

Welcome  
Bienvenue



[charitytax.imaginecanada.ca](http://charitytax.imaginecanada.ca) • [infoimpots.imaginecanada.ca](http://infoimpots.imaginecanada.ca)



## About Charity Tax Tools

A screen image from  
Imagine Canada's  
Charity Tax Tools website



Government  
of Canada

Gouvernement  
du Canada

Canada

Production of the Charity Tax Tools website has been made possible by a financial contribution from the Canada Revenue Agency.

Ce site Web Info-impôts a pu être réalisé grâce à la contribution financière de l'Agence du revenu du Canada.

Presented by / Présenté par



**Scotiabank**

Participating sponsors / Commanditaires

**CARTERS**

BARRISTERS · SOLICITORS  
TRADEMARK AGENTS

**KPMG**

# Today's Presentation



[www.carters.ca](http://www.carters.ca)

## Practical Implications of CRA's New Community Economic Development Policy

On July 26, 2012, Canada Revenue Agency (CRA) released Guidance CG-014, *Community Economic Development Activities and Charitable Registration* (the New Guidance).

Our presenter today is Mr. Terrance Carter, managing partner of [Carters Professional Corporation](http://www.carters.ca).

# Questions?

**Chat (Q&A) Pod:** Use the pod to the right of the slides, type in your question at the bottom.

This session is scheduled to be one hour long. We will answer as many of your questions as we can towards the end of the presentation. Over to you, Terrance.





BARRISTERS  
SOLICITORS  
TRADEMARK AGENTS

## **IMAGINE CANADA Charity Tax Tools**

**Webinar – April 16, 2013**

# **Practical Implications of CRA's New Community Economic Development Policy**

**By: Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent**

**[tcarter@carters.ca](mailto:tcarter@carters.ca)**

**1-877-942-0001**

© 2013 Carters Professional Corporation



## A. INTRODUCTION

- Some.....
- On July 26, 2012, Canada Revenue Agency (CRA) released Guidance CG-014, *Community Economic Development Activities and Charitable Registration* (the New Guidance)
- The Former Guidance had been in effect since 1999
- For a detailed discussion of the New Guidance, see *Charity Law Bulletin* No. 287 at [www.charitylaw.ca](http://www.charitylaw.ca)
- The New Guidance is a marked improvement over the Former Guidance

- Whereas the Former Guidance was overly prescriptive, the New Guidance expands what charities can do, sets out clear boundaries and provides examples
  - As such, it leaves charities to do what they do best:

**Find innovative ways to achieve their charitable purpose**





## B. WHAT IS COMMUNITY ECONOMIC DEVELOPMENT (CED)?

- CED generally refers to activities that “improve economic opportunities and social conditions of an identified community.”
- An “identified community” can be either a geographic community or a group of eligible beneficiaries
- CED activities are often referred to as “social enterprise” or “social finance” by a charity in helping an identified community
- e.g.:
  - Micro-loans
  - Businesses for the disabled
  - Employment training for the unemployed



## C. CAN CHARITIES ENGAGE IN CED?



THEY CAN

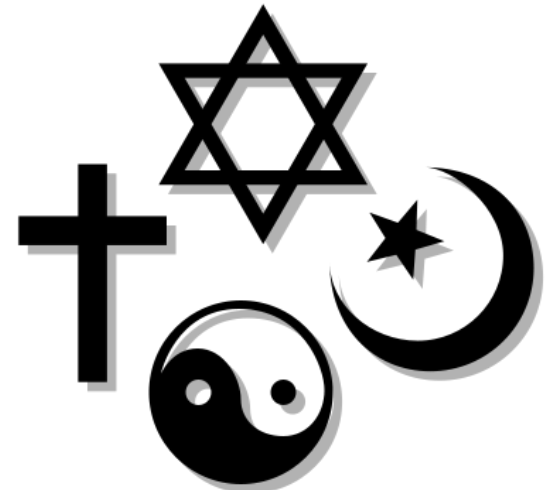
- Charities can conduct CED activities as long as they:
  - Further the charity's charitable purpose
  - Meet the public benefit test
  - Meet the requirements for eligible beneficiaries
- CED activities are considered to be charitable as opposed to meeting the requirements for related business activities

## 1. Furthering a Charitable Purpose

- The law in Canada does not recognize CED as a charitable purpose in and of itself
  - Therefore, to be considered “charitable”, CED activities must directly further a charitable purpose, i.e.:
    - relief of poverty
    - advancement of education
    - benefit to the community in ways the law regards as charitable
- The New Guidance, though, omits “advancement of religion” from its list of charitable purposes that can be furthered by CED activities



- But there should be no reason why CED cannot further advancement of religion,
  - e.g. micro loans for the poor as a manifestation of one's faith
- However, given CRA's omission, religious charities may want to implement CED activities that further one of its other charitable purposes
- As such, prior to implementing these activities, religious charities should review their objects/purposes in their constating documents to ensure that planned CED activities are within their charitable purposes



## 2. Meeting the Public Benefit Test

- To be charitable, CED activities must also meet the “public benefit test”, i.e. a significant portion of the public
- Part of this test is that a charity’s activities cannot provide any private benefit that is more than incidental
- In other words, any benefit that is received by an individual or organization that is not an eligible beneficiary and derives from a charity’s activity must be necessary, reasonable, and not disproportionate to the public benefit



### 3. Requirements for Eligible Beneficiaries

- Each charitable purpose has specific requirements relating to eligible beneficiaries
- e.g.:
  - For relief of poverty, eligible beneficiaries must be poor
  - For relief of conditions associated with disabilities, eligible beneficiaries must be individuals with conditions associated with the disability
  - For relief of unemployment, beneficiaries must be unemployed or facing a real prospect of imminent unemployment and in need of assistance



## D. TYPES OF CED ACTIVITIES

- CED activities generally fall into one of five main categories, which are each described below in more detail:
  - Activities that relieve unemployment
  - Grants and loans to eligible beneficiaries
  - Program-related investments
  - Social businesses for individuals with disabilities
  - Community land trusts

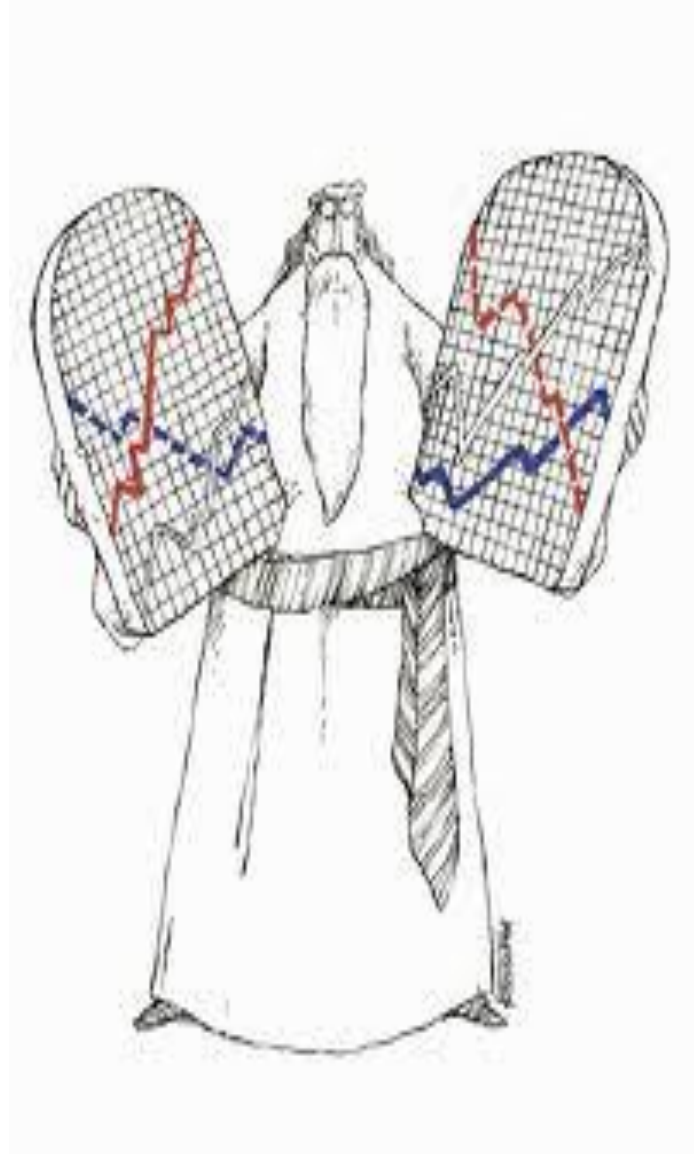


## E. ACTIVITIES THAT RELIEVE UNEMPLOYMENT

- It is not considered charitable to provide employment or help people find employment if these services are provided to the public at large
- CED activities that relieve unemployment can only be charitable if the beneficiary group consists of individuals who are:
  - unemployed or facing a real prospect of imminent unemployment, and
  - are shown to need assistance (i.e. they do not have the resources or skills to help themselves)
- In other words, the beneficiary group must contain only persons who are eligible beneficiaries

- Examples of activates that relieve unemployment are:
  - Employment related training
  - Career counseling
  - Establishing lists of available jobs
  - Providing referral services to appropriate agencies
  - Providing assistance with résumés or preparing for job interviews
  - Helping unemployed individuals obtain employment insurance
- This general guideline is much more helpful than the position in the Former Guidance, which restricted CED employment programs to helping “hard-to-employ” individuals who met a list of 9 criteria

- Given the uncertain state of the economy and the level of unemployment, there is much work that charities can do in this area, including religious charities



- Examples of employment-related training include:
  - (1) Employability training: developing employment skills, such as English and French language instruction, or life skills, such as time management
  - (2) Entrepreneurial training: providing instruction on preparing a business plan, preparing financial statements, etc.
  - (3) On-the-job training: providing on-the-job training in vocational or work skills that enhance employability
    - On-the-job training programs must focus on providing training, not jobs, so is not permanent

**TRAINING  
FOR SUCCESS**

- However, to pass the public benefit test, the emphasis of these activities must be helping beneficiaries find employment, not helping employers recruit employees
- CRA permits charities to generate incidental profits from the program, but profit generation cannot be the focus
  - CRA considers activities aimed at profit generation to be unrelated business, which charities are prohibited from conducting





## F. GRANTS AND LOANS TO ELIGIBLE BENEFICIARIES

- There are two types of CED activities in relation to making grants and loans to eligible beneficiaries (e.g. to people who are poor):
  - Individual development accounts (IDAs)
  - Loans and loan guarantees
- Both of these types of activities provide opportunities to engage and empower beneficiaries in their own development, i.e. “a hand-up instead of a hand-out”



## 1. Individual Development Accounts (IDAs)

- IDAs are savings account that help eligible beneficiaries save for an agreed upon goal
- Agreed upon goals could include:
  - Modify home to operate a home-based business for a disabled person
  - Funds to buy tools for an unemployed trades person
  - Funds for employment-related education, including post-secondary education
- For every dollar the eligible beneficiary saves during a specific period, the charity contributes a pre-determined amount



- e.g. a charity deposits two dollars into the development account for every dollar that an eligible beneficiary deposits until the beneficiary has enough money to convert his basement into a home office

- The New Guidance expands the parameters under which IDAs are permitted
  - IDAs are no longer restricted to relieving poverty, as charities can now use IDAs to advance education or to further a fourth head purpose
  - Previously, charities could only contribute over a one to three year period, the New Guidance seems to expand this to “a specific period” but no time limit



- However, charities providing IDAs must have a policy stipulating:
  - The criteria used to determine who is an eligible beneficiary,
  - How the amount of an IDA is determined,
  - The acceptable uses of an IDA, and
  - When the eligibility of the beneficiary ceases, based upon predetermined criteria
- To pass the public benefit test, the charity must not grant more to the beneficiary than is necessary to achieve the charitable purpose

## 2. Loans and Loan Guarantees

- The New Guidance expands the ability of charities to provide loans, including micro-loans and loan guarantees
- Charities can now operate these programs to advance education or other purposes that benefit the community, not just to relieve poverty
- e.g. loan guarantees to eligible beneficiaries to help them attend courses to enhance their employability or help to establish a business





- Charities providing loans or loan guarantees should have a policy outlining how the charity will determine:
  - Who is eligible for a loan or loan guarantee
  - The appropriate amount
  - When a recipient will be considered to no longer need this support and how the loan will be repaid



- Providing start-up loans and loan guarantees to establish businesses can be charitable for an eligible beneficiary
  - However, this assistance must further a charitable purpose, not simply promote entrepreneurship
  - Loans should generally be under \$10,000
- Generally, interest rates should be at or below fair market value, but exceptions may be justifiable, e.g.
  - Terms of the loan permit the borrower to delay repayment, or
  - If there is a high loan-loss ratio

## G. PROGRAM-RELATED INVESTMENTS

- One of the most significant expansions of CRA's policy in the New Guidance is the broader context in which registered charities may engage in program-related investments (PRIs)
- PRIs are an innovative way in which charities can become involved in social enterprise related activities
- While the charity does not engage directly in social enterprise activities, they can participate by investing in social enterprise activities that achieve a charitable purpose of the charity



## 1. What are PRIs?

- PRIs are investments that directly further the charitable purposes of the charity
- PRIs are not investments in the conventional financial sense because, while PRIs may generate a financial return, they are not made for that reason
- As such, PRIs are not required to generate a return of capital for the charity or yield interest
- i.e. the yield of revenue from the investment can be below market rate

- This distinguishes a charity's obligations when making PRIs from its obligations when making typical investments, as charities do not have to act like a "prudent investor" when conducting PRIs
- CRA has in essence recognized that a charity can achieve its charitable purposes by investing its capital instead of simply spending it
- Charities are also now allowed to conduct PRIs with non-qualified donees

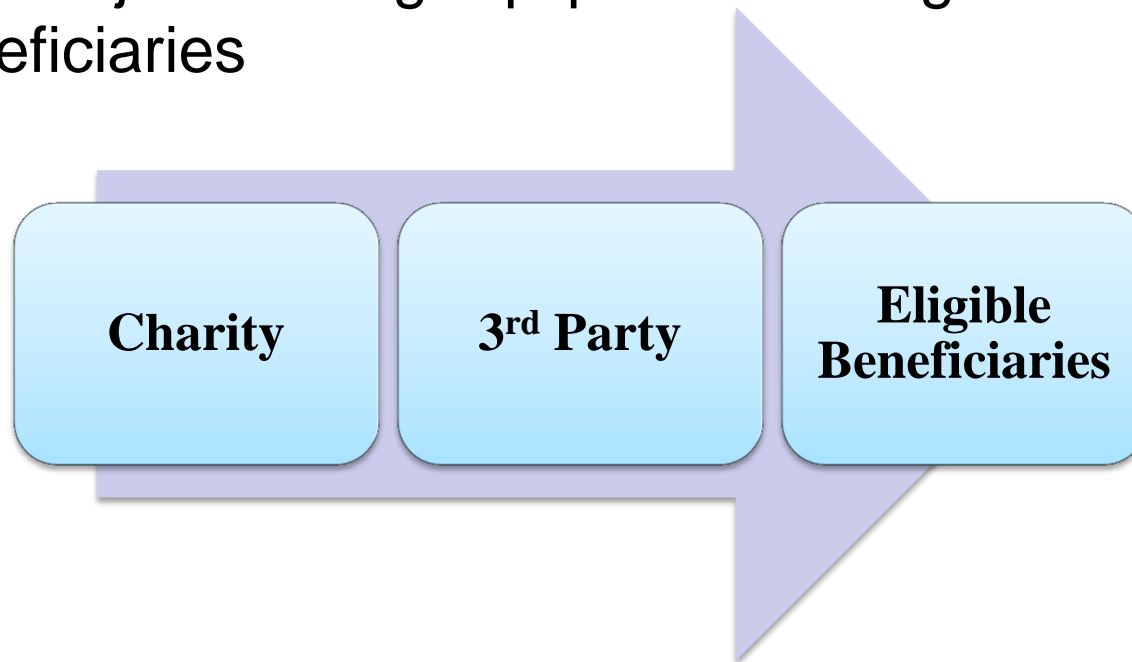


## 2. Conducting PRIs with Non-Qualified Donees

- Charities were previously restricted to making PRIs with qualified donees only, which are primarily other registered charities, as well as federal and provincial governments municipalities, the UN and its agencies, etc.
- However, charities can now make PRIs with non-qualified donees so long as the charity maintains direction and control over the program to achieve the charitable purpose
- This requirement is identical to the “own activity” test required when conducting activities through third party intermediaries inside or outside of Canada
- Must also show that any private benefit is incidental

### 3. Types of PRIs

- (a) Loans and loan guarantees – to another organization to allow the other organization to achieve the charitable purpose of the investor charity, e.g. making a loan to a third party so that the third party can acquire job training equipment for eligible beneficiaries



- (b) Leasing land and buildings – buying a building and leasing it to an organization to accomplish a charitable purpose, e.g. for education purposes
- (c) Share purchases – charities can now purchase shares in a for-profit company to accomplish their charitable purpose, e.g. operating an apartment complex for the poor
  - However, public and private foundations cannot acquire a controlling interest in a company
  - Private foundations are also subject to other restrictions, such as divestment obligations for shareholdings above 20%, under the excess corporate holding regime



## 4. Requirements of Charities Engaging in PRIs

- Charities conducting PRIs must have:
  - A policy describing how the charity will make decisions regarding PRIs
  - Documentation explaining how each PRI furthers its charitable purpose
  - Exit mechanisms to withdraw from a PRI or convert it to a regular investment if it no longer meets the charity's charitable purpose
  - Evidence of direction and control over PRIs to non-qualified donees
  - Must also meet all applicable trust, corporate and other legal and regulatory requirements

## 5. Accounting for PRIs and Loans

- Charities must account for their assets contributed to PRIs and loans in their financial statements and annual T3010 information returns
  - Include these in total assets or accounts receivable as opposed to investment assets
  - Include interest and other income earned from PRIs and loans



## 6. PRIs and the Disbursement Quota

- Charities do not have to include the assets they have contributed to PRIs in their assets base when calculating their 3.5% disbursement quota
- Unfortunately, charities cannot use the cost of their PRIs towards meeting their 3.5% disbursement quota
- The New Guidance states only that, if a charity does not meet its disbursement quota, CRA *may* consider the lost opportunity cost of the charity's PRIs as equivalent to expenditures



- This policy position by CRA may act to deter charities from engaging in PRIs and may force charities to find traditional ways to fund a particular program (such as conducting the program directly)
- Charities with large investment asset bases may refrain from engaging in PRIs if they are concerned about meeting their 3.5% disbursement quota
- Since PRIs must further the charity's charitable purposes, the assets contributed should qualify as charitable disbursements in meeting the 3.5% disbursement quota

## H. SOCIAL BUSINESSES FOR INDIVIDUALS WITH DISABILITIES

- CRA accepts the definition of “disability” as a previous or existing mental or physical disability, and includes disfigurements and previous or existing dependence on alcohol and drugs
- Social businesses for individuals with disabilities seek to provide permanent employment, not simply on-the-job training or other limited time employment



- Social businesses may provide services, sell goods, manufacture articles, operate retail outlets or undertake other kinds of work
- Social businesses may directly employ eligible beneficiaries and may provide technical assistance and materials to them
- Social businesses must have the following characteristics:
  - The workforce must consist entirely of individuals with disabilities, with the exception of employees who provide necessary training and supervision
  - The work is chosen and structured to match the special needs of individuals with disabilities and to relieve conditions associated with those disabilities

- As well, the following characteristics are generally expected but not required:
  - Job-related training that enhances the general skills of the eligible beneficiaries, and
  - Significant involvement of eligible beneficiaries in managing and making decisions
- As with on-the-job training, CRA does not prohibit a social business from earning a profit, as long as the focus is on helping eligible beneficiaries



## I. COMMUNITY LAND TRUSTS

- A community land trust may be a charitable activity if it directly furthers a charitable purpose
- Community land trusts ensure that land will remain available for the benefit of a community
- Typically, community land trusts develop properties and lease them to eligible beneficiaries
- e.g. a charity that relieves poverty purchases a residential building and provides low income housing to people who are poor





## J. PROMOTION OF COMMERCE OR INDUSTRY

- CED activities that promote commerce or industry (such as agricultural, horticultural or craftsmanship) can be charitable if they are for the public benefit as opposed to a particular eligible beneficiary group
- Purposes that could enhance an industry while also delivering a charitable public benefit include:
  - Increasing efficiencies within an industry, if those efficiencies benefit the general public
  - Promoting high standards of practice within an industry, if doing so benefits the general public
- An example is holding public exhibitions of a community's agricultural products and services that includes prizes awarded to promote excellence



- At common law, a charitable benefit must be recognizable and capable of being proved and socially useful, a benefit must generally be tangible or objectively measured
- When applying for charitable status, non-expert opinion from founders, directors, trustees, members or supporters are irrelevant when determining whether promoting an industry will benefit to the public
- In this regard, it would be best to obtain independent and object expert opinions on the matter before applying for registration

## K. CED ACTIVITIES IN AREAS OF SOCIAL AND ECONOMIC DEPRIVATION

- CED activities may be charitable if they improve socio-economic conditions for the public benefit in areas of social and economic deprivation (known as “deprived areas”)



- Deprived areas are geographic communities that display high rates (at least 1.5 times the national average) in one of the following characteristics for four consecutive years
  - Unemployment for two or more consecutive years
  - Crime (including family violence)
  - Health problems (including mental health issues, drug and alcohol addiction, and suicide), and
  - Children and youth at risk (taken into care or dropping out of school)

- As well, the deprived area must be large enough for the beneficiaries to form a sufficient segment of the public
- If a deprived area no longer displays any of the characteristics set out above for four years in a row, the charity will have two years to wind up its CED activities in the area
- Special consideration relating to the assessment of private benefits are generally allowed in deprived areas
  - e.g., if a deprived area has a shortage of health care professionals, offering health professionals inducements (private benefits) might directly further the fourth head purpose of improving the socio-economic conditions in deprived area

## L. CONCLUSION

- Charities considering becoming involved in CED need to be alert to the requirements to adopt and implement policies in support of CED activities to ensure that the activities are charitable
- Charities must also be prudent in keeping adequate books and records to evidence compliance with CRA's requirements



- With that said, the New Guidance takes a number of very positive steps to facilitate charities engaging in CED programs
- These include expanding PRIs such that charities may now make PRIs with non-qualified donees
- Charities will now have new ways to achieve their charitable purpose within the framework of what CRA considers to be charitable

The logo for "Positive Steps" features the word "Positive" in a blue serif font and "Steps" in a larger, bold blue serif font. A red arrow points from the end of "Positive" towards the "S" in "Steps".



BARRISTERS

SOLICITORS

TRADEMARK AGENTS

## Disclaimer

This handout is provided as an information service by Carters Professional Corporation. It is current only as of the date of the handout and does not reflect subsequent changes in the law. This handout is distributed with the understanding that it does not constitute legal advice or establish a solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

© 2013 Carters Professional Corporation