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CANADIAN ASSOCIATION OF GIFT PLANNERS
ASSOCIATION CANADIENNE DES PROFESSIONNELS EN DONS PLANIFIÉS

CANADA'S NEW ESTATE DONATION RULES – UNDERSTAND; GET READY

A special webinar presentation by Canadian Association of Gift Planners

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Today's webinar will begin at 1:00 p.m. EDT.

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MEET THE PRESENTERS



Brenda Lee-Kennedy
Partner - Charity and Not-for-Profit and High Net Worth Planning Group
PricewaterhouseCoopers
Toronto, ON



Doug Puffer
Director, Planned Giving
Simon Fraser University
Vancouver, BC



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TESTAMENTARY CHARITABLE GIVING

LEGISLATIVE OVERVIEW AND PLANNING IMPLICATIONS

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BRENDA LEE-KENNEDY

PARTNER - CHARITY AND NOT-FOR-PROFIT AND HIGH NET WORTH PLANNING GROUP

PRICEWATERHOUSECOOPERS



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GIFTS BY WILL AND ESTATE DONATIONS – TODAY (FOR DEATHS PRIOR TO JANUARY 1, 2016)

- Current tax legislation (for pre-January 1, 2016 gifts by will)
 - Gift by will – gift is deemed to be made immediately before donor's death
 - Gift by will – qualifications
 - Donation tax credits in respect of gifts by will are claimable against the donor's income taxes in his/her terminal tax year* or for the immediately preceding tax year
 - *often applied against income taxes arising on deemed gains on assets owned at the time of death*
 - Valuation of non-cash gift for donation tax receipting purposes starts with the fair market value of gifted property at the date of death, subject to other tax rules which may limit the eligible amount of the donation
 - Gift by estate – qualifying gift by estate if the executors have the discretion to make the charitable gift (i.e., charity is not receiving the estate's property as a beneficiary of the estate)
 - Donation tax credits in respect of estate donations are claimable against the estate's income taxes in the tax year the gift is made or by the estate in any of the five following tax years

GIFTS BY WILL, DESIGNATED GIFTS, AND ESTATE DONATIONS – FOR DEATHS AFTER DECEMBER 31, 2015

- New tax legislation (for post-December 31, 2015 testamentary gifts) – applies to gifts by will, gifts by beneficiary designation or designated gifts (of RRSPs, RRIFs, TFSA, life insurance), and estate donations:
 - Gift is deemed to have been made considered to have been made by the estate and not by any other person, at the time the property is actually transferred to the donee and not at any other time
 - Valuation of gift for donation tax receipting purposes tied to fair market value of gifted property at the time the property is transferred to the charity, subject to other tax rules which may limit the eligible amount of the donation
 - Graduated rate estate (“GRE”) gifts – qualifications
 - made by a GRE;
 - made within 36 months of the testator’s date of death; and
 - of assets that is property or substituted property owned by the testator at his/her date of death.
 - Donation tax credits for testamentary GRE gifts are potentially claimable against income taxes of:
 - the donor’s terminal tax year;
 - the donor’s tax year immediately preceding the terminal tax year;
 - the tax year of the GRE in which the donation was made; (or in any of 5 following taxation years of the GRE); and/or
 - prior tax years of the GRE.
- Estate donations (not from a GRE) are eligible for donation tax credits to be used by the estate in the tax year in which the gift is made to charity⁵ or by the estate in any of the five following tax years

GIFTS BY WILL, DESIGNATED GIFTS, AND ESTATE DONATIONS – FOR DEATHS AFTER DECEMBER 31, 2015

- Gifts of publicly-traded marketable securities, ecological property, and cultural property made as a consequence of the death of the donor will qualify for nil capital gains inclusion (s.38(a.1), s.38(a.2), and 39(1)(a)) only if gifted from a GRE
- What is a GRE?
 - an estate that arises on and as a consequence of the death of an individual;
 - qualifies as a testamentary trust (as defined in the Income Tax Act (Canada));
 - exists for no more than 36 months from the date of the individual's death;
 - provides the social insurance number of the deceased individual on the estate's tax return; and
 - designates the estate/trust as a GRE on its first estate tax return that ends after 2015 (and no other estate/trust designates itself as a GRE of the deceased individual).

TESTAMENTARY CHARITABLE GIVING – WHY THE STATUTORY SHIFT?

- Charity sector identified that there were unused donation tax credits as a result of either no planning or insufficient planning (e.g., testamentary gift does not qualify as a gift by will; donation tax credit (DTC) goes unused or not fully used as a result of a mismatch of the taxpayer who is considered to have made the gift/is entitled to the DTC AND the taxpayer that reports the taxable income/bears the income tax liability)
- View that executors and charities are confused about the appropriate value to assign to the gifted property for donation tax receipting purposes since the gifted property is often transferred to the charity at some date after the donor's death
- Department of Finance looking for a pragmatic solution for the Canada Revenue Agency to help it with its tax administration of estates (i.e., how long does it take to administer an estate?)
- Department of Finance introduced tax reform referred to as taxation of “graduated rate estates” for existing and future testamentary trusts and estates

THE UPSIDE OF TESTAMENTARY GIFT TAX REFORM

- May bring greater flexibility for the use of donation tax credits over multiple years and by two different taxpayers (testator, estate)
- Provides a 36-month timeline for the executors to transfer the gifted property to the charity(ies) in order to secure the donation tax credits related to the testamentary gifts for the deceased donor or his/her estate
- May bring greater clarity around the valuation of assets that are the subject of the donation to charity

THE DOWNSIDE OF TESTAMENTARY GIFT TAX REFORM

- Potential reduction in planned testamentary gifts due to the uncertainty by donors and their estate planners around how to plan for testamentary gifts and/or by executors that may find it difficult to effect testamentary gifts if:
 - the administration of the estate is delayed (e.g., estate litigation, probate process, tax clearance certificate process)
 - the assets that are the subject of testamentary gifts cannot be monetized and/or transferred within a 36 month time period (e.g., complex assets like private company shares, art work, real estate, etc.)
 - the assets that are the subject of testamentary gifts are not part of the testator's GRE
 - the charity(ies) have an interest in the estate's residue where there is an intervening life interest

THE GRE:A CHARITY GIFT PLANNING PERSPECTIVE

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DOUG PUFFER
DIRECTOR, PLANNED GIVING
SIMON FRASER UNIVERSITY

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GRE CHARITABLE BEQUEST OUTLOOK

- **Optimistic:** Finance will fix the problems associated with charitable tax credits and GRE 36 month rule
- **Realistic:** Finance will listen to arguments, defer decisions on any amendments
- **Pessimistic:** Finance rejects arguments, says their changes will achieve the intended result (more tax, less charity)

CHARITY CHALLENGES AND OPPORTUNITIES

- Communicating with donors
 - “I’m concerned...”
- Revised marketing and service material
 - Emphasis on specific gifts? 😞
 - Direct Beneficiary designations, Gift Annuities, Residual Interest
- Relationships with estate trustees/executors
 - Develop staff competencies in gift planning/estate administration

CHARITY CHALLENGES AND OPPORTUNITIES

- More certainty around tax receipt valuation
 - Issue gift receipt for the value on date received by charity (Jan 2016)
 - Date of death value not applicable
- Accepting *in specie* donations from estates
 - Revise gift acceptance policies, issue gift receipts correctly
 - Private shares, commercial real estate...are you ready?
- Proposals for more diverse gifts of assets
 - Charities ramp up financial competency to accept broader range of instruments
 - Assist donors/estate trustees to comply with 36 month rule

DONORS AND THEIR EXECUTORS

- If estate is simple
 - Will likely settle within 36 months
- If estate is complex
 - Select a professional co-executor
 - Specific gifts vs. residual gifts
 - Instruct executor to declare GRE
 - Instruct executor to make charitable gifts ASAP
 - Instruct executor to gift in-kind if necessary
 - Charity distributions before clearance certificate
 - Consider lifetime giving, direct beneficiary designations

CHARITY GIFT PLANNERS

- Proactive communication with PG donors
 - Open articles in newsletters
 - Tell your confirmed donors
- Proactive outreach with executors
 - Be ready with printed material, send immediately
 - Devise calendarized estate management system
- Proactive networking with advisors
 - Join estate planning councils, build knowledge, cite experts in newsletters

ADVISORS

- Review existing gift plans under old rules
 - Is plan based on donations deemed to have been made immediately before death?
- Work with charity gift planners
 - We are all professionals
- Clients/Donors with assets in spousal, alter ego and other life estate trusts
 - Will assets become mismatched with charitable gift tax credits?
- Help clients to deal with complex assets during life
 - What can you do to facilitate clients' philanthropy?

ADVISORS

- Liaise with clients and charities
 - Discuss giving in kind assets (real property, private shares, etc.)
- Consider current giving rather than bequests
 - Will client have unusable charitable tax credits at end of life?
- Discuss direct beneficiary donations
 - Investment accounts, insurance policies, retirement funds
- Urgency for estate trustees to attend details
 - Delays could mean GRE inadvertently loses status for charitable tax credits.

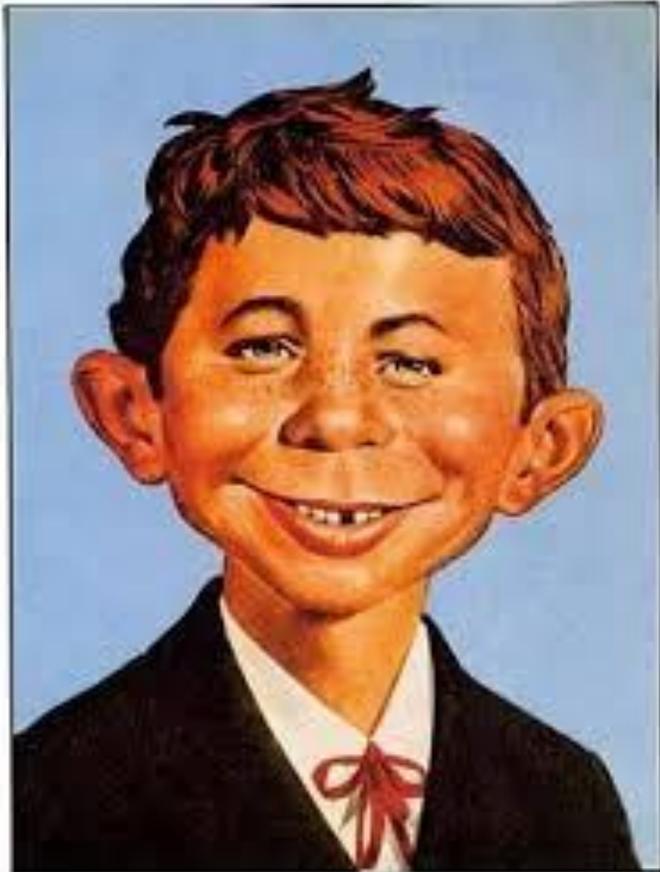
CASE STUDY – IAN SMITH TRUST

- Testamentary trust 18 years ago
 - Vacation home, investments; Life Estate for son David
- SFU sole residual beneficiary
- Trust pays upkeep, taxes, repairs on cottage
 - plus income for David (age 57)
- DOD cost basis for cottage \$150K, investment account \$275K
- Current value: cottage is \$550K, investment account \$300K

CASE STUDY – IAN SMITH TRUST

- When David dies, Ian's will states that remaining assets in the trust “shall fall into and form part of the residue of my estate”
- If David dies after January 2016 will the capital gain on property in Life Estate Trust accrue to David's estate or to Ian's trust?
- Assuming David lives beyond the 21 year anniversary of the trust what planning can be done to mitigate the looming tax hit (\$103K)? 1/3 of the investment account!
- If the residual beneficiary is a charity can the trust be converted to a qualifying CRT?

WHAT, ME WORRY?



- Be realistic
- This is the new regime
- Review your files, act accordingly
- No one has all the answers yet
- An election is coming, vote wisely
- Go to the CAGP Conference April 22-24
 - Join CAGP as a member
 - You won't learn about this anywhere else
 - The knowledge is not optional

WHAT CAGP IS SAYING TO THE FEDERAL DEPARTMENT OF FINANCE

RUTH MACKENZIE
EXECUTIVE DIRECTOR
CANADIAN ASSOCIATION OF GIFT PLANNERS

TESTAMENTARY CHARITABLE GIVING

- The Change –

New flexibility introduced allowing donation tax credits to be allocated by executors of the GRE over a number of tax periods.
A welcome adjustment that provides more certainty around tax receipting and has the potential to promote charitable giving

- The Concern –

Limited to gifts made within 36 months of the death.

TESTAMENTARY CHARITABLE GIVING

- CAGP's Proposal –

Retain the new flexibility for the allocation of a testamentary gift but remove the linkage of that flexibility to a GRE in two ways.

1. Allow executors to allocate gifts made by the estate to the designated years when the gift is made.
2. Allow the gift to be made by an estate, GRE or otherwise

GIFTS OF PUBLICLY LISTED SECURITIES, CULTURAL PROPERTY & ECOLOGICAL PROPERTY

- The Change –
Exemption from tax on the capital gain realized on these gifts is now only available to GRE's
- The Concern –
The exemption has been tied to the nature of the property gifted. It should be available to all estates.

GIFTS OF PUBLICLY LISTED SECURITIES, CULTURAL PROPERTY & ECOLOGICAL PROPERTY

- CAGP's Proposal –

Any estate (GRE or otherwise) should remain eligible for capital gains exception at the time the gift is made.

TAX LIABILITY AND LIFE INTEREST TRUSTS

- New Rule –

Proposed section 104(13.4) provides that the liability for the tax realized on the deemed disposition of all the assets in a life interest trust at the time of the death of the surviving beneficiary is in the estate of the surviving beneficiary. Previously the liability was in the life interest trust.

- The Concern –

Charities are often the residual beneficiary of a life interest trust. Transferring the liability to the estate of the surviving spouse means beneficiaries could be left with the tax bill while not receiving the assets.

As a result, donors may be reluctant to name a charity as residual beneficiaries

TAX LIABILITY AND LIFE INTEREST TRUSTS

- CAGP's Proposal –

Keep the existing rules but deem the residency of such a trust at the time of termination to be based on the residency of the survivor at the time of his or her death (or if non resident) to be the province that the survivor last resided in for Canadian tax purposes.

TAX RECEIPTS GENERALLY

- The Concern –

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 the gift is set out explicitly.

TAX RECEIPTS GENERALLY

- CAGP's Proposal –

Amend the Income Tax Act to permit receipts in both scenarios where a charitable gift is intended by the testator/setlor. This issue does not arise because of the changes but this change would assist to avoid a drafting trap for the unwary.

NEXT STEPS

- Continued dialogue with the Department of Finance to advocate for changes that will ensure the implications for Canada's charities is well understood and that negative impact is minimized as much as possible.
- Sessions & discussion at CAGP National Conference – April 22-24 in Halifax, NS
- Ongoing updates for our members and others as to changes, implementation
- Commitment to share best practices in moving forward under the new legislation

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Q&A

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Thank you for attending!

We value your opinion.

Please follow the link in the chat box to complete a short survey.