



Unpacking the CRA's New Tools for Granting to Non-Qualified Donees

GIVING INSIGHTS

HOUSEKEEPING

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- There will be an opportunity for questions at the end of the presentation. Please use the 'Q&A' function at the top of your screen to share your questions.
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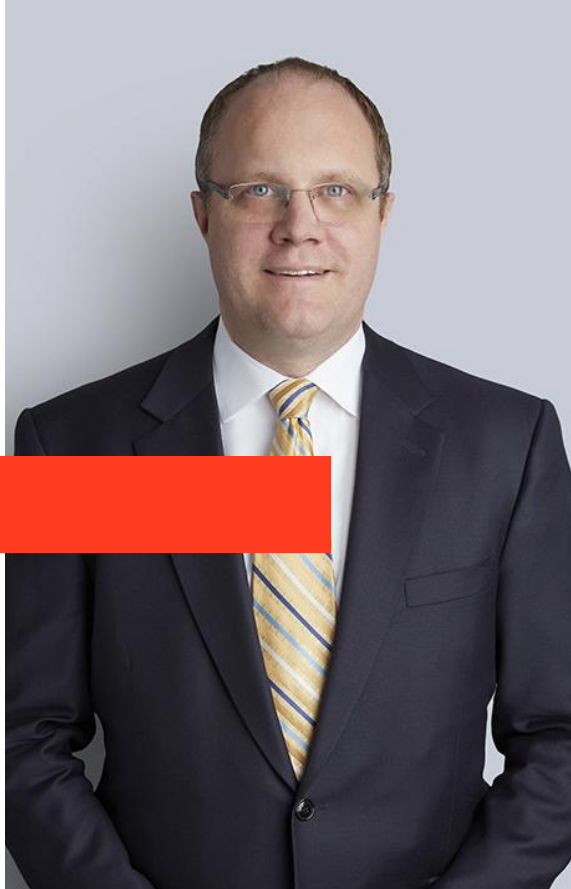


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Interim CEO, CAF Canada

Jessie Krafft currently serves as CAF Canada's Interim CEO. She began her tenure with CAF Group in 2011 and has worked at CAF Canada since its founding in 2014. In that time, she has held various roles across the organization; in her most recent role as Senior Vice President of External Affairs, Jessie oversaw CAF Canada's program operations. She also plays a management role with the CAF American Donor Fund by serving on its Management Committee. Jessie is a leading expert in international grantmaking from Canada and the US as well as in local country laws on foreign funding.

Jessie has completed her Masters in International Development at American University, and holds B.A. in Spanish and a B.S. in Anthropology, graduating summa cum laude from the honors college at Virginia Commonwealth University. She is certified in Anti-Money Laundering (AML/CFT) by the Society of Trust and Estate Practitioners (STEP).



ROBERT HAYHOE

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Robert Hayhoe specializes in advising organizations in and supporters of the charities and non-profit sector in Canada. Certified by the Law Society of Ontario as a specialist in Tax Law and ranked by Chambers, Best Lawyers and Lexpert, Robert provides both general counsel and specialized tax advice to charities and not-for-profit organizations across Canada.

Robert advises clients on the tax law governing charitable registration and non-profit status. He has experienced dealing with the complex law governing foreign expenditures and activities by Canadian charities, and with establishing structures to permit foreign charities to work and fundraise in Canada. Robert frequently advises charities and their donors on structuring gifts to maximize benefit to donors and minimize risk to charities. He is the principal author of the Charities Taxation: Policy and Practice textbook.

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**PRE-2023
FRAMEWORK**

“OWN ACTIVITIES” MODEL FOR FUNDING OVERSEAS CHARITIES

Prior to the new regulations, charities in Canada that wanted to fund charitable activities outside of Canada were required to follow the “Own Activities” rule: a qualified donee can carry out its own charitable activities, under their own discretion and control.

THIS COULD BE THROUGH:

1. Activities undertaken by the charity’s own personnel or volunteers
2. Carry out its “own activities” by working through an intermediary (e.g., agent, consultant, contractor, joint venture)

WHEN USING AN INTERMEDIARY, THE FOLLOWING RESTRICTIONS APPLY:

1. Must maintain **direction and control** over its resources with monitoring and supervision, regular reports
2. Funds must be spent in accordance with a contract for services, or “Project Agreement”
3. Funds may not be ‘commingled’ with funds from any other funder or donor
4. Project Agreements must fund “complete and distinct” projects that are wholly owned by the qualified donee funder
5. Must be able to intervene in all decisions of the intermediary

As with any exempt charitable activity, all funding must advance one or more of the qualified donee’s **charitable objects**.

NEW CRA REGULATIONS

June 1, 2022

The CRA released the Budget Implementation Act of 2022, which proposed new rules for qualifying disbursements to non-qualified donees.

November 30, 2022

DRAFT guidance was released on how to comply with the new rules.

January 31, 2023

This is the end of the public comment period.

April 1, 2023

Provisional target date for the release of final guidance.

December 19, 2023

Final guidance actually released.

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CRA's NEW TOOLS

QUALIFYING DISBURSEMENTS

AMENDMENTS TO THE INCOME TAX ACT (CANADA)

Amendments announced April 2022 and enacted June 20, 2022 introduced definition of “Qualifying Disbursement,” which includes a disbursement to a non-qualified donee if:

1. The disbursement is in furtherance of a charitable purpose of the Canadian charity,
2. The Canadian charity ensures that the disbursement is applied to activities in furtherance of its purpose, and
3. The Canadian charity maintains documentation sufficient to demonstrate that the disbursement is exclusively applied by the grantee organization to charitable activities in furtherance of a charitable purpose of the Canadian charity.

But subject to a directed giving prohibition

CRA GUIDANCE ON QUALIFYING DISBURSEMENTS

- CRA's CG-032, *Registered charities making grants to non-qualified donees*, issued Dec 19, 2023
- Attempted to adopt a “reasonable and flexible approach” to interpreting the new rules
- Recommended process when granting to a NQD:
 - Establish how the grant furthers the charity's charitable purposes
 - Assess the grant's overall risk level based on factors that may affect the charity's ability to meet the ITA requirements
 - Apply the accountability tools in collaboration with the grantee
 - Document the due diligence over the grant's duration in the charity's books and records

ACCOUNTABILITY TOOLS

Charity should determine how much due diligence is required through accountability tools based on risk level.

CRA recommends the following accountability tools:

- Research and review of the grantee
- Description of the grant activity
- Written agreement
- Monitoring and reporting
- Transfer schedule
- Separately tracked funds



ANTI-DIRECTED GIVING RULE

Charitable registration can be revoked if a Canadian charity accepts a gift that was granted with an express or **implicit condition** that the charity will make a gift to a non-qualified donee.

CRA is trying to prevent “fiscal sponsorship” situations where a charity acts as a conduit.

Key question is how this impacts donor advised funds like CAF Canada.



ANTI-DIRECTED GIVING RULE

Guidance clarifies that donors are permitted to indicate their preference for how a donation is applied, but it must be made clear that:

- Charity has ultimate authority over use of resources
- If the charity does not use a donation in the way a donor prefers, the charity will not return the donation

CRA's guidance is only administrative in nature



WHAT'S NEW? WHAT'S DIFFERENT?

Under these new guidelines, grantmakers can take advantage of the following benefits:

1. Granting focuses on risk and accountability, rather than the charity's "own activities".
2. The grantee retains autonomy to carry out its own programs (not controlled by a project agreement nor through a hierarchy with the charity in charge). This enables a **PARTNERSHIP**, rather than top-down control;
3. Grants can now support existing activities of the grantee that may be supported by other donors;
4. Grant agreement instead of contractor agreement/relationship
5. A charity is not required to provide ongoing instructions to the grantee.
6. A charity does not need to otherwise "direct and control" the grantee as it would if this were the charity's own activities.

However, the following considerations still apply:

1. All funds must further the qualified donee's Charitable Objects.
2. Monitoring and Reporting: reports will still need to be collected from non-qualified donee
3. Separately Tracked Funds: Funds must be subaccounted for separately to any other funding.

TWO OPTIONS FOR FUNDING FOREIGN CHARITABLE ACTIVITIES

**CARRYING ON OWN
ACTIVITIES THROUGH:**

Staff and Volunteers

Intermediaries

**MAKING QUALIFYING
DISBURSEMENTS
THROUGH:**

Gifts to qualified donees

Grants to grantees
(non-qualified donees)

OS

BEST PRACTICES

BEST PRACTICES FOR CROSS-BORDER FUNDING

TAKING A RISK-BASED APPROACH

December 2023 guidance puts a significant burden on a grantor to take a “risk-based approach” to approving grants to non-qualified donees.

Guidance lays out examples of “accountability tools” that can be used to manage/mitigate identified risks.

ROBUST AML/CFT POLICIES

Alongside a Risk-Based Approach, grantors should maintain robust Anti-Money Laundering and Countering the Financing of Terrorism policies to ensure that they follow international rules around cross-border financial activity.

FOLLOWING LOCAL ‘INFLOW’ RESTRICTIONS

When granting internationally, Canadian law is only half of the equation! Be sure to check whether your foreign grantee is cleared to receive your funds, otherwise they could face local legal action or the funds could be confiscated.

COLLECTING APPROPRIATE REPORTS

Reporting is still required to ensure that funds are spent for the approved charitable purpose.

We recommend streamlining all reports to focus on compliance and let grantees tell their stories as they prefer.

TAKING A RISK-BASED APPROACH: WHAT TO LOOK FOR?

Included in Final Guidance

- Grantor's experience in the work being funded
- Grantee's experience in the work being funded
- Governance Structure of Grantee
- Any private benefit returning to the grantor
- Grant amount
- Nature of the type of resources involved
- Grant Duration

Additional Considerations

- Further Financial Contexts
- AML/CFT Risk
- Reputational Risks



ANTI-MONEY LAUNDERING & COUNTERING THE FINANCING OF TERRORISM

CRA regulations control how qualified donees may advance their charitable objects outside of Canada, but following them does not ensure compliance with a separate body of regulation that governs all cross-border financial transactions.

Regulatory frameworks that must also be taken into account include the Proceeds of Crime (Money Laundering) Act (1991, amended 2000). This regime is governed by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). FINTRAC:

1. Gathers, analyzes, assesses, and discloses financial intelligence
2. Counters money laundering and terrorist financing activities
3. Produces financial intelligence relevant to investigations of money laundering and terrorist financing.

Overseas charitable funding – whether as the ‘own activities’ of a qualified donee or as a grant under the new guidance, are regulated by both the CRA and FINTRAC.

REVIEW OF COUNTRIES WITH INFLOW RESTRICTIONS

Requirement to obtain prior approval (certification)

- E.g., China, India, Pakistan, Egypt

Stigmatization (foreign agent laws)

- E.g., Russia, Hungary, Venezuela

Limiting activities and focus-areas (human rights, advocacy, etc.)

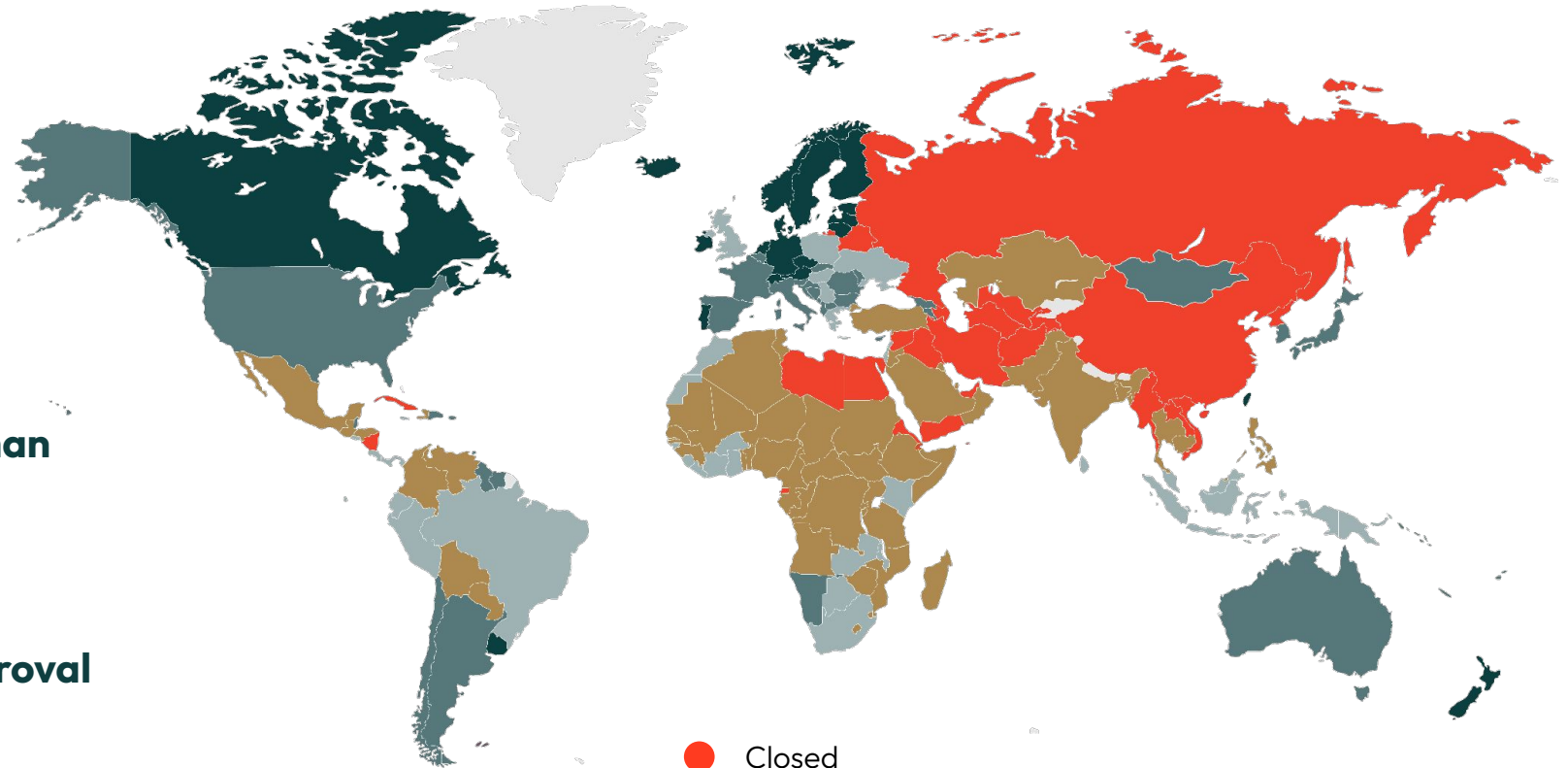
- E.g., China, Venezuela, Indonesia

Control of resources (bank account, approval to access funds)

- E.g., China, Uganda, Brazil, Mexico

Additional taxes imposed on foreign funding

- E.g., Russia, Hungary, Nicaragua



Source: CIVICUS

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IMPACT ON THE SECTOR

THE NEW TOOLS ARE POWERFUL, BUT A NUMBER OF QUESTIONS REMAIN

This new functionality is generally well-received: funders across Canada are somewhat better empowered to fund charitable activities outside of our borders.

The CRA also released a new “[Basic Guidelines Checklist](#)” to advised registered charities, including new implications related to the new qualified disbursement rules.

But there are still some unanswered questions:

1. The meaning of “anti-directed giving” and its implications for Donor Advised Funds
2. The extent to which expectations are set for a risk-based framework for oversight/due diligence

Because there are still unanswered questions, primarily around the anti-directed giving rules, and a lack of precedence, many are advising that qualified donees seek guidance from the CRA in their specific instance of implementation.

Q&A

THANK YOU



If you have any questions after today's webinar, we encourage you to contact us at info@cafcanada.ca.

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