

## Charities/Non-profits

### Canadian charities funding organizations abroad: New rules make it easier

New rules should make it easier for Canadian charities to fund organizations carrying out charitable activities abroad.

Before June 23, 2022, Canadian registered charities wishing to support other organizations operating outside of Canada had to comply with a restrictive set of rules.

Registered charities could transfer resources to foreign charities but only by using foreign charities as partners to carry out the Canadian registered charities' own activities and so long as certain requirements were met.

When engaging, and transferring resources to, a foreign charity, the Canadian charity needed to exercise direction and control over the partner's use of the charity's resources.

"Direction and control" means that the Canadian charity had to set parameters over how the partner uses the charity's funds. The Canadian charity had to be able to intervene in any significant decision of the partner.

The partner's activities also had to be the Canadian charity's "own" activities, even if the activities are, in fact, those of the partner.

The "direction and control" and "own activities" requirements have been criticized as colonial, paternalistic, and administratively burdensome.

The rules have also been criticized as being inconsistent both with other countries' tax regimes, which are not as strict, and with the reality of how organizations today actually work together.

On June 23, 2022, additional rules took effect that should make it easier for Canadian charities to transfer resources to foreign charities.

Canadian charities can still transfer resources to foreign charity partners under the existing "own activities" option described above. However, in the alternative, Canadian charities can now make a "qualifying disbursement" to a partner so long as:

- (1) the disbursement furthers a charitable purpose of the charity,
- (2) the charity ensures that the disbursement is exclusively applied to charitable activities in furtherance of a charitable purpose of the charity, and
- (3) the charity maintains sufficient documentation to show:
  - (A) the purpose for which the disbursement is made, and



**Robert Hayhoe**

rhayhoe@  
millerthomson.com



**Stephen Hsia**

shsia@  
millerthomson.com

(B) that the disbursement is exclusively applied by the partner to charitable activities that further a charitable purpose of the charity.

The new qualifying disbursements rules focus more on accountability, rather than on whether a charity exercises sufficient 'direction and control' over the recipient of the charity's resources. Charities seeking to make a qualifying disbursement to foreign charities need to ensure — and show — that the recipients have used those funds exclusively to advance a charitable purpose of the charity.

On their face, qualifying disbursements provide an attractive alternative for many Canadian charities looking to fund organizations abroad while also looking to reduce the administrative load and liability concerns that they otherwise would have under the existing 'direction and control' rules. By also doing away with the 'own activities' fiction, the new qualifying disbursements rules could help foster greater and more authentic collaborations between Canadian charities and foreign partners.

Charities, however, will not fully understand the practical requirements under the new rules until the Canada Revenue Agency (CRA) issues its final administrative guidance. The CRA released its draft guidance on November 30, 2022. A public comment period has now closed, and the CRA expects to release its final guidance later in 2023. The CRA's draft guidance recommends different accountability tools that charities should adopt in various situations (depending, for instance, on how large the grant is or how sophisticated the recipient is) to ensure the qualifying disbursements rules are being followed.



## Practice Area News

**Charities' minimum spending requirement increases in 2023.** The disbursement quota (DQ) is the minimum annual amount that a Canadian registered charity must spend on its charitable purposes or on grants to other registered charities and prescribed entities. Effective 2023, the DQ will be 3.5% on the portion of a charity's property not used on charitable activities up to \$1 million, and will increase to 5% on the portion of such property that exceeds \$1 million (previously, 3.5% generally). The Government of Canada has clarified that administrative or management expenses are not qualifying expenses for the purposes of satisfying a charity's DQ. The Canada Revenue Agency (CRA) now has discretion to reduce a charity's DQ obligation for a particular year at the charity's request. The CRA may disclose these decisions to the public.

**Canada Revenue Agency clarifies "anti-directed giving rule".** Under the *Income Tax Act* (Canada), Canadian registered charities wishing to make a "qualifying disbursement" (see main article) to a non-registered charity are not allowed to act on a donor's direction as to who should receive the disbursement. This rule is known as the "anti-directed giving rule". Penalties for breaching this rule include revocation of the Canadian charity's registration. In its draft administrative guidance released on November 30, 2022, the Canada Revenue Agency has clarified that charities wishing to remain outside the anti-directed giving rule should clearly communicate to donors on their websites and fundraising materials that (1) donors can express their preference for how a charity will apply their gift, but the charity has final say on how it uses its resources; and (2) if the charity does not use the gift in the way the donor prefers, the charity will not return the gift to the donor.

## In the Firm

### • Miller Thomson LLP Achieves Band 1 Ranking for Charities/Non-Profits in *Chambers Canada* 2023

*Chambers Canada* 2023 has once again recognized Miller Thomson LLP as a Band 1, or top-ranked, firm in the Charities/Non-Profits practice area category. Six Miller Thomson LLP partners were also individually recognized in this practice area: **Susan M. Manwaring, Robert B. Hayhoe, Andrew Valentine, Amanda J. Stacey, M. Elena Hoffstein, Troy McEachren.**

Montréal, QC; Vaughan, ON; Toronto, ON; Waterloo Region, ON; London, ON; Regina, Saskatchewan; Saskatoon, Saskatchewan; Calgary, AB; Edmonton, AB; Vancouver, BC.  
[www.millerthomson.com/en/](http://www.millerthomson.com/en/)