Implications of Regulatory Reform
Under the New Budget Proposals
(Power Point Presentation)

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Compliance
Changes based on Voluntary Sector Initiative (VSI) Joint Regulatory Table (JRT) recommendations

- Pre Budget
  - Revocation only sanction
  - Loss of ability to issue receipts
  - Loss of tax exempt status
  - Revocation tax 1 year after revocation = 100% of assets at time of revocation

- Post Budget
  - Intermediate sanctions
  - Tax
  - Penalties
  - Revocation

Intermediate Sanctions

- Suspension of tax receipting privileges
- Tax on revenue earned on prohibited activities
- Monetary penalties
- Will apply in respect of taxation years that begin after March 22, 2004
### Offence

<table>
<thead>
<tr>
<th>Offence</th>
<th>First Infraction</th>
<th>Repeated Infraction (Within 10 years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Late filing or failure to file T3010A</td>
<td>- $500 penalty</td>
<td>- $500 penalty  May lead to Revocation</td>
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<tr>
<td>- Issuing incomplete receipts</td>
<td>- Penalty of 5% of eligible amount stated on receipt</td>
<td>- Penalty of 10% of eligible amount stated on receipt</td>
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<tr>
<td>- Carrying on prohibited business activity</td>
<td>- Tax of 5% on gross revenue from activity</td>
<td>- Tax of 100% on gross revenue from activity and suspension of receipt privileges</td>
</tr>
<tr>
<td>- Private foundation – any business</td>
<td>- 5% tax on dividends paid to charity</td>
<td>- 100% tax on dividends paid to charity</td>
</tr>
<tr>
<td>- Public foundation/organization – unrelated business</td>
<td>- Penalty of 165% of benefit</td>
<td>- Penalty of 115% of benefit and suspension of tax receipt privileges</td>
</tr>
<tr>
<td>- Foundation acquiring control of corporation</td>
<td>- Tax of amount transferred and 10% of amount transferred</td>
<td>- Tax of amount transferred and 10% of amount transferred</td>
</tr>
<tr>
<td>- Undue personal benefit</td>
<td>- 125% tax on eligible amount of receipt</td>
<td>- 125% tax on eligible amount of receipt</td>
</tr>
<tr>
<td>- Transfer among charities to avoid disbursements quota (joint and several liability)</td>
<td>- Tax of 125% of amount receipted and suspension of tax privileges</td>
<td>- Tax of 125% of amount receipted and suspension of tax privileges</td>
</tr>
<tr>
<td>- Issuing receipts in taxation year that do not exceed $20,000 if no gift or if receipt contains false information.</td>
<td>- Suspension of tax receipting privileges</td>
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</tr>
<tr>
<td>- Issuing receipts totaling more than $20,000 if no gift or receipt contains false information.</td>
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<tr>
<td>- Failure to comply with certain verification and enforcement requirements (ex. Keeping proper books and records)</td>
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Inappropriate Business Activities

- Charitable organization public foundation can carry on related business or if substantially all (90%) of staff involved in activity are volunteers.
- Private foundation – cannot carry on any business activities.

What is business?
- No statutory definition/question of fact.
- Profit motive.
- Business v. investment activity.

What is "carrying on business"?

What is Related Business?
- Alberta Institute for Mental Retardation v. MNR [1987] 3 FC 286 (1987) 87DT 5306 (FCA) business is related if it raises money for charity’s purposes (destination test).
- Earth Fund v. Canada [2003] FCJ 1769 (CA) rejected destination test but did not suggest alternate test.
- CRA Policy CPS 019 (March 31, 2003).

Acquiring control of a corporation

- 149.1(12) - control – ownership of more than 50% of corporation’s issued share capital having voting rights under all circumstances.
- Exception – if Foundation did not purchase or acquire for consideration more than 5% of the shares and is given block of shares to bring total shareholding to more than 50%.
- Caveat: Charitable Gifts Act (Ontario).

Undue Benefit

- Gift other than to qualified donee.
- The amount of any "rights, income, property or resources" paid, payable, assigned or otherwise made available to member, trustee, over 50% contributor or NAL person.

Exceptions
- Reasonable remuneration or consideration for property acquired or services rendered.
- Gift made or benefit conferred in course of charitable activities unless improper eligibility.
- Gift to qualified donee.
Tax/Penalty

- Sanctioned charity can transfer amount of tax, penalty to CRA or to another charity (arms length)
- Arms length – more than 50% of directors deal at arms length with all directors of taxed charity

Revocation

- Still available for any offence and can be applied with intermediate sanctions
- Revocation Tax
  - In lieu of paying revocation tax to CRA
    - Equivalent amount can be paid to eligible transferees i.e. other registered charities dealing at arms length (pre budget the revocation tax would be paid to a “qualified donee” but CRA concerned about transfers to NAL charities)
    - Pre budget – revocation tax applied 1 year after revocation
    - Proposed amendments – tax assessed immediately, collection suspended for one year

Annulment

- Where registration obtained in error or if charity ceases to be a charity because of changes in the law
  - No effect on issued receipts
  - No revocation tax or other penalty will be charged
  - Useful tool – permits errors to be rectified without negative public notice which goes with Notice of Revocation
Appeals Regime

- Pre Budget
  - Federal Court of Appeal judicial review
  - No administrative appeal process
  - Costly, ineffective

- Post Budget: Internal Reconsideration Process
  - Existing internal objection review process will be extended to notices of:
    - decision re denial of application for charitable status
    - revocation of charitable status
    - annulment
    - designation of charity as charitable organization, private or public foundation, or
    - objections to imposition of taxes/penalties

Appeals Regime – (cont’d)

- Notice of objection within 90 days of CRA notice of result of review in writing
- No appeal to court unless objection route taken
- Will apply wrt notices issued by MNR after later of December 31, 2004 and 30 days after Royal Assent

Appeals Regime – (cont’d)

1. External Review Process
   - Appeals of intermediate taxes and penalties → trial de novo to Tax Court of Canada (after going through internal process)
   - Appeals of refusal to register, revocation, annulment, charitable designation → by way of judicial review to Federal Court of Appeal
Stay of Appeal

- Revocation:
  - revocations – 30 days after notice
  - MNR may then revoke 30 days after notice
  - Right of charity to appeal revocation – begins at time of notice
- Practice of CRA – not to actually revoke until appeal to CRA has run its course
- Review if CRA not accommodating – can appeal to Federal Court of Appeal for stay pending court decision
- Suspension of receiving privileges:
  - takes effect 7 days after notice mailed
  - Charity may apply to Tax Court for postponement of beginning of suspension
  - court may only postpone it finds it is “just and equitable” to do so
- Not necessary to file appeal to request postponement
- Appeals of penalty tax:
  - usual stay pending appeal applies (225.1(2))

Additional Information Available to Public – Increased Transparency

- Financial information
- Registration/annulment correspondence from CRA
- CRA decisions re objections to assessment of tax or penalties
- Material filed and CRA responses re requested exemption, special status (ex. permission to accumulate)
- Information detailing application of sanctions
  - Identification of charity
  - Sanction imposed
  - Grounds for sanction

Additional Information Available to Public (cont’d)

- Increased website information
  - Reasons for registration decisions
  - Policies
  - Procedures
  - Research database
  - Will help charities in regulating their activities and to comply with law and CRA administrative positions
- Additional Information required on official tax receipts (2003):
  - Name and website address of CRA
  - Charities Advisory Committee
  - Greater impact by charities into shaping of tax rules affecting charities