

decision with regards to the Organization. As [REDACTED] and the Organization are separate persons as defined in the Income Tax Act¹, any (re)assessment on one does not bear any weight on the potential (re)assessments of the other.

Failure to be constituted and operated for exclusively charitable purposes

The audit identified two non-qualified investments in the form of loans to Carrera Management Corporation (“Carrera”) and to Kerfoot WFC Holdings Ltd (“WFC”). During our review, it was noted that interest had not been collected on the Carrera loan and it was collected every few years on the WFC loan. Because the interest was not regularly collected within the timeframe stated in paragraph 189(1)(b) of the Act, the uncollected interest income was made available to and benefited parties that do not deal the Organization at arm’s length.

Organization’s Response

The initial response provided indicated that all accrued interest up to April 30, 2021, on both loans have been fully collected. Moving forward, all interest due from Carrera and WFC will be collected on a quarterly basis.

The second response indicated that the loan documents were reviewed by the previous auditor during the previous audit of the Organization from 2003 to 2009. After the review, the Organization was provided a letter stating it was in full compliance with its legislative and common law requirements.

Our Response

Regarding the initial response, although accrued interest up to April 30, 2021, has been collected, it does not negate the fact that interest was never collected from the inception of the Carrera loan in 2011 until it was noted in our administrative fairness letter dated May 12, 2021. Likewise, the steps taken does not negate the fact that interest accrued on the WFC loan was only collected every three years.

Regarding the second response, although the loan documentation was reviewed by the previous auditor, the letter that was issued only pertained to the period of 2003 to 2009, as indicated by the subject line of the letter. As a result, the statement that the Organization was in compliance only applied to the period of 2003 to 2009.

As such, neither the steps taken, nor the argument that the loans were previously reviewed change our position that unacceptable private benefits have been conferred upon two non-arm’s length parties with regard to the outstanding loan balances amounting to over \$42 million and interest receivable of over \$4 million, and the

Organization has not been operating exclusively for charitable purposes as required by the definition of a charitable foundation in subsection 149.1(1) of the Act. As a result, the

¹ Unless otherwise stated, all references to a statute herein are the *Income Tax Act* (Canada), R.S.C.1985 (5th sup.), c.1, as amended (the “Act”)



May 12, 2022

REGISTERED MAIL

Loyalty Foundation
[REDACTED]

BN: 89917 2803 RR0001
File #: 3022583

Dear [REDACTED]

Subject: Notice of intention to revoke

We are writing with respect to our letter dated May 13, 2021 (copy enclosed), in which Loyalty Foundation (the "Organization") was invited to respond to the findings of the audit conducted by the Canada Revenue Agency ("CRA") for the period from December 1, 2015, to November 30, 2018. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated May 25, 2021 ("initial response"), and June 23, 2021 ("second response"). Your replies have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained below.

Although steps have been taken subsequent to the auditor's site visit to attempt to address the deficiencies that occurred during the audit period moving forward, they do not negate the fact that serious deficiencies occurred and are the basis for our position.

In your second response, you pose the question of whether the CRA's Charities Directorate's (the "Directorate") position is inconsistent with the publicly announced policy found at canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidelines-applying-sanctions.html (the "publication"). This publication discusses the Directorate's general approach prior to revoking a charity's registration. Although your second response references the general approach that is laid out in our publication, it does not include the fact that the publication also provides guidelines in cases of serious non-compliance. It is our position that the deficiencies that occurred during the audit period amount to serious non-compliance. The publication states that: "in serious cases of non-compliance, the Directorate is prepared to move directly to a sanction or revocation."

Also in your second response, you indicate that the Minister of Revenue has proposed to deny [REDACTED]'s charitable donation tax credit for a \$6 million donation he made to the Organization in 2014, and that should be a factor in determining the Minister's

decision with regards to the Organization. As [REDACTED] and the Organization are separate persons as defined in the Income Tax Act¹, any (re)assessment on one does not bear any weight on the potential (re)assessments of the other.

Failure to be constituted and operated for exclusively charitable purposes

The audit identified two non-qualified investments in the form of loans to Carrera Management Corporation (“Carrera”) and to Kerfoot WFC Holdings Ltd (“WFC”). During our review, it was noted that interest had not been collected on the Carrera loan and it was collected every few years on the WFC loan. Because the interest was not regularly collected within the timeframe stated in paragraph 189(1)(b) of the Act, the uncollected interest income was made available to and benefited parties that do not deal the Organization at arm’s length.

Organization’s Response

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Our Response

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Regarding the second response, although the loan documentation was reviewed by the previous auditor, the letter that was issued only pertained to the period of 2003 to 2009, as indicated by the subject line of the letter. As a result, the statement that the Organization was in compliance only applied to the period of 2003 to 2009.

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CRA is of the view that the Organization should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

Disbursement Quota

The audit found that the Organization did not expend any funds on charitable activities for its fiscal periods ending November 30, 2016, to November 30, 2018, with the exception of one gift to a qualified donee of \$5,000 in 2018. During the audit period of December 1, 2015, to November 30, 2018, the Organization had a combined disbursement quota shortfall of over \$5 million.

Organization's Response

The Organization's response is that its disbursement quota ("DQ") in 2019 was \$1.9 million and in 2020 was \$2 million. It made qualifying expenditures during the year ending November 30, 2020, of \$3 million, thereby leaving a total DQ shortfall of \$6 million since the Organization's 2016 year end. In addition, it was stated that in the Organization's 2021 year, it has made \$250,000 of qualifying expenditures to date, and proposes to make up the shortfall noted by June 24, 2021.

The Organization has entered into a funding agreement with the Canada Soccer Association, and is committed to donating \$6 million in quarterly payments of \$250,000 with the first donation on February 28, 2021.

Our Response

Although the Organization is able to "catch up" on their cumulative DQ shortfall which started from their 2016 year end, it does not negate the fact that the Organization has not been compliant since 2016. The calculated shortfalls are neither minor, nor due to calculation errors or oversights; they are due to the fact that the Organization failed to make any qualifying expenditures during its 2016 to 2018 taxation years except for the \$5,000 gift made in 2018.

Subsection 149.1(20) of the Act provides a reprieve for taxpayers as it recognizes that sometimes whether due to calculation errors or other circumstances, private foundations may end up with a disbursement quota shortfall during the year. The Act allows for shortfalls to be met by applying excesses from the previous five taxation years or its immediately subsequent taxation year. The Organization's cumulative shortfall is further exacerbated by the fact that even during our audit, which began in August of 2019, the Organization did not fully address the shortfall during its 2019 taxation year by making qualifying expenditures to have sufficient DQ excesses to draw on.

Although the Organization purports to have the capacity to make up for the cumulative DQ shortfall of \$6 million with the proposed actions to address the shortfalls that began during the Organization's 2016 year end, this does not change our position that the inactions and shortfalls identified by the audit are significant and demonstrate non-compliance of a serious nature.

Books and Records

Based on our review, we were not able to reconcile the Organization's financial statements to its T3010 for 2018 in the category of accounts receivable. In addition, the audit found numerous deficiencies with the Organization's corporate records. Specifically, there were no minutes of annual general meetings or resolutions in lieu of meetings for the entire audit period, nor were there any director meeting minutes for the entire audit period.

Organization's Response

The Organization's response was that going forward, they will hold quarterly Board meetings. [REDACTED] will take minutes and ensure the decisions made are fully recorded and all significant agreements and documents are maintained in the Loyalty minute book. [REDACTED] will prepare quarterly financial statements to ensure Loyalty's accounting records are in order on a regular basis, and those financial statements will be reviewed at each meeting.

Our Response

The response addresses steps that will be taken moving forward; however, it does not address the deficiencies that occurred during the audit period. It does not change the CRA's view that the Organization failed to maintain adequate books and records in accordance with the Act, which is a sufficient reason to revoke the Organization's charitable status under the authority of paragraph 168(1)(e) of the Act.

Official Donation Receipts

A review of the donation receipts and procedures found that the Organization did not meet all three of the required elements for receipts, and that it did not have a record to delegate its authority to issue official donation receipts to a third party.

Organization's Response

The Organization's response is that going forward, all donation receipts will be approved at the quarterly Board meetings, and will be signed by an authorized individual. No donation receipts will be signed by any unauthorized individual.

Our Response

The response addresses steps that will be taken moving forward; however, it does not address the deficiencies that occurred during the audit period. It does not change the CRA's position that the behaviour noted meets the criteria for revocation as described in paragraph 168(1)(d) of the Act, issuing receipts for gifts otherwise than in accordance with the Act.

Conclusion

The audit by the CRA found that the Organization did not comply with the requirements set out in the Act. In particular, it was found that the Organization failed to be constituted

and operated for exclusively charitable purposes, failed to meet its disbursement quota, failed to maintain proper books and records, and failed to properly issue donation receipts. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated May 13, 2021, and pursuant to subsections 168(1) and 149.1(4) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), subsection 149.1(4), and paragraph 149.1(4)(b) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
899172803RR0001	Loyalty Foundation Vancouver BC

Should the Organization choose to object to this notice of intention to revoke its registration in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner
Appeals Intake Centre
Canada Revenue Agency
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of **30 days** from the date this letter was mailed. As such, the Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

As noted above, even though the Organization may file a notice of objection with the CRA Appeals Branch within the 90 day time frame, in order to temporarily suspend the revocation process, the Organization must obtain an order from the Federal Court of Appeal.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix A, attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Enclosures

- CRA letter dated May 13, 2021
- Appendix A, Relevant provisions of the Act

c.c.: Greg Kerfoot