14TH ANNUAL NATIONAL
CAGP-ACPDP CONFERENCE

Halifax – April 12, 2007

Donation Tax Shelters: Past, Present and Future

By Terrance S. Carter, B.A., LL.B.
and Theresa L.M. Man, B.Sc., M.Mus., LL.B.
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Offices / Bureaux
Ottawa (613) 235-4774
Mississauga (416) 675-3766
Orangeville (519) 942-0001
Toll Free: 1-877-942-0001

By Appointment / Par rendez-vous
Toronto (416) 675-3766
London (519) 937-2333
Vancouver (877) 942-0001
www.charitylaw.ca

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INTRODUCTION

- "Tax shelters"
- "Donation" tax shelters
- Common forms of abusive donation tax shelters
- Steps taken by the government to curtail abusive tax shelters
- Risks involved with abusive donation tax shelters
- Concerns for charities
- Donation of flow-through shares
- The future

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"TAX SHELTERS"

- In general, tax shelters are arrangements that permit an investor to claim a tax deduction equal to a portion or even the entire amount of the investment within in a short time period to create a loss in the current period from that particular source of income, and able to reduce, therefore "shelter," income taxes payable from other sources of income
- Originally, tax shelters usually involved investments in aircraft, movies, scientific research, resource exploration and development, and computer software

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"DONATION" TAX SHELTERS – The Basics

- **As the ability to claim tax benefits from these tax shelter arrangements reduce over the years due to changes to the *Income Tax Act*, tax shelters gradually evolved to involve charitable donations of gifts-in-kind and leveraged charitable donations**
- **Early donation arrangements involve donation of artwork**
- **Later, promoters also involved donation of other property, such as comic books, figurines, plates, stamps, jewellery, medical supplies, computer programs, educational products, food (such as rice, beans, barley grass) clothing, pharmaceutical products and software licenses**

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COMMON FORMS OF ABUSIVE DONATION TAX SHELTERS

1. Buy-low Donate-high Tax Shelters

- **A typical scenario would involve a taxpayer**
  - **Purchasing property for a low price**
  - **Donating the property to a charity, usually pre-arranged by the promoter**
  - **Receiving a donation tax receipt in an amount purported to be the fair market value of the donated property that is substantially greater than the price paid by the taxpayer**

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- **The fair market value of the donated property is usually supported by an independent appraisal, also arranged by the promoter or vendor of the property**
- **Often, the taxpayers never took possession of the donated property, which instead is directly transferred or delivered to the charity**
- **The attractiveness of these types of "buy-low donate-high" tax shelters to taxpayers lies in the fact that the tax credit based on the high value of the receipt far exceeds the total of the taxpayer's cost in purchasing the donated property and any tax payable on any gain realised in the disposition of the donated property, resulting in a net "profit" to the taxpayer**

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2. Gifting Trust Arrangements Tax Shelters

- A typical scenario would involve a taxpayer
  - Who is inclined to charitable giving
  - Becoming a beneficiary of a Canadian resident trust established by a non-resident settlor
  - Receiving a distribution of property from the trust
  - Donating the property distributed together with some cash to a pre-arranged charity

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- Sometimes, a non-resident trust may be involved
- The taxpayer's adjusted cost base of the property would be equal to the trust's cost, which is fair market value, if the trust received the property in the first place as a gift
- Therefore, the donor would have no capital gain on the donated property, maximising the tax benefit the donor received

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3. Leveraged Charitable Donation Tax Shelters

- A typical scenario would involve a taxpayer
  - A taxpayer borrowing a pre-arranged loan
  - Donating the loan and some additional cash to a charity
  - Receiving a charitable donation receipt for the total amount donated
- The promoter usually arranges for the taxpayer to enter into some form of insurance policy and/or investment for a return that would, over the term of the loan, be sufficient to pay off the loan, so that the tax credit that results from the cash donation would exceed the economic cost of the cash donation to the charity, resulting in a net "profit" to the taxpayer

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STEPS TAKEN BY THE GOVERNMENT TO CURTAIL ABUSIVE DONATION TAX SHELTERS

1. Legislative Changes to the *Income Tax Act*

- **2000 federal budget**
  - **Art-flip planning in the 1990s and up to February 27, 2000**
    - **Promoters purchased artwork at discount prices either from artists or in a distress sale, and sold them to taxpayers**
    - **Taxpayers in turn donated the artwork to charities, where fair market value of the artwork donation would not exceed $1,000**

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    - **Pursuant to subsection 46(1), the cost and proceeds of sale would be deemed to be a maximum of $1,000, so that when such property is sold for $1,000 or less, there would not be any gain or loss for the taxpayer, and no tax consequences**
  - **2000 federal budget**
    - **Amended subsection 46(1) to exclude the application of $1,000 *de minimis* threshold to "excluded property"**
    - **CRA would still be open to challenge the accuracy of the fair market value of the donated artwork**

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- **2003 federal budget**
  - **Before February 2003, the definition of "tax shelter" in subsection 237.1(1) of the Act applied to arrangements promoted to provide deductions in computing income or taxable income, but not those promoted as providing only the deduction of tax credits**
  - **The 2003 federal budget required tax shelter registration if representations are made that a potential purchaser will be able to claim, within 4 years, any combination of deductions in computing income or taxable income and federal tax credits which in total equal or exceed the purchaser's net cost of the property**

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- **The definition of tax shelter was amended to clarify its application to property acquired under a "gifting arrangement" (defined in subsection 237(1) of the Act) in respect of which it is represented that a donation or contribution of the property would generate tax credits or deductions (such as charitable donations tax credits or deductions) equal to or exceeding the net cost of the property to the donor**

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- **A gifting arrangement also involves a transfer of property in respect of which it is represented that a donation or contribution of the property would generate tax credits or deductions, if it may reasonably be considered that a person will incur limited-recourse debt in connection with the arrangement**
- **The definition of "gifting arrangement" is intended to be broadly encompassing and would "not be limited to situations where a donor acquires property under an agreement and, under the same agreement, the property acquired is to be gifted to a registered charity"**

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- **The proposals brought by the 2003 budget were passed into law on June 19, 2003, and apply in respect of property acquired, as well as gifts, contributions and representations made, after February 18, 2003**
- **As a result of this amendment, charitable donation arrangements that are embodied within the definition of gifting arrangement are now "tax shelters" and therefore are required to be registered with the government and comply with all tax shelter reporting requirements**

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- Reporting includes registering and obtaining a tax shelter identification number, filing an annual information return (T5002) and tax shelter information supplementaries, T5003 (including the name, address and social insurance number of each investor, and the amount paid by each investor)
- Investors have to provide the tax shelter identification number to CRA before they can claim any tax credit or tax deductions
- See CRA *Information Circular* IC89-4, "Tax Shelter Reporting," August 14, 1989

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- The purpose of requiring gift arrangements to be registered is to allow CRA to be able to identify and track unacceptable donation tax shelters pursuant to subsection 237.1(8)
- CRA has repeatedly warned the public that the issuance of a tax shelter identification number does not indicate that CRA "guarantees an investment or authorizes any resulting tax benefits," and that CRA "only uses this identification number later to identify unacceptable tax avoidance arrangements"

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- **December 2003 to November 2006**
  - In December 2003, a new package of proposed amendments to the Act (amending changes proposed in December 2002) – Proposed changes further amended and consolidated into a new set of proposed amendments released on February 27, 2004, July 18, 2005 and November 18, 2006

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- News release accompanying the December 2003 amendments - Finance indicated that the proposed amendments were in response to concerns that "various promoters are marketing charitable gifting schemes to the public in which property acquired by a taxpayer is donated to a charity at a value represented to be in excess of the taxpayer's acquisition costs" so that these "'buy-low, donate high' arrangements provide taxpayers with a tax benefit greater than their actual cost of the donated property"

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- Summary of amendments to curtail abusive donation tax shelters proposed as of November 2006
  - Deduction of "the amount of the advantage" received by the donor from the amount on the receipt, so that the "eligible amount" of a gift = the FMV of the property donation less the amount of advantage received by the donor
  - Requires clear donative intent by the donor to benefit the charity
  - Broad definition of "advantage" = the total value of any "property, service, compensation, use or other benefit" in question

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- Deeming the FMV of the property to be the lesser of:
  - the FMV of the property and
  - the cost (or the ACB) of the property to the tax-payer immediately before the donation

  in the following three situations:

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(i) If the donor acquired the property through a "gifting arrangement"

(ii) If the donor acquired the property less than 3 years before making the gift

(iii) If the donor acquired the property less than 10 years before making the gift, if it was reasonable to conclude that when the donor acquired the property one of the main reasons for the acquisition was to make a gift (donor must prove that the donor did not have an expectation to make a gift when the property was acquired)

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- **The deeming provision does not apply to inventory, real property or an immovable situated in Canada, certified cultural property, publicly traded shares and ecological gifts**
- **The deeming provision also does not apply where the gifts is made as a result of the donor's death, and certain other situations**
- **The deeming provision is subject to anti-avoidance rules**
- **Inserting a new definition for "limited-resource debt" in circumstances involving charitable donations**

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2. Education of the Public and Registered Charities

- **Various CRA Fact Sheets, News Release, Taxpayer Alerts warn the public and registered charities of the risks associated with involvement in such schemes**
- **Most recently:**
  - ***News Release,* "Warning: Tax shelters are risky," October 31, 2006**
  - ***Taxpayer Alert*, "Warning: Tax shelter gifting arrangements are risky," October 31, 2006**

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- **CRA also warns and educates the charitable sector of the risks involved with these donation schemes and the need to be wary when involved in these schemes through a series of other publications:**
  - ***Registered Charities Newsletter No. 4,* Spring 1999**
  - ***Registered Charities Newsletter* No. 14, Winter 2003**
  - ***Registered Charities Newsletter* No. 16, October 9, 2003**
  - ***Summary Policy* CSP-T08, "Tax Shelter," November 26, 2003**
  - ***Registered Charities Newsletter No. 18,* April 2004**
  - ***Registered Charities Newsletter No. 21,* January 2005**

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3. Reassessments of Taxpayers/Donors and Court Challenges

- **CRA's news released on October 31, 2006 indicates that CRA warns Canadians of the financial risks associated with participating in certain tax shelter gifting and donation arrangements, including gifting trust arrangements, leveraged cash donations, and buy-low, donate-high arrangements**
- **CRA indicates that it reviews all tax shelters and challenges any arrangements that does not comply with the Act**

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- **As of October 2006, CRA indicated that:**
  - **For donations made prior to 2002, CRA reassessed about 6,700 taxpayers, disallowed about $490 million in donations**
  - **For the 2002 tax year, a further 5,700 taxpayers were reassessed, with donations of $360 million**
  - **For the 2003 tax year, about 1,800 taxpayers were audited as of October 2006, with some $66 million in donations disallowed**

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- **CRA recommends that anyone considering participating in tax shelter donation arrangements obtain independent legal and tax advice**
- **CRA also warns that the fact that investors in some of these tax shelter donation arrangements have not been reassessed should not be interpreted as the CRA's acceptance of the arrangement and that such audits may take more than one year to complete**
- **CRA's aggressive reassessments on taxpayers involved donation tax shelters and art-flips have led to a number of cases in the tax court**

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- **In general, the challenges by CRA have been on different fronts, including whether:**
  - **There is a gift**
  - **The receipts reflect the FMV of the property**
  - **There is any donative intent (in some situations, the donor never had possession of the property before they were donated to charities)**
  - **The property was personal-use property**
  - **The appraisals obtained by tax shelter promoters could be relied upon when issuing the donation receipt**

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- **For example:**
  - **Federal Court of Appeal cases of *Nash v. Canada* & *Klotz v. Canada***
    - **Nash was a consolidation of actions brought by Nash, Quinn and Tolley, who brought their cases before the Tax Court of Canada on behalf of 1,850 taxpayers**
    - **Art-flip donation program through which it sold groups of limited edition prints to individuals, arranged for appraisals, and located charities and universities to accept gifts of the prints which issued official tax receipts**

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– **Tax Court of Canada case *McPherson v. The Queen*, December 6, 2006 – donor involved in the Association for the Betterment of Literacy and Education tax shelter, donation deduction denied because he received 75% kickback of his $125,000 donation made to a charity in 1996, A.B.L.E. was de-registered in 1999**

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4. Audits on Registered Charities and to Obtain Donor Information

- **CRA has also been active in conducting audits of charities**
- **As part of the audit process, CRA is also obtaining donor information from the charities being audited in order to assist CRA's tax avoidance investigation or to reassess the donors**

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- **For example:**
  - ***All Saints Greek Orthodox Church v. M.N.R.*, 2006 case (F.C.) - CRA applied to the court for an order authorizing it to require the Church furnish a list of all persons who donated to it comic books and trading cards**
  - ***Redeemer Foundation v. Canada* 2005 case (F.C.) - After having audited a charity that operates a "forgivable loan program," CRA obtained from the charity donor information with which CRA contacted the donors that they would be reassessed to disallow the donation tax credits claimed for their donations to the charity**

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5. Audits on Tax Shelter Promoters

- **In CRA's various fact sheets and news releases, CRA has repeatedly indicated that the tax shelter identification number allows CRA to identify all tax shelters and their investors**
- **This also allows CRA to review and audit these shelters to ensure that they comply with the requirements of the Act**

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6. Establish Centres to Fight Aggressive International Tax Planning

- **On April 23, 2004, the governments of Canada, Australia, United Kingdom and the United States agreed to establish a Joint International Tax Shelter Information Centre, which will assist the respective tax administrations in addressing challenges arising from abusive tax transactions**

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- **News release on May 3, 2004 - an initial focus will include the ways in which financial products are used in abusive tax schemes to reduce their tax liabilities and the identification of promoters developing and marketing those products**
- **Fact sheet issued in August 2005 - CRA established 11 Centres of Expertise across Canada "to strengthen and enhance its audit and collection programs to counter international tax avoidance and evasion and aggressive international tax planning" and to "develop new ways to track and combat aggressive tax planning and the use of international tax shelters"**

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RISKS INVOLVED WITH ABUSIVE DONATION TAX SHELTERS

1. Reassessment of Taxpayers and Penalties

- **Taxpayers involved in unacceptable donation tax shelters will be reassessed by CRA to reduce or disallow tax credits or deductions claimed**
- **In some circumstances, penalties may also be imposed on taxpayers**

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- **Whether penalties will be applied in a particular situation depends on the facts – will be applied where donors knowingly accepted and did not question appraised values far in excess of the cost of the property**
- **Subsection 163(2) imposes an administrative "gross negligence" penalty on a taxpayer who "knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission" for purposes of the Act**

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2. Third-party Penalties

- **Third-party penalties were introduced in 2000 - "to deter third parties from making false statements or omissions in relation to income tax or goods and services tax/harmonized sales tax (GST/HST) matters" and that "[t]hese penalties are directed at ensuring tax compliance by deterring behaviour that results in non-compliance"**
- **See CRA Information Circular IC 01-1, "Third-Party Civil Penalties," September 18, 2001**

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- **Subsection 163.2 of the Act provides for two penalties,**
  - **"Planner penalty" - directed primarily at those who prepare (or participate in), sell or promote a tax shelter or tax shelter-like arrangements**
  - **"Preparer penalty"- directed at those who provide tax-related services to a taxpayer**

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- **Third-party penalties may apply to "tax professionals, tax return preparers, accountants, advisors, practitioners, brokers, tax or financial planners, appraisers, valuators, and tax shelter promoters," and "any person … engaged in activities described in paragraphs 7 and 9." This is illustrated in examples 8 and 9 in CRA's *Information Circular* IC 01-1**

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- **CRA's 2002 and 2003 fact sheets indicate that there are a number of penalties that may be applied to third parties involved with unacceptable donation tax shelter arrangements, including promoters, appraisers, preparers, advisors, registered charities and registered Canadian amateur athletic associations**
- **CRA indicated that third party penalties can include charities that receive the donation if "it knows – or if it can reasonably be expected to have known – that the appraised values were incorrect"**

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3. Penalties and Other Sanctions on Tax Shelter Promoters

- **Subsection 237.1(7.4) of the Act - Promoters who sell tax shelters before getting a tax shelter number are liable to a penalty equal to the greater of either $500 or 25% of the money received for selling the tax shelter**
- **The same penalty applies for filing false or misleading information on an application for a tax shelter number**
- **No person may claim tax shelter benefits if a promoter is liable for such a penalty or interest on such a penalty**

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- **Subsection 239(2.1) - it is a criminal offence to wilfully provide an incorrect identification number for a tax shelter to another person. Upon summary conviction, a person can be sentenced to a fine of not less than 100% and not more than 200% of the cost of the property to the other person, or imprisonment of up to two years, or both the fine and imprisonment**
- **Other sanctions are also possible. For example, in its fact sheets released in 2002, CRA indicated that it had obtained 10 criminal convictions against tax shelter promoters for tax fraud, resulting in fines of over $9 million and jail terms in all cases**

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4. Intermediate Sanctions on Charities

- **New intermediate penalties and sanctions for registered charities that do not comply with the requirements of the Act were implemented as a result of the enactment of Bill C-33, which received royal assent on May 13, 2005**
- **Incorrect receipts - penalty equal to 5% of the amount reported on a receipt (s. 188.1(7)) and increased to 10% of the amount on the receipt upon repeat infractions within 5 years (s. 188.1(8))**

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- **Such a penalty would apply to receipts that include incorrect information or receipts that do not contain all of the information required by the Act and the *Regulations***
- **Receipts containing false statements - penalty equal to 125% of the amount shown on the receipt (s. 188.1(9))**

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- ***Registered Charity Newsletter* No. 16 - charities are not obligated to either receive or receipt a gift if they choose not to**
- **In addition, CRA indicated that "[i]f the charity knew, or would have reasonably been expected to know but for circumstances amounting to culpable conduct, that the valuations were incorrect, it would be liable for the penalties for issuing false receipts"**

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5. Negative Effect on Charities' Disbursement Quota

- **CRA's *Registered Charities Newsletter* No. 16 warns that the acceptance of buy-low donate-high in-kind gifts from donors could result in the charity not being able to meet its disbursement quota:**
- **The amount for which the receipt is issued would be included in its disbursement quota requirement for the following year**

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- **If the charity was to in turn sell the property for an amount far below the amount for which the receipt was issued, the charity would not be able to meet its disbursement quota requirement as a result of the over-inflated receipt that was issued**
- **Failure to meet the disbursement quota is grounds for us to revoke a charity's registered status**

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6. Revocation of Charitable Status

- **In spite the enactment of intermediate sanctions against registered charities to address minor infractions of the requirement of the Act, such as the two new sanctions referred to above relating to improper issuance of donation receipts, it is still open for CRA to revoke a charity's charitable status for severe breaches of the Act. The same would apply to registered Canadian amateur athletic associations**

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- **Failure to meet the disbursement quota may become grounds for losing the charitable status of a charity**
- **Upon revocation, the registered charity must, within one year of its deregistration, either transfer its assets to one or more qualified donees or pay a revocation tax under Part V of the Act, which is a 100% tax on the remaining property of the registered charity (i.e. transferring all of its remaining property to the Crown)**

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CONCERNS FOR CHARITIES

- **Legal and accounting opinions**
  - **Do they contain express exclusion of reliance on the opinions by the donor and/or the charity?**
  - **Do they contain independent verification of facts upon which the opinions are based upon?**
  - **Are they based on other assumptions and unexplained facts?**

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  - **Do the donor and/or charity have sufficient information to make an independent assessment of the tax shelter?**
  - **Do they guarantee that the arrangements are acceptable to CRA?**
  - **Is there any CRA advance ruling accepting the arrangement?**
  - **Are they written from the perspective of the tax shelter promoters or from the perspective of the donor or the charity?**
  - **Do they point out risks involved with the tax shelters that the donors and/or charity should be aware of?**

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- **Valuation opinions**
  - **Do they contain express exclusion of reliance on them by the donor and/or the charity?**
  - **Do they contain independent verification of facts upon which the opinions are based upon?**
  - **Are they based on other assumptions and unexplained facts?**
  - **Do they provide supporting material to support the opinions?**
  - **Are the valuators qualified to conduct a valuation?**

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- **Legal defence fund**
  - **Is the fund sufficient to respond to CRA's reassessments, including all subsequent appeals through the court system?**
  - **Is the fund available to defend charities named in a court challenge or are audited by CRA as a result of their involvement with tax shelters that are being challenged by CRA?**
- **Other concerns:**
  - **FMV of the gift donated**
  - **Eligible amount of the gift on the donation receipt**
  - **Disbursement quota issue**

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DONATION OF FLOW-THROUGH SHARES

- **Flow-through shares ("FTS") are tax-based financing incentives available to the oil and gas, as well as mining sectors**
- **In the 1990s, the mining and resource industry experienced low mineral prices and therefore a downturn in exploration**
- **The government introduced an incentive to promote exploration to assist those industries to raise equity – therefore FTS**

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- **The current rules effectively permit corporations to renounce or "flow-through" income tax deductions associated with certain activities to shareholders in exchange for the sale of their shares**
- **FTS are not new and FTS by themselves are generally not tax shelters**

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- **However, the purchase and donation of FTS to charities would be a tax shelter:**
  - **Where FTS are promoted together with making a gift to a charity - it would qualify as a "gifting arrangement" and thereby may be required to obtain a tax shelter identification number**
  - **Because elimination of capital gains tax on charitable donation of publicly-listed shares to**
    - **Public foundations and charitable organizations made on or after May 2, 2006 (2006 federal budget)**
    - **Private foundations made on or after March 19, 2007 (2007 federal budget)**

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- **Generally involves:**
  - **An investor invest in exploration by providing funds to a corporation in the oil and gas and mining industry**
  - **The investor receives shares issued by the corporation in return**
  - **The corporation uses the invested funds to incur Canadian exploration expenses ("CEE"), Canadian development expenses ("CDE") or Canadian oil and gas property expenses ("COGPE")**

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- **The deductions available to the corporation in relation to these resource expenditures are flowed-through to the investor**
- **The expenditures deducted by the investor reduce the cost base of the shares held, up to the amount of the purchase price**
- **Once exploration is complete, investors typically exchange the FTS for normal securities of the issuer (on a tax deferred basis)**
- **Since FTS are generally deemed to have an ACB of nil [subsection 66.3(3)], a significant capital gain will normally occur when the securities are sold**

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- **Instead of selling the FTS, the investor donates the FTS to a charitable organization, public foundation, and private foundation**
  - **There is no capital gains tax on the gain**
  - **The donor receives a donation receipt for the value of the FTS donated**

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- **Example of tax benefits:**
  - **Assume that an investor, instead of purchasing non-FTS securities, acquires $1,000 of FTS of a publicly-listed corporation**
  - **Over the course of the exploration period, the investor will be entitled to $1,000 in flowed-through deductions related to the exploration expenses resulting in tax savings of about $460 (assuming a 46% marginal tax rate)**
  - **The $1,000 FTS will have cost only $540. When exploration is completed and the investor has claimed the maximum possible amount of exploration deductions, the shares may be gifted to a qualified donee**

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- **Assuming that the value of the shares remains $1,000, the investor will be entitled to a donation tax credit in respect of the $1,000 donation, which results in another tax savings of about $460, and will not be taxed on the capital gain**
- **As a result, the investment and, thereafter, donation to charity of $1,000 will have only cost the investor/donor $80**

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- **Issues to consider for charities if FTS were donated to them:**
  - **Many FTS are subject to hold periods – Is the hold period reasonable?**
  - **Many FTS may not retain their value during the hold period - What would be the value of the FTS at the end of the hold period?**
  - **Many FTS may not be marketable upon the expiration of the hold period – What is the marketability of the shares?**

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- **Is the ownership of the FTS an appropriate investment that complies with the applicable trustee legislation? e.g. are the shares a prudent investment under the *Trustee Act* (Ontario)? – especially if the charity cannot sell the shares until after a hold period**
- **Is the ownership of the FTS an adventure in the nature of trade?**
- **Does the charity know that they are getting FTS or would the charity unknowingly hold the FTS as though they are regular publicly-listed securities?**

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- **Has the charity been actively involved in promoting a FTS tax shelter? - A charity may be deemed to be a promoter of a tax shelter if it is deemed by CRA to be carrying on a business and promoting the tax shelter aggressively or promoting a shelter in the course of carrying on a business**

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- Valuation issue when receipting FTS
  - Where FTS are not publicly-listed – the FMV deeming provisions would apply
  - Most FTS are publicly-listed – therefore the FMV deeming provision does not apply
    - Therefore the donation receipt would reflect the FMV of the FTS – valuation issues – see next slide
    - If the FTS are gifted before they could be sold, an independent valuation of the FTS for receipting purposes would be required

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- Valuation issues of publicly-listed shares in general
  - Determine the date of the gift of publicly-traded shares:
    - Certificate hand-delivered to the charity - gift made when the charity receives and accepts gift
    - Certificate is mailed to the charity - deeming rule in paragraph 248(7)(a) applies to deem the charity to receive the certificate on the day it was mailed, provided that the charity accepts the gift

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- Electronic transfers - CRA has indicated that as a general rule the date of a gift of electronically transferred shares is the date the shares are received in the charity's account
- Because the Act does not provide guidance in determining how a gift of shares should be valued, CRA has accepted the use of the closing bid price of the share on the date it is received or the mid-point between the high and the low trading prices for the day, whichever provides the best indicator, given the circumstances, of fair market value on normal and active market trading

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– **Other valuation factors to consider:**
  - **The size of the block of shares**
  - **The volume traded**
  - **The attributes of the shares**
  - **Whether the donor had control or was a minority shareholder**
  - **Whether there were any restrictions on the transferability of the shares**
  - **Whether the shares were thinly traded**

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- **Charities which anticipate receiving such gifts and which have not developed a policy in respect of receipt of donations of publicly traded shares should do so at their earliest opportunity, taking into consideration the guidance provided in *Registered Charities Newsletter* No. 12**

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THE FUTURE

- **Looking through the crystal ball …**
- **Know the risks involved with donation tax shelters and then carefully review new donation programs**
- **Know the rules that charities are required to comply with**

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