
IMAGINE CANADA SEMINAR RISK MANAGEMENT

October 28, 2010

Highlights of CRA Compliance Requirements for Charities

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OVERVIEW

Part I: Differences Between Charities and Not-for-Profit Organizations

Part II: Basic Requirements of Charitable Status

Part III: Reporting Requirements and the Annual Information Return

Part IV: Brief Update on Recent Legislation Initiatives Under the *Income Tax Act*

Part V: Fundraising Considerations

Part VI: Political Activity

Part VII: Transfer of Assets Outside Canada

2

PART I: DIFFERENCES BETWEEN CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS

- Under the *Income Tax Act* - “qualified donees” concept was introduced
 - Includes a “registered charity”
 - Defined as “charitable organization”, “public foundation” and “private foundation”
 - No definition of a “charity” but reflects the common law definition
 - Includes extended statutory list of “qualified donees”

3

- Registered Canadian amateur athletic associations
- Low-cost housing co-operatives for the aged
- Municipalities
- United Nations and its agents
- Prescribed universities
- Charitable organizations outside Canada to which the federal government or its agents has made a gift during the taxpayer's taxation year or the 12 months before it
- Her Majesty in right of Canada or a province

4

- What are the tax advantages of being a charity?
 - A charity does not pay income tax
 - A charity can issue charitable receipts to donors for income tax purposes
 - A gift for income tax purposes now permits consideration back to the donor through split-receipting
- What are the legal forms available for a charity?
 - Unincorporated associations
 - Charitable trusts
 - Non-share capital corporations

5

- Not-for-profit Organizations**
- What is a not-for-profit organization under the *Income Tax Act*?
 - Club, society or association
 - But must not be a charity
 - Organized and operated exclusively for social welfare, civic improvement, pleasure or recreation, or any other purpose, except profit
 - No part of the income can be payable or available to any proprietor, member or shareholder

6

- What are the tax advantages of being a not-for-profit organization?
 - A not-for-profit organization generally does not pay tax on income, except income from property of an organization whose main purpose is to provide dining, recreation or sporting facilities
 - However, a not-for-profit organization cannot issue charitable receipts for income tax purposes

7

- What are the legal forms available for not-for-profit organizations?
 - Unincorporated associations
 - Non-share capital corporations
- Examples would include
 - Recreational clubs
 - Service clubs
 - Trade associations
 - Professional associations

8

PART II: BASIC REQUIREMENTS OF CHARITABLE STATUS

Preliminary Comments

- Being granted charitable status by Canada Revenue Agency (CRA) can be beneficial to an organization in several ways as outlined earlier
- Accompanying these benefits are requirements that an organization must comply with in order to maintain charitable status

9

Basic Requirements of Charitable Status

There are several basic requirements that charities must ensure they comply with

1. **Maintaining the basic requirements of charitable status**
2. **Devoting resources to charitable activities**
3. **Avoiding private foundation designation**
4. **Ensuring that a public benefit is achieved**
5. **Restricting political activities**
6. **Filing information returns with CRA**
7. **Meeting the disbursement quota requirement**
8. **Keeping adequate books and records**

10

1. **Organizations with charitable status must maintain certain basic requirements:**
 - a) **The organization's purposes must fall within one or more of the following four charitable purpose categories:**
 - **The relief of poverty**
 - **The advancement of education**
 - **The advancement of religion**
 - **Other purposes that are beneficial to the public as determined by the courts**

11

- b) **No amount of the organization's income can be available to its members for their personal use, as opposed to charitable purposes**
 - **An exception exists for reimbursement of out-of-pocket expenses**
 - c) **The organization must be resident in Canada, which means that it must be either a Canadian established:**
 - **Corporation**
 - **Trust, or**
 - **Unincorporated Association**

12

2. To maintain charitable status, the resources of an organization must be devoted to charitable activities

- Charitable activities are those activities that further the charitable purpose of an organization
- As such, an activity is not in itself inherently charitable or not
- An activity is determined to be charitable or not by the purpose that is being pursued by the activity undertaken

13

- For instance, the sale of religious literature by a church would be charitable but the sale of religious literature by a for-profit book store would not be charitable
- Under the ITA certain activities are deemed to be charitable activities:
 - Carrying on a 'related business' that is either done in furtherance of and subordinate to a charity's primary charitable objects or is an enterprise which is substantially undertaken by unpaid volunteers (i.e. 90% or more)
 - Transferring charitable resources to 'qualified donees', which consists primarily of registered Canadian charities, subject to certain limitations

14

3. Organizations with charitable status as either a charitable organization or a public foundation must meet the following criteria in order to avoid being redesignated as a private foundation

- More than 50% of its board of directors must be at "arm's length" with each other
- Where a donor (other than a charitable organization or public foundation) has contributed more than 50% of the capital of the organization, then the donor cannot directly or indirectly exercise control over the charity and must be in an arm's length relationship with 50% or more of the directors or trustees

15

4. An organization with charitable status must have activities and purposes that benefit the public

- A public benefit is presumed where the organization's purpose is advancing religion
- This presumption of a public benefit can be challenged when the contrary is shown, or if the charitable nature of the organization is called into question
- Difficulty comes in determining exactly what criteria would be used to identify these circumstances

16

5. Organizations with charitable status cannot have political purposes, and as well cannot pursue political activities with certain exceptions

- Further discussion on this topic will follow

6. Generally, an organization with charitable status must file an annual information return with CRA within 6 months of its year end

- The annual information return includes the T3010 form, a basic information sheet, and financial statements of the organization
- The public portion of the T3010 return and all of the financial statements will be made available to the public on the CRA website

17

7. An organization with charitable status will also be subject to a mandatory 3.5% DQ on capital assets not used in charitable activities or administration, such as investments

- Note that the 80% DQ on receipted gifts is proposed to be repealed as part of the Budget 2010 effective for fiscal periods ending on or after March 4, 2010
- Under these rules, organizations with charitable status, holding more than \$25,000 in investment assets, will be required to expend at least 3.5% of their assets not used in charitable activities each year

18

8. Organizations with charitable status must also keep, for a period of six years, adequate books and records of the following

- T3010s as filed with attachments
- Financial statements
- Books and records (general ledger, cash receipt/disbursement journals, working papers)
- Bank account details
- Donation receipts for cash or gifts-in-kind
- Expense source documentation
- Details of activities
- Governing documents and details
- Agency/Consulting agreements

19

PART III: REPORTING REQUIREMENTS AND THE ANNUAL INFORMATION RETURN

1. General Comments

- The annual information return required to be filed under the ITA must be filed no later than 6 months after the end of the charity's fiscal period
- e.g. If the charity's year end fiscal period is March 31st, the annual information return is due by September 30th

20

- The annual information return includes the following documents:

- *Registered Charity Information Return (Form T3010B)*
- *Registered Charity Basic Information sheet (Form TF725)*
- *Directors/Trustees Worksheet (Form T1235)*
- *Qualified Donees Worksheet (Form T1236)*
- *A copy of the charity's own financial statements*

21

- See the CRA guide on *Completing the Registered Charity Information Return (Form T4033)* for more details
 - The ITA provides for both an “information return” and a “public information return”
 - For simplicity, the two distinct concepts of the information return and the public information return have been combined into a single return, the T3010. As such, the T3010 return has a dual purpose, namely, to provide information to the public and to ensure compliance
 - Filing an annual information return will not necessarily result in CRA reviewing its contents until an audit is undertaken
- 22

- 2. Information Available to the Public**
- Most of the annual information return, and all of the financial statements filed with it are made available to the public
 - Public portions of the return are available at www.cra.gc.ca/charities
- 23

- 3. Failure to File Information Return**
- A charity that does not file its return can lose its charitable status and will no longer be able to issue tax receipts for donations
 - The charity would also be liable to pay a revocation tax equal to the full value of any remaining assets after disbursement on either charitable activities or transfer to “eligible donees”
- 24

- If an organization's charitable registration is revoked, CRA policy #CSP-R19 states that it can apply for re-registration by submitting a completed *Application to Register a Charity Under the Income Tax Act* (Form T2050)
- The organization must also pay a \$500 penalty and file all missing information returns

4. Completing Form TF725 – Registered Charity Basic Information

a) General Comments

- The *Registered Charity Basic Information* sheet (Form TF725) is used to verify and/or update the accuracy of the information held in the CRA records about the charity

25

- The person who signs Form T3010A is also certifying that the information on Form TF725 is correct, complete and up to date
- Information which cannot be revised directly on the basic information sheet includes:
 - The name of the charity
 - The charity's designation, registration date, and BN/registration number
 - The fiscal period end date of the charity
- In the above cases, an authorized representative of the charity can only change the information by sending a letter, signed by an authorized representative of the charity, to CRA with supporting documentation separate from the information return

26

- Information which can be revised directly on the basic information sheet includes:
 - The address of the charity
 - The charity's contact information (e.g. telephone number, fax number, email and website address)
 - The names that the charity is known by other than its registered name
 - The charity's primary program areas

27

5. Completing Form T3010 – Registered Charity Information Return

- a) Changes to its Governing Documents**
 - If there have been any changes to the charity’s governing documents, an official copy of the amended governing documents must be sent to CRA
 - If charitable objects have changed, approval from CRA must be obtained
- b) Directors/Trustees and Like Officials**
 - The charity must attach a list providing the following information of each director/trustee and like official:
 - Last name, first name, and initial
 - Full home address
 - Position in the charity

28

- Whether or not they were a director/trustee at the end of the fiscal period
 - Telephone number
 - If they are at arm’s length from all other members of the governing board
 - Date of birth
- c) How the Charity Carried Out its Charitable Purposes During the Fiscal Period**
 - The charity must describe any ongoing programs and new programs that are carried on
 - The term “program” refers to all the charitable work the charity performs on its own, as well as gifts made to qualified donees
 - The charitable program must fall within the CRA approved charitable objects of the organization

29

- d) Did the Charity Carry on Programs, Directly or Indirectly, Outside Canada?**
 - Charities are entitled to carry out their own charitable programs outside Canada provided that it is done in accordance with one of the following:
 - Using employees or volunteers situated in other countries
 - Retaining an agent or contractor under an agency agreement, contract, joint-venture, or similar arrangement provided that the charity exercises control and direction over the programs
 - Making gifts to other qualified donees

30

e) Issues Involving Charity Revenue and Expenditures

- Eligible amount of tax-receipted gifts
- Amounts received from other registered charities
- Tracking other gifts and revenue
- Expenditures on charitable programs

31

f) Certification

- The information return must be signed by an authorized director/trustee or like official of the charity
- The person who signs the return is responsible for obtaining the best knowledge possible about the information reported on the return
- Certification applies to all components of the charity's information return listed earlier
- Board approval is recommended in order to authorize the individual to sign the certification and to verify the information

32

PART IV: BRIEF UPDATE ON RECENT LEGISLATION INITIATIVE UNDER THE INCOME TAX ACT

1. Disbursement Quota Reform under Federal Budget 2010

a) Background

- Disbursement quota (DQ) is prescribed amount that registered charities must disburse each year in order to maintain charitable registration

33

- **Purposes of DQ**
 - Curtail fundraising costs
 - Limit administration costs
 - Limit capital accumulation
 - Ensure significant resources devoted to charitable activities
- **DQ introduced in 1976**
- **Rules reformed by 2004 Budget – much more complex**

34

- b) **Pre-2010 Budget 80% DQ and 3.5% DQ Rules**
- **A charity had to spend each year on charitable activities (including gifts to other charities) what is at least equal to 80% DQ + 3.5% DQ**
- **Failure to meet DQ was and continues to be grounds for revocation**
- **80% DQ (“charitable expenditure rule”)**
 - In general terms it was the sum of
 - 80% of gifts received in the immediately preceding year (except gifts of enduring property)
 - 80% of enduring property expended in the year
 - 80% of gifts received from other charities

35

- **3.5% DQ (“capital accumulation rule”)**
 - Must expend 3.5% of assets not used directly in charitable activities or administration (“investment assets”)
 - Based on the average value of assets in 24 months immediately preceding the taxation year
 - 3.5% DQ did not apply if property is \$25,000 or less

36

c) 2010 Budget DQ Rules

- 2010 Budget released March 4, 2010
- Draft legislation released on August 27, 2010
- Provides for significant reform of the DQ regime as set out below
- Repeal of 80% DQ
- Repeal of 80% DQ related concepts
 - Enduring property (including ten-year gifts)
 - Capital gains pool
 - Specified gifts

37

- Increased threshold for 3.5% DQ to \$100,000 for charitable organizations (but remains at \$25,000 for foundations)
- Expanded anti-avoidance provisions stated to achieve the following
 - Extend existing anti-avoidance rules to situations where it can reasonably be considered that purpose of a transaction was to unduly delay or avoid application of DQ
 - To ensure amounts transferred between non-arm's length charities will be used to satisfy the DQ of only one charity

38

- Specific anti-avoidance provisions
 - A charity enters into a transaction and it may reasonably be considered that a purpose of the transaction is to avoid or unduly delay expenditures on charitable activities
 - "Transaction" includes gifts to other charities
 - May be grounds for revocation
 - 110% penalty of expenditure delayed or avoided can be imposed
 - Where gift to another charity - both charities are jointly and severally, or solitarily, liable for the penalty

39

- The fair market value of property received from non-arm's length charity will need to be expended by end of the next taxation year (in addition to its 3.5% DQ)
 - Unless the transferor charity elects that gift will not count toward satisfying its own 3.5% DQ ("designated gift")
 - Otherwise may be grounds for revocation
 - 110% penalty of FMV of the property that exceeds the amount expended can be imposed

40

- CRA will be given discretion to exclude accumulated property from 3.5% DQ
 - CRA has discretion to allow charities to accumulate property for a particular purpose, such as a building project
 - Currently, property accumulated (and income earned) with CRA approval is deemed to have been spent on charitable activities
- Changes effective for fiscal years that end on or after March 4, 2010
- Finance will monitor effectiveness of CRA's Fundraising Guidance and take action if needed to ensure its stated objectives are achieved

41

- d) Implications Of New DQ Rules
- Welcomed change
 - Simplicity of DQ calculation
 - Eases administrative burden for charities (especially small and rural charities)
 - No need to spend scarce resources allocating expenses between charitable vs administrative expenses for 80% DQ
 - Increase of \$100,000 threshold for charitable organizations allows them greater ability to maintain reserves to deal with contingencies

42

- Need to use “designated gift” option with transfers between non-arm’s length charities in order to avoid immediate disbursement requirement for recipient charity
- What to do with existing endowment funds, long-term gifts and ten-year gifts?
 - Questions
 - Can capital be encroached?
 - Still need to track 10-year period?
 - Still need to track hold period?
 - Need to review all existing gift agreements and trust provisions in this regard

43

- Whether can encroach will depend on language of agreement
 - Does agreement permit encroachment of capital or expenditure of income only?
 - Does language specifically allow encroachment up to capital gains pool?
 - May need *cy-pres* court order to vary terms
 - If terms impractical or impossible
 - e.g. Ontario – section 13 order under *Charities Accounting Act*

44

2. Bill C-470, Private Members’ Bill

- Bill C-470 would give CRA the discretion to revoke charitable status of a charity when it pays a single executive or employee annual compensation over \$250,000.00
- Bill C-470 would also allow CRA to publish name, job title and annual compensation of each of a charity’s five highest paid employees and executives
- If passed, will be effective 2011 onward
- Received second reading, now going to Finance Committee in Fall 2010

45

PART V: FUNDRAISING CONSIDERATIONS

- From the media's perspective this is a number one compliance issue
- With repeal of 80/20 DQ emphasis will both be on fundraising expenses
- While the CRA accepts that charities can have fundraising costs, its expectation is that these expenses be reasonable and proportionate to the charitable activity being conducted

46

- A charity which spends excessive amounts on fundraising to the detriment of its charitable programs is not considered to be devoting all of its resources to charitable activities
- Additionally, spending excessive amounts on fundraising results in disbursement quota shortfalls and often deliberate, incorrect categorization of expenses (i.e. including fundraising expenses as a charitable program expenditure)

47

- CPS-028, *Fundraising by Registered Charities* ("Guidance") available at <http://www.cra-arc.gc.ca/>
 - The Guidance focuses on the calculation of fundraising ratio, i.e. the ratio of fundraising costs compared to fundraising revenue on an annual basis
 - The ratio will place a charity in 1 of 3 categories

48

- **Under 35%: Unlikely to generate questions or concerns by CRA**
- **35% to 70%: CRA will examine the average ratio over recent years to determine if there is a trend of high fundraising costs requiring a more detailed assessment of expenditures**
- **Above 70%: This will raise concerns with CRA and the charity must be able to provide an explanation and rationale for this level of expenditure, otherwise it will not be acceptable**

49

– **Seven best practice indicators that will decrease the risk of CRA finding unacceptable fundraising:**

1. **Prudent planning processes**
2. **Appropriate procurement processes**
3. **Good staffing processes**
4. **Ongoing management and supervision of fundraising practice**
5. **Adequate evaluation processes**

50

6. **Use made of volunteer time and volunteered services or resources**
7. **Disclosure of fundraising costs, revenues and practice**

- **See also Office of the Public Guardian and Trustee, *Charitable Fundraising: Tips for Directors and Trustees***
<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bulletin-8.asp>

51

PART VI: POLITICAL ACTIVITY

Political Purpose

- All organizations with charitable status are required by law to have exclusively charitable purposes (as determined at common law)
- An organization established for a political purpose cannot be a charity

52

- The courts have determined political purposes to be those that seek to:
 - Further the interest of a political party or support a political party or candidate for public office, or
 - Retain, oppose, or change the law, policy or decision of any level of government in Canada or a foreign country
- CRA will look at the stated purpose of a charity, as well as its activities to determine whether it has adopted political purposes

53

Three Categories of Activities

- For the purposes of this presentation, activities undertaken by a charity can be separated into three categories:
 1. Charitable Activities (permitted without limits)
 2. Political Activities (permitted up to prescribed limits)
 3. Prohibited Activities (never permitted)

54

1. Charitable Activities (Permitted Without Limits)

- If an activity is considered by CRA to be charitable, (i.e. it is a means to achieving a charitable purpose) then it is permitted without limitations
- However, neither the ITA nor CRA policies define what a “charitable activity” is

55

- CRA Policy Statement does comment upon when a communication will be a charitable activity
 - Public awareness campaign about the work of a charity or an issue related to that work, so long as the activity is connected and subordinate to the charity’s purpose
 - Communicating with an elected representative or public official, provided that such activity is subordinate to the charity’s purpose and all representations

56

- Relate to an issue that is connected to the charity’s purpose
- Is well reasoned, and
- Does not contain information that is false, inaccurate or misleading
- Releasing the text to a representative before or after delivering it to the elected representative or public official, provided that the entire text is released and there is no explicit call to political action

57

- Other examples of charitable activities given in the CRA Policy Statement
 - Distributing the charity's research, including distributing it to all election candidates
 - Publishing a research report on-line
 - Presenting a research report to a Parliamentary Committee
 - Giving an interview about a research report
 - Distributing a research report to all Members of Parliament
 - Participating in an international policy development working group
 - Joining a government advisory panel to discuss policy changes

- Where possible, a charity should try to ensure that an activity is a charitable activity
- As a fall back, a charity can expend a limited amount of its resources on political activities as described below

- 2. Political Activities (Permitted Up To Prescribed Limits)**
- What is a Political Activity?**
- An activity is presumed to be a political activity if a charity:
 - Explicitly communicates a call to political action
 - Explicitly communicates to the public that the law, policy or decision of any level of government in Canada or a foreign country should be retained, opposed or changed

- Explicitly indicates in its material that the intention of the activity is to incite, organize or put pressure on governments to retain, oppose or change the law, policy or decision of a government
- A charity may take part in political activities if such activities are:
 - Non-partisan
 - Connected to the charity’s purposes
 - Subordinate to the charity’s purposes
 - Fall within expenditure limits under the ITA

61

Limits on Expenditures on Permitted Political Activities

- Where a charity takes part in political activities, it must devote “substantially all” of its “resources” to charitable activities
- “Resources” is not defined in the ITA but administratively CRA considers “resources” to include the total of a charity’s financial assets, as well as everything the charity can use to further its purposes, such as its staff, volunteers, directors and its premises and equipment
- “Substantially all” usually means 90% or more
- Therefore, as a general rule, a charity that devotes no more than 10% of its total “resources” a year to political activities would be operating within the “substantially all” provision

62

- CRA’s administrative discretion concerning the limits on expenditures on political activities has been extended in certain situations by its Policy Statement:
 - A charity with annual income of less than \$50,000 can devote up to 20% of resources in a given year
 - A charity with annual income of between \$50,000 and \$100,000 can devote up to 15% of resources in a given year
 - A charity with annual income of between \$100,000 and \$200,000 can devote up to 12% of resources in a given year

63

- In limited circumstances, expenditures on political activities can be averaged over a number of years
- Resources used towards permitted political activities do not count toward meeting a charity's disbursement quota
- a charity that is involved in political activities will need to keep careful records in order to demonstrate that substantially all of its resources have been devoted to charitable activities in order to be prepared for an audit

64

3. Prohibited Activities

- Prohibited activities are activities that are either illegal or involve partisan political activities and therefore are not permitted at all
- The CRA Advisory (June 11, 2004) entitled Political Activities Guidance and Partisan Politics provides as follows:
 - Recognition that charities are confused about what constitutes "partisan political activities" so the Advisory was intended to clarify matters

65

- Advisory explains that this issue is determined by subsections 149.1(6.1) and (6.2) of ITA, which states that
 - Partisan political activity involves the "direct or indirect support of, or opposition to, any political party or candidate for public office" and is clearly prohibited
- A "candidate for public office" is different from an "elected representative", but support or opposition of an "elected representative" may still be seen as "direct or indirect support of or opposition to, any political party"

66

Implications for Charities

- Charities need to
 - Ensure that activities are either inherently “charitable” or are “permitted political activities”
 - Ensure that any political activities undertaken fall within expenditure limits
 - Remember that any resources expended on permitted political activities cannot be included in amount used to meet a charity’s disbursement quota

67

- Keep careful records of all expenditures with respect to permitted political activities
- Abstain from prohibited activities
- If in doubt over whether an activity is permissible, make formal request for direction from CRA before engaging in the activity
- When filling out charitable income tax return (T3010), charities should pay careful attention to the guidelines provided by CRA which accompany the return

68

PART VII: TRANSFER OF ASSETS OUTSIDE CANADA

- On July 8, 2010, CRA released a Guidance entitled *Canadian Registered Charities Carrying on Activities Outside of Canada* (“Guidance”)
- Intended to update and replace the CRA publication on foreign activities entitled *Registered Charities: Operating Outside Canada* RC4106 and Registered Charities Newsletter No. 20

69

A. HOW CAN A CHARITY OPERATE?

- **Two means available under the Act by which a registered charity can pursue its charitable purposes**
 - a) **The charity can make gifts to qualified donees**
 - b) **The charity can carry out its own charitable activities, which in turn would require that the charity must control all of its activities and resources (referred to as the “own activities test”)**

70

1. Gifts to Qualified Donees

- **A registered charity can make gifts to other organizations that are on the list of qualified donees provided for in the ITA**
- **Qualified donees include more than just other Canadian registered charities**
- **The simplest way to carry on activities outside Canada is for a charity to make a gift to a qualified donee that has the experience and capacity in the foreign country to carry on the activity**

71

- **List of qualified donees:**
 - **Prescribed universities outside Canada**
 - **United Nations and its agencies**
 - **Municipalities, provincial and federal governments**
 - **Foreign charities that the Canadian Government has made a gift to in the preceding 12 months**

72

2. Carrying on Its Own Charitable Activities

- The carrying on of its own charitable activities requires a charity to be actively involved in programs that are intended to achieve its charitable purposes
- This can be done by the charity directly funding its own employees and/or volunteers in carrying out its programs
- It is not permissible for a registered charity to carry out its charitable purposes by merely giving either monies or other resources to an organization that is not a qualified donee

73

B. INTERMEDIARIES

- When a charity cannot carry out an activity with its own staff or volunteers, it may use an intermediary to carry out its activities
- The Guidance sets out different types of acceptable intermediary relationships, but CRA does not recommend one type of relationship over another
- The comments in the CRA Guidance requiring the exercise of direction and control over a charity's resources would also generally apply to activities carried on inside of Canada through or in conjunction with a non-charity

74

1. Agents

- In an agency relationship, a charity can appoint an agent to act as its representative in carrying out specific tasks on behalf of the charity and, in doing so, transfers monies or other charitable resources to the agent
- Agents can be organizations or individuals and do not need to be qualified donees under the ITA or registered charities in their own countries

75

- Agency agreements can be one-time agreements or can be master agreements where there is to be a longer term relationship between the parties which are then supplemented by designations accompanying each transfer of monies
- CRA warns charities that they “must always be able to show that the agent is carrying on the charity’s own charitable work”
- Agency arrangements have traditionally been the most common method used by registered charities to carry on activities outside of Canada through intermediaries

76

2. Joint Ventures

- A charity can also carry on its activities jointly with other organizations or individuals through a joint venture relationship where the participants pool their resources in order to accomplish their goal in accordance with the terms of a joint venture agreement
- A charity can work with non-qualified donees as long as the charity is exercising control over the activities proportionate to the resources it is providing and it can demonstrate this fact

77

- Generally, a joint venture committee is required to establish, conduct and oversee the joint venture
- Where the charity contributes 40% of the resources for the project, the charity should have 40% of the voting rights on the governing board
- CRA warns that if a charity is susceptible to being voted down by other joint venture participants, the charity should need to retain the right to discontinue supplying resources to the joint venture

78

3. Co-operative Participants

- “Co-operative participant” is defined as “an organization that a charity collaborates with to achieve a common, charitable purpose. No longer referred to as a partnership
- Charities are considered co-operative participants where the charity works side by side with another organization to achieve a particular goal, but the organizations do not pool their resources or carry out the project as a joint venture

79

4. Contractors

- CRA permits a charity to contract with an organization or individual in another country to provide goods and services to achieve its charitable purpose of the charity, including core charitable services
- Contractors can be organizations or individuals and do not need to be either qualified donees under the ITA or recognized charities in their own countries
- However, the registered charity is required to give specific instructions to its contractors

80

C. THE “OWN ACTIVITIES” TEST

- The key consideration that a charity must have when carrying on activities abroad is whether it meets the “own activities” test
- Defined in the Guidance as activities *“which are directly under the charity’s control and supervision, and for which it can account for any funds expended.”*

81

- Charities cannot act as a passive funding body or conduit for a non-qualified donee
- A conduit is an organization whose primary purpose is to raise funds in Canada for the benefit of a foreign non-qualified donee, and does not control all activities supposedly carried out on its behalf

82

- The “own activities” test applies to charities that are offshoots of non-qualified donees, such as a charity that is subordinate to a head body organization located outside Canada
- Charities cannot simply send payments to head bodies, affiliates or other member organizations without receiving goods or services in return
- How does this apply to charities?

83

1. Control and Direction of Resources

- One part of the “own activities” test is the control and direction that the charity exercises over its resources
- A charity should always have an agreement in place with any intermediaries that it works with
- In some cases, the agreement may only require a verbal discussion, while other situations will call for all six measures of control discussed below

84

- Six “measures of control” to assist in meeting the “own activities test”
 - a) Written agreements
 - b) Description of activities
 - c) Monitoring and supervision
 - d) Ongoing instruction
 - e) Segregated funds (if agency)
 - f) Periodic transfers

85

2. Keeping Books and Records in Canada

- Charities must keep adequate books and records in Canada, in either English or French
- The books and records must allow CRA to verify that charitable funds are either being spent on its own activities or are being gifted to a qualified donee
- The books and records must have enough information to allow CRA to determine if the charity is operating in accordance with the Act

86

D. ADDITIONAL ISSUES

1. Local Laws

- Charities operating within Canada must comply with Canadian laws
- Charities operating outside of Canada may be operating in areas where the laws are very different, but the Act does not require charities to comply with laws in foreign jurisdictions
- This is a change in position for CRA
- However, being a registered charity in Canada does not exempt a charity from the laws in the jurisdiction in which they operate

87

- CRA strongly recommends that all charities make themselves aware of local laws before operating abroad
- Awareness of local laws will ensure that the public benefit of an activity is not offset by the harm that may result to those carrying out the activities, to the beneficiaries of the charity, or to anyone else

88

2. Canada's Anti-Terrorism Legislation

- Added to the Guidance is a section on compliance with Canada's anti-terrorism legislation
- The Guidance reminds charities that it is their responsibility to ensure that they do not operate or associate with individuals or groups that support terrorist activities
- Failure to do so may result in the charity losing its status under the Act

89

3. Funding from CIDA and Other Government Programs

- The Guidance points out that not all CIDA funded activities will be considered to be charitable. The participating charity must, therefore, ensure that the project meets its own charitable purposes
- CRA recommends contacting the Charities Directorate in situations of uncertainty regarding CIDA-funded projects to determine if it is charitable

90

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