



CRA's Public Foundation List of Areas of Non-compliance with Income Tax Act Provisions

By Mark Blumberg (January 28, 2018)

We requested from CRA under the Access to Information and Privacy system copies of standard letters and scripts that the CRA uses in the Charities Directorate. One of the documents provided contains is a List of Areas of Non-Compliance with Income Tax Provisions for Public Foundations.

There are currently 86,428 Canadian registered charities on the CRA Charities Listing.

These registered charities are classified as either “charitable organizations” [of which there are 75,625], public foundations [of which there are 5,067] or private foundations [of which there are 5,736]. There are some differences as to the rules that relate to each type of registered charity.

This CRA “List of Areas of Non-Compliance with Income Tax Provisions for Public Foundations” provides a list of non-compliance for a “public foundation” under either the Income Tax Act or its regulations as well as a reference as to which section applies.

All Canadian public foundations should beware of these rules to avoid compliance issues with the Charities Directorate. You might also find helpful this directory of [top resources for Canadian charities](#) on our website.

The full document is reproduced on the next page.

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**List of Areas of Non-Compliance with the provisions of the *Income Tax Act*
and/or its *Regulations for Public Foundations***

| Issue | Income Tax Act Reference |
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| Lack of direction and control over the use of the Organization's resources | 149.1(3), 168(1)(b) |
| Failure to maintain adequate books and records | 149.1(3), 230(2), 230(4), 230(4.1) 168(1)(b), 168(1)(e), 188.2(2)(a) |
| Issuing receipts not in accordance with the Act | 149.1(3), 168(1)(d), 188.1(7) <u>or</u> 188.1(9) S.3500 or 3501 of ITA Regs. |
| Providing a personal benefit to a proprietor, member, shareholder, trustee or settlor of the Organization | 149.1(3), 168(1)(b), |
| Providing an undue benefit to a person | 149.1(3), 168(1)(b), 188.1(4), 188.1(5) |
| Failure to devote resources to a charitable purpose | 149.1(3), 168(1)(b) |
| Failure to meet its disbursement quota | 149.1(3)(b), 168(1)(b) |
| Failure to file an information return as and when required by the Act and/or its Regulations | 149.1(3), 149.1(14), 168(1)(c), 188.1(6) |
| Failure to prepare proper documentation for payments to an employee/director | 149.1(3), 168(1)(b) |
| Failure to comply with the requirements of the Act as they apply to the Organization's designation | 149.1(3), 168(1)(b) |
| Pursuing non-partisan political activities that are not ancillary and incidental to its charitable purposes | 149.1(3), 168(1)(b), 188.2(2)(e) |
| Issued a receipt for a gift of shares that are non-qualifying securities | 149.1(3), 168(1)(d) |
| Carries on an unrelated business | 149.1(3)(a), 168(1)(b), 188.1(1)(b) |
| Acquires control of a corporation | 149.1(3)(c), 168(1)(b), 188.1(3) |
| Incurred debts other than for acceptable purposes | 149.1(3)(d), 168(1)(b) |
| Made a disbursement by way of a gift, other than a gift made in the course of charitable activities carried on by it | 149.1(3)(b.1)(i), 168(1)(b) |
| Made a disbursement by way of a gift, other than a gift made to a donee that is a qualified donee at the time of the gift | 149.1(3)(b.1)(ii), 168(1)(b) |

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| Entering into a transaction with the intention to avoid or delay expenditures on charitable activities | 149.1(4.1)(a), 168(1)(b) |
| Entering into a transaction with another registered charity with the intention of assisting that charity avoid or delay expenditures on charitable activities | 149.1(4.1)(b), 168(1)(b), 188.2(2)(b) |
| Making a false statement for the purpose of obtaining registration | 149.1(4.1)(c), 163.2(1), 168(1)(b) |
| Having an ineligible individual that controls or manages the charity | 149.1(4.1)(e), 168(1)(b), 188.2(2)(d) |
| Having an ineligible individual that is a director, trustee, or officer of the charity | 149.1(4.1)(e), 168(1)(b), 188.2(2)(d) |
| Accepting a gift from a foreign state (that is defined in section 2 of the <i>State Immunity Act</i> and set out on the list in subsection 6.1(2) of that Act) | 149.1(4.1)(f), 168(1)(b) |

Legislation of the *Income Tax Act* that could apply

- 230(1)
- Regulation 3501(2) to 3501(6) depending on the facts
- Additional or subsequent sanction legislation

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