities

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Q. Is the Government attempting to stifle dissent by charities by limiting their ability to make themselves heard through the political system?

A. Registered charities are required to operate exclusively for charitable purposes and devote their resources exclusively to charitable activities.

In recognition of the contribution that charities can make to the public policy debate, charities are allowed to devote a limited amount of their resources to non-partisan political activities related to their charitable purposes.

Economic Action Plan 2012 does not change the current rules, but instead takes steps to ensure that charities respect these rules. Economic Action Plan 2012 proposes new sanctions for charities that exceed the limits on political activities or that fail to provide complete and accurate information about their activities.

Economic Action Plan 2012 also limits the ability of registered charities to circumvent the limitations on political activities by funding the political activities of other organizations.

In addition, to ensure that charities understand the rules on political activities, the Canada Revenue Agency will enhance its public outreach activities and educational resources.

Economic Action Plan 2012 will also increase public transparency about the political activities of charities, including the extent to which they may be funded by foreign sources.

Overall, the measures in Economic Action Plan 2012 will enhance the confidence of Canadians that donations of their hard-earned dollars are being used for charitable, rather than political, activities.

Enhancing Transparency and Accountability for Charities

Transparency

1. What information is currently available on the activities of registered charities?

All registered charities are annually required to file a Registered Charity Information Return (T3010 form) containing details on their activities and how they earned and spent their money. This return is published on the CRA's web site and provides information to the public on how their donations are used.

Certain other information is also available, upon request to the CRA, such as:

- a copy of a charity's governing documents,
- the financial statements filed by a charity,
- the application for registration of the charity,
- the names of the charity's directors or trustees, and
- copies of letters relating to the revocation or annulment of a charity's registration, or the imposition of a suspension or penalty.

2. What new reporting requirements are being placed on registered charities?

To enhance transparency around the political activities of registered charities and to ensure that donations are being spent on charitable, rather than political, activities, registered charities would be required to provide greater disclosure on their Registered Charity Information Return about their involvement in political activities.

The specific information required will be determined by the CRA over the coming year. It is proposed that more disclosure be required on the nature and extent of a charity's political activities. Registered charities will also have to provide additional information on foreign sources that are funding their political activities.

To respect the general principle of confidentiality of taxpayer information provided for under the *Income Tax Act*, the names of foreign donors will not be publicly released.

3. Why aren't other entities subject to similar transparency requirements around their political activities, for example, businesses or other tax exempt entities?

Registered charities are provided generous tax treatment under the *Income Tax Act*. They are not required to pay tax on their income and may issue official donation receipts for gifts received. Unlike charities, businesses and other tax-exempt entities cannot issue tax receipts. Further, most businesses are subject to tax on their income.

Given the tax support, charities are subject to the general requirement that they devote their resources exclusively to their charitable purposes. Charitable purposes include the relief of poverty, the advancement of education, the advancement of religion and certain other purposes recognized by the courts as beneficial to the community. Charities are not permitted to operate

for political purposes, such as influencing law or government policy, as these are not considered charitable at law.

However, the *Income Tax Act* permits charities to engage in a limited amount of political activity, generally up to ten per cent of their resources each year, on political and advocacy activities that are non-partisan and related to their charitable purposes. These provisions strike a balance between recognition of the contribution charities can make to the public policy process, and ensuring that tax assistance is predominantly directed towards charitable purposes.

Any organization that wants to engage in political activities without any limitations has the option to forego registration as a charity and pursue such activities on an unregistered basis (e.g., as a non-profit organization).

4. How do Canada's transparency requirements for charities compare to those in other countries?

Canada's transparency requirements for charities are similar to those in the US and the UK. All three jurisdictions require charities to file an annual return, and make publicly available most of the information on that return. Information about specific donors, however, is not generally released.

The Canadian requirements have been designed in a manner that minimizes administrative burden on charities but provides sufficient public disclosure to enable Canadians to assure themselves that charities are using donations appropriately.

5. Why are the names of foreign donors and the amount of their donations not being released?

Budget 2012 enhances transparency by requiring charities to provide more information on their political activities and the extent to which these are funded by foreign sources. These measures will provide sufficient public disclosure.

In keeping with the general principle of confidentiality of taxpayer information provided for under the *Income Tax Act*, the names of foreign donors are not being publicly released.

6. Why are charities allowed to accept funding from foreign donors to influence Canadian public policy issues?

The purpose of the tax system is to raise revenue to support a broad range of programs and services. The *Income Tax Act* is not generally designed to restrict the manner in which particular groups, including individuals, non profit organizations and businesses, can earn income.

Charities are subject to the general requirement that they devote their resources exclusively to their charitable purposes. Charities are not permitted to operate for political purposes, such as influencing law or government policy, as these are not considered charitable at law.

However, the *Income Tax Act* permits charities to engage in a limited amount of political activity, generally up to ten per cent of their resources each year, on political and advocacy activities that are non-partisan and relate to their charitable purposes. These provisions strike a

balance between recognition of the contribution charities can make to the public policy process, and ensuring that tax assistance is predominantly directed towards charitable purposes. Registered charities that do not respect these rules may have their registration revoked.

Political Activities

1. Why are charities limited in the amount of resources that they may devote to political activities?

Under the *Income Tax Act*, registered charities are required to operate exclusively for charitable purposes and devote their resources exclusively to charitable activities. According to the courts, charitable purposes include the relief of poverty, the advancement of education, the advancement of religion and certain other purposes recognized as beneficial to the community. Political purposes, such as influencing law or government policy, are not considered charitable at law.

In recognition of the valuable contribution charities make to the development of public policy in Canada, the *Income Tax Act* permits charities to devote a limited amount of their resources to political activities. Specifically, the *Income Tax Act* provides that as long as charities devote substantially all of their resources to charitable activities, they may devote a limited amount of their resources (financial, physical and human) to non-partisan political activities that are ancillary and incidental to their charitable purposes.

These provisions are designed to allow charities to contribute to the public policy process while ensuring that charities remain focused on charitable purposes.

2. Why are these changes being proposed?

Canadians have shown that they are willing to donate generously to support charities, but want to be assured that charities are using their resources appropriately. In this regard, charities are required by law to operate exclusively for charitable purposes and may devote a limited amount of their resources to non-partisan political activities that are related to their charitable purposes.

Recently, concerns have been raised that some charities may not be respecting the rules regarding political activities. Concerns have also been raised that there is a lack of public transparency around the political activities of charities, including the extent to which they may be funded by foreign sources.

Budget 2012 proposes measures to ensure that charities devote their resources primarily to charitable, rather than political, activities, and to increase public transparency and accountability in this area.

3. How will the changes proposed in Budget 2012 help to ensure that charities are devoting their resources to charitable activities?

The Budget is proposing a number of measures to ensure that charities devote their resources to charitable, rather than political, activities.

All charities are currently required to complete an annual Registered Charity Information Return. Most of this return is made public and provides a wide range of information on the finances and activities of charities. To enhance transparency, charities will now be required to provide more

detailed information on how they carry out their political activities, including the extent to which these are funded by foreign sources.

Currently, charities can transfer resources to other qualified donees for the purpose of political activities and such amounts are not considered part of the charity's political activities. To ensure that charities are not able to circumvent the limits on political activities, Budget 2012 proposes that transfers made by a charity for the purpose of supporting the political activities of another qualified donee will be considered as expenditures on political activities by the transferring charity.

In addition, to promote greater voluntary compliance with the rules on political activities, the Canada Revenue Agency (CRA) would enhance its public outreach activities, and place a specific emphasis on clarifying the rules. The CRA would also enhance its audit activities to ensure that charities respect the limitations in the *Income Tax Act*, and accurately report these activities.

Finally, to ensure that the CRA has the necessary tools to enforce compliance by charities, it is proposed that the *Income Tax Act* be amended to introduce new sanctions for charities that exceed the limits on political activities, or that fail to provide complete and accurate information in relation to any aspect of their annual return.

4. Will charities be prevented from engaging in the public policy process?

No, it is widely recognized that charities make a valuable contribution to the development of public policy in Canada. As such, the *Income Tax Act* allows charities to engage in a limited amount of political activity, generally up to ten per cent of their resources each year.

Budget 2012 does not change the current limits, but instead provides greater assurance that charities will respect them. Budget 2012 does, however, limit the ability of registered charities to circumvent the limitations on political activities by funding the political activities of other organizations.

5. What is the difference between a political activity and a charitable activity?

While the terms "political activities" and "charitable activities" are not defined in the *Income Tax Act*, their meaning is derived from the common law, and the CRA as administrator of the tax system is responsible for developing guidance to charities on this basis (CPS-022 – Political Activities).

Political activities

Under the Guidance, activities that explicitly involve a call to political action, or an explicit campaign to bring pressure to bear on a government, are considered political. Charities may only carry on political activities within limits - generally up to 10 per cent of their resources, although this can be more depending on the circumstances (see section 9 of the Guidance).

Specifically, section 6.2 of the Guidance presumes an activity to be political if a charity:

- explicitly communicates a call to political action (i.e., encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or
- explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

Charitable activities

The CRA Guidelines indicate that many “communication” activities by charities are considered to be “charitable” activities. No limits are placed on the amount of resources which may be devoted to charitable activities.

As described in sections 7 and 8 of the Guidance, some of the activities that will be considered charitable are:

- Public awareness campaigns that are connected and subordinate to the charity's purpose. The activity should, however, be based on a position that is well reasoned, rather than information the charity knows or ought to know is false, inaccurate, or misleading.
- Communicating with an elected representative or public official, whether by invitation or not. Even if the charity explicitly advocates that the law, policy, or decision of any level of government in Canada or a foreign country ought to be retained, opposed, or changed, the activity is considered to fall within the general scope of charitable activities. However, such representations should be related to an issue connected to its charitable purposes, be well-reasoned, and not contain false or misleading information.
- Releasing the text of a representation before or after delivering it to the elected representative or public official provided the entire text is released and there is no explicit call to political action either in the text or in reference to the text.
- Advancement of education, such as through conducting and distributing research, as long as the educational activity is reasonably objective and based on a well-reasoned position. This means that the position should be based on factual information that is fairly analyzed. In addition, a well-reasoned position should present (i.e. address) serious arguments and relevant facts to the contrary.

6. Which political activities are prohibited by charities?

The *Income Tax Act* prohibits registered charities from engaging in partisan political activities. These are political activities that involve direct or indirect support of, or opposition to, any political party or candidate for public office.

Registered charities are also prohibited from participating in political activities that are not ancillary (i.e., connected) and incidental (i.e., subordinate) to their charitable purposes.

7. Why does the *Income Tax Act* subject charities to restrictions on their political activities but not put limits on the political activities of businesses?

Registered charities are provided generous tax treatment under the *Income Tax Act*. They are not required to pay tax on their income and may issue official donation receipts for gifts received. Unlike charities, businesses and other tax-exempt entities cannot issue tax receipts. Further, most businesses are subject to tax on their income.

In return for the tax privileges they receive, charities are subject to the general requirement that they devote their resources exclusively to their charitable purposes. Charitable purposes include the relief of poverty, the advancement of education, the advancement of religion and certain other purposes recognized by the courts as beneficial to the community. Charities are not permitted to operate for political purposes, such as influencing law or government policy, as these are not considered charitable at law.

However, the *Income Tax Act* permits charities to engage in a limited amount of political activity, generally up to ten per cent of their resources each year, on political and advocacy activities that are non-partisan and related to their charitable purposes. These provisions strike a balance between recognition of the contribution charities can make to the public policy process, and ensuring that tax assistance is predominantly directed towards charitable purposes.

Any organization that wants to engage in political activities without any limitations has the option to forego registration as a charity and pursue such activities on an unregistered basis (e.g., as a non-profit organization).

Intermediate Sanctions

1. Will the CRA suspend any charity that exceeds the limits on political activities or fails to provide information on their annual return?

When a charity does not comply with its obligations under the *Income Tax Act*, the CRA generally takes a graduated approach to addressing non-compliance.

First, the CRA works with the charity and provides it with an opportunity to comply voluntarily. If compliance issues become more serious, the CRA may apply intermediate sanctions, such as monetary penalties or a one-year suspension of the charity's tax-receipting privileges. The CRA may also revoke a charity's registration, but this is usually only done as a last resort.

It is expected that the CRA would take a similar approach in the case of excessive political activities and missing or inaccurate information.

2. Suspending the right to issue tax receipts for a year can put a charity out of business. Isn't that too harsh?

At present, there is no intermediate sanction available to CRA if a charity exceeds the limits on political activities or fails to provide information on its annual return. If a charity were found to

be not following these rules, the sole sanction currently available to the CRA is to revoke the organization's registration. Where a charity's registration is revoked it has up to one year to disburse all of its assets to other registered charities or face a 100 per cent tax on any remaining assets. Budget 2012 therefore proposes to give the CRA more flexibility to address these forms of non-compliance, through the introduction of intermediate sanctions – i.e., temporary suspension of a charity's receipting privileges.

The CRA generally takes a graduated approach to addressing non-compliance. First, the CRA works with the charity and provides it with an opportunity to comply voluntarily. Suspension of a charity's tax-receipting privileges would only be used in more serious cases of non-compliance, including where it occurs more than once.

- For organizations that exceed the limitations on political activities, the suspension applies for one year, which is the same period as for most other forms of non-compliance.
- For organizations that fail to provide information on their registered charity information return, or that report inaccurate information, the suspension will apply only until the CRA receives the required information and notifies the charity of this.

3. The *Income Tax Act* contains monetary penalties for many forms of non-compliance, such as where a charity engages in unrelated business activities. Why hasn't a monetary penalty been proposed for excessive political activities as well?

Generally the penalties in the *Income Tax Act* for charities apply as a percentage of the financial resources associated with the non-compliant activity. For example, for an unrelated business, a charity would be liable to a penalty of 5 per cent of its gross revenue from that business, or 105 per cent of a subsequent infraction. For a charity that provided an undue benefit to any person, the penalty is calculated as 105 per cent of the undue benefit provided. Generally, penalties are applicable in circumstances where it is relatively easy to quantify the dollar amount associated with the non-compliant activity.

Determining the dollar value of excessive political activity would be much more difficult because the limits in the *Income Tax Act* apply not only to financial resources devoted to political activities, but also to human and physical resources.

General

1. What has the Government done to support the charitable sector?

The Government of Canada recognizes the important role that charities play in Canadian society and has already taken numerous steps to enhance support for the charitable sector. Since 2006, the Government of Canada has improved the tax incentives for donations and the regulatory regime for charities in a number of ways:

- Budget 2006 introduced a complete exemption on capital gains tax associated with the donation of publicly-listed securities to public charities. It also extended the exemption to donations of ecologically-sensitive land to public conservation charities.

- Budget 2007 extended the exemption to donations of publicly-listed securities to private foundations.
- Budget 2008 extended the exemption to certain donations of exchangeable shares.
- Budget 2010 significantly reformed the disbursement quota rules for charities, reducing administrative complexity, to better enable charities to focus their time and resources on charitable activities.
- Budget 2011 introduced a package of integrity measures for charities, designed to combat fraud and abuse in the charitable sector, thereby increasing the confidence of Canadians that donations of their hard-earned dollars support legitimate charities and will be used for charitable purposes.

To ensure that the Canadian tax incentives are as effective as possible, the Government has also asked the House Standing Committee on Finance to study current and proposed incentives for charitable giving.

2. How much did Canadians donate to charities in 2010?

According to Statistics Canada, Canadians donated about \$8.3 billion in 2010, which represents an increase in donations of 6.5 per cent from the previous year. This increase follows two years of consecutive decreases of 5 per cent in total charitable donations. The total value of donations is at its highest since 2007 when it reached \$8.65 billion.

The total number of donors also increased to 5.74 million from 5.62 million in 2009, an increase of 2.2 per cent. The number of donors has fluctuated between approximately 5.6 million and 5.8 million in recent years.

3. How much tax assistance is provided by the Government for donations?

The Charitable Donations Tax Credit provides a significant incentive for individuals to donate to registered charities. Donors receive a tax credit at a rate of 15 percent on the first \$200 of annual donations, and 29 per cent on the portion of donations over \$200. The provincial and territorial governments also provide charitable donation credits. When combined, the average tax assistance from the federal and provincial or territorial governments totals about 46 percent for charitable donations of more than \$200.

In 2011, total federal income tax assistance for the charitable sector was approximately \$2.9 billion.

Table 1
Personal Income Tax Expenditures (\$ millions)*

	Estimates ¹			Projections ¹		
	2006	2007	2008	2009	2010	2011
Charitable Donations and						

Political Contributions							
Charitable Donations Tax Credit (excluding donations of assets subject to a reduced inclusion rate for capital gains) ²		2,325	2,345	2,270	2,095	2,200	2,280
Donations of publicly listed securities ³							
Charitable Donations Tax Credit		125	165	90	98	110	115
Reduced inclusion rate for capital gains		37	50	27	29	33	34
Total tax expenditure		160	215	115	130	145	150
Donations of ecologically sensitive land ³							
Charitable Donations Tax Credit		4	6	9	8	5	7
Reduced inclusion rate for capital gains		S	S	3	3	S	S
Total tax expenditure		5	8	11	11	7	9
Donations of cultural property ³							
Charitable Donations Tax Credit		28	22	21	20	18	18
Non-taxation of capital gains		9	7	7	6	6	6
Total tax expenditure		37	30	27	26	25	24

Table 2
Corporate Income Tax Expenditures (\$ millions)*

	Estimates¹					Projections¹	
	2006	2007	2008	2009	2010	2011	
Charities, Gifts and Political Contributions							
Deductibility of charitable donations	495	455	415	375	395	390	
Donations of publicly listed securities ²							
Deductibility of donations ³	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	
Reduced inclusion rate for capital gains	36	55	106	34	62	67	
Total tax expenditure	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	
Donations of ecologically sensitive land ²							
Deductibility of donations	5	3	4	11	S	5	
Reduced inclusion rate for capital gains	3	22	4	10	S	5	
Total tax expenditure	7	25	8	21	3	10	
Donations of cultural property ²							
Deductibility of donations	19	8	6	4	19	10	
Non-taxation of capital gains	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	
Total tax expenditure	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	

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1. What is the policy rationale for providing qualified donee status to foreign charitable organizations?
2. Which organizations have qualified donee status under the existing provision?
3. How would the Budget proposal impact the organizations that have received qualified donee status under the existing provision?
4. Which other foreign organizations have qualified donee status?
5. What is meant by activities in the national interest of Canada?
6. What is meant by urgent humanitarian aid and disaster relief?
7. How does the Government ensure that foreign charitable organizations are held to the same accountability standards as domestic charities?
8. Why is the Budget making the existing provision more restrictive?

Political Activities

1. Why are no new tax measures being proposed to increase support for the charitable sector?
2. Why are charities limited in the amount of resources that they may devote to political activities?
3. Will charities be prevented from engaging in the public policy process?
4. What is the difference between a political activity and a charitable activity?
5. What is the difference between political activities and partisan activities?
6. How do Canada's restrictions on political activities by charities compare to those in other countries?
7. How will the changes proposed in Budget 2012 help to ensure that charities are devoting their resources to charitable activities?
8. Why does the ITA only subject charities to restrictions on their political activities, and not, for example, businesses or other tax exempt entities?

Transparency

1. What new reporting requirements are being placed on registered charities?
2. Why aren't other entities subject to similar transparency requirements around their political activities, for example, businesses or other tax exempt entities?
3. How do Canada's transparency requirements for charities compare to those in other countries?
4. Why are the names of foreign donors and the amount of their donations not being released?
5. Why are charities allowed to accept funding from foreign donors to influence Canadian public policy issues?

Transparency Requirements for Registered Charities

Political Activities

Currently, charities are required to report the following information with respect to their political activities on their Registered Charity Annual Information Return:

(a) Did the charity carry on any political activities during the fiscal period? (Yes/No)
(b) Enter the total amount spent by the charity on these activities.

Budget 2012 proposes that charities be required to report additional information with respect to their political activities, similar to what was required to be reported prior to 2003. Formerly, charities were required to report the following information:

G1 - During the fiscal period, did the charity attempt to influence public opinion or to affect legislation or policy using any of the following means?

- media advertisements
- conferences, workshops, speeches, or lectures
- publications, or published or broadcast statements
- rallies, demonstrations, or public meetings
- mailings to elected officials or the public
- meetings with elected officials or their staff
- presentations or briefs to elected or appointed officials
- letter-writing campaigns
- other (please specify)

G2 If you answered yes on any of lines 400 to 408, describe how these activities relate to the charity's purposes.

G3 Did the charity give money or other forms of support either as a gift to a qualified donee to help the recipient organization carry on political activities, or as payment to another organization or individual to help the charity conduct its own political activities? (Yes/No) If yes, provide the name and location of the recipient. If a recipient is also a registered charity, provide the BN/registration number.

21(1)(b)