

CRA public consultation on draft CG-032 guidance regarding grant-making to non-qualified donees

Cooperation Canada submission

I. General comments

Cooperation Canada and its members appreciate the efforts made to take into account practitioners' experience and previously expressed concerns about the paternalistic and inefficient Direction & Control approach. However, the guidance and the amended ITA, which it serves to implement, are still far from the spirit of Bill S-216, as expressed in its preamble quoted below:

“Whereas registered charities must also be able to operate efficiently when devoting their resources to charitable activities; Whereas registered charities must be held to reasonable standards in the proper use of their resources; And whereas registered charities should promote local capacity-building, ownership and participation and collaborative decision-making when working with communities in Canada — such as Indigenous communities — and with communities abroad as part of their charitable activities”

The spirit of Bill S-216 that Budget 2022 committed to respect was for charities to be able to operate efficiently and be held to reasonable standards in exercising their charitable purpose. Advocacy efforts by the charitable sector operating in Canada and internationally, similarly premised on the promotion of ethical relationships and collaborative decision-making, resulted in Parliament amending the Bill and removing onerous requirements from the final version of bill C-19. We were expecting to find guidelines that were more concise, precise, and user-friendly.

Unfortunately, the draft guidance, with its heavy insistence on risk and accountability frameworks, seems to emerge from a different premise than Bill S-216, one that complicates the activity of charities and their partners, rather than simplifying it. In fact, what Parliament amended out of bill C-19 seems to be woven back into the draft guidance. Furthermore, the draft guidance is long, complicated, and contains areas of uncertainty, which will likely force charities to ‘lawyer up again’ to seek interpretations.

Cooperation Canada wishes here to highlight sections of the guidance that require significant revision or clarification, as well as missing elements worth including in a revised version.

II. What requires significant revision

a. Inconsistent language

The draft guidance uses terms that were not previously introduced in the Income Tax Act amendments included in Bill C-19. For example:

- Subsection 149.1(1) of the ITA introduces the term “qualifying disbursement, which means a disbursement by a charity, by way of a gift or by otherwise making resources available. The CRA guidance encapsulates under the term grant both monetary and non-monetary resources that a charity provides to a non-qualified donee. This is problematic because non-monetary resources include simple ad hoc arrangements like making a meeting room available to a partner.
- The accountability requirements in the Draft Guidance are not connected to the legislative requirements for qualifying disbursements, including the requirement for sufficient documentation in subparagraph (b)(iii) at subsection 149.1(1) of the ITA.
- The guidance introduces words that do not appear in the ITA, words such as “conduit” and “risk”.

b. Risk assessment framework

The fact that “risk” is mentioned 62 times in the Draft Guidance despite not being mentioned in the ITA is problematic.

In the section on definitions, the draft guidance states that granting differs from the “own activities” rules and later adds that granting focuses on risk and accountability, rather than the charity’s “own activities”. The section on grant-making process explains that the guidance focuses on accountability “tools” intended to minimize risk. This begs fundamental questions:

- Why does CRA use risk as a premise in guiding charities’ relationships with non-qualified donees?
- What is the risk that charities are asked to mitigate?

Recommendation 8 of the Financial Action Task Force (FATF) describes in detail risk mitigation measures for terrorism financing. The language used in the draft guidance appears to be very similar to that used to describe FATF risk measures. Such language suggests that the risk implied in the draft guidance is presumably terrorism financing. However, the FATF states that risk mitigation should be imposed when there are known threats and vulnerabilities. The FATF does not recommend the general application of risk mitigation to all charitable activities, which the draft guidance unfortunately does.

Such emphasis on risk, and perception thereof, is likely to compromise a charity’s ability to achieve its charitable purpose. This will directly affect young and/or small organizations as partnering with them would be deemed a high “risk” venture. In addition, the proposed risk matrix poses several operational challenges, as outlined below.

- Grant amount

The \$5,000 threshold amount for lesser accountability is unrealistically low. We recommend increasing this to at least \$10,000, considering the ongoing inflation, the purchasing power of the Canadian dollar, and the fact that most international transactions are conducted in USD.

- Grant duration

It is not clear why one year is considered long term. This is likely to push charities away from multi-year commitments that are proven to promote sustainable impact on communities in need.

An important yet overlooked risk is the risk of not achieving the stated charitable purpose: this risk is high if charities are incentivized to take the business-as-usual road with usual partners and in usual “tourist” locations for interventions. This would leave young and/or small organizations often serving historically marginalized groups or new causes to only receive “pocket money”, while being tasked with burdensome requirements.

c. Accountability tools

The CRA recommends that charities use the proposed “accountability tools” to mitigate risk, noting that the proposed list is not exhaustive and that the tools’ suitability could vary depending on circumstances. Despite the apparent flexibility, if a charity chooses to use different accountability tools other than those that the draft guidance recommends, it will be incumbent upon the charity to keep additional books and records to justify why it did not use the tools recommended by the CRA.

The overall concern is that these accountability requirements may add an administrative burden that a) has no rooting in the ITA and b) will have the likely effect of discouraging charities from adopting the qualifying disbursements regime. Cooperation Canada and its members are not asking for less accountability. It is essential for the sector to be accountable with the resources entrusted to charities and that they may wish to gift to non-qualified donees. These donees are in many cases excellent partners working in and with vulnerable or marginalized communities. The sector aspires to a different understanding on accountability, one that is not mechanically grounded in paper-based requirements that many smaller partner organizations simply do not have the resources to meet.

It is not concerning to note from the guidance that the CRA recognizes the additional administrative burden imposed, but somewhat deems it justifiable. The charitable sector and the regulator should be looking for effective and streamlined solutions to ensure charitable dollars are well spent, rather than creating onerous, expensive, and unnecessary administrative overloads.

d. Provisions for pooled funding

The CRA in the draft guidance anticipates that charities, especially when operating outside Canada, may wish to make pooled grants and recognizes that these initiatives are different from

one-on-one granting arrangements. In case of pool funding arrangements, the accountability tools require obtaining a substantial amount of documentation. Again, this may prevent charities from entering into pooled funding agreements, even when these are the most efficient way to achieve a set charitable purpose.

Canada as an international aid donor government is a staunch promoter of the Grand Bargain¹, a standing global initiative to reform the humanitarian financing system, chiefly by strengthening local leadership (also called “localization”). A recent study commissioned on the Grand Bargain demonstrates how pooled funds are a key mechanism to support better local outcomes.

iii. **What needs further clarification**

a. Directed giving

Delivering on the global commitment towards greater local leadership, that Canada subscribes to, organizations working in development and humanitarian assistance increasingly name and promote the work of the local respondents supported by their programs, including when raising funds through an emergency appeal. Concealing the local actors’ identity would not only counteract our decolonization efforts but would also decrease the effectiveness of fundraising efforts that transparently showcase to potential donors the end use (and users) of their donations.

b. Security concerns

There are cases when the public disclosure of a charity’s granting information may be dangerous to the grantee. The rationale for non-disclosure needs to also include and recognize the safety and security of grantees in countries and in contexts where the charitable activities they undertake may be violently opposed or publicly oppressed. A mechanism applicable across the board (avoiding “opt-out clauses” or special requests that could raise red flags) should be put in place to keep such granting activities outside public disclosure.

iv. **What is missing**

There are a few minor omissions in the draft guidance, including:

- Line#65 does not specifically mention relevant Government of Canada sanctions related to specific countries or links to Government of Canada websites where these could be found; and
- A more complete list of definitions for terms used in the document.

¹ <https://interagencystandingcommittee.org/system/files/2022-05/Canada%20Self-report%202022%20-%20Narrative.pdf>

v. Conclusions

With this submission, Cooperation Canada seeks to stress that the draft guidance imposes, to some extent, more onerous requirements for qualifying disbursements than is the case with the direction and control regime set out in the CRA-002 and CG-004. The draft guidance contains potential pitfalls, which may have the unintended effect of perpetuating direction and control practices, despite the sector's quasi unanimous distaste for the concept.

About Cooperation Canada

Since 1968, Cooperation Canada has brought together Canadian civil society organizations working in international development and humanitarian assistance. With over 95 members, we work with partners in Canada and around the world to build a world that is fairer, safer and more sustainable for all.