

Table of Contents

<i>Acknowledgments</i>	iii
<i>Foreword</i>	v
Table of Cases	C-1

Part I Introduction and Background

Chapter 1 Introduction

1.1 Introduction	1-3
1.2 Constitutional Analysis	1-4
1.3 Tax Exemption of Third-sector Organizations	1-5
1.3.1 Tax Exemption of Registered Charities.....	1-6
1.3.1(1) Definition of Charity	1-7
1.3.1(2) Charity Tax Regulatory Matters	1-7
1.3.2 Tax Exemption of Non-profit Organizations	1-9
1.4 Donations	1-10
1.5 Conclusion	1-11

Chapter 2 History of the Taxation of Charities and Donations

2.1 Introduction	2-3
2.2 The Pre-1967 Federal Tax Regime	2-4.1
2.2.1 The Tax Treatment of Charitable Donations.....	2-4.1
2.2.1(1) World War I	2-4.1
2.2.1(2) 1920.....	2-6
2.2.1(3) 1930.....	2-7
2.2.1(4) 1930 to 1950 — Incremental Change	2-9
2.2.1(5) World War II.....	2-9
2.2.1(6) 1957.....	2-10
2.2.2 The Tax Treatment of Charitable Organizations	2-11
2.2.2(1) World War I	2-12
2.2.2(2) World War II to 1967.....	2-13
2.2.2(2)(a) Administrative Practice.....	2-13
2.2.2(2)(b) Legislation.....	2-13
2.2.3 Concluding Observations on the Pre-1967 Federal Law	2-16
2.3 The History of Federal Tax Legislation From 1967	2-16

Table of Contents

2.3.1	1967.....	2-16
2.3.2	The Carter Commission.....	2-19
2.3.2(1)	Tax-exempt Status	2-19
2.3.2(2)	Business Income.....	2-20
2.3.2(3)	The Federal Administration	2-21
2.3.2(4)	The Charitable Deduction	2-21
2.3.3	The 1972 Tax Reform.....	2-23
2.3.4	1973: Gifts In Kind.....	2-24
2.3.5	The 1976-77 Tax Reform.....	2-26
2.3.5(1)	Background.....	2-26
2.3.5(2)	The 1975 Green Paper	2-27
2.3.5(2)(a)	Background.....	2-27
2.3.5(2)(b)	Private Foundations	2-29
2.3.5(2)(c)	Business Income.....	2-31
2.3.5(2)(d)	Accumulation.....	2-31
2.3.5(2)(e)	Public Accountability.....	2-32
2.3.5(2)(f)	Fundraising.....	2-32
2.3.5(3)	The 1976-77 Legislation.....	2-32
2.3.6	The 1984 Reform	2-33
2.3.6(1)	The MacEachen Budget, 1981	2-33
2.3.6(2)	The April 1982 Press Release	2-39
2.3.6(3)	The May 1983 Discussion Paper	2-39
2.3.6(4)	The Economic Statement of November 8, 1984.....	2-43
2.3.7	The 1988 Reform	2-44
2.3.8	The 1990 Reform Effort	2-45
2.3.9	Technical Changes in the 1990s.....	2-45
2.3.9(1)	Introduction of the GST.....	2-45
2.3.9(2)	1994 Budget	2-46
2.3.9(3)	1995 Budget	2-46
2.3.9(4)	1996 Budget	2-46
2.3.9(5)	1997 Budget	2-47
2.3.9(6)	2000 Budget	2-49
2.3.10	Technical Changes in the New Millennium.....	2-50
2.3.10(1)	Avoiding Private Foundation Status.....	2-50
2.3.10(2)	Foundations Making Foreign Grants after Meeting Disbursement Quota	2-51
2.3.10(3)	Finance on Split-receipting.....	2-51
2.3.11	Voluntary Sector Initiative — 2004 Federal Budget	2-52
2.3.11(1)	March 2004 Federal Budget.....	2-52
2.3.11(2)	Joint Regulatory Table Report	2-52
2.3.11(2)(a)	Intermediate Sanctions	2-52
2.3.11(2)(b)	Appeals	2-53

Table of Contents

2.3.11(2)(c) Transparency	2-54
2.3.11(2)(d) Disbursement Quota Rules.....	2-54
2.3.12 The 2010 Federal Budget: Helping Charities	2-55
2.3.12(1) March 2010 Federal Budget	2-55
2.3.12(2) Disbursement Quota Reform	2-55
2.3.13 2011 Federal Budget: Further Regulating the Charitable Sector	2-56
2.3.13(1) 2011 Federal Budget(s).....	2-56
2.3.13(2) Regulatory Regime Extended to Other Qualified Donees	2-56
2.3.13(3) RCAAAs	2-57
2.3.13(4) Good Governance	2-57
2.3.13(5) Returning Donations.....	2-58
2.3.13(6) Donations of Flow-Through Tax Shares	2-59
2.3.13(7) Granting Options to Qualified Donees	2-59
2.3.13(8) Non-Qualifying Securities Anti-Avoidance Rules	2-60
2.3.14 2012 Federal Budget — Discouraging Advocacy.....	2-60
2.3.14(1) 2012 Federal Budget.....	2-60
2.3.14(2) Political Activity Changes	2-60
2.3.14(3) Foreign Qualified Donees.....	2-61
2.3.14(4) Tax Shelter Promoter Penalties	2-62
2.3.15 2013 Federal Budget	2-62
2.3.16 2015 Federal Budget	2-63
2.3.17 2016 Federal Budget	2-66
2.3.18 2017 Federal Budget	2-67
2.3.19 2018 Federal Budget	2-68
2.3.20 Political Activity Changes.....	2-70
2.3.21 2019 Federal Budget	2-70
2.3.22 2021 Federal Budget	2-72
2.3.23 Report by the Special Senate Committee on the Charitable Sector	2-73
2.4 Moving Forward	2-75
2.5 Conclusion	2-76

Chapter 3 Definition of Charity

3.1 Subject-Matter and Public Benefit	3-4
3.1.1 The Relief of Poverty	3-4
3.1.1(1) Nature of Poverty	3-4
3.1.1(1)(a) What Forms of Need.....	3-6
3.1.1(1)(b) Required Degree of Financial Need	3-7
3.1.1(2) Public Benefit.....	3-13

Table of Contents

3.1.2 The Advancement of Education	3-20
3.1.2(1) Nature of Education	3-20
3.1.2(1)(a) Attempts to Describe What is Included in Advancement of Education	3-20
3.1.2(1)(b) Education Institutions	3-22
3.1.2(1)(c) Education Outside Schools, Colleges, and Formal Centres of Learning	3-23
3.1.2(1)(d) Professional Training	3-24
3.1.2(1)(e) The Quality of Education Required for Public Benefit	3-26
3.1.2(1)(f) Education and Political Purposes	3-27
3.1.2(2) Public Benefit	3-28
3.1.3 The Advancement of Religion	3-31
3.1.3(1) Nature of Religious Activity	3-31
3.1.3(1)(a) Development from the Repair of Churches	3-32
3.1.3(1)(b) Upkeep of Burial Places and Grave Sites	3-34
3.1.3(1)(c) Support of Ministers of Religion, Active and Retired	3-35
3.1.3(1)(d) Missions	3-36
3.1.3(1)(e) Training of Ministers of Religion and Religious Instruction of the Young	3-37
3.1.3(1)(f) Gifts to a Minister of Religion in the Name of the Minister	3-38
3.1.3(1)(g) Private Masses or Other Private Religious Practices	3-41
3.1.3(1)(h) Closed Religious Orders	3-44
3.1.3(1)(i) Limits of the Scope of Religion	3-45
3.1.3(2) Public Benefit	3-48
3.1.3(3) Presumption of Public Benefit	3-50
3.1.4 Other Purposes Beneficial to the Community	3-52
3.1.4(1) Relief of Distress and Suffering	3-53
3.1.4(2) The Support and Care of Ex-Service Personnel	3-55
3.1.4(3) Social and Recreational Purposes	3-56
3.1.4(4) The Promotion of Sport	3-57
3.1.4(5) The Benefit of the Community at Large	3-62
3.1.4(6) The General Approach to Determining What Falls Under Other Purposes Beneficial to the Community	3-65
3.2 Conclusion	3-70

Part II Registered Charities

Chapter 4 Registration

4.1 Introduction	4-3
4.2 Unregistered Charities	4-4
4.3 Registration of Unregistered Charities	4-5
4.4 Purpose of Registration System	4-6
4.5 Comments on the Registration Process	4-7
4.6 An Annotation of the T2050 Application	4-11
4.6.1 Part 1 — Identification of the Organization Applying for Registration	4-12
Q1 — Current legal name of the organization	4-12
Q2 — Current operating or trade name	4-12
Q3 — Previous names	4-12
Q4 — Business number	4-12
Q5 — Mailing address	4-13
Q6 — Previous contacts with CRA	4-13
Q7 — Re-registration	4-13
4.6.2 Part 2 — Organizational Structure	4-14
Q8 — Internal divisions of Canadian registered charities	4-14
Q9 — Governing documents	4-14.1
Q9.1 — Incorporated applicants	4-14.2
Q9.2 — Unincorporated applicants	4-15
Q10 — Designation	4-16
4.6.3 Part 3 — Activities of the Organization	4-18
Q11A — Charitable purposes and activities	4-18
Q11B — Commencement of operations	4-18.2
Q11C — Activities outside of Canada	4-19
Q11D — Additional information	4-19
Q12 — Fundraising activities	4-19
Q13 — Revenue from the sale of goods, services, or use of assets	4-20
Q14 — Political activities	4-20
Q15 — Financial transactions with the organization’s officials	4-21
Q16 — Ownership	4-21
4.6.4 Part 4 — Financial Information of the Organization	4-22
Q17 — Proposed budget	4-22
4.6.5 Part 5 — Information About the Organization’s Officials	4-25
Q18 — Public information and confidential information	4-25
4.6.6 Part 6 — Confidential Information	4-28

Table of Contents

Q19 — Physical location of the organization.....	4-28
Q20 — Physical location of books and records	4-28
Q21 — Authorized representative/Contact person.....	4-28
4.6.7 Part 7 — Final Steps and Certification.....	4-28.1
4.7 Post-application Process	4-28.1
4.8 Where Registered Status is not Granted	4-29
4.9 Conclusion	4-30

Chapter 5 Charitable Organizations

5.1 Introduction	5-3
5.2 Definition	5-3
5.2.1 “All Resources”	5-4
5.2.1(1) Charitable Activities vs. Charitable Purposes.....	5-5
5.2.1(1)(a) Charitable Activities	5-6
5.2.1(1)(b) Criticism of the Emphasis on Charitable Activities ..	5-7
5.2.1(2) Related Business	5-8.1
5.2.1(3) Political Activities	5-8.2
5.2.1(4) Granting Activities.....	5-9
5.2.2 No Benefit to Members	5-9
5.2.3 The “Control” Test.....	5-11
5.2.3(1) The “Contribution” Test	5-12
5.2.3(1)(a) Arm’s length Directors	5-12
5.2.3(1)(b) Source of Funding	5-13
5.2.3(1)(c) Difficulty with the “Contribution” Test.....	5-13
5.2.3(2) The New “Control” Test	5-14
5.2.3(3) Implications and Opportunities	5-16
5.3 Grounds for Deregistration	5-17
5.4 Conclusion	5-18

Chapter 6 Public Foundations

6.1 Overview	6-3
6.2 Definition	6-4
6.2.1 “Charitable Foundation”	6-4
6.2.2 “Public Foundation”	6-5
6.3 Functions of a Public Foundation	6-8
6.4 Grounds for Deregistration	6-10
6.5 Penalty Tax	6-12
6.6 Conclusion	6-12

Table of Contents

Chapter 7 Private Foundations

7.1 Overview	7-3
7.2 Background	7-3
7.3 Definition	7-4
7.4 Deregistration and Penalty Tax	7-5
7.5 “Non-qualified Investments” and Section 189 Tax	7-5
7.5.1 “Non-qualified Investments”	7-6
7.5.1(1) Debt	7-6
7.5.1(2) Shares.....	7-7
7.5.1(3) Excluded Corporations	7-7
7.5.2 Section 189 Penalty Tax	7-8
7.5.2(1) Debt	7-8
7.5.2(2) Shares.....	7-9
7.6 Excess Business Holdings Regime	7-10
7.6.1 Background and Structure.....	7-10
7.6.1(1) Safe Harbour	7-10
7.6.1(2) Monitoring Phase	7-11
7.6.1(3) Divestiture Required.....	7-11
7.6.2 Whose Shareholdings Matter?	7-12
7.6.2(1) “Relevant Persons”	7-12
7.6.2(2) Trusts	7-13
7.6.2(3) Implications	7-14
7.6.3 Compliance Period.....	7-15
7.6.4 Transitional Rule	7-15
7.6.5 Exempted Shares.....	7-16
7.6.6 Substituted Shares.....	7-16
7.6.7 Penalties	7-17
7.6.7(1) General	7-17
7.6.7(2) Anti-Avoidance Provision.....	7-18
7.6.8 Evaluation of Excess Business Rules.....	7-18
7.7 Creating a Private Foundation	7-19
7.7.1 Why Create a Private Foundation?.....	7-20
7.7.2 Issues Related to the Creation of Private Foundations	7-23
7.7.2(1) Control.....	7-24
7.7.2(2) Form of Foundation.....	7-24
7.7.2(3) Anti-avoidance Provisions	7-25
7.7.3 Steps to be Taken in Establishing a Private Foundation.....	7-26
7.7.4 Disclosure	7-27
7.8 Conclusion	7-28

Table of Contents

Chapter 8 Disbursement Quota

8.1 Overview	8-3
8.2 Background	8-3
8.3 Former Disbursement Quota Rules	8-4
8.3.1 Charitable Organizations — Pre-2004	8-5
8.3.2 Public Foundation — Pre-2004	8-5
8.3.3 Private Foundation — Pre-2004	8-5
8.3.4 2004-2010 Rules	8-6
8.3.4(1) Factor A: 80% of Received Gifts	8-6
8.3.4(2) Factor A.1: “Enduring Property”	8-7
8.3.4(1)(a) 10-year Gifts	8-7
8.3.4(2)(b) Treatment of “Enduring Property” Under Factor A.1	8-8
8.3.4(3) Factor B: Gifts Between Charities	8-10
8.3.4(4) Factor B.1: The 3.5% Rule	8-11
8.3.4(4)(a) Reduction of Quota	8-11
8.3.4(4)(b) Calculation of Factor B.1	8-13
8.4 Federal Budget 2010: Disbursement Quota Reform	8-15
8.4.1 New Anti-Avoidance Provisions	8-17
8.4.1(1) Non-Arm’s Length Inter-Charity Transfers	8-17
8.4.1(2) Undue Delay	8-20
8.5 Issues Relating to Disbursement Quotas	8-20
8.5.1 Non-Charitable Expenditures	8-20
8.5.1(1) CRA’s Restrictive Recent Position	8-21
8.5.1(2) Lack of Legal Basis for CRA’s Position	8-24
8.5.1(3) Deemed Non-charitable Expenditures	8-25
8.5.2 Accumulating Funds	8-26
8.6 Disbursement Quota Shortfalls and Excess	8-27
8.7 Conclusion	8-28

Chapter 9 Record-keeping, Reporting, and Transparency

9.1 Income Tax Act Record-keeping Requirements	9-3
9.2 Record Retention Requirements	9-6
9.3 Completing the T3010B Charities Information Return	9-7
9.3.1 Accuracy in T3010 Preparation	9-8.3
9.4 Registered Canadian Amateur Athletic Associations (RCAAAS)	9-8.5
9.5 Other Tax Returns	9-8.5
9.6 Other Filings	9-9

Table of Contents

9.7 CRA Charities Directorate Transparency	9-9
9.7.1 Previous Proposals.....	9-9
9.7.2 Future Directions Initiative	9-10
9.7.3 Changes in the Transparency Rules	9-11
9.7.3(1) JRT Proposals	9-12
9.7.3(1)(a) Registration.....	9-12
9.7.3(1)(b) Compliance	9-12
9.7.3(1)(c) Annual Return.....	9-13
9.7.3(1)(d) Operational Guidance.....	9-13
9.7.4 2004 Transparency Amendments.....	9-13
9.7.5 2011 Transparency Amendments for Other Qualified Donees	9-14
9.7.5(1) General Changes.....	9-15
9.7.5(2) RCAAAs.....	9-16
9.7.6 Charities Partnership Outreach Program	9-17
9.7.7 Public Access to Information about Charities.....	9-17
9.8 Voluntary Public Disclosure	9-18
9.9 Conclusion	9-19

Chapter 10 Audits, Sanctions and Appeals

10.1 Introduction	10-3
10.2 CRA Charities Audits	10-3
10.2.1 CRA Audit Authority	10-4
10.2.1(1) Audits	10-4
10.2.1(2) Requirements	10-6
10.2.1(3) Search Warrants	10-6.2
10.2.2 CRA Audit Philosophy	10-7
10.2.3 CRA Audit Selection	10-8
10.2.4 The Audit Philosophy of a Registered Charity.....	10-9
10.2.4(1) Voluntary Disclosure	10-9
10.2.5 Privilege	10-10.1
10.2.5(1) Claiming Privilege.....	10-10.2
10.2.6 Audit Notification	10-12
10.2.7 Office Audits.....	10-13
10.2.8 Audit Parameters.....	10-13
10.2.9 Pre-audit Review	10-14
10.2.10 Audit Day.....	10-15
10.2.11 Audit Findings.....	10-16
10.2.11(1) Audit Time Limits.....	10-18.1
10.2.11(2) Legal Representation and Submissions	10-18.2
10.3 Sanctions	10-19

Table of Contents

10.3.1 Intermediate Sanctions	10-20
10.3.2 Canadian Constitutional Issues with Intermediate Sanctions.....	10-20
10.3.3 Repeat Offences.....	10-21
10.3.4 Description of the New Intermediate Sanctions	10-21
10.3.4(1) Inappropriate Business Activities	10-24
10.3.4(2) Foundation Acquires Control of a Corporation.....	10-25
10.3.4(3) Undue Personal Benefit.....	10-26
10.3.4(4) Failure to File Information Returns	10-28
10.3.4(5) Issuing Incomplete Receipts	10-29
10.3.4(6) Issuing False Receipts	10-30
10.3.4(7) Inter-charity Transfers to Delay Disbursement Quota	10-31
10.3.4(8) Failure to Keep Proper Books and Records.....	10-32
10.3.4(9) Gifts to Avoid Suspension.....	10-34
10.3.4(10) Penalties in Excess of \$1,000	10-34.1
10.3.4(11) Assessment.....	10-35
10.4 Annulment	10-35
10.4.1 Pre-2004	10-35
10.4.2 Post-2004	10-36
10.5 Revocation of Registration	10-38
10.5.1 Revocation Situations.....	10-39
10.5.1(1) Revocation for Failure to File a T3010	10-40
10.5.1(2) Revocation for Governance Violations	10-41
10.5.1(3) Revocation for Failure of Adequate Separation Between Charity and Non-Qualified Donees	10-42.2
10.5.2 Developing New CRA Approach.....	10-42.2
10.5.3 Revocation Tax	10-42.4.1
10.5.4 Procedural Issues in Revocations	10-42.6
10.6 Appeals	10-42.9
10.6.1 Objections	10-42.9
10.6.2 Intermediate Sanction Appeals.....	10-43
10.6.3 Refusal Appeals.....	10-44.1
10.6.4 Revocation Appeals.....	10-48
10.6.5 General Observations about Registration Appeals	10-51
10.6.5(1) Operating a Charity While Appealing.....	10-54.2
10.7 Judicial Review of Undertaking Letters/Compliance Agreements	10-54.3
10.8 Charter Challenges	10-56
10.9 CRA Ombudsman	10-57
10.10 Conclusion	10-57

Table of Contents

Chapter 11 Associated Charities and Other Relationships

11.1 Associated Charities	11-3
11.2 Inter-charity Relationships not Recognized by the Act	11-6
11.2.1 Charitable Organizations and Public Foundations	11-6
11.2.1(1) Hospital Foundations.....	11-6
11.2.1(2) Other Foundations	11-8
11.2.2 Charities Holding Land for Other Charities	11-9
11.2.3 Charities and Non-profit Organizations.....	11-9
11.2.4 Charities and Businesses.....	11-11
11.2.4(1) Employee Charity Trusts.....	11-13
11.2.5 Mergers and Amalgamations of Charitable Organizations..	11-14
11.2.6 Mergers and Amalgamations of Charitable Organizations and Not-Profits.....	11-15
11.3 Conclusion	11-16

Chapter 12 International Charitable Activities

12.1 Introduction	12-3
12.2 Statutory Background	12-4
12.2.1 Charitable Organizations.....	12-4
12.2.2 Charitable Foundations.....	12-5
12.3 Qualified Donees	12-6
12.3.1 Canadian Registered Charities	12-7
12.3.2 The United Nations and Its Agencies	12-7
12.3.3 Registered Foreign Universities Customarily Attended by Canadians	12-7
12.3.4 Foreign Charities with Recent Federal Crown Patronage..	12-8.1
12.3.4(1) 2012 Amendments on Gifts to Foreign Charitable Organizations.....	12-10
12.4 The Canada-U.S. Tax Treaty	12-10
12.4.1 Gifts from Canadian Charities to U.S. Charities.....	12-10
12.4.2 Activities by Canadian Charities in the U.S.	12-12
12.4.3 Deductibility of Contributions	12-13
12.5 Foreign Activities by Canadian Registered Charities	12-14
12.5.1 Public Policy	12-15
12.5.2 Operational Guidance	12-16
12.5.3 Charitable Goods Policy	12-16
12.6 Contractual Arrangements Between Canadian and Foreign Charities	12-19

Table of Contents

12.6.1 Agency Relationships	12-20
12.6.1(1) Agency Law	12-20.3
12.6.1(2) Agency Agreement Details	12-20.4
12.6.1(3) Multi-agency Agreements	12-23
12.6.1(4) Intellectual Property Issues in Agency Agreements	12-24
12.6.2 Joint Venture Arrangements.....	12-24
12.6.3 Cooperative Partnerships.....	12-26
12.6.4 Contracts for Services.....	12-27
12.7 Property Transfers to Foreign Charities	12-28
12.8 Royalties and Membership Fees	12-30
12.9 Record-keeping	12-31
12.10 Terrorism	12-33
12.11 The CRA’s Audit Approach	12-36
12.11.1 The <i>Tel Aviv Foundation</i> Case	12-37
12.11.2 The <i>Canadian Magen David Adom</i> Case	12-37
12.11.3 Intermediate Sanctions	12-38
12.11.4 Disbursement Quota.....	12-39
12.12 Conclusion	12-40

Chapter 13 Political Activities

13.1 Outline	13-3
13.2 Introduction	13-3
13.3 Common Law	13-4
13.3.1 The Definition of “Political Purpose”	13-4
13.3.2 The Reasons for the Distinction	13-6
13.3.3 Criticism of the Distinction	13-9
13.4 FCA Confusion	13-10
13.5 Parliament Intervenes	13-11
13.6 CRA Policies	13-11
13.6.1 CPS-022: Political Activities	13-11
13.6.2 CPS-021: Registering Charities that Promote Racial Equality.....	13-16
13.6.2(1) Guidance on Upholding Human Rights and Charitable Registration.....	13-17
13.7 Government Attack on Advocacy	13-20
13.8 Canada Without Poverty	13-22
13.9 Report of the Consultation Panel on the Political Activities of Charities	13-23
13.10 2018 Amendments	13-24
13.11 PPDDA Policy	13-25
13.11.1 CRA Guidance	13-25

Table of Contents

13.11.2 PPDDAs and the <i>Canada Elections Act</i>	13-31
13.12 Responses	13-32
13.13 Conclusion	13-33
Appendix	13-35

Chapter 14 Business and Business-like Activities

14.1 The Statutory Framework	14-4
14.1.1 Limited Partnerships.....	14-5
14.2 The Case Law	14-7
14.2.1 <i>Alberta Institute</i>	14-7
14.2.2 <i>Earth Fund</i>	14-8
14.2.3 <i>House of Holy God</i>	14-9
14.2.4 <i>Prescient Foundation</i>	14-11
14.3 The Charities Directorate CPS-019 Guidelines	14-11
14.3.1 Linked to Purpose	14-13
14.3.2 Subordinate to Purpose.....	14-14
14.4 CRA Audit Approach	14-15
14.5 Sanctions for Inappropriate Business Activities	14-15
14.6 Structures for Carrying on Business and Business-like Activities	14-16
14.6.1 The Controlled Corporation	14-18
14.6.2 The Business Trust	14-18
14.6.3 Joint Ventures.....	14-20
14.6.4 Community Economic Development Activity.....	14-21
14.6.5 Community Contribution Company	14-26
14.6.6 Social Enterprise.....	14-28
14.6.6(1) Social Finance	14-29
14.6.6(2) Benefit Corporations	14-30

Part III Other Organizations

Chapter 15 Quasi-Charities

15.1 Registered Canadian Amateur Athletic Associations	15-4
15.1.1 Definition.....	15-4
15.1.2 Registration and Deregistration	15-6
15.1.3 Regulation	15-8
15.2 Other Quasi-Charities Under Subsection 149.1(1)	15-9
15.2.1 Housing Corporations	15-10

Table of Contents

15.2.2 Canadian Municipalities (and Municipal and Public Bodies Performing a Function of Government in Canada).....	15-13
15.2.3 The United Nations or Agencies Thereof	15-16
15.2.4 Prescribed Universities Outside Canada.....	15-17
15.2.5 Charitable Organizations Outside Canada	15-18
15.2.6 Gifts to Her Majesty.....	15-20
15.2.7 Registered Journalism Organizations	15-22
15.3 Designated Institutions Under the <i>Cultural Property Act</i>	15-24
15.4 National Arts Services Organizations	15-25
15.5 Conclusion	15-28

Chapter 16 Non-Profit Organizations

16.1 Introduction	16-3
16.2 No Tax Payable	16-5
16.3 “Club, Society or Association” — Organizational Form	16-6
16.3.1 Share Capital Corporations.....	16-6
16.3.2 Trusts.....	16-7
16.3.3 Partnerships	16-8
16.3.4 Residential Condominiums.....	16-9
16.3.5 Non-Residents	16-10
16.4 Not a Charity	16-10
16.5 Purposes	16-12
16.5.1 Developing New Restrictive CRA Approach?	16-22
16.5.2 Conclusion.....	16-25
16.6 No Income Payable to Any Member	16-25
16.6.1 Registered Canadian Amateur Athletic Associations.....	16-27
16.7 Investment Income of Clubs.....	16-28
16.7.1 Business or Property Income?	16-30
16.8 Reporting Requirements.....	16-32
16.9 Loss of Status.....	16-34
16.10 Conclusion	16-34

Part IV Charitable Gifts

Chapter 17 Charitable Donations

17.1 Overview.....	17-3
17.2 Tax Treatment of Charitable Gifts: Deductions vs. Credits.....	17-4
17.2.1 Tax Deductions	17-4
17.2.2 Tax Credits.....	17-5

Table of Contents

17.3 The Legislative Framework	17-7
17.3.1 Gifting Capital Property.....	17-10
17.3.2 Gifts Made in the Year of Death.....	17-10
17.3.3 Deemed Donations.....	17-12
17.3.3(1) Life Insurance Proceeds, RRSPs, and RRIFs.....	17-12
17.3.3(2) Partnerships	17-13
17.4 The Meaning of “Gift”	17-13
17.4.1 “Property”	17-14.1
17.4.2 “Voluntary”	17-14.2
17.4.3 “Transfer to the Charity”: Conditions and Restrictions.....	17-16
17.4.3(1) Granting Options to Qualified Donees	17-18
17.4.4 Intention to Make Gift.....	17-20
17.4.5 “Consideration”.....	17-22.2
17.5 Split-Receipting/Partial Gifts	17-28
17.5.1 Redefining Gift — From “Gift” to “Eligible Amount of a Gift”	17-29
17.5.2 Determining the “Amount of the Advantage”.....	17-31
17.6 Valuation	17-34
17.6.1 Fair Market Value.....	17-34
17.6.2 Calculating Fair Market Value: Valuation Jurisprudence ...	17-36
17.7 Tax Shelter Anti-Avoidance Provisions	17-40.1
17.7.1 Charitable Donation Tax Shelters Previously Available....	17-40.2
17.7.1(1) Valuation-based Tax Shelters: Buy Low-Donate High	17-40.2
17.7.1(2) Leveraged Donations.....	17-40.3
17.7.2 Initial Canadian Government Responses to Charitable Donation Tax Shelters.....	17-41
17.7.2(1) Definition of Gift	17-41
17.7.2(2) Flawed Specific Valuations.....	17-41
17.7.2(3) Amendment of Personal Use Property Definition	17-41
17.7.2(4) Amendment of Tax Shelter Definition.....	17-42
17.7.2(5) Tax Court of Canada and Federal Court of Appeal Require Bulk Valuation.....	17-42
17.7.2(6) Revocation of Charitable Registration.....	17-43
17.7.3 Anti-Avoidance Legislation	17-44
17.7.3(1) Subsection 248(35) — Attack on Valuation-based Shelters.....	17-44
17.7.3(2) Subsection 248(34) — Attack on Leveraged Donation Shelters.....	17-46
17.7.4 Tax Shelter Class Action Suits	17-46
17.7.5 Promoter Liability	17-49

Table of Contents

17.7.5(1) 2012 Budget Amendments.....	17-52
17.7.6 Advisor Liability.....	17-54
17.7.7 Duty on Taxpayers.....	17-54
17.7.8 Cancellation of E-Filing Privilege	17-55
17.7.9 CRA Assessment Delays	17-56
17.7.10 Whistle Blowers	17-56
17.7.11 CRA Notice on Tax Shelters	17-57
17.7.12 CRA Duty of Care.....	17-58
17.8 Effective Dates of Donation Changes	17-58
17.9 Conclusion	17-60

Chapter 18 Gifting Capital Property

18.1 Overview.....	18-3
18.2 Basic Framework.....	18-3
18.2.1 Deemed Disposition and Election of Donated Value	18-3
18.2.2 Annual Limits on Charitable Donations.....	18-5
18.3 Special Types of Capital Property.....	18-6
18.3.1 Cultural Property.....	18-6
18.3.2 Ecological Property	18-8
18.3.3 Residual Interests	18-10.1
18.3.4 Gifts of Art by Artist	18-11
18.3.5 Listed Securities.....	18-12
18.3.5(1) Flow-Through Shares.....	18-13
18.3.6 Rebate and Reward Donation Programs.....	18-15
18.4 Anti-Avoidance Provisions	18-16
18.4.1 Personal Use Property.....	18-16
18.4.2 Non-qualifying Securities and Excepted Gifts	18-16.1
18.4.2(1) The Rules Relating to Non-qualifying Securities.....	18-16.1
18.4.2(2) Tax Planning in the Context of the NQS Rules	18-20
18.5 Conclusion	18-21

Chapter 19 Issuing Receipts and Fundraising

19.1 Overview.....	19-3
19.2 The Content of Receipts	19-3
19.2.1 To Whom Should the Receipt be Issued?	19-5
19.2.2 When Should the Receipt be Issued?	19-8
19.3 To Receipt or Not to Receipt?.....	19-8.1
19.4 Proper and Improper Receipting Practices	19-9
19.4.1 Services	19-9

Table of Contents

19.4.2 Receipts for Gifts of Negligible or Questionable Value.....	19-10
19.4.3 Inventory	19-11
19.5 Receipting Where an Advantage Accrues to the Donor	19-12
19.5.1 Membership Issues	19-13
19.5.2 Tuition Fees.....	19-15
19.5.3 Other Advantages.....	19-17
19.6 Consequences of Improper Receipting.....	19-18
19.6.1 Issuing Incomplete Receipts	19-20
19.6.2 Issuing False Receipts	19-21
19.7 Special Fundraising Issues	19-23
19.7.1 Charity Golf Tournaments.....	19-23
19.7.2 Gambling.....	19-24
19.7.3 Fundraising Events.....	19-27
19.7.4 Annuities.....	19-28
19.7.5 Charitable Remainder Trusts	19-30
19.7.6 Life Insurance.....	19-30.1
19.7.6(1) Types of Policies.....	19-31
19.7.6(2) Split-dollar Policies.....	19-32
19.7.6(3) Methods of Funding Through Insurance.....	19-33
19.7.6(4) Conclusion on Fundraising Through Insurance.....	19-34
19.7.7 Cause-Related Marketing.....	19-34
19.7.8 Fundraising with Virtual Currencies	19-35
19.8 Returning Donations.....	19-36
19.9 Conclusion	19-39

Chapter 20 Select Gift Planning Issues

20.1 Overview.....	20-3
20.2 Planned Giving by Family Members.....	20-3
20.2.1 Intra-family Transfers.....	20-6
20.3 Loans to Registered Charities.....	20-7
20.4 Donor-Advised Funds.....	20-8.2
20.5 Donations Using Trusts	20-10
20.6 Charitable Remainder Trusts.....	20-11
20.7 Planned Donations of Capital Property.....	20-16
20.7.1 Donations of Listed Securities	20-16
20.7.1(1) Donations of Flow-Through Shares.....	20-17
20.7.2 Donations of Ecological Property.....	20-20
20.7.3 Donations of Cultural Property	20-21
20.7.4 Donations of Depreciable Property.....	20-22
20.7.5 Donations of Private Company Shares.....	20-22
20.8 Gifts of Insurance	20-23

Table of Contents

20.8.1 Gifts of Life Insurance During the Donor's Lifetime	20-23
20.8.1(1) Valuation	20-24
20.8.2 Gifts of Insurance Proceeds on Death	20-26
20.9 Donations of RRSPs	20-28
20.10 Other Testamentary Gifts.....	20-29
20.10.1 Executor's Discretion.....	20-31
20.10.2 <i>Donatio Mortis Causa</i>	20-33
20.11 Tax Planning for Corporate Donations	20-34
20.11.1 Capital Dividend Account.....	20-35
20.11.2 Donating Listed Stocks and Bonds.....	20-36
20.11.3 Directing a Donation	20-38
20.11.4 Corporate-owned Insurance	20-40
20.11.4(1) What Happens on Death, When the \$500,000 is Received?	20-40
20.11.5 Sponsorships or Donations	20-42
20.11.6 Donations of Inventory	20-44
20.11.6(1) Donations of Medicine.....	20-45
20.11.7 Naming Opportunities.....	20-45
20.11.8 Corporate Foundations.....	20-46
20.12 Conclusion	20-47
Index	IND-1