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