The Carpenter Hospice

The Journey Ahead – Estate Planning and Tax Benefits of Making Charitable Gifts

Tony Italiano
Partner
Rob DePetris
Senior Manager
Agenda

• **Estate Planning**
  - Taxation at Death
  - Planning opportunities

• **Charitable Giving**
  - Tax treatment of donations on death
  - Gifts in Kind
  - Donations Using Insurance
  - Gifts Via Wills
  - Remainder and Life Interests
Income Tax on Death

- Will of deceased or court if no will names a person (executor/administrator) to handle affairs of the deceased estate
- Any funds in an RRSP, RSP, RRIF are taxed in the terminal return unless there are rollover provisions that defer the taxation
- On death, the deceased is deemed to have disposed of all capital assets
- Dispositions may result in capital gains which can increase taxable income in the terminal return of the deceased
- Opportunity to defer taxes on death where RRSP, RRIF left to spouse or disabled child - rollover opportunity (tax deferral)
- For certain shares of small business corporations there is an opportunity to shelter capital gains with Capital gains exemption (up to $800,000 in a lifetime)
Summary of filing deadlines

• Generally, the **Final Return** and **balance owing** are due on or before the following dates:

<table>
<thead>
<tr>
<th>Period when death occurred</th>
<th>Due date of Final Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1 to October 31</td>
<td>April 30(^{th}) of the following year</td>
</tr>
<tr>
<td>November 1 to December 31</td>
<td>6 months after the date of death</td>
</tr>
</tbody>
</table>

• If the deceased or the deceased’s spouse or common-law partner was **carrying on a business**, the following due dates apply:

<table>
<thead>
<tr>
<th>Period when death occurred</th>
<th>Due date for the return</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1 to December 15</td>
<td>June 15(^{th}) of the following year</td>
</tr>
<tr>
<td>December 16 to December 31</td>
<td>6 months after the date of death</td>
</tr>
</tbody>
</table>

• For **late filed returns**, CRA will charge a late-filing penalty and interest on both the balance owing and any penalty.
  
  • **Penalty** is 5% of balance owing + 1% of balance owing for each full month that the Final return is late, to a **maximum of 12 months**.
Spousal Rollovers

- The spouse and spouse trust rollovers are available to the taxpayer

- Consider Electing out of Rollovers
  - If the deceased has a capital gain exemption or has unused losses available they may choose to elect out of the rollover.
Principal Residence

• No tax charged on deemed disposition of principal residence

• Act provides for exemption on the gain on sale of a principal residence

• Where principal residence on large property limit as to what is considered principal residence
Estate Administration Tax (Probate Fees)

• What is probate?

• Joint Ownership

• Trusts, including alter ego trusts, and family trusts

• Estate freezes

• Dual wills
Estate and Trusts created by Wills

• The Estate of the Deceased and any Trust created by Will is taxed as a separate person

• Entitled to graduated tax rates – possible to leave income in the estate or trust rather than go to beneficiary to reduce taxes

• 2014 Budget
  • Applies to the 2016 and subsequent taxation years
  • Loss of graduated rates – flat top-rate taxation to estates for taxation years that end more than 36 months after the death of the individual
  • Will continue to provide graduated rates for trusts that have individuals eligible for the Disability Tax Credit as beneficiaries
Charitable Donations

- Gifting can be simple or complicated depending on the circumstances

- Deferred gifts are the more complex ones
  - Gifts via will
  - Gift of life insurance proceeds
  - Charitable remainder trust

- Gift planning needs to consider both the assets and desires of the donor
Charitable Donations

• Tax planning goal is to maximize and use all the donation credits generated from gifting

• Unused donation credits cannot be transferred to Estate/Beneficiaries

• Unused credits may result from:
  • Passing away early in a calendar year
  • Making significant gifts relative to income levels
Donation Credits

- Charitable gifts provide donation tax credits based on the FMV of the gift

- Tax credit is worth:

<table>
<thead>
<tr>
<th></th>
<th>Federal*</th>
<th>Federal/ON Combined*</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $200</td>
<td>15%</td>
<td>20.0 – 22.8%</td>
</tr>
<tr>
<td>Over $200</td>
<td>29%</td>
<td>40.1 - 46.4%</td>
</tr>
</tbody>
</table>

* based on 2014 tax rates
• Credit is non-refundable – only reduces taxes payable

<table>
<thead>
<tr>
<th></th>
<th>Donations Made Upon Passing</th>
<th>Donations Made During Lifetime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit</td>
<td>100% of net income</td>
<td>75% of net income*</td>
</tr>
<tr>
<td>Carryback</td>
<td>1 year</td>
<td>N/A</td>
</tr>
<tr>
<td>Carryforward</td>
<td>N/A</td>
<td>5 years</td>
</tr>
</tbody>
</table>

• Increased to shelter any capital gains/recapture from gifting of assets other than cash
Gifts in Kind

• **A gift of property other than cash**
  i.e., Capital property, depreciable property, shares

• **Implications to donor:**
  Disposition at FMV
  Capital gain/loss = FMV − ACB

• **Implications to charity:**
  Donation receipt = FMV. Appraisal would be required. Date of donation would be when property is transferred to charity
Gift of Publicly Traded Securities

- 0% inclusion for capital gain of “Qualifying Property”
- Includes current gifts and gifts by will
Example - Donation of Securities

- Publicly listed shares worth $20,000
- ACB of Shares is $10,000
- Donor wishes to provide funds to Charity
- Should donor donate cash (after tax proceeds) or shares?
## Example - Donation of Securities

<table>
<thead>
<tr>
<th></th>
<th>Sale/Gift Proceeds</th>
<th>Gift of Security</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Market value of securities</strong></td>
<td>(20,000)</td>
<td>(20,000)</td>
</tr>
<tr>
<td><strong>Tax on capital gain</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(FMV $20,000 – ACB $10,000) x 50% x 46.4%</td>
<td>(2,320)</td>
<td>(NIL)</td>
</tr>
<tr>
<td>(FMV $20,000 – ACB $10,000) x 0% x 46.4%</td>
<td>(NIL)</td>
<td>(NIL)</td>
</tr>
<tr>
<td><strong>Donation tax credit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>($20,000 x 46.4%)</td>
<td>9,280</td>
<td>9,280</td>
</tr>
<tr>
<td><strong>After-tax cost of donation</strong></td>
<td>(13,040)</td>
<td>(10,720)</td>
</tr>
<tr>
<td><strong>Difference:</strong></td>
<td></td>
<td>$2,320</td>
</tr>
</tbody>
</table>
## Illustration – Comparing gifts in kind to cash

<table>
<thead>
<tr>
<th></th>
<th>Cash</th>
<th>Capital Property</th>
<th>Publicly Traded Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMV</td>
<td>$10,000</td>
<td>$15,000</td>
<td>$15,000</td>
</tr>
<tr>
<td>Original Cost</td>
<td></td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Savings from flow through deduction</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax on capital gain</td>
<td></td>
<td>$1,160</td>
<td>$0</td>
</tr>
<tr>
<td>Donation tax credit</td>
<td>($4,640)</td>
<td>($6,960)</td>
<td>($6,960)</td>
</tr>
<tr>
<td>After tax cost of donation</td>
<td>$5,360</td>
<td>$4,200</td>
<td>$3,040</td>
</tr>
</tbody>
</table>
Gifting of life insurance

• The three main methods available are:

1. Donation of policy during donor’s lifetime
2. Bequest of life insurance through donor’s will
3. Name charity as beneficiary of a donor’s policy
## Summary

<table>
<thead>
<tr>
<th>Method</th>
<th>Gift during lifetime</th>
<th>Bequest in will</th>
<th>Charity is beneficiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>Charity</td>
<td>Taxpayer</td>
<td>Taxpayer</td>
</tr>
<tr>
<td>Beneficiary</td>
<td>Charity</td>
<td>Estate</td>
<td>Charity</td>
</tr>
<tr>
<td>Tax benefit</td>
<td>Policy value &amp; premiums are donations</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>during lifetime</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax benefit</td>
<td>None to taxpayer</td>
<td>Death benefit is a donation</td>
<td>Death benefit is a donation</td>
</tr>
<tr>
<td>at death</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Gifts via Will

- Gifting through a Will is attractive to a donor who wishes to reduce or eliminate the inherent tax liability that would otherwise occur on their death.

- Charitable gifts through the Last Will are treated as if the gift was made in the year of death.
  - 2014 Budget proposes for 2016 and future years charitable gift make in the will can be used in the estate or in the terminal tax return.

- The FMV of the gift is claimed as a donation tax credit in the year of death. Any excess can be carried back to the preceding year.

- 100% of net income limitation in the year of death and preceding year.
Example - Gift via Will

- Mr. X holds assets that will deem him to realize a capital gain of $2 million on his death

- The tax liability on death will be $464,000

- If half of these assets were gifted to a charity through his Will the death taxes would be completely eliminated

- Similar approach can be used for a gift of RRSP/RRIF

- Although will need to gift 100% of the RRSP/RRIF to offset Income Tax on the deemed inclusion.

- Use life insurance to replace capital to Estate.
# Gift via Will - Comparison

<table>
<thead>
<tr>
<th></th>
<th>No Donation</th>
<th>With Donation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Estate</strong></td>
<td>$1,536,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td><strong>Charity</strong></td>
<td>0</td>
<td>1,000,000</td>
</tr>
<tr>
<td><strong>Tax Liability</strong></td>
<td>464,000</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>$2,000,000</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>
Gift of Residual Interest in Real Property

• Donor retains life interest, charity obtains residual interest (i.e. principal residence)

• Must be irrevocable transfer that will ultimately be received by charity

• Donation credit only if donor has no right to encroach on capital

• FMV of gift based on current interest rates, life expectancy of donor, current FMV of property. Actuarial report will be required
Charitable Remainder Trust

- Irrevocable transfer of property to trust

- Life interest retained by donor/other beneficiary (no power to encroach on capital)

- Charity is remainder beneficiary

- Donation credit equal to FMV of remainder interest – need actuarial report to support FMV
Questions?

© The KPMG name, logo and “cutting through complexity” are registered trademarks or trademarks of KPMG International.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.