



July 14, 2022

REGISTERED MAIL

Shakthivel Vayramuthu
Secretary/Director
World Maha Hindu Organization of Canada
599 Galloway Crescent
Mississauga ON L5C 3R7

BN: 871378048RR0001
File #: 3005065

Dear Shakthivel Vayramuthu:

**Subject: Notice of intention to revoke
World Maha Hindu Organization of Canada**

We are writing with respect to our letters dated March 3, 2020 and September 28, 2020 (copies enclosed), in which World Maha Hindu Organization of 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, 2016 to December 31, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act (the Act).

As of this date, we have not received a response to our letters. In addition, the Organization provided no representations in follow-up to our query letter dated October 25, 2019 or telephone contact with the Organization on November 21, 2019. As such, the concerns outlined in our letter dated March 3, 2020 and September 28, 2020, have not been alleviated and it remains our position that the Organization's charitable status should be revoked.

Audit 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 did not devote all its resources to charitable activities, gifted resources to a non-qualified donee, provided an unacceptable benefit to a proprietor, member, shareholder, trustee or settlor of the Organization, failed to maintain adequate books and records, issued donation receipts not in accordance with the Act and/or its Regulations, and failed to file accurate T3010 Registered Charity Information Returns during the audit period. For all of these reasons, and for each reason alone, it is our position 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.

For each of the reasons mentioned in our letter dated March 3, 2020, pursuant to subsections 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), and subsections 149.1(1), 149.1(2), and 149.1(14) of the Income Tax Act, that we propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
871378048RR0001	World Maha Hindu Organization of Canada

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
PO Box 2006 STN Main
Newmarket ON L3Y 0E9

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

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

Consequences of revocation

As of the effective date of revocation:

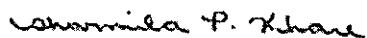
- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to

individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

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

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

Yours sincerely,



Sharmila Khare
Director General
Charities Directorate

Enclosures

- CRA letter dated March 3, 2020
- CRA letter dated September 28, 2020
- Appendix A, Relevant provisions of the Act

c.c.: Suren Sharma, President



March 3, 2020

Shakthivel Vayramuthu, Director
World Maha Hindu Organization of Canada
599 Galloway Crescent
Mississauga ON L5C 3R7

BN: 871378048RR0001
File #: 3005065

Dear Shakthivel Vayramuthu:

Subject: Audit of World Maha Hindu Organization of Canada

This letter results from the audit of World Maha Hindu Organization of 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, 2016 to December 31, 2017.

The CRA has identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities carried on by the Organization itself/Resourcing a non-qualified donee	149.1(1), 168(1)(b)
2.	Providing an unacceptable benefit to a proprietor, member, shareholder, trustee or settlor of the Organization	149.1(2), 168(1)(b), 188.1(4), 188.1(5)
3.	Failure to maintain adequate books and records	149.1(2), 168(1)(e), 230(2)
4.	Issuing receipts not in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), Regulation 3500, 3501
5.	Failure to file an accurate T3010 Registered Charity Information Return	149.1(14), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make representations and present additional information. Registered charities must comply with the



law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity² 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. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.³ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁴ An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁵

¹ 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. *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 155-159 [*Vancouver Society*]. 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.

² 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] AC 531 (PC) [*Pemsel*]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

³ See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al*, [1949] 1 All ER 848 [*Gilmour*]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [*National Anti-Vivisection Society*].

⁴ See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, supra note 6 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [*Oldham*]; *Pemsel*, supra note 5 at 583.

⁵ See *National Anti-Vivisection Society*, supra note 6 at 49, Wright LJ; *In re Shaw decd*, [1957] 1 WLR 729; *Gilmour*, supra note 6, Simonds LJ at 446-447.

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered 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.⁶

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.⁷

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.⁸

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,⁹ and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity’s funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization’s activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into

⁶ For more information about public benefit, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

⁷ A “qualified donee” means a donee described in subsection 149.1(1) of the Act.

⁸ 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*.

⁹ See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] FCJ no 315 [*Canadian Committee for the Tel Aviv Foundation*].



account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.¹⁰

Background

The Organization was registered as a charitable organization effective March 5th, 1999, with the following purposes:

- (a) To provide religious education programs for the general public with an emphasis on programs for the youth, the elderly and intergenerational programs to facilitate understanding between these two age groups;
- (b) To promote civic responsibility among the Hindu populations in Canada and;
- (c) To promote tolerance of religious beliefs of all faiths.

The activities at the time of registration were:

- (a) Conduct regular classes;
- (b) Recruitment of qualified teachers (voluntary/permanent);
- (c) Organize plays and Ramas to depict the multi-cultural make up of Canada;
- (d) Organize musical programs to expose the members to the music of the other culture;
- (e) Organize inter-faith discussion with groups and;
- (f) Form committees to assist in the alleviation of the underprivileged of the Hindu community.

The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed in its application.

Repeated Non-compliance

A previous audit was conducted by the CRA for the fiscal period of January 1, 2009 to December 31, 2010. The audit revealed that the Organization failed to devote resources to charitable purposes; failed to maintain adequate books and records; issued receipts not in accordance with the Act and/or its Regulations; provided unacceptable private benefits; failed to meet its disbursement quota; and failed to meet its requirements under the Act to file an Information Return in prescribed form.

The Organization was selected as a follow-up of a compliance agreement signed April 13, 2012, which was the result of the previous audit. The current audit revealed the Organization failed to implement the corrective measures detailed in the April 13, 2012 compliance agreement. It was

¹⁰ See, for example, Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue), (2002) FCA 323, per Shadow J.A for the majority at para.69.

found that the Organization failed to devote resources to charitable purposes; provided unacceptable private benefits; failed to maintain adequate books and records; issued receipts not in accordance with the Act and/or its Regulations and failed to meet its requirements under the Act to file an Information Return in prescribed form.

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

Identified areas of non-compliance

1. Failure to devote resources to charitable activities carried on by the Organization itself/Resourcing a non-qualified donee

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 [...]

Audit Findings

Based on the information disclosed during the audit, the Organization’s activities illustrate a significant expansion in scope and nature since the date of registration. It is our opinion that the Organization is not substantially focused on charitable activities that further its charitable purposes.

It is our view that the Organization’s activities fail to satisfy the legal requirements applicable to religious advancement. For example, during the initial interview, the director, Shakthivel Vayaramuthu, stated that the Organization’s main activity during the audit period was preparing meals with his family at their home and delivering those meals and other groceries to needy seniors at various Hindu community centers in the greater Toronto area (GTA). We note this purported activity is neither linked or in furtherance of the Organization’s stated purposes. Further, the Organization failed to provide a list of beneficiaries, the selection criteria it used to select the eligible beneficiaries, the list of community centers and/or schedule of food deliveries. Absent this information, it cannot be determined if the Organization’s resources were limited to beneficiaries in need of charitable relief from poverty.

The director also stated that the Organization provided counselling, support, and prayer services in the name of the Hindu religion to seniors and other groups. There were no schedules of prayer services and counselling support services, calendars of events, expense reports, timetables of deliveries or photographs provided. The director provided one letter from a community center that suggested the Organization may be assisting in this center’s activities involving seniors; however, the letter did not contain sufficient details to allow us to verify if the Organization was maintaining adequate direction and control over its resources and over the activities being conducted with its resources. We also noted that the letter was not on official letterhead, nor was it signed or dated.



Further, the director had stated at the initial interview that Hindu sessions or meetings had been conducted at the Organization. During a tour of the Organization's premises, which is located in [REDACTED], only one desk was observed in a small part of [REDACTED]. When asked for details of the sessions or meetings, the director acknowledged that no Hindu sessions or meetings took place on the premises during the audit period.

The fact that the Organization was unable to provide documentation to support that these activities were conducted on its behalf (under its direction and control) demonstrates a failure by the Organization to devote its resources to charitable purposes and charitable activities in a manner permitted by the Act.

Gifting to Qualified Donees as defined in the Act

The audit found that the Organization gifted funds to the [REDACTED] a non-qualified donee (non-QD) during the audit period. We were unable to identify a written agreement. The only document provided was a letter from the non-QD advising that it received a gift from the Organization totalling \$5,000 for both 2017 and 2018 for its Diwali program.

Given that the Organization has not devoted all of its resources to its own charitable activities or to gifting to qualified donees, it has failed to meet the definitional requirements of paragraphs 149.1(1) and 149.1(2) of the Act. For this reason, it is our position that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Providing an unacceptable benefit to a proprietor, member, shareholder, trustee or settlor of the Organization

Paragraph 149.1(1) of the Act stipulates that no part of a charity's income is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof. The CRA considers the meaning of the term "trustee", for registered charity purposes, to include those persons who stand in a fiduciary relationship to the charity, having general control and management of the administration of a charity, including directors of corporations established for charitable purposes. This is, essentially, a rule against self-dealing, reflecting the general rule of equity that a trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with the charity.

In circumstances where an organization does provide such benefits, it may be considered an undue benefit. The meaning of "undue benefit" with respect to charities is clarified in Subsection 188.1 (5) of the Act:

"an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity or registered Canadian amateur athletic association includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or association that is paid, payable, assigned or otherwise made



available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association, who has contributed or otherwise paid into the charity or association more than 50% of the capital of the charity or association, or who deals not at arm's length with such a person or with the charity or association, as well as any benefit conferred on a beneficiary by another person, at the direction or with the consent of the charity or association, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity or association would have a right. Undue benefit does not include a disbursement or benefit to the extent that it is

- (a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity or association;
- (b) a gift made, or a benefit conferred,
 - in the case of a registered charity, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity, or
- (c) a gift to a qualified donee."

Audit Findings

The audit found that the Organization was providing unacceptable private benefits to its directors and related persons during the audit period. The following private benefits were conferred to Shakthivel Vayramuthu (director):

- Cash withdrawals totalling \$4,555 in 2016 and \$9,037 in 2017 mostly for expenses such as gas, car repairs, and meals. No documentation was provided to demonstrate that these expenditures were used for a charitable purpose.
- Gas receipts totalling \$2,456 in 2016 and \$1,688 in 2017 for the operation and repair of his personal vehicle. No documentation was provided, such as mileage logs and that this vehicle and its related expenses were used in the operations of the Organization.

The following private benefits were conferred to Mrs. M. Sethunathan (director):

- Cheques totalling \$1,180 in 2016 and \$2,755 in 2017. Mr. Vayramuthu claimed that \$2,000 of the \$2,755 was a loan repayment; however, no documentation was provided to substantiate the existence of, and accounting for, such a loan and its repayment terms to support his claim.

The following private benefits were conferred to [REDACTED]

- Cheques totalling \$900 for rent of personal residence for January and February 2017. No documentation was provided to substantiate that this expenditure was used for a charitable purpose.



By paying for expenses, or providing advantages, that were not apparently justified or necessary to perform required duties or to further a charitable purpose, and/or providing excessive per diems, and/or permitting unjustified use of resources belonging to the Organization, the Organization conferred an unacceptable private benefit on Mr. Vayramuthu, Mrs. M. Sethunathan, and Mrs. Shakthivel.

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 under subsection 168(1)(b) or be liable to a penalty under subsections 188.1(4) and (5) of the Act.

3. 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 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;¹¹

¹¹ See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.



- 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;¹² 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 revoke an organization's charitable status in the case of material or repeated non-compliance.¹³

Audit Findings

Following an initial examination of the Organization's books and records, a query letter was issued to the Organization on October 25, 2019, requesting the following additional supporting documentation and information:

- the financial statements for 2017 that were not previously filed with the 2017 T3010
- support for the disbursements to one of the directors totalling \$3,935
- support for the daily withdrawals totalling \$4,555 in 2016
- support for the daily withdrawals totalling \$9,037 in 2017
- support for a Tamil money transfer disbursement of \$498.62 on January 18, 2016
- support for the deposits from [REDACTED] totalling \$1,769.16 for 2017
- support for deposits from [REDACTED] Rewards of \$75 per month totalling \$900 per year
- schedules or itineraries for community center food deliveries to seniors
- support for the Scarborough fundraising activity discussed at the interview but not reported
- details of the Organization's used clothing sales

The auditor followed up with the director by telephone on November 21, 2019, to inquire on the Organization's progress in getting the additional documentation and information. During the call the director acknowledged that the Organization had engaged in non-charitable activities, the bank account withdrawals were mostly for personal use, and the [REDACTED] rewards was a financial reward earned from [REDACTED] bank account. The auditor advised that if the Organization had any additional information to submit, it should respond by November 25, 2019. On November 28, 2019, a letter was received from the Organization stating that no further information would be submitted.

In addition to the issues identified above, regarding the Organization's failure to provide the additional documentation we requested in our letter dated October 25, 2019, our audit findings revealed the following deficiencies:

- no internal controls in place and no segregation of duties or adequate authorization for financial transactions and the issuance of official donation receipts (ODRs)
- no meeting minutes of the board of directors or evidence of discussions with regards to the governance or activities of the Organization

¹² *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.

¹³ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.



- no supporting documentation or brochures, photographs, pamphlets, event calendars, or literature available to demonstrate any charitable activities were carried out by the Organization
- no source documentation or information provided to substantiate the charitable expenditures of \$12,662 in 2017 and \$9,892 in 2016 reported in the T3010s
- no summaries, journals, or general ledger of financial transactions were provided
- only bank statements and ODRs were provided to support revenue which is insufficient for us to verify revenue
- no up to date log of the Organization's ODRs that included if they were issued or voided
- no summary listing of issued ODRs
- no bank deposit slips and no revenue summaries
- no log books, delivery itineraries, and/or expense reports to support gas expenses of \$2,456 in 2016 and \$1,688 in 2017

Under paragraph 188.2(2)(a), a charity may receive a notice of suspension of its authority to issue an ODR 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.

4. Issuing donation receipts not in accordance with the Act or its Regulations

Paragraph 230(2)(b) of the Act provides that every registered charity shall "keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate¹⁴ of each receipt containing prescribed information for a donation received by it"

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

Audit Findings

Gifts of Services

At law, a gift is a voluntary transfer of property without consideration. Contributions of services, that is, of time, skills or efforts, are not property, and therefore they do not qualify as gifts for purposes of issuing official donation receipts. Accordingly, a charity cannot issue an official donation receipt for services rendered free of charge.

¹⁴ The definitions found in general language dictionaries and in law dictionaries are sufficiently broad to include a "duplicate of a receipt" in almost any form.



That said, the records showed that ODRs were issued to two individuals for services rendered to the Organization's used clothing business. The two individuals picked up the used clothing and goods from the Organization's drop box and delivered the items to third parties for sale, then collected and delivered the proceeds to the Organization. The individuals were issued donation receipts totalling \$5,500 in 2016 and \$5,650 in 2017 for their services in lieu of pay. The ODRs issued to them were numbers 2501, 2503, 2513, 2513, 2520, and 2525 in 2017; and 01951, 01952, 01957, 01963, 01969, 01971, 01975, 01991, and 01992 in 2016.

Receipts for Membership Fees

A charity can issue a donation receipt for the eligible amount of the payment of membership fees. To determine the eligible amount, the charity must take into consideration the advantage received or obtained by the member in return for the payment. The advantage must be considered when determining the eligible amount even if it is not used by the member, it need only be available to the member. Where the advantage does not exceed 10% or \$75, the full amount paid in regard to membership fees may be receipted. However, where the advantage exceeds 10% or \$75 the charity must deduct the amount of the advantage from the amount of the payment. Where the advantage is more than 80% of the payment a donation receipt must not be issued.¹⁵ Further, the onus is on the charity to determine a value for the advantage provided and the value must be reasonable given the facts of the particular situation.

The audit revealed that the Organization issued donation receipts for all membership fees paid to the Organization. For 2017, the Organization issued ODRs numbered 2504 to 2508; 2510 to 2512; 2515, 2516, 2518, 2521, 2522, and 2524 which totaled \$279. For 2016, ODRs issued were numbers 01953 to 01955; 01958 to 01961; 01964 to 01968; 01970, 01972, 01973, 01976, 01977, 01980 to 01990; 01993, 01998 to 02000, which totaled \$2,031. The ODRs were issued for the full amounts without determining any applicable advantage on the receipts.

ODR missing elements

The audit also found that the Organization's ODRs did not contain the following elements as required by Regulations 3500 and 3501:

- the place or locality where the receipt was issued
- the full address of the donor
- the updated website address of the Canada Revenue Agency
- the day on which or the year during which the donation was received
- descriptions of any gifts-in-kind or non-monetary services received
- eligible and ineligible (advantage) amounts on membership fee receipts

It is our position that the Organization issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status.

¹⁵ See subsections 248(30), (31), and (32) of the Act.



5. Failure to file an information return as and when required by the Act and/or its Regulations

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.¹⁶

Audit Findings

The audit revealed the following errors in the Organization's 2016 and 2017 T3010s:

Both 2016 and 2017 T3010 errors and omissions:

- Section C, C2 ongoing programs were not updated based on the Organization's stated activity of supporting seniors in the Hindu community during the audit period
- Section C, C6 for fundraising was not completed to reflect a fundraising event(s) in Scarborough during the audit period that was stated in the audit interview
- Both Section D and Schedule 6 were filled out, however, only Section D was required
- There were no fundraising amounts entered in line 4630 (revenues) or in line 5020 (expenses)
- Lines 5900 and 5910 were not filled out
- The T1235 was not fully completed for the last listed director arm's length question
- The TF725 was not filed with the returns

2017 T3010 errors and omissions:

- Schedule 5 line 580 amount for \$4,550 in clothing for gifts in kind; however, the clothing program was not listed in Section C, C2
- Financial statements were not filed with the T3010 and were not provided during the audit

2016 T3010 errors and omissions:

- Schedule 6, Line 4810 was not filled in for vehicle expenses; however, vehicle/gas expenses were identified in the Organization's books and records
- Schedule 6, Line 4850 occupancy costs entered for \$4,800; however, no occupancy costs were identified in the Organization's books and records for 2016 (only in 2017)
- Schedule 6, line 5050 has no amount entered; however, a T1236 schedule was attached for \$800 - gifts to two qualified donees

¹⁶ *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51.



- Schedule 6, lines 4950 and 5100 were not totalled correctly
- Schedule 6, line 5100 total expenditures do not match the attached 2016 financial statements profit & loss expenditures
- The T1236 schedule includes an entry of \$1,500 for the [REDACTED]
[REDACTED] a non-QD. This schedule is for reporting gifts to qualified donees

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return as and when required under the Act or a Regulation. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.

The Organization's options:

a) Respond

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

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

b) Do not respond

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

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

If you have any questions or require information or clarification, do not hesitate to contact me at the number below. My team leader, Maria Grieco, may also be reached at (519) 584-3974.



Canada Revenue Agency Agence du revenu du Canada

Yours sincerely,

[Redacted]
Kelly Jubinville
Audit Division
Kitchener Tax Services Office
Telephone: (226) 750-4962
Fax: (519) 585-2803
Address: 166 Frederick Street, Kitchener ON N2H 0A9
Internet: www.canada.ca/en/revenue-agency

cc: Rajini Sharma, Director
Suren Sharma, President
Tharmalingam Jeyasundaram, Board Member
Mathyvathani Sethunathan, Director



September 28, 2020

Shakthivel Vayramuthu
Director
World Maha Hindu Organization of Canada
599 Galloway Crescent
Mississauga ON L5C 3R7

BN: 871378048RR0001
File #: 3005065

Dear Shakthivel Vayramuthu:

Subject: Audit of World Maha Hindu Organization of Canada

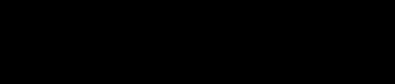
This letter results from the audit of World Maha Hindu Organization of Canada (the Organization), conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2016, to December 31, 2017.

This letter is intended to provide the Organization with a second opportunity to respond to the non-compliance issues identified in our correspondence dated March 3, 2020 (copy enclosed). The administrative fairness letter details the areas of non-compliance identified during the audit period.

If the Organization chooses to provide a response to the non-compliance issues outlined in the March 3, 2020 letter, the representations are required to be received **within thirty (30) days** from the date of this letter.

If you have any questions, please contact the undersigned at the telephone numbers listed below. My team leader, Julianne Myska, may also be reached at 905-706-7713. Thank you for your assistance during the audit.

Sincerely,


Kelly Jubinville
Audit Division
Kitchener Tax Services Office
Telephone: (226) 750-4962
Fax: (519) 585-2803
Address: 166 Frederick Street, Kitchener ON N2H 0A9
Internet: www.canada.ca/en/revenue-agency

APPENDIX A

Qualified Donees

149.1 (1) Definitions

charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

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

(a) constituted and operated exclusively for charitable purposes,

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

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

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

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

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

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

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

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

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

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

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

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

- (a) registered by the Minister and that is
 - (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,
 - (ii) a municipality in Canada,
 - (iii) a municipal or public body performing a function of government in Canada that has applied for registration,
 - (iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration; or
 - (v) a foreign charity that has applied to the Minister for registration under subsection (26),
- (b) a registered charity,
- (b.1) a registered journalism organization,
- (c) a registered Canadian amateur athletic association, or
- (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

149.1 (2) Revocation of registration of charitable organization

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

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

149.1 (3) Revocation of registration of public foundation

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

- (a) carries on a business that is not a related business of that charity;

- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1 (4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which

paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

(a) applies to the Minister in writing for revocation of its registration;

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168 (2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

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

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

168 (4) Objection to proposal or designation

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

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

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

Where the Minister

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

- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90

days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

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

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

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

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

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

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

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

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister’s decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180 (1) Appeals to Federal Court of Appeal

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

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister’s action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

$$\mathbf{A - B}$$

where

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

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

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

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188 (1.2) Winding-up period

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

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188 (1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is

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

- (ii) that is not the subject of a suspension under subsection 188.2(1),
 - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
 - (iv) that has filed all information returns required by subsection 149.1(14), and
 - (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

188 (3) Transfer of property tax

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

which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

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

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

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

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

188 (5) Definitions – In this section,

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

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

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.