Canadian Charities Operating Abroad

CRA INFORMATION LETTERS

Here are some Information Letters from the Canada Revenue Agency that deal with issues of concern to Canadian Charities Operating Abroad. At the CRA website one can find a large number of other Information Letters, however, the CRA website does not divide the Information Letters or indicate which would be specifically of interest to Canadian registered charities operating outside of Canada. These letters are useful reading in addition to the CRA's Guide entitled "Registered Charities: Operating Outside Canada (RC4106)" and also the CRA's "Registered Charities Newsletter No. 20".

Mark Blumberg, B.A., LL.B., LL.M., TEP
Blumberg Segal LLP
Barristers & Solicitors
390 Bay Street, Suite 1202
Toronto, Ontario, M5H-2Y2

Tel. (416) 361-1982 ext. 237
Fax. (416) 363-8451
Email: mark@blumbergs.ca

URL: http://www.blumbergs.ca/

Information Letter

CIL - 1991 - 001

January 7, 1991

Dear XXXXXX:

Re: Charitable Aid to the XXXXXXXXXX

I am writing to you at the request of XXXXXXXXXX, whom I recently spoke with concerning the possibility of the XXXXXXXXXX receiving gifts to provide clothing and food aid in the XXXXXXXXXX. This letter outlines the legal and administrative requirements for a registered charity engaging in such activity, as well as some potential ramifications of a project of this nature.

I understand that the XXXXXXXXXX's intention is to raise donations in the form of money and food which will be shipped initially to XXXXXXXXXX, for distribution in XXXXXXXXXX and area through a XXXXXXXXXX branch that will be set up there in the future. In the interim, you will be operating through a community organization in the XXXXXXXXXX.

The *Income Tax Act* requires that a registered charity devote its resources to its own activities or to gift its funds over to other specific organizations termed "qualified donees". A "qualified donee" is any of those organizations listed as such in the Act and includes Canadian municipalities, the provincial and federal governments, the United Nations and certain other specified entities; however, for practical purposes, the term generally refers to another "Canadian" registered charity. Since there are very few "qualified donees" operating outside Canada, it is usually necessary for a registered charity interested in charitable relief abroad to become directly involved in those foreign charitable activities.

However, Revenue Canada, Taxation acknowledges that this is not always practical either because of the registered charity's own limited financial resources, because of the size of the project or because the charity lacks the necessary expertise to operate effectively in a foreign country. I wish to discuss certain arrangements generally acceptable to Revenue Canada and that are aimed at facilitating the operation of a Canadian registered charity abroad in the context of the present income tax rules.

As a general policy, Revenue Canada will consider that a registered charity is involved outside Canada in its own charitable activities if the charity demonstrates that it has a sufficient amount of responsibility and control over those activities. The Department accepts that registered charities do, in fact, ensure a presence in the field and thereby fulfill the requirements of the Act as outlined above, through the establishment of agency relationships with other organizations or individuals operating abroad. The Department's acceptance of such an agency relationship between a registered charity and another - possibly foreign - organization or individual as a means of ensuring the registered charity's compliance with the Act, would be subject to the following parameters for departmental purposes:

1. A "Written Agreement" clearly
    - identifying all parties
    - identifying the amount of funds (or describing the goods)transferred to the agent
    - specifying that the funds transferred to the agent are to be expended only for the specific projects for which they are transferred and describing those projects
    - requiring the agent to report to the Canadian charity on a reasonable basis
    - providing for the Canadian charity's discretion in withdrawing funds or in directing the agent's activity
    - providing for the availability "in Canada" of documentary evidence (vouchers, etc.) evidencing the execution of the agreement by the agent
    - dated and signed by the parties, or

2. A full and detailed "Report" to the Department, dated and signed by the Canadian charity, concerning the foreign expenditures related to a given agency relationship, and substantiating essentially what is set out in (a) above specifying that the agent must report back to the Canadian charity, or
3. "Presumptive or Documentary Evidence" of any kind (*e.g.*, photos, exchanges of correspondence, etc.) substantiating the same facts as in (a) above.

I would caution you in the wording that you intend to use in soliciting funds for this project. Representations made to donors should be broad enough to allow for flexibility so that the charity is able to meet its promised intentions, however, not so limited as to prevent using those funds for other specified purposes (*e.g.*, charitable relief in a different country) if the initial project did not come to pass. Otherwise, it is conceivable that donors might request the return of their donations if some funds solicited specifically to provide relief to the XXXXXXXXXX ultimately were affected to other purposes.

The Department's position is that once a gift is accepted by a registered charity, and a receipt issued, the funds or property donated may not be returned to the donor. It is the Department's view that once the registered charity has received the gift, it becomes the property of the charity and can only be used in furtherance of its charitable objectives and activities.

I wish to point out that this department would not object to the provision of this type of foreign aid, providing the XXXXXXXXXX met the operational requirements of the *Income Tax Act* for registered charities. However, I would suggest that you may wish to seek legal counsel to ensure that the extension of this type of aid is not "ultra vires" of the corporate objectives as set out in the governing documents of the XXXXXXXXXX. It is possible that some members of your organization could harbour anti-XXXXXXXXXX feelings for example, and would strongly object to the provision of such assistance. In this event, assuming that this type of activity is "ultra vires", they may even wish to take the matter to court.

I hope that my comments will be of some assistance. I would be pleased to give the matter further consideration upon receipt of additional information regarding the agency relationship to be established.

Yours sincerely,

Charities Division
Registration Directorate

Information Letter

CIL - 1993 - 001

January 14, 1993

Dear XXXXXX:

Re: The XXXXXXXXXX

I am writing in response to representations made to the Honourable David Anderson, Minister of National Revenue, by XXXXXXXXXX, concerning the possibility of your charity receiving gifts to provide educational aid to XXXXXXXXXX. This letter outlines the legal and administrative requirements for a registered charity engaging in such activity, as well as some potential ramifications of a project of this nature.

I understand that the Association's intention is to raise money which will be distributed in XXXXXXXXXX for educational purposes through a convent in XXXXXXXXXX.

As a preliminary comment, I note that the Association has been constituted for the sole purpose of funding Canadian charities or other "qualified donees". Generally speaking, foreign organizations are not "qualified donees" and are not eligible to receive funding

from Canadian charities. It appears that your Association does not have the authority to provide educational aid to XXXXXXXXXX. However, this is more a question for the provincial authorities than for this Department. I suggest you have your lawyer contact the provincial authorities and obtain their opinion on the matter.

I would stress, however, that the Department would not object to the Association providing this type of foreign educational aid, as long as it met the operational requirements of the *Income Tax Act* for registered charities.

The *Income Tax Act* requires that a registered charity devote its resources to its own activities or gift its funds over to other specific organizations termed "qualified donees". A "qualified donee" is any of those types of organizations listed as such in the Act and includes Canadian municipalities, the provincial and federal governments, the United Nations and certain other specified entities; however, for practical purposes, the term generally refers to another **Canadian** registered charity. Since there are very few "qualified donees" operating outside Canada, it is usually necessary for a registered charity interested in charitable relief abroad to become directly involved in those foreign charitable activities.

However, the Department acknowledges that it is not always practical for a charity to become directly involved in those foreign charitable activities either because of the charity's own limited financial resources, because of the size of the project or because the charity lacks the necessary expertise to operate effectively in a foreign country.

The Department has no objection to a Canadian charity arranging to accomplish its own educational or other charitable activities through contractual agreements with organizations outside Canada. I would stress that the requirement to be satisfied here is that the charity be devoting its resources to activities in which it is **actively** engaged **itself**. We therefore will need to be satisfied that the arrangement contemplated by these agreements does not amount, in substance, to a Canadian charity funding activities of organizations which are not "qualified donees" under the Act.

What is important in such cases, is that the arrangement provide for sufficient direction and control by the Association over the use of its resources to satisfy the requirement of the *Income Tax Act* that these resources be devoted to charitable activities carried on by the charity itself. The Department accepts that charities can, in fact, fulfil the requirements of the Act as outlined above, through agency relationships with other organizations or individuals operating abroad wherein the charity retains a presence in the field. The Department's acceptance of such an agency relationship between a charity and another -- possibly foreign -- organization or individual as a means of ensuring the charity's compliance with the Act, would be subject to certain minimum standards for departmental purposes.

There must be a written agreement between the Canadian charity and its agent, dated, clearly identifying and signed by both parties. The agreement should describe the **specific** projects that the agent is to carry out on behalf of the Canadian charity, including the

funds or goods that are to be applied thereto. It should specify that the funds transferred to the agent by the Canadian charity will be kept segregated from any of the agent's own funds or assets. The agreement, should require the agent to report back to the Canadian charity on a reasonable and regular basis, on the progress of the project(s) and give the charity discretion to terminate funding.

Once the agreement is in place, the Canadian charity must **in fact** show a reasonable degree of on-going interest and control in the project carried out by the agent, to such an extent that it might, for example, be able to withhold funds if at any stage in the project, the agent's work is not satisfactory, or to the extent that it might require the agent to account for the project's progress so far. Vouchers, if any, or other documentation related to the carrying out of the project by the agent should be part of the charity's records, available in Canada. The charity's continuing eligibility for charitable registration will depend on whether or not it is **in fact** maintaining sufficient degree of ongoing control as required by the Act and provided for in the agreement.

I would caution you in the wording that you intend to use in soliciting funds for this project. Representations made to donors should be broad enough to allow for flexibility so that your charity is able to meet its promised intentions, however, not so limited as to prevent using those funds for other specified purposes if the initial project did not come to pass. Otherwise, it is conceivable that donors might legally request the return of their donations if some funds solicited specifically to provide educational relief to XXXXXXXXXX ultimately were affected to other purposes. Donors requesting that a donation be returned to them may have to be reassessed or taxed by the Department.

I hope that this information will assist you in understanding the degree of control required in circumstances where a charity carries out activities through a third party that is not a "qualified donee" and in arriving at a suitable arrangement. I would be pleased to give the matter further consideration upon receipt of additional information regarding the agency relationship to be established before you forward any funds. If I can be of further assistance, please do not hesitate to contact me at XXXXXXXXXX.

Yours sincerely,

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1994 - 001

January 19, 1994

Dear Sirs:

Re: XXXXXX

I refer to your letter of XXXXXXXXXX faxed to me on XXXXXXXXXX concerning the Church's funding of certain programs carried on outside Canada. I also refer to our telephone conversation of XXXXXXXXXX in this regard.

As discussed, I do not find the agreement between the XXXXXXXXXX and the XXXXXXXXXX to be specific enough to satisfy the *Income Tax Act*'s requirements for control and accountability over the use of the Church's resources in that it does not spell out the specific charitable activities to be carried out on the Church's behalf by the XXXXXXXXXX.

The respective duties and responsibilities of the contracting parties must be identified precisely enough in an agreement of this nature so that a reader is in a reasonable position to assess whether the Canadian charity's involvement can be considered to be a devotion of its resources to activities in which it is **actively** engaged **itself**.

However, I certainly recognize the good faith and altruism of your Church members in financially assisting the XXXXXXXXXX. Under the circumstances of this particular case, the Department does not propose to take any action against your Church or to disallow any receipts issued for bona fide gifts.

Should your Church wish, in future, to involve itself in charitable relief work abroad I have outlined below the legal and administrative requirements for a registered charity engaging in such activity, as well as some potential ramifications of a charity's involvement in such activity.

The *Income Tax Act* requires that a registered charity devote its resources to its own activities or gift its funds over to other specific organizations termed "qualified donees". A "qualified donee" is any of those types of organizations listed as such in the Act and includes Canadian municipalities, the provincial and federal governments, the United Nations and certain other specified entities; however, for practical purposes, the term generally refers to another Canadian registered charity. Since there are very few "qualified donees" operating outside Canada, it is usually necessary for a registered charity interested in charitable relief abroad to become directly involved in those foreign charitable activities.

However, the Department acknowledges that it is not always practical for a charity to become directly involved in those foreign charitable activities either because of the charity's own limited financial resources, because of the size of the project or because the charity lacks the necessary expertise to operate effectively in a foreign country.

The Department has no objection to a Canadian charity arranging to accomplish its own charitable activities through contractual agreements with organizations outside Canada. I would stress that the requirement to be satisfied here is that the charity be devoting its resources to activities in which it is **actively** engaged **itself**. We therefore will need to be satisfied that the arrangement contemplated by these agreements does not amount, in substance, to a Canadian charity funding activities of organizations which are not "qualified donees" under the Act.

What is important in such cases, is that the arrangement provide for sufficient direction and control by the Canadian charity over the use of its resources to satisfy the requirement of the *Income Tax Act* that these resources be devoted to charitable activities carried on by the charity itself. The Department accepts that charities can, in fact, fulfil the requirements of the Act as outlined above, through agency relationships with other organizations or individuals operating abroad wherein the charity retains a presence in the field. The Department's acceptance of such an agency relationship between a charity and another -- possibly foreign -- organization or individual as a means of ensuring the charity's compliance with the Act, would be subject to certain minimum standards for departmental purposes.

There must be a written agreement between the Canadian charity and its agent, dated, clearly identifying and signed by both parties. The agreement should describe the **specific** projects that the agent is to carry out on behalf of the Canadian charity, including the funds or goods that are to be applied thereto. It should specify that the funds transferred to the agent by the Canadian charity will be kept segregated from any of the agent's own funds or assets. The agreement, should require the agent to report back to the Canadian charity on a reasonable and regular basis, on the progress of the project(s) and give the charity discretion to terminate funding.

Once the agreement is in place, the Canadian charity must in fact show a reasonable degree of on-going interest and control in the project carried out by the agent, to such an extent that it might, for example, be able to withhold funds if at any stage in the project, the agent's work is not satisfactory, or to the extent that it might require the agent to account for the project's progress so far. Vouchers, if any, or other documentation related to the carrying out of the project by the agent should be part of the charity's records, available in Canada. The charity's continuing eligibility for charitable registration will depend on whether or not it is in fact maintaining sufficient degree of ongoing control as required by the Act and provided for in the agreement.

I hope that this information will assist you in understanding the degree of control required in circumstances where a charity carries out activities through a third party that is not a "qualified donee". If I can be of further assistance, please do not hesitate to contact me at XXXXXXXXXX.

Yours sincerely,

BLUMBERGS

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1995 - 013

October 5, 1995

Dear XXXXXX:

I refer to our meeting of XXXXXXXXXX and the letter of XXXXXXXXXX from XXXXXXXXXX asking for my comments on the draft agency agreement between the XXXXXXXXXX and the XXXXXXXXXX. Your XXXXXXXXXX Main Office Church wishes to obtain funds from its Canadian branches to apply them to overseas projects.

The definition in paragraph 149.1(1)(*b*) of the Canadian *Income Tax Act* provides that a registered charity can only use its resources directly on its *own* activities or transfer them to *qualified donees*. For all practical purposes, qualified donees mean other Canadian registered charities, although the term also encompasses, for example, charitable organizations outside Canada to which Her Majesty in Right of Canada has made a gift.

A Canadian registered charity that wishes to support a charitable project in another country that is not being carried out by a qualified donee must therefore be able to meet the statutory test that the activity is a charitable activity of the Canadian charity itself. It must show that it has control over the activity to the extent that the activity can be seen as its own undertaking. Simply providing funds for a project is not sufficient to meet this test. However, the Department accepts that a Canadian charity can carry on its own work through certain contractual arrangements, including agency, joint venture and joint ministry agreements.

When a Canadian charity wishes to carry out a particular project(s), either alone or in conjunction with another party, it may elect to appoint an agent to act as its representative in carrying out activities determined by the charity. In such an arrangement, the charity must ensure that its funds are kept separate from those of its agent so that the charity's role in any project can be recognized as the charity's own activity. Both parties must keep adequate books and records to prove on-going control and supervision by the charity over the work carried out through its agent.

Referring to your draft agency agreement, my main concern is that the Canadian charity must be the principal in the agency relationship, and that the charity's records must be

able to demonstrate this through detailed evidence of the specific activities of the overseas projects and an on-going interest in the proper application of its funds.

Rather than commenting on the draft agreement section by section, I believe it would be more helpful to outline the minimum requirements that an agency agreement should include as follows:

- names and addresses of both parties;
- the anticipated duration of the agreement;
- a description of the *specific* activities (actual and proposed) for which funds will be transferred, in sufficient detail to clearly outline the limits of the authority given to the agent to act for the Canadian registered charity on its behalf;
- provision to update the agreement as new projects come up in order to provide descriptions of the *specific* activities as per above;
- provision for *written* progress reports (or other documentation from the agent such as minutes of meetings);
- provision for regular instalment payments based on confirmation of reasonable progress (for example, board meetings, letters and visits) reflecting the fact that the resources provided to date have to be applied for the specific activities outlined in the agreement;
- provision for the Canadian charity to have discretion in withholding or withdrawing the funds or other resources;
- provision for the maintenance of adequate books and records in Canada;
- provision for the Canadian charity's funds to be kept separate from those of the agent and for the agent to keep separate books and records;
- assurance that ownership to any property such as land or buildings and improvements thereto vest in the Canadian charity. Should foreign laws preclude such ownership the property may be turned over to a government body or another public authority (for example, a local town) or to a charity officially recognized in the host country; and
- the date and signatures of both parties.

As an alternative, your Canadian branch registered charities could enter into a joint ministry agreement with your Church either singly or jointly, that is, one agreement with each branch or one agreement with all branches to carry out charitable projects. Or, the Canadian charities may wish to establish a separate registered charity that they can gift funds to and that separate charity could enter into a joint ministry agreement with your Church.

The requirements to be met in the case of a joint ministry agreement would be similar to the above agency requirements bearing in mind that the Canadian charity too would have to show that it shares responsibility and control in long-term planning, day-to-day decision-making and financial commitments at least proportionally to the level of funding it provides to the projects. The agreement must evidence that it furthers the purposes of the Canadian charity.

Factors which, in combination, could demonstrate the on-going control by a Canadian charity include the following:

- a presence of bona fide members of the Canadian charity on the board of directors of the coordinating body carrying on the joint projects;
- a presence in the field of bona fide members of the Canadian charity and control by the charity over the hiring and firing of labour involved in the projects;
- joint ownership by the Canadian charity of foreign assets and property;
- input by the Canadian charity into project initiation and follow-through including the charity's ability to direct or modify the projects and to establish deadlines or other performance bench marks;
- the Canadian charity is a signatory to loans, contracts and other agreements arising from the projects;
- the Canadian charity receives vouchers, cancelled cheques, etc., and acts as a bookkeeper for the project;
- the Canadian's charity's review and approval of the projects' budgets, the availability to the charity of an independent audit of the projects and the charity's option to discontinue funding;
- the Canadian charity's authorship of procedures manuals, training guides, standards of conduct, etc.; and
- the on-site identification of the project as being one of the Canadian charity.

I trust this information will help you prepare your report and recommendation to your Church Administration.

Yours sincerely,

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1997 - 003

February 12, 1997

Dear XXXXXX:

Subject: Agency / Joint Ministry Agreements

I have reviewed your letter of XXXXXXXXXX concerning our telephone conversation of XXXXXXXXXX and would make certain comments and offer some additional

information with respect to joint ministry and agency agreements. I will address each of your numbered paragraphs in order.

1. As an initial remark, I would emphasize that while it is true that joint ministry agreements are useful tools in many situations, **they should never be seen as a simple method for transferring money to non-qualified donees.** Subsection 149.1(1) of *Income Tax Act* clearly stipulates that charitable organizations must carry on their own activities. Therefore, Canadian charities are required to control, direct and supervise any activities undertaken and expenditures made under a joint ministry agreement.

   You are correct in noting that there are situations where an agency agreement may be more appropriate than a joint ministry agreement. Not all joint venture / joint ministry agreements satisfy the statutory requirement for control, direction and supervision, due to the Canadian charity's lack of involvement in the planning and execution of the joint undertaking. Indicia of whether a charitable joint venture / joint ministry arrangement is acceptable for departmental purposes include:

   - a presence of bona fide members of the Canadian charity on the board of directors of the coordinating body carrying on the joint projects;
   - a presence in the field of bona fide members of the Canadian charity and control by the charity over the hiring and firing of labour involved in the projects;
   - joint ownership by the Canadian charity of assets and property involved in the projects;
   - input by the Canadian charity into project initiation and follow-through, including the charity's ability to direct or modify the projects and to establish deadlines or other performance bench marks;
   - the Canadian charity is a signatory to loans, contracts and other agreements arising from the projects;
   - the Canadian charity receives vouchers, cancelled cheques, etc., and acts as a bookkeeper for the projects;
   - the Canadian charity's review and approval of the project's budgets, the availability to the charity of an independent audit of the projects and the charity's option to discontinue funding;
   - the Canadian charity's authorship of procedures manuals, training guides, standards of conduct, etc.; and
   - the on-site identification of the projects as being one of the Canadian charity.

   If it appears that a joint venture / joint ministry does not fit within these parameters - with suitable regard to the particular nature of the undertaking - then it may be preferable for the Canadian charity to meet the statutory requirement of carrying on its own activities by means of an agency agreement.

2. The Department has developed some recommendations to assist Canadian charities in establishing that they are *truly* acting as the principal in the agency relationship. At the very least, every agency agreement should include the following elements:
    - the names and addresses of both parties;
    - a *comprehensive* description of the *specific* activities (actual and proposed) for which funds will be transferred, in sufficient detail to clearly outline the limits of the authority given to the agent to act on behalf of the Canadian registered charity on its behalf;
    - provision to update the agreement as new projects are initiated by the Canadian charity in order to provide descriptions of the *specific* activities as per above;
    - provision for *written* progress reports (or other documentation from the agent such as minutes of meetings);
    - provision for instalment payments by the Canadian charity based on confirmation of reasonable progress (for example, board meetings, letters and visits) reflecting the fact that the resources provided to date have to be applied for the specific activities outlined in the agreement;
    - provision for the Canadian charity to have discretion in withholding or withdrawing the funds or other resources;
    - provision for the maintenance of adequate books and records in Canada;
    - provision for the Canadian charity's funds to be kept separate from those of the agent and for the agent to keep separate books and records; and
    - the date and signatures of both parties.
3. The segregation of funds is important to any agency relationship. However, as indicated above, it is only one aspect of an adequate arrangement under the Act.
4. We would agree that, whenever possible, an agent must account for expenditures through the production of *documentary* evidence.
5. In general, the segregation of principal and agent funds should be respected. Where commingling takes place, we would require a *complete and detailed* accounting for *every* expenditure out of the mixed fund. The invoicing procedure you describe, if applied to *all* expenditures involving the Canadian charity's funds, would seem to satisfy this requirement.
6. We would point out that where the funds of several organizations are commingled, this will not necessarily be legitimized by the adoption of a joint ministry agreement.

    Although a joint ministry agreement is likely the appropriate instrument in these circumstances, it will be measured against the criteria listed above in order to determine whether the Canadian charity is exercising a sufficient degree of control, direction and supervision in the framework of the shared endeavour.

I trust these comments will be useful to you. If you would like to discuss this matter further, please do not hesitate to contact me at XXXXXXXXXX.

Yours sincerely,

BLUMBERGS

Charities Division

Information Letter

CIL - 1998 - 027

October 6, 1998

Dear XXXXXX:

I refer to your letter of XXXXXXXXXX and our subsequent meeting on XXXXXXXXXX concerning your request to set up an endowment fund in partnership with the XXXXXXXXXX.

I have had the opportunity to review the submitted draft Memorandum of Agreement creating the XXXXXXXXXX and would like to provide you with our comments in this regard.

I would emphasize that while joint agreements are useful tools in many situations, they should never be seen as a simple method of transferring money to non-qualified donees. Subsection 149.1(1) of the *Income Tax Act* clearly stipulates that charitable organizations must carry on their own activities. Therefore, Canadian charities are required to control, direct and supervise any activities undertaken and expenditures made under a joint agreement.

The draft Memorandum of Agreement states that the XXXXXXXXXX will contribute $250,000 (U.S.) to the XXXXXXXXXX to be matched by an equivalent amount by the XXXXXXXXXX. Furthermore, the agreement states that the Foundation will determine the amount of income and the number and amount of the grants to be applied to improve geography education. We also understand that a XXXXXXXXXX advisory body will submit grant recommendations to the Foundation but that the final decisions about expenditures from the fund rests with the Foundation's Board and that any funds applied by the Foundation will necessarily go through XXXXXXXXXX. We also understand that the Foundation will submit annual audited financial statements to XXXXXXXXXX showing how the funds were applied.

In the Department's previous letter, we referred you to a draft publication dealing with issues relating to registered charities operating outside Canada. This document essentially describes the minimum elements Revenue Canada requires for arrangements that charities may use to show that they retain direction and control of their resources.

While the submitted draft Memorandum of Agreement does not entirely meet all of the elements discussed in the draft publication, the Department is willing to accept the arrangement between XXXXXXXXXX, XXXXXXXXXX and the Foundation provided that certain conditions are met.

In our meeting, we agreed that it would be preferable if a member of XXXXXXXXXX sat on the board of directors of the coordinating body carrying on the joint project. You stated that this could be possible.

I would also advise that if XXXXXXXXXX's contribution of funds is not applied for the purpose set out in the agreement, XXXXXXXXXX should terminate the agreement as per its dissolution clause. Failing to do so would place the XXXXXXXXXX's expenditures outside the law.

Finally, please proceed to have the Memorandum of Agreement certified by the identified parties and forward a copy to our office so that we may place it on your permanent file.

I trust these comments will be useful to you. If you have any further questions, please do not hesitate to contact me at XXXXXXXXXX.

Yours sincerely,

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1996 - 005

May 27, 1996

Dear XXXXXX:

I am replying to your letter of XXXXXXXXXX concerning your client's revised proposed transaction wherein XXXXXXXXXX will make an outright ten-year gift of property, known as " XXXXXXXXXX ", to the XXXXXXXXXX. The Foundation would then enter into an agreement with the XXXXXXXXXX to establish and maintain a public museum. I regret my delay in responding.

Pursuant to this agreement, the Foundation would provide the premises, and the XXXXXXXXXX would be responsible for the public museum's day-to-day operations. The Foundation would not receive any consideration from the Centre for the use of the property as a public museum. It would receive rights to appoint representatives to the

management board of the project. I note that the Centre is not a registered charity under the *Income Tax Act.*

Under the *Act*, registered charities can only use their resources directly on their own charitable activities, or transfer them to other registered charities or other qualified donees.

A registered charity cannot support a project being carried out by an organization that is not a qualified donee. Alternatively, a registered charity must meet the statutory test that the activity is its own charitable activity. It must show that it has control over the activity to the extent that the activity can be seen to be its own. The Department accepts that a charity can carry on activities through certain contractual arrangements, including agency and joint venture agreements.

The operation of the public museum would not be a project of the Foundation itself. Consequently, the Foundation would contravene the *Act's* provisions, as it would not be using its resources directly on its own charitable activities.

Whether the property would be an asset used for purposes of meeting the Foundation's disbursement quota would no longer be relevant since in fact the Foundation, in the proposed arrangement, would be contravening the *Act*.

If the Foundation were to structure its relationship with the Centre to somehow make it acceptable, the museum's operation would likely be considered a business activity.

I regret that my reply could not be more favourable, but trust the foregoing fully explains the Department's position concerning your client's proposed transaction.

Yours sincerely,

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1998 - 016

June 3, 1998

Dear XXXXXX:

Your letter of XXXXXXXXXX addressed to the Income Tax Rulings and Interpretations Directorate, has been forwarded to the Charities Division for response. I apologize for the delay in replying.

You ask whether XXXXXXXXXX can give or rent a vehicle to a worker-owned cooperative to be established by its clients. XXXXXXXXXX is a charity registered under the *Income Tax Act* that provides vocational training for the mentally disabled.

The Charities Division accepts that worker cooperatives can be a mechanism to achieve the charitable purpose of helping the mentally disabled obtain employment, and of meeting their training and self-esteem needs. Accordingly, an organization would be conducting a charitable activity when it supported the establishment of such a cooperative and provided services and supplies essential to its continued operation—assuming of course that the members of the cooperative are persons in need of charitable assistance.

In deciding whether to give away or rent assets, the basic principle is that a charity should not dispose of its assets except when this disposition is necessary to achieve its charitable purpose. For example, some organizations established to relieve poverty make outright gifts of housing to poor persons, with certain conditions attached to the gift. They give the housing away rather than leasing it because the transfer of ownership is a necessary aspect of their program which is designed specifically to address the demoralization underlying the poverty cycle and the inability of the beneficiaries to build a solid asset base. In the case at hand, it is not clear that the program would only be effective if the ownership of the vehicle was transferred to members of the cooperative. Thus, it might be more appropriate for XXXXXXXXXX to lease the vehicle.

In designing an appropriate lease agreement, you may choose whether to require the cooperative to pay a fee to XXXXXXXXXX for the use of the vehicle. Presumably, this would depend on the extent to which the cooperative requires subsidization. If the cooperative becomes profitable and the subsidization is no longer necessary for the cooperative to survive, XXXXXXXXXX should ensure that it is not giving the cooperative a benefit of a private rather than a charitable nature. It can do this by increasing the rental fee until a fair market rent is being paid.

XXXXXXXXXX can issue a donation receipt for the fair market value of the van or other vehicle that is donated to it. However, XXXXXXXXXX would need to include in its disbursement quota, for the year following the donation, 80 per cent of the amount for which it issued the receipt. It can claim as a charitable expenditure, applicable against its disbursement quota, all costs it incurs in relation to the operation and maintenance of the vehicle (less any rental payments received from the cooperative).

Please contact me if I can be of any further assistance. The postal address is: Charities Division, Revenue Canada, Ottawa, Ontario K1A 0L5. My phone number is XXXXXXXXXX, and the fax line is XXXXXXXXXX.

Yours sincerely,

Charities Division

Information Letter

CIL - 1999 - 009

February 23, 1999

Dear XXXXXX:

I refer to your letter of XXXXXXXXXX and the meeting on XXXXXXXXXX between your client, XXXXXXXXXX, and XXXXXXXXXX and XXXXXXXXXX of the Division.

In your letter, you are requesting a ruling that the transfer of a portion of the assets of the XXXXXXXXXX (a registered charity) to the XXXXXXXXXX will not jeopardize the charitable registration status of the Association. It is your view that this transfer of assets is reimbursing the XXXXXXXXXX for its donations, contributions, loans, advances and transfers made to the Association.

As you know, the confidentiality provisions of the *Income Tax Act* prevent me from discussing the affairs of particular registered charities without their written consent. Consequently, I can only provide general comments regarding the transfer of assets from a Canadian registered charity to a foreign charity.

In your meeting with XXXXXXXXXX and XXXXXXXXXX, you outlined several proposals on resolving the above matter without affecting the status of the Canadian registered charity.

First, you referred to a charity repaying a debt. I can confirm that a registered charity, in particular a charitable organization, can repay a loan to a creditor regardless of whether or not the creditor is resident in Canada and a Canadian registered charity. However, the books and records of the Canadian charity must evidence that such a debt exists.

Second, you believe that a capital contribution from a Canadian registered charity to a foreign charity would not be sufficient cause to revoke the charitable registration status of the Canadian charity because the foreign charity has made a significant financial contribution to the Canadian charity over the years with respect to its general operating costs. A registered charity can only spend its funds on its own charitable activities or on gifts to "qualified donees" as defined in the Act (see attached appendix). Most organizations outside Canada such as foreign charities and international aid agencies are

not "qualified donees". Consequently, a registered charity can make a capital contribution but it must be to a "qualified donee".

Third, you request whether a registered charity can apply to the Department under subsection 149.1(5) of the Act to deem an amount expended by the registered charity on charitable activities. Subsection 149.1(5) of the Act gives the Department discretion to reduce the disbursement quota of a charity under certain conditions. Accordingly, if a registered charity is meeting its annual disbursement quota or has disbursement excesses from previous years that it can apply to any disbursement shortfall in a given year, the Department cannot grant relief to the charity under this section of the Act.

Fourth, you brought up the option of a possible agency relationship between the Canadian charity and the foreign charity. I can confirm that the only way a charity could properly transfer funds to other organizations which are not "qualified donees", while still complying with the requirements of the Act, would be to enter into a formal written contract or agency agreement with each such other party that it funds. An agreement of this nature must clearly show that it is for a project of the Canadian charity and that the Canadian charity will be held accountable for the project. The agreement would have to specify the particular duties or activities that the Canadian charity wishes the agent to accomplish on its behalf and in the name of the Canadian charity during the term of the agreement or contract and would have to evidence that the Canadian charity has full discretion over the use of the resources it transfers to the agent. In such an arrangement, the conditions outlined in the attached Appendix regarding direction, control and accountability for the charity's funds would have to be met. The Canadian charity must be able to account for the expenditure of funds in the same manner and to the same degree, whether the activity is carried out in Canada or outside of the country. Before entering into such a contract/agreement, please submit a proposed copy so that we may determine whether or not an agency relationship is likely to result from its enactment.

Finally, you suggested amending the Act to allow a Canadian charity to return capital to a foreign entity. You also suggested that Her Majesty in Right of Canada make a symbolic gift to a particular foreign entity thereby making the entity a "qualified donee". These last two proposals, in my view, are not practical options at this time.

In closing, I wish to point out that the Department cannot become involved in internal conflicts between registered charities and other entities, beyond applying the provisions of the Act. In this regard, the Department would be pleased to meet with representatives of the Canadian charity and the foreign charity to clarify any outstanding issues should the need arise.

I trust the information provided will be helpful.

Yours sincerely,

Technical Interpretation and Communications Section
Charities Division

QUALIFIED DONEES

Qualified Donees are those entities defined in subsection 149.1(1) of the *Income Tax Act*:

1. registered Canadian charities,
2. registered Canadian amateur athletic associations,
3. housing corporations resident in Canada and exempt from tax under Part 1 of the Act by paragraph 149(1)(*i*),
4. Canadian municipalities,
5. the United Nations or agencies thereof,
6. universities outside Canada prescribed to be universities the student body of which ordinarily includes students from Canada,
7. charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the taxpayer's taxation year, or the 12 months immediately preceding that taxation year,
8. Her Majesty in right of Canada or a province and agents thereof.
9. registered Canadian national arts service organizations.

Information Letter

CIL - 1997 - 009

June 2, 1997

Dear XXXXXX:

Subject: Information Circular 75-23 and Agency Arrangement

I am writing in response to your letter of XXXXXXXXXX requesting our opinion concerning the proposed use of an agency arrangement in order to issue charitable donation tax receipts in conformity with Information Circular 75-23 *Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools.* Specifically, you ask whether the XXXXXXXXXX (the Centre) may enter into an agency arrangement with XXXXXXXXXX in XXXXXXXXXX, so parents of XXXXXXXXXX -based children attending this school can claim a tax credit for that component of the tuition relating to religious education.

I appreciate that there are parents in the XXXXXXXXXX area who wish to provide their children with the kind of education offered by the XXXXXXXXXX in XXXXXXXXXX. Unfortunately, there are at least two serious impediments to the kind of arrangement you propose.

First, as you are no doubt aware, the *Income Tax Act* defines a charitable organization as an organization, "all the resources of which are devoted to charitable activities carried on by the organization itself." When charities enter into agency arrangements, it must be for the purpose of performing their own activities through another individual or organization. In the situation you describe, the control, direction and supervision of educational activities would lie with the XXXXXXXXXX, and not with the Centre. Thus, the Centre would not be performing its own activities by transferring tuition fees to the XXXXXXXXXX under this arrangement; rather, it would appear to be acting simply as a conduit to an institution that is not authorized under Canadian legislation to issue tax receipts.

Second, Information Circular 75-23 reflects departmental policy rather than statute law. We are of the view that it would be inappropriate to extend the policy to include foreign schools. We note in this respect that it would be extremely difficult to verify whether the policy has been properly applied by the Canadian charity to an agent-institution situated beyond the Department's territorial jurisdiction.

I trust this information will be of assistance to you.

Yours sincerely,

Charities Division

Information Letter

CIL - 1997 - 004

March 21, 1997

Dear XXXXXX:

The attached publication has been brought to our attention. It is said to be part of a newsletter distributed in Canada, containing material published by your organization.

The newsletter asks Canadians for support and contains the statement "Registered Charity No. XXXXXXXXXX ". This number, we understand, is indeed the registration number of the XXXXXXXXXX, for XXXXXXXXXX purposes. However, we are concerned

that a Canadian who might make a donation to your organization could be misled into thinking that his or her gift could form the basis of a charitable tax credit in Canada, particularly as a Canadian address is given.

As you may know, only those Canadian charities that are registered with Revenue Canada can issue official donation receipts which entitle donors to claim a charitable tax credit on Canadian income tax returns. One requirement for registration with the Department is that the charity must be separately established in Canada, or else be a branch of such a Canadian charity.

There are consequences for donors to the XXXXXXXXXX should they attempt to claim a Canadian tax credit on the basis of a receipt from a charity that is not registered with us. Not only would their claim be disallowed, but penalties and interest could also be imposed.

We should like to receive a blank copy of any receipt that the XXXXXXXXXX may be currently using to acknowledge gifts received from Canadians. Our purpose is to be able to advise you whether this receipt could be confusing to people in this country. In this way, we would hope to spare both them and your organization any aggravation that would follow should we be forced to disallow claims for a tax credit.

At this time, we take no position on the issues involved in the dispute between your organization and the XXXXXXXXXX. (The latter is currently registered with Revenue Canada, with a registration number of XXXXXXXXXX.) We wish only to ensure that Canadian supporters of your organization are not under any misapprehension as to the tax status of their gifts to the XXXXXXXXXX, whether they make them directly to XXXXXXXXXX or to the Canadian Branch office under XXXXXXXXXX.

Yours sincerely,

Charities Division

Information Letter

CIL - 1995 - 013

October 5, 1995

Dear XXXXXX:

I refer to our meeting of XXXXXXXXXX and the letter of XXXXXXXXXX from XXXXXXXXXX asking for my comments on the draft agency agreement between the

XXXXXXXXXX and the XXXXXXXXXX. Your XXXXXXXXXX Main Office Church wishes to obtain funds from its Canadian branches to apply them to overseas projects.

The definition in paragraph 149.1(1)(*b*) of the Canadian *Income Tax Act* provides that a registered charity can only use its resources directly on its *own* activities or transfer them to *qualified donees.* For all practical purposes, qualified donees mean other Canadian registered charities, although the term also encompasses, for example, charitable organizations outside Canada to which Her Majesty in Right of Canada has made a gift.

A Canadian registered charity that wishes to support a charitable project in another country that is not being carried out by a qualified donee must therefore be able to meet the statutory test that the activity is a charitable activity of the Canadian charity itself. It must show that it has control over the activity to the extent that the activity can be seen as its own undertaking. Simply providing funds for a project is not sufficient to meet this test. However, the Department accepts that a Canadian charity can carry on its own work through certain contractual arrangements, including agency, joint venture and joint ministry agreements.

When a Canadian charity wishes to carry out a particular project(s), either alone or in conjunction with another party, it may elect to appoint an agent to act as its representative in carrying out activities determined by the charity. In such an arrangement, the charity must ensure that its funds are kept separate from those of its agent so that the charity's role in any project can be recognized as the charity's own activity. Both parties must keep adequate books and records to prove on-going control and supervision by the charity over the work carried out through its agent.

Referring to your draft agency agreement, my main concern is that the Canadian charity must be the principal in the agency relationship, and that the charity's records must be able to demonstrate this through detailed evidence of the specific activities of the overseas projects and an on-going interest in the proper application of its funds.

Rather than commenting on the draft agreement section by section, I believe it would be more helpful to outline the minimum requirements that an agency agreement should include as follows:

- names and addresses of both parties;
- the anticipated duration of the agreement;
- a description of the *specific* activities (actual and proposed) for which funds will be transferred, in sufficient detail to clearly outline the limits of the authority given to the agent to act for the Canadian registered charity on its behalf;
- provision to update the agreement as new projects come up in order to provide descriptions of the *specific* activities as per above;
- provision for *written* progress reports (or other documentation from the agent such as minutes of meetings);

- provision for regular instalment payments based on confirmation of reasonable progress (for example, board meetings, letters and visits) reflecting the fact that the resources provided to date have to be applied for the specific activities outlined in the agreement;
- provision for the Canadian charity to have discretion in withholding or withdrawing the funds or other resources;
- provision for the maintenance of adequate books and records in Canada;
- provision for the Canadian charity's funds to be kept separate from those of the agent and for the agent to keep separate books and records;
- assurance that ownership to any property such as land or buildings and improvements thereto vest in the Canadian charity. Should foreign laws preclude such ownership the property may be turned over to a government body or another public authority (for example, a local town) or to a charity officially recognized in the host country; and
- the date and signatures of both parties.

As an alternative, your Canadian branch registered charities could enter into a joint ministry agreement with your Church either singly or jointly, that is, one agreement with each branch or one agreement with all branches to carry out charitable projects. Or, the Canadian charities may wish to establish a separate registered charity that they can gift funds to and that separate charity could enter into a joint ministry agreement with your Church.

The requirements to be met in the case of a joint ministry agreement would be similar to the above agency requirements bearing in mind that the Canadian charity too would have to show that it shares responsibility and control in long-term planning, day-to-day decision-making and financial commitments at least proportionally to the level of funding it provides to the projects. The agreement must evidence that it furthers the purposes of the Canadian charity.

Factors which, in combination, could demonstrate the on-going control by a Canadian charity include the following:

- a presence of bona fide members of the Canadian charity on the board of directors of the coordinating body carrying on the joint projects;
- a presence in the field of bona fide members of the Canadian charity and control by the charity over the hiring and firing of labour involved in the projects;
- joint ownership by the Canadian charity of foreign assets and property;
- input by the Canadian charity into project initiation and follow-through including the charity's ability to direct or modify the projects and to establish deadlines or other performance bench marks;
- the Canadian charity is a signatory to loans, contracts and other agreements arising from the projects;
- the Canadian charity receives vouchers, cancelled cheques, etc., and acts as a bookkeeper for the project;

- the Canadian's charity's review and approval of the projects' budgets, the availability to the charity of an independent audit of the projects and the charity's option to discontinue funding;
- the Canadian charity's authorship of procedures manuals, training guides, standards of conduct, etc.; and
- the on-site identification of the project as being one of the Canadian charity.

I trust this information will help you prepare your report and recommendation to your Church Administration.

Yours sincerely,

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 1997 - 003

February 12, 1997

Dear XXXXXX:

Subject: Agency / Joint Ministry Agreements

I have reviewed your letter of XXXXXXXXXX concerning our telephone conversation of XXXXXXXXXX and would make certain comments and offer some additional information with respect to joint ministry and agency agreements. I will address each of your numbered paragraphs in order.

1. As an initial remark, I would emphasize that while it is true that joint ministry agreements are useful tools in many situations, **they should never be seen as a simple method for transferring money to non-qualified donees.** Subsection 149.1(1) of *Income Tax Act* clearly stipulates that charitable organizations must carry on their own activities. Therefore, Canadian charities are required to control, direct and supervise any activities undertaken and expenditures made under a joint ministry agreement.

   You are correct in noting that there are situations where an agency agreement may be more appropriate than a joint ministry agreement. Not all joint venture / joint

ministry agreements satisfy the statutory requirement for control, direction and supervision, due to the Canadian charity's lack of involvement in the planning and execution of the joint undertaking. Indicia of whether a charitable joint venture / joint ministry arrangement is acceptable for departmental purposes include:

- a presence of bona fide members of the Canadian charity on the board of directors of the coordinating body carrying on the joint projects;
- a presence in the field of bona fide members of the Canadian charity and control by the charity over the hiring and firing of labour involved in the projects;
- joint ownership by the Canadian charity of assets and property involved in the projects;
- input by the Canadian charity into project initiation and follow-through, including the charity's ability to direct or modify the projects and to establish deadlines or other performance bench marks;
- the Canadian charity is a signatory to loans, contracts and other agreements arising from the projects;
- the Canadian charity receives vouchers, cancelled cheques, etc., and acts as a bookkeeper for the projects;
- the Canadian charity's review and approval of the project's budgets, the availability to the charity of an independent audit of the projects and the charity's option to discontinue funding;
- the Canadian charity's authorship of procedures manuals, training guides, standards of conduct, etc.; and
- the on-site identification of the projects as being one of the Canadian charity.

If it appears that a joint venture / joint ministry does not fit within these parameters - with suitable regard to the particular nature of the undertaking - then it may be preferable for the Canadian charity to meet the statutory requirement of carrying on its own activities by means of an agency agreement.

2. The Department has developed some recommendations to assist Canadian charities in establishing that they are *truly* acting as the principal in the agency relationship. At the very least, every agency agreement should include the following elements:
   - the names and addresses of both parties;
   - a *comprehensive* description of the *specific* activities (actual and proposed) for which funds will be transferred, in sufficient detail to clearly outline the limits of the authority given to the agent to act on behalf of the Canadian registered charity on its behalf;
   - provision to update the agreement as new projects are initiated by the Canadian charity in order to provide descriptions of the *specific* activities as per above;
   - provision for *written* progress reports (or other documentation from the agent such as minutes of meetings);

- provision for instalment payments by the Canadian charity based on confirmation of reasonable progress (for example, board meetings, letters and visits) reflecting the fact that the resources provided to date have to be applied for the specific activities outlined in the agreement;
- provision for the Canadian charity to have discretion in withholding or withdrawing the funds or other resources;
- provision for the maintenance of adequate books and records in Canada;
- provision for the Canadian charity's funds to be kept separate from those of the agent and for the agent to keep separate books and records; and
- the date and signatures of both parties.

3. The segregation of funds is important to any agency relationship. However, as indicated above, it is only one aspect of an adequate arrangement under the Act.
4. We would agree that, whenever possible, an agent must account for expenditures through the production of *documentary* evidence.
5. In general, the segregation of principal and agent funds should be respected. Where commingling takes place, we would require a *complete and detailed* accounting for *every* expenditure out of the mixed fund. The invoicing procedure you describe, if applied to *all* expenditures involving the Canadian charity's funds, would seem to satisfy this requirement.
6. We would point out that where the funds of several organizations are commingled, this will not necessarily be legitimized by the adoption of a joint ministry agreement.

   Although a joint ministry agreement is likely the appropriate instrument in these circumstances, it will be measured against the criteria listed above in order to determine whether the Canadian charity is exercising a sufficient degree of control, direction and supervision in the framework of the shared endeavour.

I trust these comments will be useful to you. If you would like to discuss this matter further, please do not hesitate to contact me at XXXXXXXXXX.

Yours sincerely,

Charities Division

Information Letter

CIL - 1997 - 006

April 23, 1997

Dear Sir:

This is further to your letter of XXXXXX, concerning the scope of Schedule VIII of the *Income Tax Act*. This Schedule lists the universities located outside Canada which, according to subparagraph 110.1(1)(*a*)(vi) and subsection 118.1(1) of the Act, can issue income tax receipts to Canadians who make gifts to them.

The entities recognized for the purposes of Schedule VIII of the Act are limited to universities themselves, which, according to subsection 149.1(1) of the Act, are "qualified donees". Since a tax credit is given only for gifts to registered Canadian charities and other "qualified donees", a Canadian tax credit is not given for a gift made to a foreign organization unless the organization is a "qualified donee".

Since the provisions of subparagraph 110.1(1)(*a*)(vi) and subsection 118.1(1) of the Act provide a series of exceptions to the general tax liability rule, they must be interpreted restrictively. It is immaterial whether the activities and funds of a centre or a foundation are dedicated to achieving goals or the activities of a particular university because the centre or foundation constitutes a separate legal entity that is not a "qualified donee".

I hope that you will find this information useful.

Sincerely,

Charities Division

Information Letter

CIL - 1998 - 025

September 9, 1998

Dear XXXXXX:

I apologize for the delay in responding to your letter of XXXXXXXXXX which the Department's Rulings Directorate forwarded to us on XXXXXXXXXX.

You have asked about the possibility of tax relief for Canadians who donate to the XXXXXXXXXX. You indicated that the Association is exempt in the United States under section 501(c)(3) of the *Internal Revenue Code*.

Under the *Income Tax Act*, Canadians may obtain tax relief for their gifts to "qualified donees" which include the following entities from outside Canada:

- the United Nations or agencies thereof,

- universities outside Canada that are prescribed to be universities the student bodies of which ordinarily include students from Canada, and
- organizations outside Canada to which Her Majesty in right of Canada has made a gift during a relevant taxation year.

A complete list can be found subsection 118.1(1) of the *Act*. There are other provisions for relief for gifts to U.S. organizations that may be applicable as well that I will discuss later in this letter.

In your letter you particularly mentioned a "prescribed" university and asked for further information about obtaining such status. To become a "prescribed" university, an institution must (1) be a "university" and (2) its student body must "ordinarily" include students from Canada. Before the Department can recommend an institution for prescribed status, the institution must demonstrate that it meets these requirements by providing:

- a letter or certificate from the appropriate educational authority in the country in which the institution is located confirming that it is empowered to issue degrees at least at the baccalaureate level according to the academic standards and statutory definition prevailing in that country,
- a copy of recent calendar or syllabus which describes course curriculum, and
- enrollment records for the last ten years which indicate the number of Canadian students per semester or program year, and information such as their names, Canadian addresses, and degree program.

If the Association is a university which you think might qualify, you should forward the necessary information to:

XXXXXXXXXX
International Tax Directorate
2nd Floor, Tower C
25 McArthur Avenue
Vanier, Ontario
K1A 0L5

You are invited to contact XXXXXXXXXX at XXXXXXXXXX prior to making your submission.

Concerning charitable organizations outside Canada to which Her Majesty has made a gift, the Charities Division is responsible for determining whether a foreign entity receiving a gift from the Crown is a "charitable organization" according to Canadian law, and whether the payment to the foreign entity is a gift at law.

To make such a determination we would require the following information:

- a copy of the governing document of the foreign entity,

- a copy of the letter or certificate issued by the foreign authority granting the foreign entity charitable status, and
- copies of correspondence, agreements or other documentation relative to the Crown gift, and the amount and the date or anticipated date of the gift.

These requirements apply to all foreign charities regardless of their country of origin. If this provision is appropriate, please send the required information to my attention at:

Technical Interpretation
and Communications Section
Charities Division
18th Floor, Tower A, Place de Ville
320 Queen Street
Ottawa, Ontario
K1A 0L5

There are also two other circumstances under which individual Canadians may obtain tax relief for their gifts to U.S. organizations that may be applicable to the Association's Canadian donors.

If the donor resides in Canada near the Canada-U.S. border, and commuted to a principal place of employment or business in the U.S. and the donor's chief source of income for the year was that employment or business, then donations to 501(c)(3) exempt organizations will be deemed to have been made to a registered charity. This provision is set out in subsection 118.1(9) of the *Act*.

If that circumstance does not apply but the Canadian donor has U.S.-source income, tax relief may be available under the *Canada-U.S. Tax Convention (1980)*. Pursuant to paragraph 6, Article XXI, residents in Canada may receive tax relief for donations from their U.S.-source income to U.S. organizations which are exempt under section 501(c)(3) of the *Internal Revenue Code*. Tax relief is subject to the Canadian limit, which is currently 75% of net income. The claim will not be restricted to U.S.-source income (although the 75% limitation will still apply) if the recipient charity is a U.S. college or university at which the donor, or a member of the donor's family, is or was enrolled. (The university does not need to be "prescribed" for the purposes of this provision.)

These are all the provisions under which your Canadian supporters could potentially claim tax relief under the *Act* for their donations to the Association.

I trust this information will be of assistance. If you require further information about any of the foregoing other than prescribed universities, please feel free to contact XXXXXXXXXX of my section at XXXXXXXXXX.

Yours sincerely,

BLUMBERGS

Technical Interpretation and Communications Section
Charities Division

Information Letter

CIL - 2001 - 006

March 1, 2001

Dear XXXXXX:

I refer herein to your fax dated XXXXXXXXXX in which you request information on establishing and operating a registered charity.

You are correct that your organization would need to be created in Canada. To be registered as a Canadian charity, and thus able to issue official donation receipts for Canadian income tax purposes, the organization must be created and established in Canada and it must be resident in Canada. Therefore, as a first step, you will require some form of governing document which establishes the organization in Canada (*e.g.*, incorporation documents), and as well you will require a local office/place of business in Canada.

Second, an organization seeking registration must send a completed T2050 *Application to Register a Charity under the Income Tax Act* to the Charities Directorate of the Canada Customs and Revenue Agency. The Directorate then determines the organization's eligibility for registration, examining the organization's formal objectives and activities. If the application is approved, the charity is issued a "charitable registration number" and may then issue official donation receipts. This information can be found, in greater detail, in our Brochure T4063 *Registering a Charity for Income Tax Purposes*, available on-line at our web site at http://www.ccra-adrc.gc.ca/charities.

In specific reference to your questions regarding maximum allowable deductions, I would first point out that these deductions are applicable only against Canadian income tax. Therefore, a donor from XXXXXXXXXX or the XXXXXXXXXX, for example, would not be able to deduct these amounts unless they had a Canadian source income. Notwithstanding the above, donors can ordinarily claim charitable gifts to an annual maximum of 75 percent of their net income. For further information on this subject you should consult our Brochure RC4142 *Tax Advantages of Donating to Charity*.

On a final note, as an alternative you may wish to contact an already established Canadian registered charity operating abroad. While I cannot suggest any particular

organization, you could enter into an agency agreement with a Canadian registered charity that fulfils a mandate similar to your own (*i.e.*, providing assistance and education to impoverished children in foreign countries). While your organization would then be acting on behalf of, and accountable to, this registered charity, it would eliminate the need for your organization to establish a separate presence and be registered in Canada. You may wish to consult our Brochure RC 4106 *Registered Charities: Operating Outside of Canada* for further information.

If you have any further questions, please do not hesitate to contact the undersigned at Charities Directorate, Canada Customs and Revenue Agency, Ottawa, Ontario, Canada, K1A 0L5 or toll-free at 1-800-267-2384. I can also be reached by fax at XXXXXXXXXX. I trust this information is helpful.

Sincerely,

Charities Directorate

Information Letter

CIL - 1995 - 003

February 15, 1995

Dear XXXXXX:

Re: XXXXXXXXXX

I am responding to your letter concerning the possible recognition of XXXXXXXXXX ("Institute") for Canadian income tax purposes. I sincerely apologize for the delay in replying.

In considering a request for charitable registration, the responsibility of departmental officials is to decide whether the organization operates within the legal confines of charity established at common law, and whether it satisfies the rules governing registered charities contained in the Canadian *Income Tax Act*.

The definition of "registered charity" in the *Act* requires that the charity be resident in Canada and either created or established in Canada.

Based on the information which you provided to me, I have considered whether the Institute could qualify for charitable registration if it were established and resident in Canada. In reviewing the description of the Institute's programs described in its 1993 annual report, I note that the Institute was established as "a research and education center

dedicated to advancing the understanding of the relationship between living habits and health and to providing leadership in implementing these concepts to enhance the physical and emotional well-being of individuals". An organization that is advancing research and education could qualify for charitable registration.

However, since the Institute was chartered by the XXXXXXXXXX with headquarters based in XXXXXXXXXX, it could not qualify for charitable registration in Canada.

For your information, I enclose a copy of our pamphlet "Registering Your Charity" which explains the requirements for charitable registration in Canada. You may be interested to know that paragraph 6 of Article XXI of the *Canada-U.S. Income Tax Convention (1980)* provides some charitable tax relief to a Canadian taxpayer who has income from sources in the United States upon which he or she is subject to tax in Canada. This taxpayer can make a gift to a recognized United States charitable organization which will be deductible or creditable from the United States income within the same limitation as though the gift had been made to a registered Canadian charity.

As well, paragraph 118.1(9) of the Canadian *Income Tax Act* provides some charitable tax relief to individuals resident in Canada who commute to their principal place of employment or business in the United States and whose chief source of income for the year was that employment or business. Such individuals can make a gift to a recognized charitable organization in the United States which, further to subsection 118.1(1) of the *Act*, will be deemed to have been made to a registered Canadian charity.

Finally, you indicate that the Institute may be engaged by a Canadian corporation in Ontario as a consultant for their wellness program. If this is the case, I suggest that you contact the International Tax Programs Directorate of Revenue Canada for any possible Canadian income tax implications, in particular that part of the *Act* dealing with paragraph 3 of Article XXI of the *Canada-U.S. Income Tax Convention (1980)*. The address of that Directorate is 123 Slater Street, Ottawa, Ontario, K1A 0L8. You can also call XXXXXXXXXX of that Directorate at XXXXXXXXXX. He is aware of our correspondence and would be pleased to assist you in this regard.

I regret that my reply could not be more favourable but hope that the foregoing will be of some assistance to you.

Yours sincerely,

Charities Division

Information Letter

CIL - 1997 - 012

September 12, 1997

Dear XXXXXX:

I sincerely apologize for my delay in replying to your letter of XXXXXXXXXX concerning requirements for registration as a charity under the *Income Tax Act*.

You ask what is meant by the term "resident in Canada" which you know is a requirement for charitable registration. An applicant can demonstrate that it is "resident" in a number of ways. For example, the applicant could show that its control and direction is based in Canada, or it might incorporate in Canada. It is question of fact as to whether an applicant is resident in Canada and we look for evidence of this in an applicant's detailed application submission.

Residency is only one of the requirements an applicant must satisfy before we can register it as a charity. A registered charity may operate in only two ways - it may devote its resources to its own charitable activities, controlled and directed by the charity, or it may gift funds to "qualified donees". These donees are described in the enclosed Guide at page 8, and are principally registered charities. Very few organizations outside Canada are qualified donees.

Furthermore, a registered charity may not act as a conduit for funds to third parties, to which Canadian donors could not directly make a gift eligible for tax relief. In other words, a registered charity cannot issue official receipts for income tax purposes for gifts it receives, and then forward those monies to an organization that is not a "qualified donee". We may revoke the registration of any charity that acts this way, and will not register an applicant that plans to operate in this manner.

Because you asked what steps an organization would take to register as a charity, I am enclosing an application package that includes the necessary form and an information guide.

In the event that your Canadian donors might have U.S.-source income, I enclose a copy of the Registered Charities Newsletter that discusses the *Canada-U.S. Income Tax Convention*. Under that Treaty, Canadian donors with U.S.-source income may receive tax relief for gifts to U.S. organizations that are exempt under section 501(c)(3) of the *Internal Revenue Code*.

I trust this information will be useful. If you have any further questions, please feel free to contact me at XXXXXXXXXX or our Client Assistance Section, toll-free, at 1-800-267-2384.

Yours sincerely,

Technical Interpretation and Communications
Charities Division

Information Letter

CIL - 1998 - 004

March 5, 1998

Dear XXXXXX:

I am writing in response to your letter received on XXXXXXXXXX addressed to XXXXXXXXXX, Director General of the Corporate Affairs Branch at Revenue Canada, in which you ask about the formalities required for the XXXXXXXXXX to become a registered charity.

Considering the information contained in your letter, it would appear that the XXXXXXXXXX could not be registered in Canada. The following will explain our position on this matter.

I understand from your letter that the Society is a charity established in XXXXXXXXXX. As such, your organization does not meet the Canadian residency requirement under the *Income Tax Act*. Specifically, subsection 248(1) of the *Act* states that a registered charity means (*a*) "a charitable organization...that is resident in Canada and was either created or established in Canada" or (*b*) "a branch...or other division of an organization...described in paragraph (*a*), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf...".

Unfortunately, for the preceding reason, the XXXXXXXXXX cannot be registered as a charity in Canada.

I regret that my reply cannot be more favourable. Should I have misunderstood your letter or if you have any questions do not hesitate to contact me.

Yours sincerely,

Charities Division