



## Article

### Not-for-Profit & Charities

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# New option for Canadian charities working with non-qualified donees

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Canadian registered charities that work with non-charities now have another manner of doing so. Specifically, new qualifying disbursement rules have been added to the *Income Tax Act (Canada)* (the ITA) by the *Budget Implementation Act 2022*, No. 1 (the BIA 2022).

## Two options for Canadian registered charities

Effective June 23, 2022, a Canadian registered charity (a charity) can now fund or provide resources to organizations based in or outside of Canada (including foreign charities or non-profits) that are not qualified donees under the ITA, either through the new "qualifying disbursements" rules or, alternatively, through the previous and continuing "own activities" rules (which were not replaced by the BIA 2022). (Qualified donees (QDs) include Canadian registered charities and certain other organizations that can issue Canadian tax donation receipts.) If a charity chooses the qualifying disbursement route, it will not be required to meet the "own activities" criteria.

## Before the BIA 2022

Prior to the amendment of the ITA by the BIA 2022, a charity could only carry on its "own charitable activities" or make gifts to QDs. Any resources provided to non-QDs by a charity had to be used to support the "own activities" of the charity and any activities that were carried out by non-QDs on behalf of the charity had to be subject to the charity's "direction and control" in compliance with the requirements contained in the policies of the Canada Revenue Agency CRA). As such, a charity could not simply provide resources to foreign charities or non-profit organizations based in or outside of Canada that were not QDs.

Bill S-216

Late last year, Sen. Ratna Omidvar introduced a new bill with proposed amendments to the "own activities" requirements for charities contained in the ITA. Bill S-216, *An Act to amend the Income Tax Act (use of resources of a registered charity)* provided that if reasonable steps were taken by a charity to ensure that resources that it makes available to a non-QD were "used exclusively for a charitable purpose," doing so would be a charitable activity of the charity. Bill S-216 was repealed by the BIA 2022.

### **The new qualifying disbursements rules**

As a result of the new "qualifying disbursement" rules included in the ITA by virtue of the BIA 2022, charities are now able to make disbursements to organizations that are non-QDs through another avenue:

"Qualifying disbursements" are defined as disbursements by a charity "by way of a gift or by otherwise making resources available" to a QD or to a "grantee organization" (that is, a non-QD). A charity may be authorized to disburse funds to a grantee organization if it satisfies certain requirements, namely:

- the disbursement furthers a charitable purpose of the charity; and
- the charity ensures that the disbursement is exclusively applied by the grantee organization to charitable activities in furtherance of a charitable purpose of the charity.

A charity could have its charitable status revoked if it accepts a gift which is expressly or implicitly conditional on the charity making a gift to a non-QD.

### **Qualifying disbursements – documentation conditions**

The new qualifying disbursement rules require a charity to keep documentation which is adequate to demonstrate the purpose for which the disbursement is made to a non-QD, and that the non-QD has applied the disbursement exclusively to charitable activities that further a charitable purpose of the charity. The original draft of the BIA 2022 included certain proposed mandatory accountability conditions which fortunately have been replaced by the more general documentation requirement.

### **Reporting obligations**

The ITA now requires a charity to report the following information about its qualifying disbursements in its annual T3010 Registered Charity Information Return (T3010) filing with the CRA:

- the name of each grantee organization that received total qualifying disbursements from the charity in excess of \$5,000 in the taxation year;
- the purpose of each qualifying disbursement made to a grantee organization in the taxation year; and
- the total amount disbursed by the charity to each grantee organization in the taxation year.

It is currently uncertain whether the additional compulsory disclosure information set out above will be available for review by the public or whether it will be included in the confidential section of a charity's T3010 which can be viewed exclusively by the CRA.

### **Concluding remarks**

Bill S-216 would have provided greater flexibility for the Canadian charitable sector than the stricter qualifying disbursement framework. Thankfully, however, the amendments to the ITA do not include the more stringent accountability conditions to be imposed on charities that were contained in an earlier version of the BIA 2022.

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