
22ND ANNUAL CHURCH & CHARITY LAW SEMINAR

Mississauga – November 12, 2015

Mysteries of the T3010: Focus on Special Issues

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OVERVIEW

- Purpose of T3010 and Filing Requirements
- Digging Deeper on the T3010
- Due Diligence Recommendations
- Voluntary Disclosure to CRA



Note: For more information about the basics of the T3010, please see last year's Church & Charity Law presentation "T3010 Information Return: Tips and Traps", available at www.carters.ca

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A. PURPOSE OF T3010 AND FILING REQUIREMENTS

1. Purpose of T3010

- Under *Income Tax Act* ("ITA"), all registered charities must file annual information return, of which the T3010 is the key document
- T3010 has two main purposes:
 - Provide information to the public/donors, i.e. it is largely a public document through CRA's database
 - Ensure compliance with the ITA and CRA's policies, eg. gifts to non-qualified donees ("QDs"), foreign activities, fundraising ratio, etc.




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2. Filing Requirements

- Must file the Return no later than six months after end of fiscal period or risk revocation
- Suspension of receiving privileges also possible if fail to provide all of the required information, with suspension to continue until missing information provided
- Failure to file T3010 is the most common reason that charities lose charitable status
- CRA will usually give a charity a chance to file late but only a very small "window"




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- Failure to file T3010 or filing an incomplete one within seven months of deadline will normally result in CRA commencing revocation process
- Having to re-register as a charity should be avoided if at all possible, i.e. it is a brand new application, a charity's "old" objects will be viewed with 2015 "lenses", with no guarantee of re-registration
- CRA can apply a \$500 late-filing penalty, which usually occurs as registration is revoked
- Upon revocation, a charity is no longer exempt from tax, cannot issue donation receipts and has to transfer property to "eligible donee" within one year period



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B. DIGGING DEEPER ON THE T3010

1. Question A1 - Was charity in a subordinate position to a parent organization?

- CRA Guidance says answer "yes" if the charity is an internal branch/division of another charity or has governing document determined by another organization
- Charities often confused by this question and answer "yes" even when they are independent charities with own governing documents, i.e. given affiliation with a denomination, larger ministry, etc.
- Answering "yes" will be potential issue where "parent" a non-qualified donee ("QD")
- CRA-approved "association" with another charity is not subordination for purposes of this question



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2. Section C, Question C2 - Describe all ongoing and new programs the charity carried on in the fiscal period

- Programs include ones by employees and volunteers, as well as QDs and intermediaries
- Good time for Board to review programs *vis a vis* the charity's objects/purposes set out in letters patent or articles, with any "disconnect" fixed by updating the objects/purposes or ceasing any program(s) not authorized by the objects
- Object changes must be done in compliance with governing legislation as well as charity's own governing documents
- Will need CRA approval for new objects/purposes, but not new programs if they fall within existing objects
- Co-ordinate objects with their description in financial statements

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3. Question C3 – Did charity make gifts or transfer funds to QDs or other organizations?


- If answer yes, then must include amount gifted at line 5050, complete Form 1236, QD Worksheet and ensure amounts at lines 4920, 4950 and 5050 accurately reflect the gifts
- Need to ensure that in completing QD worksheet that all organizations listed are, in fact, QDs, using CRA charities database
- As gifts to non-QDs are offside ITA, better course is to check QD status before making gifts
- Where problem detected, then charity should consider obtaining legal advice and possibly making voluntary disclosure to CRA

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4. Question C4 – Carrying on, funding or providing resources for any activity outside Canada

- Broadly worded question which encompasses:
 - Activities by charity's employees/volunteers
 - Activities through intermediaries (which are agents, contractors, etc. but not QDs)
 - Requirement to provide resources to either of them for activities outside Canada
 - If answer yes, must complete Schedule 2, Activities Outside Canada
- Unclear how to deal with situation where a charity funds a non-QD for activity in Canada




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5. Schedule 2, Activities Outside Canada

(a) Question 1, Line 200 - Expenditures Outside Canada

- Include dollar amount on all activities outside of Canada, i.e. both through employees/volunteers and intermediaries
- Gifts to QDs doing activities outside Canada not recorded here, use line 5050 and QD worksheet
- Report all amounts in Canadian dollars valued at time of expenditure




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(b) Question 2, Line 210 - Resources to Intermediaries

- Answer yes if using intermediaries to carry out activities
- Include amount from line 200 which has been transferred to intermediaries for foreign activities
- Include name of intermediary, country code and specific amount transferred
- Naming intermediary could have security implications in its country, e.g. religious work, because not confidential data
- Do not include amounts transferred to intermediary for services or products created outside of Canada but which are used by the charity in carrying out its own programs in Canada, although other tax issues may arise, e.g. HST



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(c) Questions 5/6, Lines 240/250 - Employees and Volunteers

- Check yes if employees/volunteers conduct foreign activities
- Consider whether can answer yes even if foreign activities primarily carried out by intermediary, as this show some direction and control by charity

(d) Related Issues


- Carrying on foreign activities challenging area
- Key is direction and control by a Canadian charity, both initially and ongoing, as well as proper books and records
- See CRA's Guidance, Carrying out Activities Outside of Canada (CG-002), and CLB #307, Foreign Activities: How to Get Ready for a CRA Audit, at www.carters.ca, for more information

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6. Question C5 – Political Activities

- Particular area of focus by CRA over last few years
- While basis rules regarding political activities have not significantly changed, charities engaged in political activities may be more vulnerable to audit
- Political activities undertaken by a charity fall into one of three categories
 - Charitable activities (e.g. advocacy)
 - Political activities (limited to 10% of resources)
 - Prohibited partisan activities
- Undertake political activities with caution!



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- For question C5, political activity includes own political activities, monies to QDs for political activities and monies outside Canada directed to be spent on political activities
- If answer yes to C5(a)/line 2400 and/or enter amount at C5(d)/line 5032, then must complete Schedule 7
- If expenditure is both charitable and political, then can make reasonable allocation, i.e. 90% rule
- Unclear if amount to be set out at C5(a)/line 2400 is actual amount spent or if need to quantify “resources” used
- See CRA’s Policy Statement on Political Activities (CPS-022) and other resources at <http://www.cra-arc.gc.ca/chrts-qvng/chrts/cmmnctn/plitcl-ctvts/menu-eng.html>

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7. Schedule 7, Political Activities

(a) Question 1 - Description of political activities

- Detailed description of charity’s political activities to be provided and how these relate to objects, which should be carefully crafted being mindful of CRA’s requirements
- Focus is on the specific law, policy, etc. that the charity was trying to influence and how it relates to its purposes

(b) Question 2 - Participation in Political Activities

- Need to check all applicable boxes on the way charity participated in political activities




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- Number of different ways possible, with charity to indicate the types of resources used for each way
- Although not defined in ITA, CRA says “resources” include charity’s total assets plus anything else that can further its purposes, e.g. staff, volunteers, financial and property (buildings, land, equipment, supplies, etc.)

(c) Question 3 - Funding from Outside Canada

- This table focused on amounts from foreign donors intended to support political activities
- Need to list political activity carried out with the monies, the amount of monies received and the applicable country code




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8. Question C10 – Donations/Gifts of \$10,000+ from non-residents

- Answer yes if receive multiple donations from same donor outside Canada which total \$10,000+
- If answer yes, must complete Sch. 4, Table 2 for each donation, providing name of donor (individual, corporation or other), value of gift, etc.
- Concern that charity may have difficulty in determining residency of donors, could offend donors in asking and may face penalties if provide incorrect answers
- Unclear how to deal with below fair market value resources/services provided by non-resident
- Need to coordinate answers here with Schedule 7 if donations in question are for political activity




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9. Question C14 – Did charity issue tax receipts for donation on behalf of another organization?


BEWARE - TRAP!

- Charities are not permitted to issue receipts in this situation and cannot allow another organization to use its registration number for receipting purposes
- Cannot be a conduit for another entity or risk having receipting privileges suspended and/or lose charitable status
- If must answer yes to this question, seek legal advice on best strategy, which may include voluntary disclosure to CRA



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10. Section D/Schedule 6 – Financial Information 

- Complete one or the other, not both
- Use Sch. 6 if gross revenue over \$100,000, if property not used in charitable activities/admin is \$25,000 or if charity does not have permission to accumulate property

(a) Revenue


- Addresses assets and liabilities of the charity, as well as its revenue, during fiscal period in question
- Used information in financial statements to complete T3010, although complete transfer of numbers may not be possible
- Certain line amounts are used to calculate the fundraising ratio

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(b) Expenditures


- Correctly transfer data from financial statements, which may need to be grouped differently in Schedule 6
- All expenses first reported on lines 4800 to 4920
- Then must re-categorize them as either: charitable activities (line 5000), admin (5010), fundraising (5020), political (5030) or other (5040)
- Key is highest amount in line 5000 (charitable)
- High amounts on lines 5010-5040 will raise flags



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- May need to do an allocation of expenses between charitable (5000) and other expenditures (5010-5040) to ensure that proper amount reflected for charitable activities
- Examples of expenditures which may be allocated between charitable and other expenditures:
 - Goods or services for the charity's beneficiaries
 - Facilities or equipment used to carry out charity's programs
 - Salaries paid to those engaged in charitable work
 - Research and development costs for new program(s)




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(c) Fundraising Ratio

- Charities must report fundraising expenditures on T3010
- Calculate charity's fundraising ratio and determine if outside of CG-013, *Fundraising by Registered Charities*
- Done by adding up lines 4500 (tax receipted gifts) and 4630 (non-tax receipted fundraising) and then dividing total by line 5020 (total fundraising expenditures)
- Ratio under 35% unlikely to raise questions by CRA
- If over 35%, see if any portion of line 4530 can be moved into line 4630 to lower ratio




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- Another possibility may be adding sponsorship monies and income from cause related campaigns to line 4630
- Be sure to include gross fundraising revenue on line 4630, not net fundraising revenue after expenses
- Re-check allocation of fundraising expenditures to see if any can be explained and justified as charitable, admin or political activities
- Be aware of public nature of these amounts and possibility of bad press
- Consider possible voluntary disclosure to CRA if ratio particularly high but there is game plan to reduce it

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11. Section E - Certification 

- Who may sign Section E of the T3010?
 - Must be:
 - Director/trustee of the charity (needs to coordinate with names on last Directors Worksheet (form T1235) filed with T3010) or
 - Like official who has authority to sign on behalf of the charity (through applicable CRA Authorization form)
 - Signatory must certify the accuracy of the return
 - Serious offence under the ITA to provide false or deceptive information

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C. DUE DILIGENCE RECOMMENDATIONS


1. Preparation, Review and Approval of T3010

- Do not leave completing T3010 until last minute and, once prepared, check accuracy and completeness
- Seek professional review of the draft T3010
- Board should review and, if satisfactory, approve T3010 at same time as financial statements
- Concern is the public nature of the T3010 (i.e. could go viral if problem identified) and its use as compliance tool by CRA (i.e. T3010 information will be used by CRA auditors in the future)
- Where Board aware of T3010 issue, then pro-active steps can be taken, e.g. legal advice, voluntary disclosure to CRA, public relations plan

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- File all applicable schedules and forms with T3010
- Also file financial statements with T3010
 - Should consist of balance sheet, income statement and prepared notes at minimum
 - Should accurately show different sources of revenue and the expenditures
 - CRA recommends financial statements should be professionally audited if over \$250,000
 - However, if incorporated, then incorporating statute will have mandatory requirements for when audits must be performed



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- Keep copies of entire return for your records
- Future electronic filing of T3010? Status update
- Consider reviewing past T3010s for potential errors based on issues raised in this presentation
- Where information in past T3010s needs to be corrected, then do so using the Registered Charity Adjustment Request (Form 1240) and file it with CRA
- Depending on issues identified in T3010, there may also be a need for the charity to make a voluntary disclosure to CRA




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D. VOLUNTARY DISCLOSURE TO CRA

- CRA encourages charities to approach it to discuss non-compliance, with the objective on CRA's part to work with charities to resolve difficulties and get them "back on track"
- Process by which a charity takes the "initiative" and discloses any identified non-compliance to CRA, i.e. before it is found by CRA during an audit or other investigation
- Can be initiated first by a charity on a "no-name" basis, which can thereafter be followed by written disclosure




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- Written disclosure by the charity should include:
 - A complete/accurate description of the non-compliance and amount of the charity's resources involved
 - An explanation for why the non-compliance occurred
- Upon receipt, CRA will assess the non-compliance and determine how to proceed, potentially requiring the charity to:
 - Correct the non-compliance with set time period
 - Enter into a compliance agreement or
 - Presenting a plan to prevent future non-compliance
- For more information, see "Bringing charities back into compliance" at <http://www.cra-arc.gc.ca/chrts-vnvg/chrts/dtng/vlntry-dsclsr-eng.html>

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