

## **Registered Charities: Operating Outside Canada**

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Please contact the Charities Directorate if you need more information or further clarification on a particular topic.

You can reach the Charities Directorate at the following telephone numbers:

- 954-0410 for local Ottawa calls (English)
- 954-6215 for local Ottawa calls (bilingual)
- 1-800-267-2384 for toll-free, long-distance calls (English)
- 1-888-892-5667 for toll-free, long-distance calls (bilingual)
- 1-800-665-0354 toll-free service for hearing impaired persons.

The Directorate's fax numbers are (613) 952-6020 and (613) 946-2423.

You can get copies of all forms, pamphlets, information circulars, and interpretation bulletins referred to in this guide from the Charities Directorate or from any tax services offices.

To contact a tax services office, see the telephone listings in the Government of Canada section of the telephone book.

## Internet Access

You can find the list of registered charities and many of our publications at [www.cca-adrc.gc.ca/charities](http://www.cca-adrc.gc.ca/charities)

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If you have any comments or suggestions which would help us improve this guide, we would like to hear from you.

Please send your comments to:

Charities Directorate  
Canada Customs and Revenue Agency  
Ottawa ON K1A 0L5

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## Introduction

This brochure provides information for registered charities that carry on charitable activities outside Canada. It will explain the arrangements a registered charity must make to conduct its activities outside the country, along with potential problems to look out for. In general, a registered charity can operate in the same way abroad as it can in Canada.

This brochure uses plain language to discuss concepts relating to charities. Therefore, you should use the information in this brochure as a general guideline only. A decision about an organization's activities will depend on how we and courts are likely to look at the specific situation.

## What is a registered charity?

To qualify for registration as a charity under the *Income Tax Act*, and to continue to enjoy this status, an organization must meet a number of requirements. These include the following:

- the organization must be created or established in Canada;
- it must be resident in Canada;

### Note

An entity incorporated in Canada will normally be considered resident in Canada. Residency for an unincorporated entity is determined based on many factors that will establish the central mind and management of that entity. You may want to consult with the Charities Directorate to reach such a determination.

- its purposes and activities must be charitable;
- it must carry on **its own** charitable activities, or fund certain organizations identified in the *Income Tax Act* ("qualified donees"), or both;
- it must maintain sufficient books and records in Canada to enable us to verify that the charity's funds have been properly spent and that the charity is retaining control and direction over the use of its resources; and
- it must spend a certain amount on charitable work every year (the "disbursement quota").

## What is "charitable" at home and abroad?

The *Income Tax Act* does not define "charitable," but the term has a special legal meaning. Canadian courts have held that charitable purposes are those directed at:

- relieving poverty;
- advancing education;

- advancing religion; or
- benefiting the community as a whole in ways the courts have said are charitable.

Whether a registered charity operates in Canada or abroad, it must respect the statutory and common law rules that govern its conduct. For instance, the charity must not place unacceptable restrictions on beneficiaries who use its services or facilities; it must not engage in political activities that exceed the limitations set out in the *Income Tax Act*; and it must not generate revenue through unrelated business activities.

Also, the courts have indicated that occasionally an activity that is charitable when carried on in Canada may not be considered charitable when it is carried on in a different country. For example, reducing the Canadian national debt is charitable at law; reducing the national debt of another country may not be. In this respect, each case is assessed on its own facts.

In addition, the law has recognized that charitable purposes and activities must not violate public policy. Thus a program carried on in a foreign setting that runs counter to Canadian public policy would not be considered charitable by Canadian courts.

For more information on charitable purposes, see the brochure RC4108, *Registered Charities and the Income Tax Act*.

### Note

If a Canadian registered charity fails to comply with the statutory or common law rules, its registration may be revoked under the *Income Tax Act*.

## How can a registered charity carry out its charitable purposes?

The *Income Tax Act* permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in only two ways.

- It can make gifts to other organizations that are on the list of **qualified donees** set out in the *Income Tax Act*.  
Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies, and a few foreign charities (see the end of this brochure for a complete listing).
- It can **carry on its own charitable activities**. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

- Examples of this type of activity include:
  - awarding scholarships to students selected by the registered charity, based on criteria it has adopted and applied;
  - supplying low-cost housing to needy individuals; and
  - providing medical services to the sick.

The *Income Tax Act* does not allow a registered charity to carry out its purposes by handing over its money or other resources to another organization (that is not a qualified donee).

Yet it may not be practical for the charity to meet its “own activities” test by operating abroad using its own employees or volunteers directly funded by that charity. However, it can work with or through other organizations providing it employs certain structured arrangements that allow it to retain direction and control over the use of its resources.

The following sections give some examples of ways a registered charity can satisfy its “own activities” test.

## How can a registered charity use intermediaries to carry on charitable activities?

A registered charity can carry on its charitable activities through intermediaries such as an agent, a contractor, or any other body. It is preferable for the charity to put in place a formal agreement with this intermediary body.

Note that employees, volunteers, or other representatives under the direct control of the charity do not require a formal agreement to act on behalf of the charity.

### Agents

A registered charity can appoint an agent to act as its representative in carrying out specifically identified tasks on behalf of the charity.

#### Examples

A Canadian relief organization ships food and clothing to a stricken country and appoints local individuals or organizations to act as its agents in distributing the supplies in accordance with its instructions.

A charity involved in development work appoints an organization outside Canada to conduct a specific project under the ongoing direction and control of the charity.

#### Note

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

## Contractors

A registered charity can also carry out its charitable activities by contracting with an organization or individual in another country to provide needed goods and services.

#### Example

Before providing irrigation equipment for an agricultural project, a Canadian registered charity:

- commissions a soil analysis from a local university;
- contracts with a for-profit business in the country to deliver, install, and maintain the equipment; and
- contracts with a government agency to provide instructional or other services required to make the project a success.

Before engaging agents or contractors, it is important that the registered charity have a clear idea of the charitable project or program it is trying to achieve, and how it will be conducted from beginning to end. **This will allow the charity to give precise instructions to its agents or contractors.**

## How can a registered charity carry on charitable activities jointly with others?

A registered charity can also pursue its objectives outside Canada using one of the arrangements described below.

### Joint ventures

A registered charity and other entities that may not be qualified donees can decide to pool their resources to establish and operate a charitable program.

The charity will be considered to be carrying on its own activities providing it is an active partner exercising a proportionate degree of control in the venture, **and** it can clearly establish that its share of responsibility is at least proportional to the level of funding it contributes to the program for:

- long-term planning;
- day-to-day decision-making; and
- financial commitments.

#### Example

A Canadian church joins with churches in other countries to operate a joint missionary venture. If the Canadian charity provides 25% of the funding for the project, its representation on the venture’s governing board should constitute approximately 25% of the voting strength, and it should have approximately 25% of the decision-making power for the venture as a whole.

Guidelines for establishing that a Canadian charity is actively involved in a joint venture are set out below.

## Co-operative partnerships

Sometimes a registered charity works side by side with other organizations and with the people it is trying to assist so that together they may achieve a particular project. The various organizations do not necessarily pool their resources to carry out the project as in joint ventures, but instead each of the partners takes responsibility for a particular aspect of the project.

### Example

A Canadian charity dedicated to providing care for the sick joins with charitable, non-profit, or business organizations from Canada and elsewhere, together with the people of the target community and the host government, to build and operate a medical clinic in an isolated area. The Canadian charity volunteers to take responsibility for one or more aspects of the project.

Provided it is actively involved in the aspect of the project it selected, and is not just giving its funds to one of the other organizations working on the project, the charity will be carrying on its own charitable activities.

### Note

There are disbursement quota implications, as described below, if the tasks undertaken by the Canadian charity, although essential to the completion of the project, are not **directly** charitable. This would be the case, for example, if it agrees to provide the administrative services for the project.

## How must a registered charity structure arrangements with intermediaries and others?

### General guidelines

The examples above illustrate some of the ways a registered charity can apply funds, property, or other resources to its activities abroad. These arrangements can be an acceptable devotion of the charity's resources to its "own activities" providing:

- the charity has obtained reasonable assurance before entering into agreements with individuals or other organizations that they are able to deliver the services required by the charity (by virtue of their reputation, expertise, years of experience, etc.);
- all expenditures will further the **Canadian** charity's formal purposes and constitute charitable activities that the **Canadian** charity carries on itself;
- an adequate agreement is in place (we recommend a written agreement containing the minimum elements outlined below);

- the charity provides periodic, specific instructions to individuals or organizations as and when appropriate;
- the charity regularly monitors the progress of the project or program and can provide satisfactory evidence of this to us (see the next section on books and records); and
- where appropriate, the charity makes periodic payments on the basis of this monitoring (as opposed to a single lump sum payment) and maintains the right to discontinue payments at any time if it is not satisfied.

### Additional guidelines for joint ventures

The following are the type of factors we look for when determining whether a charity exercises on-going control in joint ventures:

- presence of members of the Canadian charity on the governing body of the joint venture;
- presence in the field of members of the Canadian charity;
- 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;
- authorship of procedures manuals, training guides, standards of conduct, etc., by the Canadian charity; and
- on-site identification of the venture as being the work, at least in part, of the Canadian charity.

### Written agreements

Written agreements should typically include **at least** the following information:

- names and addresses of all parties;
- the duration of the agreement or the deadline by which the project must be completed;
- a description of the **specific** activities for which funds or other resources have been transferred, in sufficient detail to outline clearly the limits of the authority given to the recipient to act for the Canadian charity or on its behalf;
- provision for **written** progress reports from the recipient of the Canadian charity's funds or other resources, or provision for the charity's right to inspect the project on reasonably short notice, or both;

- provision that the Canadian charity will make payments by instalments based on confirmation of reasonable progress and that the resources provided to date have been applied to the specific activities outlined in the agreement;
- provision for withdrawing or withholding funds or other resources at the Canadian charity's discretion;
- provision for maintaining adequate records at the charity's address in Canada;
- in the case of agency agreements, provision for the Canadian charity's funds and property to be segregated from those of the agent and for the agent to keep separate books and records; and
- the signature of all parties, along with the date.

#### Note

We recommend that a registered charity enter into a written agreement with intermediaries and others. If a Canadian charity operates outside the country without a written agreement in the suggested form, it will probably have serious difficulty establishing that a project is charitable and that it is carrying on its own activities. This could jeopardize the charity's registered status under the *Income Tax Act*.

Besides its "own activities" test, a registered charity also has to ensure that its resources are devoted to charitable purposes. Therefore, where resources the charity is proposing to send outside Canada are of a general nature and could be used in a wide variety of non-charitable ways (money, for example, could be used for many things, while medicines, such as insulin, are only likely to be used to treat patients), the charity must be particularly careful to retain sufficient control to satisfy the requirements of the law.

#### Example

Suppose a Canadian charity enters into an agency agreement with a foreign hospital, under which the hospital will operate a free clinic for the victims of a natural disaster. The distinction between sending money to this hospital to enable it to buy insulin and sending the actual insulin to the hospital may not be obvious, but it affects the type of precautions the Canadian charity should take so that it can be reasonably certain that its assets are being devoted to charitable purposes. As a rule of thumb, the more general the nature of the asset, the more structured and formal the arrangements should be for its distribution or use.

## CIDA-funded projects

Many registered charities undertake projects funded, at least in part, by the Canadian International Development Agency (CIDA).

CIDA has a number of requirements calling for the active involvement of an organization in the projects it funds. Thus, provided the CIDA-funded project is charitable at law, we may consider a charity to be carrying on its own activities with regard to that particular project.

#### Notes

CIDA's mandate goes beyond what the law considers charitable. Therefore, the charity must ensure that its involvement with any CIDA project falls within its own exclusively charitable purposes. If the charity has doubts about its participation in some aspect of a CIDA project, it should contact the Charities Directorate for advice.

Also, although CIDA's current funding criteria may be sufficient to secure the charity's active involvement in a project, the charity still must ensure that it is indeed exercising a sufficient degree of direction and control.

## What books and records must a registered charity have in Canada?

The *Income Tax Act* sets standards for the books and records that registered charities must keep. Among other things, these books and records must contain sufficient information to allow us to determine if the charity is operating in accordance with the provisions of the *Income Tax Act*.

#### Note

Failure to keep adequate books and records constitutes, in itself, grounds for revocation of the charity's registration.

A registered charity operating abroad through structured arrangements with others should take steps to obtain reasonable reports on the progress of its projects and programs. This serves as evidence for itself, its donors, the public, and us that its funds have been properly applied.

These reports should be supported with documentary evidence such as:

- copies of written agreements;
- deeds;
- financial statements;
- invoices;
- photos;
- minutes of meetings; and
- any other materials that reflect the charity's ongoing participation and that show how the charity's funds are used.

Different kinds of arrangements can call for different kinds of records, for example:

#### Agents

As mentioned earlier, a Canadian charity carrying out its activities through an agent should ensure that its funds and property are kept separately from those of the agent and that the agent keeps separate books and records relating to the expenditures on behalf of the charity. Copies of these books and records should be forwarded regularly to the

charity, and the originals should be available for inspection at the place where they are being kept by the agent. These records should include details on exactly how the agent is carrying out instructions issued by the charity.

### Contractors

As with agency agreements, a Canadian charity that employs contractors should obtain regular progress reports. The charity should also obtain a final complete report on the work that has been done on behalf of the charity, along with documentary evidence, such as invoices, receipts, and photographs, that the project has been completed. The reports should also show the amounts received from the charity and the expenses incurred.

### Joint ventures

In the case of joint ventures, the Canadian charity should ensure it regularly receives a copy of the full and complete financial information relating to the **entire** venture or program, along with other documentation that will enable the charity to demonstrate that it has devoted its resources to its own charitable activity.

### Co-operative partnerships

A Canadian charity involved in co-operative partnerships should maintain adequate records relating to its particular share of the program. It should also have available sufficient documentation to establish that the program as a **whole** is charitable and to show how the charity's contribution fits into the overall undertaking.

### CIDA-funded projects

If the Canadian charity's overseas project is wholly or partly funded by CIDA, it should have a copy of the agreement with CIDA available, as well as the required documentary evidence of its participation in the project.

## What guidelines must a registered charity follow to transfer its property in a foreign country?

The *Income Tax Act* requires registered charities to devote their resources to charitable purposes. This implies that a charity, whether operating in Canada or abroad, should maintain ownership and control over its assets unless:

- the transfer of these assets in itself constitutes a charitable activity, for example, offering food to the hungry, awarding a scholarship to a student, providing housing to the homeless, or giving the poor the equipment they need to become self-sufficient; or
- the assets are sold for their fair market value; or
- the assets are transferred to a qualified donee.

#### Note

It is not a charitable activity, either in Canada or abroad, to confer more on an individual than what is needed to accomplish a charitable purpose.

However, there may be instances where a registered Canadian charity is operating in a country where foreign ownership of real property is not allowed. In such circumstances, a title-holding arrangement with a local charity or government body might be possible, provided the arrangement clearly stipulates that the property will be used only for exclusively charitable purposes. You may want to consult with the Charities Directorate in order to reach such a determination.

## Development projects

Many projects carried on by registered charities outside the country involve development work. The term "development work" refers to projects designed to relieve poverty by assisting a particular community to become self-sufficient. This may include various capital projects, such as bridges, wharves, schools, and hospital buildings. A Canadian charity involved in development work may want simply to construct these facilities, and not to remain and operate them.

In these cases, turning over the charity's assets to a local organization may be integral to accomplishing the charitable purpose of giving a deprived community the necessary means to break free of the cycle of poverty and disease. **However**, goods and property can be used in a non-charitable way if they end up in the wrong hands. They could, for example, be used by private individuals to make a profit, or the new owners might place barriers to public access to them which are unacceptable in Canadian law and against Canadian public policy.

In development projects **only**, and even then depending on the circumstances, it may be sufficient to turn the property over to a government agency, municipality, or non-profit organization established to provide benefits to the community at large.

The Canadian charity will have to be careful to obtain reasonable assurances, which it must document and retain in its records, that the property will continue to be used for the development of the community as a whole. The charity should consult with the Charities Directorate if it has any concerns regarding the transfer.

## Other situations

We recognize that in certain non-development situations it may be necessary for a registered charity to transfer property to individuals or organizations outside the country to achieve its charitable purpose.

Where a charity wants to dispose of property abroad (other than by a gift to a qualified donee or a sale at fair market value) and the property is **not** being used for development work, it should consult with the Charities Directorate to consider the available options.

#### Note

Giving property to a non-qualified donee may lead to the revocation of a charity's registration under the *Income Tax Act*.

## What impact do foreign activities have on a registered charity's disbursement quota?

Each year registered charities are required to spend a certain amount on their direct charitable activities or on grants to qualified donees. These amounts are distinguished from disbursements on administration, fund-raising, and other items that do not themselves directly accomplish a charitable purpose. This spending requirement is not affected by where the charity is carrying on its work.

Amounts that are spent on charitable activities would include those spent:

- on payments to, or the purchase of goods and services for, charitable beneficiaries;
- to purchase or maintain facilities, equipment, and other items used directly in the charity's work;
- on fees, licenses, or memberships that are necessary to the charity's work;
- on salaries paid to those engaged in charitable work;
- on payments to contractors for goods and services that are an integral part of the charity's work; and
- by agents on direct charitable work.

Calculating the amount that can be used to satisfy the disbursement quota can become complicated when the Canadian charity is working jointly or in partnership with other organizations. One acceptable approach is to adjust the charity's contribution downwards to reflect the overhead costs of the project or program as a whole.

### Example

Suppose a Canadian university that is a registered charity contributes \$10,000 annually to an international archaeological project operated as a joint venture by several educational institutions. The venture devotes 90% of its resources directly on charitable research work and expeditions, with the remainder covering administrative costs. In this illustration, the Canadian charity can apply 90% of its \$10,000 towards meeting its disbursement quota.

Instead of a joint venture, this project could also be structured as a co-operative partnership, with the Canadian charity taking responsibility for providing the necessary administrative services. Assuming again that the cost of administrative services is \$1,000 and this represents 10% of the project's overall budget with the remaining 90% being spent on charitable expenditures, the charity can apply 90% of its \$10,000 towards meeting its disbursement quota.

## How should a registered charity treat payments to related bodies located outside Canada such as tithes, royalties, membership, or similar fees?

Some registered charities are offshoots of organizations with headquarters outside the country or are closely associated with a foreign organization. These related organizations may provide the Canadian charity with various goods and services, such as professional training, accounting services, and literature for distribution, for a fee or as a benefit of membership. The related organization can also allow the Canadian charity to use a name, trademark, or copyright material.

Payments to related organizations are only acceptable where the amount paid by the charity can reasonably be regarded as proportional to the benefit it receives.

### Example

A head organization outside the country (that is not a qualified donee) offers a training course to improve the skills of a Canadian charity's staff. The fees charged by the head organization must correspond to the actual value of the course. If the fees are excessive, we may regard the payment as a gift by the Canadian charity to a non-qualified donee.

We are generally willing to accept that a Canadian charity is receiving value for its payments when only a small amount is involved. For these purposes, we will probably consider a small amount to be the lesser of 5% of the charity's total expenditures in the year and \$5000.

Payments made to related organizations outside the country should be clearly identified as such in the charity's books. Where the payments exceed a small amount, as described above, the charity should be able to document the actual goods and services it is receiving in exchange for the payments, or demonstrate that they were made under a properly structured arrangement.

## What are the filing requirements?

Each year, all registered charities must complete and file Form T3010, *Registered Charity Information Return*. Section I of the form asks for details on how the charity is accomplishing its work abroad and the amounts involved.

## Qualified donees under the *Income Tax Act*

Qualified donees are:

- registered charities;
- registered Canadian amateur athletic associations;
- registered national arts service organizations;
- certain housing corporations resident in Canada that are constituted exclusively to provide low-cost accommodation for the elderly;
- Canadian municipalities;
- the United Nations or its agencies;
- prescribed universities outside Canada (listed in Schedule VIII of the Act);
- charitable organizations outside Canada to which Her Majesty in right of Canada (the federal government or its agents) has made a gift during the taxpayer's taxation year or the 12 months before it; or
- Her Majesty in right of Canada or in right of a province (i.e., the federal government, a provincial government, or their agents).