



**REGISTERED MAIL**

Rimay Gyalten Pota Ling the Doctrine  
of Compassion Tibetan Buddhist Centre  
4131 Campobello Place  
Richmond BC V7E 5G5



BN: 855974143RR0001  
File #: 3044449

Attention: Ms. Jacqueline Kok


**Subject: Notice of Intention to Revoke  
Rimay Gyalten Pota Ling the  
Doctrine of Compassion Tibetan Buddhist Centre**

Dear Mrs. Kok:

We are writing further to our letter dated June 24, 2015 (copy enclosed), in which you were invited to submit representations as to why the registration of Rimay Gyalten Pota Ling the Doctrine of Compassion Tibetan Buddhist Centre (the Organization) should not be revoked in accordance with subsection 168(1) of the Income Tax Act (Act).

We have now reviewed and considered your written response dated July 15, 2015. However, notwithstanding your reply, our concerns with respect to the Organization's lack of direction and control over the use of its resources, failure to devote resources to its own charitable activities, failure to maintain adequate books and records, failure to issue receipts in accordance with the Act, failure to file an accurate T3010, *Registered Charity Information Return*, and payments to subcontractors, have not been alleviated.

In our previous letter, we outlined our concerns regarding the large sums of funds sent to Asia for the purpose of providing assistance to villages in China, Nepal and Tibet. Particularly, the Organization did not have any written agreements, reports, expense receipts or any evidence that the funds were devoted to its own charitable activities.

The Organization's response indicates it is unable to provide the proper supporting documentation relating to the funds sent to Tibet (more specifically to  a non-qualified donee) and that it would be difficult to produce receipts documenting how the money was spent once it leaves Canada.

While we appreciate the difficulty of operating internationally and the difficulty of maintaining adequate records in all circumstances, a registered charity must be able to demonstrate that its resources are devoted to charitable activities and that it directs and

controls these activities at all times. In its letter, the Organization stated it has some receipts (to support expenditures made by the non-qualified donee for the purported activities of the Organization) it can forward. However, to date, it has failed to provide any such records. Furthermore, your response did not provide further details of the activities the Organization purportedly undertook or documentation to demonstrate that any such activities were charitable in nature and carried out on the Organization's behalf, under its continuous direction and control.

It is therefore our position that the purpose of the Organization is not to carry out its own charitable activities, but to fund and facilitate the work of [REDACTED] which is a non-qualified donee.

Further, the Organization has stated it will no longer issue donation receipts to Canadian donors who wish to send money to Tibet. However, a review of the T3010, *Registered Charity Information Return*, for the fiscal year-end 2015 indicates donation receipts are still being issued, and the Organization continues to send the same amount to non-qualified donees in Tibet. Moreover, simply ceasing to issue donation receipts would not be sufficient to resolve the above concerns with respect to the Organization's unregulated transfer of funds overseas.

With respect to the identified issues relating to gifts in kind, the Organization states in its response that it will attempt to obtain adequate third party appraisals in the future, provided it has adequate funds to pay for such fees. As the values are significant, and adequate valuations should be performed in all cases, the current practice is not satisfactory. The Organization's response did not provide adequate assurance that it will substantiate the fair market value of receipted gifts in kind in the future.

As for the bank deposit discrepancies, we are satisfied with the Organization's response explaining the error made by the bank; and accompanying letter from the bank to support the unidentified deposit.

In summary, for the reasons described above, the majority of the concerns regarding non-compliance identified in our previous letter have not been alleviated.

### **Conclusion:**

The Canada Revenue Agency's (CRA) audit has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote its resources to its own charitable activities and gifted funds to a non-qualified donee; failed to provide adequate documentation to demonstrate on-going and active direction and control over funds purportedly sent to carry out its activities outside of Canada, failed to issue receipts in accordance with the Act; failed to maintain adequate books and records; and failed to file an accurate information return. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for

charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated June 24, 2015, we wish to advise you that, pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

*Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), and 149.1(2)(c) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

<b>Business Number</b>	<b>Name</b>
855974143 RR0001	Rimay Gyalten Pota Ling the Doctrine of Compassion Tibetan Buddhist Centre Richmond BC

Should you wish to object to this notice of intention to revoke the Organization'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

A copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of **90 days** from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an objection to this notice of intention to revoke within this timeframe.

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

### Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on 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](http://www.cra-arc.gc.ca/charities).

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

Yours sincerely,



Tony Manconi  
Director General  
Charities Directorate

Attachments:

- CRA letter dated June 24, 2015
- Appendix "A", Relevant provisions of the Act

Place de Ville, Tower A  
320 Queen Street, 5th Floor  
Ottawa ON K1A 0L5

## Section 149.1 Qualified Donees

### 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; and

(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.

## **Section 168:**

### **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.

## **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

(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 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) or (12) applies

### **188(4) Transfer of property tax**

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"

« *montant de l'actif net* »

"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"

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

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

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

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

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

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

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

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

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

(a) the amount, if any, by which

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

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

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

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



CANADA REVENUE  
AGENCY

AGENCE DU REVENU  
DU CANADA

VIA REGISTERED MAIL

Rimay Gyalten Pota Ling the Doctrine  
of Compassion Tibetan Buddhist Centre  
4131 Campobello Place  
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Attention: Jacqueline Kok

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June 24, 2015

**Subject: Audit of Rimay Gyalten Pota Ling The Doctrine of Compassion  
Tibetan Buddhist Centre**

Dear Mrs. Kok:

This letter is further to the audit of the books and records of the Rimay Gyalten Pota Ling The Doctrine of Compassion Tibetan Buddhist Centre (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2011 to December 31, 2012.

At our meeting of October 8, 2013, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Lack of direction and control over the use of the Charity's resources/ Failure to carry out its own charitable activities	168(1)(b), 149.1(1), 149.1(2)
2.	Failure to maintain adequate books and records	168(1)(e), 230(2)
3.	Inadequate Receipting Practices	168(1)(d), Regulations 3500 and 3501
4.	Failure to file an information return as and when required by the Act	168(1)(c), 149.1(14)
5.	Payments to Subcontractors (T4A)	230(2), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the



opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

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

#### **1. Lack of direction and control over the use of the Charity's resources/ Failure to carry out its own charitable activities**

A registered charity may only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada - for charitable activities undertaken by the charity itself under its continued supervision, direction and control, and for gifting to "qualified donees" as defined in the Act. A charity may choose to use an intermediary to carry out its activities. However, when using an intermediary, a registered charity must still direct and control the use of its resources, although it may generally delegate authority to make day-to-day operating decisions. A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee.

Where a registered charity chooses to operate through an appointed agent or representative ("intermediary"), it must be able to substantiate, by documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of funds to a non-qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of funds provided to the intermediary, at all times.

When carrying out activities through an intermediary, the following steps are strongly recommended:

- Create a written agreement with the intermediary and implement its terms;
- Communicate a clear, complete and detailed description of the activity to the intermediary;
- Monitor and supervise the activity;
- Provide clear, complete and detailed instructions to the intermediary on an ongoing basis;
- Segregate funds, as well as maintain separate books and records; and
- Make periodic transfers of resources, based on demonstrated performance.

A charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.

This type of arrangement, and associated reporting, is necessary for the charity to clearly demonstrate that it was the directing mind behind each of its programs, and not merely contributing to, or acting as a financial conduit for, the programs of another organization.

As support for this recommendation and requirement for a charity to maintain records showing direction and control, we refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation v. Canada*:

“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...”

And

“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 in *Bayit Lepletot v. Minister of National Revenue*<sup>1</sup>, it is not enough for an organization to fund an agent that carries on certain activities. The Act requires that the agent actually conduct those activities on the organization's behalf. Where the agent has full authority to expend the principal's funds, without any appropriate ongoing regulation/approval by the principal, there is no assurance that the agent is, at all times, acting on behalf of the principal, with the principal exercising ongoing and substantive direction and control. Activities carried out in this manner are not in compliance with the requirements of the Act.

#### Audit Findings:

The audit revealed that the Organization transferred significant amounts to individuals and/or organizations in Asia for the purpose of providing assistance to villages in China, Nepal, and Tibet.

A review of the *Registered Charity Information Returns* for the periods of January 1, 2011 to May 31, 2014, relating to revenue and foreign expenses is as follows:

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<sup>1</sup> 2006 FCA 128

	2011	2012	2013	2014
Total Revenue	\$555,084	\$280,800	\$232,250	\$ 93,847
Total Expenses	\$204,118	\$500,887	\$207,860	\$105,681
Foreign Expenses	\$200,000	\$488,150	\$196,400	\$ 96,500
Percent Expenses Foreign	98%	97%	94%	91%

Total Revenue (2011-2014) \$1,161,981  
Total funds sent to Asia (2011-2014) \$ 981,050  
Percentage of income sent to Asia 84%

The audit disclosed that the Organization does not have any written arrangements with any of its foreign recipients. Additionally, the Organization has not received any type of written reports, including expense vouchers and receipts, nor is there any evidence that the Organization's funds remained separate and apart from the recipients.

The only documentation available to support how the funds were spent was a typed document stating the amount received by [REDACTED] and what was purchased. Actual receipts and invoices were not available. The documents submitted failed to provide adequate support and assurance that the funds sent to Asia were spent on charitable activities.

In addition, the Organization did not maintain any board meeting minutes, nor any other form of written communication to indicate direction relating to its foreign activities. As a result, there is no evidence the Organization is directing and controlling the funds it expends abroad.

The absence of documentary evidence in relation to its programs would seem to be indicative of a lack of involvement of the Board of Directors in their planning, implementation and operation. Therefore, it does not appear that the activities in Asia (disaster relief, rebuilding monasteries and relief of poverty in surrounding villages) are, in fact, the Organization's own activities, and are being carried on under the Organization's direction and control.

Based on the audit findings, it is our view that the Organization does not exercise the required degree of direction and control over the use of its funds, and/or over the activities to be conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. Rather, it appears that the Charity is acting as a conduit: funding the programs of [REDACTED] in China; and/or gifting to individuals and/or organizations that are not qualified donees.

It is also our view that, the purpose of the Organization is not to carry out its own activities, but to fund and facilitate the work of [REDACTED] a non-qualified donee. It is our position that the Organization exists for the mere

purpose of furthering the activities of the foreign Organization by accepting donations for their programs, and issuing receipts to, Canadian donors.

In our view, the Organization has failed to demonstrate that it devoted all of its resources to charitable activities carried on by the Organization itself and appears to be transferring its resources to support the activities of a foreign entity and individuals that are not qualified donees. We would point out that three of the Organization's current directors, specifically: Gyalten Rinpoche, Yu Ga and Cangmei Jin knew or ought to have known about these requirements given their previous involvement with Rimay Tsar Tsar Chokor Namgyala Ling Tibetan Buddhist Centre, a charity involved in similar activities. As such, it appears that there may be grounds for the revocation of the registration of the organization under s. 149.1(2) and s. 168(1)(b) of the Act.

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

The requirement for the proper maintenance of books and records is specified in subsection 230(2) of the Act: Every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

- (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
- (b) a duplicate of every 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 deduction or tax credit is available under the Act.

Note that a charity is not meeting its requirements to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof. A Charity must ensure adequate stewardship over the resources it has been given.

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 revoked (*Canadian Committee for the Tel Aviv Foundation v. Canada*<sup>2</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 documentation and records subsequent thereto (*Canadian Committee for the Tel Aviv Foundation v. Canada*<sup>3</sup>; *The Lord's*

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<sup>2</sup> Supra, footnote 1

<sup>3</sup> Supra, footnote 1

*Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397); and

- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status (*College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, 2004 FCA 101; section 168(1) of the Act).

The Organization should maintain adequate books and records so that amounts expended on charitable activities may be verified. In this regard, the following areas of concern were determined during the audit:

#### Lack of books and records

The Organization failed to maintain:

- Board meeting minutes;
- Source documents (receipts and invoices) for foreign expenses;
- A general ledger for income and expenses;
- A record of withdrawals, cheques and transfers from the Organization's bank account;
- A complete donation listing that reconciles to the T3010, *Registered Charity Information Return*;
- Adequate appraisals or valuations for gift-in-kind donations received (details are provided further);
- A detailed list of assets, including art, jewellery and investments;
- Records relating to payments made to contractors (no invoices from contractors), and did not issue T4/T4A slips as required.

#### **Gifts in Kind**

It is a requirement that donation receipts are issued based on fair market value of the gift, and that all required documentation to support the fair market value be available, at the time of the audit.

All donations of gifts in kind require appropriate supporting documentation for the fair market value of the gift. The generally accepted meaning of *fair market value* is the highest price that the property would bring in an open and unrestricted market between a willing buyer and a willing seller who are knowledgeable, informed and prudent, and who are acting independently of each other.

For gifts that were not purchased new and an original receipt is not available, and if the value is under \$1,000, the amount can be determined internally by an employee or director. However, the person who determines the fair market value of the item should

be competent and qualified to evaluate the particular property being donated. For gifts with a value over \$1,000, the CRA strongly recommends an appropriate independent appraisal be available.

During the audit period, the Organization received various gift in kind donations valued over \$1,000 where no independent appraisals were performed, nor was adequate supporting documentation available at the time of the field visit to support the established values.

During the audit, the Organization provided an internal document with the appraised value of the gift in kind donations. The document was created by the Manager of the [REDACTED] and is not considered an adequate appraisal. The documents were not appraised by an independent arm's length appraiser, nor did they include details normally included in an appraisal, such as the methodology used to appraise the art, and how the value was determined. The property should have been appraised by an independent and knowledgeable appraiser who has no material interest in the property being given, and is not associated with the donor or the charity. Appraisals must include the methodology used to determine fair market value, and details regarding the property.

#### Internal Controls

Internal controls were inadequate and the segregation of duties within the Organization was poorly defined. Delegation of responsibility, controls over the issuance of official tax receipts, and the general supervision of the receipting process, was inadequate. The director, J. Kok, performs all bookkeeping, prepares and signs donation receipts, has signing authority on bank and payment of expenses.

#### Deposit Analysis

A bank deposit analysis of the Organization's [REDACTED] Business account and [REDACTED] US\$ account was performed for the years 2011 and 2012. A bank deposit analysis calculates the total deposits (less any known transfers and adding gift in kind donations) and compares with the total revenue reported.

During the year 2011, the Organization had total bank deposits of \$662,054 and \$111,000 of gift in kind donations, representing calculated revenue of \$773,054. The reported revenue, however, was only \$554,221 (variance of \$218,833). Due to a lack of donation receipt summaries, it is not known whether the gift in kind donations of \$111,000 was included on line 4500 (total tax receipted gifts) of the *Registered Charity Information Return*. Also, the bank statement for January 2011 includes the deposit of \$318,000 (transferred from another qualified donee) and an unknown deposit of \$270,000 ("GIC" redemption).

The 2012 deposit analysis reported total deposits of \$319,259 plus gift in kind (\$11,800) for an expected reported revenue of \$331,059. The Organization reported revenue of \$280,253 (variance of \$50,806).

As a result, it appears the Organization has inadequate books and records as significant deposits were made to the bank that did not match reported revenue. Given the significant variances, the books and records could not be relied upon to determine completeness of revenue.

In light of the above described deficiencies with regard to the Organization's books and records, it is the CRA's view that the Organization failed to maintain adequate books and records for purposes of the Act. An organization that does not maintain adequate books and records may be subject to the revocation of its charitable registration under paragraph 168(1)(e) of the Act.

### **3. Receipting practices**

The Act provides various requirements with respect to the issuance of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act.

The audit identified the following issues regarding the receipting practices of the Organization:

- Receipts were issued to other registered charities (receipt #0003). Typically, registered charities should only receive an acknowledgement receipt.
- It appears receipts were issued where there was no gift. The cancelled cheques from some donors indicated the amount transferred was for the payment of either art or jewellery<sup>4</sup> sold by the charity.
- A description of donated property for gifts in kind was missing from the receipts.
- The appraiser name and address was missing from donation receipts.

All gift in kind donation receipts **must** contain the appraiser name and address. The receipts issued by the Organization for gifts in kind did not contain any information, other than the donation was a "gift".

Further, as stated above, independent non-arm's length appraisals were not performed, and there was insufficient information available to support the value of the gift in kind donations. As a result, CRA is unable to rely on the values reported on the donation receipts as the fair market value of the gift.

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<sup>4</sup> Refer to Technical News No 26, <http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf>, where the guidelines regarding split receipting are discussed.

Based on the above findings, it is our view that the Organization has issued receipts otherwise than in accordance with the Act. An organization that issues receipts otherwise than in accordance with the Act and its Regulations may be liable to a penalty under subsection 188.1(7) or may be subject to the revocation of its charitable registration under paragraph 168(1)(d) of the Act.

#### **4. Failure to file an information return as and when required by the Act**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a *Registered Charity Information Return* (T3010) with the applicable schedules.

It is the responsibility of the Organization to ensure that the information provided in its returns, schedules, and statements is factual and complete in every aspect. A charity is not meeting its requirements to file an information return if it fails to exercise due care with respect to ensuring the accuracy thereof.

It was determined during the audit that the Organization had incorrectly completed its information return for the fiscal years ended May 31, 2011 and May 31, 2012 as follows:

##### Revenue

The Organization received \$318,000 from another registered charity in January 2011 and reported this amount on line 4500 (tax receipted income) of the 2011 information return. All gifts from other registered charities must be reported on line 4510 (gifts from other registered charities).

##### Allocation of expenditures before gifts to qualified donees (Line 5000 to 5040)

The Organization did not correctly allocate its expenditures before gifts to qualified donees between charitable programs (line 5000), management and administration (line 5010), fundraising (line 5020) and other expenses (line 5040). These lines were left blank.

##### Directors/Trustees and Like Officials Worksheet (Form T1235)

The Organization failed to report all required information on its form T1235 as follows:

- Start and End date
- Date of Birth
- Telephone Numbers



Based on the above, it is our view the Organization has failed to comply with the requirements of Act by failing to file accurate information returns. An organization that fails to file an accurate information return, as and when required by the Act, may have its tax-receipting privileges suspended per subsection 188.2(2.1), or may have its registration revoked under paragraph 168(1)(c) of the Act.

#### **5. Payment to Subcontractors (T4A)**

Regulation 200(2) of the Act states that an information return must be prepared in prescribed form with respect to a payment for any amount of benefit required by paragraph 6(1)(a) of the Act. These payments include any contracts, invoices, bursaries, bonuses, grants or other taxable benefits to employees or contracted individuals. It also requires that where an amount has been paid that is required to be included in determining a taxpayer's income from an office or employment, an information slip in respect of such payment shall be issued to that individual or contractor.

The audit revealed that the Organization did not prepare and issue Statement of Remuneration (T4A) slips to individuals for contracted services. Though the CRA will not be pursuing the requirement to produce a T4A for these payments, please note that any individual, who works for a charity, without necessarily holding an office or an elective position and receives money for such work under any heading whatsoever, including an honorarium, is taxable on the income received in the year of receipt.

For further information on the payer's responsibilities with respect to issuing information returns, please refer to RC4157, "*Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary Form*", which outlines that a T4A should be issued when the payment exceeds \$500 or income tax has been deducted.

Based on the above, it is our view the Organization has failed to comply with the requirements of Act by failing to file accurate information returns. An organization that fails to file an information return, as and when required by the Act, may have its registration revoked under paragraph 168(1)(c) of the Act.

#### **The Organization's options:**

##### **a) No response**

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

**b) Response**

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

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

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 me at the numbers indicated below. My team leader, Ross Thackray, may also be reached at 250-363-3141.

Yours sincerely,



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