



REGISTERED MAIL

Mr. David Cooper
President
Am Echad Congregation
848 Sheppard Ave. W.
Toronto ON M3H 2T5

BN: 124041393RR0001
File #: 0708255

FEB 10 2017

**Subject: Notice of Intention to Revoke
Am Echad Congregation**

Dear Mr. Cooper:

We are writing further to our letter dated August 7, 2014 (copy enclosed), in which you were invited to submit representations as to why the registration of Am Echad Congregation (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have reviewed and considered information presented by your representative, Mr. Adam Serota, resulting from our meeting on January 22, 2015. However, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix A attached.

Conclusion:

The Canada Revenue Agency's (CRA) audit has revealed that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization failed to maintain proper books and records, provided a private benefit to its president, issued official receipts for income tax purposes that were not in accordance with the Act, and failed to file an accurate information return. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated August 7, 2014, we wish to advise you that, pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) and 168(1)(e), subsection 149.1(2), of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
124041393RR0001	Am Echad Congregation Toronto ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

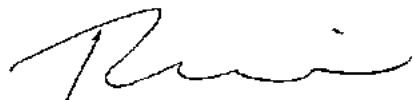
Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B", attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, I wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a *Return of Income* with the Minister in the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

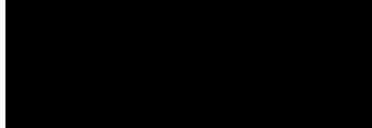
Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Attachments:

- CRA letter dated August 7, 2014
- Appendix "A", Comments on Representations of January 22, 2015
- Appendix "B", Relevant provision of the Act

cc: Ms. Lillian Cooper
Director
Am Echad Congregation


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**REGISTERED MAIL**

Am Echad Congregation
848 Sheppard Ave W.
Toronto, ON M3H 2T5

BN: 12404 1393RR0001

Attention: David Cooper

File #: 0708255

August 7, 2014

Subject: Audit of Am Echad Congregation

Dear Mr Cooper:

This letter is further to the audit of the books and records of the Am Echad Congregation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from July 1, 2011 through June 30, 2013.

During our discussions, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (Act) and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to maintain adequate books and records	230(2), 168(1)(e)
2.	Providing a Personal Benefit	149.1(1), 168(1)(d)
3.	Issuing Tax Receipts not in accordance with the Act	168(1)(d) Regulation 3501
4.	Failure to File An Accurate Information Return	168(1)(c), 149.1(14)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance in further detail.

Identified Areas of Non-Compliance:

1) Failure to Maintain Adequate Books and Records:

Subsection 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that "Every person required by this section to keep records and books of account shall retain:

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books of account relate."

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹
- a registered charity must maintain, and make available to the CRA, at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;² and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.³

During three prior audits of the Organization, the CRA observed issues of non-compliance relating to the Organization's books and records, official donation receipts and Information Return (Form T3010). The Organization provided written undertakings on March 18, 1994 and April 17, 1999 and signed a Compliance Agreement on January 11, 2006 (copy attached). The Organization previously agreed to implement the negotiated corrective measures and ensure they will "maintain proper books and records including source documents and prepared financial statements" and comply with the requirements of the Act, for the Organization to maintain its registered status. The audit findings indicate the books and

¹ The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

² Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada (2004) FCA 397

³ (College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency, (2004) FCA 101; Act section 168(1)

records of the Organization were inadequate for the purposes of the Act due to the following deficiencies:

1. The auditor was not able to verify the accuracy and completeness of the reported revenue from donations as the supporting documentation provided was incomplete. Numerous bank accounts were used by the director. Revenue amounts reported on the T3010 returns could not be reconciled to the amounts in the general ledger and bank statements as only partial records were made available.
2. The documentation maintained by the Organization to support its expenses was not adequate. For the period ended June 30, 2013, the T3010 reported total expenditures of \$62,541 at line 4950 yet the records provided indicated expenses of \$100,659. The records consisted of a manual ledger that mainly showed annual total of various expense categories (ie [REDACTED]). The Organization had very little source documentation to support the amounts that were claimed on the return, or that were recorded in the ledger. For example \$47,384.65 of expenses were selected to be tested, and \$41,751.79 of these had no source documentation.
3. There was no separation of personal expenditures and charitable expenditures. The Organization's books and records and personal records of the director were intermingled.
4. The Organization did not keep Minute Books.

The audit of the Organization has revealed that the Organization is not complying with the requirements set out in the Income Tax Act and had failed to comply with numerous elements of the Compliance Agreement it signed on January 11, 2006. In particular, it was found that the Organization failed to maintain proper books and records, which was the area of non-compliance identified in our previous audits and for which the Organization agreed to implement the negotiated corrective measures.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. The Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(e) of the Act.

2) Providing Private/Undue Benefit:

The Organization is registered as a charitable organization. In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the Act, "charitable organization" is defined as, "an organization.... no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof.". At common law, and by statute, a registered charity cannot be

established to confer a private benefit on non-charitable beneficiaries or non-qualified donees. Private benefits that occur during the normal operations of a charity - when a charity pursues activities that further its charitable purpose - such as salaries, fees for services and office expenses, are acceptable provided they:

- arise directly through the pursuit of the charity's purposes or are incidental and ancillary to the achievement of those purposes;
- are unavoidable and necessary to the achievement of the charity's purposes; and
- are reasonable or not disproportionate compared to the public benefit achieved in all circumstances.

If the activities that a registered charity conducts confer a private benefit that does not meet these criteria, it will be considered an undue benefit.

During the initial interview, it was explained that the Organization pays a salary to its director which includes a benefit relating to the use of his personal vehicle. However, the Organization has not issued any T4s for the salary and the benefits provided.

Following the three prior audits conducted, the Organization signed written undertakings and a Compliance Agreement, making assurances that the Organization will issue T4 slips for all amounts paid to employee(s)/directors, and that all proper deductions will be withheld and remitted, and that summary T4 reports will be filed as required.

The audit also revealed that the Organization had incurred numerous expenses which were non-charitable. Examples of expense items paid for by the Organization included [REDACTED] charges, [REDACTED] payments, home expenses and the expenses relating to the rental property of the director. In addition to these items, the Organization paid for the wedding expenses of the director and recorded the amounts as charitable expenses.

Throughout the audit the Organization failed to demonstrate that in fact any of the recorded expenses were incurred to further its charitable purposes. Furthermore, very little supporting documentation was provided that would allow for conformation of the expenses which were incurred for charitable purposes.

As a result it is the CRA's view that undue benefits were conferred on the director of the Organization.

3) Issuing Tax Receipts not in accordance with the Act:

The official donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act and IT-110R3 entitled, *Gifts and Official Donation Receipts*. The items are detailed below:

1. The Organization failed to include the address of the donor, and the Organization's address as recorded with the CRA on the donation receipts it issued.
2. The Organization failed to include its BN on the donation receipts issued to donors.

2. Our analysis of revenue showed that the Information Return did not include all of the Organization's revenue.
3. When completing the Information Return, the Organization reported all the revenue for which a donation receipt was not issued on line 4530 as "Total other gifts received for which a tax receipt was not issued by the charity". This is not correct as all the additional revenue collected by the Organization is the result of providing goods and services. As a result it should be reported on line 4640 as "Total revenue from sale of goods and services."

The signed Compliance Agreement dated January 11, 2006, stated that, "The 2004-06-30 and 2003-06-30 T3010A's failed to report total revenue from the sale of goods and services." The Organization was required to file an amended information return for the year ending June 30, 2004. Though the Organization agreed to make the amendment, it has failed to adhere to its commitments.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a *Registered Charity Information Return* as and when required under the Act or a Regulation. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Charity by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.

3. The Organization does not issue the donation receipts to its donors in a sequential order.
4. The Organization gave donation receipts for rental revenue it had received.

As part of the signed Compliance Agreement dated January 11, 2006, The Organization agreed that:

- "The Charity will show its actual address and business number on all donation receipts.;"
- "The Charity will include the full address of the donors including the postal code on all donation receipts.;"
- "The Charity will hence not issue donation receipts for services it renders to other persons or services it receives from other persons."

The Organization failed to implement the necessary changes outlined in the compliance agreement signed on January 11, 2006. Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of its charitable status under paragraph 168(1)(d) of the Act.

4) Failure to File An Accurate Information Return:

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file an information return with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its information return, schedules and financial statements, is factual and complete in every respect. A charity is not meeting its requirement to file an information return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The audit indicated the Information Return filed by the Organization is not accurate, in that it does not report the correct revenue amount, or the correct expense amounts that were incurred. In the course of the audit, the following deficiencies were noted:

1. As indicated in the above section, Failure to Maintain Adequate Books and Records, the total expense amount reported on line 4950 is not correct. The total amount identified in the ledgers provided by the Organization does not support the amount reported on the Information Return. The result is that the total expense reported on the T3010 Information Return is not accurate.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual, and explicitly authorizing that individual to discuss your file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

Yours sincerely,

Don Pratt
Audit Division
East Central Ontario Tax Service Office – Kingston

Telephone: 613-536-3558
Toll Free: 1-800-588-8035
Facsimile: 613-536-4629
Address: 31 Hyperion Court, PO Box 2600
Kingston, Ontario K7L 5P3

c.c.: Lillian Cooper



ITR APPENDIX "A"

Am Echad Congregation

Comments on Representations of January 22, 2015

Audit Background of the Organization

This is Am Echad Congregation's fourth audit. Details regarding the previous audits are outlined below.

Audit of the fiscal period ended July 31, 1992

This audit revealed the following areas of non-compliance:

- Am Echad Congregation (The Organization) did not issue T4s for wages paid over \$500. It also failed to collect payroll deductions and remit them to CRA (formerly Revenue Canada, Taxation). The Organization agreed with this finding.
- Financial statements had not been prepared. An attempt was made by the Organization's representative to complete financial statements, but these were incorrect. The Organization agreed with this finding.
- The auditor was unable to verify the accuracy of the amounts reported on the T3010, *Registered Charity Information Return*, because detailed records were not available. According to bank statements provided, the revenues were understated and the expenses were overstated on the T3010. The Organization indicated that action would be taken to correct this problem.

In response to the audit findings, the Organization submitted an undertaking dated March 18, 1994. The undertaking stated that the Organization would make payroll deductions and submit T4s in the future, would engage proper accounting expertise in order to maintain proper books and records, and that it would submit proper T3010 returns in the future. It was signed by Mr. David Cooper, who is the Organization's president.

Audit of the fiscal period ended June 30, 1995

This audit revealed the following areas of non-compliance:

- The Organization did not issue T4s for wages over \$500. The Organization's response was that these were casual wages that did not require a T4.

- The Organization had financial statements that were prepared by an accountant; however, the audit trail was insufficient and the auditor was unable to trace official receipted amounts to bank deposits. In addition, there were transactions between the president's personal bank account and the Organization's bank account. The Organization's response was that they hired a new accountant to implement a new financial accounting system.
- The Organization failed to submit its T3010s for 1994 and 1995 within six months of the fiscal period end. The Organization's response was that its previous accountant did not file the returns as he was supposed to.
- The official receipts could not be traced to deposits, all receipts were not accounted for, and replacement of lost receipts did not include the statement "this cancels and replaces receipt number XXXX". The Organization agreed that it would correct this deficiency.
- There were a large number of financial transactions between the bank accounts of the Organization and the president. \$92,888 was personally withdrawn and \$52,105 was credited to an account called "Advances from Directors". The opening balance on that account was \$148,874. The Organization agreed to seek advice regarding this issue from its new accountant.
- The auditor noted that despite the issuance of a previous undertaking letter, no progress had been made by the Organization.

In response to the audit, the Organization submitted two undertaking letters, dated February 28, 1999, and April 17, 1999. The first undertaking stated that the Organization wished to change its fiscal period end, that in the future a stricter separation from personal accounts and the congregation would be adhered to, and that employees would be issued T4 slips. The second undertaking stated that the Organization would include the proper notation for the replacement of official receipts, that all employees would be issued T4/T4As, that the 1997/1998 returns had been submitted, and there were books and records available upon request. Both undertaking letters were once again signed by Mr. David Cooper.

Audit of the period July 1, 2002, to June 30, 2004

This audit revealed the following areas of non-compliance:

- The official receipts did not comply with Regulation 3501. This included issuing receipts for service and in lieu of payment to vendors.
- There were books and records deficiencies including that the Organization did not maintain its own bank account, it did not have a system and/or audit trail to verify disbursement receipts, it did not prepare financial statements for the years under review, and expenditures included personal expenses of the president.
- Mr. Cooper received salary payments for which he did not receive a T4, nor were source deductions taken or remitted to CRA.

- The Organization did not properly complete its T3010s as many of the items reported were incorrectly identified or omitted.
- The auditor was unable to calculate the disbursement quota.

This audit resulted in a Compliance Agreement. The corrective measures in the agreement included that the Organization would include the address, business number, and donor's full address on all official receipts. It also stated that official receipts would not be issued for services or in lieu of payment to vendors. The agreement stated that the Organization would maintain a separate bank account and maintain deposit slips, bank statements, and cancelled checks, that it would set up a register for its members, and appointment book for its activities, that it would maintain proper books and records, including source documents and preparing financial statements, and that it would segregate the personal expenses of the president or any other employee from the Organization's expenses. Finally, the corrective measures stated that the Organization would issue T4 slips and would file an amended T3010 for the fiscal period ended June 30, 2014. The Compliance Agreement was signed by Mr. David Cooper on January 11, 2006.

Failure to Maintain Adequate Books and Records:

Our previous letter advised that subsection 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that "Every person required by this section to keep records and books of account shall retain:

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books of account relate."

We further advised that the audit revealed the Organization had not maintained adequate books and records. The specific deficiencies can be reviewed in the attached copy of our previous letter.

Representations

On January 22, 2015, the auditor attended a meeting with the Organization's representative, [REDACTED], [REDACTED] was not able to provide any additional explanation for the continued inadequacies of the books and records. He was only able to say that there would be an attempt to improve the maintenance of the books and records in the future.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1) (e) of the Act.

Providing a Private Benefit:

Our previous letter stated that in order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the Act, "charitable organization" is defined as, "an organization.... no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof".¹ At common law, and by statute, a registered charity cannot be established to confer a private benefit on non-charitable beneficiaries or non-qualified donees.

The audit revealed that the Organization was providing a private benefit to its president, Mr. David Cooper. Details can be found in the attached copy of our previous letter.

Representations

At the January 22, 2015, meeting referenced above, [REDACTED] did not refute the issue that Mr. Cooper received a private benefit from the Organization. As mentioned above, a charity cannot confer a benefit on a non-qualified donee. Such instances are considered gifting to a non-qualified donee, which is a contravention of the Act.

It is our position that the Organization has permitted the use of its charitable assets for personal benefits and as such, gifted to a non-qualified donee. Therefore it has failed to demonstrate that it meets the test for continued registration under subsection 149.1(4) as a charitable foundation that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) and 149.1(4)(b) of the Act.

¹ Please note that while the Organization is a private foundation and not a charitable organization, the obligation that "...no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof" still applies as per subsection 149.1(1) in reference to charitable foundations.

Issuing Tax Receipts Not in Accordance with the Act:

Audit Findings

The audit revealed that the Organization issued official receipts that were missing elements required by Regulation 3501 and did not comply with IT-110R3, *Gifts and Official Donation Receipts*. Details can be found in the attached copy of our letter.

Representations

The Organization's representative did not address this issue during the meeting with the auditor on January 22, 2015. He simply stated that an effort would be made to improve record keeping in the future.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it issues a receipt for a gift or donation otherwise than in accordance with the Act and the regulations. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Failure to File an Accurate Information Return:

Audit Findings

Our previous letter advised that pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file an information return with the applicable schedules.

The audit revealed that the Organization failed to file an accurate T3010, *Registered Charity Information Return*. Details regarding the deficiencies of the T3010 can be found in the attached copy of our previous letter.

Representations

The Organization's representative did not dispute this issue during the meeting with the auditor on January 22, 2015. He simply stated that an effort would be made to improve this in the future.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it failed to file an information return as and when required under this Act or a regulation. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Conclusion

The Organization has been audited four times over the course of twenty-two years. Each of these audits has resulted in the same or similar non-compliance issues. In each case, the Organization's president, Mr. David Cooper, was the individual involved directly with the audit. The results were communicated to him each time, and each time he assured the Charities Directorate that improvements would be made in the future. Two undertakings and one Compliance Agreement later, the Organization has failed to follow through with any of the changes or corrective measures agreed to in the previous audits.

Given the Organization's clear refusal to follow through with any of the improvements and corrective measures communicated to it in the past twenty-two years, it is our view that despite the Organization's promises to address these issues, it is extremely unlikely that any significant changes will be made and it is highly likely that the non-compliance will continue in the future.

We advise that the courts have upheld the position that revocation is a reasonable response to repeated non-compliance, where a lack of books and records prevents the auditor from verifying the accuracy and validity of official receipts, and where there are significant misstatements on the T3010, *Registered Charity Information Return*.² As such, it is our position that the Organization's charitable registration be revoked under paragraphs 168(1)(b), 168(1)(c), 168(1)(d), and 168(1)(e) of the *Income Tax Act*.

² *Prescient Foundation v. MNR*, [2013] FCA 120, at para. 51, *Jaamiah Al Uloom Al Islamiyyah Ontario v. MNR*, [2016] FCA 49, at para. 15, *Opportunities for the Disabled Foundation v. MNR*, [2016] FCA 94, at paras. 48-50.

Appendix B Relevant Provisions of the Act

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity; or
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year.

149.1(3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation; or
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

- (a) of a registered charity, if the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (a) applies to the Minister in writing for revocation of its registration,
- (b) ceases to comply with the requirements of this Act for its registration as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,
- (e) fails to comply with or contravenes any of sections 230 to 231.5, or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association, the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168(4) Objection to proposal or designation

A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

Section 172: Appeal from refusal to register, revocation of registration, etc.

172(3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or

- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
 - (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
 - (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
 - (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
 - (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,
- as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$A - B$

where:

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (d) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A, each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c) to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period, that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is a registered charity (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity; (b) that is not the subject of a suspension under subsection 188.2(1); (c) that has no unpaid liabilities under this Act or under the Excise Tax Act; (d) that has filed all information returns required by subsection 149.1(14); and (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity, (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) applies.

188(4) Idem

Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

"net asset amount"

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

A - B

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

A - B

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

Section 189

189(6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period exceeds
 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a registered charity in respect of the charity's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the charity after the day on which the Minister first assessed that liability and before the particular time to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.