



PROTECTED B

July 26, 2024

**REGISTERED MAIL**

Muhammad A. Choksi  
Director  
Haji Usman Dawood Choksi Family Foundation  
2 Coledale Road  
Markham ON L3R 7X3

BN: 89174 7669 RR0001  
Case number: [REDACTED]

Dear Muhammad A. Choksi:

**Subject: Notice of intention to revoke**

We are writing with respect to our letters dated September 12, 2022, and December 4, 2023 (copies enclosed), in which Haji Usman Dawood Choksi Family Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018, to December 31, 2019. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act. The assessment of penalties under section 188.1 of the Act was also presented.

We have reviewed and considered your written responses dated October 27, 2022, and February 13, 2024. Your replies have not alleviated our concerns with respect to the Foundation's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

**Conclusion**

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation: failed to be constituted and operated for exclusively charitable purposes, conferred an undue benefit to a person, failed to meet the disbursement quota, and failed to maintain adequate books and records. This non-compliance constitutes a serious breach of the requirements for registration. For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration. Given this, we have chosen not to apply the proposed penalty.

Consequently, for the reasons mentioned in our letters dated September 12, 2022, and December 4, 2023, and pursuant to subsection 168(1) and 149.1(4) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(e), and subsection 149.1(4)(b) of the *Income Tax Act*, of our intention to revoke

the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the *Canada Gazette*.

<b>Business number</b>	<b>Name</b>
89174 7669 RR0001	Haji Usman Dawood Choksi Family Foundation Markham ON

As noted in our letters dated September 12, 2022, and December 4, 2023, we informed you that the CRA may revoke the charitable registration of the Foundation. We further informed you, that the CRA may, after the expiration of 30 days from the date of the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and on the date of that publication, the Foundation's registration would be revoked.

After considering the Foundation's response, this letter is to inform you that the CRA has decided to issue a notice of intention to revoke the Foundation's registration and will publish a copy of the notice in the *Canada Gazette* immediately after the expiration of **30 days** from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act. It was found that the Foundation demonstrated serious non-compliance with the Act and was not operated for exclusively charitable purposes.

Should the Foundation choose to object to this notice of intention to revoke its registration in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within 90 days from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner  
Appeals Intake Centre  
Post Office Box 2006, Station Main  
Newmarket ON L3Y OE9

However, please note that even if the Foundation files a notice of objection with the CRA Appeals Branch, this will not prevent the CRA from publishing the notice of revocation in the *Canada Gazette* immediately after the expiration of 30 days from the date of mailing of this notice.

The Foundation has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the *Canada Gazette*. The FCA,

upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.<sup>1</sup>

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 B, attached.

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Foundation will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Foundation would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Foundation may be subject to obligations and entitlements under the *Excise Tax Act* that apply to entities other than charities that may result in significant changes in how the Foundation calculates its Goods and Services Tax/Harmonized Sales Tax (GST/HST) to be collected, input tax credits, and rebate entitlements. If you have any questions about your GST/HST obligations and entitlements, please go to [canada.ca/gst-hst](http://canada.ca/gst-hst) or call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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<sup>1</sup> Unless an order from the FCA is issued extending the 30-day period, the Minister may publish the notice of revocation in the *Canada Gazette* after the 30-day period has elapsed.

**Reminder**

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 P. Khare*

Sharmila Khare  
Director General  
Charities Directorate

**Enclosures**

- CRA letters dated September 12, 2022, and December 4, 2023
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.:





September 12, 2022

Muhammad A. Choksi  
Director  
Haji Usman Dawood Choksi Family Foundation  
2 Coledale Road  
Markham, ON, L3R 7X3

BN: 891747669RR0001  
File #: 0966580  
Case number: [REDACTED]

Dear Muhammad A. Choksi:

**Subject: Audit of Haji Usman Dawood Choksi Family Foundation**

This letter results from the audit of the Haji Usman Dawood Choksi Family Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2018, to December 31, 2019.

On March 10, 2022, and May 12, 2022, the Organization was advised that the CRA 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.	Failed to maintain adequate books and records	168(1)(e) 188.2(2)(a) 230(2) 230(4) 230(4.1)
2.	Failed to meet its disbursement quota	149.1(1) 149.1(2)(b)
3.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(14) 168(1)(c) 188.1(6) 188.2(2.1)

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

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

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

### **General legal principles**

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted and operated 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, a purpose must fall within one or more of the following four categories (also known as "heads") of charity<sup>2</sup> and deliver a public benefit:

- (1) relief of poverty;
- (2) advancement of education;
- (3) advancement of religion; and
- (4) other purposes beneficial to the community as a whole in a way which the law regards as charitable.

An organization's purposes must fall within one or more of these categories to be considered for registration as a charity. The formal purposes as set out in an organization's governing document must be clear and precise so as to reflect exclusively charitable purposes.

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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" and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (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 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 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 513 (PC). 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] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

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 may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>3</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.<sup>4</sup> 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.<sup>5</sup>
- 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.<sup>6</sup>

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 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

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<sup>3</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test. See also generally *British Columbia (Assessor of Area #09 - Vancouver) v Arts Umbrella*, 2008 BCCA 103; and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

<sup>4</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test, and CRA Guidance CG-019, How to draft purposes for charitable registration. See also; *Commissioners for Special Purposes of the Income Tax v Pe msel*, [1891] AC 531 (PC) at 583.

<sup>5</sup> *Co-operative College of Canada v. Saskatchewan (Human Rights Commission)*, 1975 CanLII 808 (SKCA) at para 19; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 202; for more information about charitable purposes see CRA Guidance CG-019, How to draft purposes for charitable registration at para 19.

<sup>6</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.<sup>7</sup>

### **Background**

The Organization was registered effective January 1, 1993, as a private foundation with the following purposes:

- To preach, promote and advance the spiritual teachings of Islam by practising the religious observances, tenet and doctrines associated with that faith.

The activities at the time of registration were:

- to acquire and hold land for the purposes of a place of worship, residence for its religious leader, a burial ground or cemetery, a theological seminary or similar institution of religious instruction;
- to operate a printing or publishing office in order to print, publish and distribute religious books, magazines, papers and other religious literature directly related to the charitable objectives;
- to accumulate from time to time part of the fund or funds of the Corporation and income therefrom subject to the provisions of the Accumulations Act, and any other statutes or laws from time to time applicable;
- to invest funds of the Corporation in such manner as the directors may determine in those investments authorized by law for trustees;
- to solicit and receive donations, bequests, legacies and grants, and to enter into agreements, contracts and undertakings incidental thereto;
- to acquire, by purchase, contract, donation, legacy, gift, grant, bequest or otherwise, any personal property and to enter into and carry out any agreements, contracts or undertakings incidental thereto, and to sell, dispose of and convey the same, or any part thereof, as may be considered advisable;
- to employ and pay such assistants, clerks, agents, representatives and employees, and to procure, equip and maintain such offices and other facilities and to incur such reasonable expenses, as may be necessary, provided that the Corporation shall not pay any remuneration to a director in any capacity whatsoever;
- to take up proportions of any increased capital of a company or corporation in which the Corporation may at any time hold shares or obligations, to purchase any

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<sup>7</sup> Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69.



additional shares or obligations in such company or corporation; to join in any plan for the reconstruction or re-organization or for the sale of assets of any company or corporation, or part thereof; to enter into any pooling or other agreement in connection with the shares or obligations of a company or corporation held by the Corporation; and to give consent to the creation of any mortgage, lien or indebtedness of any company or corporation whose shares or obligations are held by the Corporation; provided, however, that all of the foregoing is subject to the provisions of the Charitable Gifts Act;

- to demand and compel payment of all sums of money and claims to any real or personal property in which the Corporation may have an interest and to compromise any such claims, and generally to sue and be sued in its corporate name.

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.

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

##### **1. Failed to maintain adequate books and records**

#### **Legislation and jurisprudence**

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records<sup>8</sup> 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 the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (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.

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as ensuring the CRA can verify the accuracy of reported information through an audit and determine whether there are any grounds for revocation of the charity's registration.

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<sup>8</sup> Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer, as well any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

In order to meet these requirements, a charity's books and records must allow the CRA to verify the charity's revenues and expenses, as well as any official donation receipts it may have issued. Further, the Act requires that a charity's records contain such information to allow the CRA to determine whether the charity's activities continue to be charitable at law.

Subsection 230(4) also states that 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 period as is prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records<sup>9</sup> of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act.

The requirement relating to the maintenance of books and records, and books of account, is based on several court decisions, which have held, among other things, that:

- the onus is on the registered charity to prove that its charitable status should not be revoked.<sup>10</sup>
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and

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<sup>9</sup> Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

<sup>10</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

records at some later date.<sup>11</sup>

- Paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act., and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.<sup>12</sup>
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.<sup>13</sup>

While paragraph 230(2)(a) of the Act does not explicitly set out the types of books and records that a registered charity is required to maintain, which could therefore lead to a technical failure to comply with the Act, given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges. In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records, and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.<sup>14</sup>

### **Audit findings**

The audit found that the Organization failed to maintain adequate books and records. Specifically, during the audit, the Organization failed to provide adequate documentation to support the assets reported on its Form T3010, Registered Charity Information Returns, for the audit period.

The Organization reported long-term investments of \$2,653,927 on Line 4130 of Form T3010, for the 2018 fiscal period. In 2019, the amount appears to be reported on Line 4100 as cash and/or short-term investments. The Organization failed to provide bank statements, investment statements, and/or loan agreements to support the amounts reported on the Form T3010, Registered Charity Information Returns.

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<sup>11</sup> Canadian Committee for the Tel Aviv Foundation v Canada, 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. See also The Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

<sup>12</sup> Opportunities for the Disabled Foundation v Canada (National Revenue), 2016 FCA 94 at para 39; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

<sup>13</sup> Jaamiah Al Uloom Al Islamiyyah Ontario v Canada (National Revenue), 2016 FCA 49 at para 15; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

<sup>14</sup> Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

The Organization failed to provide adequate documentation to support the revenue reported in its returns for the audit period. The Organization reported \$128,737 and \$136,257 as interest revenue on Line 4580 of Form T3010, for fiscal periods 2018 and 2019 respectively. The Organization did not provide any supporting documentation to verify that the amounts were paid to the Organization and deposited into its bank accounts.

The Organization also failed to maintain minutes of the meetings of the board of directors during the audit period and none were provided for examination.

These deficiencies with the books and records resulted in CRA being unable to accurately verify assets and revenues or confirm the results of the meetings of the board of directors. A registered charity is required by the Act to maintain books and records that will allow the CRA to determine that it is operating in accordance with the provisions of the Act. Without access to these records, the auditor was unable to make this determination. Therefore, it is our position that the Organization failed to maintain adequate books and records.

For these reasons, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(e) of the Act.

It is also our view that the Organization may be subject to a sanction under subsection 188.2(2)(a) of the Act. As such, there may also be grounds for the Minister to sanction the Organization under subsection 188.2(2)(a) of the Act.

## **2. Failed to meet its disbursement quota**

### **Legislation and jurisprudence**

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). The disbursement quota calculation is based on the value of property (for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings) that a charity does not use for carrying out its own charitable activities or by way of gifts to qualified donees, or for its administrative expenses such as fundraising costs.

The disbursement quota for a charitable organization is calculated as follows:

If the average value of a registered charity's property **not** used directly in charitable activities or by way of gifts to qualified donees, or for its administrative expenses during the 24 months before the beginning of the fiscal year exceeds \$100,000, the charity's disbursement quota is: 3.5% of the average value of that property.<sup>15</sup>

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<sup>15</sup> For more information, see CRA website: Disbursement quota calculation.

The maximum allowances for carry-forward and carry-back of disbursement quota excesses are defined in subsection 149.1(20) of the Act (i.e., maximum carry-back of 1 fiscal year reporting period, maximum carry-forward of 5 fiscal year reporting periods).

### **Audit findings**

The audit found that the Organization failed to meet its disbursement quota during the audit period. The disbursement quota requirement was calculated using the amounts reported on Form T3010 by the Organization, as shown below:

	<b>31-Dec-19</b>	<b>31-Dec-18</b>
Average value of the property (Line 5900)	\$3,620,355	\$3,373,120
Disbursement Quota for the fiscal period (3.5%)	\$ 126,712	\$ 118,059
Amounts spent on charitable programs (Line 5000)	\$ 12,649	\$ 13,119
Gifts made to qualified donees (Line 5050)	\$ -	\$ -
Disbursement shortfall	<b>\$ 114,063</b>	<b>\$ 104,940</b>

The Organization previously requested permission from the CRA to accumulate funds to build a new religious centre. A letter dated September 14, 2000, was issued from the Charities Directorate, granting the Organization permission to accumulate funds of \$10,000,000 for the 6-year period from January 1, 2000, to December 31, 2005, for the purpose of building the religious centre. No additional requests to accumulate funds were received from the Organization since the expiry date of the original request on December 31, 2005.

It is our view that the Organization continued to accumulate funds without permission from the CRA, beyond the approved period in the letter dated September 14, 2000.

The Organization has not met its disbursement requirements as contained in the definition of disbursement quota in subsection 149.1(1) of the Act. For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under 168(1) of the Act.

### **3. Failed to file an information return as and when required by the Act and/or its Regulations**

#### **Legislation and jurisprudence**

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation

year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of a charity to ensure that the information provided in its Form T3010, Registered Charity Information Return, 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 a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.<sup>16</sup>

### **Audit Findings**

The audit revealed the Organization failed to attach a copy of its financial statements to the 2019 Form T3010, Registered Charity Information Return.

Further, the Organization failed to accurately complete Form T1235, Directors/Trustees and Like Officials Worksheet with the 2018 and 2019 Form T3010, Registered Charity Information Returns. Specifically, the telephone numbers of all listed Directors/Trustees were not provided as required.

Under subsection 188.2(2.1), an Organization may receive a notice of suspension of its authority to issue official receipts for failing to report information that is required under subsection 149.1(14). It is our view the Organization has failed to comply with the Act by failing to file an information return as and when required by the Act and/or its Regulations. For this reason, there may be grounds to suspend the Organization's authority to issue official donation receipts.

Under paragraph 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file an information return as and when required under the Act or its Regulations: For this reason, there are grounds for the Minister to revoke the Organization's charitable status.

In this letter we have proposed both sanctions<sup>17</sup> and revocation in relation to the non-compliance identified during the audit. Although we have stated all the provisions of the Act that apply to both the proposed sanctions and revocation, in regards to each area of identified non-compliance, the Organization is provided the opportunity to make representations for each proposed measure. We will consider any representations provided and, at the conclusion of the audit, we will inform the Organization what, if any, compliance measure is pursued.

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<sup>16</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.

<sup>17</sup> That is, proposed the assessment of a financial penalty and/or a suspension of the Organization's/Foundation's registered status.

**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, we will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the 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, we may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered mail of the Minister's intention to revoke the charity's registration. The charity's registration is not revoked until a copy of the notice is published in the *Canada Gazette*. Paragraph 168(2)(b) of the Act allows the Minister to publish the notice in the *Canada Gazette* any time after the expiration of 30 days from the date of the mailing of the notice.

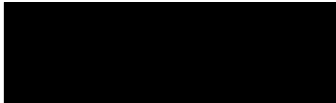
After considering the Organization's response to this letter, the Minister may decide to exercise her authority to revoke its charitable registration. If so, the Minister will issue a notice of intention to revoke the Organization's registration and will indicate in the notice whether the Minister intends to publish the notice in the *Canada Gazette* immediately after the expiration of 30 days from the date of the mailing of the notice.

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go on our website at

<https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html>.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers below. My team leader, Crystal Johnson, may also be reached at 226-989-2713.

Yours sincerely,



Shelly Martel  
Income Tax Audit Division 1  
GTA East TSO

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Toronto, ON M1P 4Y3

c.c.: Abdul W Choksi, Director  
Abdul Q Choksi, President





December 4, 2023

Muhammad A. Choksi  
Director  
Haji Usman Dawood Choksi Family Foundation  
2 Coledale Road  
Markham, ON L3R 7X3

BN: 89174 7669 RR0001  
Case Number: 69091541

Dear Muhammad A. Choksi:

**Subject: Audit of Haji Usman Dawood Choksi Family Foundation**

This letter results from the audit of the Haji Usman Dawood Choksi Family Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2018, to December 31, 2019.

Our letter, issued to the Organization on September 12, 2022, outlined the areas of non-compliance identified during the audit. The Organization responded to our concerns in a letter dated October 27, 2022. Based on the information provided, additional areas of non-compliance were identified.

All identified areas of non-compliance with the provisions of the *Income Tax Act* and its *Regulations*, including the areas identified in our letter dated September 12, 2022, are listed below:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failed to be constituted and operated for exclusively charitable purposes i. Conferred an undue benefit to a person	188.1(4) 188.1(5) 188.2(1)(b)
2.	Failed to meet the disbursement quota	149.1(1) 149.1(2)(b)
3.	Failed to maintain adequate books and records	168(1)(e) 188.2(2)(a) 230(2) 230(4) 230(4.1)

As a registered charity, the Organization must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under sections 188.1<sup>1</sup> and/or 188.2<sup>2</sup> of the Act, and/or have its registered charity status revoked in the manner described in section 168 of the Act.

<sup>1</sup> Financial sanctions are assessed under Section 188.1 of the Act.

<sup>2</sup> Suspensions of a registered charity's authority to issue official donation receipt, and qualified donee status, are assessed under section 188.2 of the Act.

[Type here]

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 provide representations to our findings to support why it believes that sanctions should not be assessed and/or why its registered status should not be revoked.

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

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

### **1. Failed to be constituted and operated for exclusively charitable purposes**

#### **Legislation and jurisprudence**

##### Charitable foundation

The Organization is registered as a private foundation, which for the purposes of the *Income Tax Act (Act)*, is considered to be a charitable foundation. Pursuant to subsection 149.1(1) of the *Act*, a “charitable foundation” is defined as, 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.

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 an organization currently engages. A charitable activity is one that directly furthers a charitable purpose. It requires a clear relationship and link between the activity and the purpose it purports to further. If an activity is, or becomes, a substantial focus of 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*.

##### Non-qualified investment

A non-qualified investment of a private foundation is defined in subsection 149.1(1) of the *Act* to include on-arm's length investments involving a debt, a share, or a right to acquire a share held by a private foundation that is issued by persons not dealing at arm's length with that private foundation.

##### Arm's length

The determination of whether two parties are arm's length can be found in subsection 251(1) of the *Act*. Paragraph 251(1)(a) of the *Act* states that related persons shall be deemed not to deal with each other at arm's length. Paragraph 251(1)(b) of the *Act* deals with a taxpayer and a personal trust, and is not relevant to this analysis. Paragraph 251(1)(c) states that in any other case, it is a question of fact whether two taxpayers are dealing with each other at arm's length.

##### Related

The definition of related persons is contained in subsection 251(2) of the *Act*. Under paragraph 251(2)(a) related persons are individuals connected by blood relationship, marriage or common law partnership or adoption. Under paragraph 251(2)(b) related persons are: (i) a corporation and a person who controls the corporation, if it is controlled by one person; (ii) a corporation and a person who is a member of a related group that controls the corporation; or (iii) a corporation and any person related to a person described in (i) or (ii). Under paragraph 251(2)(c) related persons are any two corporations; (i) if they are controlled by the same person or group of persons.

**Audit findings**

The audit identified that the Organization held multiple promissory notes that it recorded as assets during the audit period and met the criteria to be described as non-qualified investments of the Organization. They were issued by the Organization to [REDACTED], a for-profit corporation (the Corporation). Each was to be repaid within six months with an interest rate of 5% per annum. In total, \$2,409,000 was advanced to the Corporation from March 5, 2012 to December 31, 2013 with interest in the amount of \$884,623 accruing to December 31, 2019 and one repayment of \$520,000. The Organization has maintained these funds were loaned to earn interest income.

Abdul Wahid Choksi has been the sole and thereby controlling member of the Organization since registration. He is also the controlling shareholder of the Corporation making the Organization and the Corporation related to one another. Therefore the Organization and Corporation do not deal at arm's length with one another pursuant to paragraph 251(1)(1) of the Act. Given this relationship, it is particularly concerning that the Organization continued to advance funds to the Corporation after the Corporation filed for bankruptcy on [REDACTED]. Further, documents provided by [REDACTED] demonstrate that the Organization was not listed as a secured and/or unsecured creditor for any amounts owing from the Corporation. As of December 2019, \$1,889,900 of the amounts advanced to the Corporation remain outstanding and \$884,623 of interest has accrued without being collected by the Organization.

In summary, the Organization:

- advanced funds to a non-arm's length corporation knowing it was not listed as a creditor of the Corporation during the bankruptcy process; and
- did not collect any amount of interest owing to it from a non-arm's length corporation.

It is not reasonable to conclude the Organization entered into these transactions for investment purposes as it maintains. The uncollected interest amounts were made available to and benefited the controlling member's corporation and this non-arm's length corporation has not made repayments on the initial advances since 2013. Taken altogether, the Organization has demonstrated that it has not been operated exclusively for charitable purposes as required by the definition of a charitable foundation in subsection 149.1(1) of the Act. As a result, the CRA is of the view that the Organization should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b).

**i. Conferred an undue benefit to a person****Legislation and jurisprudence****Undue benefit**

The penalty associated with and meaning of undue benefit are contained in subsections 188.1(4) and (5) of the Act. An undue benefit conferred on a person by a registered charity includes a disbursement by way of a gift, or the amount of any part of the income, rights, property or resources of the charity that is paid, payable, assigned or otherwise made available for the personal benefit of any person who does not deal at arm's length with the charity. A registered charity that at a particular time in a taxation year, confers on a person an undue benefit, is liable to a penalty for the taxation year equal to 105% of the amount of the benefit.

**Audit findings**

As noted above, the Organization issued loans to a non-arms length for-profit corporation for which it did not collect all of the interest owed and did not receive all repayments of the principal according to the terms of the loans. These transactions did not further the charitable activities of the Organization; rather the Organization

income and resources were made available to a related corporation benefiting this non-arm's length entity such that they represent an undue benefit. As the for-profit corporation declared bankruptcy on October 23, 2012, the interest calculation will be up to and including December 31, 2019. The amount of interest is based on the Organization's calculation provided to CRA as part of their representation of October 22, 2022.

As a result, the CRA is of the view that the Organization may be subject to a penalty under subsection 188.1(4) of the Act as detailed below:

Year	Type of Sanction & Penalized Amount	Amount of Funds Provided	Sanction %	Penalty Amount
2012	Undue Benefit – principal loan amount advanced	\$1,889,000	105%	\$1,983,450
Total sanctionable amounts: principal loan				\$1,983,450
2012	Undue Benefit – accrued interest revenue	\$72,917	105%	\$76,563
Total 188.1(4)(a) Penalty 2012				\$2,060,013
2013	Undue Benefit – accrued interest revenue	\$103,329	105%	\$108,495
Total 188.1(4)(a) Penalty 2013				\$108,495
2014	Undue Benefit – accrued interest revenue	\$105,146	105%	\$110,403
Total 188.1(4)(a) Penalty 2014				\$110,403
2015	Undue Benefit – accrued interest revenue	\$109,170	105%	\$114,629
Total 188.1(4)(a) Penalty 2015				\$114,629
2016	Undue Benefit – accrued interest revenue	\$114,628	105%	\$120,359
Total 188.1(4)(a) Penalty 2016				\$120,359
2017	Undue Benefit – accrued interest revenue	\$120,360	105%	\$126,378
Total 188.1(4)(a) Penalty 2017				\$126,378
2018	Undue Benefit – accrued interest revenue	\$126,377	105%	\$132,696
Total 188.1(4)(a) Penalty 2018				\$132,696
2019	Undue Benefit – accrued interest revenue	\$132,696	105%	\$139,331
Total 188.1(4)(a) Penalty 2019				\$139,331
Total sanctionable amounts: accrued interest revenue				\$928,854
Total 188.1(4)(a) Penalty				\$2,912,304

## 2. Failed to meet the disbursement quota

### Legislation and jurisprudence

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on qualifying disbursements (for example, gifts to qualified donees or grants to grantee organizations). The disbursement quota calculation is based on the value of property (for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings) that a charity does not use for carrying out its own charitable activities or by way of making qualifying disbursements, or for its administrative expenses such as fundraising costs.

The disbursement quota for public and private foundations is calculated as follows:

If the average value of a registered charity's property **not** used directly in charitable activities or administration during the 24 months before the beginning of the fiscal year exceeds \$25,000, the charity's disbursement quota is: 3.5% of the average value of that property.<sup>3</sup>

The maximum allowances for carry-forward and carry-back of disbursement quota excesses are defined in subsection 149.1(20) of the Act (i.e., maximum carry-back of 1 fiscal year reporting period, maximum carry-forward of 5 fiscal year reporting periods).

### Audit findings

The audit found the Organization failed to meet its disbursement quota.

	31-Dec-19	31-Dec-18	31-Dec-17	31-Dec-16	31-Dec-15	31-Dec-14	31-Dec-13
Average value of the property (Line 5900)	\$3,620,355	\$3,373,120	\$3,281,269	\$3,195,334	\$3,127,464	\$3,153,572	\$3,054,547
Disbursement Quota for the fiscal period (3.5%)	126,712	118,059	114,844	111,837	109,461	110,375	106,909
Amounts spent on charitable programs (Line 5000)	12,649	13,119	12,800	14,209	19,063	13,608	25,646
Gifts made to qualified donees (Line 5050)	-	-	-	-	-	-	-
Disbursement shortfall (per year)	\$114,063	\$104,940	\$102,044	\$97,628	\$90,398	\$96,767	\$81,263
Total disbursement shortfall	<b><u>\$692,103</u></b>						

The Organization faces a disbursement quota shortfall as calculated for each year shown in the table above. The total disbursement shortfall is \$692,103 at December 31, 2019. For this reason, it is our view that the Organization has not met its disbursement requirements as contained in the definition of disbursement quota in subsection 149.1(1) of the Act. For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under 168(1) of the Act.

### 3. Failed to maintain adequate books and records

#### Legislation and jurisprudence

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records<sup>4</sup> of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are grounds for the revocation of its registration under the Act.

In order to meet these requirements, a charity's books and records must allow the CRA to verify the charity's revenues and expenses, as well as any official donation receipts it may have issued. Further, the Act requires that a charity's records contain such information so as to allow the CRA to determine whether the charity's activities continue to be charitable at law.

<sup>3</sup> For more information, see CRA website: Disbursement quota calculation.

<sup>4</sup> Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and other thing containing information, whether in writing or in any other form."

The requirement relating to the maintenance of books and records, and books of account, is based on several court decisions, which have held, among other things, that:

- the onus is on the registered charity to prove that its charitable status should not be revoked.<sup>5</sup>
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and records at some later date.<sup>6</sup>
- the requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.<sup>7</sup>

While paragraph 230(2) of the act does not explicitly set out the types of books and records that a registered charity is required to maintain, which could therefore lead to a technical failure to comply with the Act,<sup>8</sup> given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges. In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,<sup>9</sup> and that material or significant and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.<sup>10</sup> As outlined below, the audit has identified a number of deficiencies with respect to the Organization's books and records. In some instances, the Organization either did not maintain, or was unable to provide, books and records, and as such the CRA was not able to verify income, expenses, donations, and use of resources.

### **Audit findings**

The audit found there were no minutes of annual general meetings or a resolution in lieu of meetings for the entire audit period, nor were there any director meeting minutes for the entire audit period.

Minutes of meeting of directors and members are an essential part of an organization's governing documents as they contain an official record of these meetings. Documenting decisions of the board and members, along with the discussion surrounding these decisions, show that an organization is operating within its purposes and are a critical tool that allow external stakeholders a view to the direction and oversight of the organization and to assess the adequacy thereof. In the case of private foundations and with the Organization in particular, this may be difficult to demonstrate given the prevalence of non-arm's length relationships in its operations. However, it remains the obligation of registered charities to maintain books and records that confirm transactions among non-arm's length entities are entered into for charitable purposes and not considered the provision of unacceptable private benefits

The Organization's lack of meeting minutes of meetings of the board of directors and members, or even resolutions in lieu of meetings, demonstrates a disregard to the performance of the basic duties of these positions on the part of the Organization's directors and members. Because of the absence of minutes, a tool to evaluate the Organization's direction, processes and oversight is non-existent. In addition, had these documents existed, they may have assisted in establishing that the Organization was being operated for the requisite exclusively charitable purposes to continue to meet the definition of a charitable foundation.

<sup>5</sup> The Canadian Committee for the Tel Aviv Foundation v. Canada 2002 FCA 72.

<sup>6</sup> *ibid.* See also The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada 2004 FCA 397.

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

<sup>8</sup> Prescient Foundation v. Canada (National Revenue) 2013 FCA 120; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 37.

<sup>9</sup> Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue) 2015 FCA 178, paragraph 80.

<sup>10</sup> Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43.

It is our view that the Organization failed to maintain adequate corporate records as required by subsection 230(2) of the Act. As noted above, a failure to maintain adequate books and records in accordance with the Act is itself a sufficient reason to revoke the Organization's charitable status under the authority of paragraph 168(1)(e) of the Act.

**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, we will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the 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, we may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered mail of the Minister's intention to revoke the charity's registration. The charity's registration is not revoked until a copy of the notice is published in the Canada Gazette. Paragraph 168(2)(b) of the Act allows the Minister to publish the notice in the Canada Gazette any time after the expiration of 30 days from the date of the mailing of the notice.

After considering the Organization's response to this letter, the Minister may decide to exercise her authority to revoke its charitable registration. If so, the Minister will issue a notice of intention to revoke the Organization's registration and will indicate in the notice whether the Minister intends to publish the notice in the Canada Gazette immediately after the expiration of 30 days from the date of the mailing of the notice.

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go on our website at [canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01](http://canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01).

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If you have any questions or require further information or clarification, do not hesitate to contact me at the number below. My team leader, Megan O'Hara, may also be reached at 905-706-9629.

Yours sincerely,



Shelly Martel  
Income Tax Audit – Division 1  
GTA East TSO

Telephone: 519-577-2465  
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Toronto, ON M1P 4Y3

c.c.: Abdul W Choksi, Director  
Abdul Q Choksi, President



## APPENDIX A

### **Haji Usman Dawood Choksi Family Foundation**

#### **Audit of Haji Usman Dawood Choksi Family Foundation for the periods from January 1, 2018 to December 31, 2019**

#### **Comments on the Foundation's Representations of October 27, 2022 and February 13, 2024**

In our final administrative fairness letter (AFL) dated December 4, 2023, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018, to December 31, 2019, identified that Haji Usman Dawood Choksi Family Foundation (the Foundation) is not operating in compliance with the provisions of the *Income Tax Act* (the Act) in the following areas:

1. Failed to be constituted and operated for exclusively charitable purposes
  - i. Conferred an undue benefit to a person
2. Failed to meet the disbursement quota
3. Failed to maintain adequate books and records

We have reviewed the Foundation's representations dated October 27, 2022, and February 13, 2024, and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Act. It is also our position that the most appropriate audit outcome is the revocation of the Foundation's charitable status rather than assessing a penalty and allowing it to continue to operate as a registered charity. This is due to the severity of the non-compliance identified and the actions of the Foundation during both the audit period and the audit itself.

The basis for our position is described in detail below, including:

- a summary of the issues raised by the CRA in our letters of September 12, 2022, and December 4, 2023;
- a summary of responses provided by the Foundation in its October 27, 2022, and February 13, 2024, representations; and
- the CRA's conclusion with respect to each issue.

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

- 1. Failed to be constituted and operated for exclusively charitable purposes and**
  - i. Conferred an undue benefit to a person**

As outlined in our letter of December 4, 2023, it is our position that the Foundation advanced funds to a non-arm's length corporation (the "Corporation") with the knowledge it was not listed as a creditor of the Corporation during the bankruptcy process and did not collect any of the interest owing to it from the Corporation.

The uncollected interest amounts were made available to and benefited the Organization's controlling member's corporation and further, the Corporation has not made repayments on the initial advances since 2013. Taken altogether, the Foundation has demonstrated that it has not been operated exclusively for charitable purposes as required by the definition of a charitable foundation in subsection 149.1(1) of the Act.

Our letter further stated that the Organization may be subject to a penalty under 188.1(4) of the Act calculated on the principal loan amount advanced and the accrued interest that was uncollected.

The Foundation's representations:

The Foundation's representations did not address the CRA's finding that it had not operated exclusively charitable purposes.

With regard to the audit finding related to conferring an undue benefit, the representations stated the borrower never repaid the \$1,889,000 loan, never paid interest to the Foundation and acknowledged that the Foundation was not listed as a secured or unsecured creditor for any amounts owed to it by the borrower.

The representations disputed the CRA's calculation of penalties pursuant to paragraph 188.1(4) (a), suggesting the uncollected interest amount should not be included in the calculation, reducing the penalty amount from \$2,912,304 to \$2,060,123. The Foundation stated it was prepared to pay this lower penalty amount if permitted to maintain its charitable status. In the alternative, the Foundation requested that, if after considering its submissions, the Minister decides to revoke the Foundation's charitable status, that it be permitted to apply for voluntary revocation.

The CRA's response:

Although the Foundation agreed that the borrower never repaid the \$1,889,000 loan balance and never paid interest to the Foundation, it nonetheless continued to report the loans receivable and the accrued interest revenue on Form T3010, Registered Charity Information Returns (T3010 Return) and in its financial statements for the years 2012 through 2019, which were signed by a director of the Foundation certifying the information was correct, complete, and current.

The Foundation, at no time during the course of the audit, provided any indication that the loans receivable were uncollectable. In fact, it was the CRA who discovered the non-arm's length corporation was in the process of filing for bankruptcy during the time the Foundation provided the loans. Only after the issuance of the AFL dated December 4, 2023, where the CRA outlined our additional findings that the Foundation provided loans to a non-arm's length corporation while in the process of filing for bankruptcy, did the Foundation acknowledge that the loans receivable were in fact uncollectable. Had this fact not been discovered by the CRA, it is our view that the Foundation would have continued to report the loans receivable and accrued

interest on its T3010 Returns indefinitely, as it had done from 2012 to 2019. Further, the Foundation's representations confirm it continued to advance funds to the non-arm's length corporation after bankruptcy was declared, putting in doubt the Foundation's assertion these funds were advanced for investment purposes. In effect, the Foundation provided loans to the non-arm's length corporation with the knowledge that it would never be repaid.

Taken altogether, it remains our view that the majority of the Foundation's income and resources were made available to a non-arm's length corporation benefiting the non-arm's length entity such that they represent an undue benefit. However, it is the CRA's position that the actions of the Foundation prior to and during the audit period demonstrate an indifference to a fundamental obligation of registered charitable foundations, namely to operate exclusively for charitable purposes. For this reason, the CRA is of the view that the Foundation has failed to continue to meet the definition of a charitable foundation pursuant to subsection 149.1(1) of the Act and should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

With regard to the request included in the Foundation's representations that it be permitted to apply for voluntary revocation, as noted on our website<sup>1</sup>, voluntary revocation is a process that is discretionary on the part of the CRA and cannot be used by a charity to avoid any ongoing compliance action. Given the seriousness of the non-compliance described above, voluntary revocation is not an appropriate action to take.

## **2. Failed to meet the disbursement quota**

The disbursement quota is the minimum amount that a registered charity must spend each year on its own charitable activities, or on qualifying disbursements (for example, gifts to qualified donees or grants to grantee organizations). The disbursement quota calculation is based on the value of property (for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land and buildings) that a charity does not use for carrying out its own charitable activities or by way of making qualifying disbursements, or for its administrative expenses such as fundraising costs.

In our December 4, 2023, letter we provided a calculation detailing the Foundation's disbursement shortfall based on information the Foundation provided on its Form T3010s amounting to a total disbursement quota shortfall of \$692,103 by the fiscal period ending December 31, 2019.

### The Foundation's representations:

The Foundation provided that the CRA was mistaken in its calculation of the disbursement quota shortfalls for the 2013 through 2019 years based on amounts it claimed should have been excluded from the calculation. The exclusions were for:

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<sup>1</sup> <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/revoking-registered-status/types-revocation.html>

- i. Real property that the Foundation owned and operated as a mosque (the "Mosque"); and
- ii. the loans receivable.

The representations outlined how the Mosque was exclusively used for charitable purposes, and its value of \$385,316 as reported in the T3010 Returns should be excluded when calculating the Foundation's disbursement quotas for the 2013 to 2019 years.

Regarding the loans receivables, the representations explained as of and including 2013, the loans receivables were no longer assets of the Foundation because they were uncollectable and worthless because the borrower went bankrupt, and the Foundation was not listed as a secured or unsecured creditor for any amounts owed to it by the borrower. The representations further stated that because of this, the loans receivables should have been recorded as bad debts and excluded from the Foundation's assets in its financial statements and its T3010 returns for 2013 to 2019 years.

The representations also explained that excluding the amounts relating to the Mosque and the loans receivable results in excess disbursements and after carrying back and forward its disbursement excesses under subsection 149.1(20), there were disbursement shortfalls in only 2016 (by \$282.20) and 2019 (by \$3,071.44).

The Foundation stated it was prepared to pay the above noted disbursement shortfalls if it is permitted to maintain its charitable status.

The CRA's response:

With respect to the Foundation's claim that the Mosque was exclusively used for charitable purposes, we agree that its value of \$385,316 should not be included in the calculation of the disbursement quota. However, it was the Foundation itself that provided the value of property not used for charitable activities or administration on line 5900 and line 5910 of its T3010 Returns for the 2013 to 2019 years. Our audit findings were based on the amounts reported on the T3010 Returns. No supporting documentation or calculations were provided in the representations to suggest the value of the Mosque had not already been deducted prior to entering the values on line 5900 and line 5910 of the T3010 Returns for the 2013 to 2019 years.

The Foundation gave no indication that the loan receivable was uncollectable until its representations of February 13, 2024. Prior to this, the Foundation insisted this was in fact a loan going so far as to provide in its response to our AFL of September 12, 2022, copies of promissory notes and the statement: "The loan receivables were correctly on Line 4140 of Form T3010 and the Foundation will continue to report the Loan Receivables on Line 4140 going forward." Also included in this response was the statement "The Foundation concedes that it did not disburse the required disbursement quota amounts of \$104,940 in 2018 and \$114,063 in 2019."

No matter the amount calculated, in both of the Foundation's responses it has acknowledged it has not met its disbursement requirements under the Act. This again demonstrates an

indifference to a fundamental obligation of registered charities. Therefore, it remains our position that the Foundation failed to comply with the requirements outlined in subsection 149.1(1) of the Act, and as a result, we hereby intend to revoke the registration of the Foundation under paragraphs 149.1(4)(b) and 168(1)(b) of the Act.

### **3. Failed to maintain adequate books and records**

The audit found there were no minutes of annual general meetings or a resolution in lieu of meetings for the entire audit period, nor were there any director meeting minutes for the entire audit period.

#### The Foundation's response:

In the Foundation's letter of October 27, 2022, it stated at paragraph 28 that "The Foundation concedes that it did not maintain minutes of meetings. The Foundation is run by [REDACTED] and their meetings are informal." Then in its letter of February 13, 2024, the Foundation stated at paragraph 26 that "The Foundation advised in paragraph 28 of its October 27, 2022 letter to the CRA auditor that the Minute Book did not have minutes of meetings for the audit period. We hope that the Foundation's statements with respect to the minutes for the audit period did not result in a misconception that the Foundation never kept any minutes or resolutions, which is not the case."

#### The CRA's response:

To the CRA, there is a distinction between not having an up to date minute book and not having meeting minutes. Not having a current minute book implies that the book itself is missing some documentation; not having meeting minutes implies either a meeting was held and no record was kept of the discussions held, or no meeting was held at all. Given the Foundation specifically stated it did not maintain minutes of meetings, it is reasonable to conclude the latter. Further, if the CRA misunderstood the Foundation's statements and it in fact did keep minutes, copies should have been included in its letter of February 13, 2024, to support this assertion. Presently, the Foundation cannot demonstrate that it even held meetings of its directors or members.

As noted previously, meeting minutes are a tool that can be used to demonstrate an organization's direction, processes and oversight. Their absence from the Foundation's records leaves the CRA without an important means to confirm decisions made were made in furtherance of the Foundation's charitable purposes. Accordingly, it remains our position that the Foundation failed to maintain adequate records as required by subsection 230(2) of the Act and the Foundation's registration should be revoked under the authority of paragraph 168(1)(e) of the Act.

APPENDIX B

**Qualified Donees**

**149.1 (1) Definitions**

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

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

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

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

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

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

#### **149.1 (2) Revocation of registration of charitable organization**

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

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

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

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

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

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

#### **149.1 (3) Revocation of registration of public foundation**

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

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

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

#### **149.1 (4) Revocation of registration of private foundation**

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

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

#### **149.1 (4.1) Revocation of registration of registered charity**

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

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



(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

#### **168 (4) Objection to proposal or designation**

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

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **180 (1) Appeals to Federal Court of Appeal**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

$$A - B$$

where

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

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

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

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

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

(a) a debt of the charity that is outstanding at the end of that taxation year,

(b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

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

#### **188 (1.2) Winding-up period**

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

(a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

(c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

#### **188 (1.3) Eligible donee**

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

(a) a registered charity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **188 (5) Definitions – In this section,**

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

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

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

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

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

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

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

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

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

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

exceeds

  - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which



the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

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

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

**189 (7) Minister may assess**

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.