



## **Is your Band or Aboriginal group affected by recent Canada Revenue Agency (CRA) Charities Directorate changes?**

By Mark Blumberg<sup>1</sup> (July 8, 2013)

Many Aboriginal groups or bands either currently receive or could receive funding from Canadian charities and foundations. Some of these Aboriginal groups who are receiving funding do so on account of their special status of being a “municipal or public body performing a function of government in Canada”. There are important changes that will affect over a thousand Aboriginal groups in Canada receiving funding or donations from Canadian charities or individuals. Many of the groups may need to make an application to CRA in order to preserve their ability to issue official donation receipts and accept gifts under the *Income Tax Act* (Canada).

### **Are you a “municipal or public body performing a function of government in Canada”?**

Under the *Income Tax Act*, only “qualified donees” can issue official tax receipts for gifts they receive from individuals and corporations and only qualified donees can be recipients of gifts made by registered charities. Included in the list of qualified donees is a “municipal or public body performing a function of government in Canada” that has applied for registration (s. 149.1(1)), which includes many Aboriginal bands and certain Aboriginal groups.

As of January 1, 2012, CRA requires that all “municipal or public bodies performing a function of government in Canada” be registered with the CRA in order to become or remain a qualified

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donee. The deadline to become registered is January 1, 2014, after which time only those “municipal or public bodies performing a function of government in Canada” registered and listed on the CRA’s website will be considered to be qualified donees. Groups that are not listed will not be able to issue official donation receipts and may not be able to as easily receive funds from certain charities and foundations.

**1. What is a “municipal or public body performing a function of government in Canada”?**

***Municipal Body***

According to the Charities Directorate, a municipal body, while not defined in the Income Tax Act, is a body that is similar to a municipality. A body is similar to a municipality if it 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***

The term public body, also undefined in the *Income Tax Act*, is understood to mean a body that is created and empowered by statute and whose purpose is to benefit the community it has authority over.

Examples of the types of organizations that could meet the definition of a municipal or public body include certain provincial corporations, Aboriginal groups or bands, school boards and public transit authorities.

***Performing a Function of Government***

Performing a function of Government includes the following activities:

- a) Enacting and enforcing laws
- b) Imposing and collecting taxes
- c) Responsibility and provision of municipal- and provincial-type services
- d) In the case of an Indian band or other Aboriginal government:
  - i. Negotiating and implementing a treaty or self-government agreement with the Crown and continued administration of the agreement
  - ii. An Indian band that has passed by-laws under section 81 and 83 of the *Indian Act*
  - iii. An Indian band that has passed by-laws under section 81 of the *Indian Act* and subsection 5(1) of the *First Nations Fiscal and Statistical Management Act*.

### ***Geographical Boundaries***

A municipal or public body performing a function of government in Canada is expected to govern within a geographic boundary.

For greater detail on the CRA's criteria for determining whether an entity qualifies as a municipal or public body performing a function of government in Canada, please refer to the CRA's guidance *Qualified Donee – Municipal or Public Body Performing a Function of Government in Canada*.

#### **2. What are the benefits of being a “municipal or public body performing a function of government in Canada”?**

For entities, particularly Aboriginal groups or bands, who want to issue official tax receipts for gifts they receive from individuals and corporations, becoming registered as a “municipal or public body performing a function of government in Canada” will allow them to become qualified donees. Being designated as a qualified donee permits them to receive gifts from registered charities and may also attract donations from individuals or corporations wishing to receive official donations receipts for their donations.

#### **3. How do you become a “municipal or public body performing a function of government in Canada”?**

Assemble an application package for the Charities Directorate of CRA consisting of a letter and supporting documentation. The letter should state that the applicant is applying for registration as a “municipal or public body performing a function of government in Canada” and should also explain how the applicant meets the requirements of a municipal or public body performing a function of government in Canada. Supporting documentation may include the following:

- a) a copy of an earlier CRA determination as to whether an entity is a “municipal or public body performing a function of government in Canada” and other relevant correspondence
- b) a complete description of the applicant (creation, organization, revenue sources, election/appointment of officials, purpose, description of constituents, explanation of the applicant's powers, responsibilities, and programs and/or services it offers, description of other activities, etc.)
- c) a description of other activities carried on by the applicant, such as business activities
- d) a description of the activities carried out by any subsidiaries of the applicant

The application package should be sent to:

Charities Directorate  
Canada Revenue Agency  
Ottawa, ON K1A 0L5

**4. What happens if I am not registered as a “municipal or public body performing a function of government in Canada” by January 1, 2014?**

A “municipal or public body performing a function of government in Canada” that is not registered with the CRA by January 1, 2014 ceases to be recognized as a “municipal or public body performing a function of government in Canada” and is no longer a qualified donee. This will affect the entity’s ability to receive gifts from registered charities and it will no longer be permitted to issue official tax receipts for gifts they receive from individuals and corporations.

**5. Are there ongoing obligations of being a “municipal or public body performing a function of government in Canada” once a group is registered**

CRA notes that “A municipal or public body may have its receipting privileges suspended or its qualified donee status revoked by the CRA if it:

- fails to keep books and records supporting the official donation receipts it issues, or fails to provide these to the CRA on request;
- is involved in the improper issuance of donation receipts; or
- accepts a gift or transfer of property on behalf of a suspended qualified donee.”

Any group interested in issuing official donations must ensure that they are done in accordance with the *Income Tax Act* and must maintain appropriate books and records.

**6. For more information see:**

**New CRA Application for “Municipal or public bodies performing a function of government in Canada” by Mark Blumberg**

[http://www.globalphilanthropy.ca/index.php/blog/comments/new\\_cra\\_application\\_for\\_municipal\\_or\\_public\\_bodies\\_performing\\_a\\_function\\_of/](http://www.globalphilanthropy.ca/index.php/blog/comments/new_cra_application_for_municipal_or_public_bodies_performing_a_function_of/)

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