The differences between a registered charity and a non-profit organization

Topic	Registered charity	NPO

Purposes	• must be established and operate exclusively for charitable purposes
	  o Poverty relief
	  o Advancement of education or religion
	  o Certain other purposes that benefit the community in a way that the courts have said is charitable
		• can operate for social welfare, civic improvement, pleasure, sport, recreation, or any other purpose except profit
		• cannot operate exclusively for charitable purposes

Registration	• must apply to the CRA and be approved for registration as a charity	• does not have to go through a registration process for income tax purposes
Charitable registration number	• is issued a charitable registration number once approved by the CRA	• is not issued a charitable registration number
Tax receipts	• can issue official donation receipts for income tax purposes	• cannot issue official donation receipts for income tax purposes
Spending requirement (disbursement quota)	• must spend a minimum amount on its own charitable activities or as gifts to qualified donees	• does not have a spending requirement
Designation	• is designated by the CRA as a charitable organization, a public foundation, or a private foundation	• does not receive a designation
Returns	• must file an annual information return (Form T3010) within six months of its fiscal year-end	• may have to file a T2 return (if incorporated) or an information return (Form T1044) or both within six months of its fiscal year-end

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Topic	Registered charity	NPO
Personal benefits to members	• cannot use its income to personally benefit its members	• cannot use its income to personally benefit its members
Tax exempt status	• is exempt from paying income tax	• is generally exempt from paying income tax • may have to pay tax on property income or on capital gains
GST/HST	• generally, must pay GST/HST on purchases • may claim a partial rebate of GST/HST paid on eligible purchases • most supplies made by charities are exempt • calculates net tax using the net tax calculation for charities	• must pay GST/HST on purchases • may claim a partial rebate of GST/HST paid on eligible purchases only if it receives significant government funding • few supplies made by NPOs are exempt • calculates net tax the regular way
PSB Rebate	Eligible for a PSB rebate of 50% of all GST paid	Only eligible for a PSB rebate of 50% of GST paid if certain criteria are met (See below)

<u>Can a co-operative be a non-profit?</u>
According to the Government of Canada website located at:
https://www.ic.gc.ca/eic/site/106.nsf/eng/h_00073.html

> "Depending on the governing legislation, a co-operative may decide not to distribute surpluses, and in some situations will meet the definition of a non-profit organization, except in Quebec where this possibility does not exist for co-operatives. This is often the case when co-ops aim to address social needs, such as housing, day care, and health care co-operatives. Co-operatives can also obtain registered charitable status should they meet all the necessary requirements."

Qualifying Non-Profit Organizations (QNPO) – GST

- In order to qualify for a PSB (Public Sector Body) rebate on GST paid, an QNPO must have 40% of their revenue from "government funding".
- What qualifies as government funding?
    - Government funding refers to an amount of money (**including a forgivable loan**) that is easily measurable, identified as government funding in the NPO's financial statements and is paid by a grantor:
        - to support or promote the NPO's objectives but not to pay for property or services supplied by the NPO to the grantor; or
        - for an exempt supply of property or services made by the NPO, if the property and services are not for the use or consumption of the grantor or persons related to the grantor (for example, government funding of a local health unit to supply medical services to the public).
- Government funding does not include:
    - Internally restricted reserves or surplus;
    - indirect or non-financial forms of assistance;
    - low-interest loans and loan guarantees;
    - property or services supplied at a subsidized price; and
    - a refund, rebate, or remission of, or credit for, taxes, duties, or fees imposed under any statute
- A PSB rebate is the term for a QNPO for GST amounts to be received back. If a QNPO has the appropriate level of Government revenue, they are eligible to claim back 50% of all GST paid as a PSB credit.
- Must annually file form GST523-1 Non-Profit Organizations – Government funding. This form outlines all sources of funding, specifically citing Government funding sources. If 40% of funding is not from Government sources, a QNPO is not eligible for any PSB rebate
- Certain revenue transactions may be classified as commercial activities. Where GST is charged for these commercial activities, the QNPO may be eligible to claim back 100% of the GST paid on expenses relating to these activities.
- General rules exist but…. Lots of nuances: Examples include libraries eligible to claim 100% of GST paid on books

Charities

- A charity is eligible for a rebate of 50% of all GST paid, without having to meet the Government funding threshold of 40%.
- To qualify as a charity, an organization's purposes **must** fall within one or more of these categories:
    - relief of poverty
    - advancement of education
    - advancement of religion
    - certain other purposes that benefit the community in a way the courts have said is charitable

<u>Municipal status for GST</u>

- If a housing organization has been accepted for Municipal status, the organization can claim 100% of GST paid for costs related to the RGI units. Generally, this is done by Proportionate number of units that are RGI (Rent Geared to Income) vs the total number of units
    - Example, an organization with Municipal status has 50 units, and 20 of them are designated as RGI housing. The organization spent $5,000 on GST for the year, and 45% of their revenue is from government sources:
        - They would first claim a rebate of $2,000 for the Municipal status (20 units/50 units x $5,000)
        - Then they would claim $1,500 as a PSB rebate on the remaining $3,000 in GST because they have over 40% in Government funding)
        - Overall, they would be eligible to claim $3,500 back of the GST they incurred (Vs $2,500 if they claimed the entire amount as a PSB rebate as a QNPO)
- 4 main criteria for Housing organizations:
    - the organization is a charity, a cooperative housing corporation, a non-profit organization or a public institution;
    - the organization supplies long-term residential accommodation within a program to provide housing to low to moderate-income households;
    - more than 10% of the housing units in a particular housing project are provided on an RGI basis ("RGI basis" means housing for individuals whose **eligibility for occupancy** of the housing unit **or for reduced lease payments** depends on a **means or income test**); and
    - the organization receives funding from a government or municipality to assist it in providing the accommodation within a program to provide housing to low to moderate-income households
- Must apply and be approved, generally takes 6-12 months

<u>New construction builds</u>

- In many cases, an NPO may choose to do a capital project through a separate company for legal or liability purposes. In this case, the newly created organization will not have any revenue during the build phase. It will therefore not have the required 40% Government funding to claim the 50% GST. The process for this scenario would be as follows:
- Acting as builder
    - Filing "regular" for-profit GST returns during construction period
    - Do this as a monthly filer (not quarterly or annual) for better cash flow purposes
    - At the end of construction when: substantially completed or first unit is rented, deemed self-supply occurs – this is as if the building was sold to yourself and you must remit GST on that sale

- In essence, you recovered all GST paid during construction for cash flow purposes and then once the building is completed, you owe GST on: total GST paid OR the GST on the FMV of the building
  - For low-income NPO housing, generally take the argument that the FMV = COST of the building since it's operated at break-even
- You have now paid the GST once and the purpose of this is to "level the playing field" between an entity that can construct a building vs. an entity that simply purchases a building – in theory they will both have paid the same amount of GST, again to keep things fair
- The organization can now claim this GST as a rebate depending on your status as: charity, QNPO, municipal
- **IMPORTANT:** timing of completion of the project is critical in respect to your fiscal period – you want to make sure that deemed self-supply happens within a fiscal period where you can claim the max rebate
- For example, you cannot apply and be approved for municipal status until the building is complete. Further for QNPO status, you must have 40% gov. funding in that fiscal year. If the building is completed at the end of a fiscal period before appropriate GST status, it will fall in a period before you are eligible to claim a rebate on that GST
- Again, lots of moving parts here to monitor to ensure you get the max rebate possible

<u>T1044</u>

- Require filing if:
  - Taxable dividends, interest, rentals or royalties totaling more than $10,000 in the fiscal period are received or receivable,
  - It owned assets valued at more than $200,000 at the end of the immediately preceding fiscal period, or
  - It had to file an NPO information return for a previous fiscal period
- Penalties of $2,500 + interest for each year o/s, even though these are tax-exempt entities
- Voluntary Disclosure Program process to get on-side and avoid these penalties
  - Come forward before CRA notes the issue
  - File back to when T1044's required
  - CRA should waive penalties and interest and then file on-side going forward
  - At least 1 of the returns must be more than 1 year late past the filing due date
- Various exemptions to get you out of having to file the T1044, such as:
  - 55+ low income housing
  - Municipal entities

<u>Employee vs. Contractor</u>

- The distinction is an important one; however, it is also a grey area and can only be determined once considering all the facts of the particular scenario
- Both parties generally favour contractor treatment since the employer does not have to worry about source deductions and the contractor has more ability to deduct expenses than an employee
- However, if an employee is incorrectly treated as a contractor, the employer is liable to pay both employer and employee components of the applicable CPP and EI that should have been deducted, in addition to penalties and interest
- CRA will generally look at the following key areas when making this determination:
    - **Intention of the parties** – i.e. was there an employment agreement or a contract of service
    - **Control** – i.e. who controls the manner in which the work will be done and what work will be done
    - **Tools and equipment** – i.e. are they provided by the employer or the potential contractor
    - **Subcontracting** – does the individual have the right to subcontract work or hire assistants
    - **Financial risk and opportunity for profit** – employees will generally be paid the same regardless; whereas, a contractor assumes more risk for profit or loss

<u>Reduced rent taxable benefit</u>

- Per the CRA website guidance on taxable benefits:
- If you provide an employee, including the superintendent of an apartment block, with a house, apartment, or similar accommodation rent free or for less than the fair market value (FMV) of such accommodation, there is a taxable benefit for the employee.
- You must estimate a reasonable amount for the housing benefit. It is usually the FMV for the same type of accommodation, minus any rent the employee paid.
- In addition, the amount you pay on behalf of, or reimburse to your employee for utilities (such as telephone, hydro, natural gas, water, cable or internet) is also a taxable benefit. This is the amount that you include in the employee's income as a utilities benefit.
- The following two factors may reduce the value of a housing benefit you provide to your employee:
    - **Suitability of size**: Your employee may have to occupy an accommodation that is larger than they need (such as a single person in a three-bedroom house). To calculate the taxable housing benefit, you can reduce the value of the accommodation to equal the value of the accommodation that is appropriate to your employee's needs (in this case, a one or two-bedroom apartment or house).

    - **Loss of privacy and quiet enjoyment**: If the accommodation you provide to your employee contains things like equipment, public access, or storage facilities that infringe on your employee's privacy or quiet enjoyment of the accommodation, you can reduce the value of the housing benefit. The reduction must reasonably relate to the degree of disturbance that affects your employee.

- These two factors apply in the above order. If both circumstances apply to an accommodation, you should first reduce the value to equal the value of accommodation that suits your employee's needs. Then, you should apply any reduction for loss of privacy and quiet enjoyment to that reduced value.

<u>Vehicle taxable benefit</u>

- Care must be taken if an employee is driving a company owned vehicle
- If there is any element of personal driving and if the employee takes the vehicle home, even if this is required by the employer, there may be a taxable benefit to be included in the personal income of the employee
- Further, CRA generally considers driving to and from home and work to be personal driving, which could cause there to be a taxable benefit in itself
- The benefit comes from a standby charge, which is the benefit of simply having a vehicle available for personal use, as well as an operating cost benefit for employer paid operating expenses related to personal use driving
- The amount of the taxable benefit is very specific to the situation and would require crunching the numbers
- The standby charge may be reduced if all the following conditions apply:
    - you require your employee to use the automobile to perform their duties
    - the employee uses the automobile more than 50% of the distance driven for business purposes
    - the kilometers for personal use is not more than 1,667 per 30-day period or a total of 20,004 kilometers a year

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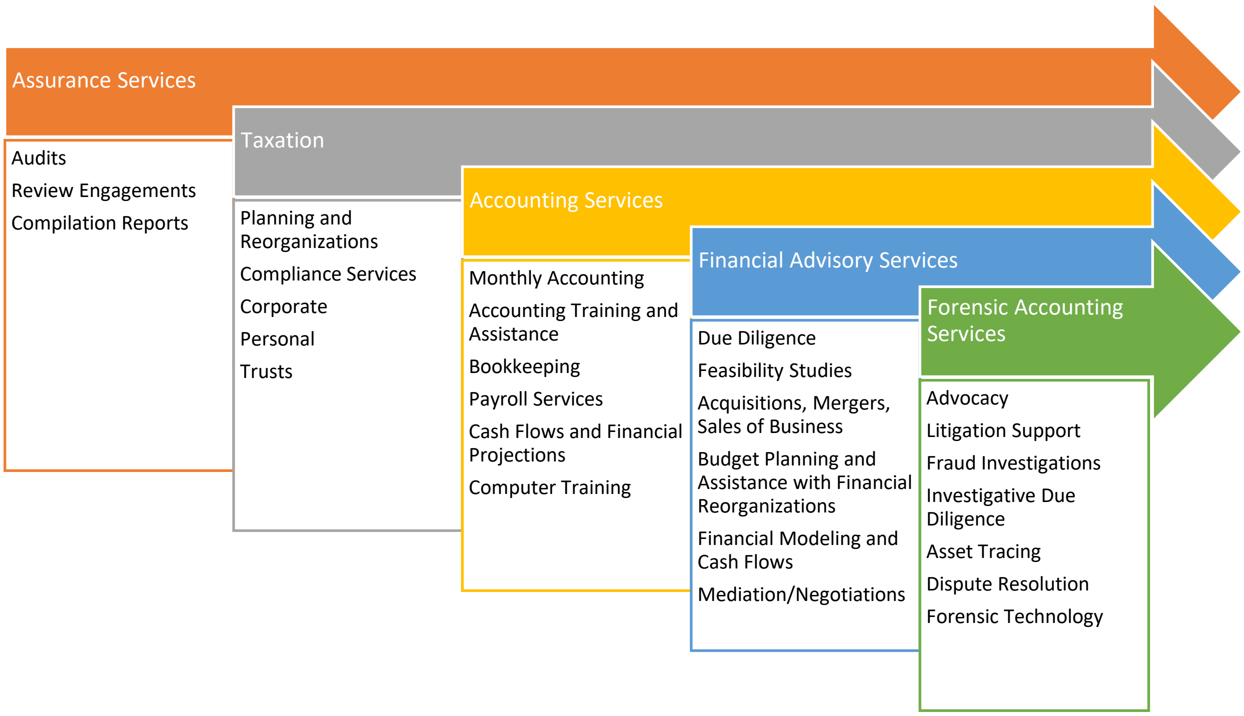

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