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The new Canada and Ontario Not-For-Profit Corporations Acts

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Canada Not-For-Profit Corporations Acts

Corporations Canada has amended the Not-For-Profit ("NFP") Corporation's Act for federal non-share capital corporations and has establisheds a new set of rules for these entities. The new Not-For-Profit Corporations Act ("NFP Act") replaces the existing Canada Corporations Act ("CCA") and is meant to be more reflective of the needs of those entities in the not-for-profit ("NFP") sector. All existing NFP's formed under the CCA and before October 17, 2011 must transition to the NFP Act as the process is not automatic. Those NFP's created after October 17, 2011 would have been formed under the NFP Act and no further action will be required. If a NFP, formed before October 17, 2011, does not transition to the NFP Act before October 18, 2014, Corporations Canada will, upon first giving written notice to the NFP and to each of its directors, dissolve that entity.

Readers are encouraged to consult legal advice on the conversion process and the specific regulations under the NFP Act. Appendix I to this article provides a brief overview of the steps involved in this process while an overview of the financial reporting considerations are discussed further below.

Financial Reporting Considerations

Under the NFP Act, each NFP will be classified as either soliciting or non-soliciting. A soliciting NFP would have received more than $10,000 from public sources, including public donations, federal or provincial governments, or other conduit entities in its last financial year.

For financial reporting purposes, the NFP Act further separates NFP's into two categories. Designated NFP's are those with gross annual revenues for its last financial year that is no more than $50,000 and non-soliciting NFP's with gross annual revenues for its last completed financial year that is equal to or less than $1 million. Non-designated NFP's are soliciting and non-soliciting NFP's with annual revenues in excess of the above $50,000 and $1 million thresholds.

The financial criteria and reporting options available to the members under the NFP Act are set out below:

	Soliciting			Non-Soliciting	
Annual revenue for last financial year	Designated with revenues of $50,000 or less	Non-designated with revenues of more than $50,000 and up to $250,000	Non-designated with revenues of more than $250,000	Designated with revenues of $1 million or less	Non-designated with revenues more than $1 million
Level of financial review	A review engagement unless a unanimous resolution has been passed requiring a compilation or an ordinary resolution for an audit	Must have an audit unless a special resolution has been passed to require a review engagement. The special resolution must be passed by at least	Must have an audit engagement	A review engagement unless a unanimous resolution has been passed requiring a compilation or an ordinary resolution for an audit engagement.	Must have an audit engagement

Ontario Not-For-Profit Corporations Act, 2010

The new Ontario Not-for-Profit Corporations Act, 2010 ("ONCA") when proclaimed, will repeal the Corporations Act (Ontario) ("OCA") which governs NFP's incorporated in Ontario. The expected proclamation date, or the effective date of ONCA, has been announced as January, 2014 by the Ontario Ministry of Consumer Services.

Unlike the federal NFP Act, once the ONCA is proclaimed, it will apply to every Ontario incorporated NFP, including charities, which are currently governed by the OCA. There is no further action required by an Ontario incorporated NFP.

Readers are encouraged to consult legal advice on the specific provisions under the ONCA. The financial reporting considerations are discussed below.

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Financial Reporting Considerations

Under the ONCA, each NFP will be classified as either a public benefit corporation ("PBC") or non-PBC. All charitable corporations will be PBC's as will some non-charitable corporations who receive more than $10,000 in a financial year from a public donor, that is, a person who is not a member, director, officer or employee of the corporation; or a non-charitable corporation that receives more than $10,000 in a financial year by way of grant or similar financial assistance from a government or a government agency.

For financial reporting purposes, the default under the ONCA is that each NFP must have an audit in respect of a financial year although members may pass an extraordinary resolution to have a review engagement instead of an audit or to not have an audit or a review engagement. The ability to qualify for an extraordinary resolution is based upon the annual revenues of the NFP and its classification as a PBC or non-PBC. An extraordinary resolution must be passed by 80% of the members.

The financial criteria and reporting options available to the members under the ONCA are set out below:

	Public Benefit Corporation			Non-Public Benefit Corporation	
Annual revenue for last financial year	$500,000 or more	> $100,000 and < $500,000	$100,000 or less	More than $500,000	$500,000 or less
Level of financial review	Must have an audit engagement	Members can pass an extraordinary resolution to have a review engagement rather than an audit engagement	Members can pass an extraordinary resolution to dis-pense an audit or review engagement	Members can pass an extraordinary resolution to have a review engagement rather than an audit engagement	Members can pass an extraordinary resolution to dis-pense an audit or review engagement

Appendix I – General outline of steps involved in the conversion to the Canada Not-for-Profit Corporations Act:

Step 1: Review of the NFP's existing letters patent and by-laws by the board members. These documents will have to be reviewed by the board of directors to ensure they are in compliance with the NFP Act. Copies of the NFP's existing documents are also available from Corporations Canada if the NFP is not able to locate them.

Step 2: Prepare Articles of Continuance - These articles will be attached to the Certificate of Continuance that is issued to the NFP by Corporations Canada. Existing federally incorporated NFP's do not have to pay a filing fee to obtain a Certificate of Continuance.

Step 3: Update by-laws - As a result of the extensive regulation in the NFT Act, there are only two by-law provisions that are mandatory under the NFP Act. At minimum, a NFP's by-laws need to address the conditions required for membership and notice of meetings to members who are entitled to vote at the meeting.

Step 4: Get members approval - A meeting of members will generally need to be held as part of the transition process. The NFP Act requires that the Articles of Continuance be approved by a special resolution of members, which is a resolution that is passed by at least two-thirds of the votes cast at a meeting.

Step 5: Submit required documents to Corporations Canada.

Canada's New Anti-Spam Legislation

Canada's New Anti-Spam Legislation ("CASL"), passed in December 2010, will be released in its final form in the coming months. Almost every business and organization in Canada will be affected by CASL and therefore should be aware of its components and have a plan for implementing a compliance program. The legislation aims to eliminate:

- Spamming - the sending of unsolicited commercial electronic messages in the form of email, text messages or social networking website.
- Harvesting – the use of computer systems to collect electronic addresses without consent.
- Privacy Invasions – the unauthorized access to a computer system to collect personal information without consent.
- Malware – the installation of computer programs without consent.
- Fraud – the making of deceptive representations online.
- Hacking – the unauthorized altering of transmission data.

Legitimate businesses that use email to market their products to Canadians should not be negatively impacted by this law. The idea is to have a recipient opt-in, which stipulates that businesses must get consent prior to sending commercial electronic messages or have a pre-existing business relationship with the recipient. As well, CASL requires the inclusion of certain elements, including an unsubscribe mechanism, a statement clarifying who is sending the message and who it is being sent to, contact information for the sender and the name of the business.

There will be a transitional period between the date the legislation is published in final form and the date the legislation will be enforced. This will allow businesses and organizations time to comply with the requirements set out in the regulations. However, there are a few steps businesses and organizations can take in anticipation of CASL:

- Taking inventory of existing commercial electronic message recipients – establishing a data management system.
- Confirming consents – checking existing consent mechanisms and consent wording to determine if the consent has been expressed or, where it may be implied, updating express consents with recipients.
- Auditing Social Media Messages – reviewing social media communications to ensure they meet the requirements of CASL.
- Staying up to date with CASL and the exceptions allowed in the legislation.

Compliance with CASL is a necessity as the penalties are significant. The maximum penalty for a violation is $1 million for an individual and $10 million for a business. On top of that, directors, or officers may be personally liable for the company's violations.

Federal Budget Highlights

On Thursday March 22, Federal Finance Minister Jim Flaherty presented the Conservative Government's budget for 2013.
Despite being challenged by lower-than-expected growth in the Canadian economy, the government says it's on course to eliminate the deficit and return to balanced budgets by 2015-2016. It projects a $25.9 billion deficit for 2012-13, a $18.7 billion deficit in 2013-2014, a $6.6 billion deficit by 2014-15, and a surplus of $0.8 billion in 2015-16. The Budget contains a number of personal and corporate tax-related measures.

Personal income tax measures

Dividend tax credit (DTC) – The budget announced a reduction to the net federal dividend tax credit available with respect to non-eligible dividends, effective for such dividends paid after 2013. The gross-up will be reduced from 25% to 18% and the corresponding DTC will be increased from 2/3 to 13/18. These changes will increase the maximum federal tax rate on these dividends from 19.6% to 21.2%.

Lifetime capital gains exemption - The budget announced an increase to the capital gains exemption from the current $750,000, by $50,000 to $800,000 effective for the 2014 and subsequent taxation years. In addition, the exemption will be indexed for inflation for taxatio years after 2014.

First-time donor's super credit – To encourage charitable giving by new donors, the Budget introduced an increased federal tax credit for a first-time donor on up to $1,000 of donations. This increased tax credit will add 25% to the current credit. Consequently, for donations of up to $200, there will be a credit of 40%, as opposed to the current 15%, and for donations in excess of $200, there will be a credit of 54%, as opposed to the current 29%. This increased tax credit only applies to cash donations, as opposed to donations in kind.

A first-time donor is an individual (other than a trust), including their spouse or common-law partner, who has not claimed the donation tax credit in any year after 2007. First-time donor couples may share the increased tax credit. This increased tax credit will be available for donations made on or after the Budget and prior to 2018. In addition, this increased credit may only be claimed in one taxation year.

Other tax measures

Graduated rate taxation of trusts and estates – Inter vivos trusts are generally taxed at the highest personal tax rate. However, grandfathered inter vivos trusts, created before June 18, 1971, are subject to the graduated income tax rates for individuals.

Testamentary trusts created on the death of a taxpayer are taxed as individuals, subject to the graduated income tax rates available to individuals. It is a common tax planning technique for individuals to transfer their assets on death to one or more testamentary trusts, each of which is eligible for this treatment.

The government intends to review and consult on whether these trusts should be taxed at the graduated rates.

Business income tax measures

Manufacturing and Processing ("M&P") Machinery and Equipment accelerated Capital Cost Allowance ("CCA") – The budget extends the current 50% CCA rate for M&P machinery and equipment included in Class 29 by an additional two years so that it will apply for 2014 and 2015, instead of ending after this year. However, the half-year CCA rule which restricts the CCA claim to one half of the calculated amount in the year of acquisition, will apply to such machinery and equipment acquired in 2014 and 2015.

Clean energy generation equipment accelerated CCA – CCA Class 43.2 currently provides for a 50% rate on declining basis for investment in specified clean energy generation and conservation equipment. The Budget expands Class 43.2 by making biogas production equipment that uses more types of organic waste eligible. In addition, the range of cleaning and upgrading equipment used to treat eligible gases from waste will be broadened.

2013 Ontario Budget Highlights

On Thursday May 2, 2013 Ontario Minister of Finance Charles Sousa delivered Ontario's 2013 Budget. The Budget is projecting a deficit of $8.9 billion in 2012-13, $5 billion lower than projected a year ago, and increasing to $11.7 billion in 2013-14. The Ontario Government plans to cut the deficit in half within five years and to eliminate it by 2017-18. The Budget proposes a few tax related measures as follows:

Personal income tax measures

Non-eligible dividends – the federal budget of March 22, 2013 proposes changes to the gross-up and credit mechanism for non-eligible dividends, effective 2014. The provincial budget indicates that Ontario will parallel the federal measure, provided it is implemented.

Business income tax measures

Employer Health Tax ("EHT") - Currently, the first $400,000 of Ontario payroll is exempt from EHT. Where employers are associated, the $400,000 exemption is shared between them. The exemption is to be raised to $450,000 of Ontario payroll, effective January 1, 2014. It will be inflation-adjusted every five years. It is projected to rise to $500,000 in 2019. The exemption will continue to be shared by groups of associated corporations. Beginning January 1, 2014, the exemption will be eliminated for private-sector employers, or associated groups of employers with Ontario payroll in excess of $5,000,000. Registered charities will be exempt from this measure.

Manufacturing and processing equipment Capital Cost Allowance ("CCA") - A temporary accelerated CCA rate of 50% is available for manufacturing and processing equipment. This enhanced rate was to expire on December 31, 2013. The federal budget of March 21, 2013 extended the availability of this rate to purchases made up to and including December 31, 2015. Ontario will parallel this measure, subject to federal implementation.

Client Corner - Locus Systems Inc.

Locus Systems Inc. is a private Canadian systems integrator and value-added reseller with over 20 years of experience specializing in enterprise content management.

As a global IT services provider, Locus provides clients access to a broad range of technical services and world-class development methodologies. Locus has successfully deployed solutions in 8 countries over 5 continents and has recently celebrated its eighth consecutive year on Branham's popular "Top 300 IT Companies" listing in Canada.

Being both agile and agnostic in its approach, Locus has the flexibility, unencumbered availability and extensive certification with ongoing training of its staff. Locus focuses on developing and deploying custom web-based solutions, application development, enterprise content management and comprehensive enterprise portals for the financial sector, manufacturing, customer service and mining verticals.

In 2013 the company strategy shifted as Locus was accepted as an SAP partner to expand the selling and implementing of:

- SAP Enterprise Information Management (DB&T)
- SAP HANA (DB&T)
- SAP Business Objects Business Intelligence (Analytics)

This new partnership with SAP, alongside the expertise and experience of working with OpenText, enables Locus to more effectively implement and innovate solutions to better manage enterprise content.

News Bits

New team members

We are proud to announce the following new additions to our team:

Matthew Walker

Matthew Walker has joined our accounting group as a Staff Accountant. He graduated from Wilfrid Laurier University with his Bachelor of Business Administration and passed the UFE in 2012. He brings with him over 3 years of experience working as a Staff Accountant from another mid-size firm in Windsor where he supported many owner-operated, private clients in Southwestern Ontario.

Promotions

We are pleased to announce the following promotions within our team:

Hilda Lam to Manager

Hilda joined the firm's forensic group in May 2009 as a Forensic Accountant. She has developed her education in forensic accounting with the recent successful completion of her Diploma in Forensic Accounting and requirements of the CPA, CA - IFA designation this year.

Renaldo Heard to Manager

Renaldo joined the firm's accounting group in January 2007 as a co-op student and returned full time in May of 2008. Renaldo has demonstrated his contribution to the firm throughout his tenure here and most recently was promoted to Supervisor in July 2011.

Sabbir Huq to Staff Accountant

Sabbir joined the firm's accounting group in February 2012 as a contract employee to support us through tax season and later commenced his full time employment with us in July 2012. He successfully passed the UFE prior to joining the firm and is in the process of completing his assurance hours required in order to obtain his CA Designation.

Summer 2013 Planner

August 5th	Civic Holiday
September 2nd	Labour Day
September 15th	3rd Income tax installment payment for 2013 due

CONTACT US

You can reach us by phone at **416.969.8166** or on-line at **www.williamsandpartners.com.**

NOTICE

Williams & Partners distributes tax tips on a regular basis via email to our clients. If you wish to be on our email distribution list for tax tips, please contact Jackie Pincente at 416.969.8166 ext. 235, or by email to jackie.pincente@williamsandpartners.com.