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Guidance

Canadian Registered Charities Carrying Out Activities Outside Canada

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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 is separate from the charity, but 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 5.5. For more information on direction and control, see section 7.

2. Introduction

This guidance updates and replaces Guide RC4106, *Registered Charities: Operating Outside Canada*.

This guidance does not have the force of law. It is intended to enable registered charities and applicants for charitable registration carrying on activities outside Canada 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, which intends to carry on activities outside Canada.

This guidance generally assumes that a charity working with an intermediary is doing so in order to carry on charitable activities outside Canada. The requirements in this guidance about working with intermediaries also apply to all charitable activities carried out within Canada. For more information on this topic, see our upcoming guidance called *Carrying Out a Charity's Own Activities Within Canada Through an Intermediary*.

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 contact 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 service for hearing impaired persons)

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

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3. Can charities carry out activities outside Canada?

Charities can carry on their activities both inside and outside Canada. Canadian registered charities make important and valuable contributions throughout the world. However, carrying on activities outside Canada often presents significant challenges and requires substantial ongoing effort. Many charities have launched well-intentioned international activities only to learn that they cannot maintain the effort needed to meet their objectives and fulfil their obligations under the *Income Tax Act*.

Before carrying on activities outside Canada, the CRA recommends that a charity or applicant for registration consider working with existing charities or other qualified donees that have the experience and capacity to carry on activities in a way that meets the requirements set out in this guidance. You can search a list of all Canadian registered charities by visiting the CRA Charities Listings.

The Canadian International Development Agency (CIDA) works in co-operation with a number of voluntary sector organizations. Although registered charities may find it useful to support these organizations, not all of them are qualified donees. Since charities can only make gifts of money or other resources to qualified donees, charities must take care in deciding which organization to support and how to provide that support.

After a disaster, the CRA often receives applications for charitable status from organizations that want to help those affected. For more information on applications for charitable status to provide immediate disaster relief, as well as advice for applicants that intend to carry on activities outside Canada, please see Appendix A.

4. What is charitable in Canada and abroad?

The *Income Tax Act* does not define what is charitable. Instead, the common law definition is applied. One part of that definition is that a tangible benefit be conferred, directly or indirectly, on the public—this is the **public benefit** test. [Footnote 4]

Most activities that are charitable in Canada are, as a matter of Canadian law, equally charitable abroad. However, the courts have stated that some activities may not be charitable when carried on in a different country. For example, increasing the effectiveness and efficiency of Canada's armed forces is charitable, but supporting the armed forces of another country is not. Each case is assessed on its own particular facts.

The courts have also established that a charity's purposes and activities must not violate officially declared and implemented Canadian public policy. [Footnote 5]

4.1 Do charities have to follow the local laws of countries they operate in?

When a charity operates within Canada, it must comply with Canadian laws, including the *Income Tax Act* and common law. [Footnote 6] However, a charity that carries on activities outside Canada may operate in areas where the legal framework and laws are different.

Although the *Income Tax Act* does not require that registered charities comply with laws in foreign jurisdictions, being registered in Canada does not exempt a charity from the laws in the jurisdiction where they operate.

The CRA strongly suggests that all charities make themselves aware of local laws, and how they are enforced, before carrying out their charitable programs abroad. Being aware of local laws and their application will help make sure that the public benefit provided by a charity's activities is not offset by harm that may result to those carrying on the activities, to the charity's beneficiaries, or to anyone else.

4.2 What if a charity's activity puts people at risk?

If a charity or applicant's activity exposes anyone to the risk of harm, it may affect its charitable status.

If an organization's activity is likely to result in harm to the charity's staff, the beneficiaries of its programs, or any other person, this harm is taken into consideration when assessing whether the public benefit test is met. To meet this test, a substantial net public benefit is required. If no substantial net public benefit is provided, the organization will fail the public benefit test. A charity could lose its registered status, and an applicant will not be registered as a charity.

On a practical level, the CRA recognizes that many situations and activities involve some element of risk. Sometimes it is not possible to predict all outcomes and hazards of certain activities, particularly in quickly changing international environments. However, a charity or applicant should be able to show an awareness of the level of risk an activity poses versus the benefit that can be provided. If the charity intends to proceed with the activity, the charity should have an appropriate plan to mitigate significant risks to an acceptable level.

The facts of every situation are different, and it is not possible to provide a comprehensive guide of how to manage risk for all activities. However, the CRA will usually look at the following types of factors to establish whether a charity is doing enough to evaluate and manage the level of benefit to risk:

- the likelihood and nature of harm to anyone delivering the activity, receiving the benefit, or otherwise affected;
- the urgency of the need for charitable assistance (for example—an activity that helps desperate people in regions affected by a disaster, or in war zones);
- the experience of the charity or applicant operating in situations with significant risk; and
- the charity's proposed measures to mitigate any significant risks.

Example

A charity is registered to provide humanitarian relief, and is launching a new activity in a developing country where a civil war has broken out. Many citizens of that country have been displaced, and are in urgent need of assistance, which the charity can provide.

The charity has been operating for several years, and its staff has considerable experience working in areas where natural disasters have recently occurred. However, this is the first war zone in which the charity is considering operations.

The charity consults experts familiar with the security situation and with experience in the region. The charity also arranges more training for its staff on measures they can take to minimize the risks of harm to themselves and beneficiaries, and arranges for guides and interpreters that the charity believes are trustworthy. The charity determines that if it carries out its activities within certain parameters, the risk will be acceptable and the charity will be able to deliver significant relief to beneficiaries in need.

Although the charity is taking on considerable risks, it appears to be managing those risks as carefully as possible to provide help to those most in need. The charity will therefore likely be considered to meet the public benefit test.

4.3 What do charities need to know about Canada's anti-terrorism legislation?

Charities have to 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.

5. Are there restrictions on how a charity can use its resources?

The *Income Tax Act* allows a charity to operate, both inside and outside Canada, in only two ways:

- carrying out its own charitable activities through its staff or an intermediary [Footnote 7]
- making gifts [Footnote 8] to qualified donees

5.1 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 registered charity to devote all its resources to charitable activities carried on by the organization itself. [Footnote 9] 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 10]

5.2 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 11] that is separate from the charity, but 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); please note that 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 12]

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 13] 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 registered status.

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

- transfers, by a Canadian research charity, of books and scientific reports to a reputable foreign library or school;
- transfers of food and blankets to a foreign charity coping with a natural disaster, and that has a long history of successful operations; and
- transfers of drugs or medical equipment to a poorly equipped foreign hospital with an excellent record of serving its community.

The transferring of ownership of real or capital property, such as land or buildings, is a complex matter. For more information, see Appendix B.

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 14] or to circumvent the provisions of the *Income Tax Act*.

A charity does not have to adopt measures to direct and control the use of its resources when transferring property directly to 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.

5.3 Court decisions about the use of intermediaries

The Federal Court of Appeal has rendered three decisions concerning charities using intermediaries to carry out foreign 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 each confirmed that a charity working with an intermediary must control the activities carried out on its behalf, and 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

5.4 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, without consideration. [Footnote 15]

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.

5.5 What is a conduit?

For this guidance, a conduit is a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief. Acting as a conduit violates the *Income Tax Act*, and could jeopardize a charity's registered status. [Footnote 16]

Example

A charity is registered to protect the environment. A foreign organization that is not a qualified donee approaches the charity, seeking funding for its activity of preserving the rainforest.

The charity approves of the non-qualified donee's activity, and agrees to provide funding. The two organizations sign a written agreement, and the non-qualified donee commits to use the Canadian charity's money only for purposes considered charitable in Canada.

However, the charity has no say in where, when, or how the activity is carried out. The charity is simply funding the non-qualified donee's own activities. Therefore, even though the activity itself is charitable, the charity is acting as a conduit.

To avoid being a conduit, the Canadian charity must have 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.

For information on charities transferring resources to their head body located outside Canada, see Appendix C.

6. 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 a particular skill, knowledge of a region, staff in the area, 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 17] 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 registered 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 D.

6.1 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.

6.2 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 relieve poverty in a developing country. The charity contacts a foreign organization that is not a qualified donee, but which has considerable experience in carrying out these types of activities in the country. The non-qualified donee agrees to act as the charity's agent in delivering a charitable activity.

The non-qualified donee provides advice to help the charity develop the details of the plan for the activity. The charity makes sure that it will comply with all provisions of the *Income Tax Act* while the activity is carried out (for example—meeting the disbursement quota and the public benefit test).

They enter an agreement setting out the details of the activity, as well as their respective roles and responsibilities. The agreement details how the activity is to be carried out. The agreement also delegates authority to the intermediary to make typical day-to-day operating decisions, such as hiring local staff and buying supplies.

The non-qualified donee provides regular detailed reports on the use of the charity's resources, which the charity reviews. 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.

6.3 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 in order to accomplish a commonly-agreed upon 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 registered to help disadvantaged women joins with a foreign organization that is not a qualified donee with a similar purpose. The two organizations enter into an agreement and collaborate to provide basic education and business training to impoverished women, and pool their resources to carry it out.

The charity provides roughly 40% of the funding for the project and its representation on the venture's governing board is about 40% of the voting rights. As long as the venture only uses the charity's resources for the agreed upon activities, the arrangement should be acceptable.

However, if the governing board of the venture decides to use the charity's resources for a purpose other than what is provided in the terms of the agreement, the charity must withdraw their resources from the project. Therefore, the agreement should include a provision that allows the charity to discontinue devoting its resources to the

venture if its resources are to be used for purposes other than those that had been previously agreed upon.

The CRA will look at any venture as a whole, and a charity's participation in a venture, to make sure that the charity is 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 E.

6.4 Co-operative participants

A **co-operative participant** is an organization that works side-by-side with a registered charity 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 registered to provide care for the sick joins with a foreign organization that is not a qualified donee to build and operate a medical clinic in an isolated area. The charity agrees to provide qualified nursing staff at the clinic, but will not help with other parts of the project, such as construction of the building, buying medicine, and so on.

6.5 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 company to dig a well in a foreign country for people lacking clean drinking water.

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

Example

A charity is registered to provide counselling services, and wants to begin an activity to help people with mental health issues in a foreign country. The charity does not itself have counsellors on staff, but instead contracts with a private, for-profit company that will provide the professional counsellors.

The charity and the company 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, and it monitors the use of its resources as the company carries out the activity.

7. What is direction and control?

When transferring resources to an intermediary, a charity must direct and control the use of its resources [Footnote 18] 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 the charity can make sure that the carrying out of the activity 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.

7.1 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 advance education, and intends to devote a relatively large sum of money for scholarships to young women in an African country. It locates a newly established foreign organization that is not a qualified donee carrying out similar work, which agrees to work as the charity's agent in carrying out the activity.

The charity and the non-qualified donee meet to plan the activity. The charity takes the non-qualified donee'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-qualified donee agrees to act as the charity's agent.

To put its program in place, 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 instruction.

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 Charities Directorate for advice.

7.2 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 19]

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 20] 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 21]

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 forms of communication might be used to show direction and control over the use of resources by intermediaries.

Example

A charity registered to relieve poverty decides it wants to support a foreign food bank. It plans to send a one-time transfer of $1,000 to the food bank to buy supplies.

In this situation, the importance of a full, formal, written agency agreement is reduced. Although having a written agreement is still preferable, as long as the charity can show through other records that it did its own activities, and directed and controlled the use of its resources, it should be in compliance with the *Income Tax Act*.

The charity could, for example, keep confirmation of delivery of faxed or written instructions to the food bank, records of bank transfers, and minutes of meetings that show decisions made and instructions sent. In turn, the food bank could send back things such as receipts and invoices, written reports, photographs, and confirmation of food purchases.

If the activity is expected to be repeated on an ongoing basis, annually for example, it is recommended that a written agreement be in place to make sure that there is a clear understanding of the agreement over time.

If a charity has concerns or questions about the above 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 F.

7.3 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 third-world countries [Footnote 22]); and
- any contributions that other organizations or bodies are expected to make to the activity.

7.4 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

Example

A charity registered to protect the environment arranges for a foreign organization that is not a qualified donee to act as the charity's agent in carrying out an activity in a rural area of a developing country. The charity's agent uses the charity's money to work with the local residents in preventing deforestation, offering training and collaboration with other communities.

The agent sends bi-monthly progress reports back to the charity, including a financial breakdown of the resources used, a written description of activities undertaken and their results, and photographs.

On the activity's conclusion, the agent presents a written final report showing the project's conclusion. Under these circumstances, the charity will likely be able to show that it had adequate monitoring and supervision.

7.5 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.

Example

A charity registered to relieve poverty intends to provide a clean water supply to an impoverished community outside Canada. The charity enters into an agreement with a foreign organization that is not a qualified donee. The organization agrees to act as the charity's agent in establishing a new water supply, providing sanitation facilities, and training community members.

As the project proceeds, various problems and challenges arise. The non-qualified donee solves many of the technical problems in the field,

such as locating a source of water and renting specialized equipment. However, the charity must intervene and provide direction for other decisions about the use of its money and other resources, such as a request by the community to use the charity's truck to send people to a rally in support of a local politician.

Since charities cannot engage in partisan political activities, [Footnote 23] the charity explains that Canadian law does not allow the use of its resources for such a purpose. It documents the matter and its resolution on its files.

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.

7.6 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.

7.7 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 24] 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.

Some regions have rudimentary banking systems or none at all, or a charity's staff or an intermediary may not be able to access a banking system. 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.

8. Keeping books and records in Canada

Under the *Income Tax Act*, a charity must keep adequate books and records in Canada. The CRA recommends that books and records be kept in either French or English. [Footnote 25]

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 26]

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 27]

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 28]

8.1 Does a charity have to have original source documents?

The *Income Tax Act* does not require a charity to provide original source documents, such as receipts for purchases, to show that it is in compliance. The CRA recommends that a charity get original source documents whenever possible, but acknowledges that war, natural disaster, lack of access to telephones or the Internet, low literacy rates, legal restrictions, or other conditions may make it impossible to do so.

Getting original source documents may not be possible or practical. If so, a charity should be able to explain why it cannot get them, and make all reasonable efforts to get copies and/or reports and records from staff and intermediaries to support its expenditures, and show that it has made such efforts. The charity will also have to show when, how, and in what amounts funds were transferred.

9. Funding from CIDA and other government organizations

The Canadian International Development Agency (CIDA) and other government organizations fund many activities inside and outside Canada. However, not all projects funded by government are charitable under common law. A charity has to make sure that any activities it carries on under the terms of a funding agreement further its charitable purposes.

If a charity has concerns about whether a CIDA-funded project would be a charitable activity, it should contact the Charities Directorate for advice.

10. Can a charity use its spending on foreign activities to meet its disbursement quota?

For more information on the disbursement quota and its calculation, please see Guide T4033B, Completing the Registered Charity Information Return.

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 in Canada or in a foreign country.

When reporting expenditures on Form T3010B, Registered Charity Information Return , all amounts spent on a charity's activities outside Canada are to be reported in the same way that expenses in Canada are reported. A charity should report all amounts spent by its intermediaries as if they had been spent by the charity itself.

A charity with foreign activities must complete *Schedule 2, Activities Outside Canada*.

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

- transfers of goods and services 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.

Example

A charity is engaged in an archaeological dig as a joint venture with a foreign organization that is not a qualified donee. The charity contributes about $10,000 annually to the project, of which $9,000 is for research and to cover direct expedition costs.

The remaining $1,000 covers administrative costs such as completing pay slips. The charity can apply $9,000 towards meeting its disbursement quota, and will record the remaining $1,000 as administrative costs.

11. 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.

You can also send comments by mail 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 – What should an applicant intending to carry out disaster relief or other foreign activities know?

Disaster relief

Following a natural disaster such as an earthquake or flood, many organizations want to provide immediate assistance and relief to those affected. As a result, the CRA often receives applications from such organizations seeking to be registered under the *Income Tax Act*.

Since the situation is usually urgent, priority is typically assigned to these files. However, before they can be registered as charities, disaster relief organizations must still meet the same legal requirements as all other applicants. Applicants must therefore be able to show how they will make sure that they are carrying on their own activities as required by the *Income Tax Act*, and also that they will direct and control the use of their resources.

Applicants should also be aware that in the immediate aftermath of a disaster, the affected area can be quite volatile and dangerous. Local authorities may limit access to an affected area to well-established, experienced, relief organizations. Rather than establishing a new charity to respond to disasters, it is almost always faster and more effective for applicants to raise funds and support existing qualified donees that have the experience, resources, and infrastructure already in place to respond to disasters.

Describing activities

Applicants who want to proceed with foreign activities of any kind should take care to provide a detailed and specific description of their proposed activities, and to match the proposed activities to their available resources. For example, an application for a small organization might propose providing anti-malaria mosquito nets to a village, rather than proposing to eradicate malaria throughout the entire country.

Establishing achievable, realistic activities and goals will help a charity to monitor the activities and maintain financial accountability. As a charity experiences success and growth, it can amend and expand the scope of its charitable activities.

Canadian affiliate organizations

On occasion, the CRA will receive an application to register a charity that intends to support a foreign organization that is not a qualified donee. Often these organizations will use the non-qualified donee's name as part of its own name to indicate the connection.

As noted in this guidance, it is not possible to register an organization solely to support a non-qualified donee's activities. If however the non-qualified donee's activities are charitable in whole or in part, an applicant could apply to carry out that portion of the work as the non-qualified donee, and then have that non-qualified donee act as an intermediary in carrying out the applicant's activity. However, the applicant would have to show real and ongoing direction and control over the use of its resources, which the non-qualified donee would have to agree to.

Appendix B – What if a charity builds or helps build capital property in a foreign country?

A charity may want to buy or build, or help buy or build, real or capital property in a foreign country, such as land or buildings. However, the charity may find that owning real or capital property is not practical or possible. For example, some countries do not permit foreign ownership of real property, or it could be extremely difficult to operate and maintain a building in another country.

In these cases, a charity may seek to transfer ownership of real or capital property to a foreign non-qualified donee. These types of transfers can be problematic because land and buildings tend to have a relatively high value, and can also be used for a wide variety of purposes. For example, a charity might help an impoverished community build a bridge that allows people to cross a river and take their goods to a local market more quickly. Then a powerful member of that community may seize control of the bridge and start charging a toll for personal profit.

Transferring ownership of capital property to a local organization or government body might be acceptable to the CRA, as long as documentation with any non-qualified donee states that the property will be used only for charitable purposes. The charity should get reasonable assurances, and document and retain these assurances, that the property will, at least for its expected useful life, be used for the benefit of the community as a whole.

The charity should also, to the best of its ability, assess the risk that its property is likely to be used inappropriately. If the risk of inappropriate use outweighs the benefit that is likely to be provided, the charity should not start, or should stop, the project.

Example

A charity is registered to provide relief from conditions associated with disabilities. The charity enters into a joint venture with a foreign organization that is not a qualified donee to build and operate a school for those with disabilities in a foreign country.

The charity's investigation into the status and activities of the non-qualified donee shows there is a strong expectation the school will use the resources only for the intended activities. However, the charity wants to pool its money with the other body, and so must direct and control the use of its resources.

The two organizations meet to discuss and plan the activity. The charity takes the non-qualified donee's experience and advice into account as they design the activity, but the charity keeps ultimate decision-making authority over the use of its resources.

The two organizations develop a written agreement, which contains a provision that the charity can withdraw its funding without penalty if the venture's activities as a whole fail to comply with the *Income Tax Act*. The agreement also contains measures to direct and control the use of the charity's resources, such as a detailed description of the activity, provision for the charity to monitor and supervise the activity, a means to send instructions, and other measures of direction and control.

The charity will have some of its staff on site during the construction phase, and to help operate the school. The charity and the non-qualified donee form a governing body composed of an equal number of members of each organization, which allows the charity to monitor the venture, to provide input when directing and modifying its activities, and to establish deadlines and other performance benchmarks.

The charity has the right to inspect the non-qualified donee's aspects of the project at any time, upon giving reasonable notice, and receives regular financial reporting for the venture as a whole.

The country in which the program operates does not permit a foreign organization to own capital property. Although the charity helps build the school, it allows the non-qualified donee to assume full ownership of the property.

In this case, the CRA will likely consider the charity to be controlling and directing the use of its resources, so that it meets the own activities requirement.

Appendix C – What if a charity has a head body outside Canada?

Some charities are registered as the Canadian representatives or offshoots of a larger organization, often located outside Canada. These head bodies sometimes require payments from their Canadian charities, in the form of tithes, royalties, memberships, or similar transfers.

The same requirements for the direction and control of resources apply to charities that are offshoots of head bodies outside Canada. In other

words, a charity may not simply send gifts of money to a non-qualified donee, even if that non-qualified donee is the charity's head body.

However, having the head body act as an intermediary for a charity is also often not practical, since the nature of the relationship may prevent the charity from instructing its head body in how to use the money. In these cases, the charities must be sure they are receiving goods and services equivalent in value to the amounts they are sending.

For example, a head body might provide a Canadian charity with any of the following:

- training
- accounting services
- literature for distribution
- use of a name, trademark, or copyright material

The CRA will generally accept that a charity with a head body outside Canada usually benefits from access to useful resources from that head body such as policies, communications, and training material. If a charity transfers small amounts to a head body, and the charity has access to internationally produced material, we will not require additional evidence of benefits to the charity.

For these purposes, we will probably consider a small amount to be whichever amount is less—5% of the charity's total expenditures in the year or $5,000.

Appendix D – Can a charity carry out capacity-building activities?

Charities that engage in capacity building will typically build a long-term, reciprocal relationship with another group or community, rather than simply transfer resources to a recipient.

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, or other group of people 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.

Example

A charity registered to provide care for the sick and to advance education intends to work with a community in an impoverished country to improve health care. Instead of bringing in foreign doctors and medical supplies for a limited time and then departing, the charity decides to help the community build its own long-term capacity in the area of health care.

The charity meets with the community for a detailed and in-depth discussion of its needs and current resources. It solicits the community's feedback regarding the best ways to improve its health care, although it ultimately is the charity that decides how its resources will be used.

The charity provides medical workers such as doctors and nurses for immediate care, but also helps the community over the long term to build a clinic and train staff to provide basic health care to the region. The clinic ultimately becomes the charity's intermediary, providing aid to the people in the area, and thereby carrying out the charity's own activity on its behalf.

The charity transfers medical equipment and supplies to the clinic to use in its capacity as an intermediary. However, the clinic is also a beneficiary, since the charity provides training for the staff—an activity that furthers the charity's purpose of advancing education.

As the skills and capacity of the staff in the clinic grow, the charity turns more of the program's operations over to the clinic. However, as long as the clinic acts as an intermediary, the charity directs and controls the use of its 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 E – 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 Canadian charity on the governing body of the joint venture;
- presence of the Canadian charity's personnel in the field;
- joint control by the Canadian charity over the hiring and firing of personnel involved in the venture;
- joint ownership by the Canadian charity of foreign assets and property;
- input by the Canadian 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 Canadian charity on loans, contracts, and other agreements arising from the venture;
- review and approval of the venture's budget by the Canadian charity, availability of an independent audit of the venture, and the option to discontinue funding when appropriate;
- authorship by the Canadian 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 Canadian charity.

For joint ventures, the charity should make sure that it regularly receives full and 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 F – 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 indicating how legal title to that property shall be held (in the name of a local charity, government agency, municipality, or non-profit organization established to provide benefits to the community at large);
    - provision for the intermediary to get reasonable assurances from the property holder, owner, or landlord, as the case may be, that the property will continue to be used for charitable purposes for the benefit of the public;
- 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; and
- signature of all parties, and the date.

Questions and answers

Q.1 Does this guidance contain new regulations?

A.1 No. The guidance continues the basic principles found in Guide RC4106, *Registered Charities: Operating Outside Canada* and incorporates recent case law.

The guidance expands and clarifies principles, providing more detail on topics such as the need to investigate the status and activities of prospective intermediaries.

Q.2 Can a charity have one general agency agreement that covers most terms of a relationship with its intermediary, and then a second, specific one for each particular activity?

A.2 Yes. Neither the *Income Tax Act* nor the courts have specified the form that written agreements must take. Charities can, if they want, create two or more separate documents, each serving a different purpose. As long as the charity can provide evidence it has met the own activities requirement, the form that evidence takes is less important.

Q.3 Regarding the recent Federal Court of Appeal decision *eBay Canada Ltd. v. Minister of National Revenue*, can a charity not keep its books and records in electronic form on a foreign server?

A.3 No. It is still the CRA's position that charities must keep their books and records at an address in Canada.

Q.4 Our charity has entered into an agency relationship with a foreign charity. The foreign charity is carrying out activities for our charity.

Under common law of agency, the foreign charity's actions taken within the framework of the agency relationship are considered to be those of our charity. Doesn't the fact that an agency relationship exists mean that we automatically meet the own activities requirement, and we do not need to adopt any more measures of direction and control such as a written agreement, monitoring, or ongoing instruction?

A.4 No. As a general rule, an agent's actions taken in the context of the agency relationship can be considered those of the principal. However, the CRA takes the position that the existence of an agency relationship does not necessarily mean a charity has also met the *Income Tax Act*'s requirement that a charity devote its resources to charitable activities carried on by itself. A charity must have direction and control over the use of its resources by any intermediary, as described in section 7.

Q.5 Can a charity use its CIDA reporting to satisfy the requirement for evidence of direction and control?

A.5 If a CIDA report contains enough evidence that the charity is carrying out its own activities, the charity can provide this report to the CRA in the course of an audit or other investigation.

Q.6 One of my neighbors told my charity about an urgent need for assistance in a particular country. He says if we raise the funds, he can get the money to the right place. Can my charity hold a fundraiser and give him the money to pass on?

A.6 No. If a charity were to hand over its money to be passed on to a third party without any direction, control, or even knowledge of what happened to the money, it would be in violation of the *Income Tax Act*.

Even if a person or organization is trustworthy or reputable, a charity must be able to show it directs and controls the use of those funds, or it will be subject to sanctions under the *Income Tax Act*—up to, and including, revocation of its charitable status.

Q.7 Can a charity use subagency or subcontractor agreements to carry out its activities?

A.7 Neither the *Income Tax Act* nor common law restricts a charity from using subagency or subcontractor agreements. However, in these situations, a charity must still be able to direct and control the use of its resources through its relationship and agreements with the agent or contractor.

Q.8 The CRA's requirement for direction and control makes it difficult for our charity to work in partnership with foreign charities. Can the CRA relax this requirement?

A.8 No. The CRA has to apply the provisions of the *Income Tax Act*, including the own activities requirement. The CRA takes the position, as supported by the courts, that the law obliges a charity to direct and control the use of its resources whenever working with an intermediary.

Nevertheless, maintaining direction and control does not mean a charity cannot co-operate or collaborate with a non-qualified donee. For example, a charity can assign day-to-day operational decision making to its intermediary, since the intermediary typically has the local knowledge and experience that allows it to make the best decisions on how to carry out a charity's activity. A charity can also consult with an intermediary when designing an activity, as long as it keeps the final decision-making authority for the use of its resources.

Q.9 The guidance emphasizes the importance of written agreements, but does not state that they are a requirement when working with an intermediary. If written agreements are so important, why does the CRA not simply make having one a requirement?

A.9 Neither the *Income Tax Act* nor common law requires a charity to have a written agreement, so the CRA has no basis in law to require a charity to have such an agreement.

However, in the CRA's experience, having a complete, detailed, written agreement with any intermediary, and implementing the terms of that

agreement, is an excellent way to show the extent of the charity's direction and control over its resources.

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]

For more information, see Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

[Footnote 5]

See Summary Policy CSP - P13, Public Policy and Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue) (2002 FCA 323), 2002-09-13 at paragraph 57.

[Footnote 6]

Everywoman's Health Care Society (1988) v. *Canada (Minister of National Revenue - M.N.R.) (C.A.)*, [1992] 2 F.C. 52, at paragraph 14

[Footnote 7]

CAMDI, supra note 3, at paragraph 66

[Footnote 8]

The phrase "disbursement of funds to qualified donees" in subsection 149.1(1) of the *Income Tax Act* ("charitable purposes") is intended to include the transfer of any property in kind. See Policy Commentary CPC-014, Disbursement of Funds to a Qualified Donee.

[Footnote 9]

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

[Footnote 10]

Summary Policy CSP-R13, Resources

[Footnote 11]

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

[Footnote 12]

CAMDI, supra note 3, at paragraph 71

[Footnote 13]

CAMDI, supra note 3, at paragraph 74

[Footnote 14]

Ibid

[Footnote 15]

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 16]

Tel Aviv, supra note 3, at paragraph 30

[Footnote 17]

Tel Aviv, supra note 3, at paragraph 40

[Footnote 18]

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

[Footnote 19]

Tel Aviv, supra note 3, at paragraph 40

[Footnote 20]

CAMDI, supra note 3, at paragraph 66

[Footnote 21]

Tel Aviv, supra note 3, at paragraph 30

[Footnote 22]

Guide RC4143, Registered Charities: Community Economic Development Programs

[Footnote 23]

For more information on political activities, see Policy Statement CPS-022, Political Activities.

[Footnote 24]

Bayit, supra note 3, at paragraph 6.

[Footnote 25]

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 26]

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

[Footnote 27]

Tel Aviv, supra note 3, at paragraph 42

[Footnote 28]

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