



May 12, 2022

**REGISTERED MAIL**

Edward Binet  
Director  
Kupas Hachesed Meoroth  
5565 Jeanne Mance Street  
Montreal QC H2V 4K7

BN: 810175273 RR0001  
File #: 3032040

Dear Edward Binet:

**Subject: Notice of intention to revoke  
Kupas Hachesed Meoroth**

We are writing with respect to our letter dated October 23, 2018 (copy enclosed), in which Kupas Hachesed Meoroth (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from December 1, 2013 to November 30, 2016, and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered the written response from your representative, [REDACTED], dated January 18, 2019. Your reply has not alleviated our concerns with respect to the Organization's failure to maintain adequate books and records, lack of direction and control over the use of the Organization's resources/failure to carry out its own charitable activities, and providing a private benefit to a person. Our concerns are explained in Appendix A attached.

**Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to maintain proper books and records, failed to carry out its own charitable activities/lack of direction and control over the use of the Organization's resources, and provided an undue benefit to a person. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated October 23, 2018, and pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation

will be effective on the date of publication of the following notice in the Canada Gazette:

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

<b>Business number</b>	<b>Name</b>
810175273RR0001	Kupas Hachesed Meoroth Montréal, QC

Should the Organization choose to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, 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.

As noted above, even though the Organization may file a notice of objection with the CRA Appeals Branch within the 90 day time frame, in order to temporarily suspend the revocation process, the Organization must obtain an order from the Federal Court of Appeal.

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 (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the 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 organizations 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 October 23, 2018
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.: 



Canada Revenue  
Agency

Agence du revenu  
du Canada

REGISTERED MAIL

October 23, 2018

Edward Binet  
Director  
Kupas Hachesed Meoroth  
5565 Jeanne Mance Street  
Montreal QC H2V 4K7

BN: 810175273 RR0001  
File #: 3032040

Dear Edward Binet:

**Subject: Audit of Kupas Hachesed Meoroth**

This letter results from the audit of the Kupas Hachesed Meoroth (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from December 1, 2013 to November 30, 2016.

The CRA has identified specific areas of non-compliance with the provisions of the Income Tax Act and/or its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to maintain adequate books and records	168(1)(e), 230(2), 230(4)
2.	Lack of direction and control over the use of the Organization's resources/Failure to carry out its own charitable activities	149.1(1), 168(1)(b)
3.	Providing an undue benefit to a person	149.1(2), 168(1)(b)

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

### General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects), and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.<sup>1</sup> To be exclusively charitable,<sup>2</sup> a purpose must fall within one or more of the following four categories (also known as "heads") of charity and deliver a public benefit:

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

The public benefit requirement involves a two-part test. The first part of the test requires the delivery of a benefit that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable.

The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:

- have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
- provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>3</sup>

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<sup>1</sup> See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.1) or (6.2) of the Act relating to political activities, and *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 (*Vancouver Society*) at paras. 155-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

<sup>2</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (PC) (*Pemsel*). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133, and confirmed in *Vancouver Society*, supra note 2.

<sup>3</sup> See CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test* for more information about public benefit.

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*,<sup>4</sup> the Supreme Court of Canada stated as follows:

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

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

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

- for its own charitable activities - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to “qualified donees” as defined in the Act.<sup>5</sup>

A charity’s own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.<sup>6</sup>

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

<sup>5</sup> A “qualified donee” means a donee described in subsection 149.1(1) of the Act. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

<sup>6</sup> For more information, see CRA Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

To summarize, the CRA must be satisfied that the Organization's purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information.

### **Identified areas of non-compliance**

#### **1. 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) of the Act also states "Every person required by this section to keep records and books of account shall retain:

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

The 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:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>7</sup>
- ii. 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
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to

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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> 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.

revoke an organization's charitable status in the case of material or repeated non-compliance.<sup>9</sup>

The Organization was initially contacted by the CRA on April 10, 2017, and were informed that they were selected for an audit for the fiscal years ending November 30, 2014, and November 30, 2015. The auditor sent the audit confirmation letter dated May 8, 2017, along with the list of books and records to have available for the audit meeting, which occurred on July 14, 2017. During this meeting, only a limited amount of books and records were provided by the Organization. Specifically, the 2014 and 2015 bank statements, listings of gifts made to qualified donees, amounts given to agents, and the donor listings for the period were provided. Despite a request for further information made by the auditor on July 21, 2017, the Organization failed to provide any further books and records.

On November 23, 2017, the Organization was once again contacted and a second meeting was arranged for a time in January 2018 when Mr. Binet would be available. A letter containing the required books and records to have available for the January 2018 meeting was also sent on this date to Mr. Binet and Mr. Fred Pfeiffer. Given the time lapse, the audit was expanded to include the 2016 books and records. On December 15, 2017, when the exact meeting date had been confirmed, a second letter, repeating the required books and records was issued.

During the meeting of January 15, 2018, the Organization once again provided the 2014 and 2015 bank statements which also contained cancelled cheques. No further books and records were provided. During the meeting, Mr. Binet stated the Organization has everything we requested, he just needs more time to gather the information. He explained that each family receiving financial assistance has a folder with all the relevant information to support direction and control. Other books and records such as donation receipts, general ledgers, and agent agreements were also available. As such, Mr. Binet requested more time and proposed a subsequent meeting.

A third meeting was arranged for March 6, 2018, and we sent a confirmation letter repeating once again the books and records to have available. On March 2, 2018, we received a telephone call from Mr. Pfeiffer requesting to cancel the March 6, 2018, meeting. The explanation provided was that Mr. Binet did not have the time for the audit process, and more specifically, the time required to gather the requested books and records due to his business obligations. Mr. Pfeiffer requested we issue an administrative fairness letter proposing to revoke the charitable status of the Organization.

In response, the CRA sent a Requirement for Information letter via registered mail on June 8, 2018. The Organization failed to respond to the Requirement letter, and no books and records were received.

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



Due to the inadequate books and records, we were unable to verify the validity of the donation receipts issued by the Organization, which totalled \$32,567,192 during the audit period.

In addition, we were unable to verify reported disbursements, and to determine if the Organization maintained ongoing direction and control over the funds transferred to the agents and over the activities conducted by the agents. Specifically,

- a) Where an intermediary disburses the Organization's funds for any expense, the Organization must be able to support those expenses with source documentation.
- b) The two agency agreements that were provided were inadequate to establish that any activities that purport to be those of the Organization were effectively authorized, controlled and monitored by the Organization. Further, the Organization stated it has several agents, but no other agency agreements were provided nor were the names of the other agents provided.
- c) There was a lack of documentation to show that the Organization had been assessing potential agents and beneficiaries against a set of defined criteria.
- d) Board minutes were non-existent.
- e) We were not given financial or narrative reports from any of the intermediaries the Organization identified as carrying out its purported activities.
- f) Copies of donation receipts were not provided.
- g) The Organization appears to be giving the majority of its funds to individuals in Canada without any supporting documentation supporting the charitable nature of the gifts.

Under paragraph 188.2(2)(a), a charity may receive a notice of suspension of its authority to issue an official donations receipt if it contravenes subsection 230(2), which is related to books and records.

As well, 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.

Given the Organization's serious failure to fulfill its requirement to maintain and make available adequate books and records, as described above, it is our position that the present case constitutes material non-compliance. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

**2. Lack of direction and control over the use of the Organization's resources/Failure to carry out its own charitable activities**

We refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*.<sup>10</sup>

“Pursuant to subsection 149.1(1) of the [Income Tax 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...”

And

“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.”

As re-iterated by the Court in *Lepletot v MNR*,<sup>11</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>12</sup>

The audit found that the Organization conducted its purported activities through an agent that was a pre-existing entity, and, most, if not all, of the purported activities were already being conducted by this pre-existing entity. For these reasons, the existence of an arrangement between the Organization and the agent demonstrating that the Organization exercises sufficient and continuing direction and control over, and full accountability for, all its resources and related activities, is critical.

Given we have not received any documentation or information regarding its foreign (or Canadian) activities, it is our position that the Organization does not exercise the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act.

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<sup>10</sup> *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively.

<sup>11</sup> *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

<sup>12</sup> *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

According to the information that we do have (the two agency agreements with agents in Israel), the Organization conducted its purported activities through [REDACTED] Y. Levi (2005 agency agreement) and [REDACTED] Chaim Gancfried (2007 agency agreement). Given the Organization has two different agency agreements with two different agents named, it is not clear who is the agent. The most recent 2007 Agency Agreement states [REDACTED] Chaim Gancfried is the agent, yet the response in the initial interview from July 14, 2017 states [REDACTED] Levi is the agent.

As stated in its approved objects and statement of activities (when registered April 17, 2007), the Organization is registered "to provide assistance to needy people in Israel." This is accomplished via its agent who interviews the candidates and reviews completed applications. The agent then makes a recommendation to the Organization, where an approval is made and funds sent to a "special bank account" maintained by the agent. Also stated in the registration of the Organization was the requirement for the agent to keep a record of all transactions and to submit reports to the Organization. According to the registration documents, and the initial interview, the Organization sends all of its funds to the agent in Israel where it is deposited into a bank account in Israel.

According to the T3010 information returns for the audit period December 1, 2013, to November 30, 2016, the Organization spent \$48,953,185 on its foreign activities yet provided no books and records to support this amount or even an explanation on how it was spent.

Furthermore, a review of the 2014 and 2015 bank statements indicate that the majority of the funds spent on foreign activities were actually given to individuals residing in Canada and cashed at Canadian bank accounts. Based on wire transfer information, only \$100,852 (CAD) was sent to Israel during the 2015 year and no funds were sent in 2016. When queried as to why so many cheques were written to Canadian individuals, Mr. Binet explained the cheques are cashed by their Canadian agents who then bring the cash to Israel (no agency agreements were provided to support this explanation). This raises serious concerns, especially considering these amounts over the 3 year audit period equate to over \$48 million. In addition, according to the agent disbursements ledger provided for the 2014 and 2015 fiscal years (2016 was not provided), \$6.8 million in 2014 and \$12.2 million in 2015 was given to agents in Israel. However, there was no documentation to support that this occurred. In fact, it does not appear that any charitable activity occurred, whether within or outside of Canada.

The Organization also gave large amounts to organizations in the United States (U.S.). When queried during the January 15, 2018, interview, Mr. Binet explained that money was sent to U.S. agents who then sent the money to Israel.

In addition to the lack of books and records to support any charitable activity, the Organization was only registered to provide financial assistance to the needy in Israel through an agent in Israel. The Organization was not registered to enter into multiple agency agreements with various individuals and/or organizations within Canada or any

other country, other than Israel. Even if the Organization entered into legal agency agreements with various other individuals and organizations, they did not provide any evidence or agreements to support this claim. The only existing agency agreements known to the CRA are the two mentioned earlier dated 2005 and 2007 with its agents in Israel.

The basis of our concerns is further outlined below.

#### **A. Agency agreement**

As mentioned above, where a registered charity chooses to operate through an appointed agent or representative, it must be able to substantiate, by documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of funds 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 conducts its activities 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 the charity's behalf, during a specified term. The scope of the intermediary's authority to act on the charity's behalf should be clearly defined in relation to each project; and,
- the intermediary will provide regular and comprehensive written reports, including expense vouchers and receipts, to the charity concerning the ongoing activities that are carried out on the charity's behalf. While the exact reporting schedule may depend on the nature of the individual project, it is suggested that reports should be required quarterly or semi-annually, **at minimum**. These written reports should be supplemented at least annually by a complete financial report reflecting the use of all transferred funds.

This type of arrangement, and associated reporting, is necessary for the charity to clearly demonstrate that it was the directing mind behind each of its programs, and not merely contributing to, or acting as a financial conduit for, the programs of another organization.

Based on our review, the Organization failed to demonstrate that the terms of the two agency agreements that were provided were implemented and/or that if they were implemented, the provisions established the ongoing direction and control over the funds transferred to the agents.

#### **B. Minutes and written correspondence**

Although requested a multiple of times, no supporting documents in the form of meeting minutes, written communications, or the like were submitted to support the Organization

having ongoing direction and control of its programs in Israel. The absence of documentary evidence in relation to what are the Organization's programs would seem to be indicative of a lack of involvement in the operation/implementation.

It is our position that the Organization has failed to devote its resources to any charitable activities due to the:

- a. absence of direction and control over the use of resources/resourcing non-qualified donees; and
- b. lack of any supporting documentation demonstrating any charitable activities.

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 of its resources to charitable activities carried on by the Organization itself. For this reason, it appears that there may be grounds for the revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

### **3. Providing an undue benefit to a person**

A registered charity must be established and operated for the purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

Private benefit means a benefit provided to a person or organization that is not a charitable beneficiary, or a benefit to a charitable beneficiary that exceeds the bounds of charity. Private benefits can occur as a charity carries out activities that advance its charitable purpose and engages in related administrative/management practices. They can be conferred on a charity's staff, directors/trustees or members, or on third parties, and can take almost any form. Private benefits conferred on persons who do not deal at arm's length with the organization are subject to particular scrutiny. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to the organization, any resulting benefit will not be acceptable.

Providing a private benefit is unacceptable unless it is incidental to accomplishing a charitable purpose. Ordinarily, a private benefit will be incidental where it is:

- (i) Necessary - Necessary means legitimately and justifiably resulting from:
  - a. an action that directly contributes toward achieving a charitable purpose; or
  - b. a required step in an action taken only to achieve a charitable purpose; or
  - c. a required consequence or by-product of an action taken only to achieve a charitable purpose.

and

- (ii) Reasonable - Reasonable means:

- a. related to the need and no more than is necessary to achieve the purpose; and
- b. fair and rational.

and,

- (iii) Not disproportionate to the public benefit achieved - Not disproportionate to the public benefit achieved means the public benefit must be predominant, being larger and more significant than the private benefit.

During the course of our review of the disbursements ledger, as well as an analysis of bank statements and cancelled cheques for fiscal periods 2014 and 2015, we noted the Organization is writing hundreds of cheques to various individuals. Typically, a cheque is addressed to an individual by first initial and last name only. No documentation was provided to support the nature or purpose of these funds given to individuals.

Additionally, these cheques represent nearly all the expenses of the Organization from December 1, 2014 to November 30, 2015 (approximately \$27M). A review of the cancelled cheques attached to the bank statements determined they were being cashed at Canadian banks. In many instances, several of the cheques, despite having various individuals as the recipient, were actually deposited to the same bank account number.

When queried regarding the nature of these cheques, Mr. Binet explained that agents of the Organization cash these cheques and personally bring the cash to Israel. Given we have no documentation or proof to verify this explanation, it appears the Organization is simply gifting funds to individuals and conferring an unacceptable private benefit.

An organization that delivers an unacceptable private benefit is not using all of its resources for charitable purposes, and may have its registered status revoked or be liable to a penalty.<sup>13</sup> We do not consider a penalty appropriate in this case, given the nature and extent of the non-compliance.

#### **The Organization's options:**

##### **a) Respond**

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

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

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<sup>13</sup> The common law concept of private benefit is incorporated into the statutory registration scheme through subsection 149.1(2) of the Act. Typically, private benefits that are unacceptable under the common law will also be "undue" under the Act, thus providing grounds for denial of registration, sanctions under subsections 188.1(4) and (5), and/or revocation under subsection 168(1)(b).

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

**b) Do not respond**

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

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

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My manager, Rahki Dhawan, may also be reached at 613-670-9722.

Yours sincerely,

Aimee Van Pelt  
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**Appendix A**  
**Kupas Hachesed Meoroth**  
**BN 810175273RR0001**

Based on the Canada Revenue Agency's (CRA) audit of Kupas Hachesed Meoroth (the Organization), we remain of the view that our findings have identified a number of serious contraventions of the Income Tax Act (the Act), of the common law applicable to registered charities, and that each of these contraventions constitutes grounds for revocation.

We have reviewed and considered the written response from your representative, [REDACTED] dated January 18, 2019. Your reply has not alleviated our concerns with respect to the Organization's failure to maintain adequate books and records, lack of direction and control over the use of the Organization's resources/failure to carry out its own charitable activities, and providing a private benefit to a person. Our concerns are explained below.

**1. Failure to maintain adequate books and records**

Summary from administrative fairness letter dated October 23, 2018

As stated in our previous letter, dated October 23, 2018, our audit findings revealed that the Organization failed to maintain and provide adequate books and records as required by subsection 230(2) of the Act. The CRA provided the Organization numerous opportunities to provide the books and records during the course of this audit, beginning with the initial audit interview on July 14, 2017. Although the Organization had been issued a letter far in advance of the initial audit meeting, detailing the books and records to have available, only a limited amount of books and records were provided. Specifically, the 2014 and 2015 bank statements, listings of gifts made to qualified donees, amounts given to beneficiaries (excel spreadsheet merely indicates a first initial and last name with the amount given), and the donor listings for the fiscal periods November 30, 2014, and November 30, 2015.

During the second audit meeting of January 15, 2018, the Organization once again provided the 2014 and 2015 bank statements, with the addition of cancelled cheques. Despite the expansion of the audit period to include 2016, no further books and records were provided.

Due to the lack of books and records, we were unable to verify the validity of the donation receipts issued by the Organization, which totalled \$32,567,192 during the audit period December 1, 2013, to November 30, 2016. In addition, we were unable to verify reported disbursements, and to determine if the Organization maintained ongoing direction and control over the funds transferred to the beneficiaries, agents and over the activities conducted by the agents.

Representations received

In response to our letter, the Organization retained [REDACTED] (the representative). The representative requested a further 30-day extension, which the CRA accepted. At the conclusion of the 30-day extension, the representative requested a further 45-day extension. Given the numerous extensions already provided, we granted only a further 25-day extension. At the conclusion of the 25 days, we received a brief letter, dated January 18, 2019, from the



representative stating they believed all bank statements, cancelled cheques, listings of gifts made to qualified donees, amounts given to agents, donor listings, and agency agreements had already been provided. Further, the letter stated the Organization has kept records of documentation pertaining to transactions with agents and the process of choosing and supporting beneficiaries, including application forms filled out by the applicant beneficiaries, disbursement forms, certificates of authentication regarding beneficiaries and copies of beneficiary ID such as passports. The letter stated it included a selection of examples of these documents. The representative also stated the official tax receipts would be available in the next week.

#### Response to representations

On January 22, 2019, the CRA contacted the representative to clarify that the 2016 books and records were never provided, including bank statements. Given the representative was not aware that these books and records were missing, a further extension to January 31, 2019, was granted in order for the representative to obtain all missing books and records. However, other than the 2016 donation receipts received on February 14, 2019, no further books and records or representations were provided. A donation receipt listing was not submitted with the 2016 official donation receipts. Although we had the official receipt listing for 2014 and 2015, we never received the official donation receipts for these two fiscal years.

The selection of examples attached to the letter dated January 18, 2019, included four application forms, and one disbursement form. Three of the application forms appear to be issued from an organization by the name of [REDACTED] and is titled "Certificate of Authentication". The forms include the name of the beneficiaries, address, certificate number, and a comments section where the individual explains why they need financial assistance. In one of the sample applications, the individual stated a foreign address; however, he was physically in Canada to raise funds for his family. All three of these applications are for the fiscal year 2017 and outside of the audit period. The fourth application form appears to be directly from the Organization and includes information requesting details relating to the applicant's marital status, number of dependants, occupation, income and debts as well as the purpose of the application. Despite providing a sample of application forms, there was no supporting documentation to substantiate the individual's level of income or lack thereof, nor any defined selection criteria.

It is the responsibility of the Organization to obtain and to maintain adequate documentary evidence to clearly demonstrate recipients of its financial aid program were in fact poor and that the applications received were evaluated against an established set of criteria. Documentary evidence may consist of originals or copies of source documents such as salary confirmation letters, personal budgets, tax returns or bank statements. Other documentation should include minutes of Board of Directors meetings and other meetings held with applicants, Rabbis and community leaders; written selection criteria; evaluations, and approval or rejection of applications along with appropriate evidence showing the source documents supplied by the individuals; reports; summaries of follow-up visits undertaken (by the Organization's volunteers or directors) to evaluate application of the funds; telephone conversation records, faxes and/or e-mails of discussions and of decisions taken; and other relevant evidential materials or documentation.

The Organization failed to maintain adequate documentation to support the disbursement of funds of \$48,953,185 as reported on its T3010 Charity Information Returns during the audit period, December 1, 2013, to November 30, 2016. The only documentation the Organization maintained to substantiate the distribution of funds to individuals for the relief of poverty were cancelled cheques, and a sampling of four incomplete application forms. Specifically, the audit determined the documentation maintained was not sufficient to substantiate the expenditures were made in furtherance of its charitable purposes. Furthermore, the audit also revealed there was no documentation maintained detailing the criteria used to select the beneficiaries, how the criteria was applied to beneficiaries and the approval of the payments.

Accordingly, given the Organization's serious failure to fulfill its requirement to maintain and make available adequate books and records per subsection 230(2) of the Act, it remains our position that the present case constitutes material non-compliance in contravention of paragraph 168(1)(e) of the Act, and that its charitable status under the Act should be revoked.

**2. Lack of direction and control over the use of the Organization's resources/Failure to carry out its own charitable activities**

Summary from administrative fairness letter dated October 23, 2018

As indicated in our letter of October 23, 2018, when a registered charity merely transfers its resources to another entity without maintaining direction and control over the use of its resources, the result is the same as making a gift to a non-qualified donee, which is not a charitable activity. Our audit found that where its foreign activities were purportedly carried out through intermediaries, the Organization did not engage in written agreements with its intermediaries, nor did it keep any books and records concerning their use of its resources. In fact, a review of the bank statements indicates the majority of the funds purportedly spent on foreign activities were actually given to individuals residing in Canada and cashed at Canadian bank accounts. This raises serious concerns, especially considering these amounts over the three year audit period equate to \$48,953,185.

As stated in its approved objects and statement of activities (when registered April 17, 2007), the Organization is registered "to provide assistance to needy people in Israel." This is accomplished via its agent who interviews the candidates and reviews completed applications. The agent then makes a recommendation to the Organization, where an approval is made and funds sent to a "special bank account" maintained by the agent. Also stated in the registration of the Organization was the requirement for the agent to keep a record of all transactions and to submit reports to the Organization. According to the registration documents, the Organization sends all of its funds to the agent in Israel where it is deposited into a bank account in Israel.

As the majority of funds were actually given to unknown individuals in Canada and the United States (U.S.) with no supporting documentation, it does not appear that any charitable activity occurred, whether within or outside of Canada. In addition to amounts given to individuals, funds were also sent to organizations in the U.S. When queried during the January 15, 2018, interview, Mr. Binet explained that cheques are given to its Canadian and U.S. agents to be brought to Israel in cash and disbursed personally to the beneficiaries. Given this is a substantial amount of cash (\$48,953,185 during the three year audit period), it does not appear

plausible that this amount of cash could be personally and physically transported by a few agents/individuals to Israel, in the manner described by Mr. Binet.

The Charity Information Returns for the audit period, Schedule 2 (Activities outside of Canada) indicate the funds were sent directly to Israel to be disbursed to beneficiaries by its agent, Yitzchok Shlomo Levy. However, the bank statements and cancelled cheques as described above do not support the Organization's assertion.

#### Representations received

In its letter dated January 18, 2019, the Organization provided no representations in disagreement to the audit findings as summarized above. Furthermore, other than a sample of four application forms, and the 2016 official donation receipts, no further books and records were provided to support the foreign or charitable activity.

#### Response to representations

While we have provided the organization several opportunities to provide additional information and documentation, the Organization has not provided any materials to alleviate our concerns over the direction and control of its foreign activities.

The bank statements indicate the disbursements from the Organization were provided to individuals/non-qualified donees with no supporting documentation to support charitable activity. Many of the cancelled cheques indicate the deposits were made to bank accounts belonging to only a handful of individuals/organizations in Canada and the U.S. No documentary evidence was provided to substantiate the Organizations assertion that the funds were purportedly distributed to beneficiaries in Israel. Specifically, due to a lack of books and records we were unable to determine how the funds were transported to Israel and disbursed to beneficiaries once the individual cheques were cashed in Canada and the U.S.

It therefore remains our position that the Organization did not exercise the required direction and control over the use of its funds, and/or over the activities to be conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the Act. Accordingly, 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 and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

### **3. Providing a private benefit to a person**

#### Summary from administrative fairness letter dated October 23, 2018

During the course of our review of the disbursements ledger, as well as an analysis of bank statements and cancelled cheques for fiscal periods 2014 and 2015, we noted the Organization is writing thousands of cheques to various individuals. These cheques were addressed to an individual by first initial and last name only. No documentation was provided to support the nature or purpose of these funds given to individuals. Additionally, these cheques total \$48,953,185, and represent nearly all the expenses the Organization incurred during the audit period from December 1, 2013, to November 30, 2016. A review of the cancelled cheques

attached to the bank statements determined they were being cashed at Canadian banks. In many instances, several of the cheques, despite having various individuals as the recipient, were actually deposited to the same bank account number.

When queried regarding the nature of these cheques, Mr. Binet explained that agents of the Organization cash these cheques and personally bring the cash to Israel. Given we have no documentation or proof to verify this explanation, it appears the Organization is simply gifting funds to individuals and conferring an unacceptable private benefit.

An organization that delivers an unacceptable private benefit is not using all of its resources for charitable purposes, and may have its registered status revoked or be liable to a penalty. Please note the terms undue benefit and private benefit were used interchangeably in our correspondence dated October 23, 2018. Specifically, based on the facts of this case, we would advise the accurate terminology should reflect our findings detailed in the correspondence; namely that an unacceptable private benefit has been provided.

#### Representations received

In its letter dated January 18, 2019, the Organization provided no representations to refute the audit findings as summarized above and, other than a sample of application forms, no further books and records were provided to refute our position as described above.

#### Response to representations

While we have provided the organization several opportunities to provide additional information and documentation, the Organization has not provided any materials to alleviate our concerns that it has provided undue benefits to a person.

Given we have no documentation or proof to verify whether the funds were spent on charitable activities, it is our position that the Organization has gifted funds to individuals which is considered an unacceptable private benefit.

An organization that delivers an unacceptable private benefit is not using all of its resources for charitable purposes. It therefore remains our position that the Organization is providing an undue benefit to a person. Accordingly, the Organization has failed to meet the requirements of subsection 149.1(2) of the Act, and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

## **Section 149.1 Qualified Donees**

### **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(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; and

(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.

## **Section 168:**

### **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.

## **Section 188: Revocation tax**

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

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

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

### **188(1.1) Revocation tax**

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

$$A - B$$

where

A

is the total of all amounts, each of which is

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(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 registered charity

(a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(b) that is not the subject of a suspension under subsection 188.2(1);

(c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

### **188(2) Shared liability — revocation tax**

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

### **188(2.1) Non-application of revocation tax**

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

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

### **188(3) Transfer of property tax**

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

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

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies

### **188(4) Transfer of property tax**

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"

« *montant de l'actif net* »

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

$$A - B$$

where

A

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

B

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

"net value"

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

#### **189(6) Taxpayer to file return and pay tax**

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

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

#### **189(6.1) Revoked charity to file returns**

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

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

#### **189 (6.2) Reduction of revocation tax liability**

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

- (a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

### **189(6.3) Reduction of liability for penalties**

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