

## Foreign Universities Applying for Prescribed Foreign University Status in Canada: What we have learned

By Kate Robertson and Mark Blumberg (February 23, 2016) **\*\*Updated as of February 26, 2017\*\***

Is your university interested in fundraising in Canada? If so, this article will provide helpful information on an option for non-Canadian universities to assist with fundraising in Canada.

Prescribed foreign universities are universities outside of Canada that have applied to the Canada Revenue Agency ('CRA') and been approved to issue official donation receipts for income tax purposes. Many foreign universities are not aware that they have the ability or capacity to be granted status as a 'qualified donee' and to issue donation tax receipts in Canada. This means that there are likely a number of foreign universities that are missing out on the potential benefits and fundraising opportunities that could be available to them in Canada. While there is an abundance of information available on CRA's website about how to apply for registered charitable status, we have found that the process of applying for prescribed university status is not as transparent. This article will provide information on the eligibility criteria to consider, application procedures and maintaining status as a qualified donee for any foreign universities that are considering seeking status as a prescribed university with CRA.

### 1) **What is a prescribed university outside of Canada?**

Prescribed Universities Outside of Canada can issue official donation receipts under the *Income Tax Act* (Canada) for gifts they receive and can also receive gifts from Canadian registered charities. They have the same ['qualified donee'](#) status as Canadian registered charities. A donor that makes a donation to a prescribed foreign university receives the same generous tax credit as if they had donated to a Canadian registered charity. If an individual or corporation in Canada donates to a foreign prescribed university the person receives the same significant tax benefits that they would have received if they had donated to a Canadian university such as the University of Toronto, McGill or UBC. Similarly, if a Canadian foundation or charity makes a gift to a foreign university it is as easy as if the Canadian foundation or charity was making that gift to a Canadian university.

As a result of the 2011 Federal Budget, CRA developed a [publicly available list of foreign prescribed universities](#) that is now maintained on a regular basis. Upon closer examination of this list, you can see that there are about 600 hundred foreign universities across the world (in the US, Europe, etc.) who currently have the ability to issue official donation receipts to Canadian donors as prescribed universities.

## 2) Eligibility criteria

Before embarking on the application process with CRA, a university should examine the eligibility criteria to ensure that it can meet the required conditions. CRA provides some helpful information in their guidance, “RC191: Becoming a Prescribed University Outside Canada”. To be considered for prescribed status, a foreign educational institution must meet all of the following conditions:

- it maintains an academic entrance requirement of at least secondary school matriculation standing;
- it is organized for teaching, study and research in the higher branches of learning;
- it is empowered, in its own right, to confer degrees of at least the baccalaureate level (bachelor or equivalent), according to academic standards and statutory definitions prevailing in the country the university is located in; and
- it ordinarily includes Canadian students in its student body.

The university will need to confirm whether it has the ability to confer degrees at the baccalaureate level or higher. CRA has indicated that associate degrees, diplomas, and certificates will not qualify at a level less than the bachelor or an equivalent level. Also, in some countries, the university does not have the right to issue degrees and instead an affiliated university is responsible for issuing the degrees. This type of entity would not be eligible to become a prescribed foreign university. A university foundation would also not be eligible as the foundation does not have the power to confer degrees.

Generally, we have found that one of the most important elements or stumbling blocks for a foreign university to consider before applying is whether the university has the minimum threshold of Canadian students. Generally CRA will look at the last ten years and expect that there are at least two Canadian students studying at the university that will meet CRA’s ‘residency’ requirement. However, they will typically allow one gap year when no students are in attendance and three years with only one student in attendance.

Another important consideration is the ‘residency’ of the Canadian students attending the university. The issue here is not whether the students are Canadian citizens but whether they are considered Canadian ‘residents’. If the university cannot provide evidence that the students attending the university are ‘resident’ in Canada, it will not qualify for prescribed university status. For example, if any of the students emigrated to the foreign

country before their start date at the university, they may not qualify as a resident in Canada. It is vital that the university is able to confirm when the students enrolled at the university (start date and end date) and their home address and residency during this time. Providing the students' Canadian social insurance numbers is helpful for CRA to be able to check its system and the residency issue.

### **3) Application Process with Canada Revenue Agency**

Once a university has determined that it meets the conditions outlined above, an authorized official or representative will need to submit a letter to CRA that according to CRA contains the following information:

- the institution's identifying information, such as its legal name, mailing address, physical address, and phone number(s)
- the institution's fiscal period-end
- a list of all the institution's current officials, for example, its directors, trustees, and like officials
- a copy of the institution's complete governing documents, for example, incorporating documents and any amendments, as well as current bylaws
- the institution's general admission requirements
- a copy of documents issued by the appropriate educational authority in the institution's country of residence that confirm that the institution is one of higher learning and has the authority itself to confer degrees of at least the bachelor level
- a list of the Canadian students who have attended the institution during the last five years and identification information for each student. The list should include each student's full name (first, last, and middle initial (if available)), Canadian address, date of birth, and Canadian social insurance number (if available), as well as each year or semester they attended. The institution may need to contact the Canadian students to get their approval to release this information
- the institution's website address, if available

We have also had requests from CRA regarding the type of degree program that each student is enrolled in. Keep in mind that the university may need to obtain consents from the students before disclosing the required information to CRA. Also, any documents provided to CRA as part of the application in a language other than English or French will generally need to be translated to either English or French and evidence will need to be provided that these are in fact certified/official translations.

The anticipated timeline to receive feedback from CRA on an application for prescribed university status varies depending on the time of year the application is submitted (as recommendations are typically made to the Governor in Council on a quarterly basis) but

generally we have found that the wait time is between six (6) to twelve (12) months. If CRA approves of the application, they will make a formal recommendation to the Governor in Council who will then send a decision in writing to the university stating whether or not it has been accepted as a prescribed "university outside Canada". However, the university's status as a prescribed foreign university is not considered 'official' until Schedule VII of the *Income Tax Act* (Canada) Regulations have been amended by Order-in-Council, passed by the Governor General in Council and then published in Part II of the Canada Gazette. CRA will then proceed to amend its list of qualified donees to reflect the new list of prescribed universities outside of Canada. Once the prescribed list has been updated by CRA, the university has the authority to issue official donation receipts. CRA has also indicated that the status once granted is considered retroactive to January 1st of the application year.

#### **4) Maintaining Prescribed University Status**

While Canadian registered charities are somewhat constrained and restricted in terms of how they can operate and must ensure they are operating at all times within the requirements of the *Income Tax Act* (Canada) and the CRA guidelines to maintain their status as a qualified donee (i.e. must be operating within legal purposes approved by CRA, restrictions on fundraising, political activities, etc.), the CRA requirements for a prescribed university outside of Canada are much less onerous. In order to maintain its status as a 'qualified donee', a prescribed university will need to ensure that 1) official donation receipts are being properly issued to Canadian donors and 2) adequate books and records are being maintained.

In terms of issuing official donation receipts under the Income Tax Act of Canada, there are many rules and requirements that must be met. It is more complicated in Canada than many other jurisdictions and we have prepared a [Receipting Kit](#) to assist.

The books/records of the prescribed foreign university should contain the following:

- information to allow the CRA to verify revenues for which donors can claim tax credits or deductions
- information to allow the CRA to confirm that they meet the requirements for qualified donee status under the Income Tax Act
- a duplicate of each receipt containing prescribed information for each donation received

CRA has indicated that the books and records of a prescribed university can be kept in the country where the university resides (which is different from a Canadian registered charity which must keep its books and records in Canada) however they must be made available for the CRA upon request.

The prescribed university does not have to file a return in Canada as Canadian charities must do every year, however, CRA may contact the university occasionally to check that

it still qualifies. Failure by the university to respond to CRA, as occasionally happens, can result in the university being removed from the list.

Canada has many exciting fundraising opportunities for foreign universities and obtaining prescribed university status for the foreign university can provide a way for the university to expand its presence in Canada and create enhanced opportunities for the university to receive gifts from Canadian individuals, Canadian registered charities and Canadian corporations.

Because of the lengthy delays, legal and practical issues that might arise during the application process and after receiving the status when issuing official donation receipts, it is usually a good idea to obtain legal counsel to assist with various aspects of the process. It is important that the foreign university not only obtain the status but also maintain it to protect this important fundraising mechanism and the reputation of the foreign university.

**Kate Robertson and Mark Blumberg are lawyers at Blumberg Segal LLP in Toronto, Ontario. If you are a foreign university and you have any questions with respect to fundraising in Canada please contact us. To find out more about legal services that Blumbergs provides to Canadian charities and non-profits please visit [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) or [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)**

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