

FUNDING NON-QUALIFIED DONEES

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Qualified and Non-Qualified Donees

A Canadian registered charity is required by the Income Tax Act (ITA), to spend its resources only on charitable activities carried out by itself. A church or parachurch can spend its revenue on such items as employees' salaries, building maintenance, purchasing Sunday school curriculum or relief/development supplies, purchasing office supplies/equipment and so on. In these cases, the funds are being spent on its own activities that pursue its charitable purposes. However, the charity cannot send funds to a church or any other entity outside Canada, even if it is to accomplish the very same activities it is doing in Canada.

If the Canadian Charity sends funds to any organization outside Canada, it must be to a qualified donee. In this case, the ITA deems the Canadian charity to have carried out the activity itself. With a few specific exceptions, it is not possible for an organization outside Canada to be a qualified donee.

For our purposes, a non-qualified donee is any individual, organization, not-for-profit or Non-Government Organization (NGO) that is not a registered charity in Canada or does not otherwise fit the ITA's definition of a qualified donee (Sec. 149.1(1)). A non-qualified donee will not have a charitable Business Number (BN) issued by CRA (9 digits followed by an RR suffix). Non-qualified donees are usually referred to in terms of organizations not individuals. However, sending funds to an individual or group of individuals without proper controls creates the same difficulties as funding an organization that is a non-qualified donee. Therefore, we include individuals in our definition.

Responding to Needs

Many charities, particularly churches, receive presentations, videos, sermons, testimonials, newsletters or personal approaches and other information about how ministries are dealing with needs around the world. Often the presenters of the information are visitors or guests of the church and are often known to the church. As a result of hearing these messages, some individuals at the charity or in the congregation wish to respond with financial gifts to meet these identified ministry needs. Sometimes an offering is taken and the funds are given directly to the presenter. Sometimes cash is given to a church treasurer with the instruction to pass it on to "the ministry" and sometimes a designation is made on a church offering envelope. Even though the need is real and compelling, such a response can create legal difficulties for the church or parachurch.

A scenario that frequently results in a church inadvertently funding a non-qualified donee, occurs after the missionary, or perhaps a foreign national, working in a country outside Canada, comes to speak at a church or parachurch event. At the event, an offering is taken and whatever is raised is given to the missionary or a cheque sent to the foreign mission or missionary. Since the missionary is not an employee, agent or contractor of the Canadian church and the foreign mission is not a registered charity in Canada, the church has inadvertently funded a non-qualified donee.

The Difficulties

When the recipient of the funds provided by the church is a non-qualified donee, the church could incur a financial penalty (105% of the amount given to the non-qualified donee) assessed by Canada Revenue Agency (CRA) or suspension and ultimate revocation of the charity's charitable status. Some donors and administrators are of the mistaken impression that the above scenario is permissible if a tax receipt is not issued for such gifts. Funding a non-qualified donee is an improper expenditure subject to the consequences noted above. Treasurers should be aware that not issuing a tax receipt does not change that.

When it comes time to complete the Registered Charity Information Return (T3010) due to CRA, the treasurer now must answer the question: Did the charity carry on or fund programs, outside Canada? (Line 2100). Since giving funds to the foreign mission is funding a program outside Canada, the correct answer to the question is 'Yes'.

C4 Did the charity carry on, fund, or provide any resources through employees, volunteers, agents, joint ventures, contractors, or any other individuals, intermediaries, entities, or means (other than qualified donees) for any activity/program/project outside Canada? **2100** Yes No

If yes, you must complete and attach Schedule 2, *Activities Outside Canada*, to your return.

If the charity responds 'yes,' Schedule 2, Activities Outside Canada, must be completed and included with the T3010 return.

On Schedule 2, line 210, answering "yes" to carrying out activities through an arrangement with an employee, volunteer, agent, or contract, implies the charity has control of the activities and funds. But since this is not the case, the question must be answered "No". Again, such a response can make it evident that the church or charity has given a gift to a non-qualified donee. Similarly, the treasurer would have to answer "No" to questions 5 and 6, meaning the amount entered on line 200 was also not spent through activities of employees or volunteers (lines 240 & 250), implying this is not the church's own activity under its direction and control. If the treasurer puts the amount given to the foreign mission on the Qualified Donees Worksheet (that forms part of the T3010 return), it will not appear with a proper Business Number. This will make it clear the gift was to a non-qualified donee.

 Canada Revenue Agency / Agence du revenu du Canada

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Qualified Donees Worksheet / Amounts Provided to Other Organizations

Registered charities may make gifts to qualified donees. Provide the required information for each gift made to other organizations. See the reverse for explanations of the terms used.

Total number of Qualified Donees/Other Organizations:

Name of organization:		Associated charity: <input type="checkbox"/> Yes <input type="checkbox"/> No	
BN/Registration number: RR	City and Prov/Terr:		
Amount of gifts-in-kind \$		Total amount of gifts \$	

Funding Activities Outside Canada

It is usually evident that a church or para-church is carrying out an activity by itself and that it has control and direction over it, if the work is done by its own employee(s) or volunteer(s). It is less evident, if the work is being carried out by an outside individual such as an agent, a contractor or an independent missionary. Unless the charity can clearly demonstrate that it has control and direction over the activities performed by the worker and that the worker is accountable back to the charity, it is in reality funding a non-qualified donee. In its guidance, Canadian Registered Charities Carrying Out Activities Outside Canada, CRA outlines how charities can demonstrate direction and control.

- Create a written agreement with the intermediary, and implement its terms.
- Communicate a clear, complete, and detailed description of the activity to the intermediary.
- Monitor and supervise the activity.
- Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
- Arrange for the intermediary to keep the charity's funds separate from its own, and to keep separate books and records.
- Make periodic transfers of resources, based on demonstrated performance.

Preventing Difficulties

There are a number of ways to approach the above scenario to prevent funding a non-qualified donee.

1. First, the charity should decide, or develop a policy on, how designated donations will be handled, particularly when there is an outside speaker who is not from another registered charity in Canada. It should be recognized that someone may wish to respond with a donation whether or not a specific request for funds has been made. If there is any doubt about whether the donation can be used as directed, the gift should not be deposited, until such a determination has been made. The gift cannot easily be returned once it has been accepted (deposited).
2. Second, determine if the speaker represents a registered Canadian charity.
3. If the speaker does not represent a registered charity in Canada, then the speaker can be paid for speaking at the church and reimbursed for expenses, if the amounts are reasonable.
4. Determine from the foreign charity if there are any projects that the Canadian church/parachurch is prepared to take on as a cooperative venture or through an agency agreement.
5. Make known to the potential donors that gifts to designated programs will be used there, unless they cannot be for any reason as determined by the board.

MEET THE AUTHOR



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