Considerations for primary care teams as a Not-for-Profit Corp.

July 17, 2019

Agenda

1. Role of the Board of Directors
2. Update on ONCA
3. Corporate tax filing requirements
4. HST considerations

Role of the Board of Directors

Fiduciary duty

Duty of *care*: duty of competence and duty to be informed

Duty of *loyalty*: act honestly and in good faith in the best interests of the organization.

Understand the organization

- What is the legal structure?
- What is the purpose of our organization?
- What are our values?
- Who are our stakeholders and what do they expect from us?
- Do we have a strategic plan?
- What risks does our organization face?

Ontario Not-for-Profit Corporations Act

What is the ONCA?

1. Ontario Bill 154 has passed and ONCA is scheduled to be proclaimed in early 2020.
2. ONCA contains rules for forming and running a non-profit in Ontario.
3. Covers areas like rights and responsibilities of members and directors and requirements for meetings and financial statements.

Does ONCA apply to you?

If you are incorporated as an non-profit under the Ontario Corporations Act, ONCA applies to you.

If you are incorporated federally, you are covered by the Canada Not-for-Profit Corporations Act.

- allows members to have meetings by telephonic or electronic means (unless the by-laws state otherwise) and to use electronic means to communicate.
- gives not-for-profit corporations natural person powers, such as buying and selling property as well as borrowing money.
- sets out duties of care for directors and officers.

What has changed?

Makes a new distinction between public benefit corporations and other non-profits.

Allows a simpler process for reviewing financial records.

Provides clearer rules on areas like directors responsibilities and conflicts of interest.

What has changed?

Provides members with actions they can take if they believe directors are not acting in the best interests of the corporation.

Clarifies that non-profit organizations can engage in commercial activities if the activities support the organization's non-profit purposes.

Gives members greater access to financial records.

What does this mean?

- Can now use email and other online methods for communications and meetings.
- Corporations now have all the rights and powers of a "natural person".
- Standard of care for directors is more clearly defined.
- Rules requiring audits have changed.

Transition

- ONCA applies automatically upon proclamation, except where overridden by existing corporate documents.
- Transition process within 3 years of proclamation in order to make the necessary changes to governing documents.
- Prudent to go through the transition process by adopting new by-law and articles of amendment.
- Regulations still being developed, so important details not yet known.
- Unless there are pressing concerns requiring by-law revamp, best to wait until regulations are complete.

Questions?

Income tax – Non-Profit Organizations

Armando Minicucci

Partner, Tax services

Agenda

1. Maintaining Tax Exempt status
2. Tax compliance
3. Director liability
4. Compensation of Board or Committee Members

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Tax Exempt status risks

- Section 149(1)(l)
- Earning a profit
- Planning for reserves

Section 149(1)

Specific entities are defined in 149(1) as tax exempt including:

- registered charities
- municipal authorities
- crown corporations
- housing corporations for low income seniors
- unions

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Section 149(1)(l)

149(1)(l) is the “others” paragraph

- not a charity under 149.1(1)
- a club, society or association… that was organized and operated exclusively for …. any purpose other than profit.
- no part of the income is available for personal benefit of members or shareholders.

Section 149(1)(l) risks - caution

- NPO's stated purpose could include profit
  - having a broad “other purposes” clause in articles of incorporation or bylaws
  - not clearly stating not-for-profit intent
- Operated in a manner that appears to have a profit goal
  - budgeting surplus
- Accumulating surpluses or reserves without purpose
- Revenue from non-members must be incidental to operations

What are reserves?

“An organization’s financial reserves are a discrete subset of its liquid net assets. They are a distinct pool of assets [set aside] that an organization can access either to mitigate the impact of [potential] unbudgeted and undesirable financial events or to pursue opportunities of strategic importance that may arise in the future.”

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Accumulation of reserves

- Some reserves have been found by CRA to be acceptable
- Purpose of the reserve must be supportable
  - Are they reasonable?
  - Are they appropriate for the nature and size of your organization?
  - Are they justifiable?

Planning

Ensuring that operations are <u>not</u> "for profit"

- Do minutes and/or budget seem to reward surpluses or use "for "profit" terminology?
- Is there a documented future purpose for accumulating surpluses?
  - Operating reserves
  - Advocacy reserves
  - Strategic reserves
  - Capital reserves
  - Special program reserves
  - Contingency reserves

CRA's stated position – IT-496R, paragraph 8

“an association may earn income in excess of its expenditures provided the requirements of the Act are met. The excess may result from the activity for which it was organized or from some other activity. However, if a material part of the excess is accumulated each year and the balance of accumulated excess at any time is greater than the association's reasonable needs to carry on its non-profit activities, profit will be considered to be one of the purposes for which the association was operated.

This will be particularly so where assets representing the accumulated excess are used for purposes unrelated to its objects such as the following:

(a) Long-term investments to produce property income;

(b) Enlarging or expanding facilities used for normal commercial operations; or

(c) Loans to members, shareholders or non-exempt persons.

“the amount of accumulated excess income considered reasonable in relation to the needs of an association to carry on its non-profit activities and goals is a question of fact to be determined with regard to the association's particular circumstances, including such things as future anticipated expenditures and the amount and pattern of receipts from various sources.

CRA's stated position – update

“A 149(1)(l) organization can earn a profit but the profit must be incidental and must result from activities undertaken to support the organization’s not for profit objectives."

2014-0522451E5, October 23, 2014

Sample approach to determining reasonable level of reserves

	Dec 31, 2017	Adjustments		Adjusted Net Values
Total Assets	115,000	(15,000)	(1)	87,000
		(13,000)	(3)	
	115,000	(28,000)		87,000
Liabilities	47,000	(3,500)	(2)	43,500
Fund Balances	68,000	(15,000)	(1)	43,500
		(13,000)	(3)	
		3,500	(2)	
	115,000	(28,000)		87,000

Notes

(1) Funding representing net book value of amounts invested in capital assets required for operations were removed.
(2) Removed deferred revenue and leasehold inducements.
(3) Externally restricted fund removed.

Sample approach to determining reasonable level of reserves

	Reasonable Reserve (000's)
Pension reserves	$10,000
Three month liquidity reserve	22,000
Bank loan guarantee	12,500
Capital Projects	3,700
Contingency Reserve	1,000
Total	**$49,200**

Actual reserves	43,500
Reasonable reserve level	49,200

NPO's – Tax compliance

Income tax filing obligations – T2

Corporation Income Tax Return (T2)

- Organizations that are exempt from tax are required to file an annual corporate tax return if they are incorporated.
- Every incorporated entity must file a corporate income tax return within 6 months of the end of its fiscal period.
- Registered charities are exempt from filing the corporation income tax return (T2).
- No tax liability will result if the organization satisfies the annual exempt from tax conditions.

Income tax filing obligations – T1044

T1044 – NPO information return:

Due 6 months after fiscal year end if:

- It received or was entitled to receive taxable dividends, interest, rentals, or royalties totaling more than $10,000 in the fiscal period;
- The total assets of the organization were more than $200,000 at the end of the immediately preceding fiscal period (book value using GAAP); OR
- Such a return was filed for a previous fiscal period.

Income tax filing obligations – Quebec

Organizations operating in Quebec must file:

- Form CO-17-SP-T if they are incorporated; or
- TP-997.1-V if they are unincorporated.

Income tax filing obligations – Income Tax Act

Corporate directors who are in office when the corporation fails to deduct, withhold, collect, remit, or pay amounts required under the Income Tax Act, Canada may be personally liable, together with the corporation, to pay part or all of these amounts:

- The unpaid amount (withholding taxes) plus related penalties and interest;
- Remuneration withholdings, the amount that should have been withheld, plus a penalty of 10 or 20% of the amount.

Director Liabilities – Excise Tax Act (GST/HST)

- In the case of the failure to collect or remit amounts of GST/HST, the amount that should have been remitted plus penalties and interest.

Director Liabilities – Applicable rules

The three basic rules of directors' liability are:

- the CRA must demonstrate its inability to recover the amounts directly from the corporation;
- the CRA must issue the assessment against the directors within two years from the time they last ceased to be directors; and
- the directors did not exercise the degree of care, diligence, and skill ("due diligence") required to prevent the failure to deduct, withhold, remit, or pay.

Director Liabilities – Due diligence defence

Directors should make sure that the corporation is properly withholding deductions.

Directors must make every reasonable effort to ensure that source deductions, GST/HST, excise duty are withheld, collected, remitted, and paid.

Director compensation

Directors fees paid to a person who holds a position of office may be employment income if the individual is:

- elected by popular vote or appointed, and
- entitled to a fixed or ascertainable stipend or remuneration

- Earnings are subject to CPP premiums but not EI premiums.
- Amounts paid are subject to income tax withholdings.
- Annual remuneration to be reported on a T4 slip.

Director fees paid to a corporation

Qualifications under the relevant corporate statutes require that a director must be an individual. Therefore corporations are not permitted to be appointed as directors.

Administratively the CRA has stated that where an individual is acting on behalf of or representing a corporation as a director and the fees relating to these services are paid directly, or are turned over by the individual to the corporation, those fees are considered to be income of the corporation and not of the individual. However this is limited to situations where an individual is appointed a director on behalf of their employer. The typical example is a bank requiring board representation to secure a loan.

See CRA documents 2010-0367781E5 and 2007-0246031E5

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Questions?

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GST/HST – what you need to know

Grace Caputo

Senior Manager, Indirect Tax

Agenda

1. GST/HST and NPOs
2. Tax status of supplies
3. GST/HST registration requirements
4. Recovery of tax
5. Remittance of tax
6. Best practices

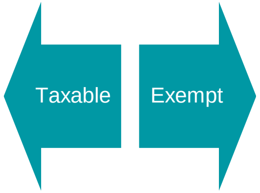
GST/HST and NPOs

- Generally most supplies are subject to GST/HST, unless a specific provision in the Act exempts them
  - e.g. medical services, educational services
- Only organizations making taxable supplies are eligible to claim Input Tax Credits (“ITCs”)
  - Some opportunity for ITCs where an NPO makes taxable supplies
  - Subject to certain conditions
- Generally, no ITCs for organizations making exempt supplies, however certain rebates may be available

Tax status of supplies - NPOs

Most supplies, other than those specifically identified as exempt

- supplies of new goods sold for more than direct cost
- supplies of real property where 211 election filed
- memberships with significant benefits (>30% benefits)



Only supplies specifically identified as exempt

- most memberships unless election filed for memberships to be taxable
- supplies sold at or below cost
- certain medical services
- certain educational services

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Tax status of supplies
Certain medical services

- Most health, medical, and dental services, where:
  - performed by licensed physicians, dentists or medical/other practitioners
  - rendered to an individual for medical reasons
  - includes certain services provide by a health care facility

- Exceptions
  - cosmetic services
  - services rendered by practitioners not listed in the legislation

Tax status of supplies

Grant vs. supply

- Key is to understand what is being supplied
  - Definition of a supply is very broad
- Implications to Grantor and Grantee
  - Does grantor get something in return?
  - Is there a direct link/benefit?
  - Primarily for public purpose?
- If consideration for a supply - is the supply taxable?
  - Exempting provisions may still apply
- B – 067 provides guidelines

Tax status of supplies

Director's fees, honorariums, reimbursements

- A director may be considered an officer or a volunteer
- Both are generally considered not to be providing taxable supplies to NPO
- If not an officer/volunteer AND
  - receives > $30k in fees/reimbursements (from anyone) or
  - is registered . . .

    sales tax likely to apply depending on the type of supply being made

Tax status of supplies
Association memberships

- Memberships are normally exempt unless an election is made to make them taxable

If election is made:

- Association will collect the HST on memberships and will be entitled to claim some ITCs
- However, clinics that pay the HST on memberships may not be able to fully recover the tax paid (where most supplies considered to be exempt)

GST/HST registration requirements

- Required to register if taxable supplies > $50k per year (for NPO or Charities)
- BN # provided with RT suffix (12345 6789 RT 0001)
  - Note may have a BN number with RT that is not a GST/HST registration number if rebates are filed
- Voluntary registration is also permitted if taxable supplies are < $50k threshold
- Elections may be available to simplify GST/HST filing requirements

Recovery of tax
ITCs vs. PSB rebate

- **ITCs →** generally provide a recovery all tax incurred
  - Only available if registered and making taxable supplies
- **PSB Rebates →** provide a portion (percentage) of the tax incurred – varies depending on type of organization
- Otherwise, sales tax becomes a cost to the organization

Recovery of tax

ITCs and rebates

- Must meet documentary requirements
- Must be **recipient** of the supply
  - i.e., person legally responsible to pay for the supply

Recovery of tax

Rebate for qualifying NPO ("QNPO")

- What is a Qualifying NPO?
- Must have at least 40% "government funding"
  - federal, provincial, municipal, or Indian band
- Funding may flow through an intermediary
- Threshold to be met in previous two fiscal years, or in current year
- QNPOs are eligible to claim rebates of part of the GST/HST paid to carry out exempt activities
- Otherwise, NPOs are not eligible for rebates
  - But may be entitled to ITCs in respect of commercial, i.e. taxable activity

Recovery of tax
PSB rebate for QNPOs

- PSB Rebates →
  - 50% of GST or federal component of HST
  - In Ontario, QNPOs qualifies for 82% of PVAT
  - Effective rate is 70% of tax incurred
    (but must be claimed separately)
- Rebates must be claimed within:
  - 2 years, if registered
  - 2 years, 3 months, if not registered
- Not required to be registered to file PSB rebate
  - But will be given a number that resembles a GST/HST #

Remittance of tax

- GST/HST return generally due 30 days after end of reporting period
  - May be monthly, quarterly or annual
- Deduct ITCs or rebates to arrive at net tax remittance
  - Rebate form generally still required to be filed
- Tax remitted based on **accrual** and not cash basis

Best practices

- Proactive discussion of GST/HST for all significant transactions
- Sales tax should factor into all transactions/activities
- Change in activities → consider potential GST/HST implications
- Commodity tax compliance → integral part of overall risk management process
  - consider regular reviews/discussion with sales tax specialist who knows your industry
  - every 2-3 years (more if significant changes occurring)
  - not purely recovery focused
  - look at revenue streams (key risk area)

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Thank you

