



Article

Not-for-Profit & Charities

June 2022

The New Qualifying Disbursements Rules for Charities

By Linda J. Godel and Nathaniel Balakumaran

In April 2022, we reported on important changes for charities arising from the 2022 Federal Budget. More recently, on June 23, 2022, the *Budget Implementation Act 2022, No. 1* (**BIA 2022**) received royal assent. Of particular importance to Canadian registered charities is the BIA 2022's new qualifying disbursement rules. These new rules provide an alternative option for charities to work with non-charities.

The Old Regime

Prior to the amendment of the *Income Tax Act* (Canada) (**ITA**) by the BIA 2022, a Canadian registered charity (**Charity**) was only able to carry on its "own charitable activities" or make gifts to qualified donees (that is, Canadian registered charities and certain other organizations that can issue Canadian tax donation receipts) (**QDs**). As such, a Charity could not simply give resources to foreign charities or non-profit organizations based in or outside of Canada that were not QDs. Rather, any resources that a Charity provided to non-QDs had to be used to support the Charity's "own activities" and any activities that were carried out by non-QDs on a Charity's behalf had to be subject to the "direction and control" of the Charity in accordance with the requirements contained in the policies of the Canada Revenue Agency (**CRA**).

The New Qualifying Disbursements Rules

Based on amendments to the ITA made by the BIA 2022, Charities are now able to make disbursements to organizations that are non-QDs, including foreign charities or non-profit organizations based in or outside of Canada, through the introduction of the new "qualifying disbursements" rules.

The BIA 2022 defines "qualifying disbursements" as disbursements by a Charity, "by way of a gift or by otherwise making resources available," either to a QD or to a "grantee organization" (that is, a non-QD). A Charity may be permitted to disburse funds to a grantee organization if it meets the following requirements:

1. the disbursement furthers a charitable purpose of the Charity; and
2. 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.

Notably, the BIA 2022 contains a provision which restricts a Charity from accepting a gift which is expressly or implicitly conditional on the Charity making a gift to a non-QD.

Qualifying Disbursements - Documentation Requirements

Under the new qualifying disbursement rules, a Charity will be required to maintain documentation adequate to establish the purpose for which the disbursement is made, and that the disbursement is exclusively applied by the non-QD to charitable activities in furtherance of a charitable purpose of the Charity. This general documentation requirement replaces the more onerous requirements to meet certain proposed mandatory accountability conditions that were included in the first reading version of the BIA 2022.

Reporting Requirements

By virtue of the BIA 2022, a Charity must disclose the following in its T3010 Registered Charity Information Return (**T3010**) which it is required to file with the CRA annually within six months of its year end:

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

As of now, it is not clear whether the additional compulsory information required to be included in the T3010 as set out above will be publicly available or will be included in the CRA-exclusive confidential section of a Charity's T3010.

Two Options for Canadian Registered Charities

With the expansion of these new rules, a Charity has two options to fund or provide resources to non-QDs, either through the new "qualifying disbursements" rules set out in the BIA 2022 or alternatively, through the part previous and continuing "own activities" rules (which the BIA 2022 does not replace). Under the BIA 2022, if a Charity follows the qualifying disbursement route, it will not be required to meet the "own activities" criteria.

The BIA 2022 repeals Bill S-216, *An Act to amend the Income Tax Act (use of resources of a registered charity)* (**Bill S-216**) that was introduced in November of 2021 by Senator Ratna Omidvar. Bill S-216 proposed amendments to the "own activities" requirements for Charities contained in the ITA to provide that the making of resources available to a non-QD would be a charitable activity if a Charity "takes reasonable steps to ensure that those resources are used exclusively for a charitable purpose." While Bill S-216 would have provided more flexibility for the charitable sector in Canada, thankfully, the more stringent accountability conditions to be imposed on Charities seeking to follow the qualifying disbursement route were removed from the final version of the BIA 2022.

* * *

A member of our Not-for-Profit & Charities Group would be happy to advise on any changes in law and policy that may affect your organization.

Authors



Linda J. Godel
Partner

Tel: 416 643 8809
lgodel@torkinmanes.com



Nathaniel Balakumaran
Associate

Tel: 416-777-5364
nbala@torkinmanes.com

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.