Ensuring New GRE Rules Work for Canada's Charities

The Canadian Association of Gift Planners (CAGP) and our Government Relations Committee have been actively addressing new rules related to graduated rate estates (GRE), enacted in December 2014 and slated to come into effect in January 2016. In addition to raising awareness around the details of the legislation and educating our members on how they may be impacted, we have an important role in informing the federal government as to the effect these rules will have on Canadian charities.

In early March, a comprehensive submission made by CAGP to the Department of Finance, suggested four possible amendments to the new rules that would ensure charities are not disadvantaged and that the full value of intended gifts is available for public benefit.

Testamentary Charitable Giving

The new rules introduce some flexibility in a testamentary gift, in that the donation tax credit can be allocated by the executors of the GRE over a number of tax periods. This is a welcome change which will assist in providing some certainty around tax receipting and has the potential to promote charitable giving. However, this flexibility is limited to gifts made within 36 months of the date of death – a time period that, in many instances, is too short.

CAGP is proposing that the new flexibility be retained, but is also suggesting two ways in which the linkage to a GRE can be removed: first to allow executors to allocate gifts made by the estate to the designated years when the gift is made and not restricted to a 36-month timeframe; and second, to allow the gift to be made by an estate, GRE or otherwise.

Gifts of Publicly Listed Securities, Cultural Property and Ecological Property

The new legislation stipulates that the exemption from capital gains tax on these gifts will now be available only to GRE's. While this ties the exemption to the nature of the property gifted, CAGP has recommended that any estate, GRE or otherwise, should remain eligible to receive this capital gains exemption at the time the gift is made.

Tax Liability and Life Interest Trusts

The legislation contains a new clause which states that the tax liability on the deemed disposition of assets in a life interest trust at the time of death of the surviving beneficiary is in the estate of the surviving beneficiary. Previously that liability was in the life interest trust. With a charity often named as the beneficiary of a life interest trust, this new rule means that the beneficiary of an estate could be saddled with a tax bill while not receiving the assets. As such, there is concern that donors may be reluctant to name a charity as a residual beneficiary.

CAGP has suggested that the existing rules be kept, but that the residency of such a trust at the time of termination be based on the survivor's residency at the time of death, or the province they last resided in for Canadian tax purposes.

Tax Receipts for Charitable Gifts

In our submission CAGP expressed an additional concern that has not arisen because of the recent changes, but which would assist in avoiding receipting errors. We conveyed that it should be possible to issue charitable tax receipts to a charity named in a will or trust whether the charity is a capital beneficiary or whether the amount of gift is set out explicitly, and proposed that the Income Tax Act be amended to permit receipts in both scenarios where a charitable gift is intended by the testator.

For more detailed information, CAGP's full submission to the Department of Finance is available on our website at www.cagp-acpdp.org. As these issues continue to be explored and discussed, we are committed to keeping our members and the sector informed over the coming months.

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