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A Health Industry Seminar Series

CHANGES TO CHARITABLE GIVING: Implications for the Health Industry

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Background - Split Receipting (Dec. 2002 amendments)

- Permits receipting in certain circumstances where none previously
 - Split-dollar insurance
 - Real estate with a mortgage
- Donation recognized to the extent of the “eligible amount” of the gift
 - Eligible amount = FMV of the transferred property less “advantage”



“Advantage”

- To the donor or third party
- Broadly defined
- Must be reasonably ascertainable
 - Obtain valuation



Gift of Life Insurance Policy

- Transfer of policy to charity
 - Charity becomes owner and beneficiary
 - New or in force policy
- Premium payments following transfer are receiptable
 - NO receipt for proceeds

CRA position on value of donated insurance policy

- Previous policy
 - Value = cash surrender value
- New policy (stated at Oct. 2007 APFF Roundtable)
 - Factors listed in IC 89-3 to be taken into account in determining FMV of policy:
 - Health, life expectancy of insured
 - Policy terms
 - Charity should retain actuary to determine value



Further from CRA...

- 2008 APFF Roundtable and CLHIA 2009 Roundtable (2009-0316701C6)
 - Proposed subs. 248(35) – grind to FMV if donated property held less than 3 years (or, less than 10 if acquired in order to gift to charity)
 - Applies to 2 examples
 - Gifted 2 years after acquisition
 - Purchased in order to gift to charity



Split Dollar Insurance Arrangement

- Donor gifts death benefit to charity, keeps investment portion of policy
- Pays all of the premium
- Post split-receipting – charity can receipt portion of premium attributable to the death benefit
 - But no guidance on valuation...



Gift of Life Insurance Proceeds

- Considered gift by Will
 - Tax credit available for year of death for donation of proceeds (eligible for carryback to year prior to death)
- Disbursement quota issues (for the charity)
 - Appears to be resolved

Donations of Public Company Shares

- 2006 – no capital gains tax on gifts to charitable organizations, public foundations
- 2007 – extended to gifts of public company shares to private foundations
- 2008 – extended to gifts of “exchangeable securities”



Donation from Private Corporation

- Potential donor has Canadian-controlled private corporation
- Corporation owns publicly-traded securities with accrued gains
- Donation by corporation will create addition to corporation's capital dividend account of 100% of the capital gain
- If from estate, direction to trustee to cause corporation to donate



Gifts of Flow Through Shares

- A gift of publicly listed flow through shares can be very attractive from a tax perspective
- Investor in the flow through share is eligible to deduct the renounced expenses
- Capital gain realized on gift to charity is exempt from tax



ATR on Gifts of FT Shares

Donors subscribing for publicly-listed FT Shares gifted to charity, charity sells to liquidity provider:

- Tax shelter ID required
- CEE and ITCs available to donor, not an “advantage”
- FMV of FT Shares on date of donation receiptable
- Capital gain realized by donor – exempt

Gifts of Flow Through Shares

- Risk for charity: Valuation and liquidity issue
- Risk for investor/donors: Valuation issue – what is the “eligible amount”?
- Conclusion: Can be a very attractive gift structure if the flow through shares retain their value



Residual Interest in Real Property

- Donor splits his/her ownership interest into 2 parts:
 - Life interest
 - Residual interest
 - Registered on title
- Donor gifts the residual interest to the charity
- Current receipt for the value of the residual interest



Issues to Consider

- Irrevocable
- Valuation of residual interest
- Gift acceptance policies
- Document in agreement
 - Who pays for what (insurance, maintenance)
 - What happens if donor can't remain in home?
- DQ?



Other Property

- “Indivisibility of chattels”
 - E.g. book collection, art work
- CRA view – must use a CRT for these gifts
 - Donor gifts property to trustee, maintaining a life interest
- Not as tax-effective
 - Disposition of all of property
 - Real property – disposition of residual interest only



Issues

- Irrevocable, no encroachment
- Valuation
- Insurance, care
- Exhibiting, accessing