

Philanthropy column



A speed-up of charitable spending: can the philanthropic sector afford it?

There may be a movement afoot in various jurisdictions to increase the amount of annual spending required of public benefit organisations and charities, quite possibly as a result of the COVID-19 pandemic underlining the need for charitable funds to reach their ultimate beneficiaries as soon as possible. A change to such spending quotas is, respectively, in early consultative and legislative stages in Canada and the US. The issue of required charitable spending has therefore moved to the front burner.

Not very long ago, the issue of required charitable spending did not appear to be as much of a preoccupation. For example, the OECD report on *Taxation and Philanthropy* issued in 2020¹ submitted questionnaires to 40 OECD member and participating countries on national policies concerning the tax treatment of philanthropic entities and of giving, and the report prepared in consequence should help support best practices. It does refer to annual reporting requirements of charities around the world, but focuses on whether the activities of charities in themselves meet necessary requirements without directly looking at required minimum charitable spending.

However, 2021 has, in some quarters, turned the spotlight on charities' minimum spending quotas. In Canada, the Federal Department of Finance opened a public consultation on the issue in August 2021,² with an indication that changes may be enacted by 2022. Currently, Canadian charities, including both private foundations and the public foundations that administer donor advised funds (DAFs), have an annual disbursement quota (DQ) of 3.5 per cent of their assets not used directly in charitable activities or administration. In other words, a Canadian charity generally must spend at least 3.5 per cent of its endowment on charitable activities or on gifts to other Canadian charities each year. The 3.5 per cent minimum presumably matches reasonably expected investment returns on endowments.

A major question in the Canadian consultation is whether that percentage minimum should be increased (and if so, temporarily to help fund the recovery from COVID-19, or more permanently). On the one hand, an increase puts more funds with beneficiaries who need it. On the other hand, in a low-interest-rate environment, will an increase in the DQ cause undue encroachment on capital? Further, how is a charity to deal with increased spending quotas if its own donors have previously stipulated limits on capital encroachment?

In the US, minimum charitable spending is under scrutiny in the *Accelerating Charitable Efforts Act* (the ACE Act),³ introduced in the US Congress in June 2021. For private foundations, the ACE Act would, for example, prevent a distribution made to a DAF from going to meet the annual payout requirement of 5 per cent and would charge an excise tax to the private foundation if it pays out less than 7 per cent of its value in a given year, or if its governing documents allow for a duration for the foundation of more than 25 years. Other provisions indicate that a DAF donor would be required to distribute funds within 15 years to maintain an upfront tax deduction or could take up to 50 years to distribute funds but only get a tax deduction on distribution.

Time will tell if such potential moves to mandate earlier charitable spending will come to fruition. Thought will have to be given to whether private and public charities can afford a speed up in spending.

¹ *Taxation and Philanthropy* (OECD Tax Policy Studies No. 27 (2020)) ² Department of Finance Canada, *Consultation: Boosting Charitable Spending in our Communities* (6 August 2021) ³ S. 1981- ACE Act



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People moves

Claire van Overdijk TEP has joined Carey Olsen as Counsel in its Bermuda office.

Alan Milgate TEP has been appointed Senior Partner at Rawlinson & Hunter Cayman Islands.

Philippa Stokes TEP has been appointed Partner at Rawlinson & Hunter Cayman Islands.

Mike Spittal TEP has joined Landmark Trust Group as a Director in its Monaco office.

STEP moves

Laura Ruse TEP has replaced **Donna Munoz-Pitcher TEP** as Secretary of STEP Bermuda.

Parisa Jones TEP has replaced **Graham Lawrence TEP** as Chair of STEP Bournemouth.

Rebecca Wallenfelsz TEP has been appointed as Secretary of STEP Chicago.

Stella Kammitsi TEP has been appointed as Chair of STEP Cyprus.

Jérôme Barré TEP has been appointed as Chair of STEP France.

Anna Casey-Woodward TEP has been appointed as Vice Chair of STEP Gloucestershire and Wiltshire.

Kirsty Tyler TEP has replaced **Mandy Casavant TEP** as Secretary of STEP Gloucestershire and Wiltshire.

Rehma Imrith TEP has replaced **Ruma Kissoonharry TEP** as Chair of STEP Mauritius.

Sharmil Shah TEP has replaced **Rehma Imrith TEP** as Vice Chair of STEP Mauritius.

Amal Autur TEP has replaced **Gael Duchenne** as Secretary of STEP Mauritius.

Brian Shetler TEP has been appointed Chair of STEP Silicon Valley.

Lorraine Robinson TEP has replaced **Dawn Sullivan TEP** as Chair of STEP Wales.

Sioned Thomas TEP has replaced **Lorraine Robinson TEP** as Deputy Chair of STEP Wales.

Dawn Sullivan TEP has replaced **Ruth Sadlier TEP** as Treasurer of STEP Wales.