



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

REGISTERED MAIL

Give2Asia
1500 W. Georgia Street, Suite 1555, Box 62
Vancouver BC V6G 2Z6

BN: 855087045 RR0001

Attention: Mr. Blake Bromley, Director

File #:3022758

July 13, 2009

Subject: Revocation of Registration
Give2Asia

Dear Mr. Bromley:

The purpose of this letter is to inform you that a notice revoking the registration of Give2Asia (the Organization) was published in the *Canada Gazette* on July 11, 2009. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

- a) The Organization is no longer exempt from Part I Tax as a registered charity and is **no longer permitted to issue official donation receipts**. This means that gifts made to the Organization are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act* (the Act), respectively.

- b) By virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the Return is enclosed. The related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", is available on our website at www.cra-arc.gc.ca/E/pub/tg/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the Act by the Organization.

- c) The Organization no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Organization's effective date of revocation.

Finally, we wish to 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 of National Revenue (the Minister) in prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,



Danie Huppé-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll free: 1-800-267-2384

Enclosures

- Copy of the Return (form T-2046)
- Canada Gazette publication

Cc: Mr. Michael Rea, Director



COMMISSIONS

CANADA REVENUE AGENCY

INCOME TAX ACT

Revocation of registration of a charity

The following notice of proposed revocation was sent to the charity listed below revoking it for failure to meet the parts of the *Income Tax Act* as listed in this notice:

“Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d) and 168(1)(e) of the *Income Tax Act*, that I propose to revoke the registration of the organization listed below under subsection 149.1(3) and paragraph 149.1(3)(b) and that the revocation of the registration is effective on the date of publication of this notice.”

Business Number Numéro d'entreprise	Name/Nom Address/Adresse
855087045RR0001	GIVE2ASIA, VANCOUVER, B.C.

TERRY DE MARCH
*Director General
Charities Directorate*

[28-1-o]

COMMISSIONS

AGENCE DU REVENU DU CANADA

LOI DE L'IMPÔT SUR LE REVENU

Révocation de l'enregistrement d'un organisme de bienfaisance

L'avis d'intention de révocation suivant a été envoyé à l'organisme de bienfaisance indiqué ci-après parce qu'il n'a pas respecté les parties de la *Loi de l'impôt sur le revenu* tel qu'il est indiqué ci-dessous :

« Avis est donné par les présentes que, conformément aux alinéas 168(1)b), 168(1)d) et 168(1)e) de la *Loi de l'impôt sur le revenu*, j'ai l'intention de révoquer l'enregistrement de l'organisme mentionné ci-dessous en vertu du paragraphe 149.1(3) et de l'alinéa 149.1(3)b) de cette loi et que la révocation de l'enregistrement entre en vigueur à la publication du présent avis. »

*Le directeur général
Direction des organismes de bienfaisance
TERRY DE MARCH*

[28-1-o]

CANADA REVENUE AGENCY

INCOME TAX ACT

Revocation of registration of charities

The following notice of intention to revoke was sent to the charities listed below because they have not met the filing requirements of the *Income Tax Act*:

“Notice is hereby given, pursuant to paragraph 168(1)(c) of the *Income Tax Act*, that I propose to revoke the registration of the charities listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of the registration is effective on the date of publication of this notice.”

Business Number Numéro d'entreprise	Name/Nom Address/Adresse
107534851RR0001	JEWISH IMMIGRANT AID SERVICES OF CANADA, MONTRÉAL, QUE.
107780066RR0001	NORTH BAY AND AREA DISABLED ADULT AND YOUTH CENTRE, NORTH BAY, ONT.
118820612RR0001	B.T.W. BLACK THEATRE WEST SOCIETY, ALDERGROVE, B.C.
118850924RR0001	CHEBUCTO ORCHESTRAL SOCIETY OF NOVA SCOTIA, HALIFAX, N.S.
119052751RR0001	N.C.I.C. CHARITABLE FOUNDATION-FONDATION CHARITABLE N.C.I.C., OTTAWA, ONT.
119210524RR0001	TERRACE LITTLE THEATRE SOCIETY, TERRACE, B.C.
121488761RR0001	THE FRIENDS OF WELLS GRAY PARK, KAMLOOPS, B.C.
129612586RR0001	METCHOSIN PRE-SCHOOL SOCIETY, VICTORIA, B.C.
131201998RR0001	M. E. (C.F.S.) ASSOCIATION OF KINGSTON, KINGSTON, ONT.
809328271RR0001	WATERLOO LUTHERAN SEMINARY, WATERLOO, ONT.
818645749RR0001	LODESTAR FOUNDATION, VANCOUVER, B.C.
829939479RR0001	CENTRE D'INTERPRÉTATION DU GRANIT DE STANSTEAD, STANSTEAD (QC)
833718968RR0001	MODERNEPIDEMOLOGY.ORG, MONTRÉAL, QUE.
841937949RR0001	NORTH EAST HUMANE SOCIETY INC., STAR CITY, SASK.
860231299RR0001	VILLAGE DES SOURCES-GASPÉSIE, BONAVENTURE (QC)
860273515RR0001	FONDATION ÉDUCATIVE DE MONT-ROYAL, VILLE MONT-ROYAL (QC)
862072907RR0001	STOP COMPUTER LAND FILL SOCIETY, VERNON, B.C.
862331881RR0001	WOLASTOKWYIK NAWICOWOK THE SACRED LAND TRUST INC., FREDERICTON, N.B.

AGENCE DU REVENU DU CANADA

LOI DE L'IMPÔT SUR LE REVENU

Révocation de l'enregistrement d'organismes de bienfaisance

L'avis d'intention de révocation suivant a été envoyé aux organismes de bienfaisance indiqués ci-après parce qu'ils n'ont pas présenté leurs déclarations tel qu'il est requis sous la *Loi de l'impôt sur le revenu* :

« Avis est donné par les présentes que, conformément à l'alinéa 168(1)c) de la *Loi de l'impôt sur le revenu*, j'ai l'intention de révoquer l'enregistrement des organismes de bienfaisance mentionnés ci-dessous en vertu de l'alinéa 168(2)b) de cette loi et que la révocation de l'enregistrement entre en vigueur à la publication du présent avis. »



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Give2Asia
1500 W. Georgia Street, Suite 1555, Box 62
Vancouver BC V6G 2Z6

JUN 29 2009

BN: 855087045RR0001
File #: 3022758

Attention: Mr. Blake Bromley, Director

**Subject: Response to Voluntary Revocation Request
Give2Asia**

Dear Mr. Bromley:

I am writing further to your letter of June 11, 2009 whereby Give2Asia (the Charity) has requested the Minister of National Revenue (the Minister) reconsider the Notice of Intent to Revoke issued on March 11, 2009 and grant the Charity's request for voluntary revocation.

We have reviewed and considered your letter (copy enclosed); however, it remains our position that the Charity has contravened the provisions of the *Income Tax Act* by failing to operate for exclusively charitable purposes. It is the Canada Revenue Agency's position that it is in the public's interest that the Charity's registration be revoked for cause given that the Charity has operated solely for the non-charitable purpose of gifting funds to a non-qualified donee, Give2Asia, a U.S. 501(c)(3) non-profit organization.

Consequently, by virtue of subsection 168(2), we will be proceeding to revoke the Charity upon the publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(3) and paragraph 149.1(3)(b) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa ON K1A 0L5

Business Number
855087045RR0001

Name
Give2Asia
Vancouver, B.C.

I trust the foregoing fully explains our position.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Terry de March', written over the typed name.

Terry de March
Director General
Charities Directorate

Attachments:

- Your letter dated June 11, 2009



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Give2Asia
1500 W. Georgia Street, Suite 1555, Box 62
Vancouver BC V6G 2Z6

MAR 11 2009

BN: 855087045RR0001
File #: 3022758

Attention: Mr. Blake Bromley, Director

Subject: **Notice of Intention to Revoke**
Give2Asia

Dear Mr. Bromley:

I am writing further to our letters dated October 27, 2008, and December 5, 2008 (copies enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Give2Asia (the Charity) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

The Canada Revenue Agency's (CRA) concerns regarding our audit findings for the period of November 1, 2005 to October 31, 2007, were identified in our letter dated October 27, 2008. The CRA's position was further clarified in our letter dated December 5, 2008. Notwithstanding your letters dated November 17, 2008 and December 15, 2008 (copies enclosed), we have not received a response which sufficiently addresses our concerns.

Conclusion:

Our audit revealed that the Charity has contravened the provisions of the *Income Tax Act* by failing to operate for exclusively charitable purposes. It is our position the Charity has operated solely for the non-charitable purpose of gifting funds to a non-qualified donee, Give2Asia, a U.S. 501(c)(3) non-profit organization. Furthermore, the Charity has served as a conduit, allowing the U.S. non-profit to flow funds from Canadian donors through the Charity to the U.S. non-profit, without appropriately controlling and regulating the application of the funds once relinquished. Consequently, it is our position the Charity issued official donation receipts for funds that were directed by donors to a non-qualified donee, which is a contravention of the Act; and has failed to meet its annual disbursement quota as transfers to the U.S. non-profit are not gifts to a qualified donee or expenditures on the Charity's own activities.

Consequently, for each of these reasons, I wish to advise you that, pursuant to the authority granted to the Minister in Subsections 149.1(3) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Charity. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(3) and paragraph 149.1(3)(b) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
85508 7045 RR 0001	Give2Asia Vancouver, B.C.

Should you wish to appeal this notice of intention to revoke the Charity's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes 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:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

Consequences of Revocation

As of the effective date of revocation:

- a) the Charity 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 Charity would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Charity 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 prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "A" attached. Form T-2046, and the related Guide RC-4424,

"Completing the Tax Return Where Registration of a Charity is Revoked", are available on our website at www.cra-arc.gc.ca/charities;

- c) the Charity will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the ETA). As a result, the Charity may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to 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 prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

Yours sincerely,



Terry de March
Director General
Charities Directorate

Attachments:

- CRA letters dated October 27, 2008 and December 5, 2008;
- Your letters dated November 17, 2008 and December 15, 2008; and
- Appendix "A", Relevant provisions of the Act

c.c. Mr. Michael Rea, Director





CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

October 27, 2008

REGISTERED MAIL

Give2Asia
Suite 1555, 1500 W. Georgia Street Box 62
Vancouver, B.C. V6G 2Z6

BN: 85508 7045 RR0001
File #:3022758

Attention: Blake Bromley, Director

Subject: Audit of Give2Asia

Dear Mr. Bromley:

This letter is further to the audit of the books and records of Give2Asia (the "Charity") conducted by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the Charity for the period from November 1, 2005 to October 31, 2007.

CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the "ITA") and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote All of Its Resources to its Charitable Purposes – Gifts to Non-Qualified Donees	149.1(1), 168(1)(b)
2.	Issuing Receipts not in Accordance with the ITA and/or its Regulations	149.1(3), 168(1)(d), Reg. 3501
3.	Failure to Maintain Adequate Books and Records	149.1(3), 168(1)(e), 230
4.	Failure to Meet Its Disbursement Quota Requirement	149.1(3)(b), 168(1)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Charity with the opportunity to address our concerns. In order for a registered charity to retain its

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

Services fiscaux de l'Île de Vancouver
1415, rue Vancouver
Victoria, C-B

Mailing Address:
Vancouver Island Tax Services
c/o 8755 King George Hwy.
Surrey, BC V3T 5E1

l'adresse postale :
Services fiscaux de l'Île de Vancouver,
A/S 8755 Aut. King George
Surrey, C-B V3T 5E1

Canada

250-18

registration, legislative and common-law compliance is mandatory, absent which the Minister of National Revenue (the "Minister") may revoke the Charity's registration in the manner described in section 168 of the *ITA*.

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

Identified Areas of Non-Compliance:

1. Failure to Devote All of its Resources to Charitable Activities:

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.¹ In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Iacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:

(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and

(2) all of the organization's resources must be devoted to these activities."

The term "charitable" is not defined in the *ITA*, therefore it is necessary to rely on the jurisprudence in the common law. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

With regard to the devotion of resources, in accordance with the provisions of the *ITA*, a registered charity may only properly use its resources (funds, personnel and/or property) in the following two ways, both inside and outside of Canada:

1. For charitable activities undertaken by the registered charity itself - *its own charitable activities*. These are activities/programs that are conducted under the charity's direction and control, by the charity's employees, volunteers, or "intermediaries" (agents, contractors or partners). At all times, the charity must be

¹ *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

able to demonstrate direction and control over, and fully account for, all resources used.

2. For gifting to "qualified donees" as defined in the *ITA*. For the most part, "qualified donees" are other registered Canadian charities.

Individuals, and most organizations outside Canada, such as foreign charities, foreign governments, and international aid agencies, are not "qualified donees". In accordance with subsection 149.1(1) of the *ITA*, the only foreign entities defined as qualified donees, and thereby the only foreign entities to which Canadian registered charities are permitted to make gifts, are:

- the United Nations or agencies thereof;
- universities outside Canada prescribed to be universities the student body of which ordinarily includes students from Canada; and
- charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the taxpayer's taxation year, or the 12 months immediately preceding that taxation year. (*Please see attached list.*)

Therefore, a registered charity that is conducting activities outside of Canada must do so itself, directly or through a duly appointed agent, contractor or partner. In this regard, continued direction and control over the use of the charity's resources is mandatory. Therefore, a charity may not simply send monies to an individual, or to a foreign organization that is not a "qualified donee".² We refer to the comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*³:

"Pursuant to subsection 149.1 (1) of the [*Income Tax Act*], a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities..."

"Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas".

As re-iterated by the Federal Court of Appeal, it is not enough for a charity to fund an agent that carries on certain activities. The *ITA* requires that the agent actually conduct those activities *on the organization's behalf*⁴:

² *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, [2002] FCA 72 at paragraphs 30 and 40

³ [2002] FCA 72 at paragraphs 30 and 40

⁴ *Bayit Lepletot v. Minister of National Revenue*, [2006] FCA 128

~~"A charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity."⁵~~

Based on our findings, and as illustrated below, the Charity did not operate in accordance with the above requirements during the audit period.

(A) Gifts to Non-Qualified Donees

The Charity was registered as a public foundation effective February 6, 2003. As stated in its governing documents, the purpose for which the Charity was established is "to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and qualified donees".

The audit found, however, that the Charity failed to gift exclusively to qualified donees during the period under review. Our audit revealed that the Charity solely gifted funds to a non-qualified donee, Give2Asia, a U.S. 501(c)(3) non-profit organization located in San Francisco, California. The U.S. Give2Asia (the "U.S. non-profit") was founded by The Asia Foundation, another U.S. 501(c)(3) non-profit organization headquartered in San Francisco, California to increase U.S. philanthropy to Asia.

The audit found that the Charity transferred funds to the U.S. non-profit, totaling \$94,775 (99% of its total 2006 fiscal period expenditures) and \$44,992 (96% of its total 2007 fiscal expenditures), by way of wire transfers. The Charity also received \$1,080,000 on December 21, 2007, 100% of which was transferred to the U.S. non-profit on January 9, 2008.

In your letter dated July 9, 2008, you represented that the Charity's position is that gifts to the U.S. non-profit "were permitted under the combined provisions of the Canada-U.S. Income Tax Treaty and the Income Tax Act."

It was further represented in your letter dated September 10, 2008, signed by [REDACTED] on your behalf, that "Give2Asia 501(c)(3) meets the criteria of being a registered charity when Article XXI of the Canada – U.S. Income Tax Convention is read in conjunction with the *Income Tax Act*," and you referenced information letter "CIL1997-012 stating that for Canadian donors, a U.S. 501(c)(3) organization can be treated like a qualified donee with a tax credit limitation based upon U.S. source income. This limitation is not relevant to a public foundation since it is not seeking to claim a tax credit."

⁵ *Canadian Magen David Adom for Israel v. Minister of National Revenue*, [2002] FCA 323 at paragraph 66

It is CRA's view that the tax treaty is applicable to donors, Canadian or American, who make charitable donations to organizations in either country, and earn taxable income in the country where the charitable donation has been made. The treaty does not apply to registered charities, resident in Canada or the U.S. making gifts to each other.

As described in the Registered Charities Newsletter No. 6-1 Autumn 1996, "Canadian donors can get tax relief for donations they make from U.S.-source income to U.S. charities...Revenue Canada will recognize U.S. charities that qualify under section 501(c)(3) of the U.S. Internal Revenue Code...This recognition does not mean that U.S. charities are "qualified donees" for the purposes of the Income Tax Act."

It is our view the Charity is in contravention of the ITA as we do not consider gifts made to the U.S. Give2Asia as gifts being made to a qualified donee as defined by the ITA.

(B) Acting as a Conduit/Lack of Direction and Control over Resources

With the exception of making gifts to qualified donees, a registered Canadian charity cannot simply fund the activities of another entity. Rather, it is essential that the charity instruct and monitor the manner in which their funds are applied on an ongoing basis. Where the recipient has full authority to expend the charity's funds on projects being carried on either by itself, or by another entity, *the charity is not exercising the required direction and control over the use of its resources.* Operating in this manner does not comply with the legal requirements pertaining to registered charities.

The information obtained during the audit shows that the Charity allowed funds to be flowed through it to the U.S. non-profit, without effectively regulating the application of funds once relinquished. Instead, the Charity's role in the arrangement was limited to collecting and remitting funds to the U.S. non-profit, which devised and controlled a program wherein it distributed the funds it received to various Asian organizations.

Functioning in such a fashion evidences none of the ongoing instruction, control and supervision required to make the activities ultimately being funded the *Charity's own activities.* To the contrary, it shows that the Charity acted as a conduit –funding operations that were conducted without its continuous input and regulation.

For example, the U.S. non-profit presented itself as an alternative for Asian entities with their own North American donors who wanted to make contributions to these organizations, but did not want to set up their own U.S. or Canadian foundations. To this end, the U.S. non-profit created and administered "Fiscal Sponsorship Funds" which served as "a vehicle to raise money for Asia-based charities". The websites of the U.S. non-profit and various participating Asian organizations promoted the Charity as a means for donors to flow donations through to these organizations and receive tax credits for income tax purposes.

The U.S. non-profit used the Charity as a means to enhance its appeal to prospective participant organizations in Asia, because the Charity gave the U.S. non-profit "an extra competitive advantage and level of service when forming relationships with Asian charitable organizations interested in G2A's Global Fundraising Support Service (aka Fiscal sponsorship)."⁶ By the U.S. non-profit's own description, "Give2Asia Canada has proven a valuable addition to *our capacity*. Since our incorporation in 2003, we have facilitated C\$78,865, in giving from 12 donors to support 3 grantees."⁷

Through this arrangement, donations remitted to the U.S. non-profit were processed and transferred by the U.S. non-profit via bank wires to the Asian entities for a fee of 7%. Therefore, in addition to representing an expansion of the prospective donor base for the Asian organizations, the Charity's participation in the arrangement served to generate more income for the U.S. non-profit because it increased the value of the transactions on which the U.S. non-profit could collect fees.

The donation forms used gave donors the ability to select their desired recipient Asian organization. Donors who required a Canadian donation receipt were instructed to make their contributions by cheque only and to forward it to a mailing address at Suite 313, 125A – 1030 Denman Street, Vancouver, B.C. Cheques received by the Charity were forwarded to QDDQ Services Inc. / Benefic Compliance and Administrative Services Inc. ("QDDQ / Benefic"), who provided administrative services for the Charity, as well as a Canadian address. QDDQ / Benefic then deposited the cheques into the Charity's bank account and forwarded scanned copies of the cheques and donor forms to the U.S. non-profit.

At the direction of Mr. Michael Rea, a director of the Charity and past Chief Executive Officer of the U.S. non-profit, the funds were transferred from the Charity's bank account to the U.S. non-profit's bank account by way of wire transfers. Transfers usually occurred shortly after larger donations were received by the Charity. The Charity kept a minimal bank account balance. Donation receipts and thank you letters were prepared in the U.S., and copies of the donation receipts were forwarded back to QDDQ / Benefic electronically. Receipts were signed by Mr. Raymond Klinke, who is both a member of the Charity, and the past Interim CEO and current Chief Financial Officer of the U.S. non-profit.

It is not clear whether Mr. Rea and Mr. Klinke made these decisions and performed these actions in their capacity as representatives of the U.S. non-profit, or while representing the interests of the Charity. As a result, it is not clear that the Charity's operations and administration were governed separately and distinctly from the U.S. non-profit. Moreover, the members of the Charity, who according to the 2004 Notice of Annual General Meeting "are responsible for the overall operation of the

⁶ See the Give2Asia Notice of Annual General Meeting for 2004

⁷ See the Give2Asia Notice of Annual General Meeting for 2004

corporation and for appointing directors", consist of trustees of the U.S. non-profit. The directors of the Charity are described as being "largely ceremonial"⁸ in Canada, which further suggests that the U.S. non-profit had a role in governing the Charity.

Based on the above findings, it is our position that the Charity operated as a conduit, transferring funds to non-qualified donees, without regulating the application thereof, and in fact exists solely for this purpose. It is our position the Charity has not devoted all of its resources to its own charitable activities or by way of gifts to qualified donees and therefore has failed to meet the definitional requirement of subsection 149.1(1) of the *ITA*.

2. Issuing Receipts not in Accordance with the *ITA* and/or Its Regulations:

The *ITA* provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulation 3501 of the *ITA*.

The audit found that the donation receipts issued by the Charity did not comply with the requirements as follows:

- The Charity issued official donation receipts for funds that were directed to non-qualified donees. It was identified in the audit, due to the inherent nature of the Charity's operations, all "gifts" made to it were directed to non-qualified donees with the largest, a gift of \$1,080,000 directed to St. Paul's Co-Ed Fund, a non-qualified donee located in Hong Kong.
- The donation receipts did not contain Canada Revenue Agency's name or website address www.cra-arc.gc.ca/charities.
- The receipts did not contain the place or locality where the receipt was issued.

The audit also found that the official donation receipts showed the Charity's mailing address / or correspondence address (U.S.) as 465 California Street, 9th Floor, San Francisco, CA 94104-1832 U.S.A., which is the U.S. non-profit's office location. The receipts comply with Regulation 3501(1)(a) in that they contain the Charity's address as registered with the Minister however, as noted elsewhere in this letter, it is our view the Charity is operated primarily by the U.S. non-profit; a fact that is further supported by the mailing and corresponding addresses listed on the official donation receipts prepared by the U.S. non-profit.

Additionally, the audit revealed that the official donation receipts issued by the Charity were prepared by the U.S. non-profit and accordingly we were unable to review and evaluate the Charity's receipting procedures to determine whether the integrity of

⁸ See the Give2Asia Notice of Annual General Meeting for 2004

the system was sufficient to protect unused and duplicate receipts from misuse. Of the duplicate donation receipts reviewed, we noted the following areas of concern:

- Receipt number was skipped in the receipting process – eg. receipt #107
- Receipt numbers were issued out of sequence - receipt #12 was issued on November 28, 2003 and receipt #11 was issued on February 6, 2004

As a result, it is our position that the Charity has not complied with the requirements of the *ITA* as it issued receipts that were not in accordance with the *ITA* and/or its Regulations.

3. Failure to Maintain Adequate Books and Records:

Section 230(2) of the *ITA* requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by section 230(2), section 230(4) provides that

“every person required by this section to keep 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 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 date of the last taxation year to which the records and books relate.”

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked⁹;
- a registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto¹⁰; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the *ITA* is itself sufficient reason to

⁹ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

¹⁰ *Supra*, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

revoke an organization's charitable status¹¹.

The audit found the Charity did not maintain adequate books and records of account. In particular, the Charity did not maintain:

- A summary listing of all official donation receipts issued, including the donor's name and address, the date of the donation, the receipt number, the date the receipt was issued, the type of gift, and the amount of the donation.
- The Charity did not maintain records which showed the detailed transactions of the Charity such as a general ledger or synoptic journal.

As such, we were unable to verify the information reported on its annual returns as accurate and complete, and it is therefore our position that the Charity failed to maintain adequate books and records as required under section 230 of the *ITA*.

4. Failure to Meet Its Disbursement Quota Requirement:

In order to maintain its status as a public foundation within the meaning of paragraph 149.1(3)(b) of the *ITA*, a registered charity must, in any taxation year, expend amounts on charitable activities and/or gifts to qualified donees, that are equal to at least 80% of the aggregate amounts for which it issued donation receipts in its immediately preceding taxation year or 3.5% of the Charity's average value of assets owned over the previous 24 months not used directly in charitable activities or administration. A charity is allowed by virtue of 149.1(20) of the *ITA* to offset any shortfalls in its disbursement quota by applying any excesses in its disbursement quota from its immediately preceding taxation year and 5 or less of its immediately subsequent taxation years.

As discussed above, we do not recognize amounts transferred to the U.S. non-profit as gifts to a qualified donee as the U.S. non-profit does not meet the definition of a qualified donee for *ITA* purposes. Therefore, the Charity has incurred a disbursement quota shortfall of:

Fiscal Period End	Disbursement Quota Excess	Disbursement Quota (Shortfall)	Cumulative Excess (Shortfall)
10/31/2004	\$ -	-\$ 45,492	-\$ 45,492
10/31/2005	\$ -	-\$ 58,344	-\$ 103,836
10/31/2006	\$ -	-\$ 42,732	-\$ 146,568
10/31/2007	\$ -	-\$ 73,910	-\$ 220,478

As a result, the Charity failed to meet its disbursement quota obligation under paragraph 149.1(3)(b) of the *ITA*.

¹¹ (*College Rabbiniqve de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency, (2004) FCA 101; ITA section 168(1)*)

The Charity's Options:

a) No Representations

If you choose not to provide representations, please advise us in writing of your intent. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Charity by issuing a Notice of Intention in the manner described in subsection 168(1) of the *ITA*.

b) Representations

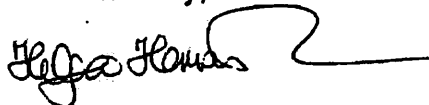
Should you choose to provide representations, please provide your representations in writing, as well as any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Charity, the Director General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

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the Minister giving notice of its intention to revoke the registration of the Charity by issuing a Notice of Intention in the manner described in subsection 168(1) of the *ITA*.

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

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,



Helga Hemsworth, CGA
Audit Division



c.c. Mr. Pitman Potter, Director
Attachment – Attachment to IC84-3R5, Gifts to Certain Charitable Organizations
Outside Canada

IC84-3R5 – Attachment

Attachment to IC84-3R5, Gifts to Certain Charitable Organizations Outside Canada

Her Majesty in right of Canada has made gifts to the following organizations since January 1, 2000:

Organization	Location	Date of gift
Aga Khan Foundation	Switzerland	May 17, 2000 May 4, 2001 June 11, 2002 July 9, 2003 June 15, 2004 March 10, 2005 April 7, 2006 April 4, 2007 April 2, 2008
Aga Khan University Foundation	Switzerland	May 17, 2000 May 4, 2001 June 11, 2002 July 9, 2003 June 15, 2004 March 10, 2005 April 7, 2006 April 4, 2007 April 2, 2008
The American Assembly	United States	July 22, 2004
Canadian International School of Hong Kong Limited (formerly: The Canadian International School Foundation Limited)	Hong Kong	August 7, 2000 August 13, 2002
Cayman Islands National Recovery Fund	Cayman Islands	June 7, 2005
Center for Strategic & International Studies	United States	October 16, 2000 September 25, 2001 August 9, 2002
Council for Canadian American Relations, Inc. (formerly: American Friends of Canada)	United States	April 16, 2002 July 9, 2003 May 27, 2004 July 7, 2005 May 4, 2006 June 21, 2007 July 3, 2008

IC84-3R5 – Attachment

<p>The Foundation for Canadian Studies in the United Kingdom</p>	<p>England</p>	<p>March 15, 2000 March 30, 2000 August 20, 2001 September 5, 2002 March 11, 2003 March 17, 2003 March 11, 2004 March 30, 2004 February 13, 2006 February 16, 2006 March 15, 2006 July 28, 2006 August 23, 2006 August 31, 2006</p>
<p>Roman Catholic Archbishop of Kingston</p>	<p>Jamaica</p>	<p>February 6, 2007</p>
<p>The State Hermitage Museum</p>	<p>Russia</p>	<p>July 7, 2003 December 23, 2005</p>
<p>Village Focus International</p>	<p>United States</p>	<p>July 31, 2002 October 10, 2002 August 12, 2003 February 16, 2004</p>
<p>Woodrow Wilson International Center for Scholars</p>	<p>United States</p>	<p>October 1, 2001 December 3, 2002 October 23, 2003 October 26, 2004 October 26, 2005 October 27, 2006 October 12, 2007</p>

Revised July 8, 2008



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

December 5, 2008

REGISTERED MAIL

Give2Asia
Suite 1555, 1500 W. Georgia Street Box 62
Vancouver, B.C. V6G 2Z6

BN: 85508 7045 RR0001
File #:3022758

Attention: Blake Bromley, Director

Subject: Audit of Give2Asia

Dear Mr. Bromley:

We have received your letter dated November 17, 2008 requesting additional clarification to our letter dated October 27, 2008. As outlined in our October 27th letter (copy attached), Canada Revenue Agency's (the "CRA") position is that gifts made to U.S. organizations are not gifts to a qualified donee, unless specifically permitted under the *Act*. The *Act* identifies the organizations defined as qualified donees under subsection 149.1(1), which are as follows:

- the United Nations or agencies thereof;
- universities outside Canada prescribed to be universities the student body of which ordinarily includes students from Canada; and
- charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift during the taxpayer's taxation year, or the 12 months immediately preceding that taxation year. (*We have enclosed a copy of Attachment to Information Circular IC84-3R5 - Gifts to Certain Charitable Organizations Outside Canada for your reference.*)

As stated in our October 27th letter, it is CRA's position that Article XXI(6) of the Canada-U.S. Income Tax Convention pertains to taxpayers seeking relief from taxation. For further reference, please see Window on Canadian Tax Commentary, Document 9728355 dated February 27, 1998.

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

Mailing Address:
Vancouver Island Tax Services
c/o 9755 King George Hwy.
Surrey, BC V3T 5E1

Services fiscaux de l'Île de Vancouver
1415, rue Vancouver
Victoria, C-B

l'adresse postale :
Services fiscaux de l'Île de Vancouver,
A/S 9755 Aut. King George
Surrey, C-B V3T 5E1

Canada

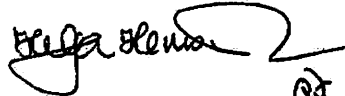
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The Charity's options are as previously stated in our October 27th letter. If you choose not to provide representations, please advise us in writing of your intent. If you choose to provide representations, please provide your representations in writing, as well as any additional information you wish us to consider. Please provide your response to our October 27, 2008 letter within 15 days from the date of this letter.

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

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,



Helga Hemsworth, CGA^{PT}
Audit Division



c.c. Michael Rea, Director

*Attachment – Attachment to IC84-3R5, Gifts to Certain Charitable Organizations
Outside Canada- Revised September 9, 2008*

IC84-3R5 – Attachment

Attachment to IC84-3R5, Gifts to Certain Charitable Organizations Outside Canada

Her Majesty in right of Canada has made gifts to the following organizations since January 1, 2000:

Organization	Location	Date of gift
Aga Khan Foundation	Switzerland	May 17, 2000 May 4, 2001 June 11, 2002 July 9, 2003 June 15, 2004 March 10, 2005 April 7, 2006 April 4, 2007 April 2, 2008
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IC84-3R5 – Attachment

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Roman Catholic Archbishop of Kingston	Jamaica	February 6, 2007
The State Hermitage Museum	Russia	July 7, 2003 December 23, 2005
Village Focus International	United States	July 31, 2002 October 10, 2002 August 12, 2003 February 16, 2004
Woodrow Wilson International Center for Scholars	United States	October 1, 2001 December 3, 2002 October 23, 2003 October 26, 2004 October 26, 2005 October 27, 2006 October 12, 2007

Revised September 9, 2008

250-8

Section 149.1: [Charities]

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; or
- (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.

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;
- (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 (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;
- (c) since June 1, 1950, acquired control of any corporation; or
- (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 the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (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.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
 - (c) fails to file an information return as and when required under this Act or a regulation,
 - (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,
- the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (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 that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) 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.

Section 172: Appeal from refusal to register, revocation of registration, etc.

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (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,
- (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) refuses to issue a certificate of exemption under subsection 212(14),
- (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, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Section 180: Appeals to 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) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (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), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Section 188: Revocation tax

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

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

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

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

$A - B$

where

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

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (d) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

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

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

188(4) Idem

Where 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 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”

“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”

“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.

Section 189

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 mailed 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 registered charity in respect of the charity'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 charity after the day on which the Minister first assessed that liability and before the particular time 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 total of

- (a) the consideration given by the 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, 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.