

May 12, 2022

REGISTERED MAIL

Peter Leung
Treasurer
China Evangelistic Mission (Canada)

BN: 873684856 RR0001
File: 3002720

Dear Peter Leung:

**Subject: Notice of intention to revoke
China Evangelistic Mission (Canada)**

The Canada Revenue Agency (CRA) understands the significant personal and economic impact of COVID-19 on Canadians. The CRA is aiming to be responsive and to operate in a way that balances these realities with its duty to administer Canada's tax laws and the obligations of all Canadians to comply with tax laws.

We are writing with respect to our letter dated November 18, 2021 (copy enclosed), in which China Evangelistic Mission (Canada), (the Organization), was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2017, to December 31, 2018. Specifically, the Organization was 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.

In response, the Organization submitted written representations dated December 13, 2021, comprised of a brief acknowledgement of the non-compliance issues raised, a summary explanation statement, and proposed corrective measures, which were as follows:

“The reason we do not have this documentation to show our direction and control is because the missionaries are in third-world and war-torn countries (Cambodia and Ethiopia) where internet connection is unstable, and communication is a challenge. We have provided direction and guidance in the projects undertaken in the various countries, but recordkeeping was not kept up to date.

Through this last audit, you provided us with a deeper understanding of what is required of the charity to exercise the necessary degree of effective direction and actual control by giving us examples of what is needed as documentary evidence.”

As detailed in our correspondence dated November 18, 2021, the audit of fiscal periods ending December 31, 2017, and December 31, 2018, represented a follow up to our previous audit, wherein the Organization agreed to enter into a compliance agreement with the CRA to implement specific corrective measures in order to fully comply with the provisions of the Act. The current audit found that corrective measures were not implemented as required, and as a result the Organization has demonstrated repeated non-compliance with the requirements of the Act.

We have reviewed and considered your written response dated December 13, 2021, and it has not alleviated our concerns with respect to the Organization’s continued non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained below.

It is our position that, despite agreeing to put in place corrective measures following the previous audit, the Organization did not implement those measures, and as a result has continued to fail to satisfy the requirements of subsection 149.1(1) of the Act, namely, that it be operated exclusively to devote its resources to charitable activities in furtherance of its stated purposes, and that it not transfer resources to a non-qualified donee.

Issues

In accordance with subsection 230(2) of the Act, a registered charity must maintain and provide to the CRA upon request adequate books and records of account. The books and records requirement at subsection 230(2) enables the CRA to verify whether registered charities are complying with the Act and the Income Tax Regulations. It remains our position the Organization has contravened this requirement of charitable registration by failing to provide sufficient information in response to our audit requests.

As a result of the Organization’s failure to provide adequate books and records, it remains our position that 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.

It also remains our position the Organization used its resources for the benefit of a non-arm’s length person and not for charitable purposes. Under subsection 149.1(1) of the Act, the Minister may revoke the registration of the Organization, because it has failed, as described at paragraph 168(1)(b) of the Act, to comply with the requirements of the Act for its registration as such.

The response provided by the Organization lacked adequate information or documentation to address the issues raised in our letter of April 15, 2021. Our concerns with respect to the Organization’s non-compliance with the requirements of the Act have not been alleviated.

Conclusion

The audit by the CRA found that the Organization has continued in its non-compliance with the requirements of the Act. In particular, it was found that the Organization failed to devote resources to a charitable purpose, failed to maintain adequate books and records, and delivered unacceptable non-incidental undue benefits to individuals who were not proper beneficiaries of charitable resources. 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 November 18, 2021, and pursuant to subsection 168(1) and 149.1(2) 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 paragraphs 168(1)(b) and 168(1)(e), and subsection 149.1(2) 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.

Business number
873684856RR0001

Name
China Evangelistic Mission (Canada)
Vancouver BC

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 Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

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

Please note that the Organization must obtain a stay to suspend the revocation process, even though it may have filed a notice of objection.

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

Enclosures

- CRA letter dated November 18, 2021
- Organization's representations dated December 13, 2021
- Appendix A, Relevant provisions of the Act

c.c.: David Poon, Chairman

November 18, 2021

Peter Leung
Treasurer
China Evangelistic Mission (Canada)

BN: 873684856 RR0001
File: 3002720

Dear Peter Leung:

Subject: Audit of China Evangelistic Mission (Canada)

This letter results from the audit of China Evangelistic Mission (Canada) (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2017, to December 31, 2018.

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 devote resources to a charitable purpose	149.1(1), 149.1(2), 168(1)(b), 188.1(4)(a)
2.	Failure to maintain adequate books and records	149.1(1), 149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
3.	Delivery of unacceptable non- incidental undue benefits	149.1(1), 149.1(2) 168(1)(b), 188.1(4)

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.

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.

Background

The CRA advised the Organization in a letter dated October 16, 2019, that it had been selected for an audit of fiscal periods ending December 31, 2017, and December 31, 2018. Our letter confirmed the audit represented a follow up to our previous audit completed in 2013 for the fiscal periods ended December 31, 2010, and December 31, 2011, wherein the Organization agreed to enter into a compliance agreement with the CRA (see enclosed). The compliance agreement obligated the Organization to implement specific corrective measures in order to fully comply with the provisions of the Act.

The Organization provided a response to our request for information letter, a review of which we have now completed. The balance of this letter describes the identified areas of non-compliance and eligible sanctions in further detail.

Identified areas of non-compliance:

1. Failure to devote resources to a charitable purpose

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.¹

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

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.²

As re-iterated by the Court in *Lepletot v MNR*,³ 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.⁴

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,⁵ and are actually implemented. For instance, the documentation should include:

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

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

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

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

- 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
- 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 Canada⁶ 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.

⁶ Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html

Activities outside Canada

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.

During the audit period the Organization transferred charitable resources outside Canada, specifically in relation to missions carried out in Ethiopia, Germany and Cambodia. The Organization also provided funds to China Evangelistic Mission International (CEMI), located in Hong Kong, for administration expenses related to the supervision of missionaries outside Canada.

Ethiopia

In relation to activities carried out in Ethiopia, the Organization provided a secondment agreement between the Organization and SIM Canada (SIM), and a “co-operative partnership agreement” (intermediary agreement) between the Organization and Abyssinia Camping Ministry (ACM). In the Organization’s correspondence, dated November 29, 2019, it described its activities in Ethiopia as conducting youth ministries and church planting, and that Joseph Chu of SIM carries out the missionary activities on behalf of the Organization.⁷

The co-operative partnership agreement included the following statements:

- ACM will provide receipts and keep careful records of all of its income and expenditures, and upon request of the Organization, ACM will send photocopies of local receipts in Ethiopian currency to the Organization.⁸
- ACM will send to the Organization: board meeting minutes, their annual general assembly report, the end of the year evaluation, quarterly and yearly financial statements.⁹
- Joseph Chu will convey an “ongoing picture of ministries on the frontline back to the Organization on a regular basis”, and that Joseph Chu should furnish a quarterly report on a regular basis.¹⁰
- Receipts for expenses incurred in relation to activities (such as gas, vehicle maintenance, travel, printing of gospel books) will be retained by ACM and available for the Organization to inspect.¹¹

The Organization’s representations were comprised of a single “quarterly report” (January – March 2017), and a copy of a newsletter (January – April, 2017), prepared by intermediary

⁷ Item I of the Secondment Agreement

⁸ Paragraph 2 of Item 2.3 of the Co-operative Partnership Agreement

⁹ Paragraph 2 of Item 3.2 of the Co-operative Partnership Agreement

¹⁰ Item 3.2 of the Co-operative Partnership Agreement.

¹¹ Item 3.3 of the Co-operative Partnership Agreement

Joseph Chu. As well as an “ACM Annual Activities Report (2017-2018 ‘2010-2011’) and an “ACM End of the Year Activities Report (December 2017)”. The Organization also provided copies of wire transfer statements (applicable to the 2018 fiscal period solely), demonstrating the following transactions (in Canadian currency):

Feb 5, 2018	4,000	Transfer to: Abyssinia Camping Ministry
Feb 28, 2018	3,348	Transfer to: [REDACTED] Joseph Chu
Jun 1, 2018	4,000	Transfer to: Abyssinia Camping Ministry
Aug 20, 2018	4,000	Transfer to: Abyssinia Camping Ministry
Aug 27, 2018	<u>3,459.57</u>	Transfer to: [REDACTED] Joseph Chu
	\$ 18,807.57	

The total funds transferred as per the wire transfer reports of \$18,807.57 matched the Organization’s stated expenditures in Ethiopia as stated in its 2018 Form T3010 financial statements, however, the information provided in the documentation (reports and newsletter) did not include sufficient details with respect to the activities of the intermediary or how the funds were expended in the carrying out of charitable activities. No financial information was provided regarding the 2017 fiscal period.

We further note that the partnership agreement between the Organization and ACM refers to a “Schedule A” as follows:

“ACM shall involve in the general camping program, the recruitment of volunteers within or without Ethiopia, the step-by-step development of the overall versatile camping ministries as expounded in **Schedule A**”; and

Whereas the parties wish to set out in this Agreement the terms and conditions under which CEM will participate with ACS in the charitable activities as set out in **Schedule "A"** (ACM - a Profile and Proposal) attached hereto”.

“Schedule A” was not included with the Organization’s representations.

Cambodia

In relation to activities carried out in Cambodia, the Organization provided documentation consisting of a “Canada Missionary Report”. The report was three paragraphs in length, prepared by intermediaries Joe and Liza Ng for the period from January 2017 to June 2017. The report stated that one of the missionaries, Liza Ng, worked as a [REDACTED] and [REDACTED] and visited needy families in the neighborhood teaching them the word of God on Sundays after church. The submission also included hand written notations identifying Joseph Ng’s missionary work as ‘status updates of [REDACTED] attendance’, ‘[REDACTED]’, and ‘teaching (spiritual development)’.

Germany

In relation to activities carried out in Germany, the Organization provided documentation demonstrating a payment to CEMI for administration expenses for the supervision of the Organization's missionaries outside Canada (in the amount of \$4,800 dated May 3, 2018). The amount was comprised of twelve monthly fees of \$200 (described on quarterly invoices only as [REDACTED] Mrs. Hung", presumably in relation to activities taking place in Leipzig, Germany), as well as a \$2,400 amount recorded as "acct payable". Applicable written agreements or additional communication records were not provided to substantiate the arrangement.

Two additional documents were provided, named "Report by [REDACTED] for work in In Leipzig, Germany", consisting of a single page for each fiscal year of the audit period. The documents were not in English or French. Hand written notes referred to 'church attendance', 'church & fellowship pastoral care & outreach', 'evangelism', 'ministry support', and 'receiving short-term mission teams and care for individuals. No further details were noted in relation to the activities taking place in Germany.

Audit Findings

The books and records provided did not include sufficient information regarding the activities of the intermediaries (missionaries), and the funds expended as a result of the work undertaken by the intermediaries. As a result, the Organization failed to demonstrate that it maintains direction and control over its funds and activities, and that the activities carried out outside Canada furthered its stated charitable purposes.

After a review of the 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.

The Organization failed to provide documentation to demonstrate that it engaged in any kind of evaluation, review, or approval processes prior to distributing funds to support the activities it purported to undertake. The Organization failed to provide documentation to demonstrate it operated as the guiding mind with respect to the undertakings it funded with its charitable resources. The Organization did not provide meeting minutes, director resolutions, secondary communication records, or any other supporting documentation to demonstrate that adequate governance was maintained, or that it ensured the safeguarding of its charitable assets, or that there was any kind of internal evaluation and approval of the activities carried out.

The Organization failed to satisfy that the requirements outlined in the previous compliance agreement have been met, which has resulted in repeated non-compliance. Specifically, the corrective measures agreed to by the Organization included the following undertakings:

- "maintain current contracts for all its missionary workers including a detailed description of the activities to be performed by the missionary";

- “require the missionaries to provide progress reports directly to the Organization, containing sufficient information to permit the Organization to determine that the missionary is performing their duties in accordance with the contract”; and
- “where a third party supervisor is used to monitor the missionary worker, the Organization will maintain records of the services provided by the supervisor including reports of their findings.”

In addition to the Organization’s failure to maintain written agreements with all intermediaries engaged (limited to a “partnership agreement” applicable to activities in Ethiopia), the documentation submitted did 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 its foreign intermediaries. 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 budgets and/or proposals 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 a meeting 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. The audit failed to identify applicable direction and/or commentary in meeting minutes, communication via telephone or email, budget or other reports (financial, progress), and no on-site visits at the locations of the activities / programs were made by representatives of the

Organization 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.
- The books and records did not include budget or proposal 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).
- Inadequate written progress and financial reporting was provided by intermediary entities in the course of the audit. In the case of all three of the applicable areas of foreign programs carried out (Ethiopia, Cambodia and Germany), the progress reporting received by the Organization was insufficiently detailed with no corresponding reconciliation of the financial resources provided.

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."

Summary

In contrast to the corrective measures agreed to by the Organization following the completion of the previous CRA audit, the Organization has continued to provide its charitable resources to non-qualified donees. 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 that 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.

The financial penalty calculated on the transactions described above are as follows:

Fiscal period ending December 31, 2018	
Funds transferred to Joseph Chu (Cambodia)	\$ 18,807.57
Funds transferred to [REDACTED] Mrs. Hung" (Germany)	2,400.00
Penalty of 105%	<u>x</u> 105%
Total penalty	\$ 22,267.95

The total penalty owing under the provisions of subsection 188.1(4)(a) of the Act would be \$22,267.95. However, due to the serious nature of the other non-compliance issues identified during the audit, we are proposing to revoke the Organization's status as a registered charity in accordance with section 168(1)(d) of the Act in lieu of assessing a penalty. We reserve the right to revisit this decision before making a final determination regarding the Organization's status

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,¹²

¹² See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

- 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,¹³ 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.¹⁴

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, or otherwise in support of 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 and/or proposals for projects undertaken, or the application of a developed selection criteria. The transfers of resources identified did not reflect specified expenditures or programs / activities to which the funds were to be applied.

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.

The Organization did not maintain copies of source documents (including written agreements and 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.

The Organization failed to satisfy that the requirements outlined in the previous compliance agreement have been met, resulting in repeated non-compliance. Specifically, the corrective measures stipulated that the Organization would ensure it maintains written agreements with all intermediaries, that it would receive financial and progress reports containing adequate information, and that it would maintain adequate books and records 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."

¹³ 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.

¹⁴ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013]FCJ no 512.

Summary

Failure to obtain and maintain adequate documentary evidence resulted in the Organization failing to provide support for expenditure amounts reported in its Form T3010, Registered Charity Information Returns filed during 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 subsection 149.1(1) of 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). 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.

Due to the serious and repeated nature of the non-compliance issues identified during the audit, we are proposing to revoke the Organization's status as a registered charity in accordance with section 168(1)(d) of the Act in lieu of assessing a penalty. We reserve the right to revisit this decision before making a final determination regarding the Organization's status.

It is our position that the present case consists of material non-compliance. For this reason, it appears that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

3. Delivery of unacceptable non-incidental undue benefits

The Organization is registered as a "charitable organization", the definition of which is provided in subsection 149.1(1) of the Act. In order to maintain its status as a registered charity, the Organization must adhere to the terms of the definition which includes the requirement that "no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof."

Generally, a personal benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a beneficiary that exceeds the bounds of charity. It is the charity's responsibility to demonstrate that any personal benefit it provides is acceptable.

In some cases, personal benefits that are more than incidental under the common law will meet the criteria of an "undue benefit" under the Act. A registered charity cannot confer on a person an undue benefit including disbursements by way of a gift or the amounts of any part of resources, or otherwise make available for the personal benefit of any person who is a member of the charity, or who deals not at arm's-length with the charity.

These disbursements will qualify as an undue benefit unless they fall into one of the three exceptions. These exceptions are when a disbursement is: a) a reasonable amount paid for property acquired by the charity or services rendered to the charity b) an amount used in the carrying out of a charitable activity, unless the charitable beneficiary was chosen solely because of their relationship to the charity c) a gift to a qualified donee.

The delivery of unacceptable personal benefits is both an offense subject to penalty (under subsection 188.1(4) of the Act as an “undue benefit”) and a revocable offense (under paragraph 168(1)(b) of the Act).

Audit Findings

The Organization transferred its resources to non-arm’s length parties in the absence of adequate documentation and information to support the charitable purpose of the outlays.

Travel expenditures were reported in the fiscal period ended December 31, 2017, in relation to two separate trips taken from Vancouver to Hong Kong by David Poon (director) and [REDACTED] from February 27 through March 23, 2017, and July 6 through August 8, 2017.

In support of the charitable purpose of the expenditures, the Organization provided copies of applicable invoices for airfare and travel insurance, a copy of CEMI board meeting minutes (dated March 14, 2017 10:00am to 1:00pm, these documents were not in English or French), and a copy of “July - Aug 2017 Hong Kong Preaching & Promotion Schedule”. The latter document was intended to demonstrate the activities to be conducted by charity’s representatives however the extent of the detail provided was limited to a listing of church names and dates.

The documentation provided did not adequately demonstrate that these funds were used to further the Organization’s stated charitable purposes. The duration of travel between February 27 and March 23, 2017, was not commensurate with the timeframe of its stated purposes (25 day trip to attend a three hour meeting). Additionally, notwithstanding the insufficient supporting documentation available to support the charitable purposes of David Poon’s travel expenses as a listed director and authorized representative, amounts paid by the Organization in relation to [REDACTED] appear to represent an undue benefit conferred upon a non-arm’s length party.

The Organization failed to satisfy that the requirements outlined in the previous compliance agreement have been met, resulting in repeated non-compliance. The corrective measures specifically addressed concerns relating to “Travel not related to the Organization’s activities”, as travel expenses appeared to be in relation to work performed on behalf of CEMI. The Organization agreed to cease funding travel costs for members who travel for purposes that do not directly relate to the activities of the Organization.

Summary

It is our position that the Organization used its resources for the benefit of a non-arm's length person and not for charitable purposes. Under subsection 149.1(1) of the Act, the Minister may revoke the registration of the Organization, because it has failed, as described at paragraph 168(1)(b) of the Act, to comply with the requirements of the Act for its registration as such.

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.

Below we have included a calculation of the penalty applicable to the amounts described above:

Fiscal period ending December 31, 2017

	David Poon	Esther Poon	Total
Airfare [REDACTED]	\$689.00	\$689.00	\$1,378.00
Travel Insurance ([REDACTED])	589.00	330.00	919.00
Airfare [REDACTED]	925.00	925.00	<u>1,850.00</u>
Penalty of 105%			\$4,354.00

The total penalty owing under the provisions of subsection 188.1(4)(a) of the Act would be \$4,354.00. However, due to the serious nature of the other non-compliance issues identified during the audit, we are proposing to revoke the Organization's status as a registered charity in accordance with section 168(1)(d) of the Act in lieu of assessing a penalty. We reserve the right to revisit this decision before making a final determination regarding the Organization's status.

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.

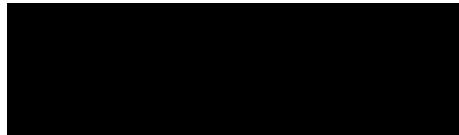
b) Do not respond

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,



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 February 23, 2013) applicable to CRA audit of fiscal periods ending December 31, 2010 and 2011.

c.c.: David Poon, Chairman



加拿大中華福音使命團

China Evangelistic Mission Canada

3215 School Ave
Vancouver, BC, Canada
V5R 5N2

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DEC 13 2021

CISD

December 8, 2021

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

Attention: Ted Dubien

Re: BN 873684856 RR0001, file # 3002720

Dear Mr. Ted Dubien,

Thank you for your letter dated November 18, 2021, in which you outlined your findings of our audit for the period from January 1, 2017 to December 31, 2018.

In your findings (pg 4) you said that "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." We the Society made various changes to comply with the recommendations from the previous auditor. We thought the changes we made were sufficient. The Society has always tried to comply with the legislation to our best understanding and knowledge.

The reason we do not have this documentation to show our direction and control is because the missionaries are in third-world and war-torn countries (Cambodia and Ethiopia) where internet connection is unstable, and communication is a challenge. We have provided direction and guidance in the projects undertaken in the various countries, but record-keeping was not kept up-to-date.

Through this last audit, you provided us with a deeper understanding of what is required of the charity to exercise the necessary degree of effective direction and actual control by giving us examples of what is needed as documentary evidence.

We apologize for failing to keep proper books and records to demonstrate effective direction and actual control of our projects overseas. Going forward, we have decided to stop our involvement with the present overseas projects in Ethiopia, Cambodia and Germany because we cannot meet the definition pursuant to subsection 149.1(1).

We hope that you will NOT revoke our charity status as we have many donors who believe in our charity work and we would like to continue to help those who are in needs. We will implement your audit findings with due care to ensure that we are complying with the legislation. Should there be any doubts, we will communicate closely with your department to ensure that we are doing everything correctly within the legislation.

Yours truly,



Peter Leung
Treasurer
China Evangelistic Mission (Canada)

CC: David Poon, chairman

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

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

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

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

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

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.