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Tax Changes Affecting Charities & Non Profit Organizations

Agenda

- 1) Overview of Tax Exempt Organizations
- 2) Recent Tax Developments for Charities and NPOs
- 3) Canada Revenue Agency's Audit of Non-Profits
- 4) Financial reporting

Tax Exempt Organizations

- **Registered Charities:**
 - **Charitable Organizations**
 - can be established as a corporation, a trust, or under a constitution
 - Public Foundation
 - Private Foundation
- **Other Organizations:**
 - Crown corporations and their subsidiaries
 - Municipal corporations and their subsidiaries
 - An agricultural organization, board of trade or chamber of commerce (ss 149(1)(e))
 - Certain housing corporations
 - **Non-profit organizations (ss 149(1)(l))**
 - Other entities such as pension, profit sharing, RRSP etc.

Recent Tax Developments

- **Affecting Non-Profit Organizations:**
 - Criteria to be a NPO under ss 149(1)(l)
 - CRA Technical Interpretations
- **Affecting Charities:**
 - Budget 2011
 - Activities Carried on by an Intermediary in Canada
 - CRA Technical Interpretations

Criteria to be a NPO under 149(1)(I)

- **Term “non-profit organization” not defined in the Income Tax Act**
- **Tax exempt non-profit organization – 149(1)(I) must be:**
 - A club, society or association
 - In the opinion of the Minister, not a charity
 - Organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit
 - No part of the income is ... for the personal benefit of, any proprietor, member or shareholder
- **Year-by-year test**

Technical Interpretations

- **2010 – 038058117 – Can an unregistered charity qualify as NPO?**
 - If organization has exclusively charitable purposes, it is a charity
 - “Charitable” is not defined in the Income Tax Act
 - Court decisions have defined “charitable” as
 - The relief of poverty
 - The advancement of education
 - The advancement of religion
 - Certain purposes that benefit the community
 - No, an unregistered charity cannot be a NPO.

Technical Interpretations

- **2010-0389161E5 – Can members of an NPO be recipients of social assistance payments paid by organization?**
 - NPO operates project that is designed to assist members in financial difficulty.
 - Based on certain criteria, potential recipients must apply for assistance and provide proof of income levels and child care expenses.
 - Assistance has to be repaid if false statements are provided.
 - Question of fact whether money used to fund assistance payments comes from income. If so, NPO would lose its tax exempt status.

Technical Interpretations

- **2010 – 0366051E5 – Will a corporation that is being incorporated under provincial non-profit legislation be tax-exempt under ss 149(1)(l)?**
 - Membership corporation incorporate under provincial legislation
 - The corporation will not make available any of its income to its members
 - On windup, assets will be distributed to another NPO
 - Members intend to invest cash donated to provide income which will be used by the corporation exclusively to pay for its cultural activities and related operations.
 - CRA position – not exempt under ss 149(1)(l) – the activity of investing cash generally has a profit objective.
 - Some general comments about operating for any purpose except profit

Technical Interpretations

- **2010-0357831E5 - Can condominium corporation be tax exempt while earning excess rental income to:**
 - fund future/current operating costs?
 - fund future capital projects?

- No - would not be “organized and operated exclusively with a purpose other than profit”

Technical Interpretations

- **2010-0358021E5 – Sale of land by 149(1)(l) entity**
 - May be subject to 149(5) taxation
 - Consider purpose of purchase in determining if entity is tax-exempt
 - Income cannot be distributed to members – capital gains are not income

Technical Interpretations

- **2010-0362851E5 – NPO Filing Requirements**

- T2 for incorporated societies
- T3 if 149(5) income
- T1044 if “large “ NPO
 - Interest/rents/royalties > \$10,000
 - Assets (under GAAP) > \$200,000
- Otherwise, no filings

Technical Interpretations

- **2010-0355831I7 – Audit of NPOs**

- 149(10) applies if incorporated NPO no longer qualifies for tax exemption
- Normal reassessment period applies
- If “misrepresentation” – indefinitely

- **2010-0369701I7 – Unincorporated association and ss 149(1)(l)**

- Members taxable if an unincorporated association is found not to qualify for tax exemption

Budget 2011

- **“Good Governance”**
 - Restrictions on eligibility of individuals who are directors, trustees, officers or like officials of a charity
 - Canada Revenue Agency can refuse registration or revoke registration of charity if charity has an “ineligible individual” as a director or like official
 - Ineligible individuals:
 - Convicted of a relevant offence in previous 5 years
 - Convicted of relevant criminal offence at any time
 - A director who was on the board of another charity in serious breach within last 5 years
 - A promoter of a tax shelter that involved a charity that had its registration revoked

Budget 2011

- **Bring other issuers of donations receipts under the same regime**
 - Will automatically be registered
 - Must keep books and records supporting receipts they issue
 - Can have their registration revoked or receipting privileges suspended
- **Restrictions on certain non-qualifying securities and stock options**
 - No tax receipt if non-qualifying securities are exchanged by two charities
 - No tax receipt until the charity exercises the stock option
- **All provisions effective January 1, 2012, except for non-qualifying securities and stock options effective March 21, 2011**

Budget 2011

- **Implications?**

- Recruiting directors has become more difficult
- More red tape rather than less
- Canada Revenue Agency has a lot more clout – Big Brother is watching!

Carrying on charitable activities by an intermediary

- **New guidance CG-004**

- Same guidance as operating overseas
- **Charities usually carry on their own activities using staff (including volunteers, directors, or employees).**
- **Using an intermediary still requires direction and control of the use of charity resources**
 - Cannot simply write a cheque to an intermediary
 - Charity must be involved in decision making process (advice can be accepted)
 - Monitoring and supervision is required (progress reports)
 - Periodically transfer resources based on performance

Technical Interpretations

- **2008-0304471E5 – Directed gift to municipality**
 - Municipality cannot issue a donation receipt for a gift that is directed to a NPO

- **2010-0367781E5 – Donated or waived remuneration**
 - Fees paid directly to an approved cancer charity: Taxable with offsetting donation receipt
 - Irrevocably waives right to receive fees: Non taxable
 - Directs the fees to be paid to personal corporation or sole proprietorship: Taxable to individual

Canada Revenue Agency's Audit of Non-profits

- **Getting to know you**
 - 30,000 – 35,000 taxpayers identified from GST/HST database
 - 1,500 of identified non-profits chosen for audit (500 per year)

- **General comments thus far**
 - Audit project halfway through but no results yet
 - Finance is very interest in the project, and the results
 - Pay attention to recent technical interpretations re capital projects and incidental activities
 - Did not like planning set out in tax article re holding a family vacation property in a NPO

Financial Reporting – Levels of Verification

- **Notice to Reader or Compilation Engagement**
 - Not necessarily independent
 - No verification but can not be knowingly wrong
- **Review Engagement**
 - Comparisons and discussion
 - GAAP statements
- **Audit Engagement**
 - Highest format
 - Testing, systems review, confirmations
 - GAAP statements

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Presenter



Carrie L. Thompson, CGA, CFP
Senior Manager, KPMG
613-541-7331 • carriethompson@kpmg.ca

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