



The Honourable François-Philippe Champagne, P.C M.P.
Minister of Finance and National Revenue
555 Mackenzie Ave., 7th Flr.
Ottawa, ON K1A 0L5
Via email: minister-ministre@fin.gc.ca

Re: Anti Directed Giving Rule

Dear Minister Champagne,

Ontario Nonprofit Network (ONN) is writing to support the Canadian Bar Association's (CBA) Charities and Not-for-profit Law Section's [submission](#) urging the Government to take action to remedy problems created by amendments to paragraph 168 (1)(f) of the Income Tax Act ((ITA). The amendments - Anti-Directed Giving Rule - came into force June 23, 2022.

Both the Ministry and CRA are aware of the issues; the CRA has asked the CBA Section to make recommendations to the Department of Finance Canada to address the issues created by the amendments.

ONN has long advocated for public policy that enables the [shared platform model](#), a sector innovation to support emerging public benefit activity in communities. The Anti-Directed Giving Rule is a barrier to the use of shared platforms under the qualified disbursement regime by prohibiting gifts to registered charities committed to working with non-charities outside of direction and control relationships.

Shared platforms model enables public benefit activities in the infancy stage

Shared platforms allow organizations with strong governance to support other community members to make meaningful contributions to their communities. Shared platforms enable and strengthen the ability of community members, everyday citizens, to contribute to the public good, and support the commitment and energy to make a difference that is so unique to this sector.

Before the advent of shared platforms as well as the enabling of funding to non-qualified donees, each new public benefit initiative had to incorporate independently and, where applicable, seek charitable status very early on in their existence to qualify for grants and donations. Small, burgeoning ideas had to quickly develop critical infrastructure like bookkeeping, payroll systems, and operational policies at a time when

they had no or few resources and struggled to find the required expertise not typically available to emerging initiatives. As a result, many initiatives floundered.

The shared platform model is an efficient sharing of capacity and nurturing of emerging leadership, and it allows innovative projects to achieve extraordinary impacts in communities across Canada. Working with our communities and adapting to meet changing needs is essential for the renewal of our sector and building strong communities.

Anti-directed giving rule is a barrier to the shared platforms model

Following the 2022 change to the Income Tax Act and the related December 2023 guidance [CG-032](#), ONN requested and received clarity from CRA on the impact of the new rules on shared platforms. Based on the clarity from CRA, [ONN's guidance](#) for the sector was that shared platforms were still viable when:

- Funders grant directly to the non-qualified donee and specify the grantee receive support (accounting, HR. administration) from the charity.
- A trust-based grant from the funder to the charity that the funds would indeed find their way to the intended but unnamed recipient.
- Continue the old direction and control regime which the ITA amendment was specifically designed to eliminate.

We appreciate the government's concern that registered charities should not be allowed to act as funnels for non-qualified donees. However, a registered charity that acts as a funnel would clearly be in violation of the Income Tax Act for failure to exercise direction and control over their resources or meet the requirements to make qualified disbursements. They would therefore not be able to demonstrate that they were devoting their resources exclusively to charitable purposes and would be subject to revocation for that reason. If a charity did meet the requirements of either direction and control or qualified disbursements, then they are not acting as a funnel but exercising meaningful oversight. In short, s.168(1)(f) serves only to prohibit activities that on policy grounds ought to be allowable.

ONN supports CBA's recommendations

Charities, particularly foundations, have been very slow and cautious about granting to non-qualified donees with some deciding not to give non-qualified donee grants. Concerns about compliance with their charitable objects, the requirement to ensure non-qualified donee compliance, and the need to change their objects which specifically say they grant to charities have limited the use of this new option.

Funder concerns about the prohibition against funding a non-qualified donee by flowing funds through a charity have made many foundations cautious about funding through shared platforms.

The easiest and most effective remedy for this is to implement the advice provided by the CBA and eliminate the prohibition on charities receiving a grant that they flow to an identified non-qualified donee.

The recommendation will enable:

- Foundations to fund projects of interest provided by nonqualified donees through trusted Charities.
- Charitable recipients would assume the responsibility for risk management of the public benefit focus of the grant, which, given their proximity to the work and relationship with the non-qualified donee is appropriate. CRA will be able to hold recipient charities to account through the “devotion of resources” test among others.
- Through shared platforms, grassroots groups would receive financial and administrative infrastructure supports, as needed, so they can focus on their project while providing assurance to funders and regulators that the groups have the necessary infrastructure.

Conclusion

We are fully supportive of the CBA recommendations to the Department of Finance and urge the Minister to see to their implementation as soon as possible.

Sincerely,



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Director of Policy
Co-Executive Director (Interim)

Cc.

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