



Sharmila Khare
Director General, Charities Directorate
Canada Revenue Agency

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December 20, 2022

Dear Ms. Khare,

This letter is to express our views on the draft guidance CG-032 [Registered charities making grants to non-qualified donees](#) (November 30, 2022). We thank the Minister for the opportunity to provide our perspective on this important new guidance.

ONN is the independent nonprofit network for the 58,000 nonprofits and charities in Ontario, focused on policy, advocacy and services to strengthen the sector as a key pillar of our society and economy. We work to create a public policy environment that allows nonprofits to thrive. We engage our network of diverse nonprofit organizations across Ontario to work together on issues affecting the sector and channel the voices of our network to government, funders, and other stakeholders.

Summary of Recommendations

We would like to congratulate the Minister on a well drafted guidance that has clearly taken stakeholder concerns into account. Striking the right balance between accountability and creating an enabling environment for charitable activities is often difficult and in our view this guidance does an admirable job of achieving that balance. We are particularly pleased to see the following features of CG-032:

- It is clear the granting framework can be used for all types of resources, including non-financial resources like staff time, intellectual property, use of space, and insurance coverage.
- There is a realistic approach to the directed giving rules that allows for the possibility of funding a shared platform to work with certain types of nonprofits.
- There are realistic and helpful examples throughout that reflect many of the ways this guidance is likely to be used.

Please find below a number of specific suggestions for further improvements the Minister can make to ensure that CG-032 is as clear and useful as possible and does not unintentionally lead to discouraging activities that are acceptable and consistent with the Minister's interpretation of the *Income Tax Act*.

In summary, we recommend the following ways to clarify and improve the guidance:

1. Consolidating the list of differences between granting and direction and control under paragraph 4.
2. Making the wording of the definition of resources at paragraph 6 consistent with CSP-R13.
3. Making the definition of public benefit at paragraph 8 consistent with CPS-024 Section 3.1.2.
4. Make clear in section 7.4 that there are many types of conditions donors can still impose on gifts.
5. Make clear in section 7.9 that making real estate available on a short term basis is not necessarily high risk.

Detailed Recommendations

1. Simplifying the Difference Between Granting and Direction and Control

The box at paragraph 4 setting out the high level differences between granting and direction and control is a very useful idea but it is currently very duplicative. We would suggest the following wording to reflect the fundamental differences.

SUGGESTED WORDING BOX AT PARA 4

Granting differs from the “own activities” (“direction and control”)^{Footnote 5} rules in key respects:

- **Granting can be collaborative rather than hierarchical.** Charities are not required to provide ongoing instructions or direction and control to grantees so grantees can remain autonomous.
- **Granting allows for the grantee’s independence and ownership of programming.** The grantee can be supported to deliver their own programs and is not a representative of the charity.

Overall, granting focuses the charity on ensuring activities are charitable rather than being required to ensure the charity controls all activities.

2. Definition of “Resources” Inconsistent Within Guidance and with CRA’s Overall Approach

We welcome the examples in CG-032, such as example 3 under paragraph 17, that indicate the Minister accepts grants of human resources as acceptable grants. However, we note that a less sophisticated user of this guidance may not notice this detail and instead be discouraged by the definition of resources given at paragraph 6, “A charity’s resources include all its physical and financial resources.”

Furthermore, this definition of resources is inconsistent with the definition set out in the footnote it cites (footnote 9). CSP-R13, which sets out the Minister’s broader view of the meaning of resources, says as follows, “Resources includes financial, material and human resources.” We recommend the wording in CH-032 and CSP-R13 be consistent.

SUGGESTED WORDING PARA 6

A charity's resources include all its **financial, material and human resources**.

3. Definition of Public Benefit Narrow and Inconsistent with CRA's Overall Approach

Public benefit is defined in the draft as follows:

“This means that a charity must deliver a measurable and socially useful benefit to the public or a sufficient section of the public.” (para 8).

This is narrower than the definition of public benefit in *CPS-024 Guidelines for registering a charity: Meeting the public benefit test*. In CPS-024 the public benefit test adds to the above quoted definition the concept of intangible benefit (sec 3.1.2). We recommend that you make the two guidances consistent by adding the below quoted line to paragraph 8.

SUGGESTED WORDING PARA 8

To be considered charitable, a charity must meet the “public benefit” test. This means that a charity must deliver a measurable and socially useful benefit to the public or a sufficient section of the public. **Intangible benefits are acceptable as well—but only in cases where there is a clear general consensus that the benefit exists.** It also means that a charity must not deliver a more than incidental private benefit.^{[Footnote 10](#)} A private benefit is incidental when it is necessary, reasonable, and proportionate to the resulting public benefit.

4. Directed Giving Does not Preclude Donors Setting Some Types of Conditions on Their Gifts

Section 7.4 of CG-032 articulates the prohibition in the Income Tax Act for a charity to receive a gift with the express or implicit condition of “granting it over to a **specific** recipient” (emphasis added) (para 72). The remainder of the section emphasizes that for a gift to be a true gift, the charity must retain ultimate authority over its resources.

We are in complete agreement with the Minister's interpretation on both these points. However, we are concerned that the exclusive emphasis on what types of conditions donors cannot set might mislead small to medium sized charities into thinking donors cannot set any conditions. Our view is that donors can continue to set many different kinds of conditions and that this view is consistent with the Minister's interpretation as set out in CG-032. We would simply ask that you make this explicit.

SUGGESTED WORDING FOR PARA 72

72. The Income Tax Act stipulates that a charity should not accept a gift that is expressly or implicitly conditional on the charity granting it over to a specific recipient, other than a qualified donee. **This does not preclude donors from setting other types of conditions on gifts, such as the types of activities the gift may be spent on or the types of beneficiaries.**

5. Granting Real Property is not Always High Risk

Section 7.9 of CG-032 claims:

“Granting real property is considered high risk, as it is difficult for the charity to ensure the property will continue to be used for the charity’s charitable purposes once it is granted.” (Para 88)

This appears to be true of *transferring* real property, but not necessarily true for *granting* real property. Grant is defined in CG-032 as follows:

“grant” refers to transfers of both monetary and non-monetary resources, or **otherwise making resources available**, to a non-qualified donee.” (para 4) (emphasis added)

CG-032 provides examples of a charity making real estate available such as a church making a church hall available for an educational program.

It is clear that when “granting” is used this way to mean “make available”, it is not necessarily high risk and it is quite possible for the charity to ensure the real estate continues to be used for charitable purposes for the duration of the grant. Section 7.9 would be accurate if the term “grant” were simply replaced with “transfer”.

SUGGESTED WORDING FOR SEC 7.9 (OPTION 1)

87. A charity may wish to **transfer** real property to a grantee, which the grantee may then transfer to another non-qualified donee. ...

88. **Transferring** real property is considered high risk, as it is difficult for the charity to ensure the property will continue to be used for the charity’s charitable purposes once it is **transferred**. ... If the risk of inappropriate use is greater than the benefit that may be provided, the charity should not **transfer** real property. Before a charity **transfers** any real property, we recommend [contacting the Charities Directorate](#) to discuss available options.

Accountability tools for real property **transfers**

... The charity should review the grantee and document the process. If concerns arise about the grantee, the charity should not proceed with a real property **transfer**.

... Since it is not usually possible to conduct a periodic transfer of real property, the CRA recommends the charity determine through past practice or other research whether the **transfer** would meet requirements.

If this approach is too narrow as the Minister wishes the same accountability measures to apply to long-term rentals as transfers, then the Minister could consider adding a line that specifically carves out making available real property on a short term basis.

SUGGESTED WORDING FOR SEC 7.9 (OPTION 2)

88. Granting real property **on a long-term basis, either by transfer or otherwise making it available**, is considered high risk, as it is difficult for the charity to ensure the property will continue to be used for the charity's charitable purposes once it is granted.

Thank you for the opportunity to review this draft, and we look forward to seeing the final product. We are available to discuss at any time. Thank you for your leadership on this issue..

Sincerely,



Cathy Taylor,
Executive Director,
Ontario Nonprofit Network