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# CRA's Foreign Activity Guidance

(or “Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada”)

A presentation to World Vision Canada’s Law Day  
December 6, 2011

Mark Blumberg ([mark@blumbergs.ca](mailto:mark@blumbergs.ca))  
Blumberg Segal LLP

# Blumberg Segal LLP

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- [www.canadiancharitylaw.ca](http://www.canadiancharitylaw.ca) and [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)
- Free Canadian Charity Law Newsletter. Sign up at:  
<http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361 – 1982 or 1-866-961-1982
- [mark@blumbergs.ca](mailto:mark@blumbergs.ca)
- [www.twitter.com/canadiancharity](http://www.twitter.com/canadiancharity)

# Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

## Good Works Outside the Charity Sphere

- Personal donations of cash or in kind items to foreign charities, no tax receipt
- Doing business in developing countries
- Corporate social responsibility (CSR), donations, sponsorship, advertising, etc...
- For-Profit “non-profit” – google.org, micro-loans
- Non-profit without charitable status – if no need to issue tax receipts
- Avoiding abusive transactions and paying fair share of taxes

## Good Works Outside the Charity Sphere

- Volunteering – at home and abroad
- Remittances – gifts to family, friends, former employees abroad
- Encourage Canadian government to fulfill commitment of 0.7% of GNI
- Encourage Canadian companies operating outside of Canada to do so legally and ethically
- Our own actions – the goods we consume, environmental footprint, what we buy

## Variety of Charities

- 12,000 carried on ‘programs’ outside of Canada – humanitarian assistance, development, education, religious, arts, etc... 5000 spent funds directly outside Canada (7000 though qualified donees)
- Every charity is different – objects / areas of charitable work / philosophy / risk tolerance / public profile / donors / level of government support / independent vs. international affiliations / resources / knowledge / activities in Canada or outside

# Canadian Registered Charity World Divided in Two

- **Qualified donees** – can issue official donation receipts for Income Tax Purposes
- **Non-Qualified donees** – cannot issue official donation receipts

## List of Qualified Donees

- Canadian registered charities under the Income Tax Act;
- registered Canadian amateur athletic associations;
- registered national arts service organizations;
- housing corporations in Canada set up exclusively to provide low-cost housing for the aged;

# List of Qualified Donees

- a municipality;
- a municipal or public body performing a function of government in Canada;
- the United Nations and its agencies;
- universities outside Canada with a student body that ordinarily includes students from Canada (these universities are listed in Schedule VIII of the Income Tax Regulations);

## List of Qualified Donees (cont)

- charitable organizations outside Canada to which the Government of Canada has made a gift during the donor's taxation year, or in the 12 months immediately before that period [IC 84-3R5]; and
- the Government of Canada, a province, or a territory.

## How do I know if it is a Qualified donee?

If in doubt check CRA's listing of charities, call CRA, or treat organization as a non-qualified donee.

- 85,000 **registered charities** listed at CRA site:  
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/menu-eng.html>
- **Prescribed foreign universities** at Schedule VIII of the Canadian Income Tax Regulations, as provided in section 3503  
<http://laws.justice.gc.ca/en/showdoc/cr/C.R.C.-c.945/sc:8/20090629/en?noCookie#anchorsc:8>
- **A few Charitable organizations** outside Canada to which the Government of Canada has made a gift in last 2 years [IC84-3R5];  
<http://www.cra-arc.gc.ca/E/pub/tp/ic84-3r5/>

# What is a non-qualified donee?

- All organizations other than qualified donees
- They cannot issue official donation receipts

Examples include:

- Foreign charities
- Canadian non-profits with no charitable status
- Businesses
- Bono, Obama, Angelina Jolie

# Why deal with a non-qualified donee?

## Foreign Activities

- You don't have people in Malawi
- You don't have road building equipment in Haiti
- Local people or organizations sometimes can do it quicker, better and more cost effectively

## Canadian Activities

- The best organization to implement charitable project may be a non-profit (non-charity) or a business and not another registered charity

# CRA's Guidance on Foreign Activities

- **Guidance on Canadian Registered Charities Carrying Out Activities Outside Canada**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

- **Bigger Font Version:**

[http://www.globalphilanthropy.ca/images/uploads/Guidance for Canadian Registered Charities Carrying Out Activities Outside Canada - July 8, 2010.pdf](http://www.globalphilanthropy.ca/images/uploads/Guidance_for_Canadian_Registered_Charities_Carrying_Out_Activities_Outside_Canada_-_July_8,_2010.pdf)

# CRA's Guidance on Canadian Intermediaries

- **Guidance on Using an Intermediary to Carry out a Charity's Activities within Canada**

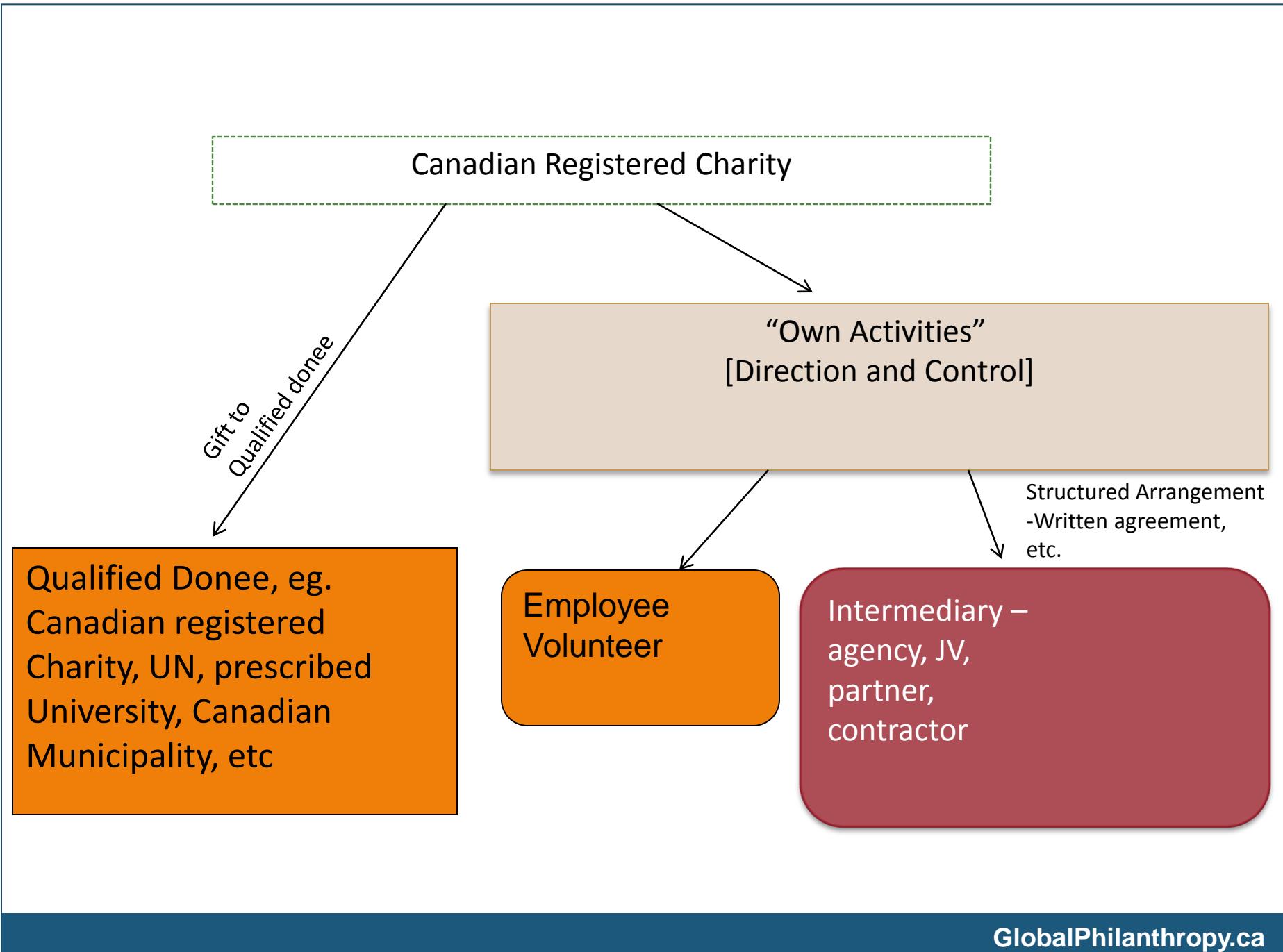
<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/ntrmdry-eng.html>

- June 20, 2011
- Almost identical to foreign activity guidance

# “Own Activities” or “Direction And Control”

When not working with qualified donee or own staff need to have:

- Due Diligence of Intermediary (investigate)
- Written agreement
- Detailed description of activities
- Monitoring and Supervision
- Ongoing Instruction for changes
- Periodic Transfers
- Separate Activities and Funds
- Books and Records showing above



## 1.1 “Own Activities”

- Canadian registered charity can have intermediary conduct activities
- “A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee.”
- “Structured arrangement” vs. “conduit”
  - [http://www.globalphilanthropy.ca/images/uploads/Structured\\_Arrangement\\_versus\\_Conduit\\_for\\_Canadian\\_Charities\\_and\\_Foreign\\_Activities.pdf](http://www.globalphilanthropy.ca/images/uploads/Structured_Arrangement_versus_Conduit_for_Canadian_Charities_and_Foreign_Activities.pdf)

### 3. Can charities conduct foreign activities?

**“Charities can carry on their activities both inside and outside Canada. Canadian registered charities make important and valuable contributions throughout the world. However, carrying on activities outside Canada often presents significant challenges and requires substantial ongoing effort. Many charities have launched **well-intentioned** international activities only to learn that they cannot maintain the effort needed to meet their objectives and fulfil their obligations under the *Income Tax Act.*”**

## 4.1 Following Local Laws

- “When a charity operates within Canada, it must comply with Canadian laws, including the *Income Tax Act* and common law.”
- “However, a charity that carries on activities outside Canada may operate in areas where the legal framework and laws are different.”
- “Although the *Income Tax Act* does not require that registered charities comply with laws in foreign jurisdictions, being registered in Canada does not exempt a charity from the laws in the jurisdiction where they operate.”

## Local Laws (Cont)

“The CRA strongly suggests that all charities make themselves aware of local laws, and how they are enforced, before carrying out their charitable programs abroad. Being aware of local laws and their application will help make sure that the public benefit provided by a charity’s activities is not offset by harm that may result to those carrying on the activities, to the charity’s beneficiaries, or to anyone else.”

## 4.2 Charities and Risk

- Charities should have substantial net public benefit
- All activities have some risk, some have a lot of risk.
- Awareness
- Appropriate plan to mitigate risk to acceptable level

## 4.2 Charities and Risk

Every situation is different but CRA will look to:

- the likelihood and nature of harm to anyone delivering the activity, receiving the benefit, or otherwise affected;
- the urgency of the need for charitable assistance (for example—an activity that helps desperate people in regions affected by a disaster, or in war zones);
- the experience of the charity or applicant operating in situations with significant risk; and
- the charity's proposed measures to mitigate any significant risks.”

## 4.3 Terrorism

“As with all individuals and organizations in Canada, charities are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities, or that support terrorist activities.”

# How Terrorists May Try to Use Charities

- Money raised by charities to fund terrorist organizations;
- Using charities to smuggle people into countries illegally;
- Using residential schools as military recruitment and training centres;
- Using charities set up for providing facilities for young people for organization and recruitment;
- Using charities as a base to spread propaganda; or
- Using charities for money laundering purposes.

<http://www.charitycommission.gov.uk/supportingcharities/ogs/g096.asp>

# CRA Checklist on Terrorism

- Released April 2009
- Succinct, balanced and helpful

## **Checklist for Charities on Avoiding Terrorist Abuse**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>

# Avoiding Terrorism

## **CRA Checklist for Charities on Avoiding Terrorist Abuse**

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/vtb-eng.html>

## **Compliance toolkit chapter 1: Charities and terrorism (UK)**

<http://www.charitycommission.gov.uk/Our regulatory activity/Counter terrorism work/Compliance toolkit index.aspx>

## **U.S. Treasury Dept. Anti-Terrorist Financing Guidelines – Voluntary Best Practices for U.S.-Based Charities**

<http://www.ustreas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml>

## **Canadian Charities and Terrorism: Preventing Abuse of Your Favourite Canadian Charity**

[http://www.globalphilanthropy.ca/index.php/articles/canadian\\_charities\\_and\\_terrorism\\_preventing\\_abuse\\_of\\_your\\_favourite\\_canadian/](http://www.globalphilanthropy.ca/index.php/articles/canadian_charities_and_terrorism_preventing_abuse_of_your_favourite_canadian/)

# Transferring Property directly to beneficiaries

A charity does not have to adopt measures to direct and control the use of its resources when transferring property directly to proper beneficiaries of its charitable activities. For example, a charity could give school supplies, such as books or writing instruments, to impoverished students without having to direct and control how the students use those resources.

## 5.3 Court decisions and intermediaries

Three Federal Court of Appeal decisions each confirmed that a charity working with an intermediary must exercise “direction and control”

- The Canadian Committee for the **Tel Aviv Foundation v. Canada** (2002 FCA 72), 2002-03-01
- **Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)** (2002 FCA 323), 2002-09-13
- **Bayit Lepletot v. Canada (Minister of National Revenue)** (2006 FCA 128), 2006-03-28

## 5.4 What is a gift to qualified donee?

- A gift to a qualified donee is a transfer of money or any other property to a qualified donee, without consideration.
- Under the *Income Tax Act*, qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them.

## 5.5 What is a Conduit

- “a conduit is a registered charity that receives donations from Canadians, issues tax-deductible receipts, and funnels money without direction or control to an organization to which a Canadian taxpayer could not make a gift and acquire tax relief.”
- Violates *Income Tax Act*
- Can be penalties or revocation

# Requirements for intermediaries

- The intermediary usually has resources that a charity needs, such as a particular **skill, knowledge of a region, staff in the area, or specialized equipment**.
- Charity must **investigate** status and activities of intermediary

Ensure that:

- The intermediary has the **capacity** (for example—personnel, experience, equipment)
- **strong expectation** the intermediary will use the charity's resources as directed by the charity.

# 6. Types of Intermediaries

- Agent
- Joint Venture Participant
- Co-operative Participant
- Contractors

## 7.1 How much direction and control?

Generally speaking, the nature and the number of measures a charity adopts to direct and control the use of its resources should correspond to the circumstances of the activity, such as:

- the amount of resources involved
- the complexity and location of the activity
- the nature of the resources being transferred
- any previous experience working with a particular intermediary
- the capacity and experience of the intermediary

# Written agreement not enough

“However, signing an agreement is not enough to prove that a charity meets the own activities test. The charity must also be able to show the CRA that the charity has a **real, ongoing, active relationship with its intermediary.**”

# One Time Activities Under \$1000

“Entering into a written agreement and implementing the terms of that agreement is usually an effective way to meet the own activities test. However, the CRA acknowledges that in situations where the amount of resources involved is minor, and is a one-time activity, the complications of developing a full, formal, written agreement may outweigh the benefits. **In situations where the money spent on a one-time activity is \$1,000 or less, other forms of communication might be used to show direction and control over the use of resources by intermediaries.**”

# Template Written Agreement

- no established template for written agreements, acceptable agreements would normally contain the elements listed in Appendix F.
- See sample contractor agreement at:
  - [www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

## 7.3 Description of Activities \*\*\*

- Before starting an activity
- agree on a clear, complete, and detailed description of the activity.
- Depending on the type, complexity, duration, and expense of an activity, the charity should be able to provide documentary evidence that shows:

# What's In a Description of Activities

- exactly what the activity involves, its purpose, and the charitable benefit it provides;
- who benefits from the activity;
- the precise location(s) where the activity is carried on;
- a comprehensive budget for the activity, including payment schedules;
- the expected start-up and completion dates for the activity, as well as other pertinent timelines;
- a description of the deliverables, milestones, and performance benchmarks that are measured and reported;

# What's In a Description of Activities

- the specific details concerning how the charity monitors the activity, the use of its resources, and the intermediary carrying on the activity;
- the mechanisms that enable the charity to modify the nature or scope of the activity, including discontinuance of the activity if the situation requires (for example—the intermediary begins misusing funds);
- the nature, amount, sources, and destination of income that the activity generates, if any (for example—tuition fees from operating a school, or sales from goods produced by poor artisans in third-world countries; and
- any contributions that other organizations or bodies are expected to make to the activity.

## 7.4 Monitoring and Supervision

“Monitoring and supervision is the process of receiving **timely and accurate reports**, which allows a charity to make sure that its resources are being used for its own activities.”

## 7.4 Monitoring and Supervision

Depending on factors such as the size, nature, and complexity of an activity, the reporting methods (as stated in any written agreement) can take many forms, including the following:

- progress reports
- receipts for expenses and financial statements
- informal communication via telephone or email
- photographs
- audit reports
- on-site inspections by the charity's staff members

## 7.5 What is Ongoing Instruction

- “Ongoing instruction is the process of providing any **necessary additional instructions or directions to an intermediary**.”
- Records of any ongoing instructions help to show that the charity is carrying out its own charitable activities in accordance with the provisions of the *Income Tax Act*. **Minutes of meetings** or other written records of decisions are one way to show that a charity has given instructions. The CRA recommends using **written instructions** (for example—letters, emails, or faxes) to communicate with an intermediary whenever possible.

## 7.6 What are Periodic Transfers

- “Making periodic transfers is the process of sending a charity’s resources to an intermediary in **instalments, based on demonstrated performance**, rather than in one transfer.”
- “**When appropriate, a charity should keep the right to discontinue the transfer of money and have unused funds returned if it is not satisfied with the reporting, progress, or outcome of an activity.** This will allow the charity to stop funding an activity if the charity’s resources are being misused or for any other valid reason.”

## 7.7 What are separate activities

- When carrying on an activity through an intermediary, a charity has to make sure that it can distinguish its activities from those of the intermediary.
- A charity cannot simply pay the expenses an intermediary incurs to carry on the intermediary's own programs and activities. Doing so draws into question whether the activity is truly that of the charity.

## 7.7 What are separate funds

“For certain types of arrangements (**for example—an agency agreement**) the charity’s money for the activity should be kept in a **separate bank account**, and taken out only after appropriate authorizations are made by the charity or performance benchmarks are met by the intermediary. Segregated funds should also be reported in **books and records separately from those of the intermediary**.”

## 7.7 What are separate activities/funds

“Some regions have rudimentary banking systems or none at all, or a charity’s staff or an intermediary may not be able to access a banking system. If funds cannot be kept separate, then a charity should be able to provide other evidence to distinguish its own resources and activities, and of direction and control over them.”

## 8. Keeping Books and Records in Canada

- Under the *Income Tax Act*, a charity must keep adequate books and records in Canada. The CRA recommends that books and records be kept in either French or English.
- Books and records must enable the CRA to check the following:
  - whether a charity's funds are being spent on its own activities or on gifts to qualified donees
  - whether the charity is directing and controlling the use of its resources
  - whether there are grounds to revoke the charity's status

# Do you need original source documents?

- The *Income Tax Act* does not require a charity to provide **original source documents**, such as receipts for purchases, to show that it is in compliance.
- The CRA recommends that a charity get original source documents whenever possible, but acknowledges that war, natural disaster, lack of access to telephones or the Internet, low literacy rates, legal restrictions, or other conditions may make it impossible to do so.

# Do you need original source documents?

- Getting original source documents may not be possible or practical. If so, a charity should be able to explain why it cannot get them, and make all reasonable efforts to get copies and/or reports and records from staff and intermediaries to support its expenditures, and show that it has made such efforts. The charity will also have to show when, how, and in what amounts funds were transferred.

# Keeping records in Canada

- Legally required
- If records on foreign server and you have access to them then easy to periodically download records relating to Canadian charity to hard drive in Canada.
- Keeping records in Canada is great “backup” if foreign server fails, lost, stolen, earthquake etc.
- Relationship with foreign intermediary may end and they may not be cooperative
- Foreign intermediary may not keep all records as long as required by ITA or funder etc.
- Not being able to access your “adequate books and records” is not adequate and can result in revocation

# Why Obtain Receipts

- Yes receipts do not guarantee that funds actually spent or that project was effective and efficient
- Not all receipts are created equal
- But requiring receipts is a good idea because:
  - Makes fraud less likely;
  - Provide proof of expenses/backup;
  - May be helpful for warranties/returns or exchanges or proof of ownership;
  - Helps with budgeting and planning for next project;
  - Helps with finding errors;
  - May be required by CRA for direction and control, compliance and books and records;
  - May be required by funder (Foundation, CIDA) for reimbursement;
  - Reduces use of underground or black market economy which may be considered tax evasion or criminal activity in some countries
  - Provides local employment for scanning or copying.

# Other Topics in Guidance

- Capital Property
- Tithes and Royalties to Foreign Bodies
- Capacity Building
- Disasters
- Local Ownership and “Direction and Control”

# Questions for Follow-Up

- 1) Do you know what a qualified donee is?
- 2) Is your charity providing resources to organizations or individuals that are not qualified donees such as foreign charities?
- 3) Does your charity have objects which allow for such activities?  
If not have you changed objects?
- 4) Have you reviewed CRA's guidance on activities outside of Canada?
- 5) Does your charity have an appropriate written agreement with all necessary elements?

# Questions for Follow-Up

6) Do you maintain “direction and control” over your resources?

Do you have:

- written agreement and comply with terms.
- clear, complete, and detailed description of the activity.
- monitor and supervise the activity.
- instructions to the intermediary on an ongoing basis.
- for agency relationships, segregate funds, as well as maintain separate books and records.
- periodic transfers of resources
- books and records that show use of resources and direction and control

# Questions for Follow-Up

- 7) Are you complying with foreign laws?
- 8) Are you undertaking appropriate risk management?
- 9) Are you complying with CRA's checklist on avoiding involvement with terrorism?
- 10) Are you properly categorizing foreign activities on T3010?
- 11) Are you obtaining appropriate professional advice?

## Further information

[www.globalphilanthropy.ca](http://www.globalphilanthropy.ca)

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

<http://www.interaction.org/document/interactions-pvo-standards>

[www.capacitybuilders.ca/clip](http://www.capacitybuilders.ca/clip)