



The Charities Directorate – Guidance on Fundraising By Registered Charities

Association of Fundraising Professionals – Banff Compass – May 29 – June 1, 2011

 

Today's presentation

1. Background
2. Fundraising guidance overview
 - Scope
 - When is fundraising unacceptable
 - Considerations in assessing fundraising
 - Allocation of fundraising related expenses
3. Post implementation review
 - Issues and proposals

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Fundraising Guidance Background

- The guidelines were developed in order to:
 - Promote consistency in how CRA officials interpret and apply legislation when dealing with fundraising
 - Respond to requests for clarification about how fundraising expenses are reported by charities
 - Respond to requests for greater transparency, and enable charities to better understand the Charities Directorate's expectations when they make decisions about fundraising.
- Final product was the result of the most extensive consultations with the sector on a policy to date.

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Fundraising Guidance Background

- The Charities Directorate released new guidance on fundraising on June 11, 2009.
- In short, the guidelines clarify the Charities Directorate's expectations concerning how charities should manage fundraising in order to remain compliant with the *Income Tax Act*.
- The CRA committed to monitor implementation and review after an introductory period, and enhance guidance if required.

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What issues does the guidance address?

- Five key elements:
 - Definition of terms – what is fundraising?
 - Outlines when fundraising is unacceptable
 - Guidance for reporting expenses – how to allocate between fundraising and other expenditures
 - Provides a tool for high level assessments of fundraising activities based on cost / revenue ratio
 - Promotes best practices

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When is fundraising unacceptable – illegal or contrary to public policy

- Illegal fundraising includes fundraising that is criminally fraudulent, or violates federal or provincial statutes regarding fundraising.
- Fundraising can be contrary to public policy if it results in incontestable harm to the public interest.
- This could include misrepresentation to the public about whether the donated amounts go to the charity or to pay the fundraising company collecting them.

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When is fundraising unacceptable – fundraising as a collateral purpose

- Fundraising cannot be a purpose for a charity, but merely an activity that supports its purposes.
- The guidance states that one indicator that fundraising is a purpose occurs
“when more of a charity’s time, effort, and other resources are devoted to its fundraising rather than to carrying out its broader charitable purposes”
- Has fundraising taken on a life of its own, or does it only serve the charity’s charitable purposes?

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When is fundraising unacceptable – more than incidental private benefit

- Any private benefit resulting from fundraising activities (e.g. the purchase of merchandise for use in a fundraising activity) is only acceptable as an incidental and proportionate by-product of a charity’s activities.
- Incidental and proportionate means the gain to individuals is not excessive relative to the benefit to the public.
- Private benefit must also be necessary to be considered incidental.

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When is fundraising unacceptable – deceptive fundraising

- Registered charities must not misrepresent:
 - Which charity will receive a donation
 - Geographic area in which the charity operates
 - Amount and type of work it conducts
 - Percentage of funds raised that will go to charitable cause

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Assessing Fundraising: Key Considerations

- The charity's fundraising ratio of costs to revenues.
- The relative public benefit (charitable expenditures vs. fundraising expenditures) is an indicator of possible collateral purpose.
- Payments of more than fair market value for goods or services, or unnecessary purchases are indicators of excessive private benefit.

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Assessing fundraising – Considerations: the fundraising ratio

Ratio of cost to revenue	CRA Approach
Under 35%	Unlikely to generate questions or concerns.
35% and above	The CRA will examine the average ratio over recent years - the higher the ratio, the more likely the CRA will conduct a more detailed assessment.
Above 70%	This level will raise concerns with the CRA. The charity must be able to provide an explanation and rationale.

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The Fundraising Ratio

- Does the CRA consider other factors when looking at a charity's fundraising ratio of costs to revenue?
- Yes –other factors will be taken into account, such as:
 - The size of charity
 - Whether it serves less well-known or popular causes
 - Is the charity carrying out a donor development drive?

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What practices decrease the risk of unacceptable fundraising activities?

- Best practices include the following:
 - Research and plan suitable fundraising activities for the charity's goals
 - Manage and supervise the fundraising activities as they are carried out
 - Make use of volunteer time, services, or resources
 - Evaluate the effectiveness of the fundraising
 - Disclose fundraising costs, revenues, and practices to the public

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What practices might cause concern with the CRA?

- A charity should avoid areas of concern such as:
 - Use of commission based fundraising, or payment to a fundraiser based on amount or number of donations
 - Failure to document completely a charity's fundraising activities
 - Devoting more resources to fundraising than to charitable program activities
 - Misrepresenting the organization in fundraising solicitations, or in disclosures about fundraising or financial performance

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Allocating expenditures

- On its Form T3010, *Registered Charity Information Return*, a charity must report as fundraising any activity that includes, relates to, or is part of a solicitation of support.
- Unless the charity can show the activity would have been undertaken whether or not it included the solicitation of support through applying the:
 - Substantially All Test
 - Four-Part Test
- If a charity fails the Substantially All and Four-Part tests, the Exception may still apply.

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Substantially All test

- Does 90% or more of the activity further a purpose other than fundraising?
- Must consider prominence of the fundraising component.
- If answer is “yes”, no expenses need be reported as fundraising as it is an incidental solicitation (i.e. the presumption is that the expenditure would have occurred regardless of the solicitation).

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Four-Part test

- Can the charity answer “no” to the following four questions?
 1. Was the main objective of the activity fundraising?
 2. Did the activity include ongoing or repeated requests, gift incentives, donor premiums, or other fundraising merchandise?
 3. Was the audience selected because of their ability to give?
 4. Was commission based remuneration or compensation derived from the number or amount of donations?
- If the answer to all questions is “no”, then the charity can pro-rate the expenses between fundraising and other categories.

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The Exception

- An activity fails both tests, but the activity still:
 - directly furthers one of the charity’ s purposes
 - reaches a significant portion of the charity’ s stakeholders
 - clearly exhibits greater emphasis on helping beneficiaries than on obtaining financial support
- The Exception will apply, and the charity may pro-rate its expenditures.

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Fundraising guidance implementation review

- Post-implementation review of fundraising guidance is underway.
- Since the release of the guidance, some issues have been identified, such as:
 - How important is the fundraising ratio?
 - When should a charity not fundraise?
 - What happens to the fundraising ratio when a donor's gift arrives via another charity?
 - Can the allocation model for expenditures be simplified?
 - Lotteries exemption – can this be clarified?
 - Sponsorship revenue – is this included?
 - Why two documents?

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How critical is the fundraising ratio?

- The fundraising ratio is intended as an indicator, to allow for a very general and simple assessment. It tells charities whether the CRA is likely to ask questions about a charity's fundraising practices.
- The vast majority of small charities will fall within the under 35% ratio and will know right away that they don't need to delve further into the details of the policy.
- A high ratio of expenses to revenues is an indicator that a charity may be operating for a non-charitable collateral purpose and / or providing more than incidental private benefit.

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When should a charity not fundraise?

- Fundraising should only be to fulfill an identified charitable need.
- If a charity has sufficient resources on hand to carry out its activities for the foreseeable future, it calls into question whether the charity needs to increase fundraising further.
- Fundraising should not be carried out for distant and vague future needs, or the fundraising may be deemed a collateral purpose.

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What happens to the ratio when gifts arrive via another charity?

- Some charities may expend considerable resources on a solicitation of support to a high-value donor, who then gives via his or her private foundation or another charity.
- On the Annual Information Return, the money appears as a gift from another charity, and does not enter the calculation of the fundraising ratio.
- The ratio is a general assessment tool only.

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What happens to the ratio when gifts arrive via another charity?

- The ratio formula can also benefit charities – for example, all receipted donations reported on line 4500 are included as fundraising revenue, even if the gifts are unrelated to a fundraising initiative.
- On balance, including revenues from other charities would greatly reduce its value as an assessment of fundraising performance.
- The guidance emphasizes the fundraising ratio's role as a "first step" in deciding whether more questions need to be asked.

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Simplification of allocation procedures

- The current allocation model requires as many as three main steps, and includes multiple sub-steps.
- The Four Part test and Exception for "mixed" activities have some overlap in their application.
- Consideration being given to simplified model that would eliminate the four part test, while still allowing pro-rating expenses related to fundraising activity where reasonable.

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Post implementation: Other issues

- Lotteries: provinces allow relatively high cost to revenue ratios (70% or higher), which we will consider when assessing a charity's fundraising; charities must still comply with ITA restrictions on collateral purposes and related business.
- How should we report sponsorship revenue: this is fundraising revenue.
- Why is the guidance divided into two documents? they are being merged into one.

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For more information

Charities Directorate
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