



October 24, 2024

**REGISTERED MAIL**

Roland Parker  
Director  
Viva Voce Charitable Foundation  
555 Queens Rd E  
North Vancouver, BC V7N 1G9

BN: 83335 8443 RR0001  
File Number: 3050126  
Case number: 13681541

Dear Roland Parker:

**Subject: Notice of intention to revoke  
Viva Voce Charitable Foundation**

We are writing with respect to our letter dated January 8, 2024 (copy enclosed), in which Viva Voce Charitable Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from December 1, 2015 to November 30, 2018. 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*.

We have reviewed and considered your written response dated March 8, 2024. Your reply has not alleviated all of 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 by participating in a series of transactions with donors, wealth advisors and another registered charity that resulted in persons receiving the tax benefits associated with \$25 million in donations that they were not entitled to. Further, the Foundation failed to devote its resources to charitable activities carried on by the Foundation itself. 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.

Consequently, for the reasons mentioned in our letter dated January 8, 2024, and pursuant to subsection 168(1) 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 paragraph 168(1)(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*.

**Business number**

833358443RR0001

**Name**Viva Voce Charitable Foundation  
Vancouver, BC

As noted in our letter dated January 8, 2024, 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 0E9

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).

### **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

<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.

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,

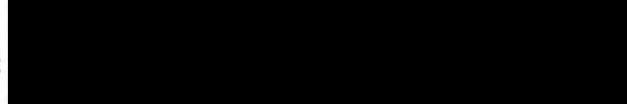
*Sharmila P. Khare*

Sharmila Khare  
Director General  
Charities Directorate

Enclosures

- CRA letter dated January 8, 2024
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.:



January 8, 2024

Roland Parker  
 Director  
 Viva Voce Charitable Foundation  
 555 Queens Rd E  
 North Vancouver, BC V7N 1G9

BN: 83335 8443 RR0001  
 File Number: 3050126  
 Case number: 13681541

Dear Roland Parker:

**Subject: Audit of Viva Voce Charitable Foundation**

This letter results from the audit of the Viva Voce Charitable Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from December 1, 2015 to November 30, 2018.

On January 8, 2024, the Foundation was advised that the CRA identified specific areas of non-compliance with the provisions of the *Income Tax Act* and its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
Issue	Reference	
1. Failure to be constituted and operated for exclusively charitable purposes	149.1(1), 168(1)(b)	
2. Failure to devote resources to charitable activities carried on by the Foundation itself - Delivered non- incidental private benefits	149.1(1), 168(1)(b)	
3. Failure to maintain adequate books and records	230(2), 168(1)(e)	

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 Foundation an opportunity to respond and present additional information and explain why its registered status should not be revoked. The Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

**Background**

The CRA had previously identified non-compliance in the audit period and sent a draft compliance agreement (CA) to the Foundation on December 14, 2021 identifying two areas of non-compliance:

1. Failure to file an information return as and when required by the Act. The Foundation reported nil long-term investments on Line 4140 while it was the CRA's position the Foundation should have reported the cash surrender value (CSV) of all life insurance policies for which it was a co-owner; and
2. Failure to maintain adequate books and records. It was the CRA's position that the Foundation did not maintain sufficient documentation to support it did in fact become the co-owner and beneficiary of these life insurance policies as no notice was provided of this to the insurance companies.

The Foundation provided a response to this letter on January 20, 2022 stating:

- it did not have ownership of the CSV of the life insurance policies; it is only entitled to a portion of the death benefit; and
- it did not agree that further information was required to establish the change of ownership of the policies. The Foundation's position is that the co-ownership agreement is the prevailing legal document that determines the allocation of the particulars of the life insurance policy and the transfer forms registered with the life insurers do not override the legal force of the co-ownership agreement and are not required to make the Foundation the owner. Further, the co-ownership agreements are legally binding agreements that purposely take precedence over the registration at the issuer.

Given the Foundation's position and additional information detailed below, the CRA's position remains that the audit findings demonstrate significant non-compliance.

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

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

###### **Legislation:**

###### Charitable Foundation

The Foundation is registered as a private foundation, which for purposes of the 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."

###### **Audit Findings**

The audit identified that the Foundation participated in a series of transactions that resulted in persons receiving official donation receipts to which they were not entitled to. The Foundation's role in these arrangements is described below.

A Donor (this may be an individual Insured, or a corporation or trust controlled by the Insured) who owns a whole life insurance policy and wishes to use that policy to obtain tax credits obtains the assistance of [REDACTED] a corporation that provides

financial advice. To initiate the arrangement, the Donor would enter into a co-ownership agreement with the Foundation. Under this agreement, the Donor and the Foundation become owners of the Policy as tenants in common, the Donor would absolutely assign the "Charity's Death Benefit Entitlement" to the Foundation and both the Donor and the Foundation agree to pay premium deposits for the Policy. Typically the Foundation would not interact with the Donor; documents and correspondence were managed by [REDACTED]

[REDACTED]

Next, funds were sent from another registered charity, CHIMP: Charitable Impact Foundation (CHIMP Foundation), to the Foundation for policy premiums, which were then sent to the life insurance provider. Information from CHIMP Foundation indicates the Insured, or a representative of the Insured, transferred funds to CHIMP Foundation for which they received official donation receipts, and then directed CHIMP Foundation to transfer these funds to the Foundation for the purposes of paying the life insurance policy premiums.

The audit found the Foundation entered into co-ownership agreements for the following policies:

Donor	Insured	Provider	Policy No
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



The Foundation reported receiving \$23,224,855 from CHIMP Foundation during the audit period and paid out \$25,486,177 during the same period for life insurance policy premiums.

The difference of \$2,261,322 is due to:

- \$2,250,000 in the 2016 fiscal period which was funds received directly from [REDACTED] for life insurance premiums, and
- \$11,322, which represents amounts from [REDACTED]. Based on copies of donation receipts provided for the 2017 and 2018 fiscal period, we assume these amounts were received. There is a minor discrepancy between the \$11,322 and \$18,675 of donation receipts issued to [REDACTED] which would be funds from [REDACTED] used by the Foundation to pay other administrative costs such as accounting fees.

As discussed in IT-244R3 – Gifts by Individuals of Life Insurance Policies as Charitable Donations, if an owner of an existing life insurance policy transfers ownership of the

policy to a registered charity, the donor may receive an official donation receipt for the cash value of the policy as of the date of the transfer and, if the donor continues to pay the annual premium payments on the policy, they may receive an official donation receipt for these payments.

As part of the audit process, we contacted the life insurance providers of the policies listed above to confirm the information provided by the Foundation. In all cases, the provider had not been notified of the change in ownership nor were they informed of the "Charity Death Benefit Entitlement." In effect, the Foundation has paid \$25,486,177 for life insurance policy premiums on policies it did not own nor was entitled to any of the death benefits provided by the policies according to the life insurance providers.

It is the CRA's position that when a registered charity is not the owner of a life insurance policy and is not named as an irrevocable beneficiary but pays premiums on the policy, the premium payments are not in furtherance of their charitable purposes. In such a situation the indication of receipt of a portion of a death benefit is considered to be a pledge. A pledge, or promise to make a gift, is not in itself a gift and an official donation receipt may only be issued once the donor has honoured the pledge.

The audit findings make the above position applicable to the Foundation. Because the insurance providers were not notified of the change in ownership or beneficiary, the co-ownership agreements amount to a pledge. By structuring the transactions in the manner they did, namely transferring funds to CHIMP Foundation and then directing those funds to the Foundation, the Insured, or representatives of the Insured, received an official donation receipt for a pledge. Further, in the case of the first premium payment by [REDACTED]

[REDACTED] it appears that the Foundation directly issued a donation receipt for a pledge. In sum, by participating in these transactions, the Foundation assisted persons in receiving tax credits they were not entitled to. It cannot be said therefore, that the Foundation operated for exclusively charitable purposes during the audit period.

To conclude, the Foundation participated in a series of transactions with donors, wealth advisors and another registered charity that resulted in persons receiving tax credits they were not entitled to. Taken altogether, the Foundation has not demonstrated that it has 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 Foundation should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

**2. Failure to devote resources to charitable activities carried on by the Foundation itself**  
**- Delivered non- incidental private benefits**

### **Legislation and jurisprudence**

A registered charity must be established and operated for the purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes. At common law, a private benefit<sup>1</sup> means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. Private benefits can be conferred on a charity's staff, directors, trustees, members, and/or volunteers while they are carrying out activities that support the charity, or to third parties who provide the charity with goods or services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to an organization, any resulting benefit will not be acceptable.

### **Audit findings**

During the audit period, the Foundation accepted gifts from CHIMP Foundation. These funds were available to the Foundation for use in pursuit of its own charitable purposes. However, as noted above, in all cases, the insurance provider was not notified of the changes in ownership or the Charity Death Benefit Entitlement. Given the volume of policies, it is not reasonable to assume this failure was simply an administrative oversight. It is the CRA's position that by choosing to use the funds received from CHIMP Foundation to pay insurance policy premiums on policies, that according to the insurance providers, the Foundation had no legal requirement to do so, caused it to provide an unacceptable private benefit to the Insured of the policies.

A charity that delivers an unacceptable private benefit is not using all of its resources for charitable purposes and may have its registered status revoked or be liable to a penalty.<sup>2</sup> Given the repeated and serious nature of the non-compliance identified in the current audit, there are grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(b) of the Act.

### **3. Failure 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>3</sup> and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

<sup>1</sup> **Personal benefit** is also sometimes used instead of **benefit** in the common law private benefit context; See CRA Guidance CG-019, *How to draft purposes for charitable registration*.

<sup>2</sup> The common law concept of private benefit is incorporated into the statutory registration scheme through subsections 149.1(2), (3) and (4), of the *Income Tax Act*. Typically, private benefits that are unacceptable under the common law will also be "undue" under the *Income Tax Act*, thus providing grounds for denial of registration, sanctions under subsections 188.1(4) and (5), and/or revocation under subsection 168(1)(b).

<sup>3</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

- (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.

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.

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.

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.

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

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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."

should not be revoked.<sup>4</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>5</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>6</sup>
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.<sup>7</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>8</sup>

### **Audit findings**

The audit disclosed the following deficiencies with regard to its books and records:

- No bank statements or other source documents were provided for the 2016 fiscal period;
- The Foundation did not maintain a general ledger that recorded transactions throughout the year;

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<sup>4</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>5</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>6</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>7</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>8</sup> Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

- Multiple asset summary sheets were provided for the same period, which were inconsistent, making these records unreliable; and
- The Foundation's representative maintained that no official donation receipts were issued until the 2019 fiscal period; however duplicate donations receipts were included in the Foundation's records indicating receipts were in fact issued for the 2017 and 2018 fiscal periods;

Accordingly, it is our view that the Foundation's records are unreliable. It has therefore failed to meet the requirements of subsection 230(2) of the Act. A foundation that fails to maintain adequate books and records of account may have its registered charity status revoked. As such, there are grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(e) of the Act.

**The Foundation's options:**

**a) Respond**

If the Foundation 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 Foundation in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

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

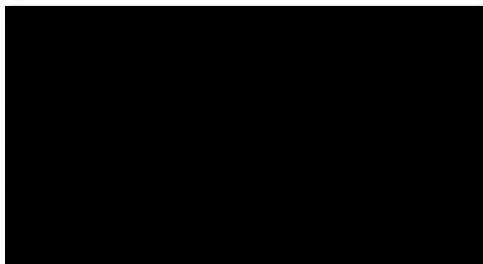
The Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered 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 Foundation'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 Foundation'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).

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers below. My team leader, Lacy Ballan, may also be reached at 236-464-5411.

Yours sincerely,



Maria Popova  
Audit Division  
Coastal & Central BC TSO

Telephone: 778-835-3255  
Facsimile: 250-363-3000  
Address: 9755 King George Blvd  
Surrey, BC V3T 5E1

**Audit of Viva Voce Charitable Foundation (the Foundation) for the period from  
December 1, 2015 to November 30, 2018**

**Comments on the Foundation's Representations of March 8, 2024**

The audit conducted by the Canada Revenue Agency (CRA) identified that the Foundation:

1. Failed to be constituted and operated for exclusively charitable purposes
2. Failed to devote resources to charitable activities carried on by the Foundation itself
  - Delivered non- incidental private benefits
3. Failed to maintain adequate books and records

We have reviewed the Foundation's submission dated March 8, 2024. This submission did not alleviate most of our concerns with respect to the non-compliance identified during the audit and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Income Tax Act. As a result, it remains our opinion that the Foundation's registration as a charity should be revoked.

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

- A summary of the issues raised by the CRA in our letter of January 8, 2024;
- A summary of responses provided by the Foundation in its March 8, 2024, submission; and
- The CRA's conclusion with respect to each issue.

**Identified areas of non-compliance**

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

As discussed in the CRA's letter of January 8, 2024, the audit identified that the Foundation participated in a series of transactions that resulted in persons receiving official donation receipts to which they were not entitled .

As part of the audit process, we contacted the life insurance providers of the policies that the Foundation stated were co-owned by the Foundation to confirm the information provided by the Foundation. In all cases, the provider had not been notified of the change in ownership nor were they informed of the "Charity Death Benefit Entitlement." In effect, the Foundation has paid \$25,486,177 for life insurance policy premiums on policies it did not own nor was entitled to any of the death benefits provided by the policies according to the life insurance providers.

It is the CRA's position that when a registered charity is not the owner of a life insurance policy and is not named as an irrevocable beneficiary but pays premiums on the policy, the premium payments are not expenditures on charitable activities in furtherance of a charitable purpose, as required at law. In such a situation the indication of receipt of a portion of a death benefit is considered to be a pledge. A pledge, or promise to make a gift, is not in itself a gift and an official donation receipt may only be issued once the donor has honoured the pledge.

The audit findings make the above position applicable to the Foundation. Because the insurance providers were not notified of the change in ownership or beneficiary, the co-ownership agreements the Foundation entered into amount to a pledge. By structuring the transactions in the manner they did, namely transferring funds to CHIMP Foundation and then directing those funds to the Foundation for the payment of premiums, the Insured, or representatives of the Insured, received an official donation receipt for a pledge. Further, in the case of the first premium payment by [REDACTED] it appears that the Foundation directly issued a donation receipt for a pledge. In sum, by participating in these transactions, the Foundation assisted persons in receiving tax credits they were not entitled to. It cannot be said, therefore, that the Foundation devoted its resources to exclusively charitable activities or operated for exclusively charitable purposes during the audit period.

To conclude, the Foundation participated in a series of transactions with donors, wealth advisors and another registered charity that resulted in persons receiving tax credits they were not entitled to. Taken altogether, the Foundation has not demonstrated that it has 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 Foundation should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

The Foundation's representations:

The Foundation denies having issued any donation receipts that the recipient was not entitled to. The Foundation submits that, at all times, it operated for exclusively charitable purposes.

No individuals/corporations donated life insurance policies or death benefit entitlements under life insurance policies to the Foundation. Therefore, the requirements set out in Interpretation Bulletin IT-244R3, requiring that the registration of the transfer of ownership of a gifted life insurance policy or gifted death benefit entitlement to a charity are inapplicable.

The Foundation was entitled to pay premiums on the life insurance policies to procure its death benefit entitlement in the life insurance policies. At all material times, the Foundation was a beneficial owner of the death benefit of the life insurance policies.

Pursuant to the legally binding co-ownership agreements and the relevant bare trust arrangements, the Foundation was legally required to pay the policy premiums. Registration of the Foundation's co-ownership is not a legal requirement for the Foundation's beneficial co-ownership to be effective.

The CRA's response:

The Foundation submits that because no individuals or corporation donated life insurance policies or death benefit entitlement under life insurance policies to the Foundation, the requirements set out in Interpretation Bulletin IT-244R3 are inapplicable. The Foundation failed to submit how, other than by donation, it obtained the entitlements received with respect to these life insurance policies. In fact, some of the records provided by the Foundation include the following terms:

- Donation Summary;
- Donor;
- Date of donation;
- Policies being donated; and
- Donation/premium amount.

The Foundation also denied it had issued any donation receipts that the recipient was not entitled to. As outlined in the CRA's letter of January 8, 2024, with the exception of one instance, the non-compliance identified by the audit was not that the Foundation itself had issued donation receipts to recipients not entitled to receive them; it was that the Foundation knowingly participated in a series of transactions that effected this.

The Foundation entered into pre-planned arrangements coordinated by [REDACTED] an advisory firm specializing in life insurance policies. [REDACTED]

The Foundation's books and records show that [REDACTED] worked with [REDACTED] documents used in these arrangements. [REDACTED]

It is not reasonable to conclude that the above transactions and relationships are coincidental. [REDACTED]

[REDACTED] We question why, given donors entered into co-ownership agreements with the Foundation, they did not make donations of policy premium amounts directly to the Foundation. Instead, they were instructed to donate policy premium amounts to CHIMP Foundation with the direction to forward the funds to the Foundation to pay policy premiums. It appears there was no reason for this additional step other than a coordinated effort to obfuscate the true intent of the donors, namely to receive a donation receipt to which they were not entitled.

It therefore remains the CRA's position that because the Foundation is not the named beneficiary on an irrevocable basis and has no legal right to make themselves the legal beneficiary of these life insurance policies, the payment of premiums cannot be said to be in furtherance of its

charitable purposes. Because of this, the Foundation has not demonstrated it has operated for exclusively charitable purposes as required by the definition of a charitable foundation under subsection 149.1(1) of Act. As a result, the CRA is of the view that the Foundation should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

## **2. Failure to devote resources to charitable activities carried on by the Foundation itself**

### **- Delivered non- incidental private benefits**

As discussed in the CRA's letter of January 8, 2024, during the audit period, the Foundation accepted gifts from CHIMP Foundation. These funds were available to the Foundation for use in pursuit of its own charitable purposes. However, as noted above, in all cases, the insurance provider was not notified of the changes in ownership or the Charity Death Benefit Entitlement. Given the volume of policies, it is not reasonable to assume this failure was simply an administrative oversight. It is the CRA's position that by choosing to use the funds received from CHIMP Foundation to pay insurance policy premiums on policies, that according to the insurance providers the Foundation had no legal requirement to do so, caused it to provide an unacceptable private benefit to the Insured of the policies.

A charity that delivers an unacceptable private benefit is not using all of its resources for charitable activities in furtherance of charitable purposes and may have its registered status revoked or be liable to a penalty. Given the repeated and serious nature of the non-compliance identified in the current audit, there are grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(b) of the Act.

#### The Foundation's representations:

In its letter of March 8, 2024, the Foundation denied that it delivered non- incidental private benefits; the Foundation had a legal requirement to pay premiums on the life insurance policies as co-owner of the policies and for its entitlement to the death benefits. In addition, it reiterated that the registration of the Foundation's co- ownership is not required for the Foundation to have a legal obligation to pay premiums or to receive or realize the death benefits to which it is entitled.

#### The CRA's response:

We have reviewed the co- ownership agreements and the corresponding nominee agreements. Despite these documents, the Foundation is not a registered owner of the insurance policies, nor an irrevocable beneficiary. We remain of the view that the purported assignment of the death benefit to the Foundation was not effective without providing notice to the Insurer, and the Foundation becoming at minimum a registered beneficiary of the insurance policies.

While the co- ownership agreements may allocate a portion of the death benefit to the Foundation, there is nothing in the agreements making such an entitlement irrevocable. In our view, the entitlement to the portion of the death benefit is useless to the Foundation unless it is

the named beneficiary or has the legal right (as registered owner) to make itself the legal beneficiary. Where the Foundation is not the named beneficiary on an irrevocable basis, the payment of the premiums could not be said to be in furtherance of the Foundations' charitable purposes and consist of an unacceptable private benefit.

We maintain our position that the Foundation has delivered an unacceptable private benefit and that there are grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(b) of the Act.

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

As discussed in the letter of January 8, 2024, the audit disclosed the following deficiencies with regard to its books and records:

- No bank statements or other source documents were provided for the 2016 fiscal period;
- The Foundation did not maintain a general ledger that recorded transactions throughout the year;
- Multiple asset summary sheets were provided for the same period, which were inconsistent, making these records unreliable; and
- The Foundation's representative maintained that no official donation receipts were issued until the 2019 fiscal period; however duplicate donations receipts were included in the Foundation's records indicating receipts were in fact issued for the 2017 and 2018 fiscal periods;

Accordingly, it was our view that the Foundation's records were unreliable and therefore failed to meet the requirements of subsection 230(2) of the Act.

#### The Foundation's representations:

In its letter of March 8, 2024, the Foundation provided the following additional information:

- 2016 Bank statements and source documents;
- Explanation for why no general ledger was kept;
- Discussion about asset summary sheets; and
- Discussion about donation receipts

#### The CRA's response:

The Foundation's provision of the above information has satisfied our concerns with regard to the adequacy of its books and records and we are not pursuing this as a ground for revocation of the Foundation's charitable status.

## 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
  - (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.