



February 22, 2022

Rudy Cavaliere, President  
The Canadian Volunteers for International Development Society  
13432 – 118 Avenue  
Edmonton AB T5L 2L8

BN: 855201364 RR0001  
File: 3040634

Dear Rudy Cavaliere:

**Subject: Notice of Intention to Revoke  
Canadian Volunteers for International Development Society**

We are writing with respect to our letter dated December 9, 2020 (copy enclosed), in which Canadian Volunteers for International Development Society (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from May 1, 2015, to April 30, 2017. The non-compliance observed in the audit warranted the application of sanctions or revocation of its charitable registration. As a result, the Organization was specifically asked to explain why:

- i) its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act,
- ii) it should not be subject to sanction in the form of suspension of donation receipting privileges in accordance with paragraph 188.2(2)(a) of the Act;
- iii) it should not be subject to sanction in the form of financial penalty in accordance with subsection 188.1(4)(a) of the Act

The Organization's response, dated December 31, 2020 (copy enclosed), acknowledged the non-compliance issues identified by the audit. Consequently, as a result of both the repeated non-compliance, and the severity of non-compliance applicable, we will be proceeding with the revocation of the Organization's charitable registration, as opposed to the application of sanctions.

The Organization's response was brief, and while it did address two specific issues the Organization believes we described incorrectly, the response dismissed the importance of the audit findings, and failed to alleviate our concerns regarding the non-compliance issues identified. The Organization's representations and our responses, are summarized below:

### **Item 1 - On-site visit to Ecuador and India**

The Organization stated that “as indicated in our letter of May 24, 2019, vice-president, secretary and a few team members of CVIDS makes annual visit to Ecuador to inspect previously approved project and discuss new projects. Vice president and secretary of CVIDS also visited India in January 2017 to inspect the project.”

#### CRA response

The documentation provided in the Organization’s May 24, 2019, letter, included a brief description of its ongoing projects, including the statement “Each year members of CVIDS team led by vice-president and the secretary visit Ecuador for maintenance and control of all projects funded by CVIDS”, as well as “vice president and secretary visited the project site in Kerala, India in 2017”.

However, we acknowledged these statements in our letter dated December 9, 2020. As previously detailed in that letter, the Organization failed to provide sufficient information and documentation (including expense vouchers, itineraries, reports and other written communications) to demonstrate that it maintained ongoing direction and control of its resources.

Supporting source documentation is required in order to allow the CRA to verify the specific application of any charitable resources transferred and any expenditures incurred in relation to carrying out the Organization’s activities, as well as to ensure the activities were in fact carried out in accordance with instructions provided by the Organization.

### **Item 2 - Congregation of the Sons of the Immaculate Conception, India**

The Organization stated that it has “...more than 183 branches around the world, mostly in USA, UK and Canada, and they are “qualified donee” per CRA. This organization issues charitable receipts to individuals and corporations.”

#### CRA response

The Act permits a registered charity to carry out its charitable purposes both inside and outside Canada in only two ways: it can make gifts to other organizations that are on the list of qualified donees set out in the Act, and it can carry on its own charitable activities under its own direction and control.

A “qualified donee” means a donee defined in subsection 149.1(1) of the Act. Qualified donees are as follows:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;

- a listed Canadian municipality;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

During the period under audit the Organization transferred charitable resources to a recipient beneficiary which was not a qualified donee. The recipient party of the electronically transferred funds was identified as the Congregation of the Sons of the Immaculate Conception Provincial House, located in Kottayam, Kerala, India (the funds were transferred via the [REDACTED]). This does not represent a transfer of funds to a qualified donee as the recipient entity is not a registered Canadian charity and does not meet any of the other criteria outlined above.

In the Organization's December 31, 2020, response, it indicated "this charitable organization has more than 183 branches around the world, mostly in USA, UK and Canada, and they are "qualified donee" per CRA". Our review confirmed there is a registered Canadian charity identified as Congregation of the Sons of the Immaculate Conception (registration number 119067684 RR0001), however, the recipient of the funds, the Congregation of the Sons of the Immaculate Conception Provincial House, is a distinct legal entity based in India and is not a qualified donee under the Act.

### Summary

To date, the Organization has provided no additional information or documentation to satisfactorily address all of the issues raised in our December 9, 2019, letter. Our concerns with respect to the Organization's non-compliance with the requirements of the Act have not been alleviated. Furthermore, it remains our position that the Organization has failed to adequately implement the corrective measures contained in the compliance agreement it signed on March 28, 2014 (copy enclosed).

### **Conclusion**

The audit conducted by the CRA found that the Organization is not complying with the requirements for registered charities as set out in the Act. In particular, the audit found that the Organization failed to demonstrate that it maintained direction and control over the use of its resources, provided charitable resources to a non-qualified donee, failed to maintain proper books and records, failed to issue donation receipts in accordance with the Act, and failed to file its Form T3010, Annual Information Returns as and when required by the Act. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated December 9, 2020, and pursuant to subsection 149.1(2) and 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to subsection 149.1(2) and paragraphs 168(1)(b), 168(1)(c), 168(1)(d), and 168(1)(e) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
855201364 RR0001	Canadian Volunteers for International Development Society Edmonton, Alberta

Should the Organization 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  
Appeals Intake Centre  
Post Office Box 2006, Station Main  
Newmarket ON L3Y 0E9

Should the Organization 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 Organization'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 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) and 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 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**;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization 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





December 9, 2020

Rudy Cavaliere, President  
The Canadian Volunteers for International  
Development Society  
13432 – 118 Avenue  
Edmonton, AB T5L 2L8

BN: 855201364 RR0001  
File: 3040634

Dear Rudy Cavaliere:

**Subject: Audit of Canadian Volunteers for International Development Society**

This letter results from the audit of Canadian Volunteers for International Development Society (Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from May 1, 2015 to April 30, 2017.

In the course of the audit review 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 maintain direction and control over the use of resources / Funding non-qualified donees	149.1(2), 168(1)(b)
2.	Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
3.	Issuing receipts not in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), 188.1(7) or 188.1(9) Regulation 3500 and 3501(1)
4.	Failure to file an Information Return as and when required by the Act	149.1(2), 149.1(14), 168(1)(c), 188.1(6)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements applicable to registered charities, and which may be subject to sanctions under the Act. The Organization will also be provided with the opportunity to make representations or present additional information as to why a sanction should not be applied.

**Canada**

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our 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.

The balance of this letter describes the identified areas of non-compliance and the sanction(s) proposed in further detail.

**Identified areas of non-compliance:**

**1. Failure to maintain direction and control over the use of resources / Funding non-qualified donees**

Subsection 149.1(1) of the Act defines a charitable organization, which reads in part as:

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

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

Accordingly, a charitable organization must be careful about how it carries on its activities and it must ensure that it keeps sufficient direction and control over its resources, or it could possibly be transferring money to non-qualified donees, which is not a charitable activity.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in Canadian Committee for the Tel Aviv Foundation v Canada are applicable to most intermediary arrangements:

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations Overseas.<sup>1</sup>

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.<sup>2</sup>

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<sup>1</sup> Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

<sup>2</sup> Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

As re-iterated by the Court in *Lepletot v MNR*<sup>3</sup>, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.<sup>4</sup>

Consequently, where a registered charity undertakes an activity through an intermediary, it must be able to substantiate that it has actually arranged for the conduct of that specific activity on its behalf and has not simply made a transfer of funds to a non-qualified donee. It must be able to demonstrate that it maintains direction and control over, and is fully accountable for, the use of its resources. To this end, a charity would be expected to:

- select the activity that it will conduct with or through an intermediary based on the fact that it will further the charity's charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity's behalf; and
- supervise/direct, and make significant decisions in regard to the conduct of, the activity on an ongoing basis.

To this end, the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,<sup>5</sup> and are actually implemented. For instance, the documentation should include:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the Organization and how it is to be carried out by the project participant on the Organization's behalf, including parameters, deliverables, milestones or goals;
- provision for real and effective monitoring and supervision of the activity, and the project participant carrying on the activity, with mechanisms for someone accountable to the Organization to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis; and

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<sup>3</sup> *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

<sup>4</sup> *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

<sup>5</sup> See *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

- a requirement for the Organization to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the Organization has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

CRA Guidance CG-002 Canadian Registered Charities Carrying Out Activities Outside Canada<sup>6</sup> sets out the guidelines that we use to help us assess whether a registered Canadian charity exercises the necessary degree of effective direction and actual control, in greater detail.

By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. Through documented evidence, the charity must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship.

Thus, the charity must provide the CRA with a means of examining the internal decision making mechanisms within the charity's own structure through records, such as: minutes of board meetings; internal communications (i.e., memoranda); as well as, policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship.

For purposes of the Act, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. The registered Canadian charity must not only show that an appropriate agreement existed (written or otherwise), it must also show that the agreement was implemented in a manner that clearly demonstrates that the registered Canadian charity exercised direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources were applied. In effect, the registered Canadian charity must show that it acted as the principal through the implementation of the agreement.

#### Audit Findings:

The audit raised serious concerns with respect to the Organization's foreign activities. Specifically, the Organization has not demonstrated that it maintains adequate direction and control over foreign activities undertaken and, as such, has failed to demonstrate that it devoted its resources to charitable activities carried on by the Organization itself.

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<sup>6</sup> [Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html](http://www.cra-arc.gc.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html)

During the audit period, the Organization transferred resources to non-qualified donees outside Canada, primarily to Fr. Pio Baschirotto (Ecuador) and the Sons of the Immaculate Conception (India). The Organization did not maintain a written agreement with either individual / organization to act on its behalf in the administration of its charitable activities. As such, no details of the applicable programs / activities were included in the books and records provided.

The expenditures outside Canada applicable to the audit period were partially matched to electronic fund transfer statements submitted by the Organization. In addition to the electronic fund transfer statements, the Organization submitted documentation to support direction and control over the charitable resources transferred consisting of the following documents:

- A letter of acknowledgement from “Parrachial Hall of Guangaje” in Spanish language confirming receipt of US\$ 7,000.00).
- An acknowledgement letter received from the Mission Salesiana de Zumbahua (“statement of funds received”). The letter was in Spanish language with a hand-written English comment at the top of the letter stating “food program for orphans in Zumbahua”.
- A letter of acknowledgement from the “Association of Volunteers Operation Mato Grosso Ecuadorna”. The letter was in Spanish language with a hand-written English comment at the top of the letter stating “physiotherapy clinic in Zumbahua c/o Pio Baschirotto”.
- A contract proposal (in Spanish language) which appears to outline the specifics of the kitchen renovation project (translated as “project for the construction of a kitchen and dining room in the bilingual intercultural educational unit of the Pisambilia community”). The document includes a listing of costs and signature fields signed by the issuing party and the Canadian Organization. It is unclear from whom the program / project originates, the retention of ownership to fixed capital assets, and measurables for periodic payments, and other required information.
- Miscellaneous photos of an operating room, a school bus, a hospital hallway, a wall with the Organization’s logo on it (hand written notation “de-worming and dental hygiene of children, Cayambe Ecuador”).

The Organization provided no documentation to demonstrate evaluation, review and approval processes to distribute funds in accordance with program / activity details. The Organization provided no documentation to demonstrate it operated as the guiding mind in the undertakings funded with its charitable resources. Meeting minutes were provided to support internal evaluation and approval of activities to be carried out however the charitable programs described related to activities conducted in Bolivia, with no reference to expenses applicable to Ecuador. The funds transferred to India were acknowledged in the meeting minutes with a single entry (February 23, 2016: “in the last minutes, our \$10,000 donation for the projects in India had been omitted”).

After a review of documentation and information provided, it is our view that the primary role of the Organization, as it relates to the foreign entities, is limited to that of providing funds for delivery of programs and activities carried out by non-qualified donees. There was no evidence

to demonstrate the Organization provided specific instruction with respect to how activities were to be conducted on its behalf.

As specified in the corrective measures of a compliance agreement signed with the CRA (signature date April 7, 2014, see enclosed), the Organization agreed that they "will enter into a structured agreement with any intermediary (an individual that is not its employee or volunteer, or an organization that is not a "qualified donee" under the Act) through which it carries out its charitable activities/programs". Furthermore, the compliance agreement stipulated the Organization shall no longer donate its funds to a non-qualified donee. This requirement has not been met specifically with respect to the funds transferred to the Don Bosco Foundation (Fr. Pio Baschirotto) in Ecuador, and the Sons of the Immaculate Conception in India.

In addition to the Organization's failure to maintain written agreements with any and all intermediaries engaged, the documentation provided does not adequately demonstrate ongoing direction and control over specific activities. Based on the documentation provided, it does not appear that the Organization is in a position to dictate operational parameters to foreign intermediary entities. The records provided do not indicate that the Organization exercises any specific direction as to how its funds are to be used to accomplish specified activities on its behalf.

The types of measures a charity may choose to adopt to demonstrate and ensure it maintains direction and control over its resources are discussed in section 7.1 of CG-002 Canadian Registered Charities Carrying Out Activities Outside Canada. The audit revealed insufficient involvement and/or oversight on the part of the Organization in order to demonstrate direction and control of its resources.

- There was no evidence to support the Organization was involved in the planning and approval of the budget for projects undertaken. The transfer of resources identified did not reflect specified expenditures to which the funds were to be applied. The Organization therefore did not demonstrate review, consideration or approval of the expenditures to which its resources were to be applied.
- There was no evidence to indicate the Organization provided periodic instructions to the foreign intermediary entity or had involvement or input in the planning of activities carried out.
- There was no evidence to indicate specific activities were in fact carried out by the foreign intermediary entity on behalf of the Organization. The books and records did not include reconciliations or copies of source expense vouchers. Further, it should be noted that financial and progress reporting provided to the Organization by a representative of a foreign intermediary entity via oral presentation at board meetings does not represent a reconciliation of the resources of the Organization to expenditures incurred.

- Supporting documentation did not adequately demonstrate ongoing monitoring by the Organization of the progress of activities carried out by the foreign intermediary entity. Audit review noted insufficient commentary in meeting minutes, communication via telephone or email, budget or audit reports. Indications of on-site visits by representatives of the Organization were observed in Bolivia however not in Ecuador or India in the audit period. The books and records lacked sufficient documentation and / or information to support proper supervision or monitoring of the activities carried out.
- Transfers of funds to the foreign intermediary entities were not demonstrated to be segregated from the operating funds of the recipients. Charitable resources of the Organization must remain segregated and apart from the funds of an intermediary so that the role of the Organization in any particular activity or program is separately identifiable as its own charitable activity. This requirement was a stipulated corrective measure outlined in the previous compliance agreement signed by the Organization which stated: "The charity's funds will remain separate and apart from those of the intermediary, so that the charity's role in any particular project or endeavor is independently identifiable as its own charitable activity".
- The books and records did not include budget documents specific to the allocations and applications for resources of the Organization. The Organization failed to demonstrate ongoing review and approval of proposed budgets, financial and progress reports by representatives of the Organization corresponding with issuances of resources to foreign intermediary entities (including meeting minutes, emails, other communications).
- No written progress or financial reporting were provided in the course of the audit. A written agreement maintained should stipulate financial and progress reporting requirements as well as provide the right to inspect and review the foreign intermediary entity's books and records with respect to the transfer and application of its resources. This requirement was a corrective measure outlined in the previous compliance agreement signed by the Organization which stated: "The intermediary will provide regular and comprehensive written reports to the charity, including expense vouchers and receipts, concerning the ongoing activities that are carried out on the charity's behalf".

The Organization's books and records failed to demonstrate regular instruction or evaluation of projects, and no supporting expense reconciliations or vouchers were maintained. Per CG-002, "ongoing instruction is the process of providing any necessary additional instructions or directions to an intermediary. Records of any ongoing instructions help to show that the charity is carrying out its own charitable activities in accordance with the provisions of the Income Tax Act. Minutes of meetings or other written records of decisions are one way to show that a charity has given instructions. The CRA recommends using written instructions (for example, letters, emails, or faxes) to communicate with an intermediary whenever possible."

Finally, in addition to the Organization's demonstrated failure to fulfill the corrective measures outlined in a previous compliance agreement issued by CRA, we would point to specific comments included in the Notification of Registration letter issued December 7, 2009: "the

applicant should strongly note that registration is being granted based on the understanding it will make donations of medical / surgical equipment, medications and medical training to hospitals in developing nations only if an agreement exists between the beneficiary and the applicant”.

Summary:

In contrast to the corrective measures agreed to by the Organization following completion of a previous CRA audit review, the Organization has continued to provide its charitable resources to non-qualified donees in the current audit period. Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Subsection 188.1(4)(a) of the Act states a registered charity that confers an undue benefit by providing its resources to a non-qualified donee is liable to a penalty under this Part for the taxation year equal to 105% of the amount of the gift. Due to the serious nature of the non-compliance, it is our view that a penalty under 188.1(4)(a) of the Act may be assessed against the Organization for conferring an undue benefit by providing charitable resources to entities other than qualified donees. Below we have included a calculation of the penalty that would be applicable to the amounts that are currently under consideration:

Fiscal period ending April 30, 2017:

Congregation of the Sons of the Immaculate Conception (Kerala, India) in the amount of \$ 10,000.00 (via electronic fund transfer June 19, 2015).

Fiscal period ending April 30, 2016:

Congregation of the Sons of the Immaculate Conception (Kerala, India) in the amount of \$ 10,000.00 (via electronic fund transfer June 13, 2016).

Total resources provided to non-qualified donee	\$ 20,000.00
Penalty of 105%	x 105%
Total penalty	\$ 21,000.00

## **2. Failure to maintain adequate books and records**

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 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 relate.”

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked,<sup>7</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 documentation and records subsequent thereto,<sup>8</sup> 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 in the case of material or repeated non-compliance.<sup>9</sup>

#### Audit Findings:

The audit revealed the Organization failed to satisfy the requirements of paragraph 230(2)(a) of the Act as documentation in support of information reported was found to be incomplete and / or inadequate. In the course of the audit review the Organization's books and records failed to demonstrate that its resources were used in furtherance of its own activities supporting its charitable purposes in a manner consistent with common law.

The Organization's books and records failed to support its involvement in the planning, review or approval of budgets for projects undertaken or application of developed selection criteria. The transfers of resources identified did not reflect specified expenditures or programs / activities to which the funds were to be applied.

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<sup>7</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>8</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

<sup>9</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013]FCJ no 512.

The Organization did not maintain financial or progress reports supported with documentary evidence such as financial statements, invoices, minutes of meetings and any like information that demonstrates the Organization's ongoing participation in the foreign activities or that substantiate how the Organization's funds were used. Note that meeting minutes referred to activities undertaken in Bolivia, with an absence of discussions relating to programs and activities conducted in Ecuador and India.

The Organization did not maintain copies of source documents (for example, expense vouchers), or expense reconciliations to support the specific application of resources transferred and expenditures incurred relating to the carrying out of the Organization's own activities in accordance with instructions provided.

Summary:

Failure to obtain and maintain adequate documentary evidence resulted in the Organization failing to provide support for expenditure amounts reported in the T3010 Information Returns filed in the audit period, and not being able to substantiate that it is devoting all of its resources to its own charitable activities as required by the Act. Accordingly, it appears that the Organization may not be exercising due care with respect to the accuracy of its books and records in support of its financial position disclosed or in support of its charitable purposes abroad.

Under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering official receipts if it contravenes subsection 230(2). It is our position the Organization 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 Organization's authority to issue official receipts under paragraph 188.2(2)(a) of the Act.

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

**3. Issuing donation receipts not in accordance with the Act and/or its Regulations**

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure the information on its official donation receipts is accurate.

Paragraph 230(2)(b) of the Act provides that every registered charity shall “keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate<sup>10</sup> of each receipt containing prescribed information for a donation received by it”

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

Audit Findings:

The audit review conducted identified concerns relating to issuances of and procedures applicable to the official donation receipts. In particular, deficiencies noted were as follows:

i) Information disclosures

The duplicate donation receipts provided by the Organization were found to generally include required information disclosures outlined in Regulation 3501(1) of the Act with the following exceptions:

- date on which the receipt was issued where that date differs from the date of the donation (Regulation 3501(1)(f))
- where the gift is of property other than cash:
  - (i) the date on which the gift was received,
  - (ii) a brief description of the property, and
  - (iii) the name and address of the appraiser of the property if an appraisal is done. (Regulation 3501(1)(e.1))

ii) Gifts in kind – Out of pocket expenses

In the audit period, an amount was recognized on donation receipts issued in relation to expenses incurred on behalf of the charity. In circumstances where a volunteer of a charity (in the audit period, applicable volunteers were specifically identified as a non-arm's length member of the board of the directors and spouse), incurs expenses on behalf of a charity, a charity cannot simply issue an official donation receipt to the volunteer for the amount of the expenses, in lieu of reimbursing the expenses.

As outlined in CRA policy CPC-012 Out of pocket expenses<sup>11</sup>, parties are encouraged to proceed by way of an exchange of cheques, that is, the charity issues a cheque to the volunteer covering

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<sup>10</sup> The definitions found in general language dictionaries and in law dictionaries are sufficiently broad to include a "duplicate of a receipt" in almost any form.

<sup>11</sup> See [Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-commentary-012-pocket-expenses.html](http://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-commentary-012-pocket-expenses.html)

the costs incurred, and the volunteer then writes a cheque to the charity for an equivalent or lesser amount. By using the cheque-exchange method, a charity will have proper financial records justifying the receipt it issues to the volunteer and the volunteer can document that he or she has transferred property to the charity.

However, provided the volunteer has a right to reimbursement from the registered charity for the expenses incurred, the charity may treat the right to reimbursement as a non-cash gift and issue a receipt for income tax purposes.

When a registered charity wants to issue a receipt for income tax purposes to a volunteer in lieu of reimbursement, it must have written direction from the volunteer. The written direction must confirm the right to reimbursement and direct the registered charity to issue a receipt rather than provide reimbursement.

The charity should also have a policy in place on reimbursing volunteers. The policy should specify both the type of expenditures the charity is prepared to repay, and appropriate procedures to document the volunteers' payments, such as submitting credit-card slips. Such a policy enables a charitable organization to demonstrate it is controlling the use of its resources for charitable purposes.

### iii) Donation receipts issued in recognition of issuer provided gift certificates

In the course of the audit review, it was observed that the Organization provided donation receipts to a number of persons (including retailer and business) in recognition of gift certificates donated.

In accordance with CRA guidance CG-007 Donation of gift certificate or gift cards<sup>12</sup>, registered charities cannot issue official donation receipts for gift certificates they receive directly from the issuer for no consideration. When the issuer of a gift certificate donates it to a charity for no consideration, a registered charity can only issue an official receipt at the time the charity receives property when it redeems the gift certificate.

For clarification, an “issuer” is defined as the person (individual, retailer, business) that creates a gift certificate or a gift card redeemable for goods and/or services from that person. An issuer cannot be a holder.

As outlined in CG-007, when an issuer donates a gift certificate directly to a charity, and the charity transfers the certificate to a third party (for example, at an auction or a raffle), the redemption of the gift certificate by the third party does not entitle the issuer to a receipt. The honouring of the gift certificate by the retailer cannot transform the character of the original transfer of the gift certificate to the charity into a gift. Each transaction must be viewed independently when determining whether a gift has been made.

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<sup>12</sup> See [Canada.ca/en/revenue-agency/services/forms-publications/publications/t4033.html](http://Canada.ca/en/revenue-agency/services/forms-publications/publications/t4033.html)

In this scenario, no income is realized for the donation and no donation deduction or tax credit can be claimed. However, when the issuer has donated and redeemed a gift certificate for inventory for the purpose of earning income in its business, a deduction is generally available for the cost of the goods.

Summary:

As a result of the concerns identified above, it is our position that the Organization has issued receipts otherwise than in accordance with the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to an Organization that the Minister proposes to revoke its registration because the Organization issues a receipt for a gift otherwise than in accordance with the Act and the Regulations or that contains false information.

**4. Failure to file an Information Return as and when required by the Act**

Subsection 149.1(14) of the Act states that:

“Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.”

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.<sup>13</sup>

Audit Findings:

Errors and omissions identified in the course of the audit are summarized as follows:

i) Section A3 Line 1600

In both fiscal years of the audit period, the Organization included an indication that it is designated as a public or private foundation. The Organization was designated as a charitable organization at the time of registration and has remained so. Line 1600 should indicate that the Organization is not designated as a foundation.

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<sup>13</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

ii) Schedule 5 Gifts in Kind

In each fiscal year of the audit period the Organization reported that non-cash donations received (gifts in kind) for which tax receipts were issued in recognition. In representations provided to CRA May 24, 2019, the Organization stated that tax receipts for gifts in kind were not issued in 2017. As a result, Line 580 of Schedule 5 should indicate a nil amount.

iii) Qualified Donees

In the fiscal period ending April 30, 2016 the Organization transferred funds totalling \$ 10,000.00 to a registered charitable organization in relation to programs carried out in the Dominican Republic. The applicable amount should not have been included in Schedule 2 amounts, expenditures on activities outside Canada, rather the beneficiary organization, Ben Sawatzky Foundation (“registration number 868486499 RR0001), required recognition on Line 5050 of Schedule 6 as well as form T1236 Qualified Donees Worksheet. Line 200 of Schedule 2 section 1 explicitly states ‘total expenditures excluding gifts to qualified donees’.

Summary:

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return as and when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

**The Organization's options:**

**a) Respond**

Should you choose to make representations regarding this proposal, 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.

**b) Do not respond**

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give 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.

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, please contact the undersigned at the telephone number listed below. Thank you for your assistance during the audit.

Sincerely,

A large black rectangular redaction box covering a signature.

Ted Dubien  
Assisted Compliance Section  
Charities Directorate, Canada Revenue Agency  
320 Queen Street, Tower A, Place de Ville  
Ottawa ON K1A 0L5  
Telephone: (613) 305-0442  
Facsimile: (613) 541-7161

Enc. Compliance agreement (signed April 7, 2014) applicable to CRA audit of fiscal periods ending April 30, 2011 and 2012.

c.c.: A black rectangular redaction box covering a list of names.

December 31, 2020

Assisted compliance Section  
Charities Directorate  
Canada Revenue Agency  
320 Queen Street Tower A, Place de Ville  
Ottawa ON  
K1A 0L5.

Attention Mr. Ted Dubien

Dear Sir,

**Canadian Volunteers for International Development Society (CVIDS)**  
**April 30, 2016 and April 30, 2017**

Your letter Ref.3040634 dated December 9, 2020 is acknowledged with thanks.

We are concurrent with your findings except for a few areas which we will discuss latter in this letter.

Your letter dated December 09, 2020 was received by our office on December 23, 2020 making it very difficult to register complete and concise reply within 30 days; most offices were closed during Christmas and New Year.

At the meeting on October 7, 2013, attended by auditor, accountant, president and secretary, general review of CVIDS books and records were made. After four to five hours of meeting, auditor recommended a few changes and concluded that books and record seems to in order. Written confirmation of the audit was received sometimes in February, 2014 and we assumed that it was just the formality of the previous meeting and paid less or no attention.

CVIDS administration and office personnel are run on volunteer basis, consequently maximizing foreign contribution to the very needy countries.

Subsequently CVIDS continued fund raising through donation and private auction. Practically all the funds collected were disbursed to various countries as humanitarian plea grew. These funds were used by thousands of improvised, underprivileged, neglected children and seniors living in the unimaginable poverty. CVIDS provides life line for their survival by providing food, medicine and shelter.

Going forward CVIDS would provide similar services to various countries under the terms dictated by Income Tax Act and the guide lines provided in your letter and any non-compliance be remedied in future.

On reviewing your letter of December 9, 2020, the following areas seem to be incorrect.

**On-sight visit to Ecuador and India**

As indicated in our letter of May 24, 2019 vice president, secretary and a few team members of CVIDS makes **annual visit** to Ecuador to inspect previously approved project and discuss new projects. Vice president and secretary of CVIDS also **visited India in January, 2017 to inspect the project**.



## Compliance Agreement

Between



**Canadian Volunteers for International Development Society (the Organization)**  
855201364RR0001  
13432-118 Avenue  
Edmonton, AB T5L 2L8

And

**Canada Revenue Agency (CRA)**

During an audit of the Organization's books and records for the fiscal period(s) ending April 30, 2011 and April 30, 2012 conducted by the CRA, the following areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* were identified.

### Areas of Non-Compliance

#### **1. Written agreements for Foreign Activities**

The verbal agreement that this Organization has with Father Pio in Ecuador is not adequate. The work in Ecuador requires a formal arrangement which will establish the use and control of the funds transferred to them. Your Organization has indicated that the Charity could possibly be going to other parts of the world in the future such as India. In order for you to continue foreign activities the following are guidelines for you to follow.

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of resources to a non-qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of funds provided to the intermediary, at all times.

Accordingly, where a charity works in this manner, it should enter into a formal arrangement, in each case, which establishes that:

- The intermediary is to carry out certain identified and fully described activities that the charity wishes to accomplish, on its behalf, during a



charity, but that the charity works with to carry out its own activities. For example, a charity might do one of the following:

- hire a company;
- enter into an agreement with a non-profit organization to have the organization deliver specific charitable programs for the charity; or
- pool its resources with another organization to complete a project.

In certain limited circumstances, the CRA may consider a charity to be carrying out its own activities by transferring certain resources to a non-qualified donee. The CRA will take into account all relevant circumstances when determining this, but at a minimum, the following three conditions must all apply:

1. The nature of the property being transferred is such that it can reasonably be used only for charitable purposes (for example, medical supplies like antibiotics and instruments, which will likely only be used to treat the sick, or school supplies like textbooks, which will likely only be used to advance education); **please note that transfers of money are not acceptable, and always require on-going direction and control.**
2. Both parties understand and agree the property is to be used only for the specified charitable activities.
3. Based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities

Investigating the status and activities of an intermediary would typically include examining details such as the intermediary's stated goals and purposes, any previous relationship with the charity and other charities, its history and general reputation, and relevant media reports.

If any of the above three conditions do not apply, then a charity will not be able to meet the own activities test by directing and controlling the use of its resources. If charities does not direct and control the use of its resources as required, it risks sanctions under the Income Tax Act. This includes financial penalties and revocation of its registered charity status.

## **Corrective Measures**

The Organization wishes to rectify all identified areas of non-compliance on a voluntary basis. The CRA is prepared to provide the Organization with an opportunity to do so. For this purpose, the parties agree that the Organization shall implement the following corrective measures.

### **1. Written agreements for Foreign Activities**

The Organization will maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada, and will retain, and make available to the CRA upon request, books and records substantiating compliance with this requirement. To this end, the Organization will enter into a structured arrangement, with any intermediary (an individual that is not its employee or volunteer, or an organization that is not a "qualified donee" under the Act) through which it carries out its charitable activities/programs.

Prior review of an arrangement by the CRA does not confer ongoing approval of the Organization's activities. Each activity conducted by the Organization will be judged on its own merits to determine whether it is in compliance with legislative and common law requirements and, in particular, with those requirements pertaining to:

- a) its charitable nature; and
- b) the exercise of adequate direction and control over its actual implementation.

The Organization must be able to demonstrate, at all times, that each activity furthers one of its charitable purposes, and that the terms of all structured arrangements are put into practice and adhered to.

Below is a list to help charities create a written agreement. However, charities should be mindful that their relationship with their intermediaries is not only judged on how well their agreements are written, but more importantly on their ability to show that they direct and control the use of their resources through active, ongoing, sustained relationships.

Even when a charity and intermediary create an agreement that contains the elements contained in the checklist, either the charity or the CRA can refer to and rely on other relevant evidence to establish the nature of the relationship between the parties to the arrangement.

### **Basic elements of a written agreement**

- exact legal names and physical addresses of all parties;
- a clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the charity's purposes;
- the location(s) where the activity will be carried on (for example, physical address, town or city);
- all time frames and deadlines;
- any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity;
- a statement of the right to inspect the activity, and the related books and records, on reasonably short notice;
- provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources);
- provision for issuing ongoing instructions as required;
- provision for the charity's funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records;
- If any of the charity's funds or property is to be used in the acquisition, construction, or improvement of immovable property, the title of the property will vest in the name of the charity. If not, there will be:
  - provision indicating how legal title to that property shall be held (in the name of a local charity, government agency, municipality, or non-profit organization established to provide benefits to the community at large);
- provision for the intermediary to get reasonable assurances from the property holder, owner, or landlord, as the case may be, that the property will continue to be used for charitable purposes for the benefit of the public;
- for joint ventures, provisions that enable the charity to be an active partner, with a proportionate degree of direction and control in the venture

as a whole, as well as assurances of the following: effective date and termination provisions; and

- the charity's resources are devoted to activities that further its purposes; and
- the charity maintains and receives financial statements and records for the entire project on a regular basis;
- signature of all parties, and the date.

## **2. Gifts to Non-Qualified Donees**

The charity will no longer donate funds to non-qualified donees. The charity will use its funds:

- on its own activities (those which are directly under the charity's control and supervision, and for which it can account for any funds expended); and/or
- on gifts to qualified donees.

## **Date of Implementation of all Corrective Measures**

The Organization shall implement all corrective measures, on or before May 1, 2014.

By signing below, the parties certify that they have read, understood, and agree to, the terms of this Compliance Agreement. The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may, by registered mail, give notice that the Minister proposes 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.



## APPENDIX A

**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
  - (i) 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,
  - (iii) 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,
- (b.1) a registered journalism organization,
- (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

$$\mathbf{A - B}$$

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

$$\mathbf{A - B}$$

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

$$\mathbf{A - B}$$

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
  - (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.