



May 12, 2021

**REGISTERED MAIL**

Terrance Sinclair  
Director  
Global Disability Network Society  
1250 -1500 West Georgia St  
PO Box 62  
Vancouver BC V5G 2Z6

BN: 818534307RR0001  
File #: 3048692

Dear Terrance Sinclair :

**Subject: Notice of intention to revoke  
Global Disability Network Society**

We are writing with respect to our letter dated November 20, 2019 (copy enclosed), in which Global Disability Network Society (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2015 to December 31, 2017. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We contacted the Foundation by telephone on November 8, 2019, November 14, 2019, and January 2, 2020. Voicemail messages were left with the Foundation's authorized representative for each of these respective telephone calls. Further, we have obtained confirmation from Canada Post that the Foundation received and signed for our letter dated November 20, 2019. Despite our repeated attempts to communicate with the Foundation and its representatives, as of the date of this letter, we still have not received a telephone call or any other information, documentation, or representations. As such, the concerns outlined in our letter dated November 20, 2019, have not been alleviated and it remains our position that the Foundation's charitable status should be revoked.

**Audit Conclusion**

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation failed to devote resources to charitable activities carried on by the Foundation itself, failed to devote resources to a charitable purpose, failed to meet its disbursement quota and failed to maintain adequate books and records as required by the Act. For all of these reasons, and for each reason alone, it is our position that the Foundation no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated November 20, 2019, pursuant to subsections 168(1) and 149.1(3) of the Act, we propose to revoke the registration of the Foundation. 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)(e), subsection 149.1(3), and paragraph 149.1(3)(b), of the Income Tax Act, that we propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

| <b>Business number</b> | <b>Name</b>                                       |
|------------------------|---|
| 818534307RR0001        | Global Disability Network Society<br>Vancouver BC |

Should the Foundation choose to object to this notice of intention to revoke its registration in accordance with subsection 168(4) of the Act, a written notice of objection, with 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:

Assistant Commissioner  
Appeals Branch  
Canada Revenue Agency  
13<sup>th</sup> Floor  
250 Albert Street  
Ottawa ON K1A 0L5

Should the Foundation choose not to file an objection to this notice of intention to revoke with the CRA within this period, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 90 days from the date this letter was mailed. As such, the Foundation's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix A, attached.

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Foundation 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 Foundation would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Foundation 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 Form T2046, Tax Return Where Registration of a Charity is Revoked. Form T2046 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. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, we 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

Enclosures

- CRA letter dated November 20, 2019
- Appendix A, Relevant provisions of the Act

c.c.: Teresa Ascoli  
Director



November 20, 2019

Terrance Sinclair  
Director  
Global Disability Network Society  
1250 -1500 West Georgia St  
PO Box 62  
Vancouver, BC V5G 2Z6

BN: 81853 4307 RR0001  
File: 3048692

Dear Terrance Sinclair:

**Subject: Audit of Global Disability Network Society**

This letter results from the audit of the Global Disability Network Society (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from January 1, 2015 to December 31, 2017.

We have made several attempts to contact you at [REDACTED] to discuss our audit findings, but have been unsuccessful. The CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations in the following areas.

| AREAS OF NON-COMPLIANCE |  |  |
|-------------------------|--|--|
|                         | Issue  | Reference  |
| 1.                      | Failure to devote resources to charitable activities carried on by the Foundation itself: Fundraising expenses | 149.1(1), 149.1(3),<br>168(1)(b)   |
| 2.                      | Failure to devote resources to a charitable purpose  | 149.1(3), 168(1)(b)  |
| 3.                      | Failure to meet its disbursement quota   | 149.1(1),<br>149.1(3)(b),<br>168(1)(b)   |
| 4.                      | Failure to maintain adequate books and records as required   | 149.1(3), 230(2),<br>230(4), 230(4.1)<br>168(1)(b),<br>168(1)(e),<br>188.2(2)(a) |

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Foundation an opportunity to respond and present additional information. The Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

## General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that a charity demonstrate that it is constituted exclusively for charitable purposes (or objects), and that it devotes its resources to charitable activities carried on by the charity itself in furtherance thereof. To be charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity and deliver a public benefit:

- relief of poverty (first category)
- advancement of education (second category)
- advancement of religion (third category) or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a benefit that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measureable. Benefits that are not tangible or objectively measureable must be shown to be valuable or approved by “the common understanding of enlightened opinion for the time being.” To be socially useful, a benefit must have public value and a demonstrable impact on the public. In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances. An “assumed prospect or possibility of gain” that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.
- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:
  - have an eligible beneficiary group that is negligible in size or restricted based on criteria that are not justified based on the charitable purpose(s); or
  - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.

To comply with the requirement that it devote all of its resources to charitable activities carried on by the charity itself, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its own charitable activities – undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to “qualified donees” as defined in the Act.

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary, and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that the charity is resourcing a non-qualified donee in contravention of the Act.

To summarize, the CRA must be satisfied that a registered charity's purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information in order to assess its bona fides. Accordingly, the audit encompassed an enquiry into all aspects of the Foundation's operations.

### **Background**

The Foundation was registered as a public foundation under the fourth head of charity (benefits to the community in a way regarded as charitable at law) on May 17, 2012, with the original name "Change a Life Foundation" and the following purposes:

- a) To solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act; and
- b) To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

The Foundation's name was changed to "Opportunities for the Disabled Society" effective March 27, 2015. Three out of the six board members were changed at the same time.

The Foundation changed its name again to "Global Disability Network Society" effective May 9, 2017. All six prior board members were removed and a new four-member board was instated.

**1. Failure to devote resources to charitable activities carried on by the Organization itself: Fundraising expenses**

All charitable organizations and foundations that are registered under the Act are required by law to devote their resources to exclusively charitable purposes and activities.

Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself, nor is it a charitable activity that directly furthers a charitable purpose.

Where the resources of a charity are devoted to fundraising, and they exceed the resources devoted to charitable activities, it is a strong indicator that fundraising has become a collateral non-charitable purpose. This may happen whether fundraising is done internally through staff or externally through a contractual arrangement. Merely showing that the costs associated with fundraising are at reasonable or market rates will not alleviate concerns in this regard, and, regardless of the cost of fundraising, a registered charity must devote its resources to charitable activities. If a registered charity's total resources devoted to fundraising exceed those devoted to charitable activities, it is unlikely that this legal requirement will be met.

The audit found that in 2017, the Foundation paid \$15,000 to [REDACTED] and \$10,000 to another third-party fundraiser [REDACTED]. These costs were incurred to generate gross revenues of \$1,054. The amount devoted to fundraising expenditures was significant as it represented 45% of the Foundation's total expenditures for the 2017 fiscal year. Further, the amount expended on fundraising resulted in an insignificant amount of resources actually being raised for the Foundation.

For the 2016 fiscal year, the audit found that the Foundation paid \$54,413.46 to third-party fundraiser [REDACTED] and \$24,528 to a second third-party fundraiser [REDACTED]. Overall, 72% of the total expenditures of the Foundation in 2016 were devoted to fundraising. This represent a large majority of the total expenditures devoted to fundraising.

For the 2015 fiscal year, the audit found that the Foundation had both fundraising expenses and administrative costs. The Foundation paid \$14,033 to [REDACTED] and \$3,648.58 to [REDACTED]. In addition, \$24,005.13 was paid to [REDACTED] for setting up the Foundation and related matters. Overall, 85% of the total expenditures of the Foundation in 2015 are either for fundraising or administration. Neither activity is in and of itself charitable at law.

We further note that the Foundation did not make any gifts to qualified donees in the audit period despite the fact that the Foundation's only stated charitable purpose is to gift funds to qualified donees. As such, the Foundation did not conduct any charitable activities during the period under audit.

The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own charitable activities. The Foundation has not made gifts to qualified donees or carried on its own charitable activities. Therefore, it no longer meets the definition of a public foundation in subsection 149.1(1).

For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(b) of the Act.

## **2. Failure to devote resources to a charitable purpose**

As mentioned above, to be registered as a charity under the Act, Canadian law requires that a charity's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.<sup>1</sup>

The question of whether a charity is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the foundation currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*, the Supreme Court of Canada stated as follows:

But the inquiry cannot stop there. In *Guaranty Trust*, *supra* at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society *at present* instituted?"<sup>2</sup>

A charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose it purports to further. If an activity is, or becomes, a substantial focus of a foundation, it may no longer be in furtherance of a stated purpose. Instead, the activity may further a separate or collateral purpose. A foundation with a collateral non-charitable purpose is ineligible for registration under the Act.

The purpose of the Foundation is as follows:

- a) To solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property

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<sup>1</sup> See *Vancouver Society*, *supra* note 1 at para. 158 per Iacobucci J. and *Travel Just v. Canada Revenue Agency*, 2006 FCA 343. [2007] 1 C.T.C. 294.

<sup>2</sup> *Vancouver Society*, *supra* note 4 at para 194. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42. [2007] 3 SCR 217.

exclusively to registered charities and “qualified donees” under the provisions of the Income Tax Act; and

b) To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

While we recognize that the Foundation’s purpose is that with which it was originally registered, our consideration of both purposes and activities must be based on current legislation, court decisions, and Charities Directorate policies and procedures.

Our audit results led us to conclude that the Foundation did not make any gifts to qualified donees in the audit period despite the fact that the Foundation’s only stated charitable purpose is to gift funds to qualified donees. As such, the Foundation did not conduct any charitable activities that worked to achieve its purpose.

Further, given the Foundation’s fundraising expenditures, as outlined above, its fundraising activities are such that it has become a collateral non-charitable purpose. When a charity’s resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements for registration under the Act.

For this reason, it appears there are grounds for revocation of the charitable status of the Foundation under paragraphs 149.1(3) and 168(1)(b) of the Act.

### **3. Failure to meet its disbursement quota**

The Act requires public foundations to make a minimal disbursement each year equal to the disbursement quota. The calculation of the disbursement quota is contained in subsection 149.1(1) of the Act. Briefly, the minimal disbursement applies to public foundations that own more than \$25,000 of property not used for charitable activities or administration.

For the period under audit, the Foundation had assets in excess of the \$25,000 limit. Specifically, the T3010 for 2015 reports cash of \$29,016 which increases to \$63,735 by the 2016 fiscal year. As explained in our March 25, 2019 letter, we require the supporting documentation used to determine the value used on line 5900, the value of property not used for charitable activities or administration. The Foundation has reported this value as zero. We have received no response to our request.

Since the Foundation has minimal activity other than payments for fundraising and administration, as discussed under “failure to devote resources to a charitable purpose,” and in the absence of any additional information, it is our position that the value of property not used for charitable activities is at least \$25,000. Therefore, the disbursement quota applies to the Foundation.

The Foundation has not made gifts to qualified donees or carried on its own activities in the audit period, or the two prior fiscals. As a result, the Foundation has failed to comply with the disbursement quota requirements contained in the Act. Pursuant to subsection

149.1(3)(b) this is cause for the Foundation to be revoked in the manner described in subsection 168(1) of the Act.

#### **4. Failure to maintain adequate books and records as required**

Pursuant to subsection 230(2) of the Act, every registered charity “shall keep records and books of account [...] at an address in Canada recorded with the Minister or designated by the Minister containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.”

In addition, subsection 230(4) also states “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 a period as is prescribed;
- 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 end of the last taxation year to which the records and books of account relate.”

The failure to maintain adequate books and records in accordance with the requirements of the Act is itself sufficient reason for the CRA to revoke an organization’s charitable registration.<sup>3</sup> The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations.

The court has established that:

- the onus is on the registered charity to provide that its charitable status should not be revoked.<sup>4</sup>
- 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 books and records at some later date.<sup>5</sup>
- paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act, and the Federal Court of Appeal has

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<sup>3</sup> College Rabbinique de Montreal Oir Hachaim D’Tash v. Canada (Minister of Customs and Revenue Agency) 2004 FCA 101, and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21

<sup>4</sup> The Canadian Committee for the Tel Aviv Foundation v. Canada 2002 FCA 72

<sup>5</sup> *ibid*. See also The Lord’s Evangelical Church of Deliverance and Prayer of Toronto v. Canada 2004 FCA 397

determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.<sup>6</sup>

- The requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.<sup>7</sup>

Furthermore, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,<sup>8</sup> and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.<sup>9</sup>

The Board of Directors (the Board) of an organization has a duty in common law to safeguard the organization's assets and make decisions in the best interests of the organization. A lack of books and records puts into question whether the Board has fulfilled its responsibilities.

The audit found that there are significant deficiencies in the documentation provided to CRA. In our letter of March 25, 2019, we requested contracts or other supporting documentation for payments made to [REDACTED] and [REDACTED]. No such documentation was provided to support the Foundation's assertion that [REDACTED] was paid 40% of donor donations and that [REDACTED] invoiced the Foundation. This information is required in order to properly assess the nature of these expenditures. Without proper documentation we cannot reasonably determine whether these expenditures are charitable; instead we are forced to rely on assumptions.

As noted above, our March 25, 2019 letter, also requested the supporting documentation used to determine the value reported on line 5900, the value of property not used for charitable activities or administration. The Foundation reported zero on line 5900. No such documentation has been provided to support the value reported on line 5900.

Further, there is a lack information and documentation regarding its board meetings and operations. Specifically, information such as meeting minutes was missing regarding the Foundation's board of director meetings and documentation that would work to support and demonstrate how the Foundation makes decisions concerning its operations. The Foundation should note that it must be able to provide the CRA with the means of examining the internal decision making mechanisms within the charity's own structure through records such as: minutes of board meetings; inspection reports; internal communications; as well as, policies and procedures.

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<sup>6</sup> Opportunities for the Disabled Foundation v. Canada (National Revenue) 2016 FCA 94; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21

<sup>7</sup> Jaamiah Al Uloom Al Islamiyyah Ontario v. Canada (National Revenue) 2016 FCA 49, paragraph 15; Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43; and Many Mansions Spiritual Center, Inc. v. Canada (National Revenue) 2019 FCA 189, paragraph 10

<sup>8</sup> Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue) 2015 FCA 178, paragraph 80

<sup>9</sup> Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43

Additionally, the audit also found that the Foundation's books and records do not support all of the revenue figures reported in its T3010 information return. Specifically, we were unable to reconcile the amount reported as gifts for which the Foundation issued tax receipts to a list of issued official donation receipts. We note that received donations are not significant source of funds, nonetheless the Foundation must be able to support what amounts it did issue donation receipts for.

There were small discrepancies between the Foundation's general ledger and T3010 information for both revenues and expenses. Although the amounts are not significant, The Foundation should note that it must be able to provide the CRA with a reconciliation to show how the financial information reported on the T3010 corresponds to its general ledger.

Finally, based on the information provided, it appears as though the Foundation has little to no internal controls in place for issuing official donation receipts. As a result, there were errors in the Foundation's list of official donation receipts issued. For example, we observed different versions of receipt #1 and duplicate copies of receipt #6,8,9 and 10 were missing. Again, while the amounts reported for received donations are small, the Foundation is still required to maintain proper books and records related to them.

Under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering official receipts if it contravenes to subsection 230(2). It is our position the Foundation has failed to comply with the Act by failing to maintain adequate books and records. For this reason, there may be grounds to suspend the Foundation's authority to issue official receipts under paragraph 188.2(2)(a) of the Act. At this time, we are not considering sanctions as we are proposing to revoke the Foundation's registration.

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes any of sections 230 to 231.5 of the Act. Given the fact that explanations were provided, we do not feel that the lack of adequate books and records is serious enough to warrant revocation alone. However, in the context of the other concerns we have with the Foundation, we feel that the lack of adequate books and records is a relevant consideration.

**The Foundation's options:**

**a) Respond**

If the Foundation chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;

- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

The Foundation may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

If the Foundation appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,



Maria Popova  
Audit Division – Charities Directorate  
Vancouver Island and North Tax Services Office

Telephone: 250-363-8876  
Toll free: 1-255-522-7864  
Facsimile: 250-363-3000  
Address: c/o 9755 King George Boulevard  
Surrey BC V3T 5E1

CC: Terrance Sinclair



## Qualified Donees

### 149.1 (1) Definitions

**charitable foundation** means a corporation or trust that is constituted and operated exclusively for charitable purposes, 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, and that is not a charitable organization

**charitable organization**, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) 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,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

**qualified donee**, at any time, means a person that is

(a) registered by the Minister and that is

a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations

#### **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;

(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; or

(c) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift.

### **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;
- (b.1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (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 149.1(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;
- (b.1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (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 it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (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;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

#### **Revocation of Registration of Certain Organizations and Associations**

##### **168 (1) Notice of intention to revoke registration**

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (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;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift 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 the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

#### **168 (2) Revocation of Registration**

Where the Minister gives notice under subsection 168(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 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, if

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(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,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(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) [Repealed, 2011, c. 24, s. 54]

(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,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (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), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the 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) [Repealed, 2011, c. 24, s. 55]
- (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),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled 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.

### **Tax and Penalties in Respect of Qualified Donees**

#### **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

$$\mathbf{A} - \mathbf{B}$$

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
- (c) 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) a registered charity
  - (i) 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,
  - (ii) that is not the subject of a suspension under subsection 188.2(1),
  - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
  - (iv) that has filed all information returns required by subsection 149.1(14), and
  - (v) 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; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

## **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) or (12) applies.

#### **188 (4) Joint and several, or solidary, liability – tax transfer**

If 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, or solidarily, 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** 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** 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.

#### **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 sent 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 particular person in respect of the particular person'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 particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, 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 other 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 or registered Canadian amateur athletic association, 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.