
21ST ANNUAL CHURCH & CHARITY LAW SEMINAR

Mississauga – November 13, 2014

T3010 Information Return: Tips and Traps

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OVERVIEW


- General Tips
- Identifying Common Traps
- Avoiding Specific Traps and Corresponding Tips



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A. GENERAL TIPS


- Under the *Income Tax Act* ("ITA"), all registered charities are required to file an annual information return ("Return")
- The T3010 is key part of the Return, which includes various schedules and worksheets, as applicable
-  The T3010 has a dual purpose: to provide information to the public/donors; and to ensure compliance by the charity with the ITA and CRA's policies
- The T3010 is a public document and the key way by which CRA obtains information about a charity's operations, which can then be reviewed during audit

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1. T3010 Filing Requirements

- All registered charities must file a Return no later than six months after the end of their fiscal period
- A charity must:
 - ensure it files the correct version of the T3010
 - answer all applicable questions on the T3010
 - report all amounts to the nearest Canadian dollar
- Failure to provide all necessary information in T3010 can now result in suspension of receipting privileges
- CRA annually updates the T3010 form, which is available on its website
- Charities are also subject to other federal and provincial filing requirements




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2. Why is Filing Important?

- A charity that does not file or files an incomplete T3010 can have its registration revoked, which means that it:
 - is no longer exempt from tax
 - cannot issue official donation receipts
 - has to transfer its property to an eligible donee or be subject to a revocation tax
- CRA will usually give a charity a chance to late file
- If the T3010 is not received within 7 months, CRA will send a *Notice of Intention to Revoke*
- CRA can apply a \$500 late-filing penalty, which is usually only done after registration is revoked
- Re-registration is not guaranteed




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3. Overall Advice

- Do not leave completing the T3010 to the last minute
- Enter all requested information on the Return itself
- Leave questions blank if they do not apply
- Have a knowledgeable accountant and/or legal counsel review the T3010 to ensure proper completion
- Have the board of directors review and approve the T3010 at the same time as financial statements
- Section E must be signed by a director, trustee or like official who is authorized to sign for the charity
- File all financial statements with the T3010
- Keep a copy of the Return and Form 1242 (showing financial totals) for your records



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B. IDENTIFYING COMMON TRAPS

- Unclear legal basis for some questions
- Some information is unnecessary or misleading
- Some inconsistent and unclear terminology
- Potential confidentiality concerns, i.e. supporters of potentially controversial projects and activities can be identified
- *Completing the Registered Charity Information Return* (the "Guide") needs more elaboration
- There is a risk of serious implications if a charity makes a small mistake on its T3010, even if it made reasonable efforts to complete the Return correctly

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C. AVOIDING SPECIFIC TRAPS AND CORRESPONDING TIPS

1. Completing Form TF725 (Basic Information)

- TF725 must be filed even if unchanged from prior year
- TF725 reflects CRA's records, meaning information should be annually reviewed and confirmed
- The person who signs the T3010 also certifies that the TF725 is correct, complete and current
- Information that can be directly changed on TF725:
 - Address, telephone, fax number, email and website
 - Name of public contact person of the charity
 - Names other than the charity's legal name
 - Charity's primary areas of activity

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- Information that cannot be directly changed on TF725:
 - Legal name of the registered charity
 - Charities must send document formally changing the name to CRA (i.e. supplementary letters patent, etc.)
 - Designation and registration date and number
 - Charities must file Form T2095, *Registered Charities: Application for Re-Designation*
 - Date of the fiscal year end
 - Enclose letter containing new fiscal year end, reason for the change, proposed effective date, and signature of a director/trustee or other authorized representative of the charity

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2. Section A: Identification

a) A1 (Line 1510): Was the charity in a subordinate position to a parent organization?

- CRA Guidance
 - Tick yes if charity is internal branch, etc. of another registered charity or has governing documents and its activities are determined by another organization
- Potential Traps
 - Terms “subordinate position” and “parent organization” are unclear
 - Question assumes “parent” is a registered charity, which likely not the case if it is a foreign entity

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- Unclear if CRA is trying to determine whether the charity is a conduit, an agent or otherwise not freely acting of its own will
- Unclear what happens if the parent organization does not agree that it is in a dominant position
- Tips to Avoid Traps
 - If separately incorporated with own number, answer “no” to this question even if affiliated with larger charity
 - CRA-approved “association” with another charity is not subordination for the purposes of this question

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b) A2 (Line 1570): Has the charity wound-up, dissolved or terminated operations?

- CRA Guidance
 - If the charity is no longer operating or no longer wants to be registered, tick yes, and attach a letter asking CRA to revoke the charity’s registration
- Common Traps
 - Compound questions are difficult to accurately answer, i.e. a charity can be wound up but not dissolved, dissolved without being wound up, etc.
 - Winding up can refer to either activities or legal existence

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- Tips to Avoid Traps
 - Seek legal advice if you think this question applies to your charity
 - If it does, then may need to request voluntary revocation of charitable status from CRA and/or take steps to formally dissolve as a corporation or unincorporated association

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3. Section C: Programs and General Information


a) C2: Describe all ongoing and new charitable programs the charity carried on in the fiscal period

- CRA Guidance
 - ‘Program’ covers all charitable activities carried out through employees, volunteers, or intermediaries as well as gifts made to qualified donees (QDs)
- Potential Traps
 - Charities often mistakenly include fundraising activities instead of charitable activities here
 - It is not clear if “grant-making charities” are the same as registered charities that make gifts to QDs

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- No legal basis for the Guide to state that if a charity is considering new activities (as opposed to new purposes), it should contact CRA
- Tips to Avoid Traps
 - The wording in this section should clearly and accurately reflect all of the charity’s programs
 - The charity should provide additional information if it is planning any new programs in the coming year



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b) C3 (Line 2000): Did the charity make gifts or transfer funds to qualified donees or other organizations?

- CRA Guidance
 - If yes, the charity must complete Form T1236, *Qualified Donee Worksheet*
- Potential Traps
 - Question is broad since any payment would constitute a transfer of funds
 - Unclear if this broad meaning is intentional
 - No clear place in the Return for a charity to report a "designated gift" in accordance with anti-avoidance rules and the disbursement quota

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- It is unclear whether "other organizations" refer to qualified donees or to non-qualified donees
- Form 1236 deals only with qualified donees but the question is about transfers that are not necessarily gifts
- Tips to Avoid Traps
 - If a charity gave gifts to qualified donees, the amount gifted should be reported at Line 5050, Form 1236 must be completed, and the amounts at Lines 4920, 4950 and 5050 must accurately reflect the gifts
 - While best to do prior to making gifts, need to check with CRA Charities database that all gift recipients are registered charities before listing them on Form 1236

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c) C4 (Line 2100): Did the charity carry on, fund or provide any resources through employees, volunteers, agents, joint ventures, contractors or other individuals, intermediaries, entities, or means (other than qualified donees) for any activity/program outside of Canada?

- CRA Guidance
 - If yes, the charity must complete Schedule 2



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- Potential Traps
 - Question doesn't ask for same information about activities carried on inside Canada through agents, etc., although implications are the same, i.e. gifts to non-qualified donees in Canada are prohibited
- Tips to Avoid Traps
 - Answer yes if you transfer any monies to non-QDs
 - Review if can answer yes to questions 5 or 6 (Sch. 2) as this can serve as evidence of "direction and control"
 - Additional CRA compliance steps likely need to be taken

(See CRA CG-002, Canadian Registered Charities Carrying on Activities Outside Canada)

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d) C5: Political Activities

- CRA Guidance
 - A registered charity can only pursue political activities if they are non-partisan, related to the charitable purposes and limited in extent
 - A political activity includes making gifts to QDs that are intended for political activities
- Potential Traps
 - The meaning of "limited extent" is unclear
 - Defining "political activities" should be based on what is reasonable to consider
 - It is unclear whether total amount "spent" on political activities includes money spent or resources used

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- It is unclear how to track volunteer time and other donated "resources"
- Need to answer question correctly or risk penalties

- Tips to Avoid Traps
- If answer yes to line 2400 and/or enter amount on Line 5032, then must complete Schedule 7
- Keep careful books and records to demonstrate that substantially all resources are devoted to charitable activities
- If an expenditure is both political and charitable, the charity can make a reasonable allocation
 - Where substantially all (90%+) of the activity is either charitable or political, then whole expenditure is so categorized

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e) C7 (Line 2700): Did the charity pay external fundraisers? CRA Guidance

- A third party fundraiser solicits funds for a charity, but is not employed by the charity
- Gross revenue means the amount collected before considering the cost of goods or other expenses
- In Schedule 4, charities must provide information about donors not resident in Canada

• Potential Traps


- It can be difficult to balance protection of confidential information and what is necessary to disclose
- It can be difficult to properly categorize external fundraisers who later become paid employees

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• Tips to Avoid Traps

- Ensure that the organization's fundraising cost ratio is proportional to its activities
- Be aware and able to describe the "arm's length" status of any external fundraisers
- Questions on the T3010 about fundraising expenditures should be read together with CRA Guidance, CG-013, *Fundraising by Registered Charities*, i.e.,- evaluating the fundraising ratio




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f) C10 (Line 3900): Did the charity receive any donations or gifts valued at \$10,000 or more from a donor that was not a resident in Canada?

• CRA Guidance

- If multiple donations from one donor over \$10,000 are received, then charity must report




• Potential Traps

- Even if make reasonable efforts to ask, donors may not give true responses about residency
- There is a risk of penalties even if the charity makes substantial efforts to answer correctly
- Donors could see this question as intrusive

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- Tips to Avoid Traps
 - Charities should carry out a high level of due diligence when trying to determine if a donor is resident in Canada
 - Review if goods/services provided by foreign affiliate for free constitute donations over \$10,000 and need to be reported here
 - Need to co-ordinate with Sch. 7 on Political Activities



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g) C14: Did the charity issue any of its tax receipts for donations on behalf of another organization?


- CRA Guidance
 - If the charity issued official donation receipts for another organization, tick yes
- **TRAP!**
 - Charities are not permitted to issue receipts on behalf of another organization and cannot allow another organization to use registration number
- Tips to Avoid Traps
 - Never be a conduit for another charity
 - If a charity must answer “yes” to this question, it should seek legal advice to consider strategy

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4. Financial Information (Section D or Schedule 6)

- Only complete either Section D or Schedule 6, *Detailed Financial Information*
- Questions in Section D and Schedule 6 are similar, although Schedule 6 requires additional information
- Complete Schedule 6 if:
 - The charity’s gross revenue is more than \$100,000
 - The amount of all property (i.e. investments) not used in charitable activities or administration is more than \$25,000
 - The charity has permission to accumulate property during the fiscal period



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a) Line 4020: Was the financial information reported prepared on an accrual or cash basis? (Section D and Schedule 6)

- CRA Guidance
 - Accrual basis records revenue in fiscal period in which the charity earned it, even if the said revenue was received after end of said period
 - Cash basis records only revenue or expenditures the charity received or paid during the fiscal period
- Potential Traps
 - Some charities use a combination of an accrual and a cash basis, which can result in answering this question incorrectly

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b) Summary of financial position (Section D)

- CRA Guidance
 - Line 4050: Did the charity own land or buildings?
 - Line 4400: Did the charity borrow from, loan to, or invest assets with any non-arm's length persons?
- Potential Traps
 - Unclear why land & buildings are singled out instead of other assets
 - Unclear whether ownership refers to any point during the year or the end of the year
 - Potential disconnect between the information required by this question and that set out on the charity's financial statements

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c) D3: Revenue (Section D and Schedule 6)

- CRA Guidance
 - Line 4500: Total eligible revenue for which the charity issued tax receipts (do not include gifts received from other charities as eligible gifts)
 - Line 4505: Enter the value of all 10-year gifts
 - Line 4630: Total non-tax received revenue from fundraising
- Potential Traps
 - Unclear if Line 4500 is to be read with Line 4571, i.e. tax-receipted revenue outside of Canada
 - 10-year gifts has been irrelevant since 2010 budget
 - Revenue from sponsorship (Line 4630) is not necessarily fundraising

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- Tips to Avoid Traps
 - Calculate charity's fundraising ratio and determine if onside of CRA Guidance, CG-013, *Fundraising by Registered Charities*
 - Do this by adding up lines 4500 and 4630, which are then divided by amount at line 5020
 - Ratio under 35% unlikely to generate questions from CRA
 - If over 35%, review if any portion of line 4530 can be moved over to line 4630 to potentially lower the ratio
 - Be aware of public nature of these amounts as anyone can calculate your charity's ratio using the T3010, resulting in possible negative press

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d) D4: Expenditures (Section D and Schedule 6)

- CRA Guidance
 - Line 4860: Enter the total amount paid for professional or consulting services
 - Line 5000: Enter the amount of all expenditures on charitable activities
- Potential Traps
 - Line 4860 does not distinguish between expenditures for charitable activities and those for administration
 - The Guide should provide more information to small charities about how to allocate these expenditures

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- Tips to Avoid Traps (Schedule 6, Expenditures)
 - Correctly transfer data from financial statements
 - All expenses must first be reported on one of lines 4800-4920 and then re-categorized as one of: charitable activities (5000), administration (5010), fundraising (5020), political (5030) or other (5040)
 - Highest amount to be in line 5000 (charitable activities)
 - High amount(s) on lines 5010-5040 will raise red flags
 - Do appropriate allocation of expenditures between charitable activities (line 5000) and other expenditures (lines 5010 to 5040)
 - For example, charitable activities can include all expenses for operating programs such as salaries for program staff

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e) Other Financial Information (Schedule 6)

- CRA Guidance
 - Lines 5900/5910: Enter the value of property not used in charitable activities or administration during the 24 months before/after fiscal period
- Potential Traps
 - The disbursement quota (DQ) is calculated using Lines 5900 and 5901
 - Unclear if “value” is intended to be an average, highest amount, lowest amount or another value
 - If a trust’s terms do not allow the trustees to use the capital of the trust, trustees may find it difficult to meet the DQ if trust has insufficient income


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- Tips to Avoid Traps
 - A charity has met its DQ if:
 - amount spent on charitable programs (line 5000);
 - gifts made to QDs (Line 5050) minus any designated gifts; or
 - amount of an approved reduction (Line 5750) equals or exceeds the spending requirement
 - Separate charitable expenditures from political, administrative or fundraising expenditures
 - Keep records of disbursement excesses or shortfalls from previous years
 - Use excess from previous fiscal periods (5) to address shortfall in current year

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5. Schedule 2: Activities Outside of Canada 

- CRA Guidance*
 - Line 200: Total expenditures for activities carried on outside Canada, excluding gifts to QDs
 - Line 210: If any of the charity’s financial resources were used for activities outside Canada under any kind of an arrangement, tick yes (use applicable country code)
- Potential Traps
 - It is unclear how this question should be answered where payments were made to qualified donees outside Canada

*Also see CG-002, *Carrying out Activities Outside of Canada*

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- Some qualified donees operate both inside and outside of Canada, making it difficult to answer this question accurately
- It is unclear if "spent" refers only to financial resources or also includes personnel
- Disclosing the names of individuals or organizations who act as intermediaries could have security ramifications

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6. Schedule 7: Political Activities

- CRA Guidance
 - Describe the charity's political activities, including gifts to QDs intended for political activities
 - Identify the way the charity participated in or carried out political act
 - Enter amounts for any political activity that funds from outside of Canada were intended to support and the country from which they came
- Potential Traps
 - Charities that are involved in political activities are currently a CRA audit focus


*For more information on political activities, see presentations by Cathy Hawara and Terrance S. Carter

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Other Helpful Tips

- Directors Worksheet
 - ensure listed directors are up to date and coordinate with charity's corporate profile
 - set out dates of each director's term of office
 - include dates of birth for each director
- Consider reviewing past filed T3010s based on these traps and corresponding tips, seeking professional advice, if needed
- Make adjustments to past T3010s using Form T1240




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C. CONCLUSIONS

- Given serious consequences of incorrect Returns, charities must understand potential traps of the T3010 and the associated Guide
- Complete and correct Returns must be filed on time
- Charities should seek professional advice on T3010s (and forms) before submitting the Returns
- Given their public nature, T3010s should be reviewed and formally approved by a charity's board of directors before being filed with CRA

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