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From the Director General

Disasters such as that caused by the tsunami in Southeast Asia on December 26, 2004, highlight the important role that charities can play, not just in Canadian society, but throughout the world. Some charities have been moved by these events to expand their range of charitable activities to include ones in the affected countries, while others have redoubled their efforts, expanding already existing programs. We are pleased to have been able to work with CIDA and the Department of Finance, to help Canadians and the charities they support, to provide relief for the devastated regions of Southeast Asia.

In the fall 2004 newsletter (No. 20), we discussed some of the questions that arise for charities that work overseas, including those that are concerned with helping people recover from disasters.

This newsletter deals, in part, with a question that can affect charities that fundraise for particular purposes, whether their resulting activities take place within or outside Canada. At times charities accept funds for particular purposes. These can include aiding those impoverished by a disaster, constructing a new building, or supporting the activities of missionaries overseas. In some cases, the funds raised can exceed those needed, or the project can become difficult or impossible to pursue. Depending on the way these funds have been raised, a charity cannot assume that such funds can automatically be directed towards another purpose of the charity's choosing. For this reason, the way a charity designs its fundraising appeal can be important. This newsletter touches on some of the questions pertaining to this issue.

We have received many questions about how the changes announced in the March 2004 Budget will affect the requirements for donation receipts for tax purposes. This includes the new requirement that charities include the name and Web site address of the Canada Revenue Agency on receipts. We recognize that there is a need for a transition period before the new requirements are enforced. We will be mailing a letter to all charities explaining the new requirements and the timetable for enforcing them. Information on this is also available on the CRA Web site at www.cra.gc.ca/tax/charities/jrt-e.html.

More Ways to Serve You!
Pour vous servir encore mieux!



Canada Revenue
Agency

Agence du revenu
du Canada

Canada

Charities will also be receiving an invitation to the information sessions delivered by the Charities Directorate (the Roadshow) for 2005. I encourage you to take advantage of these sessions. The sessions will focus on the *Registered Charity Information Return*, form T3010A, which has been significantly revised to reflect the changes in the Spring 2004 budget and pending legislative changes. In particular, there have been significant changes to the way the disbursement quota is calculated, and these will be covered in these sessions. This year we will also be covering new regulations and sanctions, and new receipting rules and gifting. Updated information on the Roadshow will be added to the CRA Web site at: www.cra.gc.ca/tax/charities/roadshow as it becomes available. I encourage everyone who thinks they might be interested to complete the invitation they receive. Filling out this invitation does not oblige you to take part in these sessions, but it does ensure that we are aware that there is interest in having a session in your area, and that you'll be alerted to a session being given. There is no charge to attend.

We are also seeking information from charities on their experiences with situations where a donor receives advantages (promotion, advertising) as a result of making a donation. Your suggestions will help us to draft a policy on the types and value of advantages received by a donor. To help frame the discussion, we have included a list of some of the questions that you may wish to consider in this newsletter. We look forward to your input.

Facts and figures

Number of charities (designation and charity types)

	Public foundation	Private foundation	Charitable organization	Total
Welfare	1,581	1,896	12,455	15,932
Health	1,000	261	4,313	5,574
Education	740	744	11,637	13,121
Religion	281	594	31,727	32,602
Benefits to the community	877	526	12,282	13,685
Total	4,479	4,021	72,414	80,914

*As of December 2004

Roadshow

We gave slightly fewer sessions in 2004 because we were unable to provide sessions early in the fall. However, we increased the number of sessions in the spring, and we scheduled additional sessions for November and December.

This year, we plan to hold sessions in major centres and to have extra sessions in areas we did not visit last year. Please remember to fill out an application by the deadline if you are interested in attending this year.

	Number of sessions	Number of participants
Spring 2004		
National Capital Region	4	213
Alberta	10	593
British Columbia	10	615
Fall 2004		
Ontario	18	1,066
Total	42	2,487

Funding and tax implications

An estimated \$1.9 billion in revenue is foregone through tax assistance to registered charities including:

- the personal charitable donations credit;
- deductible corporate donations;
- the non-taxation of registered charities; and
- the GST/HST rebate for charities.¹

Number of donors

In 2003, 5.6 million Canadians made financial or in-kind donations worth \$6.5 billion to registered charities.² This was the highest level of donations ever reported and represented an 11.4% increase from 2002. The number of donors increased by 1.2%.

Did you know?

Permission to accumulate property

Q. 1. If a charity receives permission to accumulate property, what does this allow it to do?

A. 1. Under subsection 149.1(8) of the *Income Tax Act*, a registered charity can ask for written permission to accumulate property for a particular purpose. When such a request is granted, the terms, conditions, and time period for the accumulation of property will be indicated. The property

¹ Tax Expenditures and Evaluations Report 2003, Department of Finance.

² Statistics Canada (taxfilers database) Data for 2003. October 2004.

accumulated, including any income it earns, will be deemed to have been expended on charitable activities in the year in which it is accumulated (so that its disbursement quota is not adversely affected). This allows a charity to save enough funds to spend on a large project that is particular and not general in nature. For example, a school saving money to purchase a swimming pool might want to take advantage of this provision.

This provision does not enable a charity to capitalize funds and use only the interest income for charitable expenditures such as establishing a scholarship fund. Under subsection 149.1(9) of the Act, if the accumulated property is not used within the agreed time or for the approved purpose, the amount accumulated (and the income it earns) will be treated as a receipted donation of the charity for the year in which:

- the property was used for another purpose; or
- the charity was to have spent it for the purpose it was accumulated.

Accordingly the disbursement quota expenditure requirement related to the accumulated property will be reinstated.

Q. 2. Our charity has obtained all the funds necessary to buy a building rather than continue renting. Do we need to obtain permission under the accumulation of property rules to purchase this building?

A. 2. No. Charities do not need our permission to spend funds that have already been accumulated to purchase property that is used for its charitable purposes.

Q. 3. Is the value of property accumulated using the permission to accumulate provision included in calculating the value of the property that is subject to the 3.5% disbursement quota obligation?

A. 3. No. The intent of this provision is to enable registered charities to **save** funds for a particular project and not to **require an immediate expenditure**. As such, the disbursement quota obligation that pertains to property does not apply to property accumulated using permission to accumulate property. On a technical level, the Act deems that property (including any income earned) to have **been expended** on charitable activities **in the year in which it was accumulated** and therefore the property would be considered to be used directly in charitable activities such that the 3.5% obligation would not apply. Charities that have accumulated property using this provision would, therefore, not have to include the value of this property when calculating the average value of investment property.

Legalese for charities

Cy-près – Where property is given in trust for a particular charitable purpose and it is or becomes impossible, impractical, or illegal to carry out the particular purpose, the trust will not necessarily fail if the intention of the trust is to devote the property to charitable purposes. The court can apply the *cy-près* doctrine and direct the property to some charitable purpose that falls within the general charitable intention of the trust.

Fiduciary – Relationship between a trustee/director and a charity.

Fiduciary duty – A duty to act for someone else's benefit exclusively. It is the highest standard of duty implied by law (e.g., trustee, guardian). For charities, this means to accept and hold a public trust to maintain, preserve, and develop the organization's resources to be used for charitable purposes, to ensure that the organization's activities remain charitable, and to manage the organization for the benefit of the public.

Charitable trusts – A legal relationship created for the benefit of a class or the public generally, and established for charitable purposes (e.g., religious, educational).

Estoppel – The doctrine under which a person cannot change previously made statements, acknowledged facts or conduct if doing so would be detrimental to another person who has acted on those statements, facts or conduct.

Gifts for particular purposes

Q. 4. Can we transfer gifts donated for a specific purpose to our general funds?

A. 4. If a charity has raised funds or accepted a donation for one of its specific purposes, it cannot simply use these funds for another purpose. However, the charity may transfer funds raised if it clearly indicated while soliciting from donors that excess funds which cannot be used for a particular purpose may be used for another purpose.

Q. 5. Can a gift instead be used for a similar but different purpose if the original purpose becomes impossible?

A. 5. Under the doctrine of *cy-près*, it is possible to apply such funds to a similar but different purpose. Purposes that are unlawful are considered impossible (for example, if they require discrimination). Such was the case in *Canada Trust Co. v. Ontario Human Rights Commission*. In this case, the Ontario Court of Appeal held that an educational trust set up in 1923 violated public policy because it was based on notions of racism and religious superiority and because it improperly discriminated on the basis of race, religion, and sex. As a result, the trust was not charitable. *Cy-près* doctrine was applied and the trust was brought into accord with public policy by removing the discriminatory restrictions.³ Trustees cannot do this alone. Generally, applying the *cy-près* doctrine requires the Court's approval.

Q. 6. Can a gift instead be used for a similar but different purpose if the condition is clear but not efficient?

A. 6. No. In cases where the condition is clear, the Court cannot intervene and go beyond the donor's initial charitable intent through a *cy-près* scheme. *Cy-près* cannot be applied where there is no impossibility or impracticability. As a result, a charity should educate donors about the difficulties associated with gifts given for narrowly-defined purposes. As well, when soliciting gifts for a specific purpose, a charity should include a clause allowing for a gift to another charity or purpose.

Where conditions are attached to the use of a gift, a charity may need to consider whether to accept it at all.

Christ Church v. Can. Permanent Trust (1984) 18 E.T.R. 150 (NSSCTD) is an example of the court's unwillingness to accept the trustees' decision that a specified purpose was impracticable. A will had left money in trust and directed that the income it earned be used for repairs to a church building. The will also directed that the capital of the trust could be used to construct a new building. The trustees decided that they had no intention of constructing a new building and asked the court for an order allowing the trust capital to be applied to repairs of the old building. The court refused, saying that the trustees were bound to carry out the testator's view, which was not necessarily that of the current governing body, and that the testator clearly foresaw the possibility the bequest might not be used at once. Therefore, there was nothing invalid about the direction given.

Q. 7. Can we let donors choose which of our programs they support through their donations?

A. 7. If a charity offers particular programs in accordance with its mandate, the donor may direct the donation to the program

of the donor's choice. For example, a charity may fund several community projects—schools, hospitals, youth organizations—and the donor may choose to which of these he or she wishes to donate.

A donor may not direct that funds be given to specific individuals that are not qualified donees for purposes of the Act, except when a charity's mandate specifically contemplates the type of fundraising that would benefit those individuals (such as an organization with a mandate to raise funds for victims of a particular flood or fire).

A receipt should **not** be provided to a donor who directs that the donation be used to the donor's own benefit, or to the benefit of persons with whom the donor does not deal at arm's length.

Rent-free accommodations

Q. 8. Can a charity issue a charitable receipt to a landlord who provides rent-free accommodations?

A. 8. No. One of the criteria for a gift is that there be a voluntary transfer of property. In this situation, no property is being transferred—instead, use of the building is being provided. Since no property is transferred, no “gift” is made. A tax receipt for the value of the loan of property cannot be issued.

Although the loan of property does not constitute a gift, a charity may pay rent on a property to an individual and later accept a gift of all or part of the payment, as long as the gift is voluntary. The charity may then issue a receipt for tax purposes. The donor would have to report the income earned but would be able to claim the tax relief associated with the gift.

Property won through a lottery

Q. 9. How is the value of a donation of property won in a lottery determined? Is it the fair market value of the property or the cost of the winning ticket?

A. 9. Assuming there is no advantage provided to the taxpayer, if the property is donated three or more years after it was won in the lottery, the donation amount would be the fair market value of the property when it was donated.

If the property is donated less than three years after it was won, the amount of the donation will be whichever is less: the fair market value of the property at the time it was donated **or** the cost to the taxpayer of the property. Under subsection 52(4) of the *Income Tax Act*, the cost to a taxpayer of property acquired as a prize in connection with a lottery is equal to its fair market value at that time.

³ *Canada Trust Co. v. Ontario Human Rights Commission* (1990), 74 O.R. 481.

Example

A taxpayer wins a property having a fair market value of \$1,000 and immediately donates it to a charity. The deemed cost of the property to the taxpayer and fair market value at the time of the donation is \$1,000. The charity may issue a receipt for \$1,000.

The cost to the taxpayer of the lottery ticket is not relevant.

The charity should be aware that the advertised value of the property might not be the fair market value (e.g., list price versus retail price).

See *Registered Charities Newsletter* No.18 for information on factors considered in determining fair market value.

Ecological gifts**Q. 10. What is an “ecological gift”?**

A. 10. For tax purposes, an ecological gift is defined to be a gift of land, including a covenant or an easement, or, in the case of land in Quebec, a real servitude. The land must be certified by the Minister of the Environment or a person designated by the Minister to be ecologically sensitive land whose conservation and protection is important to preserving Canada’s environmental heritage. The recipient of the gift must be Her Majesty in right of Canada or a province, a municipality in Canada (including, for gifts made after May 8, 2000, a municipal or public body performing a function of government in Canada), or a registered charity that has been approved by the Minister of the Environment.

Q. 11. Do persons who make ecological gifts get preferential capital gains treatment?

A. 11. Yes. For ecological gifts made after February 28, 2000, the taxable component of capital gains resulting from the donation is one-half the normal rate. This means that only 25% of capital gains resulting from such a donation would be taxable under the current law.

Q. 12. When is it appropriate to issue a tax receipt for an ecological gift?

A. 12. The qualified recipient of the gift may issue a tax receipt once a gift has legally been completed, which is a question of law. A charity should obtain legal advice when it considers accepting a gift of real property.

For more information on the Ecological Gifts Program, visit: www.cws-scf.ec.gc.ca/ecogifts.

Issues**Donate-a-car programs**

“Donate a car” programs have received significant media attention in the United States. The Charities Directorate has received questions about the legitimacy of similar programs in Canada.

In these programs, owners of old cars seek to have the transfer of the cars treated as gifts in kind by a charity. Some of these programs are legitimate attempts to aid charities, but charities and donors need to be cautious when taking part in these programs because not all of them genuinely benefit the charities involved. Charities that consider participating in these arrangements need to consider issues relevant to all programs dealing with gifts in kind. In particular, charities should be aware that they may only give tax receipts where there is a gift, and the eligible amount of the gift cannot be more than the fair market value of the car.

Typically, these arrangements involve older cars. Generally, the red book value does not represent the fair market value of the car. Most of the vehicles being donated in this type of arrangement are in such condition that the fair market value is closer to nil than the red book value.

In appraising the vehicle, charities must consider the condition of the car. The price in vehicle valuation guides is not necessarily a true reflection of the value of a particular car. If the car is not in as good condition as outlined in the guide, its fair market value will be lower.

Advantages received by a donor: Promotion, advertising, and sponsorship

The Charities Directorate has received many questions about situations where a donor receives advantages (promotion, advertising) as a result of making a donation. Does such an advantage negate the gift entirely? If there is an advantage, should the rules of split-receipting apply so that only part of the donation may be considered a gift? Or can the entire amount be receipted? These questions apply principally to business donors as well as to some individual donors who are synonymous with a business.

If the benefits provided to business donors make it impossible to consider the transfer of property a gift, donors may still benefit from the ability to write off the transfer as an advertising expense.

We want your input to help draft a policy on the types and value of advantages received by a donor. We are particularly interested in hearing your comments on the value of benefits that may be considered to be nil in some cases (e.g., simple recognition or thanks). Have you encountered specific scenarios in dealing with the issue of advantage received by a donor when there is some form of promotion, advertising, or sponsorship at issue? What logic or criteria do you think we should use to determine when donor recognition constitutes an advantage and its value?

We currently consider these situations on a case-by-case basis, but we would like charities to have a better understanding of when an advantage will reduce the eligible amount of a gift. Here are some of the many factors or questions that charities officers consider in these cases:

Purpose: Is one of the purposes of the donation to obtain recognition?

Source: Is the donation from an individual or a business?

Generally, individuals will not benefit financially from name recognition, and the recognition, to the extent it constitutes a benefit, will have a nil value. However, there may be some rare exceptions. For example, if the donor's name is indelibly associated with a company or product with which the donor is concerned, does the use of the donor's name constitute a valuable benefit to the donor?

Contracting: Is there a contract (a written or unwritten understanding concerning the benefits the donor will receive in return for the donation)? Does such an understanding, whether or not it is formally written, indicate that the donor expects and receives an economic benefit in return for the donation?

Valuation: Can the value of the exposure (promotion, advertising, sponsorship) be determined? How much is the equivalent exposure worth?

In looking at these arrangements keep in mind that the split-receipting rules may apply. Under these rules, the gift portion of the payment (the "eligible amount") can only be calculated if the fair market value of all advantages can be determined. If the advantage is not more than 80% of the value of the payment a charity may issue a receipt for the difference (see www.cra.gc.ca/E/pub/tp/itnews-26/README.html).

Token recognition or not?

Naming

- Is simply being named as a donor necessarily a benefit (e.g., newsletters, plaques, cards)?
- If the recognition takes place in a newsletter or similar publication, is the publication available to members only, or is it distributed externally?
- Does making donor recognition cards available constitute a benefit?

- Does it make a difference if a donor company's logo, rather than just its name, is used?
- Even where there is a benefit, does it have value?

If you have encountered specific scenarios dealing with the issue of advantage received by a donor when there is some form of promotion, advertising, or sponsorship at issue, we would be interested in hearing about your views and experiences. Please send all replies in writing to the address or fax below or by email to

consultation-policy-politique@ccra-adrc.gc.ca.

The mailing address is:

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Ottawa ON K1A 0L5

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Court news

A pledge is not a contract

The Brantford General Hospital Foundation et al. v. The Canada Trust Company et al. concerned whether the estate of a deceased person could be required to act on that person's promise. The charity was unsuccessful in seeking a court declaration that the pledge was enforceable.

Helmi Marquis signed a pledge document in which she committed to donate \$1 million over a five-year period to the foundation of a hospital, which she and her husband had supported in the past. She died after the first payment of \$200,000 was made.

Under the terms of her will, the hospital received a fifth of her estate. Her executors refused to pay the remainder of the pledged amount in addition to this. The court was asked to determine if the pledge form signed by Mrs. Marquis constituted a legal and binding contract enforceable in law.

Did the naming opportunity turn the pledge into a contract?

The court rejected the argument that the agreement to name the unit after Dr. Marquis turned the pledge into a contract. The idea that the unit be named after both of the Marquises came from the hospital, not from Mrs. Marquis, and it was never a condition for making the pledge. The court found that the naming opportunity was irrelevant to her in her decision to sign the pledge. Moreover, at the time the case was heard, the naming was still subject to board approval.

Did the partial performance of the pledge make it legally enforceable?

The hospital also argued that having made the first payment of \$200,000 also made the pledge into a contract using the doctrine of estoppel. While there was no doubt that Mrs. Marquis intended to make a \$1 million gift, this did not make it legally enforceable. The doctrine of estoppel can only succeed if there is a pre-existing legal relationship between the parties. No such relationship existed. The hospital was also unable to prove that it relied to its detriment on this incomplete pledge, as the project continued despite the pledge not being fulfilled.

Contact information

The Charities Directorate

You can call us toll free at 1-800-267-2384 (English) or 1-888-892-5667 (bilingual).

You can also write to us at:

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Ottawa ON K1A 0L5

Email your comments or suggestions:

- about this newsletter to:
charities-bienfaisance-bulletin@ccra-adrc.gc.ca
- about our draft publications to:
consultation-policy-politique@ccra-adrc.gc.ca
- about our Roadshow to:
information.sessions@ccra-adrc.gc.ca
- about our Web site to:
Charities-Bienfaisance@ccra-adrc.gc.ca

You can contact the Charities Representative at 1-866-303-0316 toll free, or 948-8608 in the greater Ottawa area, or by email at:

charities-bienfaisance-resource@ccra-adrc.gc.ca

You can find all our publications at: **www.cra.gc.ca/charities/**

Draft publications for consultation are available at:
www.cra.gc.ca/tax/charities/consultation_policy-e.html

For information on new additions about charities, see the “What’s new” page at:

www.cra.gc.ca/tax/charities/whatsnew/whatsnew-e.html

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