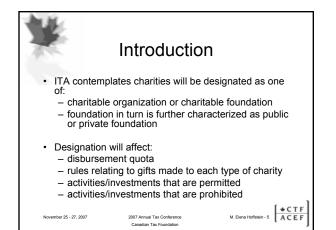
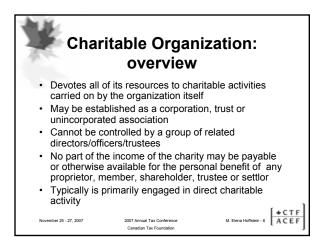
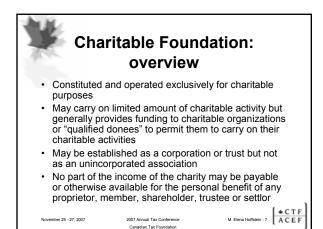
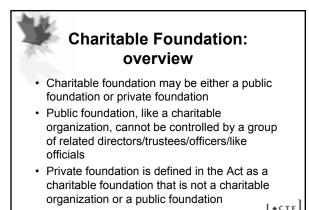


*	Introductio	on
Purpo	se of this talk	
fou and the sele cha	mine rules applicable ndations and other typ d consider this differen context of donors' mo ecting a specific vehicl rritable giving	bes of charities tial treatment in tivations in le for their
– exp priv	olore advantages and I vate foundations	imitations of
	sider public foundation	n as alternative to
November 25 - 27, 200	17 2007 Annual Tax Conference Canadian Tax Foundation	M. Elena Hoffstein - 4





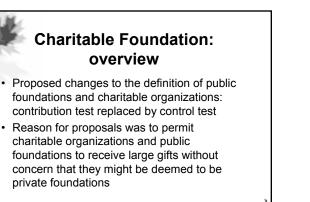




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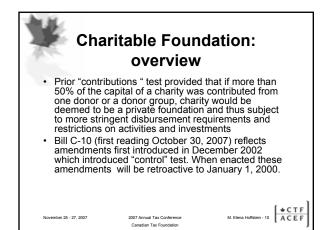
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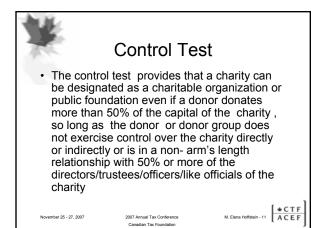
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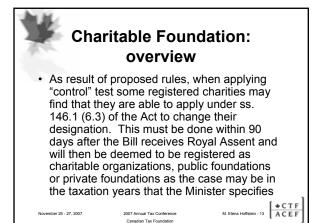
Charitable Foundation: overview

 Exemption for funds from federal or provincial government, municipalities, other registered charities that are not private foundations or non profit organizations

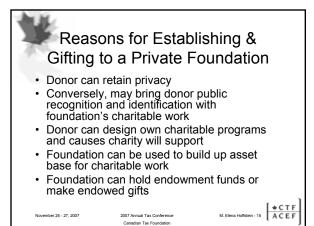
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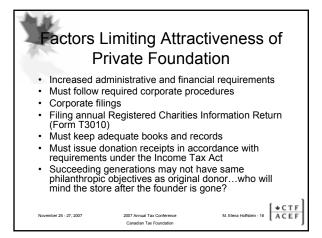
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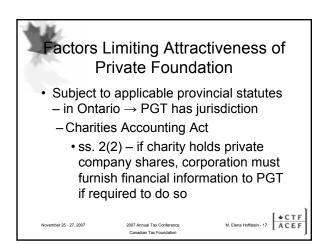
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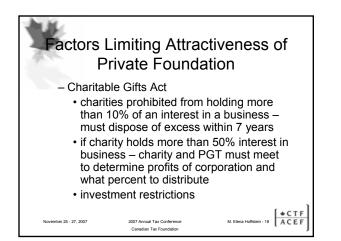


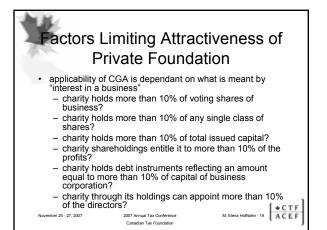


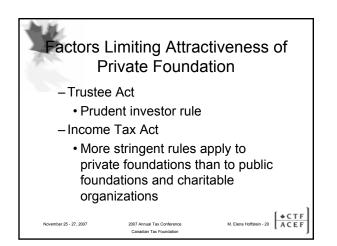


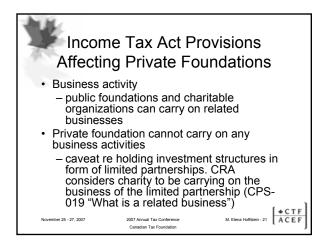






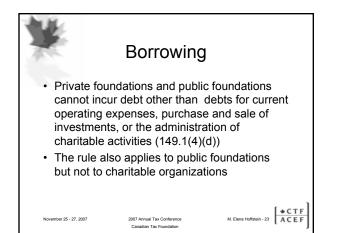


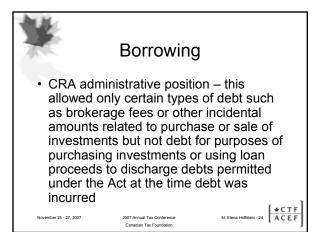




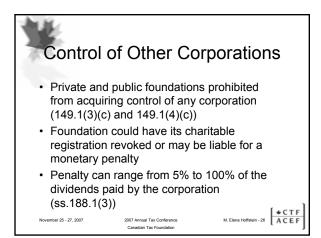
Income Tax Act Provisions Affecting Private Foundations
 If private foundation carries on business or a public foundation or charitable organization carry on a business that is not a related business it could:
 have its charitable designation revoked (149.1(4)(a))
 be liable for monetary penalty ranging from 5% to 100% of its gross revenues from the business for repeated infractions (188.1(1) and (2) and 188.2(1))
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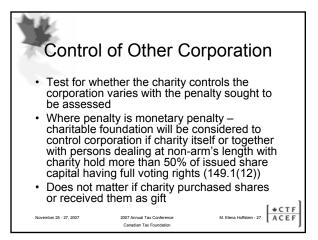
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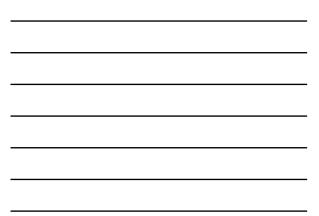




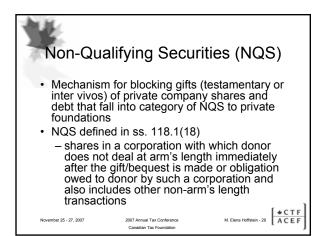
Borrowing
 Technical Interpretation (2005-015475117, October 2005) – CRA reverses position – says a foundation is permitted to incur debt for purposes of acquiring investments – also now permitted for members and directors of foundation to lend money interest free to enable foundation to acquire investments, pay current operating expenses or expand on charitable activities
 CRA will continue to monitor debt arrangements, in particular in non-arm's length situations; one other concern is whether there is a "personal benefit"
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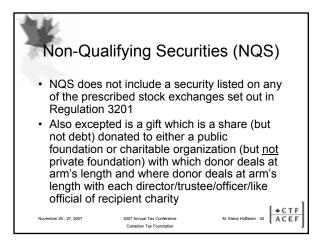


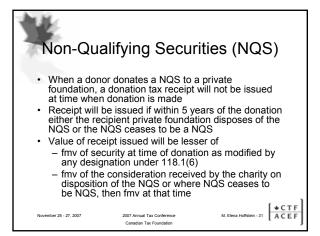


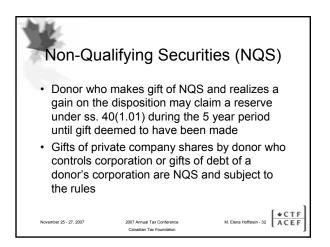


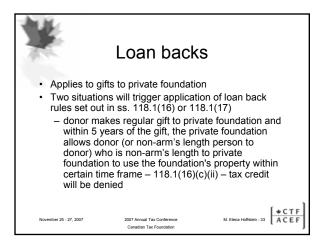
Control	of Other Co	orporation
foundation w control provi acquired for (voting or oth Thus, a gift c in charitable the corporati	ty is loss of charitable ill be deemed not to h ded it has not purchas consideration more th nerwise) of shares of t of any percentage of s foundation being cons on charitable foundation	ave acquired ed or otherwise an 5% of any class he corporation hares will not result sidered to control
	ss of charitable registr uld still apply	ation but monetary
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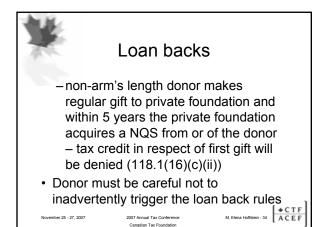


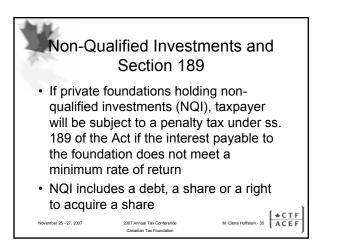


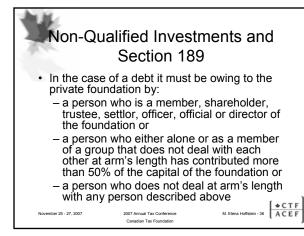






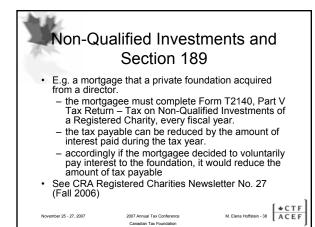


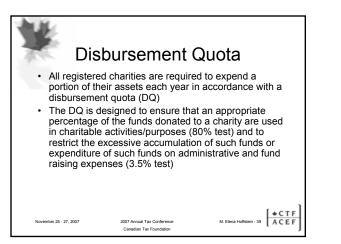






Non-Qualified Investments and Section 189	
 In the case of a corporation, a deb the corporation if controlled by the by any person or group of persons by the foundation and any other pi with which it does not deal at arm combination of the above 	private foundation, s described above, rivate foundation s length, or by any
 Will include a share in the capital stock of a corporation referred to above, held by the foundation, or held by persons not dealing at arm's length with the foundation 	
 Shares listed on a prescribed stoc within or outside Canada will not b 	
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Disbursement Quota New DQ rules enacted on May 13, 2005 (Bill) c. 33, 2005) and apply generally to taxation years beginning after March 22, 2004 except that for charitable organizations registered before March 23, 2004, the 3.5% DQ will only apply to their taxation years beginning after 2008 New DQ rules for charitable organizations and public foundations are now the same,

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subject to some transitional provisions M. Elena Hoffstein - 40

Disbursement Quota Briefly – 2 main elements - charitable organizations/public foundations 80% of donations for which receipts were issued in prior years, subject to some exceptions such as 10 year gifts - 3.5% of value of investments determined on a rolling average basis private foundations – some exceptions -must expend 100% of gifts received from other charities (other than specified gifts and enduring property) M. Elena Hoffstein - 41

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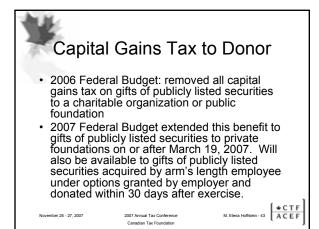
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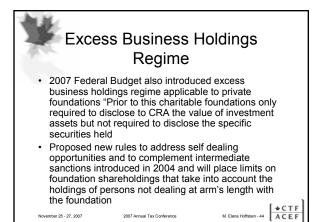
- In general donors making gifts in kind to a charity deemed to have disposed of the gifted asset at fair market value – generally this will result in realization of a capital gain
- In 1997 amendments to the Act provided that deemed disposition resulting from gift of publicly listed securites to a public foundation or charitable organization only taxable at 1/2 the usual capital gains rate

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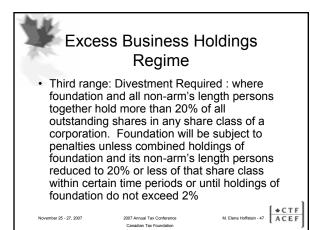
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Excess Business Holdings Regime Will apply to private foundations and to both publicly-listed and unlisted shares · New regime identifies three ranges of

- shareholdings with different implications for the foundation for each range. · First range: Safe Harbour : if foundation's
- holdings in a corporation for each class total 2% or less of all outstanding shares of that class - No need to monitor or report holding of any non-arm's length person to CRA

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Excess Business Holdings Regime
 Second range: Monitoring phase: if foundation's holdings of one or more share classes exceed 2 % of outstanding shares of that class, foundation must determine and report to CRA shares held at end of year in all share classes by foundation and non arm's length persons. Foundation must also report in its annual information return any material transactions (acquisition or sale involving over \$100,000 worth of shares of a class or more than .5% of all outstanding shares of that class) during year by foundation or non-arm's length persons
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· · ·		undation*	uired by a
	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% 20%	10% 10% 0%	Reporting required
3. Divestment required	25% 8% 10% Above 2%	0% 14% 17% Above 18%	Reduce holdings to 20% Reduce holdings to 6% ¹ Reduce holdings to 3% ¹ Reduce holdings to 2% ¹

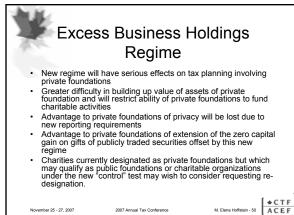


Excess Business Holdings Regime

 Transitional period from 5 to 20 years for private foundations to sell off existing excess holdings. Those foundations that have not completed their transition by end of their first taxation year beginning on or after March 19, 2012 will not qualify after that time for the zero inclusion rate for capital gains on donations of publicly traded securities. in-49 ACEF

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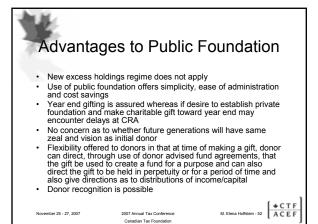
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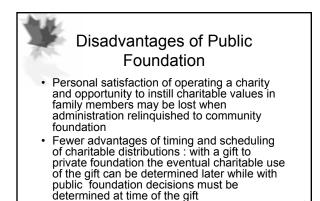


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Advantages of Public Foundation
.
  Public foundations generally have arms length
  board, come in variety of forms
  Parallel foundations act as fund raising and fund
  administering entity for an operating charity such as
  hospital, art gallery, museum and the like
  Other foundations have a broader focus in many
  cases acting as an umbrella foundation for numerous
  operating charities on a national or international scale
· Between these is the community foundation which
  seeks to support charitable works in a particular
  region
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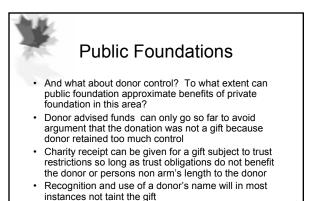
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¥	Conclusio	n
foundation establishing • Restrictions still more of	sed funds make gi attractive alternati g a private foundat imposed on priva nerous than on pu ble organizations	ve to tion ate foundations
 Some clien private four 	ts will still want to indations	consider use of
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