
TRANSFERS TO HEAD BODIES OUTSIDE CANADA

*By Jennifer Leddy**

A. INTRODUCTION

As most readers will know, the Charities Directorate of the Canada Revenue Agency released its *Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada* on July 8, 2010. It reaffirmed that a Canadian registered charity can only use its resources in two ways: 1) on gifts to qualified donees, which are primarily but not exclusively registered charities; and 2) on its own activities. A general commentary was provided on the Guidance in a previous *Charity Law Bulletin*.¹ The focus of this Bulletin is on how the Guidance treats transfers of funds from Canadian charities to their head bodies outside the country.

B. CHARITIES CONDUCTING OWN ACTIVITIES

Unlike the relatively passive transfer of gifts to qualified donees, a registered charity must be an active and controlling participant in programs or projects that directly achieve a charitable purpose of the charity. There are two ways to achieve this: 1) by using its own volunteers, staff, or directors which it directly controls; or 2) through an intermediary, which it must also control with respect to the expenditure of charitable resources, although day-to-day operating decisions may be delegated. A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee. Instead it must demonstrate control over the use of its resources, so that the carrying out of that activity by the intermediary amounts to the charity carrying on its own activities itself rather than the funding of programs of the intermediary.

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¹ Terrance S. Carter and Karen Cooper, *CRA's Revised Guidance for Canadian Registered Charities Carrying on Activities Outside Canada*, *Charity Law Bulletin*, No. 219, July 29, 2010.

C. MEASURES OF CONTROL

CRA recommends that charities adopt the following types of measures to direct and control the use of a charity's resources, with the number and nature of the measures to correspond to the circumstances of the activity (e.g. amount of resources, complexity, location, nature of resources, capacity and experience of intermediary):

- a) Create a written agreement, and implement its terms and provisions.
- b) Communicate a clear, complete, and detailed description of the activity to the intermediary.
- c) Monitor and supervise the activity.
- d) Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
- e) Make periodic transfers of resources, based on demonstrated performance.

D. TRANSFERS TO HEAD BODIES OUTSIDE CANADA

In Appendix C to the Guidance, CRA addresses the situation of Canadian charities being part of or “offshoots” of a larger organization located outside of Canada that may require payments from the Canadian charities, such as tithes, memberships, royalties or other similar transfers. On the one hand, CRA acknowledges that “having the head body act as an intermediary for a charity is often not practical, since the nature of the relationship may prevent the charity from instructing its head body in how to use the money.” On the other hand, the Guidance warns that the charities must adhere to the same principles with respect to direction and control of their resources and cannot simply send gifts to their head office.

The Guidance recognizes that head bodies outside Canada may provide charities with goods and services, such as training, accounting, literature, polices, communications and use of intellectual property. However, it cautions charities to be sure that “they are receiving goods and services equivalent in value to the amounts they are sending.” CRA also accepts that charities usually benefit from resources received from their head body and if the amount transferred is small (i.e. \$5,000.00 or 5% of the charity's annual expenses) no further evidence of benefit will be required. Therefore, should the amount of funds transferred exceed the threshold amount, the charity would have to be sure that the goods and services received reflect the value of the funds transferred. A contract should also be signed but it would not need to contain all of the measures of control required when the charity engages an intermediary to carry on activities on behalf of the charity.

Appendix C of the Guidance does not address the common situation of funds being transferred to a head body from its international members for the purpose of undertaking a charitable project, such as

development work. The advantage of this type of project is that economies of scale can be achieved and the funds can be directed to those most in need rather than having multiple small projects undertaken by the various national bodies. In situations like this, it would appear that the measures of control provided for in the Guidance are required.

E. CONCLUSION

The CRA Guidance recognizes that the nature of the relationship between the Canadian charity and its head body does not fit neatly into the usual requirements for direction and control. Being hierarchical in nature, head bodies are not accustomed to receiving “direction” from and being “controlled” by members of the international body. CRA’s acceptance that the Canadian charity generally receives benefits from the head body in terms of goods and services is also welcome. Many Canadian charities, however, will find that the safe harbour amount of \$5,000.00 sent in exchange for goods and services from the head body to be quite low and does not address the situation of funds transferred to the head body for charitable programs.