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## **OECD REPORT SUGGESTS THAT CANADA'S CHARITIES ARE VULNERABLE TO ABUSE**

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*By Terrance S. Carter and Sean S. Carter\**

### **A. INTRODUCTION**

On February 24, 2009, the Organisation for Economic Co-operation and Development ("OECD") released its "Report on Abuse of Charities for Money-Laundering and Tax Evasion" (the "Report").<sup>1</sup> The Report is a survey of the status of charities in 19 countries, the common methods of the "abuse of charities" regarding tax fraud, and the detection strategies that different countries have adopted to combat these activities. In comparison with other countries surveyed in the Report, Canada stands out as an example of a jurisdiction where charities are particularly vulnerable to abuse by fraudulent tax and money laundering schemes. Though the Report is focused on reviewing tax laws as they apply to charities, the Report expands its findings to include terrorism related concerns. This *Anti-Terrorism and Charity Law Alert* will review the contents of the Report and provide some commentary on its impact for charitable sector regulation in Canada.

### **B. BACKGROUND ON THE OECD AND THE REPORT**

The OECD is a multi-lateral policy making institution, a voluntary association of various countries, including Canada, the United States and the United Kingdom, which come together to formulate mutually beneficial economic policy through a process of self-reporting and peer monitoring. The publications and

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<sup>1</sup> Available at [http://www.oecd.org/document/32/0,3343,en\\_2649\\_33767\\_42232352\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/32/0,3343,en_2649_33767_42232352_1_1_1_1,00.html)

findings of the OECD, while not legally binding on member states, still carry significant weight in the formation of policy and regulation by national tax regulators, such as the Canada Revenue Agency (“CRA”).

The Report was prepared by the Tax Crimes and Money Laundering Sub-Group of Working Party No. 8 of the OECD (“OECD Subgroup”). The Report is primarily based on answers given by member countries to questionnaires circulated in May 2008. The Report summarizes the status attached to charities in the countries surveyed and compiles the common methods of the misuse of charities by tax fraudsters and money launderers. The Report also gives examples of information resources and describes effective detection and investigation approaches adopted by some countries. Though the Report cites terrorism concerns in the charitable sector, the domestic legislation and government action reviewed by the Report is almost exclusively tax related and does not include an analysis of anti-terrorism legislation or initiatives.

### **C. THE REPORT’S FINDINGS**

The Report’s beginning remarks are that “(t)he abuse of charities is becoming more organised and more sophisticated.” The ‘abuse of charities,’ which the Report is investigating, is explained as occurring when the “sanctioned government status of a charitable organization is abused either by the charitable organization, by taxpayers and donors, or third parties, such as fraudsters who pose as charitable organizations or tax return preparers who falsify tax returns to defraud the government.”

In elaborating on the serious and increasing risks to national governments and the international community posed by charities being misused for tax fraud and money laundering, the Report references Canada as an example of a country that has reported substantial losses because of such activities. The Report indicates that in Canada “the abuse of charities is costing their treasury millions of dollars in terms of misappropriated tax relief such as the overpayment of refund claims or fraudulent claims.”

The Report also details a variety of common methods and schemes used to evade taxes and launder money that involve charities. Out of the fourteen example scenarios provided in the Report to illustrate the methods, Canada reported instances of eight of those scenarios. This variety of scenarios illustrating the common methods reported in Canada is at a level greater than any other surveyed country, including the United States. The scenarios reported in Canada include: sham companies posing as registered charities and soliciting

donations; directors of charities selling charitable receipts for a commission; counterfeit charitable receipts; and tax sheltered donations as a part of an illegal tax donation scheme.

In terms of the variety of sectors and occupational groups potentially involved in the abuse of charities, Canada leads all other countries in the number of groups involved according to the Report, with examples like: donation tax shelters and their promoters; professional fundraisers; and, terrorist organizations. Furthermore, in assessing the costs or level of tax evasion and money laundering associated with the abuse of charities, Canada reports the highest amount of surveyed countries, indicating that \$200 million in tax revenue is at risk.<sup>2</sup>

It is important to note, however, that Canada is not only referred to in the Report as an example of a jurisdiction struggling with the abuse of charities and tax fraud. Canada is also cited in the section of the Report detailing notable examples of investigative strategies and techniques to combat tax fraud. Among the measures mentioned in the Report that were undertaken “to increase compliance and deter non-compliance regarding the abuse of charities” were Canadian examples, including: CRA’s “donor alert link”;<sup>3</sup> the ability to search an online database of registered charities; and, CRA’s awareness campaigns to alert the public about donation schemes and abuse by intermediaries with respect to charitable donations.

#### **D. REPORT CLAIMS ABUSE OF CHARITIES BY TERRORIST ORGANIZATIONS IN CANADA**

The Report cites terrorist financing as a potential example of abusing charities for criminal purposes. Canada is listed as one of three countries that reported instances of the misuse of charities by terrorist organizations. Citing a Financial Transactions and Report Analysis Centre of Canada (“FINTRAC”) report,<sup>4</sup> Canada is noted as having reported situations of false charities being utilized to support terrorist organizations, though no specific details are given.

Although the Report mentions that terrorist organizations and their supporters are a part of the abuse of charities, it neglects to mention the vast anti-terrorism legislative and regulatory regime that is in place in Canada to monitor, deter and prevent these activities. The anti-terrorism legislation which directly impacts charities includes sweeping *Criminal Code* provisions regarding the financing and facilitation of terrorist

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<sup>2</sup> It should be noted that several countries such the United Kingdom and the United States declined to attempt to quantify the economic cost.

<sup>3</sup> <http://www.cra.arc.gc.ca/tx/chrts/dnrs/lrt/menu-eng.html>

<sup>4</sup> FATF Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, June 23, 2006.

activities and the controversial deregistration process under the *Charities Registration (Security Information) Act*. The Report only makes passing reference to the considerable information sharing and collection that happens in Canada regarding non-profits and registered charities between CRA, FINTRAC, law enforcement agencies and foreign governments. In addition, the Report does not indicate the percentage of the money being illegally diverted from taxation that is actually connected to terrorist activities or organizations.

As has been stated, it is outside of the intended purview of the Report, which is limited to issues of tax fraud and policy, to consider national anti-terrorism legislation in response to the misuse of charities. However, highlighting the potential abuse of charities by terrorist organizations without the corresponding inquiry into the various national anti-terrorism policies and their effectiveness may possibly give a misleading impression to the reader. Though the Report addresses the misuse of charities for fraudulent and illegal ends generally, it does not provide a substantive review of anti-terrorism measures or their efficacy as they apply to charities. The Report, therefore, has the potential to mislead its audience into believing that there is a lack of regulation with regards to Canada's anti-terrorism laws and that the misuse of charities by terrorist organizations has reached significant levels.

## E. CONCLUSION

The Report highlights the increasing scrutiny and oversight of the charitable sector that is occurring internationally. The Report demonstrates that tax authorities worldwide believe that the misuses involving charities are becoming more organized and sophisticated and that there is a need to develop new policies to combat these activities movement. In addition, there will be increased international scrutiny placed on Canada and its responses to these issues resulting from the Canadian government's own representations in the Report about the tax fraud and money laundering involving charities. Particularly with regards to terrorism concerns in Canada, the Report creates a sense of vulnerability and urgency without an informed discussion of Canada's anti-terrorism legislative and regulatory framework that impacts charities.

In the wake of the Report, there may well be impending initiatives to more vigorously regulate the charitable sector to prevent tax fraud and money laundering in Canada, which would be a mistake. During the formulation of such policies, if these changes were to occur, it would be important to carefully consider what policies are already in place and their effectiveness, particularly when the scope is broadened to encompass terrorism concerns. Canada has a robust, sweeping anti-terrorism legislative regime that applies to charities and this regime already has the potential to have a profound effect on the day-to-day operations of a charity. Charities in Canada need to be aware of anti-terrorism legislation, the responsibilities of compliance and the importance these issues hold for the government and regulators. The Report of the OECD, however, is not a good place to start in this regard, even though the name of the Report might suggest otherwise.