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Not for Profit Board Treasurer

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Agenda

Welcome & Introductions

Not for Profit Sector Snapshot

The Treasurer and the Board of Directors

The Role of the Treasurer

Accounting & Financial Reporting

Legal Developments: Information, not advice

Next Steps

Not-for-Profit Snapshot

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Snapshot of Canada's Not-for-profit Sector

Sector is large

- 161,000 non-profits, 85,000 charities
- 2 million employees (13% of labour force)
- $182 billion in revenues

Many organizations have small operating budgets and are local in scope

- 42% <$30,000; 63% <$100,000
- 64% are local in scope

Reliant on volunteers

- 54% have no paid staff
- 19 million volunteers, >1 million charity board volunteers

Growth of the Not-for-Profit Sector (2000-2008)

Number of registered charities up by 6%

Total revenue up 83% ($182 billion in 2008)

Government remains largest funder for sector, up 126% ($122 billion in 2008)

Portion of sector revenue from government has increased from 54% to 67%

Long term investments up from $18 to $52 billion

Source: http://www.globalphilanthropy.ca/

The Treasurer and the Board of Directors

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How does the Treasurer fit in?

Generally a member of the Board of Directors

Basic responsibilities closely linked to responsibilities of the Board of Directors

What is the role of the Board of Directors?

To oversee the organization's affairs within the framework of applicable laws and standards i.e. to provide **governance** to the organization

Governance:

Refers to the responsibility of the Board of Directors with respect to establishing and overseeing the long-term direction of the organization.

There can at times be a grey area – but we want to stay out of the weeds

Operations (day-to-day management):

What the organization's staff and volunteers do to run the organization and achieve its strategy and overarching mission.

Life Cycles and Governance Models

Life Stage	Birth	Development	Growth	Transformation
	Foundation Building	Focus on Mission, Vision, Values	Strategic Alliances and Partnerships	Innovation Maturity
Board Models	**Management**	**Traditional**	**Policy Board**	**Generative vs. Rubber Stamp**
	Founding	Sustaining	Corporate	Renewing or Ratifying

Board responsibilities

a) Setting the mission and strategic objectives & evaluating progress

b) Making sure the organization operates in a fiscally responsible manner and complies with all laws and regulations applying to it;

c) Selecting and evaluating the performance of CEO;

d) “Boundary Spanning”: bringing the concerns of the outside community into the organization; and (representing the organization to the community and constituencies;

e) Ensuring management operates organization as efficiently as possible and uses the best available systems, policies and administrative practices to do so;

f) Ensuring that the board itself functions as effectively as possible (e.g., finds best people to serve, provides adequate training for members, manages its meetings and committees well);

g) Ensuring necessary oversight and allocation of financial resources.

Source: “Improving Board Performance” by Vic Murray in The Philanthropist

(Volume13, No.4) http://www.thephilanthropist.ca/index.php/phil/article/download/161/161

Duties of the Board of Directors

Directors of both for profit and not-for-profit organizations have responsibilities which cannot be delegated

Most important is **FIDUCIARY DUTY** = the duty to act with a view to the best interests of the organizations at all times

A director is in a position of **TRUST**. They must:

- act honestly and in good faith
- be loyal to the interests of the corporation
- avoid any conflict of their duty and self-interest

Duties of the Board of Directors

As part of fiduciary duty, have to exercise **DUTY OF CARE**

- Make informed, independent decisions
- Exercise degree of skill and due diligence that would be expected of a reasonable prudent person in the circumstances
- Professionals, such as accountants or lawyers, may be held to a higher standard – must do their personal best with regard to their education and experience
- Directors of a charity may also be held to a higher standard – exercise the degree of skill and prudence expected of a reasonable business person caring for his or her personal affairs

Duties of the Board of Directors

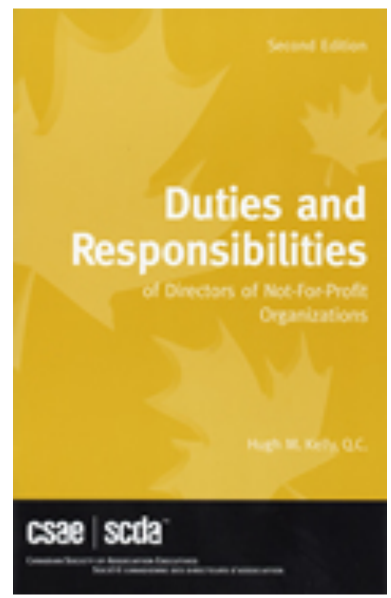
Other duties:

Duty of Knowledge – Page 15

Duty of Skill & Prudence – Page 18

Duty of Diligence - page 18

Duty to Avoid Conflicts of Interest – Page 22



Liabilities of Directors – Examples for Treasurers

Not Withholding Source Deductions from Salary and Remitting to Government

Abusive Gifting Tax Schemes – penalties, litigation

Non-Payment of Salaries to employees

Conflict of Interests of Directors

Entering Into Agreement with Proper Authorization

Negligence in Investing

Breach of Trust

Breach of Contract

Environmental Contamination

Resources for you to review

The Role of the Treasurer

A Treasurer's Responsibilities

A **Treasurer oversees and monitors financial performance** of the organization, supervising the organization's financial condition and report on it to the Board.

Key duties include:

- Budget is prepared and presented to the Board;
- Accounting records are maintained as required by law;
- Board receives financial information to be able to monitor the financial situation of the organization. Will generally manage, with the finance committee, the board's review of and action related to the board's financial responsibilities ;
- Where required, financial statements are audited and presented to the members;

Source: Board Source (2008)

A Treasurer's Responsibilities

Other responsibilities may include:

- Serving as the **chair of the finance and/or audit committee** ;
- **Understanding risks** and the organization's responses to them;
- Setting and reviewing **financial policies** ;
- Maintaining a system of **internal controls**;
- **Analyzing financial results** and performance of the organization;
- **Supervise the organizations financial condition** and report to the Board;
- Providing input into the organization's strategic plan;
- Approving **expenditures**;
- Preparing and **signing cheques**;
- Educating other board members about **how to read and understand financial information**;

A Conflicted Role?

Remember:

The primary function of a Board of Directors is to oversee, not manage, the organization

The Treasurer may be required to undertake management-type responsibilities AND oversee that function – leads to conflicting responsibilities and impairment of ability to provide objective oversight

Consider:

- Is there someone else who could fulfill one of the roles?
- Can you clearly define the roles in a written mandate?

Finance and Audit Committees

Finance Committee - assists in carrying out some or all of above functions

Audit Committee, on the other hand, has four main objectives:

1. To help ensure the **annual audit** is conducted in an efficient, cost-effective and objective manner.
2. To oversee the organization's **financial and control** systems.
3. To review and recommend to the board approval of the **annual financial statements**, including the selection of **appropriate accounting policies and practices**.
4. To recommend the **appointment of the external auditor** and the appropriate fee.

What are the skills I might need?

1. Have **experience working with financial information**, controls and budgeting
2. **Be impartial and able to clearly articulate financial information**: procedures, processes and explain the context as to why they matter (especially to other Board members)
3. Often have a **financial qualification** or relevant experience
4. Understanding of **financial accounting for not-for-profit organizations** can be useful
5. Ability to ensure **decisions are taken and followed-up**
6. **Be available** to be contacted for ad hoc advice

What types of questions might I get?

From the more basic:

How do I compare the budget to actual and why are there differences between the two?

What should we be spending our money on – how much is appropriate?

How much should we keep in reserves?

Have we got enough assets to fund our future projects?

How do I read the audited financial statements?

To more advanced:

Are the organization's policies and practices regarding gifts to and transactions with others in compliance with the Income Tax Act and CRA guidance?

Your value:

People look up to you as an expert in your field. You're helping to develop, maintain and strengthen good financial practices at your organization! That' s a big job.

Accounting & Financial Reporting

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Goal of this conversation

Accounting and financial reporting – what does this include?

How does accounting and financial reporting differ from a for-profit organization

What does accounting and financial reporting mean for an NPO?

Internal

- Accounting records that are required by law to be kept
- Financial plans and operating budgets

External – to fulfill statutory and compliance obligations

- Audited financial statements
- Compliance filings
- Other funding requirements

What does accounting and financial reporting mean for an NPO?

Audited financial statements

- Requirement for an external audit by an independent auditor dependent upon incorporation
  - Federal Audit Requirements – Canada Corporations Act
    - Requires an audit
    - Some relief – if all members agree, can appoint a director, officer or employee
  - Provincial – in Ontario, Corporations Act (Ontario)
    - Requires an audit, except where annual income <$100k and unanimous written consent of members
    - Often provided to donors/funders
  - Legal requirement are in the process of changing – new *Canada Not-For-Profit Corporations Act* and proposed changes to Ontario legislation – will amend the requirement for an audit for some organizations
  - Audited financial statements may be made available to public through annual report/website or upon request

What does accounting and financial reporting mean for an NPO?

Compliance filings

Federal Tax Filing Requirements	Registered Charity	Non-Profit Organizations
Incorporated	T3010 Charity Information Return	• T1044 NPO Information return (possibly) • T2 Corporation Income Tax Return
Unincorporated	T3010 Charity Information Return	T1044 NPO Information return

What does accounting and financial reporting mean for an NPO?

Other compliance filings include:

- Sales tax reporting and remittances
- Payroll source deductions
- Workplace Safety and Insurance Board premiums (WSIB)
- Employer Health Tax (EHT)

If management are completing these, consider requesting a certificate of compliance

What does accounting and financial reporting mean for an NPO?

Accounting and financial reporting associated with other funding requirements

Audited or unaudited: Special purpose reports, such as;

- Wage subsidy reports to comply with regional funding agreements
- Audit of a revenue and expenditures report for a specific program to comply with federal or provincial funding agreements

Responsibilities of a treasurer with respect to all of this will vary depending on the type of board and the size and complexity of the organization

Much of the work relating to these areas may be performed by staff. However, as the senior financial officer, the **treasurer will still maintain overall responsibility**

How does accounting and financial reporting differ from a for-profit organization?

- Existing standards for NPOs are set out in the CICA Handbook – 4400 series of standards
- Differ in some respects to those used in the for-profit sector.
- Main differences are:
  - **Presentation options** – use of fund accounting
  - **Option to use deferral or restricted fund method** of accounting for contributions
  - **Revenue recognition** for endowment, restricted or unrestricted contributions
  - Recognition and measurement of **contributed materials and services**
  - Presentation and disclosure of **controlled entities**
  - Presentation and disclosure of **related entities and related party transactions**
  - **Disclosure** of allocated expenses

How does accounting and financial reporting differ from a for-profit organization?

- Currently – same standards used by government and non-government NPOs = "blue book" (CICA Handbook including 4400 series)

- Based on recent decisions, will now be a divergence:
  - **Government NPOs** ("GNPO" - a government organization with counterparts outside the public sector , including schools, colleges, universities and hospitals must choose between:
    - Public sector accounting standards
    - Public sector accounting standards plus 4400 series (renumbered as 4200 series)

How does accounting and financial reporting differ from a for-profit organization?

Non-government NPOs must choose between

- New part III of the Handbook (based on private enterprise standards plus 4400)
- International Financial Reporting Standards (IFRS)

- For both government and private NPOs – have to make the change by the years beginning on or after **January 1, 2012**
- **See separate PwC publication on the key changes for both government and non-government NPOs**

How does accounting and financial reporting differ from a for-profit organization?

Non-government NPOs moving from current CICA Handbook to Part III

Most similar to standards currently in use

What are the key differences?

Accounting

- Financial instruments - Generally no longer options for classifying instruments – use mandatory default treatments
  - Quoted equities – at fair value-changes through statement of operations (AFS treatment is no longer an option)
- Capital assets may be measured at fair value on transition date

Disclosure

- Cash flow statements are mandatory – no option to say information available from other statements
- Government remittances – now requires disclosure of amounts outstanding
- Capital disclosures – eliminated as standard is not applicable

How does accounting and financial reporting differ from a for-profit organization?

Non-government NPOs moving from current CICA Handbook to IFRS:

- Reasons to select IFRS:
  - Part of a global organization adopting IFRS
  - Users who require IFRS – i.e. international funders
  - Organization in an industry with ‘for profit’ companies reporting with IFRS
- It is not expected that many NPO organizations will move to IFRS
- High level differences include:
  - Revenue recognition – no deferral method of accounting for retricted contributions
  - Requirement to consolidate all controlled entities
  - Significant increase to note disclosure requirements

How does accounting and financial reporting differ from a for-profit organization?

Government NPOs moving from current CICA Handbook to Public Sector accounting Standards (PSAS):

Can adopt either just PSAS, or PSAS plus new section 4200 specifically for NPOs

Key differences

- Financial statement presentation (if adopt only PSAS)
  - Changes in financial statement position classifications
  - Include budget information
- Financial instruments
- Retirement and post retirement benefits – amortize all actuarial gains and losses
- Intangibles – other than software, intangibles not recognized as assets

Legal developments: Information, not advice

Receipting Issues for Registered Charities

According to CRA 89% of registered charities had one or more issues with receipting

Largest CRA audit concern – especially abusive charity gifting tax scheme and fraudulent receipting.

Biggest problems

Not a "gift" – registered charities can only issue tax receipt for a gift

Mandatory Fields not Included on Receipts – make sure all are included

You don't get a receipt for some valuable transfers to charities – know when

Split receipting and advantages – you can't always get a receipt for what you give

Fair Market Value – It is not "the highest price", it is FMV.

Receipting Schemes – legal, ethical and reputational issues with involvement.

Source: http://

Some basic points on receipting

Receipts are valuable

Charities Don't Have to Issue Receipts

http://www.canadiancharitylaw.ca/index.php/blog/category/blog/category/receipting_by_charities/

Call CRA if you have questions **1-800-267-2384 (English)**

Or obtain professional advice from knowledgeable accountant or lawyer.

IF IN DOUBT, DON'T RECEIPT

What is a “Gift”?

Charities can only issue receipts for a “gift”.

A “gift” is a:

1) **Voluntary** – given of free will (not compelled, not court ordered, etc)

2) **Transfer** – from donor to charity/qualified donee (complete transfer)

3) **Property** – cash or gifts in kinds (not services)

4) **Donative Intent** on the part of the donor (donative intent – advantage must be less than 80% of amount unless Minister agrees)

Mandatory Elements of Receipts

For gifts of cash: (Regulation 3501 of the Income Tax Act)

A statement that it is an official receipt for income tax purposes

The name and address of the charity as on file with the CRA

The charity's registration number

The serial number of the receipt

The place or locality where the receipt was issued

The day or year the donation was received

The day on which the receipt was issued if it differs from the day of donation

The full name and address of the donor

The amount of the gift

The value and description of any advantage received by the donor (under proposed legislation)

The signature of an individual authorized by the charity to acknowledge donations, and

The name and Web site address of the Canadian Revenue Agency (http://www.cra.gc.ca/charities)

Additional Elements for Gifts in Kind

For non-cash gifts (gifts in kind), these additional elements:

The day on which the donation was received (if not already indicated)

A brief description of the property transferred to the charity

The name and address of the appraiser (if property was appraised), and

In place of the amount of the gift mentioned above, the deemed fair market value of the property (under proposed legislation)

Sample Official Donation Receipts

Canada Revenue Agency
www.cra.gc.ca

Français | Home | Contact Us | Help | Search | canada.gc.ca

Sample official donation receipts

Sample # 1 - Cash gift (no advantage)

Official Donation Receipt For Income Tax Purposes

Receipt # 0001

Charity name **Canadian charity address** **Charity BN/Registration #**

Date donation received: ______________

Donated by: ____________________
(First name, initial, last name)

Address: ____________________

Eligible amount of gift for tax purposes: ______________________________

Date receipt issued: ____________________

Location issued: ____________________

Authorized signature: ____________________

For information on all registered charities in Canada under the *Income Tax Act* please visit:

Canada Revenue Agency www.cra.gc.ca/charities

Don’t Issue a Receipt When…

You cannot determine the value of the donation or the benefit.

Donation of services (donated time, labour, skills) to charity or loans of property, use of a timeshare or lease of premises.

Donation is intended for another organization that is not a registered charity or qualified donee (“lending registration”).

Don't Issue a Receipt When…

Tuition (except IC 75-23 - private religious schools)

Business advertising expenses/sponsorship

Gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation) or pledges

Payment of basic fee for event (e.g. concert)

Payment for program (e.g. daycare)

Don’t Issue a Receipt When…

Membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceeds 80% of the value of the payment

Lottery tickets

Purchase of goods or services from charity

Donation for which the **fair market value** of the advantage or consideration provided to the donor **exceeds 80% of the value of the donation**

Don’t Issue a Receipt When…

Funds or gift in kind from another qualified donee (for example Canadian private foundation gifts or transfers funds to registered Canadian charitable organization).

Cannot determine the name of the true donor.

Gift directed to specific person or family unless charity has already decided that person or family is recipient of its charitable program and charity has full discretion to reallocate and person or family is arms-length from donor.

Split Receipting

New legislative idea – from 2002

Pre-2002 – if donor received any advantage, then no receipt

Now donors can receive some advantage eg. concerts, golf tournament, gala dinners, etc.

Charity must determine the eligible amount of that gift for receipting purposes in order to issue an official donation receipt

Eligible amount is gift minus advantage

http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf

Advantage is Broad

Possible advantages include:

Property (for example, cash, non-cash gifts)

The use of or enjoyment of property

The provision of services

Other benefits (for example, assumption of debt by donee, sponsorship)

Is There Donative Intent?

If advantage is:

- 80% or less of the fair market value of the donation, then a receipt may be issued for the difference

- greater than 80% of the value of the donation, no gift is deemed to have been made (no donative intent), and a receipt cannot be issued

Why is FMV Important?

For valuing gift in kind (non-cash) gift (“eligible amount of a gift”)

For valuing any advantages received

If you cannot determine fair market value of either gift or advantage then cannot issue receipt

Onus on charity to determine – major consequences for mistakes.

What is Fair Market Value?

"*The highest price*, expressed in dollars, that property would bring in an open and unrestricted *market*, between a *willing buyer and a willing seller* who are both *knowledgeable*, *informed*, and *prudent*, and who are *acting independently* of each other."

Gifts In Kind

Why accept gifts in kind?

Can your charity 1) use it or 2) easily sell it?

Gifts in kind can create significant legal and ethical issues

In many cases best to decline offer of gifts in kind

Appraisal and Gifts In Kind

If under only one gift under $1000 then someone affiliated from charity with sufficient knowledge may determine value.

If over $1000 then CRA recommends that professional appraisal by third party who is knowledgeable about specific marketplace and not associated with either charity or donor.

If appraisal include name and address of appraiser on the official donation receipt.

Appraisal and Gifts In Kind

May need more than one appraisal

Responsibility of charity to determine FMV

Many cases of courts not accepting exaggerated appraisals

Gifts under $1000 without valuation – still keep supporting documents.

Correcting or Replacing Receipts

To replace a lost receipt, a registered charity can issue a replacement, which must contain all the required information plus the serial number of the lost receipt. The replacement receipt should also state that it “cancels and replaces the lost receipt.” The charity's copy of the lost receipt should be kept and marked “cancelled”.

For a spoiled receipt, a registered charity can issue a new receipt but must keep the original copies (both the donor's and charity's) marked "cancelled”.

Receipting – Watch what you're signing off

False receipting is a problem:

100,000-135,000 donors reassessed since 2005.

The reassessed amount to date is about $290 million.

With questionable donations in some cases taxpayer has to show payment.

Source: http://www.globalphilanthropy.ca

Gifting – Remember who you are giving to

“Warning: If you donate to a gifting tax shelter, expect to be audited.”

Source: http://www.cra-arc.gc.ca/nwsrm/lrts/2010/l101223-eng.html

Other Top Compliance Issues

Failure to File T3010

Mistakes on the T3010

Acting Outside Legal Objects

Making a Gift to a Non-Qualified donee: not maintaining direction and control over funds

Fundraising costs and practice

Employment – withholding and remitting

Maintaining Adequate Books and Records

Failure to meet DQ

Political Activities

Unrelated Businesses

Transactions with Directors

Fundraising Ratio of Costs to Revenues

Ratio of Costs to Revenues over Fiscal Period	CRA Approach (Cost to Revenue
Under 35%	• *Unlikely* to generate questions or concerns.
35% to 70%	• The CRA will examine the *average ratio* over recent years to determine if there is a *trend* of high fundraising costs. The *higher the ratio*, the more likely it is that there will be concerns and a need for a more *detailed assessment of expenditures*.
Above 70%	• This level *will raise concerns* with the CRA. The charity must be able to provide an *explanation and rationale* for this level of expenditure to show that it is in compliance; *otherwise, it will not be acceptable*.

Source: http://www.globalphilanthropy.ca

Fundraising - Indicators of Concern

Sole-source fundraising contracts

Non-arm's length fundraising contracts

Fundraising initiatives that are **not well-documented**

- Fundraising merchandise purchases that are not at arm's length, **not at fair market value**, or not purchased to increase fundraising revenue

Most of the gross revenues for non-charitable parties

Commission-based fundraiser remuneration

- **Misrepresentations** in fundraising solicitations or in disclosures about fundraising or financial performance.

Source: http://www.globalphilanthropy.ca

2011 Federal Budget

Motion 559 House Standing Committee on Finance to study charitable incentives.

Publicly available list of qualified donees

Receipt rules apply to all qualified donees

Paragraph 149(1)(l) exemption from income tax

All qualified donees must maintain adequate books and records

RCAAA - Exclusivity of Purpose and Function, Undue Benefits, Public Access to Information Returns etc., receipting penalties

Safeguarding Charitable Assets through Good Governance and “ineligible individuals”

Recover Tax Assistance for returned gifts

Non Profits and Business/Profits

Can a Canadian non-profit (non-registered charity) earn a profit?

CRA's views on the subject:

http://www.canadiancharitylaw.ca/index.php/blog/comments/can_a_canadian_non-profit_earn_a_profit_cras_views_on_the_subject/

Paragraph 149(1)(l) exemption from income tax

"…a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;"

149(1)(l) broken down

- Exemption from income tax (not necessarily other taxes)

- For a club, society or association that (broad)

- In the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) (does not mean not registered charity but not common law definition of charity) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation ***or for any other purpose except profit***,

149(1)(l) broken down – slide 2

- no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof

- unless the proprietor, member or shareholder was a club, society or association the primary [now exclusive]purpose and function of which was the promotion of amateur athletics in Canada;”

Key Elements

- the organization **must not be a charity**;
- it must be organized and operated **exclusively for a purpose other than profit**; and
- its income cannot be payable to or made available for the benefit of its members.

Can NPO compete against for-profits?

Yes.

- 149(1)(l) does not restrict an organization from undertaking any particular type of activity, including commercial activity.

- In BBM, TCC noted: "the statutory language does not mandate a qualifying purpose but permits the organization to have any purpose or purposes other than the one disqualifying purpose of profit."

Can 149(1)(l) entity intentionally earn profit?

No

Even if profit if used to support 149(1)(l) entity?

- No

- Paragraph 149(1)(l) of the Act requires that an organization be organized and operated “exclusively” for “any other purpose except profit” in order to be exempt from tax under that provision.

- “exclusively” indicates that while an organization may have many purposes, none of those purposes may be to earn a profit.

Unintentional and Incidental Profit

The CRA accepts that a 149(1)(l) entity can earn a profit; otherwise, the tax exemption provided would be unnecessary. Earning a profit, in and of itself, does not prevent an organization from being a 149(1)(l) entity. However, the **profit should generally be <u>unanticipated and incidental</u> to the purpose or purposes of the organization**. For example, an organization might budget with the intention of not earning a profit, but ultimately find itself with a profit because of expenses that were less than anticipated or that were reasonably expected but not actually incurred. If the original budget was reasonable, the profit earned would not, in and of itself, cause the organization to cease to be a 149(1)(l) entity.

Incidental and unanticipated

- Whether an organization that has earned a profit qualifies for the tax exemption provided under paragraph 149(1)(l) of the Act is a question of fact.

- If the profit was incidental and unanticipated, the organization may still qualify as a 149(1)(l) entity.

- If organization planned to earn a profit when it entered into the contract-for example, if the contract specifically contemplated a “mark-up” the organization would not qualify for the tax exemption.

What is purpose of "profit"

- **It is always a question of fact** whether an organization is operating for the purpose of earning a profit.

- A "profit" is generally considered to be the (positive) difference between an organization's revenue and the expenses incurred to earn that revenue.

- CRA say that in determining the expenses incurred by an organization to earn revenue**, it is appropriate to take into account depreciation of capital assets as well as ongoing current expenses**.

What is purpose of "profit" – slide 2

- CRA says "cannot take into account the anticipated cost of future capital projects, because that cost cannot, by its nature, be an expense incurred to earn the current revenue."

- Is entity intentionally generating profit in order to finance future capital projects?

- If future capital project financing was allowed then any business where the members did not require income distributions could be organized and operated as a 149(1)(l) entity and accumulate wealth on a tax-free basis.

Excess Funds or Surpluses

- There are instances when a 149(1)(l) entity may have funds on hand in excess of its immediate operating requirements.

- While retaining excess funds may be evidence that an organization is operating with a profit purpose, generally, this will not in and of itself result in the organization failing to qualify as a 149(1)(l) entity.

- What is "unreasonably high" accumulated surplus?

Allowable excess funds

- may accumulate **members' contributions** over a period of years in order to finance a planned, future capital project.

- may earn reasonable investment income with respect to such accumulated funds, even though such income might otherwise be considered anticipated profit.

- However, if the excess funds were collected for the purpose of earning investment income rather than for the purpose of funding a specific capital project, then this would be a profit purpose and the organization would no longer be a 149(1)(l) entity.

Corporate Legislation

- Being NPO for provincial or federal corporate purposes is not the same at Income Tax Act

- **Criteria contained in the provincial "not-for-profit" legislation and in the federal Canada Not-for Profit Corporations Act are not the same** as the criteria required to qualify for the tax exemption provided by paragraph 149(1)(l) of the Act.

- Statutes may suggests that organizations incorporated under these statutes can operate with a profit purpose, as long as that profit is used by the organization to support its objectives.

Corporate Legislation

- CNCA provides that “no part of a corporation’s profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to a member….except in furtherance of its activities…”

- CRA’s view is that any profit purpose prevents an organization from being a 149(1)(l) entity.

- So organization can meet the requirements of federal or provincial “not-for-profit” incorporation legislation, but not qualify for the tax exemption under 149(1)(l) provided

Is their list of 149(1)(l) entities

No.

The CRA does not maintain a list of organizations that qualify for the exemption provided by paragraph 149(1)(l) of the Act. Unlike charities, these organizations are not required by the Act to register with the CRA.

Public Benefit

149(1)(l) entities are not registered charities and do not have to have public benefit.

Restructuring

May want to restructure operations and place certain activities in for-profit entity or even charity

General

- CRA increasingly auditing NPOs.

- Better to analyze and proactively deal with issues.

- ITA does not define “not-for-profit” or “non-profit” and may require legislative action to bring more clarity

- Creating ‘business like’ environment does not mean for profit

General

CRA's Tax Services Offices (TSOs) can rule that an organization is organized as a 149(1)(l) entity, however, it is a question of fact at a particular point in time whether the organization is operated as such.

Where do I go for help?

Blumberg Segal LLP – Globalphilanthropy.ca

Carter's Law – Risk Management Checklist

Charity Law Information Program – The Basic Information

CICA Handbook – 4400 series of standards

CICA – 20 Questions for Directors of not-for-profits (Hardcopy)

CICA – Accountants on Boards (Hardcopy)

CRA – Resources for Operating a Registered Charity in Canada

CSAE – Duties & Responsibilities of not-for-profit Directors (Hardcopy)

Muttart Foundation – Financial Responsibilities of NPO Directors

Resource Centre for Voluntary Organizations – Financial Responsibilities

Thank you

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