



Compliance Overview – Major Non-Compliance Issues

International Committee on Fundraising Organizations
Annual General Meeting, May 14, 2010



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

Outline

1. General compliance overview
2. Audit results
3. Common compliance issues
4. Serious non-compliance issues impacting the sector, the donor public and the tax system
 - Tax shelters
 - Sale or issuance of false receipts

Mandate

- It is the mandate of the Charities Directorate to enhance compliance with provisions of the legislation (ITA) administered by the Canada Revenue Agency (CRA) and to encourage and assist charities to comply with the requirements of the legislation through a balanced program of education, service and responsible enforcement.

Compliance Approach

- The Charities Directorate's basic approach for achieving compliance:
- First and foremost, facilitating voluntary compliance;
- Assisting clients to comply whenever possible;
- Enforcing compliance where necessary
- Audit program is primary means of assessing, monitoring and enforcing compliance.

CRA's Compliance Function

- The CRA's role as regulator is really particular to tax law and eligibility for registration
- There is a significant amount of cross regulation with respect to registered charities
- The Constitution gives the provinces responsibility for supervising charities in their particular jurisdictions
- However some provinces are far more rigorous about regulations than others

CRA's Compliance Function

- CRA's main compliance functions consist of ensuring:
 - Only organizations that meet the requirements for registration in accordance with the Income Tax Act and the common law are registered;
 - That registered charities operate in compliance with the boundaries set out in the ITA;
 - That registered charities issue tax receipts only for gifts in accordance with the requirements of the ITA.

Donation Receipts

- The Income Tax Act encourages taxpayers to support the activities of registered charities by allowing gifts to such organizations to qualify for a tax credit if the gift is made by an individual
- Federal tax credits – T1 Individual return
 - Gifts \$0- \$200 = 15.25%
 - Gifts over \$200 = 29%
 - Maximum 75% of net income
 - Can carry-forward for 5 years and split with spouse

Donation Receipts (cont'd)

Donation Amount	Federal rate	Provincial rate (Ontario)	Total refund
(1 st) \$200	15.25 %	6.05 %	\$43
(next) \$200	29 %	11.16 %	\$80
(total) \$400			\$123

Charities Audit Program

- The Charities Directorate maintains approximately 1% audit coverage of the Charitable Sector.
- Audits are conducted thru on-site reviews or via a desk audit where information is requested by mail or phone
- For the fiscal year 2010/11:
 - 846 budgeted audits in total
 - 646 Field audits
 - 200 Desk audits

Program Delivery – Headquarters

- The field auditors are supported by Compliance Officers in Headquarters.
- 2 types of Advisors:
 - Activities Advisors
 - Audit Advisors
- HQ advisors also conduct audits for complex cases.
- All proposed revocations are finalized at HQ and signed by the Director General, Charities Directorate.

Audit Plan

- Each year the Compliance Division develops an “audit plan” for the year.

- The Audit Plan for 2010/2011 :
 - 53% - High Risk files (446 files)
 - 18% - Core Audit Program – Random (150 files)
 - 10% - Compliance Agreements Review (80 files)
 - 9% - Restricted Books/Records Review (80 files)
 - 5% - Exploratory Audits (40 files)
 - 5% - Projects (50 files)

AUDIT RESULTS – 2009/10

- Compliant 13%
- Education 52%
- Compliance Agreements 22%
- Revocations for cause 41 6%
- All Others 7%
- Note – The “All Others” category includes:
Voluntary revocations, Annulments, Pre
registration audits, Part V

Enforcing compliance

- Sanctions:
 - Monetary Penalties &/or Suspension of receipting privileges and qualified donee status

- Revocations
 - A revoked charity can no longer issue official donation receipts to acknowledge gifts made by donors
 - A revoked charity is subject to a revocation tax equivalent to 100% of its net assets
 - A revoked charity may become a taxable entity

- Where it is in the public's interest, compliance actions taken against a charity will be publicized (e.g., through a press release)

Discovering non-compliance

- Generally, cases of non-compliance are discovered through the course of an audit.
- They can also be discovered through external and internal referrals/leads
- The following list of issues are encountered all too frequently through the audit process.

Top 5 Audit Findings

- 1. Incorrect issuance of donation receipts
- 2. Books and Records are often inadequate or deficient
- 3. Gifts to non-qualified donees
- 4. Failure to maintain direction and control
- 5. Failure to file T3010

Focus Shift

- Since 2007, the Charities Directorate has been focussing its audit and compliance resources on two major issues:
 - ❖ Addressing the participation by registered charities in facilitating tax shelter arrangements
 - and
 - ❖ Combating the issuance of fraudulent donation receipts.

TAX SHELTERS



Definition

- Under the Income Tax Act, a tax shelter includes any gifting arrangement:
 1. for which a promoter represents that an investor can claim deductions or credits which equal or exceed the cost of the property or
 2. for which a person will incur a limited recourse amount (debt).
- These arrangements are generally promoted promising participants tax receipts reflecting a value many times greater than what participants are out-of-pocket
- Tax Shelters have to obtain identification numbers in order for CRA to track these arrangements and identify their participants

TAX SHELTERS

- There are generally 3 types of tax shelter schemes involving charities and /or RCAAs:
 - Buy low, donate high, where an individual buys property for \$3,000, then donates the property at a “fair market value” of \$10,000, and receives a \$10,000 receipt
 - Gifting trust arrangements, where an individual donates \$3,000 cash to a charity, receives property with a purported fair market value of \$7,000 from a trust which is also donated to charity, and receives a donation receipt of \$10,000
 - Leveraged cash donations, where an individual borrows \$8,000 (from an organization involved in the scheme) to donate to a charity and donates \$2,000 out of pocket to the charity for a \$10,000 donation receipt

Art Flip

Donor

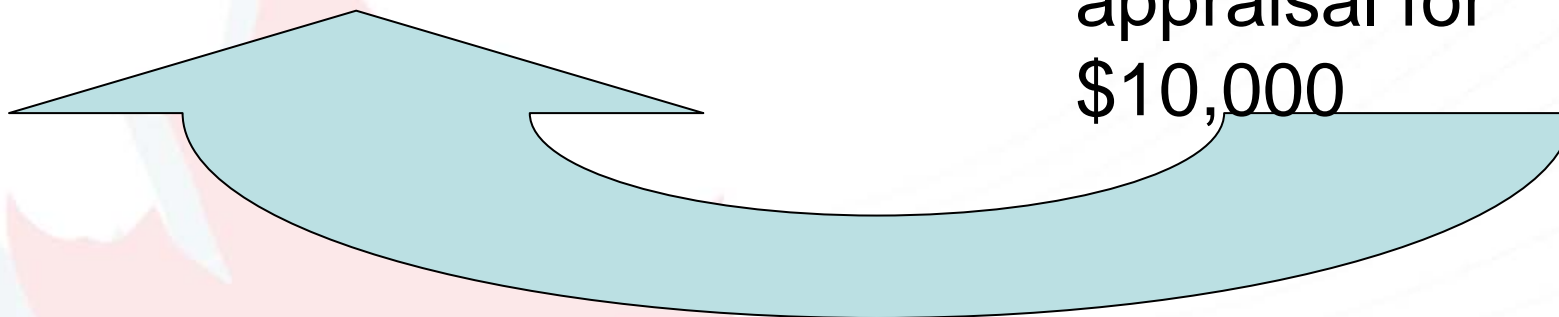
Purchase Art
for \$3,000

Donates to Registered
Charity or QD



Charity

Charity given
appraisal for
\$10,000

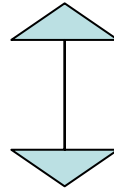


Charity issues a tax receipt to donor. Donor files tax return and receives \$4,600 refund

Giftng Trust

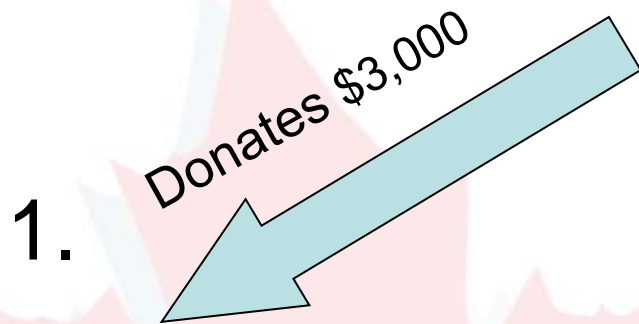


2. Donor applies for and receives \$7,000 property from a trust

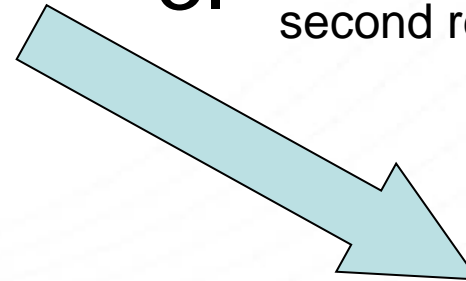


Donor

3. Donor gifts \$7,000 property to second registered charity



Charity A



Charity B

Both charities issue tax receipts to the donor.
Donor files tax return and receives \$4,600 refund

Leveraged Gift

Lender

2. Donor gifts \$7,000 loan plus \$3,000 own cash to charity. Donor receives \$10,000 tax receipt.

1. Donor borrows \$7,000

Donor

Charity

4. Behind the scenes, monies are repaid to lender, promoters etc.

3. Charity retains 1% commission, funds flow out of country for "investment" purposes

SCOPE OF THE PROBLEM

- Since 2003, despite the introduction of legislation to combat such arrangements, tax shelter schemes have continued to draw in investors. It is estimated that there are approximately:
 - 161,500 donors;
 - \$5.15 billion in donations;
 - 75 registered charities/RCAAA; and
 - 30 donation arrangements

SCOPE OF THE PROBLEM

- Abuse of the charitable tax incentive
 - Intent of the legislation is to allow registered charities and RCAAAs to receipt reflecting the value of the property received
 - Most of the money/property involved:
 - is paid out to promoters and related companies,
 - simply doesn't exist,
 - or is grossly overvalued.
 - Proportionately little money is actually retained by the charity/RCAAAA – generally
1%

SCOPE OF THE PROBLEM

- Participation by Charities and RCAAAs:
 - Charities and RCAAAs are happy to receive the 1% - tax receipts cost them very little
 - Don't give consideration to the effects of their activity on the tax base
 - Believe the often incredible claims of the promoters as to what is done with the donated money and property
 - No accountability for the funds/property
 - Believe it is a “loophole” or a matter of interpretation
 - Many schemes cross the line into gross misrepresentation or outright fraud.

Example

- Example: A Montreal-area foundation
- Registered in 2004 to grant scholarships to students in post-secondary institutions
- Became involved in a tax shelter arrangement
- Issued tax receipts for \$10,000,000 and retained approximately 1% (\$100,000)
- Issued one scholarship for \$10,000

CRA APPROACH

Promoters & Donors

- Aggressive Tax Planning Division is currently proceeding with the re-assessment of tens of thousands of participants for hundreds of Millions of dollars
- Third-party penalties will be considered against promoters of these arrangements and other third-parties
- Possibility of Criminal charges

CRA APPROACH

Registered Charities

- Charities Directorate auditing all charities and RCAAAs participating in tax shelter arrangements
 - Includes organizations seeking registration or re-registration whereby applicants appear to be seeking registration to participate in arrangements
- Revocation and/or financial penalties will be considered in all cases
 - 27 audits on-going
 - 60 audits completed with 37 charities/RCAAAA revoked & 6 applicants denied registration
- Publicizing compliance actions (e.g., through a press release)

CRA APPROACH

Registered Charities

■ Egregious Cases

- Revocation published within 30 days of Notice of Intent to Revoke issued
 - Charities required to obtain a Stay Application from Federal Court of Appeal to prevent CRA from publicizing revocation
- Taxpayer Alerts and Fact Sheets are posted on CRA's Web site
- Public information sessions

Promising Results

- When comparing 2007 and 2008
- 2008 statistics have shown a 58% reduction in number of donors involved in tax shelters as well as a reduction of 51% in the amounts donated through these arrangements

FALSE RECEIPTING



SCOPE OF THE PROBLEM

- In 2004 CRA received information from an informant regarding the sale of fraudulent receipts.
- This information lead to the Charities Directorate uncovering numerous other individuals and organizations involved in the same fraudulent activity primarily centered in the Southern Ontario Region.
- The schemes generally involve a charitable tax receipt being sold for 10% of the receipts face value.
- In most cases the CRA finds that the charity is complicit in these arrangements, however, this fraud may or may not be carried on with the knowledge of the particular registered charity e.g., receipts being created sold entirely by a tax preparer.

SCOPE OF THE PROBLEM

- False Receipting:
- Between 100,000-135,000 donors have been involved between 2004 and 2009 with
- Hundreds of Millions in donations.

Statistics

- Since 2004, the Charities Directorate has screened over 165 files for audit.
- 135 audits completed – 70 revoked for cause.
- Numerous cases referred to CRA Enforcement for the potential laying of Criminal charges.
 - Some prosecutions already completed.
- Charities Directorate is currently working with other areas of the CRA to potentially identify additional cases.

CanAfrica International Foundation

- Audit conducted for FPE 2002-2005
- Charity reported \$2,203,364 as receipts on 2004 T3010
- CRA seized records showing Charity issued \$21,555,427 in receipts to 3,700 donors in 2004
- Estimated \$38,127,696 in false receipts issued – (low)
- One of directors - Ambrose Danso-Dapaah issued receipts
- File referred to Enforcement
- Charity revoked September 8, 2007

Toronto tax preparer jailed for providing false charitable donation receipts to clients

- Toronto, Ontario, December 18, 2008 . . . Ambrose Danso Dapaah, formerly of Mississauga, pleaded guilty on December 15, 2008 to one count of fraud over \$5,000. He was sentenced to 51 months in jail in the Ontario Court of Justice in Toronto.
- “Canadians have to be confident that the administration of the tax system is fair,” said William V. Baker, Commissioner of the Canada Revenue Agency. “That’s why the Agency works to ensure that the vast majority of Canadians who pay their taxes are not penalized by those who don’t.”
- A Canada Revenue Agency (CRA) investigation revealed that Dapaah, owner and operator of ADD Accounting Services, as well as president of CanAfrica International Foundation (CIF), prepared and filed false personal income tax returns on behalf of his clients. His clients claimed fictitious or overstated charitable donation receipts from CIF and other charities on their income tax returns. During the 2002 to 2005 tax years, Dapaah falsified over \$21M in charitable donations, and in doing so, helped his clients claim over \$6M in non-refundable tax credits.
- On September 8, 2007, CRA revoked the charitable registration of CIF for its role in selling official donation receipts.

TRENDS in TAX SHELTERS & FALSE RECEIPTING

- Go West
- Affordability
- The Moribund
- Technology

Objections & Appeals

- 2004 Budget introduced Notice of Objection process for registration, revocation and intermediate sanction appeals
 - Objections Process (internal)
 - Federal Court of Appeal
 - Supreme Court of Canada

Appeals process

- Regular
 - 90 days to file a Notice of Objection
 - 30 days to file an Appeal to the Federal Court of Appeal
 - 30 days to file an Appeal to the Supreme Court of Canada
 - File is not revoked until all Appeals rights have been exhausted. Organization continues to issue receipts.

Appeals process (cont'd)

- Egregious cases (as of early 2008)
 - Although the organizations' rights of Objection and Appeals is intact, we revoke the organization within 30 days of our ITR letter unless the organization successfully obtains a stay of proceedings, from the Federal Court, within that time period.
 - The organizations lose their receipting privileges as soon as the revocation notice is published in the Canada Gazette
 - So far, we have had great success in winning our cases against stays. (5/5)

Court Activity 2008-2009

- Supreme Court:
 - Choson Kallah Fund of Toronto
 - Faith Assemblies Mission International

- Federal Court of Appeal:
 - International Charity Association Network (ICAN)
 - House of the Holy God

Contact Us

- Charities Information Line
 - 1-800-267-2384 (English)
 - 1-888-892-5667 (bilingual)
- Charities Information on the Web
 - WWW.CRA-ARC.GC.CA/CHRTS

THANK YOU