

Charities

Definitions

149.1. (1) In this section,

"charitable foundation"
« fondation de bienfaisance »

"charitable foundation" means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization;

"charitable organization"
« oeuvre de bienfaisance »

"charitable organization" means an organization, whether or not incorporated,

(a) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(d) where it has been designated as a private foundation or public foundation pursuant to subsection (6.3) of this section or subsection 110(8.1) or (8.2) of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, or has applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the definition "registered charity" in subsection 248(1), not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arm's length and, for the purpose of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

"charitable purposes"
« fins de bienfaisance »

"charitable purposes" includes the disbursement of funds to qualified donees;

"charity" « organisme de bienfaisance »

"charity" means a charitable organization or charitable foundation;

"disbursement quota"
« contingent des
versements »

"disbursement quota" for a taxation year of a charitable foundation means the amount determined by the formula

$$A + A.1 + B + [(C \times 0.045[D - (E + F)]) / 365] + G$$

where

A is 80% of the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

- (a) a gift of capital received by way of bequest or inheritance,
- (b) a gift received subject to a trust or direction to the effect that the property given, or property substituted therefor, is to be held by the foundation for a period of not less than 10 years, or
- (c) a gift received from a registered charity,

A.1

is 80% of the total of all amounts each of which is the amount of a gift received in a preceding taxation year, to the extent that the amount of the gift

- (a) is expended in the year, and
- (b) was excluded from the disbursement quota of the foundation
 - (i) because of paragraph (a) of the description of A for a taxation year that begins after 1993, or
 - (ii) because of paragraph (b) of the description of A,

B is

- (a) in the case of a private foundation, the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift, or
- (b) in the case of a public foundation, 80% of the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity,

other than an amount that is a specified gift,

C is the number of days in the taxation year,

D is the prescribed amount for the year in respect of property (other than a prescribed property) or a portion thereof owned by the foundation at any time in the immediately preceding 24 months that was not used directly in charitable activities or administration,

E is $\frac{5}{4}$ of the total of the amounts determined for A and A.1 for the year in respect of the foundation,

F is the amount equal to

(a) in the case of a private foundation, the amount determined as the value of B for the year in accordance with paragraph (a) of the description of B, or

(b) in the case of a public foundation, $\frac{5}{4}$ of the amount determined as the value of B for the year in accordance with paragraph (b) of the description of B, and

G is, for each of the first 10 taxation years of the foundation commencing after 1983, a portion of the amount, if any, by which

(a) 90% of the amount, if any, by which the amount deducted by the foundation, for its last taxation year that commenced before 1984, pursuant to paragraph 149.1(18)(a) of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, as it read for that year, exceeds the total of the amounts determined in respect of the foundation under clauses 149.1(1)(e)(iv)(B) to (D) of that Act for its first taxation year commencing after 1983

exceeds

(b) the total of all amounts each of which is an amount that, for a preceding taxation year, has been determined as the value of G or included under subparagraph 149.1(1)(e)(v) of the above-mentioned Act in determining the disbursement quota of the foundation,

that is not less than the amount obtained when such excess is divided by the difference between 10 and the number of preceding taxation years of the foundation that commenced after

"non-qualified investment"
« placement non admissible »

1983 and before the year;

"non-qualified investment" of a private foundation means

(a) a debt (other than a pledge or undertaking to make a gift) owing to the foundation by

(i) a person (other than an excluded corporation)

(A) who is a member, shareholder, trustee, settlor, officer, official or director of the foundation,

(B) who has, or is a member of a group of persons who do not deal with each other at arm's length who have, contributed more than 50% of the capital of the foundation, or

(C) who does not deal at arm's length with any person described in clause 149.1(1) "non-qualified investment" (a)(i)(A) or 149.1(1) "non-qualified investment" (a)(i)(B), or

(ii) a corporation (other than an excluded corporation) controlled by the foundation, by any person or group of persons referred to in subparagraph 149.1(1) "non-qualified investment" (a)(i), by the foundation and any other private foundation with which it does not deal at arm's length or by any combination thereof,

(b) a share of a class of the capital stock of a corporation (other than an excluded corporation) referred to in paragraph 149.1(1) "non-qualified investment" (a) held by the foundation (other than a share listed on a prescribed stock exchange or a share that would be a qualifying share within the meaning assigned by subsection 192(6) if that subsection were read without reference to the expression "issued after May 22, 1985 and before 1987"), and

(c) a right held by the foundation to acquire a share referred to in paragraph 149.1(1) "non-qualified investment" (b),

and for the purpose of this definition, an "excluded corporation" is

(d) a limited-dividend housing company to which paragraph 149(1)(n) applies,

(e) a corporation all of the property of which is used by a registered charity in its administration or in carrying on its

charitable activities, or

(f) a corporation all of the issued shares of which are held by the foundation;

"private foundation"
« fondation privée »

"private foundation" means a charitable foundation that is not a public foundation;

"public foundation"
« fondation
publique »

"public foundation" means a charitable foundation of which,

(a) where the foundation has been registered after February 15, 1984 or designated as a charitable organization or private foundation pursuant to subsection 149.1(6.3) or to subsection 110(8.1) or (8.2) of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952,

(i) more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and

(ii) not more than 50% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or members of a group of such persons who do not deal with each other at arm's length, or

(b) in any other case,

(i) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm's length, and

(ii) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm's length

and for the purpose of subparagraph 149.1(1) "public foundation" (a)(ii), a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described

in paragraph 149(1)(l);

"qualified donee"
« donataire reconnu »

"qualified donee" means a donee described in any of paragraphs 110.1(1)(a) and 110.1(1)(b) and the definitions "total charitable

gifts" and "total Crown gifts" in subsection 118.1(1);

"qualified investment" (Repealed by S.C. 1984, c. 45, s. 57(5).)

"related business"
« activité
commerciale
complémentaire »

"related business", in relation to a charity, includes a business that is unrelated to the objects of the charity if substantially all persons employed by the charity in the carrying on of that business are not remunerated for that employment;

"specified gift" « don
désigné »

"specified gift" means that portion of a gift, made in a taxation year by a registered charity, that is designated as a specified gift in its information return for the year;

"taxation year"
« année
d'imposition »

"taxation year" means, in the case of a registered charity, a fiscal period.

Exclusions

(1.1) For the purposes of paragraphs 149.1(2)(b), 149.1(3)(b), 149.1(4)(b) and 149.1(21)(a), the following shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee:

(a) a specified gift; and

(b) an expenditure on political activities made by a charitable organization or a charitable foundation.

Authority of Minister

(1.2) For the purposes of the determination of D in the definition "disbursement quota" in subsection 149.1(1), the Minister may

(a) authorize a change in the number of periods chosen by a charitable foundation in determining the prescribed amount; and

(b) accept any method for the determination of the fair market value of property or a portion thereof that may be required in determining the prescribed amount.

Revocation of
registration of
charitable
organization

(2) The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

(a) carries on a business that is not a related business of that charity; or

(b) fails to expend in any taxation year, on charitable activities

carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of

(i) the amount that would be the value of A for the year, and

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection 149.1(1) in respect of the organization if it were a charitable foundation.

Revocation of
registration of public
foundation

(3) The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on a business that is not a related business of that charity;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(c) since June 1, 1950, acquired control of any corporation;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or

(e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

Revocation of
registration of private
foundation

(4) The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the

foundation's disbursement quota for that year;

(c) since June 1, 1950, acquired control of any corporation; or

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

Revocation of
registration of
registered charity

(4.1) Where a registered charity has made a gift to another registered charity and it may reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities, the Minister may, in the manner described in section 168, revoke the registration of the charity that made the gift and, where it may reasonably be considered that the charities acted in concert, of the other charity.

Reduction

(5) The Minister may, on application made to the Minister in prescribed form by a registered charity, specify an amount in respect of the charity for a taxation year and, for the purpose of paragraph 149.1(2)(b), 149.1(3)(b) or 149.1(4)(b), as the case may be, that amount shall be deemed to be an amount expended by the charity in the year on charitable activities carried on by it.

Devoting resources to
charitable activity

(6) A charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that

(a) it carries on a related business;

(b) in any taxation year, it disburses not more than 50% of its income for that year to qualified donees; or

(c) it disburses income to a registered charity that the Minister has designated in writing as a charity associated with it.

Charitable purposes

(6.1) For the purposes of the definition "charitable foundation" in subsection 149.1(1), where a corporation or trust devotes substantially all of its resources to charitable purposes and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable purposes, and

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for

public office,

the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

Charitable activities

(6.2) For the purposes of the definition "charitable organization" in subsection 149.1(1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

(a) it devotes part of its resources to political activities,

(b) those political activities are ancillary and incidental to its charitable activities, and

(c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,

the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

Designation as public foundation, etc.

(6.3) The Minister may, by notice sent by registered mail to a registered charity, on the Minister's own initiative or on application made to the Minister in prescribed form, designate the charity to be a charitable organization, private foundation or public foundation and the charity shall be deemed to be registered as a charitable organization, private foundation or public foundation, as the case may be, for taxation years commencing after the day of mailing of the notice unless and until it is otherwise designated under this subsection or its registration is revoked under subsection 149.1(2), 149.1(3), 149.1(4), 149.1(4.1) or 168(2).

National arts service organizations

(6.4) Where an organization that

(a) has, on written application to the Minister of Canadian Heritage describing all of its objects and activities, been designated by that Minister on approval of those objects and activities to be a national arts service organization,

(b) has, as its exclusive purpose and its exclusive function, the promotion of arts in Canada on a nation-wide basis,

(c) is resident in Canada and was formed or created in Canada, and

(d) complies with prescribed conditions

applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section, paragraph 38(a.1), sections 110.1, 118.1, 168, 172, 180 and 230, subsection 241(3.2) and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or as if it were a registered charity that is designated as a charitable organization, as the case may be.

Revocation of designation

(6.5) The Minister of Canadian Heritage may, at any time, revoke the designation of an organization made for the purpose of subsection 149.1(6.4) where

(a) an incorrect statement was made in the furnishing of information for the purpose of obtaining the designation, or

(b) the organization has amended its objects after its last designation was made,

and, where the designation is so revoked, the organization shall be deemed for the purpose of section 168 to have ceased to comply with the requirements of this Act for its registration under this Act.

Designation of associated charities

(7) On application made to the Minister in prescribed form, the Minister may, in writing, designate a registered charity as a charity associated with one or more specified registered charities where the Minister is satisfied that the charitable aim or activity of each of the registered charities is substantially the same, and on and after a date specified in such a designation, the charities to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be associated.

Accumulation of property

(8) A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions, and over such period of time, as the Minister specifies in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any income earned in respect of the property so accumulated, shall be deemed

(a) to have been expended on charitable activities carried on by the charity in the taxation year in which it was so

accumulated; and

(b) not to have been expended in any other year.

Idem

(9) Property accumulated by a registered charity as provided in subsection 149.1(8), including any income earned in respect of that property, that is not used for the particular purpose for which it was accumulated either

(a) before the expiration of any period of time specified by the Minister in the Minister's approval of the accumulation, or

(b) at an earlier time at which the registered charity decides not to use the property for that purpose

shall, notwithstanding subsection 149.1(8), be deemed to be income of the charity for, and the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph 149.1(9)(a) expires or the time referred to in paragraph 149.1(9)(b) occurs, as the case may be.

Deemed charitable activity

(10) An amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization shall be deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it.

Income not to include taxable capital gains

(11) (Repealed by S.C. 1984, c. 45, s. 57(13).)

Rules

(12) For the purposes of this section,

(a) a corporation is controlled by a charitable foundation if more than 50% of the corporation's issued share capital, having full voting rights under all circumstances, belongs to

(i) the foundation, or

(ii) the foundation and persons with whom the foundation does not deal at arm's length,

but for the purpose of paragraph 149.1(3)(c) or 149.1(4)(c), as the case may be, a charitable foundation shall be deemed not to have acquired control of a corporation if it has not purchased or otherwise acquired for consideration more than 5% of the issued shares of any class of the capital stock of that corporation;

(b) there shall be included in computing the income of a charity

for a taxation year all gifts received by it in the year including gifts from any other charity but not including

(i) a specified gift or a gift referred to in paragraph (a) or (b) of the description of A in the definition "disbursement quota" in subsection 149.1(1),

(ii) any gift or portion of a gift in respect of which it is established that the donor is not a charity and

(A) has not been allowed a deduction under paragraph 110.1(1)(a) in computing the donor's taxable income or under subsection 118.1(3) in computing the donor's tax payable under this Part, or

(B) was not taxable under section 2 for the taxation year in which the gift was made, or

(iii) any gift or portion of a gift in respect of which it is established that the donor is a charity and that the gift was not made out of the income of the donor; and

(c) subsections 104(6) and 104(12) are not applicable in computing the income of a charitable foundation that is a trust.

Designation of private foundation as public

(13) On application made to the Minister by a private foundation, the Minister may, on such terms and conditions as the Minister considers appropriate, designate the foundation to be a public foundation, and on and after the date specified in such a designation, the foundation to which it relates shall, until such time, if any, as the Minister revokes the

designation, be deemed to be a public foundation.

Information returns

(14) Every registered charity shall, within 6 months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand therefor.

Information may be communicated

(15) Notwithstanding section 241,

(a) the information contained in a public information return referred to in subsection 149.1(14) shall be communicated or otherwise made available to the public by the Minister in such manner as the Minister deems appropriate; and

	(b) the Minister may make available to the public in such manner as the Minister deems appropriate an annual listing of all registered or previously registered charities indicating for each the name, location, registration number, date of registration and, in the case of a charity the registration of which has been revoked, annulled or terminated, the effective date of the revocation, annulment or termination.
Penalty tax	(16) (Repealed by S.C. 1984, c. 45, s. 57(17).)
Idem	(17) (Repealed by S.C. 1984, c. 45, s. 57(17).)
Rules relating to computation of income	(18) (Repealed by S.C. 1984, c. 45, s. 57(17).)
Election in respect of first taxation year	(19) (Repealed by S.C. 1980-81, c. 48, s. 84.1(2).)
Rule regarding disbursement excess	(20) Where a registered charity has expended a disbursement excess for a taxation year, the charity may, for the purpose of determining whether it complies with the requirements of paragraph 149.1(2)(b), 149.1(3)(b) or 149.1(4)(b), as the case may be, for the immediately preceding taxation year of the charity and 5 or less of its immediately subsequent taxation years, include in the computation of the amounts expended on charitable activities carried on by it and by way of gifts made by it to qualified donees, such portion of that disbursement excess as was not so included under this subsection for any preceding taxation year.
Definition of "disbursement excess"	(21) For the purpose of subsection 149.1(20), "disbursement excess" for a taxation year of a charity means the amount, if any, by which <p>(a) the total of amounts expended in the year by the charity on charitable activities carried on by it or by way of gifts made by it to qualified donees</p> <p>exceeds</p> <p>(b) in the case of a charitable foundation, its disbursement quota for the year, and</p> <p>(c) in the case of a charitable organization, the total of</p> <p>(i) the amount that would be the value of A for the year, and</p>

(ii) the amount that would be the value of A.1 for the year,
in the definition "disbursement quota" in subsection (1) in respect
of the organization if it were a charitable foundation.

S.C. 1976-77, c. 4, s. 60; S.C. 1977-78, c. 1, s. 75; S.C. 1979, c.
5, s. 52; S.C. 1980-81-82-83, c. 48, s. 84.1; S.C. 1984, c. 45, s.
57; S.C. 1986, c. 6, s. 85; S.C. 1986, c. 55, s. 58; S.C. 1988, c.
55, s. 134; 1994, c. 7, Sch. II, s. 123; S.C. 1994, c. 21, s. 74; S.C.
1998, c. 19, ss. 41.1, 179; S.C. 2001, c. 17, s. 146.