The Regulator’s Perspective: Steering Clear of Compliance Concerns

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Church and Charity Law Seminar
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Seminar Outline

1. Understanding the Regulator
2. Our Approach to Compliance
3. Common Compliance Issues
4. Steering Clear of Compliance Concerns

Understanding the Regulator - Legal framework

- Two sources of law:
  1. Income Tax Act - outlines requirements and obligations of charitable registration
  2. Court decisions - determines what purposes and activities are charitable
- Canada Revenue Agency’s interpretation of the law expressed through policy guidance
Understanding the Regulator - Broad stakeholder interests

- Charitable sector
  - Diverse range of entities
- Public
  - Donors, taxpayers/Canadians
- Professionals/ Intermediaries
  - Lawyers, accountants, fundraisers

Our Approach to Compliance - Compliance continuum

- Facilitating voluntary compliance
  - Education - website, guidance products, webinars
  - Client services, including telephone support
- Assisting compliance
  - Application review and advice
  - Annual information return follow-up
- Enforcing compliance
  - Field audits and litigation (outcomes - education letters, compliance agreements, sanctions, revocation)

Our Approach to Compliance - Charities audit program

- Audit Program
  - Approximately 1% of charities audited each year
- Types of Audits
  - Office Audits - conducted out of headquarters
  - Field Audits - conducted at the charity’s premises
Our Approach to Compliance
- How are charities selected for audit?
  ▪ Random audits
  ▪ High risk files
  ▪ Audit projects to review specific issues or concerns
  ▪ Compliance agreement follow-ups
  ▪ Exploratory audits

Our Approach to Compliance
- Educate first
  ▪ Provide opportunity to correct compliance issue
  ▪ Consider whether non-compliance is intentional or unintentional
  ▪ Utilize compliance agreements
  ▪ Apply sanctions or revocation where warranted

Our Approach to Compliance
- Religious charities selected for audit

- Total Audits
- Religious Audits

- 2010-2011: 28%
- 2011-2012: 34%
- 2012-2013: 33%
Common Compliance Issues
- Receipting issues
- Improper receipts - important elements missing;
- Receipting for services - not permitted;
- Not properly establishing fair market value;
- Inadequate books and records to verify receipts, revenue and expenditures

Common Compliance Issues
- Religious tuition fees
- Schools that are registered charities may issue receipts for religious tuition fees if they:
  • Teach religion exclusively; or
  • Operate in a dual secular/religious capacity
- Receipts may be issued for the religious portion of tuition fees
- See IC 75-23 for more information
Common Compliance Issues
- Gifts to non-qualified donees
  - Registered charities may only use their resources in two ways:
    - By carrying on their own charitable programs; or
    - By making gifts to qualified donees
  - Gifting to non-qualified donees is a serious issue

Common Compliance Issues
- Direction and control
  - A charity that operates through an intermediary must maintain direction and control over its resources
  - A properly structured agreement helps demonstrate direction and control
  - Even when agreement exists, charities sometimes fail to properly implement and monitor

Common Compliance Issues
- Political activities
  - Charities cannot have political purposes
  - A charity may carry out a limited amount of political activity provided they are:
    - Connected to the charity’s purpose
    - Subordinate to the charitable purpose
    - Non-partisan in nature
Steering Clear of Compliance Concerns
- Establish internal controls and policies for receipting and expenditures
- Ensure direction and control by:
  - Written agreements
  - Monitoring and supervising
  - Clear and complete instructions
  - Separation of funds

Steering Clear of Compliance Concerns
- Client service
  - Call centre, written enquiries
- Website
  - Guidance products, information on operating a registered charity
- Sector outreach
  - Information sessions, webinars, electronic updates and newsletters

Thank you!
Client Services - General Inquiries
1-800-267-2384

Charities Information on the Web:
www.cra.gc.ca/charities

Charities Electronic Mailing List:
To connect, go to our Website main page, bottom right, and click on “Email list sign-up”