

NOTE ON NONPROFITS AND CHARITIES TAXATION

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It is important to distinguish between Nonprofit organizations (NPO) and Charities on the taxation dimension. Even if Charities could be viewed as a sub-group of Nonprofit organizations, they share some common Canadian income tax implications, but also have special tax treatment and requirements.

Definition of Nonprofit Organizations

Different terms are used to describe NPO, such as nonprofit, non-profit or not-for-profit organizations (NPO).

“A **not-for-profit organization** is an entity, normally without transferable ownership interests, organized and operated exclusively for social, educational, professional, religious, health, charitable or any other not-for-profit purpose. A not-for-profit organization’s members, contributors and other resource providers do not, in such capacity, receive any financial return directly from the organization.” (CPA Canada Handbook - Accounting, preface 3, July 2013)

Nonprofit organization is defined as “an organization formed for social, philanthropic or similar purposes, in which there is normally no transferable ownership interest and that does not carry on business with a view to distribution or use of any profits for the pecuniary gain of its members” (CICA, 1992, p.143).

Per the *Income Tax Act* (section 149(1)(l)), nonprofit organizations are “a club, society or association that, in the opinion of the Minister, was not a charity [...] 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”.

Per the *Excise Tax Act* (section 123), nonprofit organization “means a person (other than an individual, an estate, a trust, a charity, a public institution, a municipality or a government) that was organized and is operated solely for a purpose other than profit, no part of the income of which is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder is a club, a society or an association the primary purpose and function of which is the promotion of amateur athletics in Canada”.

Definition of Charities

The *Income Tax Act* (ITA) does not provide a very comprehensive description of a charity. Charity “means a charitable organization or charitable foundation” (ITA 149.1(1)). Essentially, charitable organizations are active charities and charitable foundations are funding organizations. Three types of registered charities exist in Canada: charitable organization, public foundation, private foundation (ITA 248(1)).

Canada Revenue Agency (CRA) describes a registered charity as an organization established and operated exclusively for charitable purposes (CRA, 2009a). CRA defines a couple of objects of charitable purposes based on the UK 1891 court case *Pemsel* adopted in Canada in 1999 by the Supreme Court of Canada in *Vancouver Society* court case. The courts have consistently reinforced the four categories of objects/purposes of a charity: relief of poverty, advancement of education, advancement of religion and any other purpose beneficial to the community not falling under the other three purposes (Bourgeois, 2002).

Innes and Boyle (2006) summarize three main elements require to qualify as a charitable organization. First, “all of the resources of the organization are devoted to the charitable activities that it carries on itself” (p.8). Second, “no part of the income of the organization may be payable to or otherwise available for the personal benefit of any proprietor, member, shareholder, trustee or settler of the organization” (p.9). Third, “a charitable organization must meet an arm’s length and absence of control test with respect to major donors” (p.9).

Charitable foundations are subdivided into public foundation and private foundation.

- public foundation
Public foundation means a foundation where more than 50% of its board operating at arm’s length and no *de facto* or *de jure* control by a person who has donated more than 50% of its capital (major donor) (Innes and Boyle, 2006; ITA 149.1(1)).
- private foundation
“Private foundation means a charitable foundation that is not a public foundation” (ITA 149.1(1)).

As funding organizations, charitable foundation doesn’t need to carry the charitable activities themselves. “Charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof, and that is not a charitable organization” (ITA 149.1(1)).

Tax Implications for Nonprofit Organizations

The first benefit of being a nonprofit organization may be a complete income tax exemption (ITA 149(1)(l)). Other potential preferential tax treatments for nonprofit organizations are related, for examples, to retail sales tax, goods and services tax, property tax and land transfer tax. An organization, who qualify as a section 149(1)(l) entity, will qualify for a complete income tax exemption under ITA Part I and other tax (Parts I.3, IV, IV.1, VI, VI.1) (ITA 181.1(3)(c) and 227(14)). The consequence for nonprofit organizations of a default in following CRA rules is the possibility of losing the income tax exemption and penalty (ITA 149(7.1)).

However, they must have to file some returns (see Table 1): a T2 (T2 Corporate Income Tax Return) return if they are a corporation, a T1044 (NPO Information Return) under certain conditions, a T3 (T3RET Trust Income Tax and Information Return) on property income and taxable capital gains or a T2052 (Registered Canadian Amateur Athletic Association (RCAAA) Return of Information).

When the main purpose of an organization (described in ITA 149(1)(l) (non-profit organization) is to provide dining, recreational or sporting facilities to its members (for example: curling or golf club), an inter vivos trust shall be deemed to have been created (ITA 149(5)). There is an exception to the exemption to tax investment income (property income and taxable capital gains) in excess of \$2,000 as part of a trust deemed to have been created (ITA 149(5)).

Table 1 - NPO Returns and Filing Period

	<u>NPO</u>	<u>Filing Period</u>
Returns	must file a T2 Corporate Income Tax Return (if incorporated) (ITA 150(1)(a)) (9 pages in T2 (21) version)	within 6 months after the end of taxation year
	must have to file a T1044 NPO Information Return (ITA 149(12)) (2 pages in T1044 (19) version)	within 6 months after the end of taxation year
	must have to file a T3RET Trust Income Tax Trust and Information Return (ITA 150(1)(c)) (5 pages in T3 RET (21) version)	within 90 days after the end of taxation year
	if Registered Canadian Amateur Athletic Association, no need to file a T1044 NPO Information Return but must have to file a T2052 RCAAA Return of Information (ITA 149(12)) (2 pages in T2052 (13) version)	within 6 months after the end of taxation year

Tax Implications for Charities

An organization, who qualify as a section 149.1(1) entity, will qualify for a complete income tax exemption under ITA Part I. Other potential preferential tax treatment for charities are related, for examples, to retail sales tax, goods and services tax, property tax and land transfer tax. Many benefits arise from being a registered charity (Bourgeois, 2002). The first benefit of being a registered charity is a complete income tax exemption (ITA 149(1)(f)). A second advantage, a major financial incentive, is the possibility to provide receipts to donors allowing individuals to claim tax credit for charitable donations (ITA 118.1; 118.1(3.1)) and allowing corporations to claim deductions in their taxable income calculations (ITA 110.1). A third advantage is the credibility added, even if the registration is not a certification by CRA.

An organization, who qualify as a section 149(1)(f) entity, will qualify for a complete income tax exemption under ITA Part I and other tax (Parts I.3, IV, IV.1, VI, VI.1) (ITA 181.1(3)(c) and 227(14)). Returns will need to be file (see Table 2). The consequence for registered charities of a default in following CRA rules is the possibility of revocation of their registration and losing the income tax privileges.

Table 2 - Registered Charity Returns and Filing Period

	<u>Registered charity</u>	<u>Filing Period</u>
Returns	<p>must file a T3010 Registered Charity Information Return (ITA 149.1(14)) (9 pages in T3010 (21) version)</p> <p>don't need to file a T2 Corporate Income Tax Return (ITA 150(1.1))</p>	<p>within 6 months after the end of taxation year</p>

Obligations of a Charity

The main obligations of a registered charity are to:

- devote its resources (funds, personnel, and property) to its charitable purposes and activities
- control and direct the use of all its resources (funds, personnel, and property)
- maintain its status as a legal entity
- keep adequate books and records
- meet its annual spending requirements (disbursement quota)
- make sure that official donation receipts are complete and accurate when issued
- file its annual form T3010, within six months of its fiscal period-end

Registration, Notice and Revocation of a Charity

Application for Charities for Registration

To qualify for registration as a charity, an organization must:

- be resident of Canada
- be established and operated for charitable purposes
- devote its resources (funds, personnel, and property) to charitable activities

Governing documents must be provided by a charity, as a corporation, a trust or unincorporated association, for registration (Bourgeois, 2002, p.319-320)

- organization's name
- organization's objects or purposes
- description of activities
- organization's structure (directors, officers, trustees)
- process for the replacement of directors and officers
- rules governing the administration of the funds
- clause stating that it will carry out its purpose without gain for its members and any profits or other accretions shall be used solely to promote its objects
- effective date of the document
- signatures of at least three persons

Forms: T2050 - Application to Register a Charity Under the Income Tax Act
T1189 - Application to Register a Canadian Amateur Athletic Association Under the Income Tax Act

Guides: T4063 - Guide Registering a Charity for Income Tax Purposes

Associated Charities

Charities that give more than half their income to other charities are designated as foundations. A charitable organization that makes substantial gifts to another charity can avoid being re-designated, if it is 'associated' with the other charity (ITA 149.1(7)).

Two scenarios:

- Charities where the relationship, is that of a national, provincial, or regional body (principal charity) to registered charities that are chapters, branches, sections, parishes, congregations, or divisions of the principal charity
- Two individual registered charities share the same charitable aim or activity
 - The relationship between the charities is ongoing
 - The relationship between the charities is temporary and based on a joint project

Form: T3011 - Registered Charities Application for Designation as Associated Charities

Change to Designation

Charities could ask to change their designation.

Form: T2095 - Registered Charities Application for Re-Designation

Revocation, Re-registration or Annulment

Registered charities could face many revocation of their registration.

- voluntary revocation
(The charity asks to have its registration revoked.)
- revocation for failure to file
(The charity's registration is revoked because it did not file its T3010 return on time.)
- revocation for cause
(The charity's registration is revoked because it did not comply with the requirements of registration.)

Form: T2046 - Tax Return Where Registration of a Charity is Revoked

Organizations that have had their charitable registration revoked for less than four years can apply to be re-registered. Organizations that have had their charitable registration revoked for more than four years cannot be re-registered. Instead their applications will be treated as new applications.

Form: T2050 - Application to Register a Charity Under the Income Tax Act

An annulment is when registration as a charity is cancelled as though it never existed.

Registration may be annulled for the following reasons:

- registration was granted in error
- The organization no longer qualifies as a registered charity because of a change in the law.

T1044 Form for Nonprofits

Since 1993, an organization (described in ITA 149(1)(l) (non-profit organization) and described in ITA 149(1)(e) (agricultural organizations, boards of trade or chambers of commerce)) has to file a T1044 return (Non-Profit Organization (NPO) Information Return) if:

- it received or is entitled to receive taxable dividends, interest, rentals or royalties totalling more than \$10,000 in the fiscal period;
- it owned assets valued at more than \$200,000 at the end of the immediately preceding fiscal period (determined in accordance with generally accepted accounting principles); or
- it had to file a NPO return for a previous period (ITA 149(12); CRA T1044(11)).

Tables 3 and 4 present the list of Canada Revenue Agency T1044 versions in recent years and Canada Revenue Agency T1044 content.

Table 5 - List of Canada Revenue Agency T3010 Information Return versions in recent years

	<u>T3010</u> (16)	<u>T3010</u> (17)	<u>T3010A</u> (18)	<u>T3010C</u> (19)	<u>T3010</u> (20)	<u>T3010</u> (21)			
For taxation years »»»»»»»»»»	2016	2017	2018	2019	2020	2021			
	<u>T3010A</u> (02)	<u>T3010A</u> (03)	<u>T3010A</u> (05)	<u>T3010B</u> (09)	<u>T3010-1</u>	<u>T3010</u> (13)	<u>T3010</u> (14)	<u>T3010</u> (15)	
For taxation years »»»»»»»»»»	2000 2001 2002	2003 2004	2005 2006 2007 2008	2009 2010	2011 2012	2013	2014	2015	

Table 6 - Canada Revenue Agency T3010 content

<u>Section</u>	<u>Description</u>	<u>Additional form</u>
Section A	Identification	Schedule 1 Foundations
Section B	Directors/trustees and like officials	T1235 Directors/Trustees Worksheet
Section C	Programs and general information	T1236 Qualified Donees Schedule 2 Activities outside Canada Schedule 3 Compensation Schedule 4 Confidential data Schedule 5 Non cash gifts
Section D	Financial information	Schedule 6 Detailed Financial Information
Section E	Certification	
Section F	Confidential data	
Schedule 1	Foundations	T2081 Excess Corporate Holdings Worksheet
Schedule 2	Activities outside Canada	
Schedule 3	Compensation	
Schedule 4	Confidential data	
Schedule 5	Non-cash gifts	
Schedule 6	Detailed financial information	

Source: CRA T3010 (21)

- Forms: TF725 - Registered Charity Basic Information Sheet
T3010 - Registered Charity Information Return
T1235 - Directors/Trustees and Like Officials Worksheet
RC232-WS - Director/Officer Worksheet and Ontario Corporations Information Act Annual Return
T1236 - Qualified Donees Worksheet / Amounts Provided to Other Organizations
T2081 - Excess Corporate Holdings Worksheet
T1240 - Registered Charity Adjustment Request
- Guides: T4033 - Guide Completing the Registered Charity Information Return

Taxation Issues

Some sensitive issues appear regarding charities and taxation, such as:

- business activities (related business rules)
- public policy dialogue and development activities (previously political activities)
- foreign activities

*** Non-Charitable Objects - Business Activities and Earned Income**

Bourgeois (2010b) mentioned three policy issues invoking business income regarding charities. First, the purpose of a registered charity is to carry out charitable activities, not business activities. This is why they could receive a tax exemption and could issue tax receipt for charitable donations. Second, there is risk factor associated with a business which may be in contradiction with the original charitable purpose. On the other hand, by diversifying the sources of revenue it will reduce the exposure of charities to risk. Third, a charity competing with regular businesses could be considered to have an unfair advantage due to their special tax status.

As part of the general requirements to maintain registration is the problematic rule that a charitable organization (ITA 149.1(2)) or public foundation (ITA 149.1(3)) may only carry on related business activities that accomplish or promote their charitable objectives, and a private foundation (ITA 149.1(4)) must not carry on any business activities whatsoever. The *Income Tax Act* does not really define a related or unrelated business, except to clarify an inclusion (CRA, 2003, CPS-019). The term related business is described as “businesses that are linked to a charity’s purpose and subordinate to that purpose” (CRA, 2003, CPS-019, par.17).

CRA (2003, CPS-019) identify four forms of linkage and provide some examples:

- 1) a usual and necessary concomitant of charitable programs with examples such as a museum opening a gift store, a hospital running a cafeteria and a church operating a religious bookstore,
- 2) an off-shoot of a charitable program with examples such as an heritage village selling flour and a symphony orchestra or church selling recordings of its performance,
- 3) a use of excess capacity with examples such as churches renting out their parking lots during the week and universities renting accommodation in their student residences during the summer, and
- 4) the sale of items that promote the charity or its objects with examples such as pens, cookies and T-shirts.

CRA (2003, CPS-019) identify four factors indicating subordination: 1) relative to the charity's operations as a whole, the business activity receives a minor portion of the charity's attention and resources, 2) the business is integrated into the charity's operations, rather than acting as a self-contained unit, 3) the organization's charitable goals continue to dominate its decision-making, and 4) the organization continues to operate for an exclusively charitable purposes by, among other things, permitting no element of private benefit to enter in its operations.

A related business is also "a business that is unrelated to the objects of the charity if substantially all persons employed by the charity in the carrying on of that business are not remunerated for that employment", or, in other words, a business runs substantially by volunteers (ITA 149.1(1)). The expression 'substantially all' is interpreted by CRA as meaning 90% (CRA, 2003, CPS-019, par.18). The expression 'carrying on' a business is interpreted by CRA as "a continuous or regular operation" (CRA, 2003, CPS-019, par.9). This is important because if a charity is not found to be 'carrying on' a commercial activity at all, then it would not matter if the activity was related or unrelated.

CRA (2003, CPS-019) considers fundraising events as business activities. However, "in practice, they are mostly not affected by the related business provisions because they do not amount to 'carrying on' a business" (CRA, 2003, CPS-019, par.12). Factors to divide fundraising event and carry on a business are: 1) "A fundraising event has clear 'start' and 'end' points" compare to continuous operations and 2) "A fundraising event of a particular type does not recur with such regularity and frequency that it amounts to carrying on a business" (CRA, 2003, CPS-019, par.12).

CRA (1999) interpretation provides some exception regarding community economic development related to 'training businesses', 'social businesses', thrift stores and 'community businesses'. The purpose of 'training businesses' "is to give on-the-job training in vocational skills or more general training in work skills that enhances a person's employability" (CRA, 1999, p.6). Their characteristics are: "classroom training occurs before or accompanies the on-the-job training; the participants are employed in the business for a limited period of time; the charity offers a job placement service to help graduates of the program find work in the labour force; the proportion of workers from the target population in relation to the total number of employees is no lower than 70%, but alternative ratios may be justifiable if considerable supervision is required; and revenues derived from the business do not substantially or consistently surpass the break-even point" (CRA, 1999, p.6).

"Social 'businesses' address the needs of the disabled and are recent equivalents of sheltered workshops" and "seek to provide employment on a permanent basis" (CRA, 1999, p.7). Their characteristics are: "the work is specifically structured to take into account the special needs of the workers; the workforce is comprised entirely of people who are physically, mentally, or developmentally challenged, with the exception of a few persons with specialized skills required for operating the business; the workers are involved in decision-making for the organization and sit on its board to foster their sense of competence and control over their lives; income derived from the business may pay the workers' wages, but the organization is subsidized, usually by government grants; and the organization provides training that is not only immediately job-related, but which enhances the general skills of its workers" (CRA, 1999, p.7).

CRA (1999, p.7) “recognize the operation of thrift stores and similar outlets as a charitable activity if the stores are located in sections of a community inhabited largely by the poor, if they sell donated goods at low-price, and if they operate on a break-even basis”. Another type of businesses, ‘community businesses’ or “agencies created by a community-based organization to address a social need”, “cannot be assumed to be charitable”, for example a nursing home (CRA, 1999, p.8).

In case of default to the rules, CRA have adopted a gradual penalty approach involving monetary sanctions, suspensions of privileges and revocation of status (CRA, 2007, CSP-B02): first, monetary sanctions of 5% on the gross unrelated business revenue earned in a fiscal period for charitable organization and public foundation or 5% on the gross business revenue earned in a fiscal period for private foundation; second, monetary sanctions increase to 100% and suspensions of tax-receipting privileges for a repeat infraction within five years; third, registered charity status revoked, if continuation to contravene.

Three issues regarding earned income for nonprofit organizations could be underlined. First, the organization should not be a “charity”. It should be noted that “an association may be considered to be a charity even if it is not a registered charity or if its designation as a registered charity has been revoked” (CRA, 2001, IT-496R, par.4).

Second, the organization should operate exclusively for a specific purpose. Interpretation based on tax case BBM Canada of what is acceptable or not for a nonprofit organization regarding the “exclusively” concept per CRA is changing and may add more complications to earn income. In a CRA (2009b) technical interpretation (in Bourgeois, 2010c), the tax authority interpretation of the law is that “while an organization may have many purposes, none of those purposes may be to earn a profit [...] even if it expects to use or actually uses that profit to support its non-for-profit objectives”. Therefore “CRA accepts that a 149(1)(l) entity can earn a profit [...]”. However, the profit should generally be unanticipated and incidental to the purpose or purposes of the organization”.

Third, no distribution or payment for the personal benefit of any proprietor, member or shareholder should occur. CRA (2001, IT-496R, par.11) specify that “certain types of payments made directly to members or indirectly for their benefit, will not, in and by themselves, disqualify an association from being tax-exempt”. Examples are “salaries, wages, fees or honorariums for services rendered to the association, provided the amounts paid are reasonable and no more than those paid in arm’s length situations for similar services” and some reimbursement of expenses (CRA, 2001, IT-496R, par.11).

*** Non-Charitable Objects - Public Policy Dialogue and Development Activities (previously only Political Activities)**

“Charitable activities include public policy dialogue and development activities (PPDDAs) that further a charitable purpose (ITA 149.1(1)). PPDDAs generally involve seeking to influence the laws, policies, or decision of a government, whether in Canada or a foreign country.” (CRA, 2019, CG-027)

In 2019, new guidance (CG-027) replaces Policy statement CPS-022.

“PPDDAs can be described as activities a charity carries on to participate in the public policy development process, or facilitate the public’s participation in that process.” (CRA, 2019, CG-027) “[...] public policy means the laws, policies, or decision of a government, in Canada or a foreign country. The Canada Revenue Agency (CRA) considers PPDDAs to include: providing information [...], research [...], disseminating opinions [...], advocacy [...], mobilizing others [...], representations [...], providing forums and convening discussions [...], communicating on social media [...].” (CRA, 2019, CG-027)

“The Income Tax Act prohibits a charity from devoting any part of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office.” (CRA, 2019, CG-027) Charities are still required to have exclusively charitable purposes and are still prohibited from undertaking activities that support or oppose a political party or candidate for public office.

Per CRA, a charity’s political activities must always be:

- non-partisan (never oppose or support any political party or candidate in any way)
- connected (or ancillary) (helps further a charity’s charitable purposes)
- subordinate (or incidental) (secondary to a charity’s charitable purposes)

CRA (2003, CPS-022, par 6.2) “presume an activity to be political if a charity:

1. explicitly communicates a call to political action (that is, encourages the public to contact an elected representative or public official and urge them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country)
2. explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if retention of the law, policy, or decision is being reconsidered by a government in Canada), opposed, or changed; or
3. explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.”

Table 7 presents examples of related political activities distinguishing charitable activities, permitted political activities and prohibited activities.

Table 7 - Example of Related Political activities

Charitable activities	<ul style="list-style-type: none"> - distributing the charity's research - distributing the research report to election candidates - publishing a research report online - presenting the research report to a Parliamentary Committee - giving an interview about the research report - distributing the research report to all Members of Parliament - participating in an international policy development working group - joining a government advisory panel to discuss policy changes
Permitted political activities	<ul style="list-style-type: none"> - buying a newspaper advertisement to pressure the government - organizing a march to Parliament Hill - organizing a conference to support the charity's opinion - hiring a communications specialist to arrange a media campaign - using a mail campaign to urge supporters to contact the government - organizing a rally on Parliament Hill
Prohibited activities	<ul style="list-style-type: none"> - supporting an election candidate in the charity's newsletter - distributing leaflets highlighting lack of government support for charity goals - preparing dinner for campaign organizers of a political party - inviting competing election candidates to speak at separate events

Source: CRA (2003) CPS-022

“Advocacy is demonstrated support for a cause or particular point of view. Advocacy is not necessarily a political activity, but it sometimes can be.” (CRA, 2003, CPS-022, appendix I)

Document: IC 87-1 Registered Charities - Ancillary and Incidental Political Activities

* Non-Charitable Objects - Foreign Activities

“Charities can carry on their activities both inside and outside Canada” (CRA, 2010, CG-002, par. 3).

Use of resources (CRA 2010, CG-002, par. 1):

- on its own activities
 - using its staff (including volunteers, directors, or employees)
 - through an intermediary, but must direct and control the use of its resources
- on gifts to qualified donees

Common types of intermediaries (CRA, 2010, CG-002, par. 6):

- agents
 - “an intermediary that agrees to carry out specific activities on a charity’s behalf.”
- joint venture participant
 - “an organization that a charity works with to carry out a charitable activity. The charity and one or more joint venture participants pool their resources in order to accomplish a commonly-agreed upon goal under the terms of a joint venture agreement.”
- co-operative participant
 - “an organization that works side-by-side with a registered charity to complete a charitable activity. Rather than pooling their resources and sharing responsibility for the project as a whole, as in a joint venture, the charity and other organization(s) instead each take on responsibility only for parts of the project.”
- contractors
 - “an organization or individual that a charity hires to provide goods and/or services.”

Steps for direction and control when using intermediaries (CRA, 2010, CG-002, par. 1.2):

- “create a written agreement with the intermediary, and implement its terms
- communicate a clear, complete, and detailed description of the activity to the intermediary
- monitor and supervise the activity
- provide clear, complete, and detailed instructions to the intermediary on an ongoing basis
- arrange for the intermediary to keep the charity’s funds separate from its own, and to keep separate books and records
- make periodic transfers of resources, based on demonstrated performance”

Disbursement Quota by Charities

The disbursement quota establishes the amount that a charity must expend annually on charitable activities. Per ITA 149.1(1), the rules state a required disbursement of 3.5% of the prescribed amount (average value of a charity’s property) (ITR3701) in respect of all or a portion of a property owned by the charity at any time in the 24 months immediately preceding taxation year that was not used directly in charitable activities or administration. It only applies if value is greater than \$100,000 for a charitable organization and \$25,000 for charitable foundations. No disbursement quota in any other case. Failure may lead to revocation of charitable status. On January 1, 2023 the required disbursement will increase to 5% for the portion of property not used in charitable activities or administration that exceeds \$1 million.

Tax Requirements for Donations

Per CRA (1997, IT-110R3, par. 3), a gift is “a voluntary transfer of property without valuable consideration. Generally, a gift is made if all three of the conditions listed below are satisfied:

- some property – usually cash – is transferred by a donor to a registered charity
- the transfer is voluntary; and
- the transfer is made without expectations of return. No benefit of any kind may be provided to the donor, except where the benefit is of nominal value.”

Sources and Types of Gifts

Source of gifts (Innes and Boyle, 2006)

- Individuals
- Corporations
- Partnerships

Different types of gifts (Innes and Boyle, 2006)

- Gifts of Cash
- Gifts of Property
 - Gifts of capital property
 - Gifts of cultural property
 - Gifts of ecological property
 - Gifts of shares
 - Gifts of stock options
 - Gifts of charitable annuities
 - Gifts of residual interests under wills
 - Gifts of residual interests under inter vivos trusts
 - Gifts of insurance policies
 - Gifts of RRSP (Registered Retirement Savings Plan)
 - Gifts of RRIF (Registered Retirement Income Fund)
 - Gifts of non-qualifying securities and loan-backs
 - Gifts of services
 - Gifts by artists (ITA 118.1(7); (7.1))

Gifts of publicly traded securities (unless donated to private foundations) and ecologically sensitive land may allow for an inclusion rate of 0 (instead of $\frac{1}{2}$) on disposition and capital gain.

Tax Credit and Deductions of Gifts

The *Income Tax Act* (ITA) does provide a non-refundable tax credit for the eligible amount of gifts made by individuals to qualified donees (ITA 118.1(3) and ITA 118.1(3.1) and allows a deduction in taxable income for the eligible amount of gifts made by corporations to qualified donees (ITA 110.1).

An official receipt form is “any printed form that a registered organization or other recipient of a gift has that is capable of being completed, or that originally was intended to be completed as an official receipt by it” (ITA Regulation 3500). (See Appendix B for official receipt content)

Qualified Donees

The qualified donees, who could issue official donation receipts for gifts and are eligible to receive gifts from registered charities, are (ITA 149.1(1)):

- registered low-cost housing corporations for the aged
- registered municipalities
- registered municipal or public bodies performing a function of government of Canada
- prescribed universities outside Canada (ITA Regulations Schedule VIII)
- registered charities
 - charitable organization
 - charitable foundation (public foundation and private foundation)
 - National arts service organizations (ITA 149.1(6.4))
- registered Canadian amateur athletic associations (RCAAA)
- Her Majesty in right of Canada, or a province
- the United Nations or an agency of the United Nations

Registered Journalism Organization (RJO)

(<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/business-tax-credits/canadian-journalism-labour-tax-credit/registered-journalism-organization.html>)

Since January 1, 2020, a qualified Canadian journalism organization (QCJO) (ITA 248(1); 125.6) may apply to the Minister of National Revenue to become a registered journalism organization (RJO), which is a qualified donee. An RJO is exempt from tax and can issue donation receipts for gifts that it receives. A registered charity can also make a gift to an RJO.

Definition of an RJO

A registered journalism organization (RJO) “means a qualifying journalism organization (as defined in subsection 149.1(1) that has applied to the Minister in prescribed form for registration, that has been registered and whose registration has not been revoked” (ITA 248(1))

Criteria to become an RJO

An RJO is a corporation or trust that meets the following conditions:

- it is a QCJO;
- it is constituted and operated exclusively for journalism-related purposes;
- any business activities it carries on are related to its purposes;
- its board of directors or trustees operate at arm’s length from each other;
- it is controlled, either directly or indirectly in any manner whatsoever, by a person or group of persons that do not deal with each other at arm’s length;
- generally, in anyone taxation year, it cannot accept gifts from any one source that represent more than 20% of its total revenues (including donations); and
- no part of its income is payable to, or otherwise available for the personal benefit of, a proprietor, member, shareholder, director, trustee, settlor or like individual.

Obligations of an RJO

An RJO is required to comply with its other obligations as a qualified donee under the ITA. This includes:

- ensuring that it, at all times, meets the requirements for registration;
- keeping reliable and complete books and records, and providing them to the CRA upon request
- issuing complete and accurate donation receipts; and
- filing an annual information return and public information return (ITA 149.1(14.1))

Apply for RJO status

A QCJO may apply to the Minister of National Revenue for registration as an RJO using form T624, Application to Register a Journalism Organization under the Income Tax Act.

Revoking RJO registration

Where an RJO no longer meets the requirements for registration as a qualified donee, the Minister of National Revenue may revoke its registration.

Registered Journalism Organization Information Return

Table 7 presents the list of Canada Revenue Agency T1000-1 content.

Forms: T1000-1 - Registered Journalism Organization Information Return

Table 7 - Canada Revenue Agency T1000-1 content

<u>Section</u>	<u>Description</u>
Section A	Identification
Section B	Directors/trustees
Section C	Programs and general information
Section D	Financial information
Section E	Certification
Section F	Confidential data
Schedule 1	Compensation

Source: CRA T1000-1

GST/HST Implications for Nonprofits and Charities

The Goods and Services Tax (GST) is a tax that applies to most supplies of goods and services made in Canada. Participating provinces harmonized their provincial sales tax with the GST to implement the Harmonized Sales Tax (HST) in those provinces.

Public Service Body

A public service body (PSB) means a charity, non-profit organization, municipality, university, public college, school authority, or hospital authority.

Exemption regarding registration for public service body if taxable supplies of less than \$50,000 per year (instead of \$30,000).

Public Service Bodies' Rebate

The public service bodies's rebate of the GST or the federal part of the HST paid or payable on eligible purchases and expenses if you are any of the following:

- a charity (For example, a church is considered a public service body.)
- a qualifying non-profit organization (Generally, a non-profit organizations is a qualifying non-profit organization for a fiscal year if its percentage of government funding for the fiscal year, or for the previous two fiscal years, is a least 40% of its total revenue.)
- a selected public service body (e.g. municipality, university, hospital)

In general the rebate for charities and qualifying NPO is 50% of the GST paid on eligible purchases and expenses, of the federal part of the HST paid. Provincial part (%) of the HST varies depending on participating provinces. PSB activity may change the perecentage.

No need to be registered for the GST/HST to claim the rebate.

Supplies and Input Tax Credit

<u>Taxable supplies</u>	<u>Zero-rated supplies</u>	<u>Exempt supplies</u>
You charge the GST/HST at the regular rate.	You charge the GST/HST, but a 0% rate.	You do not charge the GST/HST.
You can claim input tax credit (ITC).	You can claim input tax credit (ITC).	You cannot claim input tax credit (ITC).

- Guides: RC4081 - GST/HST Information for Non-Profit Organizations
 RC4082 - GST/HST Information for Charities
 RC4034 - GST/HST Public Service Bodies' Rebate
- Forms: GST66 - Application of GST/HST Public Service Bodies' Rebate
 GST31 - Application by a Public Service Body to Have Branches or Divisions Designated as Eligible Small Supplier Divisions
 GST32 - Application to Deem One Unincorporated Organization to be a Branch of Another Unincorporated Organization
 GST523-1 - Non-Profit Organizations - Government Funding

References

- Bourgeois, D.J. (2002). *The Law of Charitable and Not-for-Profit Organizations*, Third ed., Markham: LexisNexis Butterworths.
- Bourgeois, D.J. (2010a). “Business activities – Raising revenue through business activities without violating legal principles”, *Charity Law Bulletin*, no 196, February 25, 3p.
- Bourgeois, D.J. (2010b). “Business activities – Raising revenue through business activities without violating legal principles: Part 2”, *Charity Law Bulletin*, no 200, March 30, 5p.
- Bourgeois, D.J. (2010c). “Business activities – Raising revenue through business activities without violating legal principles: Part 3”, *Charity Law Bulletin*, no 204, April 27, 5p.
- Carter, T.S. and Man, T.L.M. (2008). *Canadian Registered Charities: Business activities and social enterprise - Thinking outside the box*, National Centre on Philanthropy and the Law Annual Conference, October 24, 51p.
- Carter, T.S. and Man, T.L.M. (2009). *Business activities and social enterprise: Toward a new paradigm*, Canadian Bar Association/Ontario Bar Association 2009 National Charity Law Symposium, May 7, 51p.
- CPA Canada. *CPA Canada Handbook*, Toronto, Chartered Professional Accountants Canada.
- CICA (1992). *Terminology for Accountants*, 4th edition, Toronto, Canadian Institute of Chartered Accountants.
- CRA (Canada Revenue Agency) (1990). *IT83R3 - Non-profit Organizations - Taxation of Income from Property*, October 31.
- CRA (Canada Revenue Agency) (1997). *IT110R3 - Gifts and Official Donation Receipts*, June 20.
- CRA (Canada Revenue Agency) (1999). *Registered Charities: Community Economic Development Programs*, RC4143.
- CRA (Canada Revenue Agency) (2001). *IT-496R - Non-profit organizations*, August 2.
- CRA (Canada Revenue Agency) (2003). *What is a Related Business?*, CPS-019, March 31.
- CRA (Canada Revenue Agency) (2003). *Political Activities*, CPS-022, September 2.
- CRA (Canada Revenue Agency) (2007). *CSP-B02*, June 14,
- CRA (Canada Revenue Agency) (2008). *Small and Rural Charities: Making a Difference for Canadians*.
- CRA (Canada Revenue Agency) (2009a). *Registered charity vs. non-profit organization*, April 22, online: <<http://www.cra-arc.gc.ca/tx/chrts/pplyng/rgstrtn/rght-eng.html>>.
- CRA (Canada Revenue Agency) (2009b). *Technical Interpretation 2009-0337311E5*, November 5.
- CRA (Canada Revenue Agency) (2010). *Canadian Registered Charities Carrying Out Activities Outside Canada*, CG-002, July 8.
- CRA (Canada Revenue Agency) (2019). *Public Policy Dialogue and Development Activities by Charities*, CG-027, January 21.
- Drache, A.B.C. (1998). “Charities, Non-Profits, and Business Activities”, *1997 Conference Report*, Toronto: Canadian Tax Foundation, p.30:1-12.
- *ITA - Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (thereafter ITA).
- Innes, W.I. and Boyle, P.J. (2007). *Charities, Non-Profits and Philanthropy Under the Income Tax Act*, 1st ed. Toronto: CCH: Fraser Milner Casgrain LLP.
- (Pensel) *Commissioners for Special Purposes of the Income Tax v. Pensel* [1891] A.C., 531.
- (Vancouver Society) *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue* [1999] 1 S.C.R. 10.

Appendix A
Exemptions from Part I of the Income Tax Act (ITA)

ITA section	Nature of organization
149(1)(c)	Municipal authorities
149(1)(d)	Corporations, commission or association owned by the Crown
149(1)(d.1)	Corporations 90% owned by the Crown
149(1)(d.2)	Wholly-owned corporations owned by the Crown (d)
149(1)(d.3)	90% owned-corporations owned by the Crown (d or d.2)
149(1)(d.4)	Combined ownership (d to d.3)
149(1)(d.5)	Income within boundaries of entities (Municipal corporation)
149(1)(d.6)	Subsidiaries of municipal corporations
149(1)(e)	Certain organizations (agricultural organization, board of trade, chamber of commerce)
149(1)(f)	Registered charities
149(1)(g)	Registered Canadian amateur athletic association (RCAAA)
149(1)(h)	Registered journalism organizations
149(1)(h.1)	Association of Universities and Colleges of Canada
149(1)(i)	Certain housing corporations (low-cost housing accommodation for the aged)
149(1)(j)	Non-profit corporations for scientific research and experimental development
149(1)(k)	Labour organizations, society, benevolent, fraternal benefit society, order
149(1)(l)	Non-profit organizations (club, society, association - for social welfare, civic improvement, pleasure or recreation, for any other purpose except profit)
149(1)(m)	Mutual insurance corporations that received its premiums wholly from the insurance of churches, schools or other charitable organizations
149(1)(n)	Housing companies (limited-dividend housing company)
149(1)(s.2)	Cemetery care trust
149(1)(t)	Farmers' and fishermen's insurer
149(1)(v)	Amateur Athlete trust
149(1)(z)	Qualifying environmental trust
149(1)(z.1)	Environmental Quality Act trust

ITA section	Nature of organization
149(1)(z.2)	Nuclear Waste Fuel Act trust
<i>(149(1)(a, b))</i>	<i>(Employees of a country other than Canada and their family)</i>
<i>(149(1)(o.1, o.2, o.3))</i>	<i>(Corporations (pension, SBIC - prescribed small business investment (ITR5100)))</i>
<i>(149(1)(o, o.1, o.2, o.4, p, q, q.1, r, s, s.1, s.2, u, u.1, u.2, u.3, w, x))</i>	<i>(Trusts (pension, master, RSUBP - registered supplementary unemployment benefit plan, RCA, RRSP - registered retirement savings plan, DPSP - deferred profit sharing plan, eligible funeral arrangement, cemetery care trust, RESP -registered education savings plan, RDSP - registered disability savings plan, TFSA - tax free savings account , PRPP - pooled registered pension plan, trusts to provide compensation, RRIF - registered retirement income funds, trust to provide vacation pay)</i>

Appendix B
Content of official gift receipts for Income Tax Act (ITA)

Every official receipt shall include (ITA Regulations 3501):

- a statement that it is an official receipt for income tax purposes
- the name and address in Canada of the organization
- the registration number assigned
- the serial number of the receipt
- the place of locality where the receipt was issued
- where the gift is a cash gift, the date on which or the year during which the gift was received
- where the gift is a property other than cash
 - the date on which the gift was received
 - a brief description of the property
 - the name and address of the appraiser of the property if an appraisal is done
- the date on which the gift was received
- the name and address of the donor including, in the case of an individual, the individual's first name and initial
- the amount that is
 - the amount of a cash gift, or
 - if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made
- a description of the advantage, if any, in respect of the gift and the amount of that advantage
- the eligible amount of the gift
- the signature of a responsible individual who has been authorized by the organization to acknowledge gifts
- the name and internet website of the Canada Revenue Agency