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**IMAGINE CANADA**

**2011 NONPROFIT RISK MANAGEMENT CONFERENCE**

**November 8, 2011**

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**Tax Receipting and Completing the T3010**

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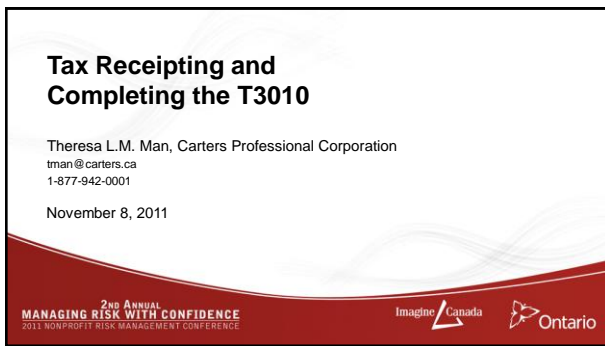
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**OVERVIEW**

- Tax receipting
  - Importance of issuing accurate receipts
  - How to receipt
  - What may not be receipted
  - How to ensure compliance
- T3010
  - Key features of the T3010
  - Tips for completing the T3010
  - Avoid common mistakes

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## TAX RECEIPTING

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### A. IMPORTANCE OF ISSUING ACCURATE RECEIPTS

- Donation receipts must be issued in accordance with the requirements of the Income Tax Act (ITA) and Canada Revenue Agency's (CRA) policies
- If a receipt includes incorrect information - penalty of 5% of the eligible amount on the receipt, increases to 10% penalty for a repeat infraction within 5 years

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- If a receipt includes false information
  - If the total does not exceed \$25,000 - penalty of 125% of the eligible amount on the receipt
  - If the total exceeds \$25,000 - penalty of 125% and the suspension of tax-receipting privileges
  - May be subject to revocation on repeated contraventions

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## B. DUTY OF CHARITY IN ISSUING RECEIPTS

- Only receipt donations that are “gifts”
- Comply with split receipting rules
- Include required information on receipts
- Ensure accuracy of information on receipts
- Due diligence
- Keep control over the receipts
- Keep adequate books and records in support of receipts issued

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## C. SPLIT RECEIPTING

- (a) Meaning of gift
- Only the “eligible amount” of a gift may be receipted
  - CRA adopts the traditional common law definition of a gift
    - The donor must have an intention to give
    - Property is transferred by the donor
    - Transfer of property must be voluntary
    - Gift is made without expectation of return
    - No consideration or benefit can be received by the donor

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- Split receipting proposed in 2002
- Although draft amendments to the ITA have not yet been passed, the amendments are treated by CRA as being administratively in effect
- Proposed ITA changes create a new concept of “gift” for tax purposes - permits a donor to receive a benefit, provided that the value of the property donated exceeds the benefit received by the donor

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(b) Basic mechanics of split-receipting rules

- Charitable donation receipts must reflect the following:  
Eligible amount of gift = FMV less advantage
- Must have a voluntary transfer of property of ascertainable value
- Donative intent required
  - Must have a clear donative intent by the donor to benefit the charity
  - Donative intent will generally be presumed if the fair market value of the advantage does not exceed 80% of the value of the gift

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- Deduct Advantage

- Broad definition of advantage : total value of all property, services, compensation, use or other benefits
  - To which the donor, or a person not dealing at arms length with the donor
  - Has received or obtained or is entitled to receive (either immediately or in the future)
  - As partial consideration of or in gratitude of the gift or that is in any other way related to the gift

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- Advantage must be clearly identified and its value "ascertainable"
- Advantage can be received prior to, at the same time as, or subsequent to the making of the gift
- Advantage does not require a causal relationship between the making of the gift and the receiving of the advantage, as long as the advantage is in some way related to the gift
- Advantage can be provided to the donor or to a person or partnership not dealing at arm's length with the donor

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- Not necessary that the advantage be received from the charity that received the gift - advantage could be provided by third parties unbeknownst to the charity
- CRA's administrative exemption applies where there is a token advantage of the lesser of 10% of the value of the gift and \$75 (de minimis threshold)
- Example - A charity receives a gift of land from a donor who has received some type of benefit from a developer who owns property adjacent to the donated property in exchange for making the gift
- Naming rights are not advantages if there is no prospective economic benefit associated with the naming rights

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- "Deemed fair market value" rules
  - Result of the government's attempt to curtail abusive tax shelter donation schemes
  - Do not apply to inventory, real property or an immovable situated in Canada, certified cultural property, publicly traded shares and ecological gifts
  - FMV of donated property will be deemed to be the lesser of
    - FMV of the property
    - Cost (or the adjusted cost base) of the property to the tax-payer immediately before the gift is made

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- Deeming rules applies
  - If the donor acquired the property through a "gifting arrangement" (donation tax shelter scheme)
  - If the donor acquired the property less than 3 years before making the gift
  - If the donor acquired the property less than 10 years before making the gift, and it was reasonable to conclude that when the donor acquired the property, one of the main reasons for the acquisition was to make a gift

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– Also require a “look-back” to see if the property had been acquired within the last 10 years by a non arm’s length person and if so then the “deemed fair market value” applies when that non arm’s length person acquired the property

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#### D. WHEN TO RECEIPT?

- A charity is not required to receipt donations for gifts it accepts
- A charity may set administrative minimum threshold of gifts before issuing receipts
- The "date of issue" of a receipt is the date on which the receipt was prepared
- There are no requirements that receipts must be issued within a particular time frame, but CRA suggests that they be issued at least by the last day of February following the year during which the gift was made

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#### E. CONTENTS OF RECEIPTS

- Each official receipt must contain at least the following
  - A statement that it is an official receipt for income tax purposes
  - Name and address of the charity as on file with CRA
  - Charity's registration number
  - Serial number of the receipt
  - Place or locality where the receipt was issued
  - Day or year donation was received
  - Day on which the receipt was issued if it differs from the day of donation

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- Full name, including middle initial, and address of the donor
- Amount of the gift
- Value and description of any advantage received by the donor
- Eligible amount of the gift
- Signature of an individual authorized by the charity to acknowledge donations
- CRA's name and website address

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- For gifts in kind, include additional information
  - Day on which the donation was received (if not already indicated)
  - Brief description of the property
  - Name and address of the appraiser (if property was appraised)
  - Deemed fair market value of the property in place of amount of gift above
- See CRA sample receipts

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- F. PREPARATION AND OTHER ADMINISTRATIVE MATTERS**
- Prepare receipts in duplicate and keep a copy as record
  - Guard against the unauthorized use of receipts, e.g., keeping pre-printed receipts in a locked office with access provided to authorized personnel
  - To correct errors on printed receipts if it wants to use its remaining stock of official donation receipts before ordering a new supply
    - Use a stamp that clearly shows a change of name, address, or registration number
    - Any incorrect information is crossed out, either by stamp or by hand

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- To replace a lost receipt
  - Replacement receipt may be issued which must contain all required information
  - Indicate on the receipt that it cancels and replaces receipt # (insert the serial number of the lost receipt)
  - The charity's copy of the lost receipt should be retained and marked "cancelled"
- To replace a lost or spoiled receipt, all copies will be retained and marked "cancelled," and another receipt may then be issued
- If lost or stolen receipt stocks, the charity should notify CRA immediately

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- May use a facsimile signature on a receipt, provided that
  - Receipts are distinctively imprinted (usually by a commercial printer) with the name, address, and registration number of the charity
  - Receipts are serially numbered by a printing press or numbering machine
  - All unused receipt forms are kept at the charity's address

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- May use computer-generated receipts, provided that
  - Ensure the computer system used to store the receipts is password protected and restricts entry to and modification of donor contribution records
  - Donor records are stored on non-erasable media, such as CD-ROMs or printouts, with copies kept off-site for recovery purposes
  - Hard copies of issued receipts can be printed on request

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- May email donation receipts to donors, provided that
  - Receipts should be in a read-only or non-editable format
  - Receipts should be protected from hackers through the use of appropriate software
  - Receipts should be encrypted and signed with an electronic signature
  - Use of secure electronic signature should be kept under the control of a responsible individual authorized by the charity
  - Copies of email-issued receipts must be retained by the charity

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- Must reflect true donor on the receipt
  - Question of fact
  - In general, where a charitable donation is provided by way of a cheque on an account held jointly by spouses (i.e., both names of the spouses appear on the cheque), then the charity will issue the official donation receipt in either or both names, regardless of how the cheque is endorsed

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- If a charity is asked to issue a receipt in another person's name and there is no obvious indication as to the true donor, the charity should request a written declaration or letter from the party providing the donation as to the identity of the true donor, in order to allow the charity to ensure that the name it records on the receipt is that of the true donor

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### G. WHAT MAY NOT BE RECEIPTED?

- Advantage received by the donor (value of advantage may not be receipted)
- Advantage exceeds 80% of the gift unless proven donative intent
- Unascertainable value of property
- Unascertainable value of advantage
- Gift pledge
- Donation of service

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- Purchase of an item or service by the charity
- Sponsorship fees where the sponsor receives something in exchange for the donation made
- Loan
- Free use of a property
- Court ordered donations
- Gifts from other charities or qualified donees
- Fundraising proceeds, e.g., dinner tickets, concert admission, bake sale, etc.
- Anonymous gifts (unless CRA's requirements are followed)

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### H. RETURNING A GIFT

- Questionable whether a gift can be returned at law
- If a gift was indeed returned, need to issue replacement receipt
- Proposed new changes in the 2011 federal budget - what happens when a charity returns a donation?
- The 2011 budget permits CRA to reassess a taxpayer outside the normal reassessment period and disallow a taxpayer's claim for a credit or deduction if a gifted property is returned to a donor to ensure "that tax assistance is not improperly retained"

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- Must issue a revised donation receipt and file a copy with CRA if
  - A receipt had already been issued when the property was gifted; and
  - The value of that returned property is greater than \$50
- Other rules in the 2011 budget
  - If the transfer of the original property was a gift, the person is deemed not to have made a gift of the original property nor to have disposed of the property at the time the gift was made

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- If the transfer of the original property was not a gift, for greater certainty, the person is considered not to have disposed of the original property at the time that it was provided to the charity
- If the returned property is identical to the original property, the returned property is deemed to be the original property
- If the returned property is not the same property or identical property, the person is deemed to have disposed of the original property at the time that the person acquires the returned property
- These measures are to apply in respect of a gift of property returned on or after March 22, 2011
- Legal advice should be sought

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- ### I. HOW TO ENSURE COMPLIANCE
- Adopt and implement gift acceptance and receipting policy
  - Have someone or committee in charge of the receipting process
  - Educate staff and volunteers
  - Periodic review of process
  - Monitor new changes in CRA's policies and ITA requirements

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## T3010

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**A. WHAT IS THE T3010**

- Annual information return charities are required to file with CRA within 6 months after year end
- T3010 *Registered Charity Information Return* (includes Schedules 1 to 6)
- Form T3010A for fiscal periods ending from March 23, 2004, to December 31, 2008
- Form T3010B for fiscal periods ending from January 1, 2009, to March 3, 2010
- Form T3010-1 for fiscal periods ending on or after March 4, 2010

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**B. IMPORTANCE OF THE T3010**

- T3010 is CRA's key information to the operation of a charity, will be reviewed by CRA on audit
- Information reflects whether the charity is compliant with CRA's policies, e.g., fundraising, activities outside of Canada, receipting, etc.
- The charity is accountable to donors to report on its operations
- Information is publicly available on CRA's website

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### C. KEY FEATURES OF T3010

- T3010-1
  - Revised to take into account the repeal of 80% disbursement quota introduced by the 2010 Federal Budget
- T3010B
  - Provides accountability to the public and to potential donors
    - Most of the return is available on the CRA website once filed
    - Increased reporting requirements for large charities and for charities engaged in various and complex activities

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- Reduce filing burden for small charities (revenue less than \$100,000) - 4-page core form, with 6 topic-related schedules for use if applicable
- Enforcement tool for CRA - allows CRA to see if a charity has been compliant with the requirements of the ITA, e.g.,
  - Disbursement quota requirements
  - Gifts to non-qualified donees
  - Fundraising ratio
- New information to be filed
  - Information on external fundraisers
  - More details on activities outside of Canada
  - Information on donors not resident in Canada that made gifts \$10,000 or more

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- T3010 consists of compulsory 4 pages (Sections A to F), and 6 Schedules to complete where applicable (some info is public)
- Sections A to F
  - A. Identification (public information)
  - B. Directors/trustees and like officials (Form T1235 (partially public information)
  - C. Programs and General Information (public information)
  - D. Financial Information (public information)
  - E. Certification (publicly available, but not online)
  - F. Confidential Data

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- Sections A to F contain questions to trigger further reporting requirements set out in Schedules 1 to 6
  1. Foundations (public information)
  2. Activities Outside Canada (public information)
  3. Compensation (public information)
  4. Confidential Data (private information)
  5. Non-Cash Gifts (public information)
  6. Detailed Financial Information (public information, including financial statements)

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- T3010 also includes the following forms
  - *TF725 Registered Charity Basic Information Sheet* (partially public)
  - *T1235 Directors/Trustees and Like Officials Worksheet* (not required if filing Form RC232-WS) (partially public)
  - *T1236 Qualified Donees Worksheet / Amounts Provided to Other Organizations* (public)
  - *T2081 Excess Corporate Holdings For Private Foundations* (partially public)

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- Charities under the Ontario *Corporations Act* – also file *Form RC232-WS, Director/Officer Worksheet and Ontario Corporations Information Act Annual Return, or Form RC232, Ontario Corporations Information Act Annual Return*
- Confidential data is not available to the public, but is available:
  - To authorized representatives of the charity
  - CRA may share some info with other governments and agencies or in legal proceedings
  - Bill C-25 which amended the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* permits CRA to share information with CSIS, RCMP, and foreign governments and agencies

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### D. FAILURE TO FILE T3010

- Must be filed within 6 months after fiscal year end
- Failure to file on time will result in revocation
- Failure to file is the most common cause for losing charitable status
- To re-register, pay \$500 penalty, new charitable application, submit all missing T3010s
- Re-registration application
  - Approval not guaranteed
  - Treated the same as it is applying for the first time, must meet all *current* requirements, which may be different than when the charity first registered

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### E. WHAT TO DO BEFORE COMPLETING THE T3010

1. Carefully check the *TF725 Registered Charity Basic Information Sheet*
  - Must be filed with the T3010 even if no changes from previous years
  - Verify for accuracy – reflects CRA's record
  - Ensure changes already requested of CRA appear on the form

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2. Be familiar with what information is made available to the public and what is not
  - Everything in the T3010 is available to the public and will be on CRA website except the following
    - Physical address of the charity
    - Storage address for books and records
    - Name and address of individual who prepared the T3010
    - Information about external fundraisers
    - Information about donors who are not resident in Canada
    - Directors/Trustees and Like Officials Worksheet – home address, telephone number, date of birth
  - Financials available to the public upon request

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- 3. Do not leave it until the last minute
  - T3010 can require a significant amount of time to complete
  - Board of directors or like officials should also review and approve the T3010 for certification purposes - because the T3010 will become a public document
- 4. Review T4033-1 *Completing the Registered Charity Information Return* and T3010 *Registered Charity Information Return* checklist
- 5. Review sample T3010 on CRA's website <http://www.cra-arc.gc.ca/tx/chrts/prtngrtrn/smpls-eng.html>

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- F. TIPS FOR COMPLETING THE T3010**
- Except for yes/no questions, if a question does not apply, leave it blank
  - All requested information must be entered on the return itself (except for the financial statement, which is to be attached separately)
  - Report all dollar amounts in Canadian funds, and round all amounts to the nearest single dollar

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- Section A – Identification**
- Question A1 – Was the charity in a subordinate position to a parent organization?
    - A subordinate charity can be defined as:
      - Is an internal division, e.g., an internal branch, section or other division of another charity without its own governing documents; or
      - Has its own governing documents, but is at least in some respects subordinate to another organization
  - Question A3 – indicate whether it is a foundation – if so, fill out Schedule 1

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**Section B – Directors/Trustees and Like Officials**

- Must use either T1235 or RC232-WS (in Ontario) to provide particulars of directors/trustees or like officials – includes both a public portion and confidential data portion
- List only members of the board or individuals who either alone or in collaboration with one another have managing authority
- NOT include individuals who are subject to control of the governing body, such as a paid executive director

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- Include personal information
- While information marked as “Confidential Data” may not be available to the public, Bill C-25 which amended the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* permits CRA to share information with CSIS, RCMP, and foreign governments and agencies
- Registered charities in Ontario under the Ontario *Corporations Act* may file RC232-WS or RC232, instead of T1235 *Directors/Trustees and Like Officials*

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**Section C – Programs and General Information**

- Question C1 – whether the charity was active for the fiscal period – if not, explain why
- Question C2 - charity must explain all ongoing and new charitable programs
  - Must fall within the charitable objects of the charity in its constating document (e.g., letters patent, trust deed, constitution)
  - If objects have changed, has CRA approved the revised objects?

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- Question C3 - If the charity has made gifts to qualified donees, complete form T1236 *Qualified Donee Worksheet*
  - “Qualified donee” defined in ITA, e.g., includes a registered charity, a registered Canadian amateur athletic association, United Nations and its agencies, “prescribed” universities, etc.
  - Question not clear - “made gifts or transferred funds to qualified donees or other organizations”?

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- Question C4 – whether the charity carried on activities outside Canada – if so, complete Schedule 2
  - Schedule 2 requires the charity to name the individual and organizations that it has an arrangement with for programs outside Canada, country it is located and amount
  - Problematic for charities who do not wish to make publicly available the names of their partners and the location of their programs outside Canada – e.g., if their partners operate in a dangerous environment
  - If information not provided, charity should provide explanation to CRA in a covering letter
  - Do not include gifts to qualified donees

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- Question C7 – If use external fundraiser, complete Schedule 4
  - Need to provide the name and the “arm’s length” status of the external fundraiser
- Question C9 – If provide compensation to employees, must complete Schedule 3
  - “Gross” compensation, including all forms of salaries, wages, commissions, bonuses, fees, taxable and non-taxable benefits
  - Do not include compensation for independent contractors

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- Question C10 – whether charity received donations for \$10,000 or more from any donor not resident in Canada, and who was not a Canadian citizen, employed in Canada, carrying on a business in Canada, or has disposed of taxable Canadian property
  - If “yes”, complete Schedule 4
  - Charities must have all the requisite personal data from non-resident donors, and will require consent of the donor, who may not want this information to be shared with CSIS, RCMP or foreign governments and agencies as permitted under Bill C-25

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- Question C11 – Whether charity received non-cash gifts (gifts-in-kind), e.g., artwork, jewelry, vehicles
  - If so, complete Schedule 5
  - Value for these gifts needs to include the total dollar value of tax receipted non-cash gifts
  - Independent appraisal should be provided with all necessary information, including that the appraisal is being done for a charity, to determine fair market value

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- Questions C12 on non-qualifying securities and C13 on loan backs involve complex issues that will require careful consideration, as it would likely be reviewed by CRA on an audit
- Question C14 – is a trap – whether the charity has issued receipts on behalf of another organization
  - A charity is not permitted to allow another organization to use its registration number
  - If a charity must answer “yes”, it should seek legal advice to consider strategy

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### Section D – Financial Information

- A small charity can complete this section IF:
  - Its revenue is \$100,000 or less
  - It has \$25,000 or less in assets not used in its charitable programs
  - It has not obtained permission to accumulate funds during the fiscal period
- If charity does not meet all of these criteria, then it must fill out the more extensive Schedule 6

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- Schedule 6
  - Charitable programs on line 5000 include:
    - All expenses to operate charitable programs
    - May allocate expenses between charitable programs on line 5000 and other expenditures
  - Examples:
    - Goods or services for the beneficiaries of the charity
    - Facilities or equipment to carry out charitable programs
    - Salaries paid to those engaged in charitable work

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- The fundraising ratio of fundraising expenses to fundraising revenue calculated on an annual basis is calculated based upon the line items from the T3010
  - Fundraising revenues = line 4500 (receipted income) and line 4630 (all other income from fundraising)
  - Line 4630 - sponsorship? Other fundraising income?
  - Fundraising expenditures = line 5020

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- As of January 1, 2009, the 3.5% DQ has been extended to all charitable organizations with assets not used in charitable activities or administration in excess of \$25,000, increased to \$100,000 March 4, 2010 (remained at \$25,000 for foundations)
  - 3.5% DQ is based on an average fair market value of the those assets averaged over the previous 24 month period
  - Lines 5900 for the current fiscal year and 5910 for the next fiscal year
  - Keep adequate records of property value
  - T1259 *Capital Gains and Disbursement Quota Worksheet* no longer required

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- ### G. WHAT TO DO AFTER COMPLETING THE T3010
1. Check T3010 checklist
  2. Have the board or like officials review the T3010
  3. Check for accuracy and completeness - T3010 information will be used by CRA auditors in the future
  3. Keep copies for charity's own records before filing
  4. Who may sign Section E – Certification
    - Must be a director/trustee or like official who has authority to sign on behalf of the charity
    - Has to certify the accuracy of the return
    - Serious offence under the ITA to provide false or deceptive information

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- ### H. FILING THE T3010
- Mandatory to be filed by all registered charities within 6 months after year end
  - File T3010 with all applicable Schedules and related forms
  - Must file financial statements with the form
    - At a minimum, should consist of balance sheet, income statement and prepared notes
    - Should accurately show the different sources of revenue and the expenditures
    - CRA recommends that financial statements be professionally audited if income is over \$250,000, otherwise should be signed by treasurer

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- Attach peel-off bar code labels from TF725 *Registered Charity Basic Information Sheet* to all applicable forms
- Do not include
  - Changes to governing documents
  - Copies of donation receipts
  - Requests for changes to contact person, phone numbers, mailing address, etc.
- Mail to Charities Directorate, Canada Revenue Agency, Ottawa Ontario K1A 0L5, no e-filing (yet)

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- I. WHAT TO DO AFTER FILING THE T3010
1. Check the T1242 *Registered Charity Information Return Summary*
    - CRA will mail out a copy after the charity has filed the T3010
    - Contains CRA's DQ calculations and financial totals, based on info in T3010
    - Contact CRA if contains error
    - This information will be posted on CRA website to be viewed by the public
  2. Subsequent corrections to T3010 can be made by submitting the T1240 form

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- J. AVOID COMMON MISTAKES
- Mistakes can cause various problems such as processing delays, missing returns
  - CRA's list of common mistakes when filing the T3010
    - Mailing return to the wrong address
    - Filing the return on the wrong form
    - Not including the financial statements
    - Financial statements having a different fiscal period ending as the T3010 return
    - Not including the *Registered Charity Basic Information Sheet*

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- Describing fundraising activities instead of charitable activities in Section C2
- Not including Director/Trustee dates of birth, arm's length status or telephone number on Form T1235 *Directors/Trustees and Like Officials Worksheet*
- Not including qualified donees' BN/Registration numbers on Form T1236, *Qualified Donees Worksheet / Amounts Provided to Other Organizations*
- Not signing the Certification area in Section E
- Certain lines in financial info not add up correctly

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### CONCLUSION

- This is only a general overview of key issues
- Take time to carefully complete the T3010
- Seek professional advice

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