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Compliance Issues with Successfully Funding Aboriginal Groups

**The Circle of Philanthropy and
Aboriginal Peoples in Canada's
All My Relations Gathering: Reviving Reciprocity
Toronto, October 22, 2013**

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Blumberg Segal LLP

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Goal of Presentation

- Explain some legal issues methods for charities and foundations funding aboriginal organizations and projects that benefit aboriginal peoples.
- Encourage more involvement by charitable organizations and foundations in aboriginal issues.
- Discuss new registration procedures for “Municipal or Public Body Performing a Function of Government In Canada”

Questions

- How difficult is it to fund aboriginal organizations or projects?
- Do you want philanthropic dollars?
- What changes will there be on January 1, 2014?

Some Options for Charities and Foundations

Changes Jan 1, 2014

1. Gifts to Qualified Donees

- Public Body Performing a Function of Government In Canada
- Registered charity

2. Direct Charitable Activity

- Employee or volunteer

3. Transferring Resources to an Intermediary (who is not a qualified donee) through a **structured arrangement** with *direction and control* by registered charity

Rules similar to “foreign activities”

Canadian Registered Charity

Gift to
Qualified donee

“Own Activities”
[Direction and Control]

1) Qualified Donee,
eg. Canadian registered
Charity, Public Body
Performing the Function of
Government,
Canadian municipality, etc.

**2) Employee
Volunteer**

**3) Intermediary –
contractor , agency,
JV, partner**

Structured Arrangement -
Written agreement, etc.

1) Gifts to Qualified Donees

What is a Qualified Donee?

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

Why Make Gifts to Qualified Donees?

- In many cases easier and better than doing own charitable activity especially if foundation does not have employees and capacity.
- Some foundations have narrow object clauses and can only fund qualified donees.

List of Qualified Donees

- Registered charities including registered national arts service organizations;
 - <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>
- Listed municipal or public body performing a function of government in Canada;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/mncplpblcbds-lst-eng.html>
- Listed Canadian municipality;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/menu-eng.html>

List of Qualified Donees

- United Nations and its agencies;
- Listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/prscrbdnvrsts-lst-eng.html>
- Registered Canadian amateur athletic associations;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/RCAAA-ACESA-lst-eng.html>

List of Qualified Donees

- Listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/gftsfrmhrmjsty-lst-eng.html>
- Government of Canada, a province, or a territory; and
- Listed housing corporations resident in Canada set up exclusively to provide low-cost housing for the aged;
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/lwcsthsng-lst-eng.html>
 -

Municipal or Public Bodies Performing a Function of Government

- “Municipal or public bodies performing a function of government in Canada are treated as "qualified donees" in a manner similar to registered charities, meaning they can issue official donation receipts for gifts that then allow donors to claim tax relief, and as qualified donees they can receive funds from registered charities.”
 - http://www.cra-arc.gc.ca/gncy/bdgt/2011/qa20-eng.html#_Toc288650953a

CRA Registration Requirement

- Deadline for “municipal or public bodies performing a function of government in Canada” to be registered with the CRA in order to become or remain a qualified donee = **January 1, 2014**
- Groups that are not listed with CRA after January 1, 2014 will not be able to issue official donation receipts even if they have in the past
- Also will not be able to receive gifts from registered charities/foundations.

Municipal or Public Body

- **Municipal Body** - a body that is established or exercises power under a municipal act or other provincial or territorial statute regarding the governance of a geographic area and is accountable to its constituents.
- **Public Body** - a body that is created and empowered by statute and whose purpose is to benefit the community it has authority over.

Public Body

Generally, a public body is:

- An Indian band as defined in the *Indian Act* with procedures to elect Chief and council.
- Other Aboriginal governments with election procedures.
- A body (whether incorporated or not, the members of which may be elected or appointed) established under or as a result of implementing a statute with specific authorization and duties assigned by the statute to the body to develop, administer or regulate governance functions.

<http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplpblcbds-ltr-eng.html>

Performing a Function of Government in Canada - Examples

- Laws and Taxation
 - Enacting and enforcing laws, by-laws or rules which all citizens (or, in the case of an Indian band or other Aboriginal government, all of the band's or other Aboriginal group's citizens or members) must follow.
 - Imposing and collecting taxes.

Performing a Function of Government in Canada

- In the case of an Indian band or other Aboriginal government:
 - Negotiating and implementing a treaty or self-government agreement with the Crown (e.g., a federal, provincial or territorial government), and continued administration of the agreement.
 - An Indian band has passed by-laws under both sections 81 and 83 of the *Indian Act*.
 - An Indian band has passed by-laws under both section 81 of the *Indian Act* and subsection 5(1) of the *First Nations Fiscal and Statistical Management Act*.

Performing a Function of Government in Canada

- Being responsible for and providing provincial-type services or a range of municipal-type government services as follows:
 - **Provincial-type services**
 - Education
 - Health care
 - Protection of the environment
 - Natural resources
 - Designation of park land and other special use property

Performing a Function of Government in Canada

– **Municipal-type services**

- Sewage removal,
- Waste disposal
- Water treatment and delivery
- Building of infrastructure
- Maintenance of infrastructure (such as sewers, public buildings and maintaining and clearing of roads)
- Public transit
- Fire protection services
- Police services
- Paramedic/ambulance services
- Recreational services
- Social services
- Library services

What is a “Municipal or Public Body Performing a Function of Government in Canada”?

- **Geographical Boundaries** - a municipal or public body performing a function of government in Canada is expected to govern within a geographic boundary
- Refer to the CRA’s guidance Qualified Donee – Municipal or Public Body Performing a Function of Government in Canada
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplpblcbds-ltr-eng.html>

How to Verify?

- **Public Body can call or write to CRA**
- **Will be on CRA`s website in January 2014**
 - <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/qd-lstngs/mncplpblcbds-lst-eng.html>

“Municipal or Public Body Performing a Function of Government in Canada”?

- Confusion
- Only extra obligations imposed by status are:
 - Books and records
 - Proper Receipting practices
- Does not constrain organization politically, does not restrict business activities, does not make you a charity.

2) Direct Charitable Activities

Direct Charitable Activities

- Charity or foundation provides goods or services
- Uses own staff or volunteers
- Often it is not practical – location, expertise, capacity, cost
- Issues – employment, volunteers, liability and risk management

3) Using Intermediaries (Non-qualified Donees)

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 registered charity status
 - Businesses

Why Deal With a Non-qualified Donee?

- Canadian Activities
 - The best organization to implement a charitable project in Canada may be a non-profit (non-charity) or a business and not another registered charity or qualified donee

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

Direction and Control

- Create a written agreement with the intermediary, and implement its terms.
- Have 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.
- For agency relationships, segregate funds, as well as maintain separate books and records.
- Make periodic transfers of resources, based on demonstrated performance.
- Books and records

Challenges

- Need more Aboriginal bands as qualified donees
- Need more Aboriginal groups as registered charities
- Need greater acceptance of “structured arrangements” involving non-qualified donees
- Deal with excuses

Questions and Thank you!

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