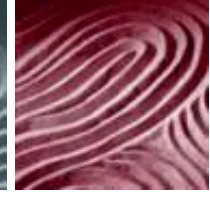
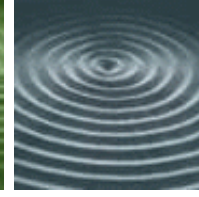
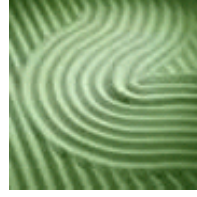


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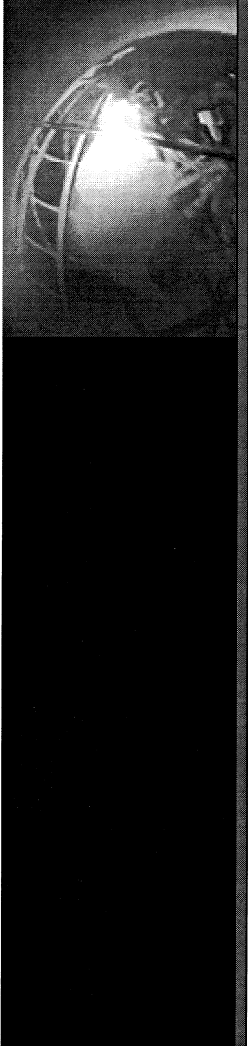
WASHINGTON, D.C.

Canadian Cross Border Tax for Charities

by Robert B. Hayhoe
January 30, 2003

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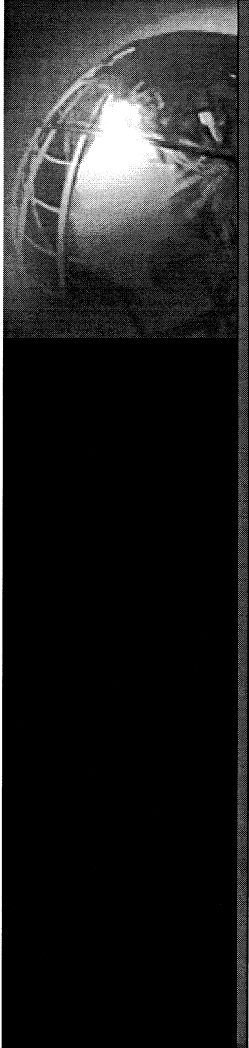
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Canadian Cross Border Tax For Charities

- **Outbound (Canadian charities operating abroad)**
- **Inbound (Canadian charities fundraising abroad)**
 - **primarily US discussion**

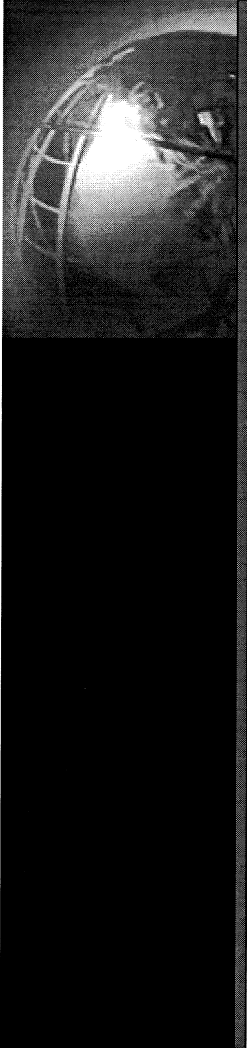
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Outbound

- **Any foreign charity can fundraise in Canada**
- **Only donations to “qualified donees” result in a Canadian individual tax credit/corporate tax deduction**
 - **exceptions in Canada US tax treaty**
 - **US college attended by a family member**
 - **donations to US charities tax-recognized against Canadian taxes on US-source income**

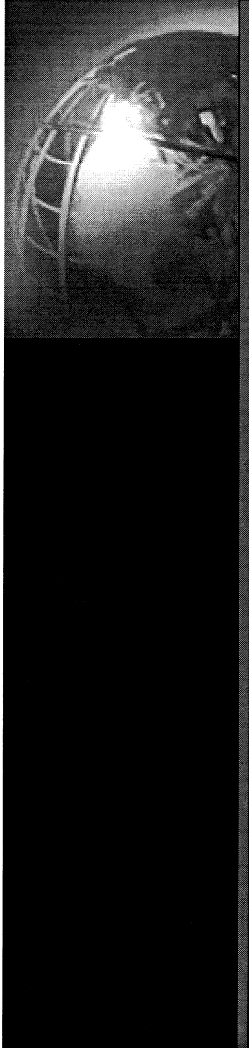
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Outbound - Qualified Donees

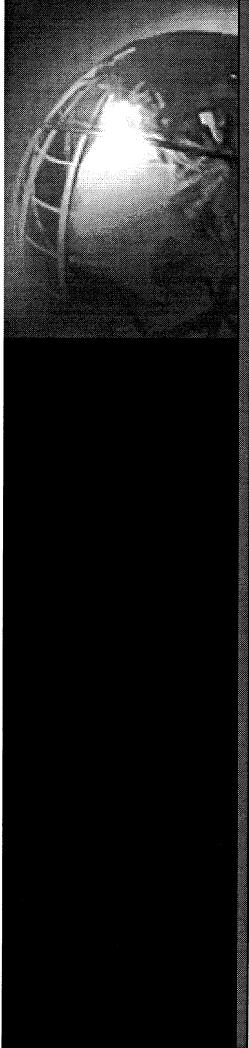
- **Registered Charities**
- **UN**
 - **agencies**
- **Federal or provincial Crown**
 - **agencies**
- **Foreign charities with Crown patronage**
- **Prescribed foreign universities**
(customarily attended by Canadians)

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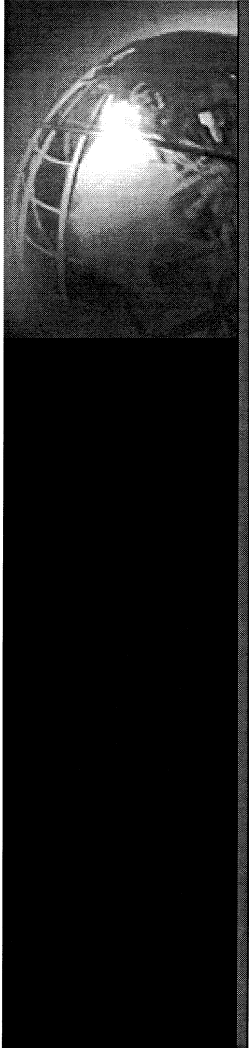
Outbound - Registered Charities

- **ITA “registered charity” must be both**
 - **“resident in Canada”; and**
 - **“created or established in Canada”**
- **Therefore foreign charities cannot become registered charities**



Outbound - Grants by Registered Charities

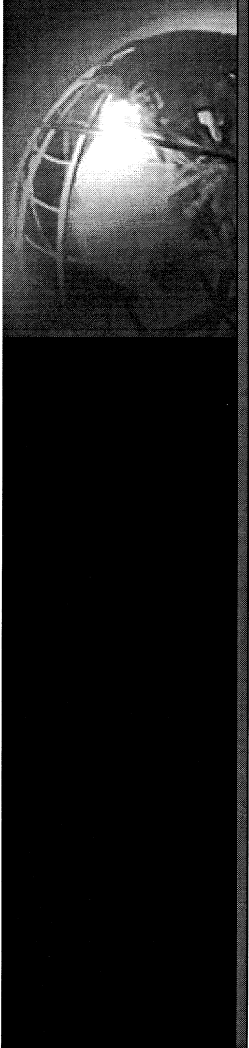
- **Registered charities**
 - must devote their resources to their own charitable activities, or
 - can make grants to qualified donees
- **Registered charities should not make grants (gifts) to foreign charities**
 - explicit grounds for revocation



Outbound - Foreign Activities

- **Canadian registered charities can operate anywhere in the world**
 - consistent with charitable purposes
- **Direct foreign activities**
 - local or Canadian employees

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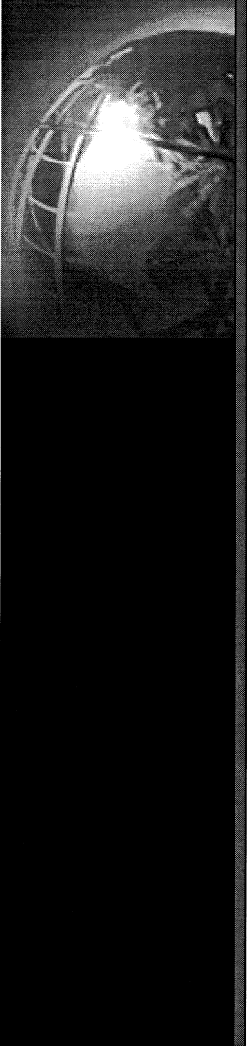


Outbound - Indirect Foreign Activities

- **agency relationship**
- **joint venture**

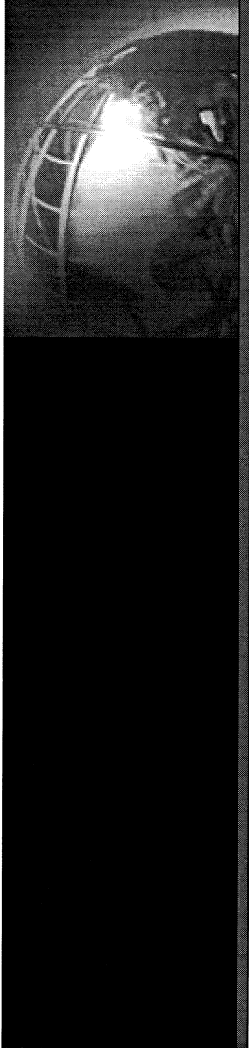
- **RC 4106 “Registered Charities Operating Outside of Canada”**
 - **need binding written agreements**
 - **complex CCRA administrative policy**

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Outbound - Recordkeeping

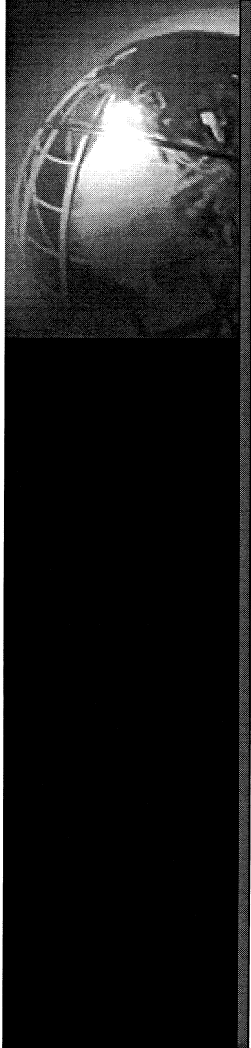
- **Registered charities must keep records in Canada to show charitable nature of all of activities**
- **Foreign indirect activities:**
 - **agency or joint venture agreement**
 - **operational reports**
 - **financial reports (with backup)**



Outbound - CCRA Approach

- **Formerly very flexible**
- **Now increasingly complex**
 - **RC 4106 “Registered Charities Operating Outside Canada”**
 - **T3010 annual return questions**
 - **T2050 application for registration questions**
 - **audit attention**

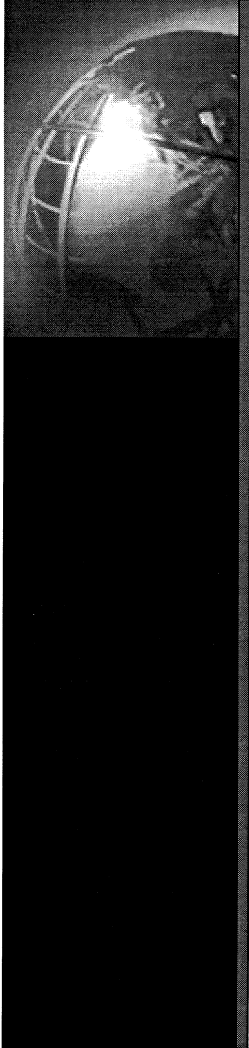
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Outbound - Revocation of Registration

- *Tel Aviv* revocation appeal
 - not following agency agreement (care & control) and not getting agent's reports permitted revocation
 - prior audit undertakings not followed

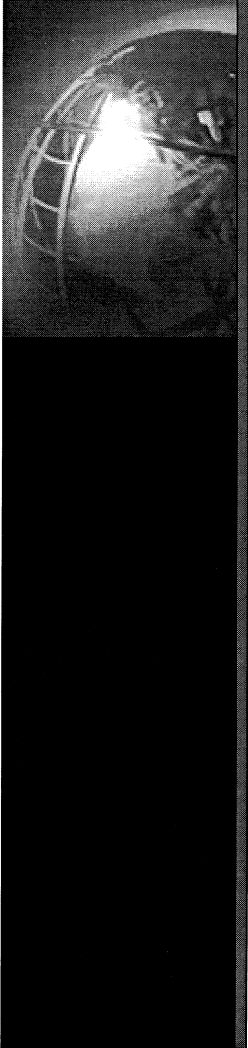
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Outbound - Another Revocation

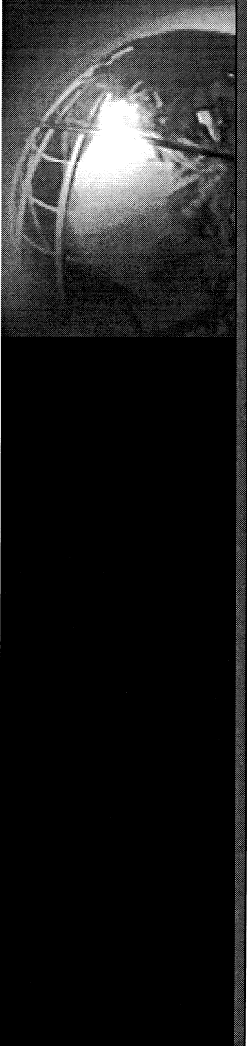
- ***Canadian Magen David Adom*** revocation appeal
 - public policy
 - charitable property distribution permitted?
 - revocation upheld based on IDF use of donated ambulances
 - SCC leave being sought
- **Important lesson about repeat violations**

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Terrorism

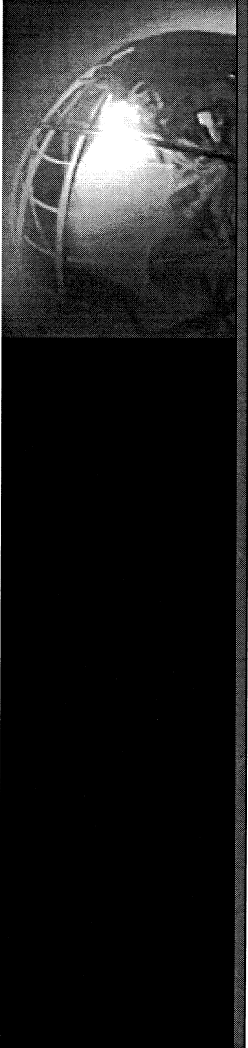
- **Post 9/11/01 Bill C-36**
- **Refuse or revoke charitable registration for:**
 - **making any resources available to a terrorist organization (directly or indirectly)**
 - **secret appeal process**
- **CCRA initially targeting specific terrorist fundraising charities, not international aid agencies**



Inbound - Canadians Fundraising Abroad

- **Not a Canadian legal issue**
 - *We are only Canadian lawyers*
 - foreign correspondent firms
- **What is the local law?**
 - tax law
 - trust law
 - exchange controls
 - fundraising regulations
- **If a gift arrives, be grateful**
- **If soliciting a gift, get advice**

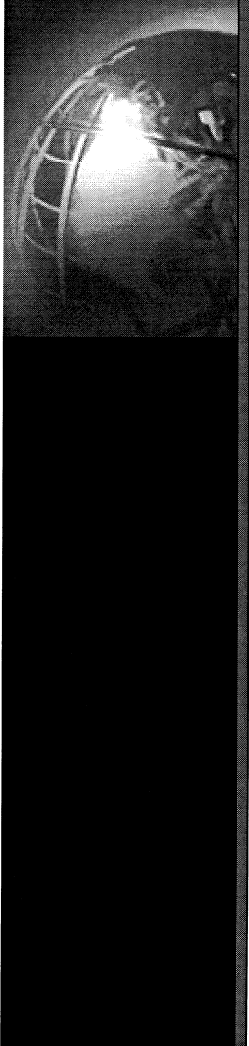
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Inbound

- **Canada and US have very generous tax recognition for donations**
- **Many other countries are less generous**
- **Some countries have exchange controls which could bar a foreign charity from fundraising**

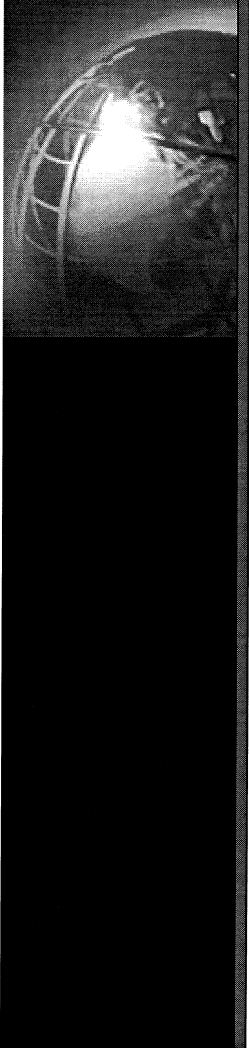
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Inbound - US Individuals

- **Only get tax deduction for donations to US resident charities (501(c)(3)s)**
 - **exceptions in Canada US tax treaty**
 - **Canadian college attended by a family member**
 - **donations to Canadian charities tax-recognized against US taxes on Canadian-source income**
- **“US Friends of...” IRC 501(c)3 charities**
 - **similar structure to Canadian of “Friends” of charities**

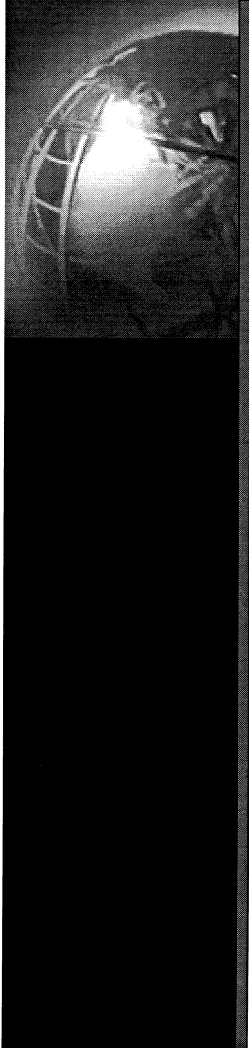
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Inbound - US Private Foundations

- **May make grants to foreign charities**
 - **need to show charitable nature of grantee**
 - **legal opinion**
 - **equivalency affidavit by foreign charity**
 - **www.usig.org**
 - **can also show “expenditure responsibility”**
 - **requires ongoing monitoring**
- **Many foundations only grant to 501(c)(3)s**

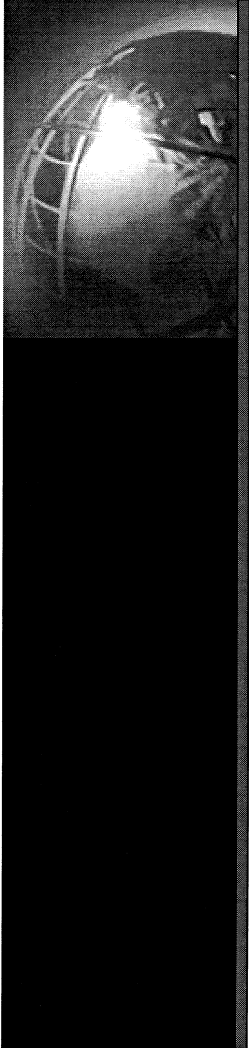
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Inbound - US Public Charities

- **May make grants to foreign charities**
 - **need only to show charitable nature of grant**
 - **less onerous detail than for grants by private foundations**

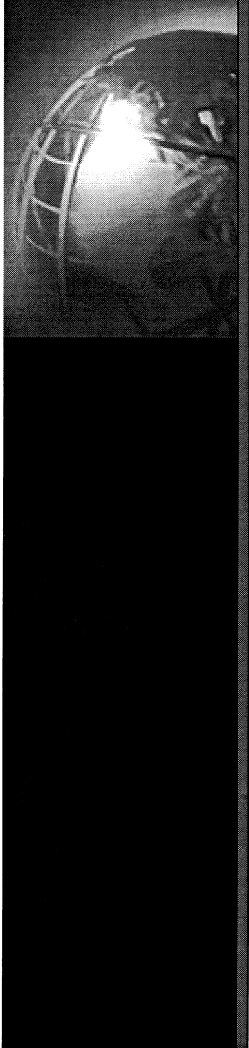
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Inbound - Other US Laws

- **Registration of fundraisers**
 - **applicable to internet presence?**
 - **views differ**
 - **registration services**

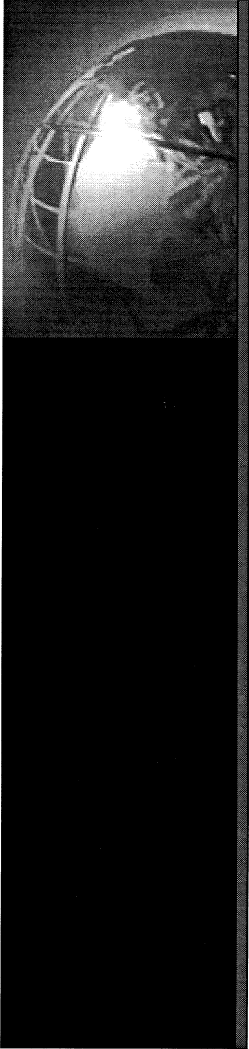
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Inbound - Foreign 501(c)(3)s

- **Foreign charities can register with IRS as 501(c)(3)s**
 - **no ability to give tax deductions to individuals**
 - **permits hassle-free grants from US charities**

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Inbound - US Intermediaries

- **US public foundations which will accept donations subject to recommendations that the funds be granted to a foreign charity**
 - **less % based fees**
- **The American Fund for Charities**
 - **www.chapel-york.com**
- **Charities Aid Foundation America**
 - **www.cafonline.org/cafamerica**

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