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## Using an Intermediary to Carry out a Charity's Activities within Canada

### Guidance

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## 1. Summary

According to the *Income Tax Act*, [\[Footnote 1\]](#) a registered charity can only use its resources (for example - funds, personnel, and property) in two ways, whether inside or outside Canada:

- on its own activities (those which are directly under the charity's control and supervision, and for which it can account for any funds expended); and
- on gifts to qualified donees. [\[Footnote 2\]](#)

## **1.1. Own activities**

A charity usually carries on its activities using its staff (including volunteers, directors, or employees), or through an intermediary (for example - an agent or contractor). However, when using an intermediary, it must still direct and control the use of its resources, [\[Footnote 3\]](#) although it may generally delegate authority to make day-to-day operating decisions. A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee.

For this guidance, an intermediary is a person or non-qualified donee that the charity works with to carry out its own activities.

## **1.2. Direction and control when using intermediaries**

The Canada Revenue Agency (CRA) requires that a charity take all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary. When carrying out activities through an intermediary, the following steps are strongly recommended:

- Create a written agreement with the intermediary, and implement its terms.
- Communicate a clear, complete, and detailed description of the activity to the intermediary.
- Monitor and supervise the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
- For agency relationships, segregate funds, as well as maintain separate books and records.
- Make periodic transfers of resources, based on demonstrated performance.

A charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.

For more information on [conduits](#), see section 3.5. For more information on [direction and control](#), see section 5.

## 2. Introduction

This guidance does not have the force of law. It is intended to help registered charities and applicants for charitable registration carrying on activities within Canada through an intermediary to understand the CRA's interpretation of, and expectations related to, the provisions of the *Income Tax Act* concerning charitable registration. To establish whether an activity complies with the *Income Tax Act*, the CRA will have to examine the facts of the situation.

For this guidance, **charity** means a Canadian charity that is registered under the *Income Tax Act*. **Applicant** means an organization applying for registered charity status, and which intends to carry on activities through an intermediary.

This guidance generally assumes that a charity working with an intermediary is doing so to carry on charitable activities within Canada. The requirements in this guidance about working with intermediaries also apply to all charitable activities carried on outside Canada. For more information on this topic, see [Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada](#).

For information on registering a charity, see the Charities Directorate's Web page on [applying for registration](#). If you have questions about this guidance or need more information, you can call the Charities Directorate at the following telephone numbers:

- 613-954-0410 (for local Ottawa calls)
- 1-800-267-2384 (for toll-free, long-distance calls)
- 1-800-665-0354 (for toll-free TTY service)

The Charities Directorate's fax number is 613-954-8037.

### 2.1. What do charities need to know about Canada's anti-terrorism legislation?

Charities must remember their obligations under Canada's anti-terrorism legislation. As with all individuals and organizations in Canada, charities are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities or that support terrorist activities.

The CRA has produced a [checklist](#) to help Canadian charities identify vulnerabilities to terrorist abuse.

Under the *Charities Registration (Security Information) Act* and the *Income Tax Act*, a charity's status may be revoked if it operates in such a way as to make its resources available, either directly or indirectly, to an entity that is a **listed entity** as defined in subsection 83.01(1) of the *Criminal Code*; or to any other entity (person, group, trust, partnership, or fund, or an unincorporated association or organization) that engages in terrorist activities or activities in support of them.

There are other prohibitions on funding or otherwise facilitating terrorism. For more information, see the *Criminal Code*, the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*, and the *United Nations Al-Qaeda and Taliban Regulations*, as well as the Charities Directorate's Web page [Charities in the International Context](#).

### **3. Are there restrictions on how a charity can use its resources?**

The *Income Tax Act* allows a charity to operate in only two ways:

- carry out its own charitable activities
- make gifts to [qualified donees](#)

#### **3.1. What are charitable activities?**

Charitable activities are those that further a purpose recognized as charitable under common law, such as providing housing to the homeless, scholarships to students, or medical care to the sick.

Apart from making gifts to qualified donees, the *Income Tax Act* requires a charity to devote all its resources to charitable activities carried on by the organization itself. [\[Footnote 4\]](#) This requirement is referred to as the **own activities** test.

A charity's resources include all physical, financial, and material resources (for example - buildings, money, or donated goods), intellectual property, and its staff. [\[Footnote 5\]](#)

### 3.2. How can a charity carry out its own charitable activities?

A charity may use its own staff (including volunteers, directors, or employees) to carry out its activities. Assigning the charity's staff to carry out its activities is typically the easiest way for a charity to meet the own activities test.

A charity may use an intermediary to carry out its activities. For this guidance, an intermediary is an individual or non-qualified donee [\[Footnote 6\]](#) that the charity works with to carry out its own activities. For example, a charity might do one of the following:

- hire a company;
- enter into an agreement with a non-profit organization to have the organization deliver specific charitable programs for the charity; or
- pool its resources with another organization to complete a project.

In certain limited circumstances, the CRA will consider a charity to be carrying out its own activities by transferring certain resources to a non-qualified donee. Before a charity carries out its own activities by transferring its resources to a non-qualified donee, the CRA expects **all** of the following conditions to apply:

- The nature of the property being transferred is such that it can reasonably be used only for charitable purposes (for example - medical supplies like antibiotics and instruments, which will likely only be used to treat the sick, or school supplies like textbooks, which will likely only be used to advance education); **Note:** transfers of money are not acceptable, and always require ongoing [direction and control](#).
- Both parties understand and agree the property is to be used only for the specified charitable activities.
- Based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities. [\[Footnote 7\]](#)

Investigating the status and activities of an intermediary would typically include examining details such as the intermediary's stated goals and purposes, any previous relationship with the charity and other charities, its history and general reputation, and relevant media reports.

If any of the above three conditions do not apply, then a charity will only be able to meet the own activities test by [directing and controlling](#) the use of its resources as otherwise stated in this guidance. [\[Footnote 8\]](#) If a charity does not direct and control the use of its resources as required, it risks sanctions under the *Income Tax Act*. This includes financial penalties and revocation of its status as a registered charity.

Examples of a transfer of resources to a non-qualified donee where the above conditions could apply include the following:

- transfers, by a research organization, of books and scientific reports to a reputable library or school that is not a qualified donee
- transfers of food and blankets to a non-profit organization that is coping with a natural disaster, and has a long history of successful operations

A charity cannot transfer any kind of property if it knows, or ought to know, that the property will be used either for non-charitable purposes [\[Footnote 9\]](#) or to circumvent the provisions of the *Income Tax Act*.

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.

A charity does not have to adopt measures to direct and control the use of its resources when transferring property to the proper beneficiaries of its charitable activities. For example, a charity could give school supplies, such as books or writing instruments, to impoverished students without having to direct and control how the students use those resources.

### **3.3. Court decisions about the use of intermediaries**

The Federal Court of Appeal has rendered three decisions concerning charities using intermediaries to carry out their activities. Each case was an appeal of a revocation of charitable status by the CRA, and the Federal Court of Appeal dismissed each appeal.

The Federal Court of Appeal's decisions confirmed that a charity working with an intermediary must control the activities carried out on its behalf and maintain direction and control over the use of its resources. Charities or applicants for charitable status may find it useful to review these decisions, which are as follows:

- [The Canadian Committee for the Tel Aviv Foundation v. Canada \(2002 FCA 72\), 2002-03-01](#)
- [Canadian Magen David Adom for Israel v. Canada \(Minister of National Revenue\) \(2002 FCA 323\), 2002-09-13](#)
- [Bayit Lepletot v. Canada \(Minister of National Revenue\) \(2006 FCA 128\), 2006-03-28](#)

### **3.4. What is a gift to a qualified donee?**

A gift to a qualified donee is a transfer of money or any other property to a qualified donee. [\[Footnote 10\]](#)

Under the *Income Tax Act*, qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them. Some examples of qualified donees include other registered Canadian charities, the Government of Canada, prescribed universities outside Canada, the United Nations and its agencies, and [certain charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift.](#)

### **3.5. What is a conduit?**

For the purposes of this guidance, a conduit is 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. Acting as a conduit violates the *Income Tax Act* and could jeopardize a charity's registered status. [\[Footnote 11\]](#)

## **Example**

A charity is registered to protect the environment. A non-profit organization with identical purposes approaches the charity, and explains it has submitted an application for charitable status, but has not yet been registered.

The non-profit asks if the charity will accept donations on its behalf, issue receipts, and then forward the money to the non-profit. The charity agrees to the non-profit organization's request.

The charity has no direction or control over how the receipted funds are used, and no say in where, when or how the activity is carried out. In this case, the charity is simply funding the non-profit's own activities, and therefore, even though the activity itself may be charitable, the charity is acting as a conduit.

To avoid acting as a conduit, the charity must have real and demonstrable control over the use of its money, so that the carrying out of that activity by the intermediary amounts to the charity carrying on its own activity itself.

A charity may also be acting as a conduit when it transfers resources to a head body or umbrella organization that is not a qualified donee. In such cases, a charity and its head body may create a written agreement that gives the appearance that the head body is the charity's intermediary.

To determine if a charity is acting as a conduit, the CRA will look at the following types of facts:

- 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?
- 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?

#### **4. What are the requirements when working with an intermediary?**

A charity typically uses an intermediary when unable to carry out its own activities through its staff. The intermediary usually has resources that a charity needs, such as particular skills, resources, knowledge of a region, or specialized equipment.

Before deciding to work with an intermediary, and during the course of any such arrangement, a charity should investigate its status and activities to assure itself of the following conditions:

- The intermediary has the capacity (for example - personnel, experience, equipment) to carry out the charity's activity.
- There is a strong expectation the intermediary will use the charity's resources as directed by the charity.

When working through an intermediary, a charity must direct and control the use of its resources. [\[Footnote 12\]](#) A charity that does not direct and control its resources when working through an intermediary risks sanctions under the *Income Tax Act*, including the revocation of charitable status.

An intermediary can sometimes also be a beneficiary of a charity's activity - for example, acquiring skills and expertise - while carrying out the activity. For more information on this type of situation, see [Appendix A](#).

Any private benefit provided to an intermediary by a charity must be incidental and proportionate to any work being done. For example, a charity should ensure it pays a contractor only fair market value for any work done on its behalf.

##### **4.1. What are the most common types of intermediaries?**

Following are descriptions, provided for the purposes of this guidance only, of the four most common types of intermediaries a charity might use to carry out its own activities.

The type of intermediary that a charity needs to carry out an activity will depend on the facts of any given situation. The CRA does not recommend using one type of intermediary over another.

## **4.2. Agents**

An **agent** is an intermediary that agrees to carry out specific activities on a charity's behalf. A charity often uses an agent when the charity cannot send its staff to a region to carry out an activity.

### **Example**

A charity is registered to provide psychological counselling services to people in under-served northern communities across Canada. None of the charity's staff has any training in providing counselling. Instead, the charity locates a number of professional psychological counsellors with their own independent practices who agree to act as the charity's agents in carrying out the activity.

The charity and the counsellors create and sign an agreement describing the details of the activity and their respective roles and responsibilities. The agreement states that the charity will pay all travel and operating expenses, and the counsellors will volunteer their time and make typical day-to-day operating decisions, such as renting offices, notifying the communities of their services, and hiring local support staff.

The counsellors provide regular, detailed reports on the use of the charity's resources, according to the terms of the agreement. The charity intervenes as required to provide ongoing instructions on the use of its resources to make sure that the activity continues to be carried out according to the agreement, and that the activity is achieving the charity's own charitable purpose.

Registered charities should consider how they structure agency arrangements, since the existence of an agency relationship may expose them to significant liability for the acts of their agents. Even if there is no formal agency agreement in place, a court can attach liability to a registered charity if the court decides from the circumstances that an implied agency relationship exists.

### **4.3. Joint venture participant**

A **joint venture participant** is an organization that a charity works with to carry out a charitable activity. The charity and one or more joint venture participants pool their resources to accomplish their goal under the terms of a joint venture agreement.

A joint venture participant differs from an agent in that the charity is not relying entirely on the joint venture participant to carry out activities for the charity. Instead, the charity works with a joint venture participant to further the charitable activity.

Typically the charity has members sit on the governing board for the entire project, letting the charity make decisions on the use of its resources for the project. The structure of a joint venture varies from case to case.

A charity must be able to establish that its share of authority and responsibility over a venture allows the charity to dictate and account for how its resources are used. If a charity does not have enough decision-making authority to make sure that its resources are used as it directs, it may have difficulty establishing that it is carrying on its own activities.

#### **Example**

A charity is registered to relieve poverty by providing small business loans in an [economically challenged community](#). The charity collaborates with a for-profit bank to design an activity that will provide entrepreneurial training, support services, and start-up loans to hard-to-employ people.

The charity and the bank form a governing body to operate the venture. The charity provides roughly 40% of the funding for the

project and its representation on the venture's governing body is approximately 40% of the decision-making power. As long as the venture only uses the charity's resources for the charity's own activities, the arrangement should be acceptable.

However, with only 40% of the decision making power, it is possible the bank could decide to use the charity's resources inappropriately, such as carrying on different activities that are not those initially agreed to. Therefore, the arrangement should include a provision that allows the charity to discontinue devoting its resources to the venture under such circumstances.

The CRA will look at any venture as a whole, and a charity's participation in a venture, to make sure that the charity's resources are only furthering its charitable purposes. If the purpose of an overall project is not charitable, such as providing excessive or undue private benefit to an individual or company, a charity's own activities on behalf of that project may not be acceptable, even if those activities would normally be considered to be furthering its charitable purposes if carried out on their own.

For a list of the factors the CRA looks at when examining joint venture arrangements, see [Appendix B](#).

#### **4.4. Co-operative participants**

A **co-operative participant** is an organization that a charity works side by side with to complete a charitable activity. Rather than pooling their resources and sharing responsibility for the project as a whole, as in a joint venture, the charity and other organization(s) instead each take on responsibility only for parts of the project.

##### **Example**

A charity and a non-profit corporation have a common object to assist youth at risk in a major city. The charity specializes in helping teens recover from substance abuse. The non-profit provides academic assistance to teens with learning disabilities.

They decide to lease a space jointly to run a new program, aimed at helping youth at risk complete high school.

Each organization operates its particular program out of its half of the leased space, using its own staff and resources. While they co-operate by, for example, sharing information and recommending potential candidates for each other's programs, each organization retains ownership of its assets and carries out its responsibilities independently, without oversight or control from the other body.

#### **4.5. Contractors**

A **contractor** is an organization or individual that a charity hires to provide goods and/or services. For example, a charity might hire a for-profit construction company to build temporary housing for homeless individuals.

A contractor is an intermediary with whom direction and control is usually exercised through the terms and oversight of the contract between the charity and the person or business providing the goods or services.

##### **Example**

A charity is registered to carry out research into a particular disease. As part of its activities, it contracts with a private medical laboratory to test new compounds for their disease fighting properties.

The charity and the laboratory draft and sign a contract that outlines all the terms and conditions of their relationship. The contract is the instrument through which the charity directs and controls the use of its resources, monitors the use of its resources as the laboratory carries out the activity, and ensures that only fair market value is paid for any work done.

#### **5. What is direction and control?**

When transferring resources to an intermediary, a charity must direct and control the use of its resources [\[Footnote 13\]](#) to meet the own

activities test. The charity must be the body that makes decisions and sets parameters on significant issues related to the activity on an ongoing basis, such as the following:

- how the activity will be carried out
- the activity's overall goals
- the area or region where the activity is carried out
- who benefits from the activity
- what goods and services the charity's money will buy
- when the activity will begin and end

Maintaining direction and control does not mean a charity cannot accept advice from its intermediaries, or that a charity must make every decision involved in the carrying out of an activity, although it must have the ability to intervene in any decision. Typically, the types of decisions listed above would describe the overall framework of an activity.

An intermediary that carries out the work in the field is often in a better position to make day-to-day operational decisions. A charity can delegate the responsibility for such decisions to an intermediary, although this is not required under the *Income Tax Act*. For example, a charity might delegate the authority to make the following kinds of decisions:

- which local vendor to buy supplies from
- hiring and managing staff
- locating potential beneficiaries for an activity
- maintaining buildings owned or operated for the charity's activities

The intermediary should report back to the charity on any decisions made, so that it can make sure that the intermediary continues to comply with the *Income Tax Act*. For example, an agent awarding scholarships for a charity should be able to provide a list of recipients. This will let the charity make sure the agent is not awarding scholarships only to friends and family of the agent. The charity can veto awards that are not appropriate, and so continue to meet the public benefit test.

## **5.1. How should a charity direct and control the use of its resources?**

Generally speaking, the nature and the number of measures a charity adopts to direct and control the use of its resources should correspond to the circumstances of the activity, such as:

- the amount of resources involved
- the complexity and location of the activity
- the nature of the resources being transferred
- any previous experience working with a particular intermediary
- the capacity and experience of the intermediary

The CRA recommends adopting the following types of measures to direct and control the use of a charity's resources:

- Create a written agreement, and implement its terms and provisions.
- Communicate a clear, complete, and detailed description of the activity to the intermediary.
- Monitor and supervise the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
- For agency relationships, segregate funds, as well as books and records.
- Make periodic transfers of resources, based on demonstrated performance.

A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its activities.

### **Example**

A charity is registered to assist refugees, and it begins an activity to help refugees in Canada from a foreign country that recently suffered a civil war. However, the charity's staff has little expertise in the language and culture of the foreign country, and encounters difficulty when trying to contact people it can help.

The charity finds a Canadian, non-profit organization that welcomes newcomers to Canada, and that by coincidence happens to have several members who immigrated from the same country some time ago. The non-profit agrees, and has the capacity, to act on the charity's behalf in carrying out the activity of providing housing, interpretation, language training, social services, and employment preparation.

The charity and the non-profit meet to plan the activity. The charity takes the non-profit's advice and experience into account as they plan the activity, although it has final authority over the use of its funds. Both parties are satisfied with the activity, and the non-profit agrees to act on the charity's behalf.

The charity adopts as many measures to direct and control the use of its resources as is practical, including developing a written agreement with its agent, implementing the terms of the agreement, monitoring the activity, and providing ongoing instruction when required.

In this case, the CRA will likely consider that the charity is directing and controlling the use of its resources.

The facts of every situation will differ, and it is not possible to give precise guidelines to cover all situations in advance. If a charity plans to start a program that requires the transfer of property to an intermediary, or has questions about these types of transfers, we recommend contacting the CRA for advice.

## **5.2. What is a written agreement?**

A written agreement is a document that helps establish the relationship between a charity and its intermediary. The agreement should provide the authority and means for the charity to meet the own activities test, including by maintaining direction and control over its resources and over its intermediary's actions as they relate to the charity's activities. [\[Footnote 14\]](#)

The CRA recommends that a charity enter into a written agreement with any intermediary. Although there is no legal requirement to have a written agreement, and the same result might be achieved by other

means, [\[Footnote 15\]](#) a properly executed written agreement is an effective way to help meet the own activities test.

However, signing an agreement is not enough to prove that a charity meets the own activities test. The charity must also be able to show the CRA that the charity has a real, ongoing, active relationship with its intermediary. [\[Footnote 16\]](#)

Entering into a written agreement and implementing the terms of that agreement is usually an effective way to meet the own activities test. However, the CRA acknowledges that in situations where the amount of resources involved is minor, and is a one-time activity, the complications of developing a full, formal, written agreement may outweigh the benefits. In situations where the money spent on a one-time activity is \$1,000 or less, other documentary means might be used to show direction and control over the use of resources by intermediaries.

If a charity has concerns or questions about this type of arrangement, it should contact the CRA.

On occasion, applicants for charitable status intend to carry on activities through an intermediary. In these situations, a copy of a written agreement included with the application is often a good way to show the CRA that the relationship the applicant will enter into with its intermediary will enable the applicant to meet all requirements for registration.

Although there is no established template for written agreements, acceptable agreements would normally contain the elements listed in [Appendix C](#).

### **5.3. What is a description of activities?**

Before starting an activity, the charity and its intermediary should agree on a clear, complete, and detailed description of the activity. The charity should be able to document its exact nature, scope, and complexity.

Depending on the type, complexity, duration, and expense of an activity, the charity should be able to provide documentary evidence that shows:

- exactly what the activity involves, its purpose, and the charitable benefit it provides;
- who benefits from the activity;
- the precise location(s) where the activity is carried on;
- a comprehensive budget for the activity, including payment schedules;
- the expected start-up and completion dates for the activity, as well as other pertinent timelines;
- a description of the deliverables, milestones, and performance benchmarks that are measured and reported;
- the specific details concerning how the charity monitors the activity, the use of its resources, and the intermediary carrying on the activity;
- the mechanisms that enable the charity to modify the nature or scope of the activity, including discontinuance of the activity if the situation requires (for example - the intermediary begins misusing funds);
- the nature, amount, sources, and destination of income that the activity generates, if any (for example - tuition fees from operating a school, or sales from goods produced by poor artisans in economically challenged areas [\[Footnote 17\]](#)); and
- any contributions that other organizations or bodies are expected to make to the activity.

#### **5.4. What is monitoring and supervision?**

Monitoring and supervision is the process of receiving timely and accurate reports, which allows a charity to make sure that its resources are being used for its own activities. Depending on factors such as the size, nature, and complexity of an activity, the reporting methods (as stated in any written agreement) can take many forms, including the following:

- progress reports
- receipts for expenses and financial statements
- informal communication via telephone or email

- photographs
- audit reports
- on-site inspections by the charity's staff members

### **5.5. What is ongoing instruction?**

Ongoing instruction is the process of providing any necessary additional instructions or directions to an intermediary.

Records of any ongoing instructions help to show that the charity is carrying out its own charitable activities in accordance with the provisions of the *Income Tax Act*. Minutes of meetings or other written records of decisions are one way to show that a charity has given instructions. The CRA recommends using written instructions (for example - letters, emails, or faxes) to communicate with an intermediary whenever possible.

Charities and organizations acting as intermediaries occasionally arrange to have a director/trustee, volunteer, or employee work for both bodies. Although this type of arrangement may make it easier to pass along reports and ongoing instructions, it is not likely to be enough to show that the charity maintains direction and control over the use of its resources by the intermediary.

For example, if a staff member from the charity serves on the board of an intermediary, his or her control over the charity's resources may be limited to one vote among many. The intermediary's board could potentially decide to use the charity's money for activities other than those of the charity's own, despite the staff member's objections.

### **5.6. What are periodic transfers?**

Making periodic transfers is the process of sending a charity's resources to an intermediary in instalments, based on demonstrated performance, rather than in one transfer.

When appropriate, a charity should keep the right to discontinue the transfer of money and have unused funds returned if it is not satisfied with the reporting, progress, or outcome of an activity. This will allow the charity to stop funding an activity if the charity's resources are being misused or for any other valid reason.

## 5.7. What are separate activities and funds?

When carrying on an activity through an intermediary, a charity has to make sure that it can distinguish its activities from those of the intermediary. [\[Footnote 18\]](#) A charity cannot simply pay the expenses an intermediary incurs to carry on the intermediary's own programs and activities. Doing so draws into question whether the activity is truly that of the charity.

For certain types of arrangements (for example - an agency agreement) the charity's money for the activity should be kept in a separate bank account, and taken out only after appropriate authorizations are made by the charity or performance benchmarks are met by the intermediary. Segregated funds should also be reported in books and records separately from those of the intermediary.

If funds cannot be kept separate, then a charity should be able to provide other evidence to distinguish its own resources and activities, and of direction and control over them.

## 6. Keeping books and records

Under the *Income Tax Act*, a charity must keep adequate [books and records](#). The CRA recommends that books and records be kept in either French or English. [\[Footnote 19\]](#)

Books and records must enable the CRA to check the following:

- whether a charity's funds are being spent on its own activities or on gifts to qualified donees
- whether the charity is directing and controlling the use of its resources
- whether there are grounds to revoke the charity's status [\[Footnote 20\]](#)

Also, books and records must contain enough information to allow the CRA to determine if the charity is operating in accordance with the *Income Tax Act*. [\[Footnote 21\]](#)

A charity that fails to keep adequate books and records may be subject to various [sanctions](#) under the *Income Tax Act*, including having its registration [revoked](#). [[Footnote 22](#)]

## **7. Can a charity use its spending on activities carried out through an intermediary to meet its disbursement quota?**

All the amounts a charity spends on directly carrying out its charitable activities will go towards meeting its disbursement quota, whether the activities were carried out by the charity's staff or an intermediary.

When reporting expenditures on [Form T3010, Registered Charity Information Return](#), a charity should report all amounts spent by its intermediaries on its behalf as if they had been spent by the charity itself.

Amounts that are considered to have been spent on charitable activities include, but are not limited to:

- 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.

If a charity is working jointly with other organizations, it must account for all charitable and other expenditures it incurs when carrying on an activity, or that an intermediary has spent on its behalf.

For more information on the disbursement quota and its calculation, see [Guide T4033, Completing the Registered Charity Information Return](#).

## **8. Comments on this guidance**

If you have comments or suggestions that would help us improve this guidance, we would like to hear from you. Please email your comments to [consultation-policy-politique@cra-arc.gc.ca](mailto:consultation-policy-politique@cra-arc.gc.ca).

You can also mail comments to the following address:

Charities Directorate  
Canada Revenue Agency  
Ottawa ON K1A 0L5

The Charities Directorate's fax number is 613-954-8037.

## **Appendix A - Can a charity carry out capacity-building activities within Canada?**

A charity can carry out capacity-building activities, as long as it continues to meet all requirements of the *Income Tax Act*. For example, a charity must, among other requirements, make sure that its activities only further its own charitable purposes, keep direction and control over the use of its resources, meet the public benefit test, and not confer undue private benefit.

For the purposes of this guidance, capacity building is working in partnership with an organization, community, other group of people, or any other non-qualified donee to develop the skills, tools, and resources necessary to address their own problems. Capacity-building activities may be charitable if they relieve poverty or advance education, or further another recognized charitable purpose.

One of the principles behind capacity building is that simply transferring money to a group or community, without providing ongoing support, rarely leads to long-term solutions. Instead, a long-term relationship can ultimately lead to ownership of the program by the charity's partner, such that the charity may be able to withdraw its resources from the project entirely, and leave its successful operation in the hands of its former partner.

In these cases, the line between intermediary and beneficiary may become harder to distinguish. Although this guidance typically assumes intermediaries are a medium or means for a charity to carry out its own activities, in some cases they may also be a beneficiary of

the charity's activities, such as by receiving training or operational resources.

Before starting capacity-building programs, charities should make sure that their objects and activities as registered with the CRA allow them to carry out the charitable activities they anticipate will be required.

## **Appendix B - Guidelines for joint ventures**

The following are the type of factors the CRA looks for when determining whether a charity directs and controls the use of its resources in a joint venture:

- presence of members of the charity on the governing body of the joint venture;
- presence in the field of members of the charity;
- joint control by the charity over the hiring and firing of personnel involved in the venture;
- joint ownership by the charity of foreign assets and property;
- input by the charity into the venture's initiation and follow-through, including the charity's ability to direct or modify the venture and to establish deadlines or other performance benchmarks;
- signature of the charity on loans, contracts, and other agreements arising from the venture;
- review and approval of the venture's budget by the charity, availability of an independent audit of the venture, and the option to discontinue funding when appropriate;
- authorship by the charity of such things as procedures manuals, training guides, and standards of conduct; and
- on-site identification of the venture as being the work, at least in part, of the charity.

For joint ventures, the charity should make sure that it regularly receives complete financial information for the whole venture. It should also have enough documentation to show how its contribution fits into the overall undertaking, and how its resources have been devoted to activities that further its charitable purposes.

## **Appendix C - What should a written agreement contain?**

Below is a list to help charities create a written agreement. However, charities should be mindful that their relationship with their intermediaries is not only judged on how well their agreements are written but, more importantly, on their ability to show that they direct and control the use of their resources through active, ongoing, sustained relationships.

Even when a charity and intermediary create an agreement that contains the elements contained in the checklist, either the charity or the CRA can refer to and rely on other relevant evidence to establish the nature of the relationship between the parties to the arrangement.

### **Basic elements of a written agreement**

- exact legal names and physical addresses of all parties
- a clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the charity's purposes
- the location(s) where the activity will be carried on (for example - physical address, town or city)
- all time frames and deadlines
- any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity
- a statement of the right to inspect the activity, and the related books and records, on reasonably short notice
- provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources)
- provision for issuing ongoing instructions as required
- for agency agreements, provision for the charity's funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records
- If any of the charity's funds or property are to be used in the acquisition, construction, or improvement of immovable property, the title of the property will vest in the name of the charity. If not, there will be provision showing how legal title to that property is held by a qualified donee.

- for joint ventures, provisions that enable the charity to be an active partner, with a proportionate degree of direction and control in the venture as a whole, as well as assurances of the following:
    - the charity's resources are devoted to activities that further its purposes; and
    - the charity maintains and receives financial statements and records for the entire project on a regular basis;
  - effective date and termination provisions
  - signature of all parties, and the date
- 

## I

### **Footnotes**

#### [Footnote 1]

*Income Tax Act* R.S.C. 1985, c 1, (5th Supp.)

#### [Footnote 2]

Qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them, as listed in subsections 110.1(1)(a) and 118.1(1) of the *Income Tax Act*.

#### [Footnote 3]

[The Canadian Committee for the Tel Aviv Foundation v. Canada \(2002 FCA 72\) 2002-03-01](#); [Canadian Magen David Adom for Israel v. Canada \(Minister of National Revenue\) \(2002 FCA 323\) 2002-09-13](#); [Bayit Lepletot v. Canada \(Minister of National Revenue\) \(2006 FCA 128\) 2006-03-28](#)

#### [Footnote 4]

The *Income Tax Act*, supra note 1, at paragraph 149.1(1)

#### [Footnote 5]

[Summary Policy CSP-R13, Resources](#)

#### [Footnote 6]

In this guidance, any organization that is not a qualified donee is often called a **non-qualified donee**.

[\[Footnote 7\]](#)

*CAMDI*, supra note 3, at paragraph 71

[\[Footnote 8\]](#)

*CAMDI*, supra note 3, at paragraph 74

[\[Footnote 9\]](#)

*Ibid.*

[\[Footnote 10\]](#)

Charities that are constituted in, or a resident of, Ontario should contact the [Office of the Public Guardian and Trustee of Ontario](#) to see if they have any restrictions on the qualified donees to which they can gift their funds.

[\[Footnote 11\]](#)

*Tel Aviv*, supra note 3, at paragraph 30

[\[Footnote 12\]](#)

*Tel Aviv*, supra note 3, at paragraph 40

[\[Footnote 13\]](#)

*CAMDI*, supra note 3, at paragraph 66, and *Tel Aviv*, supra note 3, at paragraph 40

[\[Footnote 14\]](#)

*Tel Aviv*, supra note 3, at paragraph 40

[\[Footnote 15\]](#)

*CAMDI*, supra note 3, at paragraph 66

[\[Footnote 16\]](#)

*Tel Aviv* supra note 3, at paragraph 30

[\[Footnote 17\]](#)

[Guide RC4143, Registered Charities: Community Economic Development Programs](#)

[\[Footnote 18\]](#)

*Bayit*, supra note 3, at paragraph 6

[\[Footnote 19\]](#)

Charities that have to file a GST/HST return or that have applied for a rebate must keep some records in either official language. See the *Excise Tax Act* 286(1) R.S., 1985, c. E-15, and 15.1, and [General Requirements for Books and Records](#).

[\[Footnote 20\]](#)

The *Income Tax Act*, supra note 1, at paragraph 230(2)

[\[Footnote 21\]](#)

*Tel Aviv*, supra note 3, at paragraph 42

[\[Footnote 22\]](#)

The *Income Tax Act*, supra note 1, at paragraph 168(1)(e)

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[Important Notices](#)