

Foreign Universities Applying for Prescribed Foreign University Status in Canada: What we have learned

By Mark Blumberg¹, Lynn Gluckman and Adam Greco (September 22, 2018)

Is your university outside of Canada interested in fundraising in Canada? If so, this article will provide helpful information on an option for non-Canadian universities which can greatly assist with fundraising in Canada. Essentially, if your non-Canadian university typically has 2 Canadian students studying at the university over the previous five-year period, then the university may be able to obtain prescribed foreign university status. This status can assist in fundraising in Canada by providing generous tax incentives to Canadian donors for their donations to the foreign university. For wealthy donors (and not just alumni) these tax incentives can be between 50-70 cents for every dollar they donate.

Prescribed foreign universities are universities outside of Canada that have applied to the Canada Revenue Agency (the "CRA") and have been approved to issue official donation receipts for income tax purposes. While there is an abundance of information available on CRA's website about how to apply for registered charitable status, the details of obtaining and maintaining prescribed university status are not always abundantly clear. This article will provide information on (i) what it means to be a prescribed foreign university, (ii) the eligibility criteria for becoming a prescribed foreign university, (iii) the application procedures with the CRA, and (iv) how a prescribed foreign university can maintain its qualified donee status.

1) What is a prescribed university outside of Canada?

Prescribed universities outside of Canada (also referred to as prescribed foreign universities) have the same 'qualified donee' status as Canadian registered charities. As such, prescribed foreign universities can: (i) issue official donation receipts under the *Income Tax Act* (Canada) for gifts they receive, and (ii) easily receive gifts from Canadian registered charities. If individuals or corporations in Canada donate to a prescribed

¹ This article was originally written by Kate Robertson and Mark Blumberg in February 2016 and subsequently revised.

foreign university, they receive the same significant tax benefits that they would have received if they had donated to a Canadian registered charity (including Canadian universities). If a Canadian foundation or charity makes a gift to a prescribed foreign university, it is as easy as gifting to a Canadian registered charity (including a Canadian university).

As a result of the 2011 Federal Budget, CRA developed a publicly available [list of foreign prescribed universities](#) that is now maintained on a regular basis. The list currently includes approximately 600 hundred foreign universities across the world (in the US, Europe, etc.) that have the ability to issue official donation receipts to Canadian donors as prescribed universities. However, upon closer examination, significant gaps remain – for example, there are currently no Indian universities on the list and there are only five universities from China, including three from Hong Kong. On the other hand some other countries are very well represented on the list.

The 2018 Federal Budget proposed further changes, with the aim of simplifying the regulation of foreign prescribed universities. As of February 28, 2018, CRA maintains only one list of foreign prescribed universities. While the eligibility criteria have not changed (See Part 2 below), the registration process has been simplified, and will only require CRA to include the university on its public list following approval. Previously, foreign universities needed to be listed both in Schedule VIII of the *Income Tax (Canada) Regulations* and in CRA's list of foreign prescribed universities to be qualified donees. Budget 2018 removed the requirement that universities be “prescribed” in the regulations, and also repealed Section VIII of the Regulations. The Minister of Finance has made it clear that all foreign universities that were listed in Section VIII as qualified donees prior to February 28, 2018 will not have their registration status affected as a result of Budget 2018 but now it will be quicker and easier for new foreign universities to obtain this status.

2) Eligibility criteria

Before embarking on the application process with CRA, a university should examine the eligibility criteria to ensure that it can meet the required conditions. CRA provides some helpful information in their guidance, [RC191: Becoming a Prescribed University Outside Canada](#). To be considered for prescribed status, a foreign educational institution must meet all of the following conditions:

- maintain an academic entrance requirement of at least secondary school matriculation standing;
- be organized for teaching, study and research in the higher branches of learning;
- have the authority itself to confer degrees of at least the baccalaureate level (bachelor or equivalent) according to the academic standards and statutory definitions of the country in which the institution is located; and
- ordinarily include Canadian students in its student body.

Among other things, an educational institution will need to confirm whether it has the ability to confer degrees at the baccalaureate level or higher. CRA has indicated that an institution that confers only associate degrees, diplomas, certificates, or other degrees at a level lower than a bachelor degree or equivalent will not qualify. Also, in some countries an educational institution does not have the right to issue degrees at the baccalaureate level or higher and instead has an affiliated university that is responsible for issuing its degrees. This type of entity would not be eligible to become a prescribed foreign university. A university foundation would also not be eligible as the foundation itself does not have the power to confer degrees.

We have found that one of the most important elements or stumbling blocks for a foreign university to consider before applying is whether it meets the minimum threshold of Canadian students. CRA has relaxed their requirements and will now generally look at the university's last five years (and not ten years) and expect that, in each of those years, there are at least two Canadian students studying there that will meet CRA's 'residency' requirement. They may allow a gap year with no students in attendance or a year with only one student in attendance.

Another important consideration is the 'residency' of the Canadian students attending the university. The issue here is not whether the students are Canadian citizens but whether they are or were considered Canadian 'residents'. If the institution cannot provide evidence that the students attending are or were 'resident' in Canada, it will not qualify for prescribed university status. For example, if a student was born in Canada and moved to a foreign country when they were 3 years old they may not qualify as a resident in Canada under the CRA system. On the other hand, if a foreign person comes to Canada when they are 25 and works in Canada for 5 years and then studies abroad they may be considered by CRA to be "Canadian" for purposes of this provision. It is crucial that the institution is able to confirm when the students enrolled at the educational institution (start date and end date) and their home address and residency during this time. Providing the students' Canadian social insurance numbers is helpful for CRA to be able to check its system and the residency issue. Often the best approach for an institution which may not track all of this information is to place an advertisement in student newspapers or email students asking for names of students who have spent time in Canada.

While it is clear that some universities will not have had 2 students from Canada studying at the university it is also clear that there are many universities who meet that criteria and are not on the list. These universities are forsaking in some cases tremendous fundraising opportunities. As well for groups who don't have Canadian students studying at their universities there are other options for establishing a Canadian registered charity that can fund activities outside of Canada or working with a Canadian registered charity that already exists.

3) Application Process with Canada Revenue Agency

Once a university has determined that it meets the conditions outlined above, an authorized official or representative will need to submit a letter to CRA that, according to CRA, contains the following information:

- the institution's identifying information, such as its legal name, mailing address, physical address, and phone number(s)
- the institution's fiscal period-end
- a list of all the institution's current officials, for example, its directors, trustees, and like officials
- a copy of the institution's complete governing documents, for example, incorporating documents and any amendments, as well as current by-laws
- the institution's general admission requirements
- a copy of documents issued by the appropriate educational authority in the institution's country of residence that confirm that the institution is one of higher learning and has the authority itself to confer degrees of at least the bachelor level
- a list of the Canadian students who have attended the institution during the last five years and identification information for each student. The list should include each student's full name (first, last, and middle initial (if available)), Canadian address, date of birth, and Canadian social insurance number (if available), as well as each year or semester they attended. The institution may need to contact the Canadian students to get their approval to release this information
- the institution's website address, if available

We have also had requests from CRA seeking information on the type of degree program that each student is enrolled in. Keep in mind that the institution may need to obtain consents from its students before disclosing the required information to CRA. Also, any documents provided to CRA as part of the application in a language other than English or French will generally need to be translated to either English or French and evidence will need to be provided that these are in fact certified/official translations.

We note that the CRA will only communicate with an institution's officials (such as a director, trustee or similar official) or individuals that the institution has authorized to deal with the CRA such as a law firm or representative in Canada. The CRA will require a written authorization from the institution to communicate with that individual, and such letter of authorization must include the printed name and signature of the current official.

The anticipated timeline to receive feedback from CRA on an application for prescribed university status will now be shorter with the recent Budget 2018 changes. As CRA is generally backlogged we anticipate that that the wait time can easily be twelve (12)

months. Once approved, the CRA will send the institution a final letter confirming that it is registered as a qualified donee. CRA has indicated that the effective date of an institution's status will be retroactive to the date that CRA received the university's complete submission.

4) Maintaining Prescribed University Status

While Canadian registered charities are somewhat constrained and restricted in terms of how they can operate and must ensure they are operating at all times within the requirements of the *Income Tax Act* (Canada) and the CRA guidelines to maintain their status as a qualified donee, the CRA requirements for a prescribed university outside of Canada are much less onerous. In order to maintain its status as a 'qualified donee', a prescribed university will need to ensure that (i) official donation receipts are being properly issued to Canadian donors, and (ii) adequate books and records are being maintained.

In terms of issuing official donation receipts under the *Income Tax Act* (Canada), there are many rules and requirements that must be met. It is more complicated in Canada than many other jurisdictions and we have prepared the [Blumbergs' Receipting Kit](#) to assist.

The books/records of the prescribed foreign university should contain the following:

- information to allow the CRA to verify revenues for which donors can claim tax credits or deductions
- information to allow the CRA to confirm that they meet the requirements for qualified donee status under the *Income Tax Act*
- a duplicate of each receipt containing prescribed information for each donation received

CRA has indicated that the books and records of a prescribed university can be kept in the country where the university resides (which is different from a Canadian registered charity which must keep its books and records in Canada), however they must be made available for the CRA upon request.

The prescribed university does not have to file a return in Canada as Canadian charities must do every year; however, CRA may contact the university occasionally to check that it still qualifies. Failure by the university to respond to CRA, as occasionally happens, can result in the university being removed from the list.

Finally, a prescribed foreign university must keep the CRA informed of any changes to its legal name or address so that the information that CRA has on the list of qualified donees is correct. Any letter informing the CRA of such changes must include copies of the legal documentation effecting the change(s) and must also include the name and signature of the university official authorized to deal with the CRA.

Canada has many exciting fundraising opportunities for foreign universities and obtaining prescribed university status for a foreign university can provide a way for the university to expand its presence in Canada and create enhanced opportunities for the university to receive gifts from Canadian individuals, Canadian registered charities and Canadian corporations. It is important that a foreign university not only obtain prescribed university status but also maintain it in order to protect this important fundraising mechanism as well as its reputation.

Being a prescribed foreign university can definitely make it easier for a foreign university to fundraise in Canada. However, a number of larger foreign universities may also wish to have a Canadian affiliate non-profit or charity to conduct active fundraising in Canada. Because of the lengthy delays in the review process and the legal and practical issues that might arise during the charity application process and after receiving charitable status, it is usually a good idea to obtain legal counsel to assist with various aspects of the process. However, a group that just wishes to be a prescribed university can usually complete the process by themselves.

Please feel free to circulate this article to any foreign university that is interested in fundraising in Canada.

Mark Blumberg, Lynn Gluckman and Adam Greco are lawyers at Blumberg Segal LLP in Toronto, Ontario. If you are a foreign university and you have any questions with respect to fundraising in Canada please contact us. To find out more about legal services that Blumberg's provides to Canadian charities and non-profits please visit www.canadiancharitylaw.ca, www.globalphilanthropy.ca, www.smartgiving.ca or www.charitydata.ca

This article is for information purposes only. It is not intended to be legal advice. You should not act or abstain from acting based upon such information without first consulting a legal professional.