
CRA GUIDANCE ON WORKING THROUGH INTERMEDIARIES IN CANADA

*By Ryan M. Prendergast and Terrance S. Carter**

A. INTRODUCTION

On June 20, 2011, CRA released Guidance CG-004, *Using an Intermediary to Carry out a Charity's Activities within Canada* (the "Guidance").¹ The Guidance was previously referenced in the June 2011 *Charity Law Update*.² The Guidance will assist charities and applicants for charitable status who are intending on conducting charitable activities through an intermediary within Canada, such as a non-profit organization or a for-profit partner. As previously indicated in our June 2011 *Charity Law Update*, an individual or "non-qualified donee"³, is referred to as an intermediary by CRA for definitional purposes in the Guidance. While the Guidance contains relatively few changes from CRA's previous guidance, CG-002, *Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada* ("Foreign Activities Guidance"), the Guidance clarifies that the principles discussed in the Foreign Activities Guidance concerning operating outside Canada apply equally within Canada.

This *Charity Law Bulletin* summarizes the new information or clarifications contained in the Guidance, together with a brief review of the information already set out in the Foreign Activities Guidance. For

* Ryan M. Prendergast, B.A., LL.B., is an associate of Carters Profession Corporation, Orangeville, Ontario, Canada. Terrance S. Carter, B.A., LL.B., Trade-Mark Agent, is the managing partner of Carters Profession Corporation, and counsel to Fasken Martineau DuMoulin LLP on charitable matters.

¹ "Using an Intermediary to Carry out a Charity's Activities within Canada", Canada Revenue Agency (June 20, 2011) online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>.

² *Charity Law Update* (June 2011) online: <http://www.carters.ca/pub/update/charity/11/jun11.pdf>.

³ Qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them, and include, among others, registered charities, registered Canadian amateur athletic associations; municipalities, the United Nations and its agencies or certain prescribed universities.

commentary concerning the previously released Foreign Activities Guidance, see Charity Law Bulletin No. 219 *CRA's Revised Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada*.⁴

B. NEW INFORMATION CONTAINED IN THE GUIDANCE

1. Factors CRA will Consider in Determining if a Charity is Acting as a Conduit

Although concerns over whether or not a charity is acting as a conduit typically arise in instances where the charity is working with an organization outside Canada, the Guidance contextualizes the definition of “conduit” for domestic situations as well, although both definitions are substantially similar. In this regard, the Foreign Activities Guidance defines a conduit as a “a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief.” The Guidance defines conduit in a slightly different manner as, “an organization that accepts donations for which it typically issues tax-deductible receipts and then funnels the money, without maintaining direction and control, to a non-qualified donee.”⁵

As an example, the Guidance provides a hypothetical situation wherein a registered charity agrees to accept donations on behalf of a non-profit organization, issues a receipt and then forwards the donations to the non-profit organization without having direction and control over the donations and no say in how the proceeds are to be used. Although the Guidance does not say as much, the situation described would likely place that charity’s registered status at risk as the charity would not be maintaining direction and control over the funds.

In addition, the Guidance provides criteria which CRA states they will look at in determining whether or not a charity is conducting itself as a conduit. In this regard, the criteria are listed as follows:

- Does the charity have any evidence that it exercises ongoing direction and control over the use of all of its resources?
- Does the charity keep adequate books and records at a Canadian address it has on file with the CRA?

⁴ Terrance S. Carter and Karen J. Cooper, “Revised Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada” (July 26, 2010) online: <http://www.carters.ca/pub/bulletin/charity/2010/chylb219.pdf>.

⁵ For ease of reference, the Guidance generally refers to any organization that is not a qualified donee as a “non-qualified donee”.

- Does the charity receive goods and services of proportionate value for any money or other resources it sends to a non-qualified donee?
- Does the charity need permission from a non-qualified donee to undertake activities, or approval of how to carry out those activities?

Lastly, the Guidance provides recognition for the situation in which a charity needs to provide funds to a head body or umbrella organization (presumably in Canada, but it could also be outside of Canada) that would not be eligible to be a qualified donee under Canadian law. In this regard, the Guidance states that a charity and its head body might create a written agreement that creates the “appearance” that the head body or umbrella organization is acting as an intermediary to the charity, although it is not necessarily clear what CRA means in this regard.

2. Transference or Construction of Capital Property

The Foreign Activities Guidance recognized the complexities involved with a charity operating abroad in co-operation with other organizations to purchase or construct capital property. As such, the Foreign Activities Guidance acknowledges the fact that some countries do not permit foreign ownership of real property, and provides best practices concerning how a charity might purchase or construct capital property in a foreign country.

However, given that the Guidance is intended to provide assistance in complying with CRA’s administrative guidelines within Canada, the Guidance provides a more restrictive approach to the transference and construction of capital property. In this regard, the Guidance states that:

If a charity intends to build or buy capital property in partnership with an intermediary, the charity must retain ownership of its share of this property. In exceptional cases where it is impossible for the charity to retain ownership of its share of the property, the charity should consult with the CRA to consider the available options

In addition, the Guidance also confirms that a charity in Canada cannot transfer any kind of property to a non-qualified donee if it knows, or ought to know, that the property will be used either for non-charitable purposes or circumvention of the *Income Tax Act*.

3. Reporting Expenditures on Activities Carried Out Through Intermediaries

The Guidance confirms that all funds expended on the charity's own activities, whether it is through the charity's own staff or through an intermediary, will go towards meeting the charity's disbursement quota. In this regard, that Guidance states that the following could be reported as charitable expenditures on the charity's T3010:

- the costs of goods transferred to an intermediary to provide eligible beneficiaries with charitable relief;
- payments for buying goods and services to provide eligible beneficiaries with charitable relief;
- purchase or maintenance of facilities, equipment, and other items used directly in the charity's charitable activities;
- fees, licences, and memberships that are necessary to deliver the charity's charitable activities; and
- salaries paid to those that directly provide charitable relief to eligible beneficiaries.

However, the Guidance also points out that it is important when a charity is working jointly with other organizations, it must be able to account for all charitable and other expenditures the intermediary has spent on its behalf.

C. UNCHANGED ASPECTS OF THE FOREIGN ACTIVITIES GUIDANCE

The remainder of the Guidance is little changed from the Foreign Activities Guidance. As such, the variety of relationships described in the Foreign Activities Guidance through which a charity can carry out its own activities with an intermediary are also described in the Guidance.

In this regard, the Guidance sets out different types of acceptable intermediary relationships, including agents, joint venture participants, co-operative participants and contracts, but CRA does not recommend one type of relationship over another. What is unique to the Guidance is that the examples from the previous Foreign Activities Guidance have now been made specific to intermediary relationships within Canada.

In addition, when transferring resources to an intermediary, the Guidance confirms that whether the transfer is being made to an intermediary inside or outside Canada, a charity must direct and control the use of its

resources to meet the “own activities” test. CRA recommends that a charity enter into a written agreement with any intermediary that it works with, and confirms the elements that should be contained therein.

D. CONCLUSION

Although no consultation process was used by CRA with the charitable sector prior to releasing the Guidance, as was done with the Foreign Activities Guidance, considering that the guidance documents are substantially similar to one another, this comes as no surprise. As such, charities, even if they do not conduct any activities outside Canada, should review the Guidance to ensure that they are able to comply with the *Income Tax Act* (Canada) and CRA’s administrative policies.