

# CHANGES TO THE PROPOSED GUIDANCE ON ACTIVITIES OUTSIDE OF CANADA FOR CANADIAN REGISTERED CHARITIES<sup>1</sup>

## Introduction

The Canada Revenue Agency released a consultation report in the summer of 2009 entitled “*Consultation on the Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities*” [“Guidance”]. The Guidance was intended to help registered charities and applicants for charitable registration carrying on activities outside of Canada comply with the sections of the *Income Tax Act* [“Act”] relating to charitable registration. In particular, the Guidance is viewed as an update to the current CRA authority on foreign activities and charities, RC4106 - Registered Charities: Operating Outside Canada. The Guidance focuses on the notions of “carrying out own activities” and methods in maintaining control and direction of the resources funding these activities abroad. The Guidance provides many recommendations for charities, a few of which are discussed below:

## Carrying on Activities Outside of Canada

The Guidance speaks to the importance of ensuring that any Canadian charity, while necessarily expected to be in compliance with Canadian law, should also be in compliance with the local laws of any foreign countries it is operating within. Charities should keep in mind the importance of adhering to Canadian public policy and comply with pertinent legislation that applies to foreign affairs. The anti-terrorism legislation is an example of legislation Canadian charities must respect by ensuring that they are not operating or associating, either directly or indirectly with individuals or groups that are engaged in terrorist activities.

## How Charities Operate

A charity must demonstrate that it has direction and control over its resources at all times, it is carrying out only its own activities if using an intermediary, and that it directs and controls the use of any resources that further these activities. The Guidance focuses on the two ways in which a charity can further its purposes outside of Canada; (1) by making gifts to qualified donees; and (2) by carrying out its own activities.

## Intermediaries

Charities operating abroad can find the use of intermediaries very helpful when carrying out an activity with its own staff would prove difficult. Intermediaries can offer

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<sup>1</sup> This paper relies upon the Consultation on the Proposed Guidance on Activities Outside of Canada for Canadian Registered Charities by the Canada Revenue Agency in June 2009. The consultation paper can be found online at <http://www/cra-arc.gc.ca/tx/chrts/plcy/cnslttns/cerc-eng.html>

particular skills, knowledge of a region, or specialized equipment otherwise not available to the charity. It is imperative that the charity have reasonable assurance that the intermediary has the ability to carry out the activity and any resources given to the intermediary are under the control and direction of the charity. The Guidance discusses and provides examples of four common intermediary relationships:

- Agents
- Joint Venture Participants
- Co-operative Participants
- Contractors

### **Control and Direction**

The Guidance asserts that the best way to maintain control and direction over its resources in a foreign nation is to use its own staff. When using any form of the four intermediaries listed above, additional measures are suggested to ensure control and direction. The recommendations are:

- Written Agreements
- Detailed Descriptions of Activities
- Monitoring and Supervision Controls
- Ongoing Instruction
- Periodic Transfers of Information Back to Canada
- Clear Separation in Activities and Funding

The Guidance was created as an update to previous CRA authority on charities operating foreign activities abroad. By providing more details as to the CRA's position on this matter, the Guidance serves as a valuable resource to any Canadian charity looking to advance its charitable purpose outside of Canada.