
22nd ANNUAL CHURCH & CHARITY LAW SEMINAR

Mississauga – November 12, 2015

To Keep or Not to Keep: Books and Records Under the *Income Tax Act*

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Books and Records Under the *Income Tax Act***

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OVERVIEW*

- Are You Required to Keep Books and Records?
- What are Books and Records?
- Keeping Books and Records
- Who Decides What is Adequate?
- What Happens If Your Books and Records are Inadequate?
- Practice Tips and Resources



*This presentation addresses the *Income Tax Act's* ("ITA") key books and records requirements related to Non-profit Organizations and qualified donees only, i.e. not other ITA requirements or federal or provincial statutes that may also apply

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A. ARE YOU REQUIRED TO KEEP BOOKS AND RECORDS?

- 1. Non-profit Organizations ("NPOs")**
 - Yes, NPOs are required to keep books and records in accordance with ss 230(1) of the *Income Tax Act* ("ITA")
- 2. Registered Charities**
 - Yes, registered charities must keep books and records (ss 230(2) ITA)

Yes
 No

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3. Other Qualified Donees ("QDs")

- Yes, most other QDs are also required to keep books and records including registered (ss 230(2) ITA)
 - National arts service organizations ("RNASOs")
 - Housing corporations
 - Municipalities and municipalities or public bodies performing a function of government in Canada
 - Prescribed universities outside Canada
 - Foreign charitable organizations who meet the requirements of ss 149.1(26) of the ITA
 - Canadian amateur athletic associations ("RCAAs")
- However, Her Majesty in right of Canada or a province and the United Nations and its agencies are not required to keep books and records

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B. WHAT ARE BOOKS AND RECORDS?









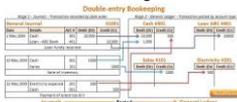




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- The ITA refers to books as "books of account," but does not define them
- However, s 5800 of the *Income Tax Regulations* ("Regulations") clarifies that
 - Books of account include general ledgers or other books of final entry summarizing the year to year transactions of the organization



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- "Records" are broadly defined to include
 - An account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form (ss 248(1) ITA)
- The key words here are "containing information" because s 230 of the ITA further sets out what kind of information NPOs, registered charities, and QDs' books and records must contain



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- Additional records are identified in Regulation 5800
 - Incorporated NPOs
 - Meeting minutes of directors and shareholders
 - Registered charities, RCAAAs, and RNASOs
 - Meeting minutes of members and executives
 - Governing documents and by-laws



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1. CRA's General Administrative Requirements

- CRA does not stipulate what specific books and records must be kept because the onus is on the taxpayer to demonstrate its entitlement to benefits or exemptions under the ITA and that it otherwise complies with Canada's tax law
- Records must be
 - Reliable, complete, correct, and substantiated
 - Made available to CRA officials
 - Kept, maintained, retained, safeguarded, and backed up by the taxpayer (responsibility cannot be delegated to third parties)



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- Books and records may include
 - Source documents such as invoices, receipts, contracts, delivery slips, deposit slips, bank and credit card statements, tax returns, correspondence
 - Accounting and other financial documents, e.g. working papers, financial statements, tax returns
 - Appointment books, logbooks, agreements, guarantees, and cancelled cheques



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2. What Must NPOs' Books and Records Contain?

- Information to determine "the taxes payable under [the ITA]...or the taxes or other amounts that should have been deducted, withheld or collected" (ss 230(1) ITA)
- A NPO is exempt from income tax under paragraph 149(1)(l) if it is not a charity, and
 - is organized and operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit, and
 - does not distribute or otherwise make available for the personal benefit of its members any of its income



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- For those NPOs that file a Form T1044, *Non-Profit Organization (NPO) Information Return*, CRA requires detailed books and records to verify
 - Amounts reported, e.g. membership dues, grants received, gifts, sales, payments to members, royalties
 - NPO's activities, the location of activities carried on outside of Canada (if any), and a copy of its mission statement (if filing for the first time)
- In 2009 CRA auditors reviewed a random sample of NPOs and found a "significant portion" did not meet at least one of the requirements

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- Accordingly, it is very important for NPOs to keep books and records that contain information to demonstrate compliance with the ITA, e.g.
 - Copies of governing documents which indicate its purposes are not charitable
 - Proposed operating budgets that demonstrate an intention to not generate profits, i.e. zero-budgeting as much as possible
 - Other documentation to show any profits earned were unanticipated, incidental, and arose from activities carried out in support of its non-profit purposes



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3. What Must Books and Records of Registered Charities and QDs Contain?

- The books and records of registered charities and other QDs must contain specific information under ss 230(2) of the ITA
 - Information related to any grounds for revocation
 - Duplicate receipts
 - Information to support the verification of donation tax credits and deductions




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a) Information related to any grounds for revocation

- QDs' books and records must contain "information in such form as will enable the Minister [of National Revenue ("Minister")] to determine whether there are any grounds for the revocation of its registration"
- QDs can be revoked for different reasons depending on the type of QD and if a registered charity, its designation as a charitable organization, public foundation, or private foundation, e.g.
 - ceasing to comply with the requirements for registration, improper or false receipting, unrelated business, ineligible individuals, failing to file an information return, excessive or prohibited political activities



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- The broad language of paragraph 230(2)(a) and the ITA's multiple grounds for revocation mean prudent QDs should keep a vast array of supporting documents as part of their books and records in order to be able to demonstrate the absence of any grounds for CRA to revoke its registration
- This is particularly vital because the onus is on the QD to show it meets the specific requirements of its registration under the ITA
- A lack of documentation makes it easier for CRA to conclude the organization no longer meets the requirements of its particular registration



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- Examples of supporting documents include
 - Expense accounts
 - Staff meeting minutes
 - Investment agreements
 - Promotional and fundraising materials
 - Copies of press releases, blogs, website archives
 - Proof of degree conferring powers from an appropriate educational authority
 - Contracts for services
 - Progress reports from partners delivering charitable programs and services outside Canada




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b) Duplicate receipts

- Paragraph 230(2)(b) of the ITA requires QDs to keep "a duplicate of each receipt containing prescribed information for a donation received by it"
- Regulation 3501 sets out the prescribed content of official receipts and content varies depending on the type of QD issuing the receipt
 - Registered organizations versus other recipients of gifts
 - Some QDs do not receive registration numbers so cannot include them on official and duplicate receipts



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c) Information to support the verification of donation tax credits and deductions

- Paragraph 230(1)(c) requires QDs to keep “other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under” the ITA
- Examples of supporting documents include
 - Appraisals relating to the determination of fair market value of gifts in kind and advantages
 - Detailed agreements to authenticate restricted and estate gifts
 - Certification of eligible recipient status from Environment Canada to receive ecological gifts



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C. KEEPING BOOKS AND RECORDS

1. Paper versus Electronic Records

- Records can be kept electronically if retained in “an electronically readable format” (ss 230(4.1) ITA)
- Kept electronically means “information is created, processed, maintained and stored electronically”
 - As opposed to creating electronic images or reproductions of original paper documents
- Electronically readable format means “information supported by a system capable of producing an accessible and useable copy”
 - Accessible → able to be accessed by CRA officials
 - Useable → compatible with CRA systems & software




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2. Cloud Computing and Electronic Books & Records

- You are probably cloud computing if you use programs and services such as Microsoft OneDrive, Microsoft Office Online, Google Drive, Apple iCloud, Dropbox, and Gmail to carry out your activities
- CRA requires that electronic records comply with national standards set by the Canadian General Standards Board
- Additional requirements include secure storage, offsite back up, audit trails, establishing procedures to prevent overwriting, allowing periodic testing, and controlling access to electronic records



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3. Where Must Books and Records Be Kept?

- NPOs, registered charities, and most QDs must keep their books and records in Canada
 - registered charities and most QDs must keep their books and records at an address in Canada recorded with the Minister
- The Minister also has the authority to designate where NPOs, registered charities, and most QDs must keep their records
- Prescribed universities outside Canada, registered foreign charitable organizations, and Canadian municipalities do not have to keep books and records in Canada



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- While CRA permits electronic record keeping, it does not permit electronic records to be kept outside Canada, even if they can be accessed within Canada
- Organizations that conduct e-commerce activities, keep electronic records, or cloud compute should verify the location of their servers and take steps to comply with CRA's server requirement
- NPOs can request CRA's permission to keep their records outside of Canada, but registered charities, RCAAAs, municipalities or public bodies performing a function of government, and housing corporations cannot



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4. What Language Must Your Books and Records Be Kept In?

- CRA suggests, but does not state, that books and records *should* be kept in English or French and translated from a third language
 - CRA may consider exceptions if translation requirements impose a “significant burden”
- Although the ITA does not require books and records to be kept in French or English, some NPOs and QDs will be required to keep their books and records in French or English if they are GST/HST registrants or claim a rebate or refund

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5. How Long to Keep Your Books and Records?

- Depends on the organization’s status under the ITA, the type of book or record, and whether the organization is incorporated
- Regulation 5800 and s 230 set out the retention periods for keeping records
 - Apply to electronic records (ss 230(4.1))
 - Books and records related to an appeal or objection must be kept until the process is resolved or appeal rights exhausted (ss 230(6))
 - The Minister can also demand a taxpayer retain certain books and records and supporting documents for a specific period (ss 230(7))



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- NPOs and registered charities must complete Form T137, *Request for Destruction of Records* and obtain the Minister’s permission to dispose of books and records outside the retention period
- Organizations should retain key books and records beyond these periods for a mix of reasons, e.g. to
 - Demonstrate due diligence in the event the organization or one of its donors is audited
 - Defend against a lawsuit or support an insurance claim
 - Preserve organizational memory
 - Establish a paper trail to show directors’ decisions were in line with restricted charitable purpose trusts

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Retention Periods for NPOs’ Books and Records

TYPE OF BOOK OR RECORD	UNINCORPORATED NPO	INCORPORATED NPO	RECOMMENDED RETENTION PERIOD
Governing documents			
General ledger or book of final entry	6 years after end of year ceased to exist	2 years after dissolution	10 years after end of year ceased to exist or 5 years after dissolution
Minutes			
Supporting status under ITA			
Information returns	6 years after end of tax year related or year ceased to exist	6 years after end of tax year related or 2 years after dissolution	10 years after end of tax year related or ceased to exist or 5 years after dissolution

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Retention Periods for QDs’ Books and Records

TYPE OF BOOK OR RECORD	REGISTERED CHARITY, RCAA, & RNASO	OTHER QDS	RECOMMENDED RETENTION PERIOD
Governing documents	2 years after revocation or corporate dissolution	2 years after corporate dissolution or 6 years from end of tax year ceased to exist	10 years after revocation or 5 years after corporate dissolution
Minutes	2 years after revocation or corporate dissolution	2 years after corporate dissolution or 6 years after ceased to exist	5 years after corporate dissolution or revocation or 10 years after ceased to exist
General ledger or book of final entry	2 years after revocation or corporate dissolution or 6 years after ceased to exist	2 years after corporate dissolution or 6 years after ceased to exist	5 years after corporate dissolution or revocation or 10 years after ceased to exist
Duplicate receipts	2 years after year gift made	2 years after year gift made	5 years after year gift made

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Retention Periods for QDs’ Books and Records

TYPE OF BOOK OR RECORD	REGISTERED CHARITY (INCLUDING RCAA & RNASO) & OTHER QDS	RECOMMENDED RETENTION PERIOD
Supporting status under ITA	2 years after corporate dissolution or 6 years after ceased to exist	5 years after corporate dissolution or 10 years after ceased to exist
Verification of donation tax credits and deductions	6 years after end of tax year related or 2 years after revocation or dissolution	10 years after tax year related or 5 years after revocation or dissolution or indefinitely for certain gifts and endowments
Information returns	6 years after end of tax year related or 2 years after revocation or dissolution	10 years after tax year related or 5 years after revocation or dissolution

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D. WHO DECIDES WHAT IS ADEQUATE?

- 1. The Organization**
 - The primary originator and regulator of a NPO or QD's books and records is the organization itself
 - Under a self-assessing tax system like Canada's, a well organized and efficient record keeping system is essential
- 2. CRA Officials**
 - CRA auditors and other officials who exercise discretion to develop policy, deal with appeals, and issue GST/HST and income tax rulings are expected to provide information and administer tax legislation "in a consistent manner"



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- The Taxpayer Bill of Rights grants NPOs and QDs the rights "to complete, accurate, clear, and timely information" and "to have the law applied consistently"
 - It is reasonable to assume a record keeping system that adheres to the ITA rules and CRA policy is likely to be adequate
- 3. The Courts**
 - Ultimately decide the adequacy of books and records, e.g.
 - Records of donor lists, board meetings and documents which identify recipients of funds should be kept (*Redeemer Foundation v MNR* 2008 SCC 46; *Prescient Foundation v MNR* 2013 FCA 120)



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E. WHAT HAPPENS IF YOUR BOOKS AND RECORDS ARE INADEQUATE?

- If a QD or NPO fails to keep adequate books and records, the Minister can specify what books and records must be kept (ss 230(3) ITA)
- If the books and records are not kept as specified, the Minister can issue a formal requirement to provide information or documents (s 231.2 ITA)
- QDs receipting privileges can be suspended for failing to keep adequate books and records and/or failing to comply with a formal requirement to provide information or documents (paragraph 188.2(2)(a) ITA)



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- QDs can be revoked for failing to keep adequate books and records and/or failing to comply with a formal requirement
- QDs and NPOs who fail to keep adequate books and records and/or fail to comply with a formal requirement may also be prosecuted by CRA for an offence or subject to a compliance order to provide the information by a judge
- The ITA has additional provisions to address those who destroy or alter books and records to evade tax or make false or deceptive entries in books and records



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F. PRACTICE TIPS AND RESOURCES

- 1. Records Management Policies**
 - Establish procedures to ensure the effective management of your organization's records including
 - The retention, maintenance, and disposal of books and records as required under the ITA and other pertinent legislation
 - Assign responsibility for its implementation and compliance to a senior officer, director, employee, or volunteer
 - Set and adhere to a retention and disposal schedule



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- Keep books and records safe and secure
 - Physically protect them from human intervention and natural disasters
 - Limit access to permanent and stored records
 - Encrypt electronic records
 - Fire and waterproof storage containers or facilities
 - Hire a third party to store and protect
- Contact CRA for general guidance
 - Not legally binding on CRA and may not address the specific facts of your situation
- Consult with legal counsel to obtain advice that can be relied upon




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2. CRA Publications and Online Resources

- *Registered Charities Newsletter No. 20* (October 2004)
- *Registered Charities Newsletter No. 26* (Winter 2006)
- Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* (8 July 2010)
- <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/bks-eng.html>
- IC78-10R5, *Books and Records Retention/Destruction* (June 2010)
- IC05-1R1, *Electronic Record Keeping* (June 2010)

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