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# **CANADIAN ASSOCIATION OF GIFT PLANNERS (CAGP)**

**Quebec – April 18, 2013**

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## **Practical Implications of CRA New Governance Rules & Top Ten CRA Compliance Issues**

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**By Theresa L.M. Man & Karen J. Cooper**  
tman@carters.ca kcooper@carters.ca  
1-877-942-0001


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**20th Annual National CAGP-ACDPD™ Conference**  
**Gatineau – April 18, 2013**

**Practical Implications of CRA New Governance Rules**  
**Top Ten CRA Compliance Issues Gift Planners Need to Know**

**By Karen Cooper and Theresa Man**  
kcooper@carters.ca tman@carters.ca  
1-866-388-9596 and 1-877-942-0001

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**OVERVIEW OF TOPICS**

1. CRA New Fundraising Guidance (Revised 2012)
2. Gifts Outside of Canada
3. Transfers to Non-profits
4. Receipting
5. Inter-charity Transfers and Disbursement Quota
6. Tax Shelters
7. Ineligible Individuals
8. Political Activities
9. CRA T3010
10. Books and Records

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**1. CRA NEW FUNDRAISING GUIDANCE (REVISED 2012)**

**a) Introduction**

- From the media's perspective this is the number one compliance issue for charities
- Revised Fundraising Guidance April 2012  
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/fndrsng-eng.html>
- New Guidance is a significant improvement
- Complex and requires careful reading
- Guidance will impact current CRA audits, not just future audits
- Guidance will apply to all registered charities and to both receipted and non-receipted fundraising

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- Charities must still meet their other obligations (including 3.5% disbursement quota)
- An organization carrying out unacceptable fundraising may result in:
  - Denial of charitable registration
  - Sanctions or even revocation of charitable status
- Fundraising ratio in Guidance forms part of a charity's T3010 available to the public on the internet
- Failure to correctly record fundraising revenues and expenditures can result in suspension of receiving privileges
- Important for the board of a charity to review and approve the T3010 before filing with CRA

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**b) What is Fundraising?**

- In general, fundraising is any activity that includes solicitation of present or future donations of cash or gifts in kind, or the sale of goods or services to raise funds, whether explicit or implied
- Fundraising does not include (i.e., to be excluded from revenue and expenses)
  - Seeking grants, gifts, contributions, or other funding from other charities or government
  - Recruiting volunteers (except for fundraising volunteers)
  - Related business activities

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**c) Allocating Fundraising Expenditures**

- Must report fundraising expenditures (all costs related to any fundraising activity) on T3010
- Where some fundraising activities include content that is not related to fundraising, some of these costs may be allocated to charitable activities, management or administrative activities, or political activities
- Onus is on the charity to justify allocation
- CRA's guidelines for allocation
  - 100% allocation to fundraising
  - No allocation of costs to fundraising
  - Pro-rated allocation of costs

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**d) Evaluating a Charity's Fundraising**

- Resources devoted to fundraising are disproportionate to resources devoted to charitable activities
- Fundraising without an identifiable use or need for the proceeds
- Inappropriate purchasing or staffing practices
- Fundraising activities where most of the gross revenues go to contracted third parties
- Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations
- Misrepresentations in fundraising solicitations or disclosure about fundraising costs, revenues, or practices
- Fundraising initiatives or arrangements that are not well documented

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- Guidance has list of factors that may influence CRA's evaluation of a charity's fundraising
- Guidance has list of best practices for managing fundraising
- Fundraising ratio
  - General self-assessment tool, but not determinative on its own
  - Fundraising ratio is the ratio of fundraising costs to fundraising revenue calculated on an annual basis
  - Global calculation for a fiscal period
  - A high fundraising ratio for an individual event may be an indicator of unacceptable fundraising
  - It is distinct from the 3.5% disbursement quota

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- Fundraising expenditures means amounts reported on line 5020 of T3010
- Fundraising revenue:
  - Line 4500 = all tax receipted donations, irrespective of whether they were made in response to fundraising, i.e., include receipted donations that were not given in response to a fundraiser, e.g., unsolicited gift from an estate
  - Line 4630 = amounts for which the charity did not issue a tax receipt, but were generated through fundraising activities, e.g., sponsorship income and cause related campaigns
  - Should include gross non-receipted fundraising revenue on line 4630 instead of only net fundraising revenue

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- The fundraising ratio will place a charity into one of three categories:
  - Under 35%: unlikely to generate questions or concerns by CRA
  - 35% and above: CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs requiring a more detailed assessment of expenditures
  - Above 70%: will raise concerns with CRA - the charity must be able to provide an explanation and rationale for this level of expenditure, otherwise it will not be acceptable

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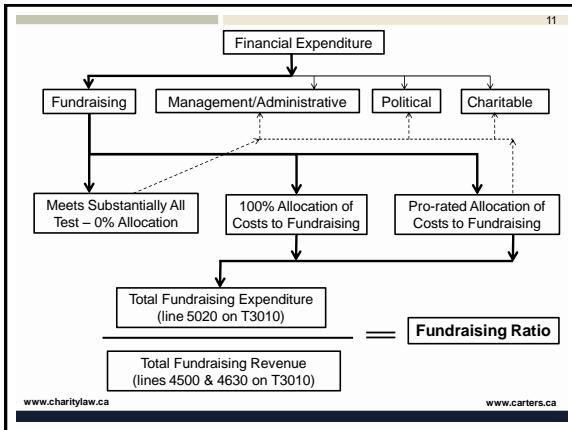
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## 2. GIFTS OUTSIDE OF CANADA

- All activities outside of Canada must meet requirements in the *Income Tax Act* ("ITA") and policies of CRA
- CRA Guidance on Canadian Registered Charities Carrying Out Activities Outside of Canada, CG-002 <http://www.cra-arc.gc.ca/chrts-qvng/chrts/plcy/cgd/tsd-cnd-eng.html>
- Must comply with detailed requirements in the Guidance
- Failure to comply may risk charity paying a penalty of 105% on the amount of the gift to non-QDs, increased to 115% on repeat infractions, and risk of losing charitable status

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- Guidance regulates
  - How to conduct activities outside of Canada through third parties
  - What to include in the written agreements with third parties
  - How to maintain direction and control over third parties
  - What books and records to obtain from third parties
- A charity can only conduct its activities in two ways:
  - Making gifts to qualified donees
  - Conducting its own activities either:
    - By its own staff and volunteers, or
    - Through third parties

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**a) Making Gifts to Qualified Donees (QDs)**

- “Qualified donee” is defined in the ITA
- QDs in Canada
  - Registered Canadian charities
  - Registered Canadian amateur athletic associations
  - Registered Canadian national arts service organizations
  - Housing corporations resident in Canada constituted exclusively to provide low-cost housing for the aged
  - Listed Canadian municipalities
  - Listed municipal or public bodies performing a function of government in Canada
  - Her Majesty in right of Canada or a province

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- QDs outside Canada – only 3 categories
  - Prescribed universities - universities outside Canada with student body that ordinarily includes students from Canada
  - The United Nations and its agencies
  - Listed charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift in past 24 months and which pursue activities related to disaster relief or urgent humanitarian aid or in the national interest of Canada
- Does not include the following unless they meet one of 3 categories
  - US 501(c)(3) tax exempt organizations
  - International NGOs

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- Funds to QDs are “gifts” under the ITA
- Can make the gift by deed of gift - short document
- Can make gift by funding agreement - more detailed, sets out terms of gift, for due diligence and monitoring purposes, not a CRA requirement
- Cannot make gifts to non-QDs

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**b) Conducting Own Activities**

- Activities must be directly under the charity’s direction, control and supervision and for which it can account for any funds expended = “own activities” test
- CRA recognizes two ways to meet this test
  - A charity sending its own staff and volunteers on the ground to conduct the activities
  - Through third parties - “intermediaries”
- Third party intermediaries do not have to be QDs, can be non-QDs, for-profits, international NGOs

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- Activities funded are activities of the Canadian charity, not activities of the third party intermediaries (to meet “own activities” test)
- Canadian charity cannot fund third party to help their programs
- Canadian charity must give funds to third party to conduct the charity’s program on behalf of the charity
- When working through an intermediary, a charity must direct and control the use of its resources = “direction and control” is key

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- Because of own activities test, difficult for a charity to contribute funds to be pooled with funds from other funders for a partner's program
- Before working with an intermediary and throughout the course of the arrangement, the charity must investigate the status and activities of the intermediary to ensure
  - The intermediary has the capacity to carry out the charity's activity (e.g., personnel, experience)
  - There is a strong expectation the intermediary will use the charity's resources as directed by the charity
- Must do appropriate due diligence of intermediary concerning anti-terrorism compliance issues

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- A charity cannot act as a "conduit" to funnel money to non QDs
  - A conduit is an organization that accepts donations for which it typically issues tax-deductible receipts and then funnels the money, without maintaining direction and control to a non-QD
  - To avoid being a conduit, the Canadian charity must have demonstrable control over the use of its money
- A charity may use its spending on activities carried out through an intermediary to meet its 3.5% disbursement quota

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- There are four common types of intermediaries that can be used:
  - Agency
  - Joint venture
  - Co-operative
  - Contract for services
- CRA does not recommend using one type of intermediary over the other
- Regardless of which option is used
  - Must meet own activities test
  - Must maintain direction and control
  - Must have written agreement

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- CRA recommends exercising direction and control by the following measures:
  - Create a written agreement and implement its terms
  - A clear, complete, and detailed description of activities is communicated to the intermediary
  - Give ongoing clear, complete, and detailed instructions to the intermediary
  - Maintain a record of steps taken to direct and control the use of its resources, as well as detailed books and records (in French or English)
  - Periodic transfer of resources based on performance

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- Monitor and supervise the activity - i.e., receiving timely and accurate reports to make sure that its resources are being used for its own activities
  - Progress reports
  - Receipts for expenses and financial statements
  - Informal communication via telephone or email
  - Photographs
  - Audit reports
  - On-site inspections by the charity's staff

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- CRA does not provide a black and white threshold or form to complete to evidence sufficient direction and control - what is sufficient depends on the facts in each case
- The larger the amount of funding, CRA would likely expect higher level of due diligence
- If a charity engages in activities outside of Canada using intermediaries, the question is not if it will be audited by CRA but rather when

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### 3. TRANSFERS TO NON-PROFITS

- Charities may make gifts to QDs
- Charities cannot give money or other resources to individuals or other organizations that are not QDs
- For example - charity working with a for-profit or NPO to do a joint program
  - Is the charity providing resources for the benefit of the NPO or for-profit?
  - Is the charity getting fair market value ("FMV") compensation for its resources?
  - Is the charity accomplishing its charitable objectives as part of the program?

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- CRA Guidance "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>
- Guidance applies when charities conduct activities in Canada in cooperation with or through entities that are not charities, e.g., NPOs, for profit businesses
- Same requirements and principles apply as if activities were outside of Canada

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### 4. RECEIPTING

**a) Importance of Issuing Accurate Receipts**

- Donation receipts must be issued in accordance with the requirements of the ITA and 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
- 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**

- 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
- Permits a donor to receive a benefit, provided that the value of the property donated exceeds the benefit received by the donor
- Only the “eligible amount” of a gift may be receipted

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- 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 - 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: total value of all property, services, compensation, use or other benefits
  - Must be clearly identified and its value “ascertainable”
  - Can be received prior to, at the same time as, or subsequent to the making of the gift
  - Does not require a causal relationship
  - Can be provided to the donor or to a person or partnership not dealing at arm’s length with the donor
  - 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)

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- “Deemed fair market value” rules
  - Result of the government’s attempt to curtail abusive tax shelter donation schemes
  - 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
  - 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) Other Matters**

- Must comply with detailed rules in the Regulations
- Prepare receipts in duplicate and keep a copy as record
- Guard against the unauthorized use of receipts
- Follow CRA’s policies on
  - How to correct errors on printed receipts if it wants to use its remaining stock of official donation receipts before ordering a new supply
  - To replace a lost or spoiled receipt
  - Lost or stolen receipt stocks
  - Facsimile signature on receipts
  - Computer-generated receipts
  - Email donation receipts to donors
  - Reflect true donor on the receipt

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- 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
  - Purchase of an item or service by the charity
  - Sponsorship fees where the sponsor receives something in exchange for the donation made

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- 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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- 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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### 5. INTER-CHARITY TRANSFERS AND DISBURSEMENT QUOTA

- The DQ is the prescribed amount that registered charities must disburse each year in order to maintain charitable registration
- The DQ may be met by spending the required amount on its own charitable activities or on gifts to qualified donees (for example, other registered charities, the UN and its agencies, federal, provincial and municipal governments)
- Failure to meet the annual DQ requirement may be cause for revocation

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- Significant reforms in 1984, 2004, 2010
- 2004 reform - became more complex
- 2010 reform - simplified DQ
- Effective for fiscal years that end on or after March 4, 2010
- Finance will monitor effectiveness of CRA's Fundraising Guidance and take further action if necessary

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**a) Repeal of Capital Expenditure Rule**

- Repealed 80% DQ
- Repealed 80% DQ related concepts
  - Enduring property (including ten-year gifts)
  - Capital gains pool
  - Specified gifts

**b) Modification of Capital Accumulation Rule**

- Increased threshold for 3.5% DQ to \$100,000 for charitable organizations (remains at \$25,000 for foundations)
- Purpose - reduce compliance burden on small charitable organizations and provide them with greater ability to maintain reserves to deal with contingencies

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**c) Expansion of Anti-avoidance Rules**

- In relaxing the disbursement requirements by charities, the 2010 Budget extended anti-avoidance provisions
- To cover situations where it can reasonably be considered that a purpose of a transaction was to delay unduly or avoid the application of the disbursement quota
- Two changes introduced

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**d) Accumulation of Property**

- Charities can apply to CRA to accumulate property for a particular purpose, e.g., a building project
- Old rules - property accumulated (and income earned) with CRA approval was deemed to have been spent on charitable activities
- New rules - accumulated property is excluded from 3.5% DQ asset base calculation

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**e) General Implications of DQ Rules**

- Welcome change
- Simplicity of DQ calculation
- No need to track receipted and non-receipted gifts
- Eases administrative burden for charities (especially small and rural charities)
- No need to spend scarce resources allocating expenses between charitable vs administrative expenses for 80% DQ
- Increase of \$100,000 threshold for charitable organizations allows them greater ability to maintain reserves to deal with contingencies

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- A charity must still pursue its charitable purpose
- A charity must still comply with CRA's Fundraising Guidance
- Need to consider using "designated gift" option with transfers between non-arm's length charities in order to avoid 100% capital expenditure requirement for the recipient charity
- What to do with existing endowment funds, long-term gifts and ten-year gifts?
  - Can capital be encroached?
  - Still need to track 10-year period?
- Need to review all existing gift and endowment agreement provisions in this regard

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- It used to be necessary to comply with both an 80% DQ and a 3.5% DQ, but now only necessary to comply with 3.5% DQ
  - 3.5% DQ generally means 3.5% of investment assets, based on the average value of assets in 24 months immediately preceding the taxation year
  - 3.5% DQ does not apply to charitable organizations with investments of \$100,000 or less (\$25,000 threshold remains for foundations)
- There are now complicated rules for inter-charity transfers between non-arm's length charities
  - As such, it may be necessary to make an inter-charity gift between non-arm's length charities a "designated gift" in order to avoid a 100% expenditure requirement

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### 6. TAX SHELTERS

- During recent years, the Department of Finance and CRA have taken a number of steps to shut down abusive donation tax shelters
- As a matter of tax policy, the fact that the donor under a donation tax shelter is receiving a net economic benefit from having made the donation is inconsistent with the requirement that a valid gift must involve the donor being impoverished

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### a) Common Forms Of Abusive Donation Tax Shelters

- 1) Buy-low Donate-high Tax Shelters – The Classic
  - A typical scenario would involve a taxpayer
    - Purchasing property for a low price
    - Donating the property to a charity, usually pre-arranged by the promoter
    - Receiving a donation tax receipt in an amount purported to be the FMV of the donated property that is substantially greater than the price paid by the taxpayer
  - The FMV of the donated property is usually supported by an appraisal, (usually arranged by the promoter)

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- Often, the taxpayers never takes possession of the donated property, which instead is directly transferred or delivered to the charity
- Key: tax credit based on the high value of the receipt far exceeds
  - The taxpayer's cost in purchasing the donated property and
  - Capital gains taxes on the disposition of the property
  - Recently introduced amendments with respect to split-receipting include provisions deeming the FMV of donated property to be its cost if the property was acquired within three years (or 10 years in certain circumstances) of making the gift

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**b) Gifting Trust Arrangements Tax Shelters**

- A typical scenario would involve a taxpayer
  - Who is inclined to charitable giving
  - Becoming a beneficiary of a Canadian resident trust, often established by a non-resident settlor
  - Receiving a distribution of property from the trust
  - Donating the property distributed together with some cash to a pre-arranged charity
  - Receiving a tax receipt for the donation
- The taxpayer's adjusted cost base of the property would be equal to the trust's cost, which is FMV, if the trust received the property in the first place as a gift
- Therefore, the donor would have no capital gain on the donated property, maximizing the tax benefit the donor received

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**c) Leveraged Charitable Donation Tax Shelters**

- A typical scenario would involve a taxpayer
  - Borrowing a pre-arranged loan
  - Donating the loan and some additional cash to a charity
  - Receiving a donation tax receipt for the total amount donated
- The promoter usually arranges for the taxpayer to enter into some form of insurance policy and/or investment for a return that would be sufficient to pay off the loan
- The tax credit would exceed the economic cost of the donation to the charity

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**d) CRA Efforts to Reduce Tax Shelter Schemes**

- Various CRA Fact Sheets, News Release, Taxpayer Alerts warn the public and registered charities of the risks associated with involvement in such schemes
- For example, "The Canada Revenue Agency: protecting Canadians from gifting tax shelter schemes"
  - October 30, 2012:
  - "Starting with the 2012 tax year, the CRA will put on hold the assessment of returns for individuals where a taxpayer is claiming a credit by participating in a gifting tax shelter scheme... Assessments and refunds will not proceed until the completion of the audit of the tax shelter, which may take up to two years. All gifting tax shelter schemes are audited and the CRA has not found any that comply with Canadian tax laws."

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- CRA has to date denied more than \$5.5 billion in donation claims and reassessed over 167,000 taxpayers who participated in gifting tax shelter schemes
- CRA has revoked the charitable status of 44 charitable organizations that participated in these gifting tax shelter schemes
- Since June 2000, the CRA has also assessed \$63.5 million in third-party penalties against promoters and tax preparers
- No gifting arrangement or charitable donation structure has been maintained by the Court

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**e) 2013 Federal Budget Amendments**

- 1) Extension of Reassessment Period for Donors to Registered Tax Shelters
  - This change extends the normal reassessment period with respect to participants in a tax shelter or "reportable transactions" where the information return required to be filed by the tax shelter or reportable transaction is not filed on time, or at all, by a period of a further 3 years after the date that the information return has been filed (for a total of 6 years)

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2) Early Collection of Amounts Owing from Donation Tax Shelters

- Budget 2013 permits CRA to proceed with collection actions on 50% of the disputed tax, interest or penalties that result from the disallowance of a donation claimed with respect to a tax shelter
- CRA will be able to proceed with these actions even before the ultimate liability of the donor has been determined through the objection and appeal process
- While donation tax shelter schemes should be discouraged, it is arguably unfair to permit CRA to collect taxes, fines, and penalties before the tax payer has exhausted all avenues of appeal

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**f) Tax Shelter Cases**

- *Berg A. V. The Queen* (2012 TCC 406) involved a series of pre-determined donation transactions with ("YITI") and SVG Bancorp:
  - B purchased timeshare units in 2002 with a cash payment of \$200,000 and \$2.2 million promissory note in favour of YITI
  - B pledged the timeshare units to YITI as security for his obligations under the promissory note and was provided with a written discharge of his obligations
  - B transferred the units to a charity and received a donation receipt for \$2.4 million with which a claimed a charitable donation tax credit

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- *Guindon v. The Queen*, 2012 TCC 287
  - The case dealt with third party penalties provided under section 163.2 of the ITA
  - The basic purpose of s. 163.2 is to provide for monetary penalties assessable against third parties who, participate in, promote, or assist conduct that results in another taxpayer making a false statement or omission in a tax return
  - Court concluded that the penalties under s. 163.2 are criminal in nature meant that the penalties would therefore have to be prosecuted not in a tax court

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- Decision is likely to be appealed
- If the decision is left to stand, it will become significantly more difficult to impose penalties on advisors backing abusive donation schemes (or other forms of excessively aggressive tax planning)
- The decision not only brings attention to abuses of donation incentives at a crucial moment of policymaking in this area of law, it also calls into question the current capacity of the CRA to police such abuses

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- *Lipson v. Cassels Brock & Blackwell LLP, 2013 ONCA 165*
  - Case concerned a tax shelter which involved donors giving cash or timeshares to a trust in return for tax credits worth more than the value of their donations
  - Ontario Court of Appeal certified a class action lawsuit against Cassels Brock & Blackwell LLP which had prepared the legal opinion used to promote the tax shelter to potential donors
    - The legal opinion had indicated that CRA would likely be unable to successfully deny the tax credits offered by the tax shelter
    - Many donors claimed to have relied on this opinion in making their donations

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### 7. INELIGIBLE INDIVIDUALS

- The 2011 Federal Budget introduced the concept of “ineligible individuals”, which has become a new *de facto* eligibility requirement for directors of registered charities under the ITA
- CRA had been concerned that applications for charitable status were being submitted by individuals who had been involved with other charities and Registered Canadian Amateur Athletic Associations (RCAAA) that had their status revoked for serious non-compliance

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- In the past, CRA could not refuse to register or revoke the status of a registered charity or RCAA based on these concerns
- Budget 2011 now permits CRA to refuse or revoke the registration of a charity or a RCAA or suspend its ability to issue official donation receipts, if a member of the board of directors, a trustee, officer or equivalent official, or any individual who otherwise controls or manages the operation of the charity or RCAA is an "ineligible individual"

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- Charities must find a way to deal with a director that is an ineligible individual (generally only the members can remove a director)
  - By-laws will now need to include a new requirement that the directors must not be an "ineligible individual" as defined under the ITA at the time that they become a director and during their tenure
- Removal of management staff that are "ineligible individuals" could have important employment law ramifications
  - For existing staff it may difficult to remove them
  - For new management staff it will be important to include this in an employment contract

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**8. POLITICAL ACTIVITIES**

**a) New Rules and Sanctions Involving Political Activities**

**1) Key CRA Policies, ITA Provisions and Resources**

- CRA Policy Statement (CPS – 022) "Political Activities" dated September 2, 2003
- New web pages highlighting and explaining key elements of the Policy Statement
- CRA Advisory on Partisan Political Activities
- CRA Policy Commentary, Political Party Use of Charity Premises (CPC-0070)
- Speech by the Director General of the Charities Directorate on May 4, 2012
- These documents are available on the CRA website <http://www.cra-arc.gc.ca/chrts-qvno/chrts/plcy/menu-eng.html>

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**2) Three Categories of Activities**

- Politically related activities undertaken by a registered charity can be separated into three categories:
  - i. Charitable Activities (permitted without limits)**
    - A charitable activity is an activity undertaken to achieve a charitable purpose
    - If an activity is considered by CRA to be charitable, then it is permitted without limits
    - Under certain circumstances, communication with a public official or the public can be a charitable activity (e.g. submission to a public official on a law or policy provided that it relates to and is subordinate to the charity's charitable purpose, is well reasoned, and does not contain information that is false, inaccurate or misleading)

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**ii. Political Activities (permitted up to prescribed limits)**

- An activity is presumed to be political if a charity
  - **Explicitly** communicates a call to political action, or to the public that the law, policy or decision of any level of government in Canada or a foreign country should be retained, opposed or changed, or
  - **Explicitly** indicates in its material that its activity is intended to incite, organize or pressure governments to retain, oppose or change the law, policy or decision of a government
- Political activities are permitted if they are: non-partisan, connected to and subordinate to the charity's purpose, and fall within the general 10% of resource spending limit
- However, how resources (i.e., funds, property and people) is to be calculated is not clear

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**iii. Prohibited Activities**

- Prohibited activities are either illegal or involve partisan political activities and therefore are not permitted at all
- "Partisan political activity" involves the "direct or indirect support of, or opposition to, any political party or candidate for public office"
- CRA Advisory contains examples of prohibited partisan political activity, such as
  - Gifting charity funds to a political party that supports the charity's views on a given matter
  - Making public statements (written or oral) that endorse or denounce a candidate or political party

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**b) Impact of Budget 2012 on Political Activities**

- Budget 2012 impacts charities and RCAAs with regards to political activities in three ways
- First, Budget 2012 expands the definition of political activities to include certain gifts to qualified donees
  - Budget 2012 expands the definition of "political activities" under subsection 149.1(1), to "include the making of a gift to a qualified donee if it can reasonably be considered that a purpose of the gift is to support the political activities of the qualified donee" ("QDs")

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- The focus is on the intent of the donor charity, not the intent of the recipient QD
- This change would result in a double count of political activities, once by the donor charity and once by the recipient QD
- Three possible scenarios in determining "can reasonably be considered"
  - Written designation to use the gift for the political activities of the QD
  - No written designation, then look at other circumstances to see if there was "a purpose"
  - Written designation to not use the gift for the political activities of the QD

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- Likely best to avoid multi-purpose gifts, because Budget 2012 simply refers to "a purpose", so any political purpose for any part of the gift may taint the whole gift
- Funding charities that are caught by the new inclusion rules will have to track and report political activities the same way as charities directly involved in political activities
- As a result, funding charities that do not want to have to track political activities in their T3010 should designate in writing those gifts that are not to be used for political activities by the recipient QD

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- Second, Budget 2012 introduces new intermediate sanctions
  - Where a registered charity exceeds the limits in the ITA for political expenditures (generally 10% of its total resources a year), CRA can impose a one year suspension of tax receiving privileges (in addition to revocation)
  - Where a registered charity fails to report any information (not just political activities) that is required to be included on a T3010 annual return, CRA can suspend its tax receiving privileges until CRA notifies the charity that it has received the required information

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- This second sanction emphasizes the importance of having the board, as well as having legal and accounting professionals, review and approve the T3010 annual return before filing it with CRA
- \$8 million committed to enforcement by CRA in Budget 2012, including educational initiatives and webinars

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- Third, As promised in Budget 2012, CRA has released a new Form T3010(13) *Registered Charity Information Return*
- See *Charity Law Bulletin* No.305 for overview of the T3010(13)
- The new form requires more disclosure concerning political activities
- The increased requirements are found in section C5 of the T3010(13) and in Schedule 7, *Political Activities*
- Section C5 now asks if the charity carried on any political activities during the fiscal year, "including making gifts to qualified donees that were intended for political activities"
- Line 5032 of C5 requires a charity to report the total amount it received from outside Canada that was "directed to be spent on political activities"

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- Schedule 7, consists of three tables:
- Table 1 - a charity must describe its political activities, including any gifts it made to qualified donees that are intended for political activities, and explain how these political activities relate to its charitable purpose
- Table 2 - a charity must disclose how it has conducted its political activities
- Table 3 - a charity that entered an amount on line 5032 must disclose
  - The political activity that the funds were intended to support
  - The amount received from each country outside Canada, and
  - The corresponding country code
    - However, there is no requirement that the charity identify the name of the foreign donors

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**c) Practical Implications for Charities**

- Know the rules before becoming involved in political activities
  - Read CRA's Policy Statement, visit the new web pages and review the new T3010(13)
- Ensure that activities are either "charitable activities" or are "permitted political activities"
- The decision to become involved in permitted political activities should be authorized by the board of directors of the charity
- Ensure that any permitted political activities undertaken fall within expenditure limit (i.e., generally within the 10% resource limit)

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- It is essential to keep careful books and records and do appropriate allocations of all expenditures with respect to permitted political activities
- Avoid any prohibited partisan political activities
- Gifts to QDs should generally include a written designation which states that the gift should not be used for the political activities of the recipient QD
- Have the board of directors, as well as accounting and legal professionals, review and approve the T3010 prior to filing, due to the imposition of new intermediate sanctions and greater public scrutiny
- For more information, see *Charity Law Bulletin* No.286, "Playing By the Rules: Political Activities Fair Game for Charities" at [www.charitylaw.ca](http://www.charitylaw.ca)

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**9. CRA T3010**

- T3010 is the annual Registered Charity Information Return (includes a four-page form and 7 schedules)
- New T3010 Form released
  - CRA has released new T3010 forms for charities with fiscal periods ending on or after January 1, 2013
  - Charities will be required to give more details about their political activities
- Must be filed within 6 months after fiscal year end
  - Must be filed on time
  - Do not go by the postage date stamp, but when the Charities Directorate in Ottawa receives it

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- Available on CRA's website - need to ensure information is accurate and need to obtain board approval
- Failure to file the T3010 will result in revocation of charitable status - this is the most common cause for revocation of charities
- Upon revocation, the charity will be liable to pay a revocation tax equal to the full value of its remaining assets

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- If charitable status is lost due to failure to file the T3010, the charity will need to re-register
  - Submit a new application - which is treated the same as if it is applying for the first time, must meet all *current* requirements, which may be different than when the charity first registered, and approval not guaranteed
  - Pay \$500 penalty upon CRA agreeing to grant registration
  - Submit all missing T3010s

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### 10. BOOKS AND RECORDS

- Failure to keep proper books and records could be cause for
  - Suspension of tax receipting privileges
  - Revocation of charitable status
  - Possible other consequences, e.g.,
    - Unable to provide adequate evidence to defend a legal claim
    - Affect insurance coverage (e.g. if occurrence based insurance policy)
    - Poor donor relations, where applicable
- Records must be kept at an address in Canada that is on file with CRA

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- Must keep books and records in either English or French
- CRA requires charities to keep “adequate books and records” (including source documents) so that CRA can verify revenue, expenditures, resources spent on charitable (and non-charitable, if any) activities
- Different records to keep include: governance records, financial records, and operational records
- Must be kept for the time period required by the ITA and CRA, with different requirements for different types of record
- Consider adopting a books and records policy

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