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Top 20 Compliance Issues for Canadian Registered Charities

Webinar with Charity Village

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Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions at end
- Logistics and timing

Charity Law Basics

- Registered charities are regulated by Charities Directorate of the Canada Revenue Agency (CRA)
- Registered charities fall under both federal and provincial jurisdiction
- Non-profits and charities are both tax exempt
- Income Tax Act – concept of “registered charity” can issue “official donation receipt” with income tax savings for donor
- Benefits and restrictions on registered charities

Variety of Charities

- Every charity is different:
 - Objects
 - Areas of charitable work
 - Risk tolerance
 - Public profile
 - Donors and level of government support
 - Independent vs. affiliated
 - Resources
 - Values and knowledge
 - Local vs. international activities

Top Legal Compliance Concerns for Canadian Registered Charities

1. Failure to File T3010

- Canadian registered charities must file their T3010 Registered Charity Information Return every year.
- Within six months of the end of the charity's fiscal period.
- Form is mailed with labels to charity – also can download form from:
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rtrn/flngb-eng.html>
- See www.CharityFocus.ca for T3010 information.

Why File T3010

- Legally required
- Only uniform way to compare Canadian charities
- Advertisement for charity
- Important for transparency of charity
- Only beginning of transparency (website, annual report, newsletters, e-mail lists, etc.)

Consequences for Failing to File

- Revocation of charitable status within months
- Cannot issue receipts
- Lose benefits of registered status
- Revocation tax if not re-registered within 1 year
- May not be able to reregister
- \$500 penalty

2. Mistakes with T3010

- T3010 must be the correct form, accurate and complete including schedules and financial statements otherwise may be returned or considered incomplete.
- Lots of help on internet with T3010
- CRA has fillable T3010, also www.charityfocus.ca
- 2012 Budget – CRA can suspend charity for incomplete T3010

Problems with T3010

- Using wrong form
- Not providing all information
- Not providing accurate information
- Not providing all schedules
- Not providing financial statements
- Not providing date of birth of directors

Form T3010 Checklist

Filing the annual T3010 information return

A registered charity must file an annual information return (together with financial statements and required attachments) no later than six months after the end of the charity's fiscal period.

Checklist

Has the charity included:

- a completed [Form T3010, Registered Charity Information Return](#)
- [Form TF725, Registered Charity Basic Information Sheet](#), with or without corrections (if the form has been lost or was not received with the return package, [contact the Charities Directorate](#))
- a completed [Form T1235, Directors/Trustees and Like Officials Worksheet](#), including all the dates of birth
- a completed [Form T1236, Qualified Donees Worksheet / Amounts Provided to Other Organizations](#), if applicable
- a completed [Form T2081, Excess Corporate Holdings Worksheet for Private Foundations](#), if applicable
- Form RC232-WS, *Director/Officer Worksheet and Ontario Corporations Information Act Annual Return*, or [Form RC232, Ontario Corporations Information Act Annual Return](#), if applicable
- a copy of the registered charity's own [financial statements](#) (assets and liabilities, revenue and expenditures, and any prepared notes)
- the signature of a director, trustee, or like official of the charity in the certification area of the return

3. Incorrect Receipts

- Charities are required to issue correct receipts
- Some receipts:
 - Lack required information
 - Have mistakes
 - Include improper fair market value (FMV)

Why Receipt?

- Can offset federal and provincial income tax
Exact amount depends on which province, which marginal bracket a person is in that year and the type of property (*e.g. appreciated marketable securities*).
- Can carry forward for next five years.
- Can donate up to 75% of your net income each year.

Does a Charity Have to Issue Receipts?

- No.
- But make donors aware of policies (minimum donations, when receipts will or will not be issued, gift acceptance policies, etc.).
- Individuals require “official donation receipt” to reduce personal income tax when they file their personal return each year so let them know if no receipt will be issued.
- If in doubt, DON'T RECEIPT.

Mandatory Elements of Receipts

- For gifts of cash: (Regulation 3501 of the *Income Tax Act*)
 - A statement that it is an official receipt for income tax purposes
 - The name and address of the charity as on file with the CRA
 - The charity's registration number
 - The serial number of the receipt
 - The place or locality where the receipt was issued
 - The day or year the donation was received

Mandatory Elements of Receipts (continued)

- The day on which the receipt was issued if it differs from the day of donation
- The full name and address of the donor
- The amount of the gift
- The value and description of any advantage received by the donor (under proposed legislation)
- The signature of an individual authorized by the charity to acknowledge donations, and
- The name and Web site address of the Canadian Revenue Agency (<http://www.cra.gc.ca/charities>)

Mandatory Elements for Gifts in Kind

- For non-cash gifts (gifts in kind), these additional elements:
 - The day on which the donation was received (if not already indicated)
 - A brief description of the property transferred to the charity
 - The name and address of the appraiser (if property was appraised), and
 - In place of the amount of the gift mentioned above, the deemed fair market value of the property (under proposed legislation)

Sample Official Donation Receipts

- CRA has sample templates for official donation receipts
 - <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pbs/rcpts-eng.html>

Sample 1 - Cash gift (no advantage)

This is the most common scenario. The items in this sample receipt should be included on your official donation receipt if the donor or any other person receives nothing in return for the gift. For example, the donor makes a cash (or cheque) gift of \$20. There is no advantage received or receivable by the donor or any other person for the gift. Therefore, the eligible amount of the gift is \$20.

Official Donation Receipt for Income Tax Purposes

Receipt # XXX

Charity name

Charity address

Charity BN/Registration #

Date donation received: _____

Donated by: _____
(first name, initial, last name)

Donor address: _____

Eligible amount of gift for tax purposes: _____

Date receipt issued: _____

Location receipt issued: _____

Authorized signature: _____

For information on all registered charities in Canada under the *Income Tax Act* please visit: Canada Revenue Agency www.cra-arc.gc.ca/charitiesandgiving

Don't Issue a Receipt When...

- You cannot determine the value of the donation or the benefit.
- Donation of services (donated time, labour, skills) to charity or loans of property, use of a timeshare or lease of premises.
- Donation is intended for another organization that is not a registered charity or qualified donee (“lending registration”).

Don't Issue a Receipt When... (continued)

- Tuition (except IC 75-23 - private religious schools).
- Business advertising expenses/sponsorship.
- Gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation) or pledges.
- Payment of basic fee for event (e.g. concert).
- Payment for program (e.g. daycare).

Don't Issue a Receipt When... (continued)

- Membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceeds 80% of the value of the payment.
- Lottery tickets.
- Purchase of goods or services from charity.
- Donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation.

Don't Issue a Receipt When... (continued)

- Funds or gift in kind from another qualified donee (for example Canadian private foundation gifts or transfers funds to registered Canadian charitable organization).
- Cannot determine the name of the true donor.
- Gift directed to specific person or family unless charity has already decided that person or family is recipient of its charitable program and charity has full discretion to reallocate and person or family is arms-length from donor.

4. Acting Outside Legal Objects

- Charities in Canada have legal objects in their founding documents (eg. Letters Patent, Trust deed etc).
- Charities must not act outside of these legal objects.
 - Are objects up to date, relevant and broad enough?
 - If your charity is acting outside its objects then charity should either cease such activities or consider expanding objects
 - New corporate acts such as CNCA give some corporations good opportunity to make changes.

Check Your Articles/Letters Patent

4 - Statement of the purpose of the corporation

The purposes of the Corporation are:

- a) To relieve poverty in developing nations by providing food and other basic necessities of life to individuals or families in need;
- b) To promote health by providing affected populations with health care services or products that prevent and manage serious threats to health and survival; and
- c) To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to qualified donees as defined in subsection 149.1(1) of the Income Tax Act (Canada).

Changing your Objects

- Registered charities should ask CRA for preapproval
 - can take months and CRA will require both objects and detailed description of activities for CRA to review
 - be careful and precise with objects otherwise may be considered vague or broad and not charitable
- How to Draft Purposes for Charitable Registration (Guidance CG-019)
 - <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/drftprpss-eng.html>

5. Gifts to Non-Qualified Donees

- Charities conduct activities in two ways:
 1. By gifting to “qualified donees”; or
 2. By carrying on its own charitable activities through
 - its own employees and volunteers
 - intermediaries who are not qualified donees (in Canada or abroad).
- Charities need “direction and control” over funds and resources if working with non-qualified donees.

Canadian Registered Charity

Gift to
qualified
donee

Qualified Donee, eg.
Canadian registered
charity, UN, prescribed
university, Canadian
municipality, etc.

“Own Activities”
[Direction and Control]

Structured
Arrangement -
Written
agreement, etc.

Employee /
Volunteer

Intermediary –
agency, JV,
partner,
contractor

Canadian Charity World Divided in Two

- **Qualified donees** – can issue official donation receipts for Income Tax Purposes
- **Non-Qualified donees** – cannot issue official donation receipts

List of Qualified Donees

- If in doubt check CRA's listings, call or write CRA, or treat organization as a non-qualified donee.
- Qualified donees include:
 - a registered charity (including a registered national arts service organization);
 - <http://www.cra-arc.gc.ca/chrts-gvng/chrts/menu-eng.html>
 - a registered Canadian amateur athletic association;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/RCAAA-ACESA-lst-eng.html>

List of Qualified Donees (continued)

- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/lwcsthsng-lst-eng.html>
- a listed Canadian municipality;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/menu-eng.html>
- a listed municipal or public body performing a function of government in Canada;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/mncplpblcbds-lst-eng.html>

List of Qualified Donees (continued)

- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/prscrbdnvrsts-lst-eng.html>
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/gftsfrmhrmjsty-lst-eng.html>
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

What is a Non-qualified Donee

- All organizations other than qualified donees
- They cannot issue official donation receipts
- Examples include:
 - Foreign charities
 - Canadian non-profits with no charitable status
 - Businesses
 - Bono, Obama, Angelina Jolie

Gifts to Non-Qualified Donees

- Charities cannot gift to a non-qualified donee (such as Canadian non-profit or foreign charity).
- Charities cannot be “conduit”.
- (Gifts to non-qualified donees = 105% penalty on the amount of the gift and second infraction 110% penalty and greater chance of revocation).

Why Deal with a Non-qualified Donee?

- Foreign Activities
 - You don't have people in Malawi
 - You don't have road building equipment in Haiti
 - Local people or organizations sometimes can do it quicker, better and more cost effectively
- Canadian Activities
 - The best organization to implement charitable project may be a non-profit (non-charity) or a business and not another registered charity

CRA's Guidance

- **Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

- **Using an Intermediary to Carry out a Charity's Activities within Canada**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>

“Own Activities” or “Direction And Control”

- When not working with qualified donee or own staff need to have:
 1. Due Diligence of Intermediary (investigate)
 2. Written agreement
 3. Detailed description of activities
 4. Separate Activities and Funds
 5. Monitoring and Supervision
 6. Ongoing Instruction for changes
 7. Periodic Transfers
 8. Books and Records showing above

CRA Checklist on Terrorism

- Released April 2009
- Succinct, balanced and helpful

Checklist for Charities on Avoiding Terrorist Abuse

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>

6. Fundraising Costs and Practice

- Fundraising is important for charities but it is not a charitable activity
- Lots of media and donor concern about fundraising costs and practices
- CRA Guidance on Fundraising recently updated

CRA Fundraising Guidance

- Consultation draft in 2008
- Published guidance on June 11, 2009
- Revised guidance in April 2012 (“Guidance”)

Organization of Guidance

- Fundraising by Registered Charities
- A. Introduction
- B. Summary
- C. Application and jurisdiction
- D. What is fundraising?
- E. Definitions
- F. When is fundraising not acceptable?
- G. Evaluating a charity's fundraising
- H. Factors that may influence the CRA's evaluation of a charity's fundraising
- Appendix A – Examples of fundraising activities
- Appendix B – Allocating fundraising expenditures
- Appendix C – Best practices
- Appendix D – Questions and answers
- Footnotes

Summary - Unacceptable Fundraising

- Fundraising is acceptable provided that is not:
 - a purpose of the charity (a collateral, non-charitable purpose);
 - delivering a more than incidental private benefit (a benefit that is not necessary, reasonable, or proportionate in relation to the resulting public benefit);
 - illegal or contrary to public policy;
 - deceptive; or
 - an unrelated business.

Summary – Indicators and Factors

- “6. When evaluating a charity’s fundraising activities, the CRA will consider a range of indicators and factors, including the following:
 - Resources devoted to fundraising relative to resources devoted to charitable programs;
 - Fundraising without an identifiable use or need for the proceeds;
 - The charity’s fundraising expenses to fundraising revenue ratio;

Summary – Indicators and Factors (continued)

- Inappropriate purchasing or staffing practices, including:
 - purchases of fundraising merchandise or services that do not increase fundraising revenue;
 - paying more than fair market value for fundraising merchandise or services; and
 - sole source or not-at-arm's length contracts with suppliers or service providers.
- Activities where most of the gross revenues go to contracted non-charitable parties;
- Commission-based fundraiser remuneration or payment of fundraisers based on the amount or number of donations;

Summary – Indicators and Factors (continued)

- Misrepresentations in fundraising solicitations or in disclosure about fundraising costs, revenues or practices;
- Fundraising initiative or arrangements that are not well documented;
- The size of the charity;
- Causes with limited appeal;
- Donor development programs; and
- Involvement in gaming activities.”

Fundraising Ratio

- **Ratio of costs to revenue over fiscal period – under 35%**
 - This ratio is unlikely to generate questions or concerns by the CRA.
- **Ratio of costs to revenue over fiscal period – 35% and above**
 - The CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs. The higher the ratio, the more likely it is the CRA will be concerned the charity is engaged in fundraising that is not acceptable, requiring a more detailed assessment of expenditures.
- **Ratio of costs to revenue over fiscal period – above 70%**
 - This level will raise concerns with the CRA. The charity must be able to provide an explanation and rationale for this level of expenditure to show that it is not engaged in unacceptable fundraising.

Misrepresentation

- For example, registered charities must not misrepresent:
 - Which charity will receive the donation;
 - The geographic area in which the charity operates, and the amount or type of work it undertakes;
 - Whether they have hired third-party fundraisers, and how those fundraisers are compensated; or
 - The percentage of funds raised that will go to charitable work.
 - Claims that 100% of the money raised by a third party will go to the charity, or that 100% of money raised by the charity conducting its own fundraising will be used for charitable activities by the charity, must always be made with care.
 - Charities usually have some expenses for their fundraising activities, and may be required to pay substantial fees to any third-party fundraiser it employs. As these expenditures ultimately reduce the charity's fundraising revenue, this type of claim could be considered to be deceptive.

Disclosure

- The CRA recommends that charities provide complete disclosure of all fundraising costs, revenues, practices, and arrangements so that members of the public—and, more specifically, donors or prospective donors—are not deceived or misled about the resources from fundraising that are ultimately available to a registered charity for its programs, services, or gifts to qualified donees.
- To be meaningful, disclosure must be accurate, accessible, and timely.

7. Charity Gifting Tax Shelters

- People can donate to registered charities in Canada and get an official donation receipt which is very valuable and can cost the tax system a lot. Promoters and “charities” cannot, through various games and tricks, abuse the tax system to issue an inflated receipt.
- Usually “investor” or “donor” is told that the tax benefits and deductions arising from the scheme will equal or exceed the costs of entering into the arrangement or the property.

Avoiding Abusive Charity Gifting Tax Shelters

- Over \$6.3 billion in gifting tax shelters over last 10 years
- Over 190,000 Canadians being audited
- If it sounds too good to be true, it probably is
- Be careful of advice from people who have a financial benefit in the transaction

CRA Taxpayer Alerts on Tax Shelters Gifting

Tax Alerts:

- [Warning: Schemes that promote big tax losses or deductions are not worth the risk](#) (April 2009)
- [Warning: Canada Revenue Agency has denied over \\$2.5 billion in tax shelter gifting arrangement donations](#) (November 2008)
- [Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!](#) (August 2007)
- [Tax shelter donation arrangements](#) (October 2006)
- [Tax shelter donation arrangements](#) (November 2005)

Fact sheets:

- [Tax shelter donation arrangements](#) (November 2004)
- [Tax shelter donation arrangements](#) (November 2003)
- [Art-donation schemes or "art flipping"](#) (November 2002)
- [Canada Customs and Revenue Agency Reminds Investors of Risks Associated with Tax Shelters](#) (November 2000)
- [Canada Customs and Revenue Agency Issues Warning on Art Donation Scheme](#) (December 1999)
- [What is a Tax Shelter?](#) (February 1998)

8. Employment Issues

- Employee vs. Independent contractor - see CRA publication Employee or Self-employed?: <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/>
- Withholding source deductions (CPP, EI, Income Tax)
- Remitting source deductions
- Proper employment agreements
- Excessive compensation / private benefit

9. Failing to Keep Adequate Books and Records

- A Canadian registered charity must keep adequate books and records in Canada, preferably in either English or French.
- CRA must be able to:
 - Verify revenues, including all charitable donations received;
 - Verify that resources are spent on charitable programs; and
 - Verify that the charity's purposes and activities continue to be charitable.

Why We Need Adequate Books and Records

- Help with charity audits and can result in suspension of receipting privileges, or the loss of its registered status
- Knowing where expenses go and revenues come from
- Needed for issuing official donation receipts
- Help with decision making
- Makes it easier for you to complete filings
- Information on current and past financial position of charity
- Stakeholders may require

Questions for Follow-Up

- 1) Do you have governing documents (incorporating documents, constitution, trust document), bylaws, financial statements, copies of official donation receipts, copies of T3010, written agreements, board and staff meeting minutes, annual reports, ledgers, bank statements, expense accounts, inventories, payroll records, promotional materials, and fundraising materials.
- 2) Do you have source documents? e.g.. invoices, vouchers, work orders, delivery slips, purchase orders, and bank deposit slips.

10. Failure to Meet Disbursement Quota

- The Disbursement Quota (DQ) is the amount that a registered charity must spend each year on its charitable activities or as gifts to qualified donees.
- Used to be 80% of receipted donations plus 3.5% of assets not used in charitable activities.
 - 2010 Budget removed 80% expenditure requirement.

Disbursement Quota

- Each year, registered charities must spend on charitable activities 3.5% of the average value of any assets the registered charity owned over the previous 24 months that were not used directly in charitable activities or in the administration of the registered charity – applies if charitable organization has \$100,000+ of such assets and public or private foundation has \$25,000+ of such assets.
- E.g.. 3.5% of endowments, investments, reserve fund, building owned by charity not used by charity at the moment for charitable or administrative activities.

11. Political Activities

- “A registered charity may pursue political activities to retain, oppose, or change the law, policy, or decision of any level of government inside or outside Canada provided the activities are non-partisan, related to its charitable purposes, and limited in extent.” (see T3010)

Political Activities

- Cannot have political purpose (object); only political activities
- No illegal or partisan political activities
- Political activities must be “connected and subordinate” to purpose (legal objects)
- Comply with “10% rule” and disbursement quota restrictions (political work not charitable and only if DQ room)
- Informative, accurate, and well-reasoned (not false, inaccurate, or misleading)
- Read CRA Policy Statement on Political Activities (CPS-022)
 - <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html>
- Budget 2012 changes

An Activity Can Be...

- Prohibited activities (illegal and/or partisan political)
- Allowable political activities
- Charitable activities:
 - Public awareness campaigns
 - Communicating with an elected representative or public official
 - Education

12. Unrelated Business Activities

- *Income Tax Act* prohibits “unrelated business activities” by all charities
- Charitable organizations and public foundations are permitted to engage in “related business activities” but private foundations may not engage in any business activity
- “Carrying on business” - activity is commercial in nature (derive revenue and provisions of goods and services, intention to earn profit) and continuous

Why Prevent Unrelated Business?

- Unfair competition with private businesses
- Why should charities be able to compete tax-free?
- Business is not a charitable object
- Will encourage regular business to set up as charities
- In some countries, unrelated business is permitted, but the charity will be taxed on unrelated business income like a private business but not in Canada

What is a Related Business?

- There are two kinds of related businesses that a registered charity can conduct:
 1. Businesses that are linked to a charity's purpose and subordinate to that purpose (for example, a hospital parking lot, church gift shop); or
 2. Businesses that are run substantially (90%) by volunteers (for example, coffee shop run by volunteers).

Business Activities

- For more guidance, see CRA's CPS-019 "What is a Related Business?"
 - <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-019-eng.html>
- Penalties for unrelated business: 5% (1st infraction) on gross unrelated business revenue
 - 2nd infraction: 100% penalty on that revenue and suspension* of tax-receipting privileges
- Earned in a taxation year

13. Transactions with Directors

- In Ontario, the Public Guardian and Trustee takes the position that directors of charities can only be reimbursed for reasonable out of pocket expenses – directors cannot be consultants or employees of charity.
- In other provinces, CRA will provide more scrutiny of salaries, loans to directors, investments in companies of directors, transactions with businesses owned by directors, etc....

14. Mishandling of Audit

- CRA has an obligation to audit registered charities to spot whether they are complying with the Income Tax Act.
- Charities must assist with audit.
- Here discussing CRA charity audit, not other types of audits such as GST/HST, EI/CPP.
- About 30 charities (4%) out of 800 audited will be revoked for cause each year.

Type and Number of CRA Audits

- 800 audits per year.
- 600 field audits, 200 office audits.
- field audit – auditors attending charity office.
- office audits - conducted at the CRA headquarters and not at the charity's place of business. At an office audit, the auditors are only reviewing the documents in the CRA file, publicly available information and other documents requested by CRA of the charity.

How are Charities Picked for Audit?

There are many reasons a charity may be picked for audit including:

- Random selection;
- A complaint about the charity from the public;
- A red flag from a T3010 filing;
- Involvement with an abusive tax shelter or charity receipting fraud;
- Follow-up on a previous audit or compliance issue; or
- A CRA review of a particular segment of the charitable sector.

What Documents is CRA Reviewing?

- Financial information
- Other – e.g. contracts, governing documents, annual reports, minutes and any other documents that related to the charity's activities.

Education First Approach

- Except in the case of very serious non-compliance, for example, fraud or deliberate attempts to not cooperate with the regulator, CRA takes an “education first” approach.

What is Discovered on Audit?

- According to the CRA, in the 2007-2008 fiscal year, 790 audits were conducted. The audit findings reveal challenges facing registered charities, including:
 - 89% had incomplete or incorrect official receipts;
 - 72% had incomplete T3010 Registered Charity Information Returns;
 - 71% had insufficient books and records;
 - 16% made gifts to non-qualified donees; and
 - 13% carried out non-charitable activities including excessive amounts of resources being devoted to non-charitable activities (fundraising, political, or social activities).

Tips for Handling Audit Properly

- 1) Respond quickly
- 2) Be cooperative and polite
- 3) Use your time wisely before the audit
- 4) Choose carefully which charity officer or employee represents the charity with CRA
- 5) The lawyer is generally best kept in the background
- 6) Have your records up-to-date

Tips for Handling Audit Properly (continued)

- 7) Answer questions at the audit truthfully and only if you know the answer
- 8) Providing documents – don't dump documents on CRA, remember solicitor-client privilege
- 9) Copying of documents – provide copies, keep originals, know what you have provided to CRA
- 10) Preliminary discussions and findings – take notes

15. Changes/Approvals

- To advise CRA of changes to the name, address, contact person, legal status, purpose, activities, and bylaws of a registered charity.

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/chngs/menu-eng.html>

- For requests that require approval such as how to request a fiscal period end change, re-designation, associated status, permission to accumulate funds, or disbursement quota reduction.

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rqsts/menu-eng.html>

16. Corporate Changes

- Certain new corporate law changes can result in dissolution of your corporation and loss of charity status
- What is your non-profit?
 - Ontario Corporations Act (OCA)
 - Canada Corporations Act (CCA)
 - Canada Not-for-profit Corporations Act (CNCA)
 - Other provincially incorporated non-profit
 - Trust
 - Unincorporated association
 - Other – e.g. Foreign entity

Canada Not-for-profit Corporations Act (CNCA)

- Replaces Canada Corporations Act (CCA), passed in 1917
- CNCA received Royal Assent on June 23, 2009 and came into force on October 17, 2011 with a 3-year transition period that ended October 17, 2014
 - No fee for this transition
- CNCA does not automatically apply to CCA corporations and CCA corporations must transition or be dissolved by Corporations Canada
 - Dissolved corporations will lose their charitable status
 - Dissolved corporations can be revived

The Not-for-Profit Corporations Act, 2010 (Ontario) “ONCA”

- The Ontario Not-for-Profit Corporations Act, 2010 (ONCA) received Royal Assent on October 25, 2010.
- There has been a significant delay of the implementation of ONCA - originally supposed to be in force January 1, 2013.
 - Bill 85 - An Act to amend various companies statutes and to amend other statutes consequential to ONCA died on the order paper (introduced June 2013, June 2014 election and has not been reintroduced).
- Ontario Government recently announced they will provide at least 2 years’ notice before ONCA is proclaimed.

Transition Options for OCA Corporations

1. Do nothing now
 - wait for ONCA to come into force
2. Make changes under OCA, then later ONCA
3. OCA corporations can continue (transfer) to the CNCA
 - available now

17. Gift Restrictions

- If a charity accepts a gift with a restriction on it the charity needs to comply with the restriction unless
 - the charity obtains a court order (cy pres) or
 - there is a provision for amendment by agreement or otherwise.
- Biggest myth is that if there is a restricted gift with no amendment clause that charity and donor can mutually agree to make changes after the gift is made

Is it Restricted and What is the Restriction?

- Restricted and unrestricted gifts
 - Unrestricted (spend according to objects)
 - Precatory – non binding restriction
 - Internally restricted
 - Conditional (precedent or subsequent)

- Types of restrictions
 - Restricted as to subject matter of expenditures (help poor in Vancouver)
 - Restricted as to timing of expenditures (spend 20% of the funds per year)

Respecting Binding Restrictions

- Who suggests restrictions:
 - The charity itself
 - Donors
 - Third Parties raising funds for charity
- Donors attempt to retain control by placing stringent restrictions on and ongoing involvement with a gift
 - may affect its recognition as a charitable gift and any tax benefits of the donation

Challenges with Restricted Gifts

- Donors are well-intentioned, but do not know what is in the best interests of the organization
- What is in the best interest of the organization can change over time and donors interests change over time
- Can undermine mission as funds may not be available for most important needs

Challenges with Restricted Gifts (continued)

- If large proportion of funds is restricted can make financial management and planning very difficult
- Restricted and long-term gifts can also undermine fundraising as the organization appears to have a large amount of funds, but they cannot necessarily be used for what is needed

Preventing Problems with Restrictions

- You can refuse the restrictions but you may lose the gift
- You can suggest restrictions to donors that are broad and compatible with the areas of greatest need
- You can negotiate as broad a restriction as possible with the donor
- You can accept restrictions but can diminish real value of gift
- Ensure there is clear communication
- Include necessary caveats, provisions
- Try to maintain as much flexibility as possible
- Have an updated and appropriate gift acceptance policy

Tips for Special Purpose Fundraising

- Special purpose fundraising – only use funds for that purpose
- Should include a caveat in the event circumstances change or it is oversubscribed
- Should be included in a charity's
 - fundraising calls, emails, literature, website, discussions
- Otherwise, may need to return funds or apply to court
- Keep record of fundraising campaign and purpose

18. Adoption of Voluntary Standards

- Voluntary standards can be very helpful for organizations
- Understand the standards before adopting
- Carefully consider whether you should adopt standards
- Comply with the standards
- Once adopted they are no longer “voluntary”

19. Fraudulent Tax Receipts

- Tax receipts are sold for a small percentage of their face value
- No donation, or small donation, to charity
- No complicated scheme
- Keep tight control over receipts

20. Other Legal Concerns

- Breaching contractual relationships (funding agreements, leases, etc.)
- Abuse of children and beneficiaries
- Criminal gangs, money laundering and terrorism
- Fraud against charities, misuse of charitable assets
- Failure to respect donor restrictions (breach of trust)

20. Other Legal Concerns (continued)

- Safety of staff and volunteers
- Undue Private benefits
- Ineligible Individuals
- New Corporate Acts

Thank you!

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