

Charities and Charitable Giving as Part of Estate and Succession Planning

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Types of Charitable Entities

- a) Public foundations and private foundations
- b) Donor advised funds in public foundations
- c) Considerations in choosing
 - i. start-up costs
 - ii. compliance costs
 - iii. administration
 - iv. investments
 - v. succession
 - vi. flexibility

Types of Charitable Entities

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- d) Charitable organizations
- e) Registration process



Forming Private Foundation

- a) Jurisdiction of incorporation
- b) Ontario PGT
- c) Choice of directors
- d) Corporate law issues with respect to financial disclosure, number of directors, etc., no payments to directors permitted
- e) Eligible individuals
- f) Record keeping
- g) CRA audits and compliance
- h) Source of funds and receipting issues

Donor Advised Funds

- a) Gift made absolutely, charity has discretion, subject to recommendations from advisor
- b) Some provide more flexibility than others
- c) Annual fee in DAF for funds retained and/or funds distributed, compared to annual maintenance costs and start-up costs for private foundation
- d) Succession through advisor
- e) Anonymity available - recipient charity does not issue a receipt to donor but rather receives gift from DAF

Distinction Between Charity and Not-For-Profit Organization

- a) No tax relief for donations to unregistered NPO
- b) Requirements for tax to status
- c) Department of Finance consultation and forthcoming amendments
- d) CRA restrictive view on purposes/activities

Donations to Charities

- a) Three categories; charitable organization, private foundation and public foundation
- b) Different levels of compliance such as carrying on business, acquiring control of and investing in shares of companies, etc.
- c) Due diligence with respect to recipient (including T3010 return)

Donations to Charities

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- d) Administrative costs and funds actually employed in charitable activities or in making grants to other qualified donees
- e) Disbursement quota issues and requirement to spend minimum amount on charitable activities or making grants
- f) Intermediary, such as Canada Helps

Donations to Charities

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- h) Valuation of property for receipting purposes, probate tax and income tax
- i) Tax relief based on "eligible amount" of donation
- j) Official receipt must state eligible amount, if any advantage received by donor
- k) Issues relating to measurement of advantage
- l) Retention of naming rights, use of property on loan, property received in exchange (split receipting such as dinners and other events)

Donations to Charities

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- m) Aggressive arrangements involving buy-low and donate high and loose links e.g. school program
- n) Conditional gifts – condition precedent or condition subsequent
- o) Reversing gifts
- p) Gifts by holding companies



Types of Donations

- a) Cash
- b) Marketable securities
- c) Art and other exotic property
- d) Real estate
- e) Shares of private companies (issues re control, excess business holdings)
- f) Ecological property

Types of Donations

...cont'd

- g) Cultural property
- h) Inventory
- i) Special benefits for non-recognition

Methods of Giving

- a) Inter vivos
- b) Testamentary
- c) Trusts

Donations to Foreign Organizations

- a) Foreign organizations that Canada recognizes as qualified donees
- b) U.S. organizations are not necessarily qualified donees to which deductible donations can be made
- c) Problem with grants by registered charities to U.S. organizations that are not qualified donees

Probate Tax Issues

- a) Gifts made outside will not subject to probate tax
- b) Designation of life insurance proceeds, RRIFs, RRSPs and TSFAs
- c) Need to coordinate overall plan with tax consequences and tax savings
- d) Tax tail should not wag dog

Life Insurance a Useful Tool

- a) Death benefit can pay tax on deemed disposition at death or other income or be donated
- b) Insurance policy can be donated to charity with credit for value of policy and premiums paid or cash donated to charity to pay premiums
- c) Corporate owned insurance increases capital dividend account (subject to new rules)
- d) Access to refundable tax in private corporations

Life Insurance a Useful Tool

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- e) Split ownership of policies dividing cash value and death benefit
- f) Changes in tax rules
- g) Other life insurance issues



Non-Qualifying Securities

- a) Loan-back rules response to planning involving private companies, payment of salaries, funds lent back to company and charity without funds
- b) Use of life insurance to monetize value of loans
- c) Five year waiting period for non-qualifying securities
- d) Exceptions for arm's length public foundations and charitable organizations (Remai case on "arm's length")
- e) Other issues in planning for "closely held" charitable organizations such as private foundations or shares or debt of family entities



Questionable Arrangements

- a) "Buy/low – donate high" arrangements
- b) Triple dip or double dip no longer available for flow-through shares
- c) Anti-avoidance rules and general anti-avoidance rules
- d) Cases on scope of advantage that taints a gift, even if cash paid
 - i. Marechaux
 - ii. Coleman
- e) Dichotomy between provincial law and tax law with respect to "gift"

Planning Involving Charities and Charitable Donations

- a) Testamentary gifts are made by estate not by deceased
- b) Need to coordinate tax relief in year of death
- c) Five year carry forward for gifts not utilized while alive
- d) Carry over rules for gifts by will
- e) Charitable remainder trusts
- f) Charitable annuities

Planning Involving Charities and Charitable Donations

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- g) Valuation issues for real estate, art, shares of private companies, etc.
- h) 2015 budget proposals dropped for donations of proceeds of sale of real estate or private company shares

Conclusion

- a) Motivation for giving is important
- b) Ongoing involvement of donor may be important
- c) Private foundation offers most control, combined with succession issues, involving next generation, etc. but more administrative effort and cost
- d) DAF a useful alternative
- e) Homework required to investigate recipients
- f) Other issues if charity is expected to carry out its own activities either off shore or domestically through intermediaries

Conclusion

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- g) Political activity often a concern
- h) Reputation issues
- i) Life insurance often a useful tool
- j) Many donors want to be more involved than writing a cheque, by donating time, volunteering on boards or as workers
- k) Provincial law, e.g. Ontario PGT



Questions?



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