

HIGHLIGHTS OF CRA REGISTERED CHARITIES NEWSLETTER WINTER 2008

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A. INTRODUCTION

This *Charity Law Bulletin* highlights some key aspects of Canada Revenue Agency's ("CRA") *Winter 2008: Registered Charities Newsletter No. 31* ("Newsletter") released on November 28, 2008. The Newsletter focuses on CRA Charities Directorate's positions on: noted compliance issues for registered charities; priorities for 2008/2009; the new call for funding proposals; a public education update; and other important topics. The full text of the Newsletter is available at <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-31/charitiesnews31-e.pdf>.

B. WINTER 2008: REGISTERED CHARITIES NEWSLETTER NO. 31

1. Facts and Figures about Charities and CRA in 2007-08

For the 2007-08 fiscal year (April 1 to March 31), CRA's Charities Directorate reported, in part, that it:

- ◆ received 3,655 new applications for registration as a charity;
- ◆ received 606 applications for re-registration as a charity;
- ◆ formally denied 357 applications;
- ◆ registered 2,345 charities (including both new registrations and re-registrations);
- ◆ revoked the charitable status of 958 organizations at their request;
- ◆ revoked 771 registered charities because they did not file their annual registered charity information return within the six month period after their fiscal year-end;

- ♦ revoked 49 registered charities for other causes (e.g., because they ceased to comply with the requirements of the *Income Tax Act* (Canada) (“ITA”)); and
- ♦ completed 790 audits of registered charities as a result of public complaints, random selection, or based on a review of annual information returns.

2. Top 3 Compliance Issues

The Newsletter states that one of the first methodologies that CRA takes in fulfilling its mandate to monitor the operations of registered charities in accordance with the obligations set out under the ITA is through educational outreach initiatives. Through such activities, as well as the audit of charities, CRA has identified the following top three compliance issues: (1) failure to file the T3010 return; (2) T3010 – errors and omissions; and, (3) incorrect issuance of receipts.

CRA reports that each year thousands of charities file their returns late or fail to do so at all, which results in the revocation of their charitable status. In addition, CRA points out that the annual T3010 return is often completed incorrectly or is missing information, which can lead to an inappropriate assessment of a charity’s situation and even revocation in some instances. In this regard, to assist registered charities fulfil their filing obligations, CRA has provided important information about the T3010 return, available at <http://www.cra-arc.gc.ca/tx/chrts/prtng/rtrn/menu-eng.html>.

Finally, CRA states that registered charities must issue receipts that meet the ITA’s regulations regarding required contents of an official donation receipt. CRA further reports that establishing the proper fair market value of a gift is another compliance concern for charities, as they often mistakenly characterize the type of gifts that are receiptable. As such, CRA directs those charities in need of assistance with issuing receipts to review sample donation receipts, available at <http://www.cra-arc.gc.ca/tx/chrts/prtng/rcpts/menu-eng.html>.

3. Disbursement Quota Shortfalls

Another compliance obligation that registered charities may fail to meet is the disbursement quota (“DQ”), which is the minimum amount that they must spend annually on their own charitable programs, or on gifts to qualified donees. CRA explains that the purpose of the DQ is to ensure that registered charities actively use their tax-assisted donations to help others according to their charitable purposes.

CRA warns that charities should remember that there are serious consequences for not meeting their DQ requirement, and continuous DQ shortfalls could lead to the revocation of a charity's registration.

CRA suggests that registered charities can cover DQ shortfalls by drawing on disbursement excesses from the five previous fiscal periods. However, if excesses are not available, registered charities can create an excess in the subsequent year that it can use to make up for the shortfall. For more information about the DQ, see the following CRA publications: *Annual spending requirement (disbursement quote)* is available at <http://www.cra-arc.gc.ca/tx/chrts/prtng/spndng/menu-eng.html> and *Meeting the disbursement quota when filing the T3010A return*, which contains the disbursement quota checklist, is available at <http://www.cra-arc.gc.ca/tx/chrts/chcklsts/dq-eng.html>.

4. Growth in Number of Charities as of December 31, 2007

Compliance concerns become more pressing in light of CRA's report that the charitable sector has continued to grow in 2007 with a total of 83,215 registered charities. Charitable organizations with the purpose of advancing religion represent 32,062 (almost 40%) of the total number of charitable organizations, while those with other purposes beneficial to the community comprise 16,903 (approximately 20%) of the total number of charitable organizations. Together, these groups of charities account for more than half of the total number of registered charities. This growth in the charitable sector suggests a trend toward an increasing number of applications for charitable registration submitted to CRA.

5. Charities Incorporated in Ontario

CRA reports that its collaborative efforts with Ontario have resulted in an agreement authorizing CRA to collect, on behalf of the province, *Corporations Information Act* (Ontario) Annual Return information from registered charities incorporated, continued, or amalgamated in Ontario, and subject to the *Corporations Act* (Ontario).

CRA further explains that beginning in 2009, those charities incorporated, continued, or amalgamated in Ontario, and subject to the *Corporations Act* (Ontario), will receive and have the option to file a new *Director/Officer Worksheet and Ontario Corporations Information Act Annual Return* (RC232-WS)

with their T3010, *Registered Charity Information Return*. CRA anticipates that more information will be made available on its website at www.cra-arc.gc.ca in the coming months.

6. Charities Directorate's Priority for 08/09

In light of various factors, primarily the increase in number of applications for charitable registration, CRA's Charities Directorate has announced that its first priority for 2008/2009 is to reduce its inventory of applications for charitable registration that are on-hand and awaiting a decision. CRA states that it receives approximately one application every two hours, 24 hours a day, 365 days a year, and states that it is optimistic that the majority of these applications will be approved.

CRA notes, on the other hand, that every four hours, a registered charity ceases operation, through either voluntary or involuntary revocation of its registered charity status. One question that CRA seeks to address in light of this is whether organizations should be applying for registered status in the first place. In this regard, the Charities Directorate is developing material that will help organizations understand the obligations and responsibilities associated with operating a registered charity. CRA expects that this material will allow organizations to make informed decisions about whether they should apply for registered status. CRA anticipates this material to be available on its Charities and Giving website (<http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html>) in 2009. Other initiatives for helping charities fulfil their legislative and regulatory obligations include CRA's commitment to advancing education on such topics by providing funding to organizations to carry out the programs and activities that are necessary to increase awareness.

7. Charities Partnership and Outreach Program: New Call for Proposals

In 2005, CRA initiated the Charities Partnership and Outreach Program ("Program"), which was designed to support education and training projects on regulatory compliance for the charitable sector. CRA states that the main objectives of the Program are to improve the capacity of the sector to develop and deliver compliance-based education programs; increase the capacity of the charitable sector in meeting regulatory compliance requirements; and raise awareness among the charitable sector of regulatory obligations under the *Income Tax Act* ("ITA").

CRA has announced that, within the next few months, it will be accepting proposals for the 2009/2010 fiscal year, from registered charities and non-profit organizations servicing the charitable sector in Canada for funding projects that further the goals of the Program. CRA directs those interested to see Guide RC4411, *Charities Partnership and Outreach Program, Funding Guide and Application*, which provides information about the Program objectives, funding eligibility, completing the application, and the review process. Information regarding the upcoming 2009/2010 call can be found on CRA's Charities and Giving website at <http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html>.

8. Model Objects

On May 21, 2008, CRA released a non-exhaustive list of model purposes/objects that would be acceptable to CRA in order to assist organizations that wish to apply to become registered charities or are existing registered charities that wish to amend one or more of their purposes/objects. CRA indicates that the use of the model objects may speed up the decision making processes, as CRA would not have to discuss at length the wording of a non-standardized object/purpose with the applicants. Instead, CRA would likely only need to consider whether: the organization will deliver a public benefit; the proposed activities are charitable, will be carried out in a manner allowed by the ITA, and will further one of the organization's objects; and the organization is appropriately set up. For more information about and examples of CRA's model objects, see <http://www.cra-arc.gc.ca/tx/chrts/bcmng/md-ntr-eng.html>.

9. Public Education Update

In keeping with CRA's commitment to education and awareness regarding topics related to charities, the Charities Directorate has introduced the Speaker's Kit, *Giving to charity: Information for donors* ("Kit"). CRA states that the product may be of interest to the charitable sector, as it allows interested individuals and organizations to make presentations on wise donation practices to audiences in their communities. The Kit includes CDs and hard-copies of visual aids and written materials aimed at helping people understand more about donating wisely to charities and can be found on CRA's website at <http://www.cra-arc.gc.ca/E/pub/xi/rc306-k/README.html> or by request at 1-800-267-2384.

10. Court News – CRA Authorization to Obtain Donor List

The Supreme Court of Canada (“SCC”) released its judgment on July 31, 2008 in *Redeemer Foundation v. Canada (Minister of National Revenue)*, 2008 SCC 46 upholding the Federal Court of Appeal’s decision. This decision demonstrates CRA’s scope of authority as the SCC ruled that CRA did not require judicial sanction to obtain a donor list.

The appellant Foundation, a registered charity, operated a forgivable loan program that financed the education of students at an affiliated college. CRA was concerned that some donations to the program were not valid charitable donations because the donors’ contributions were made to finance their children’s education. CRA requested donor information, which the Foundation ultimately refused to provide. The SCC held that CRA was not required to obtain prior judicial authorization for the requested donor information, as the Minister was entitled to it under paragraph 230(2)(a) and subsection 231(1) of the ITA, which set out book and record keeping requirements for inspection, audit, and examination purposes. As well, the information was requested for a legitimate purpose, which was to investigate the validity of the loan program operated by the Foundation.

11. Disaster Relief – Information for Applicants for Charitable Status Undertaking Foreign Activities

Although in urgent circumstances CRA may expedite consideration of disaster relief organization applications, CRA clarifies that such organizations must meet the same essential requirements as all other applicants for charitable registration. One of the requirements that disaster relief organization applicants must meet is to show how they will direct and control their resources and activities outside Canada.

CRA’s Charities Directorate also reminds applicants that immediately after disasters, local authorities often limit access to an affected area to experienced relief organizations, such as the Red Cross. In this regard, CRA recommends that applicants should consider donating money or food, or offering services, to existing registered charities that have the experience and resources in place to respond quickly and effectively to disasters. For a list of registered charities, refer to CRA’s Charities Listings on its website (www.cra.gc.ca) and search “Disaster Funds”.

12. No Receipting on Behalf of Another Organization

CRA's Charities Directorate reiterates that registered charities cannot issue official donation receipts on behalf of another organization or charity. CRA further explains that under the ITA, donors can only obtain tax relief when they make a donation to qualified donees, including registered charities. Therefore, a donor is not entitled to tax relief when the transfer is made through a registered charity to a non-qualified donee. CRA warns that a charity that circumvents that intent and improperly provides tax relief by issuing donation receipts risks losing its charitable registration.

C. CONCLUDING COMMENT

Charities will find that the Winter 2008 CRA Newsletter provides helpful direction on a range of relevant issues, especially with respect to information concerning the CRA Charities Directorate's: noted compliance issues for registered charities; priorities for 2008/2009; new call for funding proposals; and public education update.

All charities, including board members, should give careful consideration to CRA's various guidelines found in their newsletters available at: <http://www.cra-arc.gc.ca/tx/chrts/whtsnw/menu-eng.html>. Other summaries of recent CRA newsletters can also be found at www.charitylaw.ca.