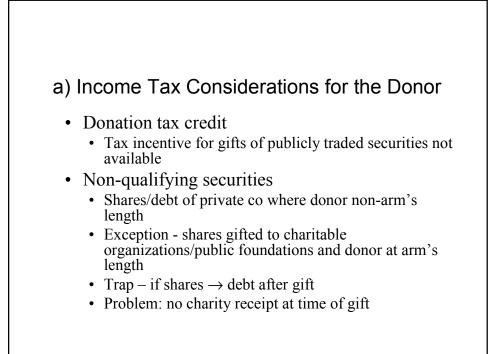


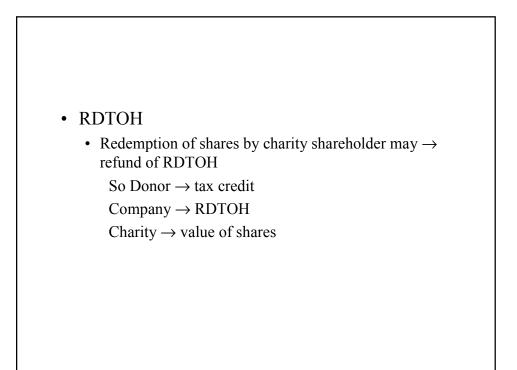
Outline

- Income tax considerations for the donor
- Income tax considerations for the charity
- Regulatory considerations for the charity (nonincome tax)
- Tips and traps

1. Private Company Shares

- Private company shares can be effective gifting tool
- However implementation and ongoing management of such gifts more complex/costly





• Deemed FMV

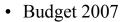
- Draft legislation introduced Feb 27, 2004 To stop "buy low-donate high" and other tax shelter gifting arrangements
- Potential punitive tax consequences for private company shares gifts (e.g., estate freezes and other corporate reorganizations?)



- Property acquired through a "gifting arrangement", in contemplation of gift or donated within 3 years of acquisition
- Deemed fair market value- lesser of FMV and donor's cost
- Exceptions include publicly traded shares, certified cultural property, real property in Canada, inventory and ecological gifts, and gifts on death.
- Exception for shares subject to estate freeze arrangements

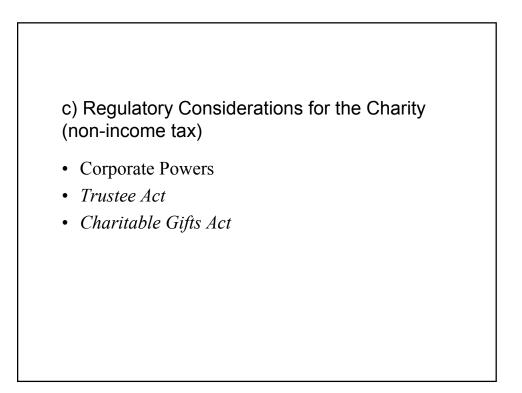
b) Income Tax Considerations for the Charity

- Donation receipt
 - Fair market value of shares what is value if can't redeem for some time
 - Split receipting advantage?
- Disbursement quota issues
 - Enduring property?
 - If hold shares for some time → dividends to cover 3-5% DQ and administrative costs
- Control of corporation



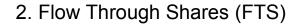
- For private foundations
- New excess business holdings rules impose requirement to continuously monitor holdings and acquisitions of both publicly listed and private corporation shares
- Depending upon the amount of its interest in a particular class of shares of a company, a private foundation will be subject to varying requirements

	Private Foundation (Holdings of Share Class)	Non-Arm's Length Persons (Holdings of Share Class)	Action Required by a Foundation
1. Safe harbour	2% or less	Any percentage	None
2. Monitoring			
phase	5%	10%	Reporting required
	10%	10%	
	20%	0%	
3. Divestment			
required	25%	0%	Reduce holdings to 20%
	8%	14%	Reduce holdings to 6% ¹
	10%	17%	Reduce holdings to 3% ¹
	Above 2%	Above 18%	Reduce holdings to 2% ¹



• Charitable Gifts Act

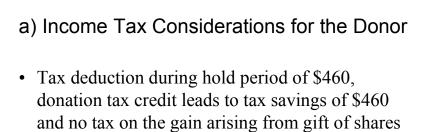
- Greater than 10% interest in a business
- Mandatory divestiture within 7 years
- What is an "interest in a business"
- Reporting requirements
- Requirement to share profits
- Requirements re: investment of proceeds from disposition of business interest



- Tax based financing incentives (oil and gas/mining sectors)
- Corporations can flow through tax deductions to investor
- Expenditures deducted by investor grind cost base of shares



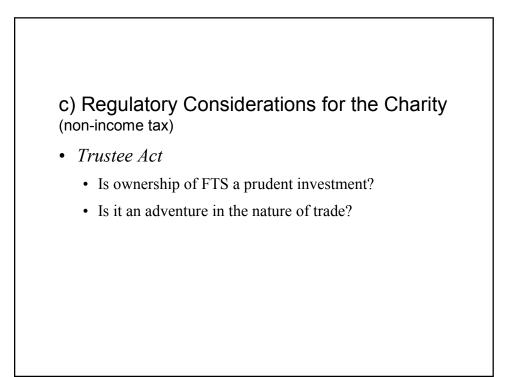
- ACB \$1,000
- Deductions of \$1,000 for exploration expenses leading to \$460 tax savings (assume 46% tax rate)
- Donor gifts the shares to charity
- Assume value is still \$1,000



- to the charity
 Actual cost to taxpayer of the investment is \$80 (\$1,000 less \$460 x 2) and taxpayer gets donation
 - (\$1,000 less \$460 x 2) and taxp credit of \$1,000

b) Income Tax Considerations for the Charity

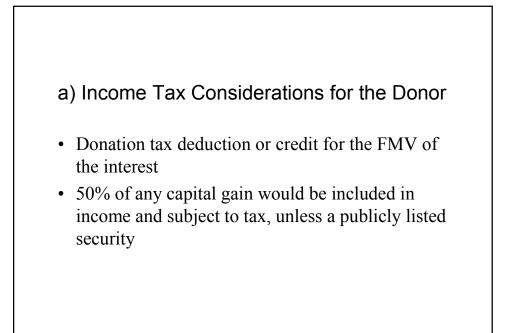
- Date of gift considerations
- Valuation issues:
 - Hold periods
 - Maintenance of value
 - Marketability of shares after hold period
- Policy re. closing bid price or midpoint between high and low trading values
- Could Charity be considered a tax shelter promoter?

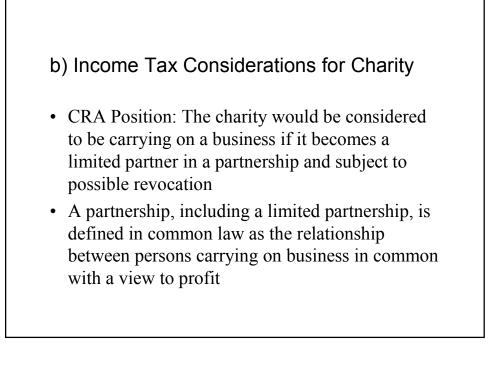


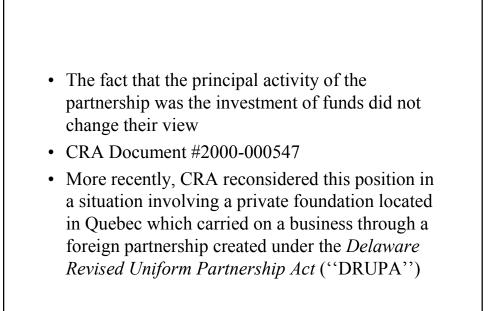
3. Limited Partnership Interests

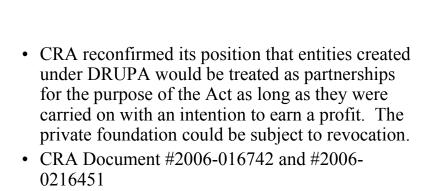
- Increasing requests to receive gifts of limited partnership interests
- Limited partnerships are very different from general partnerships and are usually set up by companies that invest money in other businesses or real estate

- One general partner who controls the company's day-to-day operations and who is personally liable for business debts. Limited partners contribute capital to the business (investment money) but have minimal control over daily business decisions or operations
- In return for giving up management power, a limited partner's personal liability is capped at the amount of his or her investment. That investment amount and no more would go toward paying off any partnership debts

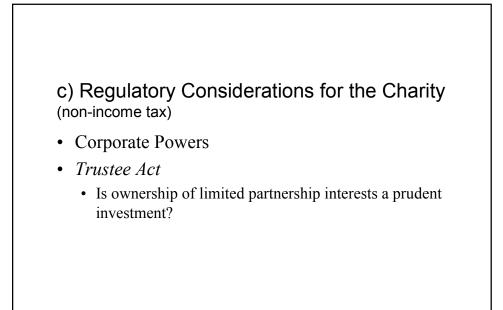


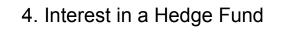




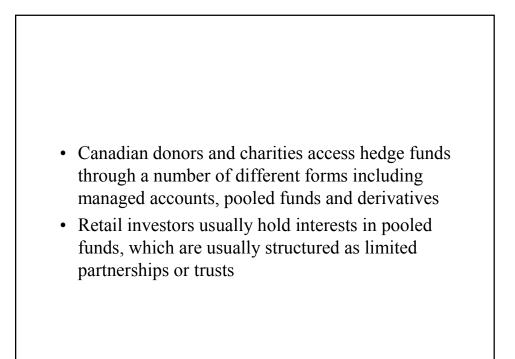


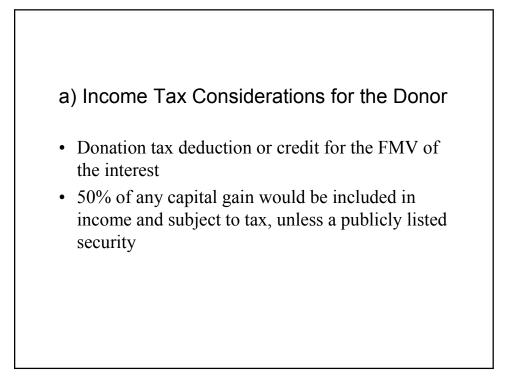
• But, consider whether position would be the same if donation consists of limited partnership units which are publicly listed, widely held, and sold immediately upon receipt

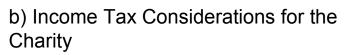




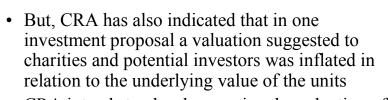
- Investment advisers increasingly asking charities to accept gifts of units in a hedge fund and issue tax receipts for them
- Hedge funds are a specialized kind of investment. They are usually addressed to sophisticated investors and are privately offered, and thus may escape the regulatory controls placed on investments sold to the public, such as mutual funds



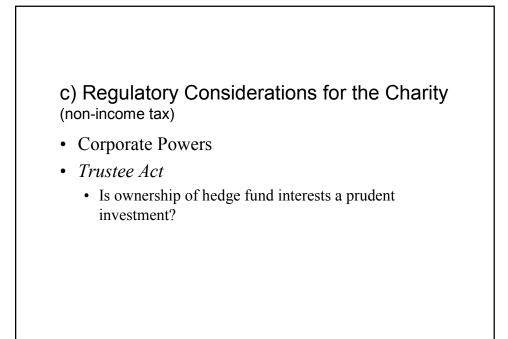




- Will depend on the nature of the underlying interest, unit in a limited partnership or a trust
- If limited partnership interest, see concerns above
- CRA position: The *Income Tax Act* allows charities to accept a gift like an interest in a hedge fund (Registered Charities Newsletter No. 8 — Spring 1999)



- CRA intends to closely examine the valuation of these gifts
- Independent, expert appraisals (with access to all relevant facts) must be obtained to determine the FMV of the fund units when the gift is made
- Any tax receipt issued should carry the name and address of the appraiser

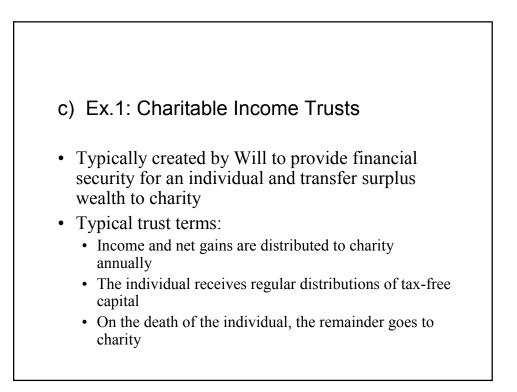




- a) Introduction
- Trusts play a key role in wealth preservation and succession planning for high net worth families
- For many high net worth families, a substantial portion of their wealth is held in trusts
- Yet, tax law regarding transfers from trusts to charities is relatively underdeveloped

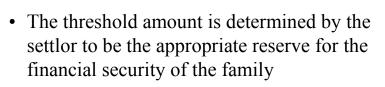
b) Charitable Remainder Trusts

- Traditional thinking about trusts and charities has been narrowly focused on charitable remainder trusts
- But charitable remainder trusts have some limitations, including:
 - Uncertainty regarding the receipt amount
 - Inefficiencies in the investment policy
 - Tax inefficiencies
 - Lack of flexibility
- There are other ways to use trusts to facilitate transfers to charities that potentially avoid some of those limitations





- Typically created as part of an estate freeze or as a succession planning vehicle after a substantial sale of assets
- Typical trust terms:
 - Completely discretionary during the lifetime of the settlor
 - After the death of the settlor, mandatory distribution of income (and realized gains) to charity above threshold amount



• When the value of the trust property is below the threshold amount, income and net gains may be accumulated or distributed to the family or to charity

Ex.3: Gifts from Alter Ego Trusts

- Typically established as a Will substitute in order to avoid probate fees or, in B.C., the *Wills Variation Act*
- Typical terms:
 - Completely flexible during the settlor's lifetime
 - On the death of the settlor, a portion of the trust property is gifted to charity and a portion is distributed to family
 - The proportions can be changed at any time during the settlor's lifetime

f) Conclusion

- Trusts play a key role in succession planning for high net worth families
- Designing the trusts to contemplate future transfers to charity brings philanthropy into the core of the high net worth family's long term planning
- Properly designed trusts can provide for transfers to charity in a manner that is tax efficient, maintains flexibility for the donor family and is compatible with preserving the financial security of the donor family