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Charities Directorate
Attn: Policy, Planning, and Legislation Division
Canada Revenue Agency
Ottawa ON K1A 0L5
Email: guidancefeedback-retroactionsurleslignesdirectrices@cra-arc.gc.ca

Re: CG-032 Registered charities making grants to non-qualified donees (draft)

Imagine Canada is pleased to provide comments in response to the Canada Revenue Agencies (CRA) CG-032 Draft Guidance for Registered Charities Making Grants To Non-Qualified Donees (referred to in the document as the Guidance). We have consulted with the charitable sector about the Guidance, and we have concerns that it does not capture the spirit of the legislation. In particular, the 62 references to the term risk are problematic, especially for the international cooperation sector. The immediate assumption of high risk when working internationally implies the continued application of direction and control in the relationships between Canadian organizations and international colleagues. Additionally, the charitable sector needs clear stipulations in the Guidance on what will prompt an audit related to qualifying disbursements.

Imagine Canada hopes this Guidance will help promote co-creation and equitable partnerships between charities and non-charities, ensuring our sector can respond to complex problems and better serve our communities at home and abroad. To further support the development of this document, we have prepared the following recommendations to bring awareness to the key opportunities and issues surrounding the Guidance.

Clarity and Accessibility

This Guidance was designed for use by those working in charities and non-profits. However, the document needs more clarity and conciseness. Further revision is needed to ensure the Guidance is user-friendly, especially for non-qualified donees (NQDs) who are not familiar with the Income Tax Act and do not have legal counsel on retainer. Firstly, we recommend that the Guidance contain subtitles which differentiate between general information, such as the preamble, the relationship to legislation and the definitions. Secondly, a summary detailing the general requirements for working with NQDs should be developed. This summary should be no longer than 1-2 pages, so charities have step-by-step directions on how to comply. Thirdly, requirements for domestic parties should be separated from requirements for international parties to avoid confusion. Lastly, as suggested in the *Future of Good* article, the revised Guidance should contain a frequently asked questions (FAQ) section with additional examples to illustrate different applications of the Guidance.

Recommendation: *Refine the Guidance to ensure it is clear, concise, and user-friendly.*

Inconsistencies with Terms, Definitions and Concepts

To ensure the final version of the Guidance is clear and concise, terms, definitions, and concepts must be consistent with other regulatory documents. Those that are currently inconsistent with the terminology used in the Income Tax Act (ITA) and previously published policy and guidance documents are listed below.

Qualifying Disbursements and Grants

Throughout the Guidance, terms such as "grants" and "grantees" are used, which are not present in the ITA. The ITA uses "qualifying disbursements[1]" and "grantee organizations[2]." The ITA has made it clear that a qualifying disbursement is a *disbursement* (an amount of money given for a particular purpose[3]) which aligns with the requirement that charities must ensure that qualifying disbursements to an NQD further its charitable purpose. The Guidance introduces a new concept for qualifying disbursements called a "grant," which is defined as "*transfers of both monetary and non-monetary resources*, or otherwise making resources available, to a non-qualified donee (grantee)." This definition is problematic because it has a broader scope than a qualifying disbursement and is significantly different from its usage by those in the sector. A "transfer" refers to "*any mode of disposing of or parting with an asset* or an interest in an asset including a gift[4], the payment of money, release, lease, or creation of a lien or other encumbrance".[5] Unfortunately, there is no formal definition of a grant provided by the CRA beyond the Guidance.[6] This definition may create confusion in sections where the term "grant" and "transfer" are used in the same sentence.[7]

Charity:

The Guidance refers to "charity" as applicants for registration. This reference is not present in the ITA. The Guidance should be revised to reflect the definition of charity in the ITA.

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[1] A qualifying disbursement means a disbursement by a charity, by way of a gift or by otherwise making resources available. (Income Tax Act, s. 149.1(1) "qualifying disbursement.")

[2] A grantee organization includes a person, club, society, association or organization or prescribed entity, but does not include a qualified donee.(Income Tax Act, s. 149.1(1) "grantee organization.")

[3] Black's Law Dictionary, 11th ed (Thomson Reuters, 2019) "disbursement."

[4] A gift is a voluntary transfer of property without valuable consideration to the donor. https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/charities-giving-glossary.html

[5] Black's Law Dictionary, 11th ed (Thomson Reuters, 2019) "transfer"

[6] There is no definition for a grant provided in the Charities and giving glossary. https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/charities-giving-glossary.html

[7] For example, section 7.9 states, "a transfer of real property might be acceptable as a grant." For many readers, it is hard to differentiate the difference between a transfer and a grant in the example provided because the charity does not have legal ownership of the property being "transferred" by the NQD. In this example, the ITA's definition of a qualifying disbursement better aligns with the charity's intent instead of a "grant," as the charity has provided the school with money to purchase school property. The Guidance should be revised to ensure the definition of a grant aligns with the ITA.

Otherwise Making Resources Available

The Guidance must define "otherwise making resources available" in the ITA. It is unclear whether this concept refers to (a) a charity *gifting* non-monetary resources to an NQD or (b) a charity *making available* non-monetary resources to an NQD. Clarifying this concept is important as several examples (section 4, examples 2 and 3) in the Guidance allude to "otherwise making resources available." Charities should be aware of any nuances associated with "making resources available" as it may influence their grant-making practices.

Non-Monetary Resources

Paragraph 13 of the Guidance states, "a charity can also operate by making a *qualifying disbursement* through either a *gift* to a qualified donee or a *grant* to a grantee. A *grant includes both monetary and non-monetary resources*." The Guidance further states that this "includes [a charity's] *staff, intellectual property*, and real property." Further guidance is needed to clarify what constitutes a non-monetary resource. Greater clarity is also needed to understand how non-monetary resources (staff time or intellectual property) would be quantified to ensure they can be counted as a qualifying disbursement.

Resources

Paragraph 6 defines a charity's resources as all its physical and financial resources. Paragraph 13 states that "A grant includes both monetary and non-monetary resources. A charity's resources include all its physical and financial resources. For example, this includes its staff, intellectual property, and real property". These definitions are inconsistent with footnote 9, which references CSP-R13, which states, "Resources [include] financial, material and human resources." Additionally, paragraph 17, example 3 is problematic because it merges two definitions *grants and resources* to create "grant resources." As the example states "Grant resources include *cash, financial administration, and support from the charity's employees*. The charity can also grant *intellectual property assets*, provided any private benefit concerns such as non-charitable use of the profits are addressed." The Guidance should be revised to ensure paragraphs 6, 13 and 17, example 3 are consistent with CSP-R13**.**

Public and Private Benefit

Section 2.2 of the Guidance states that "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*. It also means that *a charity must not deliver a more than incidental private benefit*. A private benefit is *incidental when it is necessary, reasonable, and proportionate to the resulting public benefit"*. The Guidance should avoid paraphrasing previously finalized policies and guidance, such as the policy statement referenced for this section (Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test). The paraphrased sentence above has merged complex terms, definitions and concepts such as public[8], benefit[9] and incidental, which are described in different contexts than those in CPS-024 policy statement. Firstly, "public benefit" is not defined in the policy statement. It is a combination of two terms which are defined separately. Secondly, CPS-024 Guidelines do not define "incidental private benefits." They only state the *acceptability* of those benefits. The policy statement states, "private benefit is only *acceptable* as a *minor and incidental by-product of the charitable purpose*" and that "private benefits will be considered *acceptable* when they occur in the delivery of a *reasonable charitable benefit to a properly chosen beneficiary…* when reviewing the private benefit, examiners want to ensure that any benefit conferred is *no more than is necessary to achieve the charitable purpose*". The Guidance should be revised to align with the CPS-024 policy statement.

Directed Donations and Acting as A Conduit

Section 7.4 states, "The [ITA] 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 provision is intended to prevent a charity from acting as a conduit, which can be implicitly or expressly conditional when a donor makes a gift." This is a misinterpretation of section 168(1)(f) of the ITA, which states, "the Minister proposes to revoke its registration if the person in the case of a registered charity… accepts a gift the granting of which was *expressly or implicitly conditional* on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee." The summary of section 168(1)(f) of the ITA is incorrect because the term conduit is not referenced. The term conduit is referenced in CG-004 Using an intermediary to carry on a charity's activities within Canada. CG-004 defines a conduit as a "charity that funnels its resources to a non-qualified donee without direction or control." Further clarification is needed as to how a charity would become a conduit if the charity were to make a qualifying disbursement to an NQD, which does not require the use of direction and control. Greater clarity is also needed to understand what constitutes an implicit conditional gift. The example provided in section 7.4 allows charities to design webpages that allow the donor to indicate their donation preferences. However, it is unclear whether indicating this preference would constitute an implicit conditional gift despite the charity having the authority to decide how to use the donation. The Guidance should be revised to align with section 168(1)(f) of the ITA.

Non-Qualified Donees

The Guidance states that a "'grantee' is a non-qualified donee and is defined in the ITA to include "a person, club, society, association or organization or prescribed entity, but does not include a qualified donee." The ITA does not provide a definition for a non-qualified donee. This definition

[8] CPS-024 Guidelines define public as "charitable purpose be for the benefit of the community (at large) or a sufficient segment of the community"

[9] CPS-024 Guidelines define benefit as "charitable purpose confer a tangible, or objectively measurable, benefit on the public. Or objectively measurable and socially useful benefit."

is used to define a grantee organization. While the CRA has published guidance[10] to outline different types of Qualified Donees (QDs), further guidance is needed to define what constitutes a grantee or NQD, as the definition provided in the guidance is too broad. The Guidance defines a grantee as an "individual or organization that the charity works with to further its charitable purposes." This could include many actors, such as consultants and employees, who are not NQDs, as the sector currently understands the definition. The Guidance should clarify whether individuals without an organizational affiliation can be classified as NQDs and include examples of NQDs similar to the guidance provided for QDs.

Risk

The term "risk" is mentioned 62 times throughout the Guidance without being defined. It is problematic that the use of the term "risk" in this Guidance is often conflated with equity-seeking groups. Imagine Canada recommends the CRA reassess the use of the term risk so broadly.   Additionally, It is unclear if the term refers to unintended consequences, the proposed activities not being carried out, or the uncertainty related to partnering with NQDs. It is vitally important that risk is defined within the Guidance, as its current usage may quickly deter charities from partnering with NQDs. Greater clarity is also needed to determine how to classify risk using the matrix. It is also unclear how to assess risk because terms such as "minor medium risks" have been used throughout the Guidance in addition to the risk levels identified at the top of the matrix.

Recommendation: *Ensure terms used throughout the Guidance are universally applicable and consistent with terms and definitions used in the ITA and other guidance documents developed for the charitable sector.*

Accountability Tools to Combat Risk

Imagine Canada recognizes the need for the CRA to create a practical and flexible accountability tool. We understand the need for charities to perform their due diligence when providing NQDs with a grant. However, there is a need to ensure that the effort required to administer the accountability tools (due diligence review, written agreement and regular monitoring and reporting) is proportionate to the value of the grant. While the CRA may view $25,000 as a "high amount or significant transfer of resources," charities and NQDs may not, especially given the work required to meet the accountability requirements. This may result in a reduced number of charities willing to provide grants to NQDs or a reduced number of NQDs seeking grants from charities. Alternative accountability tools may include allowing for verbal and video applications, mid-way check-in calls and simplified final reports.[11]

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[10] CG-019: Qualified donees
https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-019-draft-purposes-charitable-registration.html#fn25

[11] The Philanthropist Journal. New pathway to partnership opens with CRA draft guidance on qualifying disbursements.
https://thephilanthropist.ca/2023/01/new-pathway-to-partnership-opens-with-cra-draft-guidance-on-qualifying-disbursements/

To reduce the administrative burden associated with the granting process, we encourage the CRA to look for opportunities to streamline reporting requirements with those required for the T3010.

Recommendation: Reduce the administrative burden for grants over $5,000 by streamlining the reporting requirements for granting to NQDs.

Failure to Address Charitable Purposes of Charities that Make Gifts to Qualified Donees
Many charities, including foundations, have charitable purposes of making gifts to QDs. However, some charities would like to provide grants to NQDs, but doing so may cause them to operate outside of their charitable purposes. The Guidance should contain a section that clarifies whether a charity with a singular charitable purpose of making gifts to QDs can make qualifying disbursements. The Guidance should clearly state whether charities need to modify their charitable purposes to include NQDs and QDs. If so, greater clarity is needed to understand if charities will be permitted to grant to NQDs while they work to modify their charitable purposes. The sector would benefit greatly from a sample template with the preferred text for new charitable purposes, including funding NQDs. Additionally, if the changes to charitable purposes are simple (e.g. adding funding NQDs), the Charities Directorate should fast-track those applications to ensure the spirit of the regulatory change can be implemented within the same fiscal year.

Recommendation: *Include a section in the Guidance to address the charitable purposes of charities that make gifts to QDs. If charities will be required to modify their charitable purposes before funding can begin, the process should not be administratively complex, and the Charities Directorate should provide charities with an appropriate timeline (with a 90-day turnaround commitment for simple changes) in order for charities to operate efficiently.*

Working With A Non-Qualified Donee as an Intermediary and Grantee
Imagine Canada would like further clarification as to whether a charity can simultaneously work with an NQD as an intermediary and grantee. Many of our members work with NQDs in varying capacities which may require them to administer different reporting requirements depending on the program’s needs (e.g. own activities v.s. qualifying disbursements). Depending on the program's needs, this may lead to further complications as organizations try to differentiate between the charity's and NQDs' programming.

Recommendation: Provide greater clarification as to whether Charities can work with NQDs as intermediaries and grantees when delivering a program.

Qualifying Disbursement Limit
Section 7.3 of the Guidance states, "There is no…limit on how much of its income a charitable organization may devote to making **grants** to **grantees** (non-qualified donees). Making grants to grantees will not affect the designation of a charitable organization.” Greater clarity is needed to understand how qualifying disbursements by way of gifts differ from qualifying disbursements by “otherwise making

resources available." Furthermore, greater clarity is required to explain how a gift over 50% of the charitable organization's income will be classified if it is not a qualifying disbursement.

Recommendation: Develop clear guidance for determining how qualifying disbursements by way of gifts differ from qualifying disbursements by "otherwise making resources available."

Granting Real Property to a Grantee or Another Non-Qualified Donee

Section 7.9 of the Guidance states, "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." Section 4, example 2 details a charity providing a grant to an NQD in the form of property by allowing the NQD to use the charity's church hall to conduct their program. In this example, the charity's property is being used by the NQD. However, the risk of misuse appears to be less severe than the example provided in section 7.9, where the charity is providing an NQD outside of Canada with a grant to purchase school property. Due to the NQD's location and the charity's inability to claim ownership of the school property, one can see why granting property to an NQD would be considered high-risk in this example. Greater clarity is needed to classify the risk of granting property to an NQD. Additionally, several terms must be clarified and defined. In the scenario above, *property* and *real property* may confuse readers since "property" has been mentioned in both scenarios. Section 7.9 may also cause confusion where the term "transfer" is used.

Recommendation:

- *Ensure the terms property and real property are clearly defined.*
- *Provide greater clarity as to what constitutes a transfer of property.*
- *Develop a risk matrix for granting property to an NQD to demonstrate variance in the risk associated with granting property domestically and internationally.*

Conclusion

The charitable sector is keenly invested in the application of this Guidance. In summation, the Guidance needs an FAQ section that makes clear the absolute requirements that charities need to meet related to qualifying disbursements. Charitable organizations want a clear list of their obligations. The CRA needs to reconsider its use of the term risk in the Guidance. The Guidance needs clearer definitions of many terms and applications. Finally, the Charities Directorate needs to make it relatively simple for charities to change their objects, so that funding of non-qualified donees can begin in earnest this year.

About Imagine Canada

Imagine Canada is a national charitable organization dedicated to providing charities and nonprofit organizations with programs, assistance, and resources designed to help them better support the Canadians and communities they serve. Altogether our sector adds 8.3 percent to Canada's GDP and employs more than 2.4 million people across the country with over 170,000 nonprofits and charities.
If you have any questions, please do not hesitate to contact us using the information below.

Thank you for your consideration.

Sincerely,

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