Corporate Giving: A Tax Perspective

A Paper

By

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Abstract

Corporate giving has been on the rise recently. However, the tax rules that apply to corporate contributions have not been well understood by corporate givers, fundraisers, and charities in general. This paper reviews why corporations give to support charitable and philanthropic causes. This followed by a review of the treatment of various types of charitable gifts, including cash and in-kind gifts, sponsorship, inventory, services under the *Income Tax Act* (Canada) from the perspective of taxation of those corporations that have made contributions to charities. The paper will also review the impact of the latest proposed amendments to the *Income Tax Act* (Canada) announced in July 2005 on corporate giving.

A. The Landscape of Corporate Giving

Studies have shown that corporate giving has been on the rise in recent years. For example, a study on corporate donations in the United States in 2005 has shown that 62 biggest companies in the U.S. gave $8.4 billion last year, an increase of 14% from 2004. As well, 87% of the companies surveyed indicated that they have an employee volunteer program, with 44% of them offering paid time off to employees who volunteer.[1] Corporate giving is greatly sought after by charities because of the financial resources that businesses have available, the ability of charities to use corporate contributions they received to leverage for other donations, and the

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[1] Suzanne Perry, "Giving by Companies Rose 14% Last Year, Study Finds" *The Chronicle of Philanthropy*, June 15, 2006; Fleishman-Hillard Research and National Consumers League: "Rethinking Corporate Social Responsibility" (Fleishman-Hillard Research and National Consumers League, 2006) (online: http://www.csrresults.com). For the Canadian scene, see Alison Azer "The Changing Corporate Landscape and its Effect on Charitable Giving" (Canadian Centre for Social Entrepreneurship, 2003); Agnes Meinhard, Mary Foster and Ida Berger, "Closing the Loop: Corporate Links to the Voluntary Sector" (Toronto: Ryerson University Faculty of Business, Working Paper Series, 2005); and Statistics Canada, "Caring Canadians, Involved Canadians: Highlights from the 2004 Canada Survey of Giving, Volunteering and Participating" (Ottawa: Statistics Canada, 2006). See also Norah McClintock, "The Business of Giving" *Front & Centre* (May 1999) Vol 6, No. 6 at 1, 8-9.

possibility to seek non-cash support from businesses, such as in-kind gifts and volunteer support.[2]

This paper reviews the treatment of various types of charitable gifts, including cash and in-kind gifts, sponsorship, inventory, etc., under the *Income Tax Act* (Canada)[3] from the perspective of taxation of those corporations that have made contributions to charities.

Why do corporations give to support charitable and philanthropic causes? A detailed review of these reasons from a policy and social perspective is beyond the scope of this paper but the following is a brief overview of these reasons. Some studies have pointed out that a corporation's mission is to benefit the shareholders of the company and therefore corporate philanthropy stops at the point where the shareholders are no longer benefited. Without the expectation of positive return for shareholders or where the return on their investment is not attractive, corporations would not have any motivation to make charitable giving.[4] Others have pointed out that a new emerging reason for corporations to give is their need to fulfill their corporate social responsibility in giving back to the community.[5] The corporate citizenship commitment adopted by Imagine Canada, which it requires all of its "caring company members" to subscribe to, requires corporations and their shareholders to acknowledge that they have an important stake in the prosperity, health and qualify of life of the society in which they operate and they are to contribute to the community through the generating wealth and jobs; following ethical and environmentally responsible business practices; and engaging in direct investment in the human and social capital of their communities and support for the charitable and non-profit organizations that serve the community.[6] In this regard, it has been observed that the Act assumes a "social responsibility" view of the corporation, rather than a "profit maximizing" approach in allowing deduction for corporate charitable contributions because such deductions do not act as an adjustment to accurately measure income for the year, but as a tax incentive or tax

[2] Ken Wyman, "Fundraising Ideas that Work for Grassroots Groups" (Canada: Department of Canadian Heritage, 1995) (online: http://www.pch.gc.ca).
[3] R.S.C. 1985, c. 1 (5th Supp.), as amended (hereinafter referred to as the "Act").
[4] Darcy L. MacPherson, "Companies Gone Wild a Review of the Corporation: The Pathological Pursuit of Profit and Power" (2005) 31 Manitoba Law Journal 201-208. This article is a review of a book by Darcy L. MacPherson, entitled "The Corporation: The Pathological Pursuit of Profit and Power, (CITY: Viking Canada, 2004), 228pp. Also Nancy J. Knauer, "The Paradox of Corporate Giving: Tax Expenditures, the Nature of the Corporation, and the Social Construction of Charity" (1994-1995) 44 DePaul Law Review 1 at 56
[5] Jane Rowland, "Corporate Responsibility on the Rise" Front & Centre (2001) Vol. 8. No. 5 at 15; Industry Canada, *Corporate Social Responsibility*, 2006.
[6] Imagine Canada, *Corporate Citizenship Commitment* (online: www.imaginecanada.ca).

expenditure designed to provide further encouragement to corporate charitable giving irrespective of business considerations.[7]

There are a number of benefits that corporations receive when making charitable gifts.

Firstly, corporations are entitled to deductions for charitable donations made pursuant to section 110.1 of the Act.[8] As reviewed below in this paper, in some situations, expenses incurred in supporting charitable causes may be deductible as business expenses.[9] However, it has been pointed out that the tax deductibility of corporate contributions is only an ancillary and relatively minor reason for corporate philanthropy.[10]

Secondly, others have argued that non-tax benefits to corporations are the main reasons that encourage corporate giving. These benefits may be categorized into three main categories, namely advertising and marketing, public relations, as well as investment in future markets and future employees.[11] In this regard, various recent studies have identified the following benefits:[12]

- Improved corporate image and reputation,[13] as well as increased brand awareness and recognition;
- Positive consumer purchasing and investment decisions;
- Customer loyalty recognition that the corporation is a responsible neighbour;
- Improves recruitment and retention of employees;
- More productive workforce;
- Lower training and other employee-related costs;

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[7] David G. Duff, "Tax Treatment of Charitable Contributions in Canada: Theory, Practice, and Reform" (2004) 42 Osgoode Hall L.J. 47 ["Duff 2004].

[8] A more detailed explanation of the deductions under section 110.1 is set out on pages 4ff.

[9] Sections 18, 67 and 69 of the Act.

[10] Knauer, *supra* note 4 at 51.

[11] Knauer, *supra* note 4 at 55.

[12] Gaunor Humphreys, "Peer learning event on support of corporate philanthropy: sharing good practice" (Brussels, Belgium: Worldwide Initiatives for Grantmaker Support, 2004) (online: http://www.wingsweb.org/download/PLE-Philippines04-Report.pdf); The Giving Campaign, "The business of giving: a summary report of the business benefits of payroll giving" (England: The Giving Campaign 2003) (online: http://www.givingcampaign.org.uk/images/uploaded/pg_business_summary.pdf); Cari Parsons, "Exploring Corporate Philanthropy, a Member Survey" (New York: Committee to Encourage Corporate Philanthropy, 2006) (online: http://corporatephilanthropy.org); and Norah McClintock, "Corporate Contributions Focus on Results" *Front & Centre* (March 1996) Vol 3, No. 2 at 12-13.

[13] Interestingly, the Exchequer Court in *Olympia Floor & Wall Tile (Quebec) Ltd. v. MNR,* [1970] Ex. C.R. 274 at 283 speculated on the purpose for government to implementing deductions for donations made by corporations as follows:

> Presumably, a time came in the evolution of income tax law when, the more sophisticated campaigns of charitable organizations having resulted in corporations being forced to make charitable contributions (not because they were as corporations capable of charitable motivation but because an atmosphere was created in which a failure to contribute would damage the corporate "image" so as to affect adversely the corporation's business operations), Parliament, for that reason, decided that corporations should have some sort of tax treatment for such contributions as individuals.

See also *Impenco Ltd. v. M.N.R.* (1988), 88 D.T.C. 1242 (T.C.C.).

- Better teamwork skills of employees and enhanced professional development of employees;
- Improved inter- and intra-company collaboration and communication and sense of purpose; and
- Boost staff morale.

Thirdly, businesses that make contributions to charities and have their name (or product or service) associated with charities they gave to tend to be perceived positively from their employees, customers and the public at large as a result of the charities' positive public image and their charitable endeavours. This has been referred to as the "halo effect" of corporate giving. The impact of the halo effect relies on the extent to which the corporations publicizing their philanthropic efforts. The more the publicity, the greater the halo effect.[14]

B. Gifts by Corporations and Annual Limits of Deductions

A corporation that makes a gift to a registered charity would be entitled to claim a tax deduction of the "eligible amount" of the gift made when computing its taxable income.[15] The provision for deduction for corporate donations dates back to 1930 when the government implemented a 10% deduction limit of donors' income.[16]

Pursuant to subsection 110.1(1), there are four different types of gifts that could be made by corporations.

[14] Knauer, *supra* note 4 at 58.

[15] Individuals who made donations to registered charities, however, may claim non-refundable tax credits pursuant to the rules set out in section 118.1 of the Act. In general, individuals are entitled to a tax credit of 16% on the first $200 of donation, and 29% of gifts over $200, up to 75% of net income, plus 25% of certain taxable capital gains, 25% of any capital cost recapture. The change from donation deduction to donation credit for individuals was enacted in 1988 as part of the overall move to a tax credit regime. *Income Tax Act*, S.C. 1988, c. 55, s. 78, enacted following the 18 June 1987 White Paper on tax reform. See David G. Duff, "Charitable Contributions and the Personal Income Tax: Evaluating the Canadian Credit," in *Between State and Market*: *Essays on Charities Law and Policy in Canada* (Montreal: McGill-Queen's University Press, 2001) 407-56 ["Duff 2001"].

[16] The 10% deduction limit was reduced to 5% in 1940 and increased back to 10% 1957, 20% 1972, 50% in 1996, and 75% for 1997 and subsequent taxation years. See Duff, "Charitable Contributions and the Personal Income Tax: Evaluating the Canadian Credit," *supra* note 15 and 408-09 and Duff 2004, *supra* note 7.

1. <u>Charitable gifts</u>

Pursuant to paragraph 110.1(1)(a) of the Act, a corporation may deduct the eligible amount of gifts made to qualified donees[17] in the year or in the preceding 5 years. This provision does not apply to gifts made to Her Majesty, gifts of cultural property and ecological gifts because they are dealt with under paragraphs 110.1(1)(b), (c) and (d).

In general, a corporation is entitled to a tax deduction from its taxable income, up to a maximum of 75% of its net income, plus 25% of certain taxable capital gains, and 25% of any capital cost recapture. Specifically, the maximum amount that could be deducted must not exceed the lesser of the corporation's income for the year and the total of the following:

- 75% of the corporation's income for the year computed without reference to subsection 137(2) [which deals with credit union deductions]; and
- 25% of the following three amounts:
  - Taxable capital gains realized by the corporation for the taxation year as a result of the disposition of gifts under paragraph 110.1(1)(a);
  - Taxable capital gains realized by the corporation because of subsection 40(1.01) [in relation to gifts of non-qualifying securities][18] in a preceding taxation year as a result of the disposition of a property;
  - Total of all amounts in respect of the corporation's depreciable property of a prescribed class and equal to the lesser of the following:
    (A) the recapture of capital cost allowance under subsection 13(1) in respect of a class of property when computing the income for the corporation for the year; and
    (B) in respect of each property in a class that is gifted pursuant to paragraph 110.1(1)(a) in the year, the lesser of the following:

[17] Subsection 149.1(1) of the Act provides that qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them under paragraphs 110.1(1)(a) and (b) and 118.1(1). They consist of registered charities, registered Canadian amateur athletic associations, certain low-cost housing corporations for the aged, municipalities, provincial and federal governments, the United Nations and its agencies, prescribed universities outside Canada, charities outside Canada to which the federal government has made a gift in the past year, and registered national arts service organizations. In February 2004, it was proposed to amend sections 110.1 and 118.1 of the Act by including municipal or public bodies performing a function of government in Canada. This proposed amendment has been brought forth and is now included in the proposed amendments released by Finance in July 2005.

[18] Subsection 40(1.01) allows a taxpayer to claim a reserve in respect of gains realized from gifting a non-qualifying security. Pursuant to section 110.1 and 118.1, a gift of non-qualifying security is not recognized as a gift until the security ceases to be non-qualifying security or is disposed of by the donee within 5 years of the original donation by the taxpayer.

(I) proceeds of disposition less expenses incurred for the disposition; and

(II) the capital cost to the corporation of the property disposed.

2. Gifts to Her Majesty

Pursuant to paragraph 110.1(1)(b) of the Act, a corporation is entitled to claim 100% deduction of the eligible amount of all gifts made to the Crown, i.e. Her Majesty in right of Canada or a province, [other than gifts of cultural property and ecological gifts dealt with under paragraphs 110.1(1)(c) and (d)], before February 19, 1997 or pursuant to a written agreement made before that date. This rule applies to gifts in the taxation year and gifts made in the preceding 5 preceding years. However, gifts to the Crown on or after February 19, 1997[19] would be considered to be charitable gifts made pursuant to paragraph 110.1(1)(a) and be subject to the limitations set out therein.

3. Gifts of Cultural Property Made to Certain Institutions

Pursuant to paragraph 110.1(1)(c) of the Act, a corporation is entitled to claim 100% deduction of the eligible amount of all gifts [other than ecological gifts pursuant to paragraph 110.1(1)(d)] of cultural property (i.e. an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*[20]) to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object. This rule applies to gifts in the taxation year and gifts made in the preceding 5 preceding years.

4. Ecological gifts

Pursuant to paragraph 110.1(1)(d), a corporation is entitled to claim 100% deduction of the eligible amount of gift of land (including a covenant or an easement to which land is subject or, in the Province of Quebec, a real servitude) if all of the following apply:

(i) the fair market value of the gift is certified by the Minister of the Environment;

[19] This change was introduced as part of the overall move to a tax credit regime in 1988. *Income Tax Act*, S.C. 1988, c. 55, s. 78, enacted following the 18 June 1987 White Paper on tax reform. See also D. Bruce Ball and Brenda R. Dietrich, "Rewards for the Generous: A Review of Recent Tax Changes for Charitable Donations" in "Personal Tax Planning," (1998), vol. 46, no. 2 *Canadian Tax Journal*, 415-441.

[20] R.S.C., 1985, c. C-51.

(ii) the land is certified by the Minister of the Environment or his/her designate to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or designate, important to the preservation of Canada's environmental heritage; and

(iii) the gift was made by the corporation in the taxation year or in the preceding 5 preceding years to any of the following (A) Her Majesty in right of Canada or of a province; (B) a municipality in Canada; (C) a municipal or public body performing a function of government in Canada,[21] or (D) a registered charity, one of its main purposes is the conservation and protection of Canada's environment heritage and that is approved by the Minister of the Environment or his/her designate in respect of the gift.

Subsection 110.1(5) of the Act provides that the fair market value of an ecological gift is deemed to be the amount determined by the Minister of the Environment. Where the gift is land, then the amount so determined by the Minister of the Environment is the fair market value of the land. Where the gift is (a) a covenant or an easement to which land is subject or (b) a real servitude in the Province of Quebec, then the amount so determined by that Minister shall be the greater of (i) the fair market value otherwise determined of the gift and (ii) the amount by which the fair market value of the land is reduced as a result of the making of the gift. Paragraph 110.1(5)(b) is proposed by the July 2005 amendment[22] to clarify that it applies to "real servitude" in the Province of Quebec.

5. Other Related Provision

Subsection 110.1(1.1) of the Act provides further limits on the deductions. Paragraph 110.1(1.1)(a) provides that amount of a gift is deductible only to the extent that it exceeds amounts in respect of the gift deducted under that subsection in computing the corporation's taxable income for preceding taxation years. Paragraph 110.1(1.1)(b) provides a first-in first-out

[21] Paragraph 110.1(1)(d) was proposed in February 2004 to permit ecological gifts to a municipal or public body performing a function of government in Canada to become deductible. This proposed amendment has been brought forth and is now included in the proposed amendments released by Finance in July 2005. The proposed amendment is applicable to gifts made after December 20, 2002. However, for gifts made after Mary 8, 2000 and before December 20, 2002, such a gift is also permitted by proposing to amend paragraph 110.1(1)(d)(i) to read "(i) Her Majesty in right of Canada or of a province, a municipality in Canada or a municipal or public body performing a function of government in Canada, or."

[22] *Infra* note 33 and 34.

ordering rule whereby no gifts could be deducted until amounts deductible for those gifts made in preceding taxation years have been deducted.[23]

Corporations may carry forward unused charitable donation deductions for up to five years. However, the Act does not permit corporations to sell or transfer these unused claims to other taxpayers. In order to ensure that an individual who could not otherwise use surplus charitable donation tax credits also cannot do so indirectly by means of a transfer of property to a corporation, paragraph 110.1(1.2)(a) provides that unused charitable donation deductions of a corporation are deductible only for taxation years that end before the time when control of the corporation is acquired by a person or a group of persons. This will ensure that unused charitable donation deductions cannot be traded by having unused charitable donation deductions of a corporation treated in a manner that is similar to the treatment accorded to capital losses. Paragraph 110.1(1.2)(b) goes on to deny an unused charitable donation deduction in respect of a gift made by any corporation before the control of the corporation is acquired by a person or a group of persons, if the property that is the subject of the gift was acquired by the corporation (before the making of the gift) under an arrangement under which it was expected that control of the corporation would be so acquired and a gift would be so made. This rule does not apply where the person or group of person who acquires control of the corporation is a qualified donee that received the gift in question. This rule applies in respect of gifts made after March 22, 2004.[24]

When claiming a charitable deduction, subsection 110.1(2) provides that it must be proven by filing with the Minister a receipt indicating the eligible amount of the gift issued in accordance with the requirements of Regulations 3501 and 3502, the applicable required certificate for gift of cultural property, and the applicable required certificates for ecological gifts.[25]

Subsection 110.1(4) provides that where a corporation is a member of a partnership at the end of a fiscal period of the partnership, then the eligible amount of a gift made by the partnership would be deemed to be an eligible amount of the corporation according to the

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[23] Section 110.1(1.1) was introduced by the 1997 federal budget. This first-in, first-out assumption reflects CRA's previous assessing policy and is favourable to taxpayers since it allows the largest carry forward of unused donation.
[24] Subsection 110.1(1.2) was introduced by the 2004 federal budget and was enacted on May 13, 2005 as the *Budget Implementation Act, 2004, No. 2*, R.S.C., 2005, c. 19.
[25] See also Canada Revenue Agency, *Interpretation Bulletin* IT-110R3, "Gifts and Official Donation Receipts," June 20, 1997.

corporation's share in the partnership. Subparagraph 53(2)(c)(iii) provides that an eligible amount of a gift deemed under subsection 110.1(4) to be a gift made by the corporate partner would be deducted from the corporate partner's adjusted cost base of its partnership interest. Where the adjusted cost based is reduced to below zero, the corporate partner would realize a capital gain pursuant to subsection 40(3).

6. Rationale for Deductibility of Donations

A critical review of the justification of the deductibility or tax treatment of charitable donations is outside the scope of this paper.[26] In brief, it has been pointed out that the possible justifications for the donation support include:

> (1) A deduction/credit is required as a proper or equitable measure of the income tax base because (a) giving to charity is a moral obligation; (b) the income due to the donation should be taxed, if at all, in the hands of the ultimate recipient; and/or (c) the availability of the deduction maintains tax equity between donors of income on the one hand and donors of services and capital on the other.
> (2) Charities are generally useful and ought to be rewarded or encouraged by making a deduction/credit available to people who support them.
> (3) Tax-supported charity promotes pluralism in the production of public goods and therefore a deduction/credit ought to be available to people who support them."[27]

Regardless of what the justification for the tax relief is, tax relief *lowers* the costs of charitable giving to taxpayers, while the government provides a matching program to charities in an amount equal to the tax foregone by the government from the donation made by taxpayers.[28]

C. Gift and Split-Receipting

The Act does not contain a definition of "gift." Courts therefore apply the common law or civil law definition of the term. A gift at common law requires three elements, namely an intention to donate, acceptance of the gift and a sufficient act of delivery.[29] The court in *Friedberg v. The Queen* defined a gift to be "a voluntary transfer of property owned by a donor to

[26] For example, see Duff 2004, *supra* note 7; Duff 2001, *supra* note 15 at 407-56; Neil Brooks, "The Tax Credit for Charitable Contributions: Giving Credit Where None Is Due," in, Jim Phillips, Bruce Chapman, and David Stevens, eds. (Montreal: McGill-Queen's University Press, 2001) at 457-81.

[27] David P. Stevens, "Update on Charity Taxation," in *Report of Proceedings of Fifty-Third Tax Conference*, 2001 Tax Conference (Toronto: Canadian Tax Foundation, 2002), 28:1-41, summarizing arguments reviewed by Duff 2001, *supra* note 12.

[28] Daniel Sandler and Tim Edgar, "The Tax Expenditure Program for Charitable Giving: Kicking a Gift Horse in the Teeth" (2003), vol. 51, no. 6 *Canadian Tax Journal*, 2193-2214, at 2194.

[29] Timothy G. Youdan, "Charitable Gifts and Pledges: Some General Comments," paper presented at the Seventh Annual Estates and Trusts Law Summit, Law Society of Upper Canada, December 1 and 2, 2004.

a donee, in return for which no benefit or consideration flows to the donor."[30] This definition is adopted by Canada Revenue Agency ("CRA").[31]

Recent proposed amendments to the Act would allow a donor to receive a donation tax receipt even in situations where the donor or someone else receives a limited advantage as a result of the gift provided that the value of the property donated by the donor exceeds the amount of advantage received by the donor.[32] This is referred to as "split-receipting." The split-receipting rules were part of a package of proposed amendments to the Act first introduced by Finance on December 20, 2002. These amendments have since undergone various incarnations on December 5, 2003 and February 27, 2004, with the latest consolidation and amendment of the proposed regime coming with legislative amendments proposed by Finance on July 18, 2005.[33] These changes have not yet been enacted into law.

This paper is not intended to review and comment on the detailed proposed rules.[34] However, the following is a brief summary of the applicable rules.

- The gift must be donated voluntarily by the donor.
- The value shown on the donation receipt would need to reflect the difference between the fair market value of the gift and the amount of the advantage. This receipted amount to be shown on the receipt is now known as the "eligible amount" of the gift. As such, in order to ascertain the value of the eligible amount of the gift, not only is the charity required to determine the fair market value of the property, the charity is also required to determine the amount of any advantage provided to the donor by, where appropriate, obtaining a qualified independent valuation of the advantage.

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[30] 89 DTC 5115; [1989] 1 CTC 274 (FCTD), var'd. 92 DTC 6031 at 6032; [1992] 1 CTC 1 (FCA).

[31] Canada Revenue Agency, *Interpretation Bulletin* IT-110R3, "Gifts and Official Donation Receipts," June 20, 1997. It defines a "gift" to be a voluntary transfer of property without valuable consideration. Generally a gift is made if all three of the conditions listed below are satisfied: (a) some property—usually cash—is transferred by a donor to a registered charity; (b) the transfer is voluntary; and (c) the transfer is made without expectation of return. No benefit of any kind may be provided to the donor or to anyone designated by the donor, except where the benefit is of nominal value.

[32] Proposed subsections 248(30) to (33) of the Act.

[33] Canada, Department of Finance, *Legislative Proposals Relating to Income Tax*, July 18, 2005.

[34] For an explanation, see Theresa L.M. Man, "Tax Shelters and Charitable Donations – a Miss-Match" July 4, 2006 (online: www.charitylaw.ca);.Theresa L.M. Man, "July 18, 2005 Draft Amendments to the Income Tax Act Affecting Charities: Part I – Definition of Gift & Split-Receipting," *Charity Law Bulletin* No. 76, September 8, 2005; and M.E. Hoffstein, Theresa L. M. Man and Laura E. West, "When is an Advantage Not an Advantage—Issues Arising from the Proposed Split Receipting Regime," paper presented to the Canadian Bar Association/Ontario Bar Association 4th National Symposium on Charity Law, May 11, 2006 (online: www.charitylaw.ca).

- The "amount of advantage" is very broadly defined, and includes the value of any "property, service, compensation or other benefit" that (1) the donor, (2) another person who does not deal at arm's length with the donor, or (3) another person who does not deal at arm's length with the donor and holds, directly or indirectly, an interest in the donor has received or is entitled to receive (either immediately or in the future) that is (i) in consideration of, (ii) in gratitude of, or (iii) in "any other way related to the gift."
- The donor must have a clear intention to donate the property to the charity.
- If the amount of the advantage does not exceed 80% of the fair market value of the donated property, then the fact that the donor obtained an advantage from the donee charity will not necessarily disqualify the transfer from being qualified as a gift. If, however, the amount of an advantage exceeds 80% of the fair market value of the transferred property, then the donor will have the onus to prove to CRA that the donor has the intention to donate the property.

Given these proposed changes to the Act, CRA released *Income Tax Technical News* No. 26 on December 24, 2002[35] that sets out a list of guidelines on split-receipting and explains how to determine the eligible amount in situations where the donor received a benefit. Where the amount of complementary advantage received by the donor are of insignificant value, CRA is prepared to accept an administrative *de minimis* threshold for the value of the benefit that is equal to the lesser of 10% of the value of the donated property and $75. In such circumstances, the amount of the advantage would be ignored and the eligible amount of the gift would be equal to the fair market value of the property, without the need to deduct the amount of the advantage. However, this *de minimis* threshold would not apply to cash or near cash advantages, such as redeemable gift certificates, vouchers, coupons. Where the amount of the advantage is unascertainable, then no donation tax receipt could be issued.

Although these proposed changes have not been enacted, the British Columbia Supreme Court in *Richert v. Stewards' Charitable Foundation*[36] upheld compliance with CRA's requirements under *Income Tax Technical News* No. 26, in spite of the fact that the split-

[35] Canada Revenue Agency, *Income Tax Technical News No. 26,* December 24, 2002. The *Technical News 26* also explains how to deal with a number of common situations, such as fundraising dinners, charity auctions, lotteries, concerts, golf tournaments, membership fees, and mortgage properties, etc. See also Theresa L.M. Man and Terrance S. Carter, "New CCRA Guidelines on Split-Receipting," *Charity Law Bulletin* No. 23, July 31, 2003 (online: www.charitylaw.ca).

[36] [2005] B.C.J. No. 279. See Suzanne E. White and Terrance S. Carter, "B.C. Court Upholds CRA Guidelines on Split-Receipting," *Charity Law Bulletin* No. 68, April 7, 2005 (online: www.charitylaw.ca).

receipting rules have yet to be enacted as law. The appeal to the British Columbia Court of Appeal in January 2006 was dismissed.[37] In this regard, CRA's *Registered Charities Newsletter* No. 17 specifically indicates that the proposed guidelines in *Income Tax Technical News* No. 26 "can be relied on now, despite the fact that the proposed legislation is not yet law."[38]

D. Types of Contributions by Corporations

Corporate giving may involve different forms of support, e.g. contributing cash; contributing in-kind gifts; assisting a charity by using a corporation's expertise knowledge, such as information technology; making available premises of the corporation for meetings, conferences or other activities of the charity; providing the corporation's products at no or reduced costs to a charity; providing free services for a charitable event, such as catering or printing services; offering paid time off to employees who volunteer for services for a charity; providing in-store signage for a charity to advertise its events or raise aware of its causes; etc.[39]

The various forms of corporate giving could be grouped into a number of categories when reviewing how they impact the taxation of the corporate donor. This section of the paper reviews the tax treatment of some of the more common forms of corporate giving.

1. Corporate Sponsorship vs. Gifts

a) Meaning of "sponsorship

This is not a defined term in the Act. CRA takes the view that "sponsorship fees" are "not gifts because the sponsor receives something in exchange" and "they are usually paid to support a charity event in return for advertising or some other consideration."[40] As pointed out in an employee speech by a senior official of CRA,[41] the word "sponsorship" is poorly defined and it could take on different meanings.[42] CRA pointed out that there is some confusion as to the proper use of the term, and some question on the part of recipient charities as to whether they should be issuing receipts or not, in light of the proposed arrangement between them and the sponsor. CRA pointed out that the Concise Oxford Dictionary gives several definitions of

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[37] 2006 BCCA 9.
[38] Canada Revenue Agency, *Registered Charities Newsletter* No. 17, winter 2004.
[39] Humphreys, *supra* note 12 at 24; and McClintock, *supra* note 1.
[40] Canada Revenue Agency, *Summary Policy* CSP-S13, "Sponsorship," September 3, 2003.
[41] Canada Revenue Agency, *Employee Speech* CES-012, "CCRA Update," October 3, 2000.
[42] *Ibid* at para. 51.

"sponsorship," notably, "a sponsor is one who makes himself responsible for another, or a person who subscribes to a charity in return for a specified activity by another (e.g., walk-a-thons)" or "an advertiser who pays for a programme into which advertisements of his wares are introduced."[43]

b) Tax difference between a gift and a sponsorship

The tax difference between a gift and a sponsorship is as follows:[44]

First, the corporation can obtain a donation receipt for having made a gift pursuant to subsection 110.1(1) and claim a tax deduction against its income. In this regard, other than gifts of cultural property or ecological gifts, the deduction is limited up to a maximum of 75% of net income, plus 25% of certain taxable capital gains, and 25% of any capital cost recapture. The deduction of sponsorship fees as business expenses under section 18 of the Act is not so limited, provided that the deduction is made in respect of an outlay or expense that was reasonable in the circumstance required under section 67 of the Act. The deducibility of such an expense is reviewed in the next section of this paper.

Second, a charitable tax deduction can be carried forward for a period of five years, while a sponsorship fees must usually be deducted within the fiscal year in which it was made.

c) Deductibility of business expenses

The marketing, advertising or promotion expenses to be deducted by a business under section 18 of the Act must meet six tests, namely it must be of an income nature and not a capital expenditure, be reasonable in amount, be incurred for the purpose of earning income, not be a personal expenditure, not be expressly prohibited by the Act, and not constitute "abusive tax avoidance."[45]

Section 67 of the Act provides that in computing the income of a business, only expenses reasonable in the circumstances can be deducted. The courts have held that the governing principle for applying section 67 is that "it is not a question of the Minister or this Court

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[43] *Ibid* at para. 52.

[44] It is interesting to note that in the U.S., due to the argument of the halo effect referred to Ms. Knauer in her article, she argues that corporate giving is more properly characterized as a purchase of goodwill that is deductible by the corporation as ordinary business expense, with the registered charities recognizing the contributions as unrelated business income. See Knauer, *supra* note 4 at 41-43

[45] Vern Krishna, *The Fundamentals of Canadian Income Tax,* 9th ed. (Toronto: Thomson Carswell, 2006) at 322 and *Royal Trust Co. v. M.N.R.* (1956) C.T.C. 32 at 42, 57 D.T.C. 1055 (Ex. Ct.)

substituting its judgment for what is a reasonable amount to pay, but rather … coming to the conclusion that no reasonable business man would have contracted to pay such an amount."[46] What is reasonable is a question of fact, by comparing the expense in question with amounts paid in similar circumstances in comparable businesses.[47]

Therefore, what would be necessary is for the business to determine the marketing, advertising, promotion expense in question and determine whether the business would be paying the same amount for similar marketing, advertising, promotion arrangements in the business world. For example, if the business received recognition as a donor in the charity's monthly newsletters that is widely distributed in appreciation of a contribution made by the business, then the business may need to determine what a similar advertisement in a publication with similar circulation would cost.

It might be difficult to find appropriate comparables, especially when some benefits associated with the contribution may not be quantifiable and may not available if the business were to place an advertisement itself in the commercial market, such as those benefits reviewed on page 3 above. For example, the business's public image might be increased by being associated with having made a donation to the charity and being publicized to the public, and therefore it might justify the business's willingness to pay more to the charity to obtain that exposure rather than to pay for an advertisement in a publication itself.

In relation to the purpose test for the ability of the business to deduct the sponsorship fees as a marketing, advertising or promotion expense, it must be incurred for the purpose of earning income. There is no requirement that income must be earned after having incurred the expenditure.[48] For example, "if a taxpayer incurs advertising expenses for the purpose of promoting sales, failure of the advertising program to stimulate sales doe not disqualify the expenditure as a deductible expense.[49]

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[46] *Gabco Ltd.* [1968] C.T.C. 313 (Ex. Ct.), approved in *Petro-Canada*, [2004] 3 C.T.C. 156 (FCA) (leave to appeal denied 2004 CarswellNat 4108 (SCC)).
[47] Vern, *supra* note 45 at 334.
[48] Vern, *supra* note 45 at 336.
[49] *Ibid*. See also *Royal Trust*, *supra* note 45.

d) Three options

CRA noted that "advertising or publicity on the one hand, and the concept of a gift or a donation on the other, are mutually exclusive concepts at law."[50] CRA further pointed out as follows as to what sponsorship means:[51]

> It is at least clear that a true sponsorship, like other quid pro quo arrangements, involves a benefit of some kind accruing to the sponsor. In the usual case it is publicity, which a sponsor is already entitled to claim as a deduction in the calculation of taxable income, and which it should not be claiming as a second deduction as a charitable donation. Sponsorships in this context are not gifts, nor should they give rise to a tax receipt.

At that time CRA took the view that "even if it could be argued that a component of a larger business arrangement between a charity and a sponsor was in fact a gift, it would not be acceptable to the extent that its execution is tied to the larger arrangement" and that "if a sponsor does decide to make a gift "on the side," it should not be tied in any way to the sponsorship."[52] In this regard, CRA made reference to *Olympia Floor and Wall Tile Co. v. M.N.R.*[53] In that case, a corporation gave a substantial amount to a charity, well above its donation limit. It claimed the full payment as a donation, up to the acceptable limit, and claimed the excess as an advertising expense. The Tax Court disallowed the portion of the deduction related to advertising, saying that one could not on the one hand claim that a payment was a donation, and then claim that it also had a publicity value for the company.[54]

However, with the proposed split-receipting rules, it would now be possible for a corporation to have part of its contribution recognized as a gift, with the remaining balance as a sponsorship; provided it could support that part of the contribution was a gift and the balance was a legitimate business expense. During a recent conversation between the author of this paper and a senior policy official of CRA, CRA confirmed that this is the current position of CRA. Therefore a contribution by a corporation could be 100% charitable donation, 100% sponsorship, or partly gift and partly sponsorship.[55]

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[50] *Ibid* at para. 55.
[51] *Ibid*, at para. 57.
[52] *Ibid*, at para. 57.
[53] 21 D.T.C. 358 (TCC).
[54] Canada Revenue Agency, *Employee Speech* CES-012, supra note 41 at para. 55.
[55] See page 17ff for a more detailed explanation of the application of these three options.

e) CRA new policy on sponsorship

CRA is currently developing a policy on whether a particular contribution is a sponsorship or donation in order to assist charities and CRA is seeking input from the sector in this regard.[56] CRA indicates that at this time they are reviewing these situations on a case-by-case basis at this time. Specifically, CRA indicates that:[57]

> The Charities Directorate has received many questions about situations where a donor receives advantages (promotion, advertising) as a result of making a donation. Does such an advantage negate the gift entirely? If there is an advantage, should the rules of split-receipting apply so that only part of the donation may be considered a gift? Or can the entire amount be receipted? These questions apply principally to business donors as well as to some individual donors who are synonymous with a business.

In addition, CRA has indicated that would like charities "to have a better understanding of when an advantage will *reduce* the eligible amount of a gift" and that the factors that charities need to consider would include the following:

- Purpose – Is one of the purposes of the donation to obtain recognition?
- Source – Is the donation from an individual or a business?
- Contracting – Is there a contract? Does the contract indicate that the donor expresses and receives an economic benefit in return for the donation?
- Valuation – Can the value of the exposure (promotion, advertising, sponsorship) be determined? How much is the equivalent exposure worth?
- Token recognition or not – Is there any naming recognition given to the donor?[58]

f) Cash and/or in-kind property

Corporate sponsorship may consist entirely of cash contribution, contribution of in-kind gifts, or a combination of the two. The balance of this section of the paper deals with the treatment of different forms of assets that could be contributed by corporations to charities. Within each type of property, the same analysis of whether the property contributed is 100% charitable gift, 100% sponsorship or part donation and part sponsorship would need to be made.

2. Cash Contribution

When a cash gift is made by a corporation to a charity, in determining whether a donation receipt could be issued, it becomes necessary to determine whether the corporation received any

[56] Canada Revenue Agency, *Registered Charities Newsletter* No. 22, March 2005.
[57] *Ibid*.
[58] See page 18ff below for more details regarding whether a naming right or a naming recognition is an advantage.

advantage that is in respect of the gift. Such a determination becomes necessary in order to comply with the proposed split-receipting rules. Where a corporate donor received an advantage from the charity, then the amount of the advantage would need to be deducted from the value of the contribution made when issuing the receipt in accordance with the split-receipting rules.

There are three possible scenarios that may arise in this regard. The same analysis would apply to other forms of property contributed by corporations.

a) Scenario 1 - No or very little advantage received – fully receipted

At one end of the spectrum, it would involve a situation where a cash contribution is made by a corporation, and the corporation received no benefit in return for having made the gift. As a variation of this situation, it is also possible that the corporate donor received some advantage which is *not material* in nature and the amount of the advantage received is below CRA's *de minimis* threshold of the lesser of $75 or 10% of the value of the donated property. In that case, the full amount of the contribution made could be receipted and the corporation would be entitled to claim a tax deduction with that donation receipt.

An example of an advantage would be the charity that received the gift providing with corporate donor with a small appreciation gift, or a one-line acknowledgement of the gift in its annual report.

b) Scenario 2 - Material advantage received – no receipt

At the other end of the spectrum, it would involve a situation where a corporation makes a contribution to a registered charity and the corporation received an advantage that is *so material* in nature that the advantage received could be attributable to the entire cash contribution made. If so, the corporation would not be entitled to a donation receipt for the contribution made, but it would be entitled to write off the contribution made by claiming a business expense. For example, the name of the corporation is shown on all promotional brochure of the charity, its logo appears on the website of the charity, one of the charity's feature events of the year is named after the corporate donor, etc., then the corporation might be able to claim the contribution made as an advertising, marketing or promotion expense.

As a variation, it may involve a situation where the advantage received by the corporation exceeds 80% o the contribution made but the corporation was not able to prove to CRA that it has the intention to donate the property to rebut the statutory presumption of lack of intent to give.[59] In such a situation, the corporation would not be entitled to receive a donation from the charity, but the corporation would be able to deduct the portion of the contribution made that reflects the value of the advantage received.

c) Scenario 3 – Some advantage received – split-receipt

Where a corporation receives *some* benefits that is above the *de minimis* threshold as a result of having made a gift to a registered charity but the amount of contribution made does not reflect the fair market value of the benefits received, then the corporation would need to assess the amount of the advantage received and issue a split-receipt to the corporate donor, with the eligible amount of the receipt to reflect the donation portion of the contribution. It would also appear that the corporation would be entitled to deduct the non-receipted portion of the contribution as a business expense.

d) Other implications

As indicated above, the "amount of advantage" is very broadly defined, and includes the value of any "property, service, compensation or other benefit" that (1) the donor, (2) another person who does not deal at arm's length with the donor, or (3) another person who does not deal at arm's length with the donor and holds, directly or indirectly, an interest in the donor has received or is entitled to receive (either immediately or in the future) that is (i) in consideration of, (ii) in gratitude of, or (iii) in "any other way related to the gift."

CRA takes the view that where the amount of the advantage is unascertainable, then no donation tax receipt could be issued.[60] Therefore, it is important to be able to ascertain eth amount of the advantage for the purpose of the split-receipting and for the purpose of evidencing the deduction of a business expense, where applicable.

Whether or not a particular contribution is within any one of these three options would generally not have any significant impact on the corporation from a tax perspective. A corporation is entitled to deduct 100% of a sponsorship fee paid by the corporation against income of the corporation as a marketing expense. The corporation is also entitled to deduct

[59] As explained above, in order for a receipt to be issued at all, the advantage obtained by the corporation must not exceed 80% of the fair market value of the donated property. If, however, the amount of an advantage exceeds 80% of the fair market value of the transferred property, then the donor will have the onus to prove to CRA that the donor has the intention to donate the property.

[60] CRA, *Income Tax Technical News* No. 26, *supra* note 35.

100% of a charitable donation made against its income. Where a split-receipt is received, the corporation can deduct both the charitable donation portion. It can also deduct the non- receipted portion of the contribution as a marketing expense against its income.

Since the tax treatment of whether a contribution is sponsorship, donation, or part sponsorship and part donation would depend on the amount of the advantage received by the corporation, it is not clear whether the charity and the corporation could agree to re-allocate the donation/sponsorship split in case if the deductions claimed by the corporation is challenged by CRA.

Examples of advantage may involve recognition of the corporation in the charity's publications, donor appreciation dinners, donor appreciation plaque, etc. A detailed analysis of what would constitute an advantage and how an advantage may be valuated is outside the scope of this paper.[61] However, an interesting issue at this point is whether naming rights will constitute an advantage for the purposes of the spilt-receipting regime - that is, whether the nexus between the naming right and the gift will be such to constitute a calculable advantage for the purposes of the Act. A naming right arises when a charitable donation is made in exchange for the right to name a program or piece of property belonging to the charity, such as the "Jane Doe Centre for Children's Health."

CRA does not have a policy regarding naming rights at this time. *Registered Charities Newsletter* No. 22[62] indicates that CRA is in process of developing such a policy. In that *Newsletter*, CRA indicates that the following questions are to be asked when determining whether a naming right constitutes an advantage:

- Is simply being named as a donor necessarily a benefit (e.g. newsletters, plaques, cards)?
- If the recognition takes place in a newsletter or similar publication, is the publication available to members only, or is it distributed externally?
- Does making donor recognition cards available constitute a benefit?
- Does it make a difference if a donor company's logo, rather than just its name, is used?
- Even where there is a benefit, does it have value?

[61] For a detailed analysis, please refer to Hoffstein, Man and West, *supra* note 34.
[62] Canada Revenue Agency, *Registered Charities Newsletter* No. 22, March 2005.

A number of advance tax rulings issued by CRA have provided that naming rights do not constitute an advantage for the purposes of the Act.[63] For example, in Advance Ruling 2005-0110701R3, the facts were as follows. Corporation A proposed to make a charitable donation. Corporation B, which held all of the shares of corporation A, also proposed to make a charitable donation. The charity agreed to name the funded programs after the individual who was the shareholder of Corporation B. In this circumstance, it was held that provided that there was no economic benefit associated with the naming rights, the amount of the advantage would be nil.

CRA, in another very similar earlier ruling, stated their position regarding naming rights as follows:

> Provided that there is no prospective economic benefit associated with the naming rights described in the Agreement, it is our opinion that the amount of the advantage of such naming rights would be nil for the purpose of subsection 248(31) [now 248(32)] of the draft legislation released by the Minister of Finance.[64]

Although the conclusion reached by CRA in regard to this issue appears fairly clear, the statement that there is no advantage so long as the naming right presents no "prospective economic benefit" for the donee raises some interesting questions. The conclusion reached by CRA would appear to be clear in most circumstances - i.e. if a corporation wishes to make a donation in exchange for the promotion of its business name, an economic benefit will result, whereas, conversely, if a private individual wishes to make a donation in exchange for the use of a family name, no economic benefit will result. In this regard, *Registered Charities Newsletter* No. 22 states as follows:[65]

> Generally, individuals will not benefit financially from name recognition, and the recognition, to the extent it constitutes a benefit, will have a nil value. However, there may be some rare exceptions. For example, if the donor's name is indelibly associated with a company or product with which the donor is concerned, does the use of the donor's name constitute a valuable benefit to the donor?

But what is not clear is, for example, where a donor's family name is also the name of the business, and the donor's wish to acquire a sizeable charitable donation a personal family naming right indirectly produces a benefit for the business of the same name. These issues and the

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[63] See for example CRA document numbers 2005-0110701R3, dated March 16, 2005; 2005-0130381R3, dated July 13, 2005; and 2003-0043013, dated December 10, 2003.
[64] *Ibid,* see docuemtn number 2003-0043013, dated December 10, 2003.
[65] Canada Revenue Agency, *Registered Charities Newsletter* No. 22, March 2005.

questions they raise, although fairly specific, remain outstanding and no doubt will be addressed at some point in the future by CRA or the courts when the split-receipting regime is fully operational.

3. In-Kind Property

Other than cash, corporations may contribute gifts in kind to charities. Gifts in kind include capital property, depreciable property, personal-use property including listed personal property, a leasehold interest, a residual interest, a right of any kind, a license, a share, a chose in action and inventory of a business. However, it does not include a gift of services, because it is not property.[66] Special rules apply to some types of gifts in kind, such as gifts of life insurance policies, gifts of capital property, gifts of Canadian cultural property, and gifts made by artists, dealer or collector.[67] Different rules also apply when a business donates its inventory.[68] Gifts in kind in general are deal with in CRA's *Interpretation Bulletin* IT-297R2, "Gifts in Kind to Charity and Others."[69]

a) Tax treatment in general

When a property is donated to a charity by a corporation, it is deemed to have disposed of it at fair market value pursuant to subparagraph 69(1)((b)(ii) and the corporation will need to include the value as income of the corporation under section 9 of the Act, or capital gain or capital loss under section 39, and recapture of capital cost allowance under section 13 if the property was depreciable property. The fair market value of the property is also relevant for calculating the tax deduction that the corporation is entitled to claim for having made the gift.

In situations where property was transferred to a charity in consideration of "a right, privilege, material benefit or advantage such as promotion or advertising" for the corporation, then the transfer would not be a gift, but would be deducted as a business expense as reviewed above.

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[66] See page 27ff below.
[67] See Canada Revenue Agency's publications:
IT-244 - Gifts of Life Insurance Policies as Charitable Donations
IT-288 - Gifts of Capital Property to a Charity and Others
IT-407 - Disposition of Canadian Cultural Property
IT-504 - Visual Artists and Writers
[68] Canada Revenue Agency, *Policy Commentary* CPC-018, "Official donation receipts – whether gifts out of inventory qualify as charitable donations," March 29, 2000.
[69] Canada Revenue Agency, *Interpretation Bulletin* IT-297R2, "Gifts in Kind to Charity and Others," March 21, 1990; Guide "Gifts and Income Tax" P113(E) Rev. 05; Registered Charities Newsletter No. 18.

Subsections 110.1(2.1) and (3) contain specific rules that apply to gifts of capital property by corporations to charities. Subsection 110.1(2.1) was proposed to be inserted as part of the July 2005 amendments, which also proposed to amend subsection 110.1(3). Similar rules apply to individuals under subsections 118.1(5.4) and (6). Subsection 110.1(2.1) sets out the circumstance in which subsection 110.1(3) would apply, i.e. in situations where a gift of capital property is made under paragraphs 110.1(1)(a), (b) or (d) and where a gift of depreciable property is made where the actual value of the gifted property is between the undepreciated capital cost of that class at the end of the taxation year of the corporation and the fair market value of the gifted property. Pursuant to subsection 110.1(3), in general, a corporation may designate any value between the fair market value of the gifted property and its adjusted cost base to be treated both as the proceeds of disposition of the property and the fair market value of the gift for purposes of the newly proposed subsection 248(31), rather than for purposes of subsection 110.1(1). For depreciable capital property, the corporation may reduce the amount of recaptured depreciation that might otherwise be calculated in respect of a gift of depreciable capital property, with a corresponding reduction to the eligible amount of the gift deductible under subsection 110.1(1) for the gift. The designated amount must not be less than the fair market value of the property otherwise determined, and must not be less than the greater of (a) the amount of the advantage in respect of the gift and (b) the adjusted cost base or, for a depreciable property, the undepreciated capital cost of the class of the property at the end of the corporation's taxation year.

Special rules also apply to gifts of non-qualifying securities made by corporations to registered charities and loan back arrangements. In this regard, subsection 110.1(6) provides that rules regarding gifts of non-qualifying securities and loan back arrangements contained in subsections 1181.1(13), (14), and (16) to (20) for individuals would apply to corporations. Gifts of non-qualifying securities include a debt, share or a right to acquire a share held by a charity that is issued by persons not dealing at arm's length with that charity. In general, such gifts are denied tax deduction unless if the gift ceases to be a non-qualifying security or is disposed of within 5 years of the gift. When that occurs, a gift would then be treated to have been made and tax deduction allow. Special rules also apply to situations involving loan back arrangements, whereby a donor donated property to a non-arm's length charity and is granted a loan in return, or is permitted to use the loaned property. Subsection 110.1(7) provides that if a corporation is deemed by subsection 118.1(13) in relation to non-qualifying securities to have made a gift after the corporation ceased to exist, then for the purpose of section 110.1, the corporation is deemed to have made the gift in its last taxation year, except that the amount of interest payable under the Act is the amount that it would be if this subsection did not apply to the gift. A detailed review of the rules that govern these types of gifts is outside the scope of this paper.

b) Fair market value

The receipt issued by a charity that received a gift in kind from the corporation must reflect the fair market value of the gift received. The courts have defined fair market value as being the highest price obtainable in an open and unrestricted market between a willing buyer and a willing seller who are knowledgeable, informed and prudent, who are acting independent of each other, acting at arm's length, under no compulsion to act, expressed in terms of money, or money's worth.[70] The fair market value of the gift is usually determined by obtaining an appraisal of the value of the gift by a qualified appraiser.

It is also note that property of little or only nominal value to the donor, e.g. used clothing, will not qualify as a gift in kind.[71] As well, the fair market value of donated goods is the appraised value of the goods at the time that the donation is made, not the actual amount for which the goods would ultimately be re-sold at a retail outlet.[72]

c) Appraisals

If the value of the property donated is anticipated to have a fair market value greater than $1,000, CRA recommends that it is advisable to have an independent appraiser or valuator determine the fair market value of the items donated.[73] In this case, whether the property is personal property, real property, or intangible property, donors and charities would need to contact a professional appraiser, valuator, or other individual who is accredited in the field of valuation. The appraiser should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession. The appraiser should be knowledgeable about and active in the marketplace for the specific property and about the elements of a properly prepared and credible valuation report. Also, the appraiser should be independent and not be

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[70] Canada Revenue Agency, *Summary Policy* CSP-F02, "Fair Market Value," October 25, 2002.
[71] Canada Revenue Agency, *Interpretation Bulletin* IT-297R2, supra note 69 at para. 6.
[72] Canada Revenue Agency, *Information Letter* CIL-1999-021, October 29, 1999.
[73] Canada Revenue Agency, *Registered Charities Newsletter* No. 18, April 2004.

associated with the donor, the charity, or another party associated with the purchase, sale, or donation of the property.

However, CRA considers it reasonable for a qualified employee of the charity accepting the gift to appraise if the gift the fair market value is anticipated to be $1,000 or less, if there is difficulty finding an independent appraiser, or this would involve unreasonable expense. If the circumstances are very unusual, CRA also considers it permissible for that employee to appraise the donation if the fair market value is just over $1,000. However, this option would not be available if the charity does not have any employee that is qualified in this regard.

d) Deemed fair market value

Special new rules have been proposed as part of the July 2005 amendments that would require the value of the gift to be "deemed" to be an amount that is less than the appraised fair market value under certain situations. Although these new rules have not been enacted by Parliament, they would apply retroactively once the proposed changes are passed into law. As such, charities are required to comply with these rules at this time. Below are a few examples of some of these new rules:[74]

- Where (1) donated property was acquired by the donor through a tax shelter arrangement regardless of when it was acquired, or (2) donated property was acquired by the donor less than 3 years before making the gift, the value of the donated property would be "deemed" to be the lesser of (i) the fair market value otherwise determined (e.g. by an appraisal) and (ii) the cost of the property to the donor immediately before making the gift (the "deeming provision").
- Where donated property was acquired less than 10 years before making the gift, and where it is "reasonable to conclude" that one of the main reasons for acquiring the property was to make a gift to a qualified donee, the deeming provision also applies.
- The acquisition of a donated property by a person or a partnership dealing non arm's length with the donor within the said 3-year or 10-year hold periods would also impact how the fair market value of the donated property is determined.

[74] See Theresa L.M. Man and Terrance S. Carter, *Charity Law Bulletin* No. 80, "Quick List Of New Tax Rules For Charities", November 7, 2005, and Theresa L.M. Man, *Charity Law Bulletin* Nos. 76 and 77, "July 18, 2005 Draft Amendments to the *Income Tax Act* Affecting Charities: Part I – Definition of Gift & Split-Receipting and Part II – Other Changes," dated September 8, 2005, all available at www.charitylaw.ca for further details.

- Complicated new rules have also been proposed to curtail tax shelter schemes that may result in reduction of the eligible amount on charitable receipts for gifts in kind.
- Generally, gifts of inventory, publicly traded securities, certified cultural property, ecological gifts, or real property situated in Canada are exceptions to the deeming provision.

e) Split-receipting and advantage

The proposed rules on split-receipting would also need to be complied with when issuing receipts for gifts in kind, notwithstanding that these rules have not been enacted by Parliament.[75]

f) Date of donation

The donation date is the date that the gift is made. The donation date may not necessarily be the date of physical delivery, since a property may be on loan to a charity before it is actually donated to the charity. The value of the gift shall be valuated on the date of donation.[76]

4. <u>Inventory</u>

Special rules apply to donation of inventory by businesses.[77] CRA's policy indicates that when the charity received inventory from a business, its responsibilities are to determine that it has in fact received a gift and to determine the value of the gift.[78]

In relation to the first question of whether the charity received a gift, it would be necessary to determine whether the business received any benefit in return.

- If the business has "sold" the inventory to the charity, then it would record it as a sale transition by recording an income inclusion and deduct the cost of acquiring or producing the inventory.
- If the business transfers the inventory to the charity at no charge but obtains a *material* benefit from the transaction, such as promotion or advertising, then no gift has been made and the charity cannot issue a donation receipt to the business. Instead, the business may write off the cost of the inventory by claiming a business expense for advertising, marketing or promotion purposes as reviewed on page 15and 17 above.

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[75] *Ibid*.
[76] Canada Revenue Agency, *Interpretation Bulletin* IT-297R2, supra note 69 at para. 6.
[77] Canada Revenue Agency, *Policy Commentary* CPC-018, "Official donation receipts – whether gifts out of inventory qualify as charitable donations," March 29, 2000; and *Registered Charities Newsletter* No. 18.
[78] Canada Revenue Agency, *Policy Commentary* CPC-018, supra note 78 at para. 2.

- If the business has made a true gift of inventory to the charity (i.e. the business received no benefit in return whatsoever), then the business would need to add the fair market value of the inventory to its income under subparagraph 69(1)(b)(ii) of the Act. However, this increase in its income is offset by the business obtaining a donation receipt from the charity and claiming a charitable tax deduction under paragraph 110.1(1)(a). The following is an example of how the taxable income is to be calculated:

Sale of bread	$50,000
Plus the value of bread donation to charity	+ 1,000
Income	$51,000
Less production costs	25,500
Net income	$25,500
Less tax deduction for donated bread	- 1,000
Taxable income	$24,500

- It is possible for a situation to arise where the business received *some* benefit from the charity (e.g. promotion or advertising), but not sufficient to justify writing off the entire cost of the inventory transferred as a business expense. Although not explained in CRA's policies, but it would appear that under that situation, it would be necessary for the business to allocate a portion of the inventory that resulted in a true gift and the balance of the inventory that resulted in a benefit to the business. Then, the business would need to calculate the applicable income, business expense and charitable tax deduction for each portion of the inventory so allocated.

Generally, gifts of inventory are exceptions to the deeming provision reviewed above when determining the fair market value of the inventory for purposes of gifting the inventory to the charity. It is also note that property of little or only nominal value to the donor will not qualify as a gift in kind.[79] This would be the case if a corporation were to donate its obsolete inventory to a charity when the corporation has already written off the value of the obsolete inventory.[80]

5. Services

At law, a gift is a voluntary transfer of *property* without consideration.[81] Contributions of services (i.e. time, skills, effort) are not property.[82] In *Slobodrian v. Canada*,[83] the court held that a gift does not include mere services without compensation. However, this must be distinguished from remunerated services which once performed give rise to rights capable of ownership and which can in turn form the subject matter of a gift. Therefore, charities are prohibited from issuing official donation receipts for services provided free of charge.[84]

However, a charity may issue an official donation receipt if a person provides a service to the charity, the charity pays for the service, and the person then returns the payment to the charity as a cash gift. In such circumstances, two transactions have taken place, the first being the provision of a service and the payment of the services provided, and the second being the making of a cash gift by the service provider. CRA suggests that these two transactions be conducted by way of an exchange of cheques. This ensures the presence of an audit trail, as the donor must account for the taxable income that would be realized either as remuneration (in which case the charity may also be required to issue a T4 slip) or as business income.[85]

6. Gift certificates

A corporation may issue gift certificates, vouchers, coupons in support of a charity's fundraising events, such as auctions and raffles. When a gift certificate is donated to a charity,

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[79] Canada Revenue Agency, *Interpretation Bulletin* IT-297R2, supra note 69 at para. 6.
[80] Canada Revenue Agency, Document Number 961130A, May 23, 1996.
[81] See review on pages 9ff above.
[82] For example, Canada Revenue Agency, *Interpretation Bulletin* IT-297R2, "Gifts in Kind to Charity and Others," March 21, 1990, indicates that a gift-in-kind does not include a gift of services.
[83] *Slobodrian v. Canada*, [2003] F.C.J. No. 1414; 2003 FCA 350 (FCA). The court held that voluntary services provided by Mr. Slobodrian were not a gift. In 2005, another appeal by Mr. Slobodrian on the same facts but for different taxation years was dismissed for the same reason. *Slobodrian v. Canada*, [2005] F.C.J. No. 1733; 2005 FCA 336 (FCA). See also Canada Revenue Agency, *Registered Charities Newsletter* No. 23, Summer 2005.
[84] See Canada Revenue Agency, Policy Commentary CPC-017, "Official donation receipts – whether gifts of services qualify as charitable donations," March 29, 2000; *Summary Policy* CSP-S03 "Services," October 25, 2002; *Information Letter,* CIL-2002-009, July 10, 2002; and *Information Circular* RC 4142(E) Rev. 05, *Tax Advantages of Donation to a Charity,* updated February 2006.
[85] *Ibid*.

CRA has taken an administrative position in regard to under what circumstances a donation receipt may be issued by the charity for the value of the gift certificate received.[86]

According to CRA's policy, in general, charities may issue a donation receipt when the donor is *not* the issuer (an issuer could be an individual, a retailer or a business) of the gift certificate and the charity has obtained the gift certificate for valuable consideration either from the issuer or other third party. In this regard, CRA takes the view that a gift certificate can be considerate to be a promise from a merchant to supply goods and/or services in an amount specified on the face of the gift certificate. A gift certificate constitutes property and a right only if the promise is enforceable, that is, only when the certificate was acquired for consideration.

For example, CRA's policy indicates that when a person purchases, or otherwise obtains for consideration, a gift certificate from an issuer and donates it to a charity, then the purchaser/donor (but not the issuer) would be entitled to a donation receipt for the fair market value of the gift certificate. The issuer of the gift certificate would realize income for the fair market value of the gift certificate upon its sale to the purchaser/donor.

In a different example, when a business issues a gift certificate and donates it to a charity, the issuer is not entitled to a donation receipt at the time of the donation This is because upon the donation of the gift certificate, there was no transfer of property. The issuer does not realize any income from the donation of the gift certificate.

However, where the issuer donates a gift certificate to a charity and the charity redeems the gift certificate for property[87], then the issuer would be entitled to a donation receipt in an amount for the value of the gift certificate and the issuer would realize income equal to the difference between the value of the property gifted (or redeemed) and the amount it paid for the

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[86] Canada Revenue Agency, *Policy Statement* CPS-018, "Donation of Gift Certificates," October 9, 2002. See also Canada Revenue Agency, *Registered Charities Newsletter No. 24*, Summer 2005; and *Document number* 2000-0030237, July 25, 2000. See *Document number* 2000-0026285, July 18, 2000 for a situation where a holder of the certificate is entitled to present it at a retailer to reduce the price of goods and to direct the retailer to pay the purchase price to a designated charity. CRA decided that the certificate would not have the same value in the hands of the person who initially purchased it from the issuer and in the hands of the retailer. In determining the value of the certificate in the hands of he retailer and consequently the amount of the donation to the charity, CRA took the view that the value should be determined without reference to the tax system. Further, the retailer is not entitled to a donation receipt because the money donated is not the retailer's money. However, CRA pointed out that the situation would be different should if the retailer were entitled to redeem the certificate for the original selling price, is free to do with the money as the retailer pleases, and chooses to, but is under no obligation to, donation all or part of the money to a charity.

[87] The redemption must be for property, not services, because donation of services does not qualify a charitable donation.

property, and the issuer may claim it as a business expense. As such, the deduction of the charitable donation would off-set the income inclusion.

In a further example, it may involve an issuer donating a gift certificate to a charity and the charity transferring the gift certificate to a third party (e.g. as a prize at an auction), and the third party redeeming the gift certificate for property. The honouring of the gift certificate by the issuer does not transform the character of the original transfer of the gift certificate from the issuer to the charity into a gift. In this case, the issuer does not realize any income in respect of the donation of the gift certificate and the issuer is not entitled to a donation receipt for the gift certificate.

Where a charity purchases a gift certificate from an issuer, the issuer may donate the proceeds of sale and receive a donation receipt for the donated proceeds of sale. In this case, an exchange of cheques would be required.[88]

The *de minimis* threshold set out in CRA's *Income Tax Technical News* No. 26 does not apply to cash or near cash advantages, such as redeemable gift certificates, vouchers, coupons.[89] In determining the value of a gift certificate, CRA takes the view that it may not be the face value of the certificate but, instead, would depend on a number of factors, including (a) the flexibility of the certificate[90] and (b) its usefulness.[91]

7. Loans and Free Use of Property

When a corporation loans funds to a charity, it is not a gift and no receipt could be issued by the charity for the loaned funds. In this regard, at the time when the loan is made to the charity, no ownership of property was transferred since "there is an obligation and an expectation that, at a minimum, the value of the property will be repaid."[92] Therefore, even if it were an interest-free loan, the lender would not be entitled to a receipt for the interest that the corporation has foregone by having given the interest-free loan. However, in the event that the corporation

[88] Canada Revenue Agency, *Registered Charities Newsletter* No. 10, Spring 2001.
[89] CRA, *Income Tax Technical News* No. 26, *supra* note 35.
[90] For example, whether the certificate expires after a certain time, whether it is usable only within a specific timeframe, whether it restricts the purchaser to specific merchandize in the store, etc.
[91] For example, whether the retainer offer merchandise for the amount of the gift certificate, whether the certificate account for a portion of regular selling property, (e.g. $50 gift certificate at a car dealership).
[92] Canada Revenue Agency, *Information Letter,* CIL-2006-001, March 31, 2006.

forgives the indebtedness, then the corporation would be entitled to a donation receipt for the amount of the debt forgiven.[93]

Similarly, the loan of a piece of property by a corporation to a charity for the charity's use for free is also not a gift. This could be the use of a piece of equipment, the use of the corporation's premises for the charity's activities, or the use of a cottage for a week as a prize in a fundraising auction event.[94] The corporation would not be entitled to a donation receipt for the rent that the corporation has foregone by loaning it to the charity for free or for the value of the property loaned. In this regard, CRA takes the view that the term "transfer" has to involve more than mere granting of a right to use property for a limited time.[95] However, a charity may pay rent on a property to the corporation and the corporation donation a gift of all or part of the rent payment paid, as long as the gift from the corporation is voluntary. The charity may then issue a donation receipt for the gift received. The corporation would have to report the income earned from the rental payment but would be able to claim the tax deduction with the donation receipt received.

E. Identity of Donor on Donation Receipts

Sometimes, a charity that has received a donation from a business may be asked to issue a donation receipt to a person, such as the owner of the business, as opposed to the business itself.

A donation receipt must be issued by a registered charity to the donor who provided the gift in question to the charity. It is a question of fact whether property donated from one individual to a registered charity is the property of that individual and/or another.[96]

Where the provider of the gift asks the charity to issue an official donation receipt in another name and there is no obvious indication as to the true donor, the registered charity must be reasonably sure that the name it records on the receipt is that of the true donor. In these

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93 *Ibid*.

94 Similarly, loaning the use of time-share and recreational property is not considered as gifts under the Act. See Canada Revenue Agency, *Registered Charities Newsletter* No. 18, Spring 2004.

95 Canada Revenue Agency, *Information Letter,* CIL-2002-009, July 10, 2002; and Canada Revenue Agency, *Registered Charities Newsletter* No. 22, March 2005.

96 Canada Revenue Agency, *Policy Commentary* CPC-010, "Official donation receipts – whether receipts can be issued in a name other than the donor's," February 21, 1994; *Summary Policy* CSP-R02, "Receipt – Official donation receipt," October 25, 2002 (revised September 12, 2005; *Interpretation Bulletin* IT-110R3, "Gifts and Official Donation Receipts," June 20, 1997.

circumstances, CRA suggests that the charity request a written declaration as to the identity of the true donor from the party providing the donation.[97]

For example, where a registered charity receives a cheque from a corporation and is subsequently asked to issue the official donation receipt in the name of an individual who controls the corporation, the charity must decline the request and must issue the receipt to the corporation, unless there is *evidence* to show that the individual is the true donor, for example, the donation is by way of that individual's personal cheque or by way of the corporation making the donation in the name or on behalf of the individual (e.g., a corporation accounts for the donation from a shareholder in the shareholder's account). This would be a situation where the charity should obtain a written declaration from the provider of the gift as to the identity of the true donor. CRA indicates that this guideline also applies to a gift from a partnership in which both spouses are business partners.

Another example would be where an individual acts as trustee or agent for another person in making a gift to a registered charity. For example, a corporation may issue a cheque to a registered charity representing contributions collected from its employees. Although the corporation's name appears on the cheque, the property donated was, in fact, that of the corporation's employees. This would be another example where it would be prudent for the charity to request a written declaration from the corporation providing the gift as to the identity of the true donors (i.e. its employees).

F. Use of Parallel Corporate Foundations

Last but not least, a corporation can establish a corporate foundation to carry out its charitable giving program. In this regard, it has been noted that the following are some of the advantages of doing so:[98]

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[97] However, CRA's policy indicates that in general, where a charitable donation is provided by way of a cheque on an account held jointly by spouses (i.e. both names of the spouses appear on the cheque), then the charity can issue the official donation receipt in either or both names, regardless of how the cheque is endorsed.

[98] Norah McClintock, "Laying a Foundation for Corporate Giving," *Front & Centre* (July 1994) Vol 1, No. 4, at 14; Michael Kray, "Establishing a Private Foundation." *The Advisor* (Spring 2006). The rationale and factors for considering when establishing a private foundation for individuals are not the same as those for the establishment of corporate foundations by businesses. For the former, see M. Elena Hoffstein and Robin P. Roddey, "Private Foundations and Community Foundations" in "Personal Tax Planning"," (2001), vol. 49, no. 5 *Canadian Tax Journal*, 1258-1281; Wolfe D. Goodman and Howard Carr, *Establishing a Private Foundation* (Toronto: Canadian Centre for Philanthropy, 1987).

- For large conglomerate corporations, the corporate giving programs are not always coordinated, which sometimes confused the public and grant recipients. However, with a corporate foundation, the funder of the foundation can change throughout the years as the earnings of the companies change, the entity engaged in corporate philanthropy would remain unchanged.
- By having a corporate foundation with its own separate identity for the sole purpose of donating money and resources, it often results in a better public perception than a company's own donations program.
- A corporate foundation also elevates the public image of the company being fiscally or corporately responsible within the community.
- Having a corporate foundation also helps to separate donations from internal business pressures so that the foundation would be able to set its own guidelines of what to support and not to support.
- Having a corporate foundation can also help build an asset base for consistent long-term charitable giving even when corporate profits are down.

In addition, the corporation would be able to make donations to its corporate foundation according to its business needs and planning. At the time of the donation, the corporation would be entitled to a donation receipt and claim a tax deduction accordingly. Any funds held by the corporate foundation could be invested tax-free and be utilized for charitable cases according to its charitable program.

Furthermore, the corporation may collaborate with its corporate foundation so that its charitable program would be complementary to the business goals of the company. For example, a company that is in the technology field may wish to have its corporate foundation focus on charitable work in educating youth.[99]

The following are some of the issues that would need to be addressed by the corporation when establishing a corporate foundation:

What would be the charitable objects of the foundation and what type(s) of charitable causes would the foundation support? Although a corporation is free to engage in any charitable endeavours it desires, this may not be the case for a corporate foundation. The activities that a corporate foundation is permitted to engage in would be governed by the charitable objects of the

[99] Norah McClintock, "New-Style Corporate Foundations," *Front & Centre* (May 1997) Vol. 4, No. 3 at 3.

foundation set out in its constating documents. Therefore, it is necessary to determine at the outset what the charitable objects of the foundation would be, which objects must be within the recognized four heads of charitable purposes, namely the relief of poverty, advancement of religion, advancement of education, and other purposes beneficial to the community in a way the law regards as charitable.[100]

Where should the foundation be incorporated? For a company with businesses across Canada, it would appear that the preferred jurisdiction to incorporate the foundation would be under the federal *Canada Corporations Act*.[101] If the company has businesses on an international basis, then the issue of which jurisdiction to incorporate the foundation would need to be carefully considered because the operations of the foundation would be subject to that law of the home jurisdiction of the foundation.

If the foundation was decided to be incorporated in Canada, should the corporate foundation be structured as a charitable organization, public foundation or a private foundation?[102] This decision will, in part, depend on the type of activities that are intended to be carried out by the corporate foundation and whether the corporate foundation would be able to operate within the more stringent requirements and limitations imposed on private foundations. For example, the newly proposed[103]definition for charitable organizations and public foundations requires that they are prohibited to allow a donor that has contributed more than 50% of the assets of the charity[104] to be in control of the charity or represent more than 50% of the directors, trustees, officers or similar officials of the charity. Therefore, if the corporate foundation would be funded solely by the company, then the foundation will need to be established as a private foundation. The following are some of the restrictions that private foundations are subject to:[105]

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[100] *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] AC 531 (HL). See also Malcolm D. Burrows, Sian M. Matthews, Karen J. Cooper and Terrance S. Carter, "Guiding the Urge to Give," *Step Inside* (Fall 2005) Vol. 5., No. 1, 2 at 4.

[101] R.S.C., 1970, c. C-32.

[102] Subsection 149.1(1) of the Act. For a review of the differences between the three types of registered charities, see Theresa L.M. Man and Terrance S. Carter, "A Comparison of the Three Categories of Registered Charities" *Charity Law Bulletin* No. 73 (21 July 2005) (online: www.charitylaw.ca).

[103] The proposed new definition is part of the July 2005 amendments referred to *supra* note 33 and 34. Once enacted, these amendments will become generally retroactive to January 1, 2000.

[104] However, funds received from the federal government, provincial governments, municipalities, other registered charities that are not private foundations, as well as non-profit organizations are exempted. For charitable foundations that were registered before 15 February 1984, the capital contribution rate was 75%. See also the definition for "charitable organization" and "public foundation" in subsection 149.1(1) of the Act.

[105] See, for example, Wolfe D. Goodman, "Some Issues Relating to the Treatment of Private Foundations Under the Income Tax Act" (2000), vol. 16, no. 2 *The Philanthropist* 100-3; and Burrows et al, *supra* note 100.

- Private foundations would be prohibited from engaging in any business activities;
- Private foundations would not be permitted to incur debts other than debts for current operating expenses, the purchase and sale of investments, or the administration of charitable activities;[106]
- Private foundations cannot acquire control of another corporation, except by gift but within limits; and
- Private foundations holding non-qualified securities (i.e. a debt, share or a right to acquire a share held by a private foundation that is issued by persons not dealing at arm's length with that foundation) would be subject to a penalty tax if the interest payable to the foundation does not meet a minimum rate of return.[107]

How should the foundation be structured? How can the company exercise control and oversight on the foundation? How can the company ensure that the operations and activities of the foundation would not be off-side with the business objectives of the company and would not cause any damage to the reputation of the company? Should the company and the foundation operate on an arm's length relationship? How can the branding of the corporation and the foundation be coordinated and protected?

How will the foundation be funded? Will the foundation engage in fundraising activities to raise funds from the public or will the foundation be restricted to be funded by the company? Will the foundation hold endowed funds? If non-qualifying securities (e.g. shares of a private corporation) were to be held by the private foundation, care must be taken in order not to trigger the penalty tax referred to above.

Is the company aware of what regulatory compliance requirements that the foundation would be required to comply with? The government regulatory compliance requirements that the foundation is required to comply with are very different from those of the company itself. To name a few examples, the foundation would be required to file annual Registered Charities Information Return (Form T3010) within 6 months of its fiscal year end, the corporate information filing requirements may be different from those of the company's, charities in Ontario would be subject to the oversight of the Ontario Public Guardian and Trustee, the

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[106] See Theresa L.M. Man, "Foundations Incurring Debts to Purchase Investments," *Charity Law Bulletin* No. 86 (February 7, 2006) (online: www.charitylaw.ca).
[107] Section 189 of the Act.

foundation would be required to disburse a minimum amount of gifts it received in order to meet the applicable disbursement quota under the Act,[108] etc.

G. Conclusion

Although corporate giving has been on the rise, the tax rules that apply to corporate contributions have not been well understood by corporate givers, fundraisers, and charities in general. The delay of the federal government in bringing finality to the enactment of the proposed July 2005 amendments and the lack of clarity in interpreting the proposed changes and in applying the proposed rules in the practical context may lead discourage corporate giving. Charities may also find it difficult to comply with the proposed rules without clear guidelines from the government authorities. It is hoped that more clarity to the unsettled rules that apply to corporate giving could be achieved in the near future so that corporate giving would not be hindered.

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[108] Subsection 149.1(1) of the Act. Amendments to the disbursement quota rules were introduced by the 2004 federal budget and were enacted on May 13, 2005 as the *Budget Implementation Act, 2004, No. 2.*, R.S.C., 2005, c. 19. For a detailed review of the new disbursement quota rules, please review M. Elena Hoffstein and Theresa L.M. Man, "New Disbursement Quota Rules under Bill C-33," paper presented to the Canadian Bar Association/Ontario Bar Association 3rd National Symposium on Charity Law, May 6, 2005 (online: www.charitylaw.ca).

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