ASSOCIATION OF FUNDRAISING PROFESSIONALS (AFP) –
GREATER TORONTO CHAPTER

CONGRESS 2007 – A WORLD-CLASS GATHERING FOR FUNDRAISERS

Toronto – November 14, 2007

Corporate Giving: A Going Concern

By Terrance S. Carter, B.A., LL.B., Trade-mark Agent
and Theresa L.M. Man, B.Sc., M.Mus., LL.B.
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OVERVIEW

- Corporate giving has been on the rise recently. However, the tax rules that apply to corporate contributions have not been well understood by corporate donors, fundraisers, and charities in general
- This presentation reviews the following:
  - The Landscape of Corporate Giving – Why Corporations Give
  - Gifts by Corporations and Annual Limits of Deductions

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  - Gifts and Split-Receipting with Regards to Corporate Giving
  - The Treatment of Various Types of Contributions by Corporations
  - Identity of Donor on Donation Receipts
  - Use of Parallel Corporate Foundations
- See paper "Corporate Giving: A Tax Perspective" by Theresa Man on www.charitylaw.ca for more details

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A. THE LANDSCAPE OF CORPORATE GIVING – WHY CORPORATIONS GIVE

- **Studies have shown that corporate giving has been on the rise in recent years**
- **There are a number of benefits that corporations receive when making charitable gifts.**
  - **Corporations are entitled to deductions for charitable donations made pursuant to section 110.1 of the ITA - this may be only an ancillary and relatively minor reason for corporate philanthropy**

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- **Non-tax benefits, including advertising and marketing, public relations, and investment in future markets and future employees, such as**
  - **Improved corporate image and reputation**
  - **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**

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- **More productive workforce**
- **Lower training and other employee-related costs**
- **Better teamwork skills of employees**
- **Improved inter- and intra-company collaboration and sense of purpose**
- **Boosts staff morale**

- **"Halo effect" of corporate giving – i.e. 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**

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B. GIFTS BY CORPORATIONS AND ANNUAL LIMITS OF DEDUCTIONS

- **Pursuant to subsection 110.1(1) of the ITA, there are four different types of gifts that can be made by corporations with regards to annual limits of deductions**

1. Charitable gifts

- **Pursuant to paragraph 110.1(1)(a) of the ITA, a corporation may deduct the eligible amount of gifts made to qualified donees in the year or in the preceding 5 years**
- **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**

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- **This provision does not apply to gifts made to Her Majesty, gifts of cultural property and ecological gifts, as they are dealt with under paragraphs 110.1(1)(b), (c) and (d) of the ITA as set out below**

2. Gifts to Her Majesty

- **Gifts made to the Crown on or after February 19, 1997 are considered to be charitable gifts made pursuant to paragraph 110.1(1)(a) and be subject to the limitations set out in that paragraph (i.e. 75% of its net income, plus 25% of certain taxable capital gains, and 25% of any capital cost recapture)**
- **Gifts made to the Crown on before February 19, 1997 or pursuant to a written agreement made before that date are eligible for 100% deduction of the eligible amount of the gift**

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- **This rule applies to gifts in the taxation year and gifts made in the preceding 5 preceding years**

3. Gifts of cultural property made to certain institutions

- **A corporation is entitled to claim 100% deduction of the eligible amount of all gifts of cultural property 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***

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- **The gifts must be determined by the Canadian Cultural Property Export Review Board to have met the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act***
- **This rule applies to gifts in the taxation year and gifts made in the preceding 5 preceding years**

4. Ecological gifts

- **A corporation is entitled to claim 100% deduction of the eligible amount of gift of land if all of the following criteria are met:**

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- **The fair market value of the gift is determined and certified by the Minister of the Environment**
- **The land is certified by the Minister of the Environment to be ecologically sensitive land, the conservation and protection of which is important to the preservation of Canada's environmental heritage**
- **The gift was made by the corporation in the taxation year or in the preceding 5 preceding years to any of the following:**
  - **The Crown**
  - **A municipality in Canada**

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  - **A municipal or public body performing a function of government in Canada**
  - **A registered charity established for the conservation and protection of Canada's environment heritage and that is approved by the Minister of the Environment in respect of the gift**
- **The gift includes a covenant or an easement to which land is subject**
- **The ITA is proposed to be amended to clarify that an ecological gift would include a "real servitude" in the Province of Quebec [proposed amendment released on November 2006 (Bill C-33 before the prorogation of Parliament on September 14, 2007)]**

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5. Other related provisions concerning annual limit of deductions

- **First-in first-out ordering rule whereby no gifts could be deducted until amounts deductible for those gifts made in preceding taxation years have been deducted**
- **Corporations may carry forward unused charitable donation deductions for up to five years – However, in respect of gifts made after March 22, 2004, the ITA does not permit corporations to sell or transfer these unused claims to other taxpayers**

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- **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 corporation's share in the partnership**
  - **The eligible amount of the gift 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**

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C. GIFTS AND SPLIT-RECEIPTING WITH REGARDS TO CORPORATE GIVING

1. History of the proposed amendments on gifts and split receipting

- **December 20, 2002 - Draft Amendments**
- **December 24, 2002 - Income Tax Technical News No. 26**
- **February 28, 2003 - Federal Budget**
- **December 5, 2003 - Draft Amendment**
- **February 27, 2004 - Revised Draft Technical Amendments**
- **July 18, 2005 Special Release**
- **November 22, 2006 – Proposed Draft Legislation Bill C-33**

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- **September 14, 2007 – Bill C-33 dies on the Order Paper**

2. Highlights of proposed amendments in draft legislation – Bill C-33

a) Meaning of Gift

- **The traditional common law definition of a gift requires:**
  - **The donor must have an intention to give**
  - **There must be a transfer of property**
  - **The transfer must be made voluntarily without contractual obligation; and**
  - **No consideration or advantage can be received by the donor**

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- **Proposed draft amendments to the *ITA* create a new concept of "gift" for tax purposes which permits a donor to receive benefit, provided that the value of the property donated exceeds the benefit received by the donor**
- **Concept is commonly referred to as "split-receipting"**
- **The proposed draft amendments reflect an importation of the civil law concept of gift which permits a benefit back to the donor**

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- **While a gift with an advantage may be deemed a gift under the *ITA*, it will not necessarily be a gift at common law and therefore should not be identified as a gift in order to avoid subsequent challenges to the validity of the transfer**
- **When dealing with inter-charity transfers involving consideration, Bill C-33 states that split receipting does not apply. Therefore, such transactions must be structured as transfers or sale, not gifts**

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b) New split receipting rules

- **Charitable donation receipts must now reflect the following formula:**

Eligible Amount of Gift = Fair Market Value of the Property Donated – Advantage Received by Donor

i) Must be voluntary transfer of property with a clearly ascertainable value

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ii) Donative intent required

- **Must have a clear donative intent by the donor to benefit the charity**
- **Donative intent will generally be presumed if the fair market value of the advantage does not exceed 80% of the value of the gift**

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iii) Advantage

- **Broad definition - includes:**
  - **The total value of all property, services, compensation, use or other benefits**
  - **To which the donor, or a person not dealing at arms length with the donor**
  - **Has received or obtained or is entitled to receive (either immediately or in the future)**
  - **As partial consideration of or in gratitude of the gift or that is in any other way related to the gift**

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- **The advantage must be clearly identified and its value ascertainable**
- **Value of advantage is the total value of any "property, service, compensation, use or other benefit" in question**
- **Timing of valuation is the time when the gift is made**
- **The advantage can be received prior to, at the same time as, or subsequent to the making of the gift**
- **Does not require a causal relationship between the making of the gift and the receiving of the advantage, as long as the advantage is related to the gift**

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- **The advantage can be provided to the donor or to a person or partnership not dealing at arm's length with the donor**
- **It is not necessary that the advantage be received from the charity that received the gift, i.e. the advantage could be provided by third parties unbeknownst to the charity, which fact will necessitate that charities make inquiries of donors to determine if they have received a related benefit from anyone**
- **CRA's administrative exemption applies where there is a token advantage of the lesser of 10% of the value of the gift and $75 (*de minimis* threshold)**

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- **Examples**
  - **A charity receives a gift of land from a donor who has received some type of benefit from a developer who owns property adjacent to the donated property in exchange for making the gift**
  - **A donor who poses for pictures with his wife, a professional model, after agreeing to make a large donation to a charity. The agreement regarding the donation is publicized, various media outlets publish the pictures, and the wife of the donor receives increased modeling work as a result**

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- **Naming rights**
  - **Naming rights are not advantages if there is no prospective economic benefit associated with the naming rights**
  - **Corporate donors - if a corporation wishes to make a donation in exchange for the promotion of its business name, an economic benefit will result in creating an advantage**

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iv) The "deemed fair market value" rules arising from donation tax shelter schemes

- **The proposed "deemed fair market value" rules for a gift are the result of the government's attempt to curtail abusive tax shelter donation schemes by severely restricting the tax benefits from donations made under these schemes**

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- **These donation programs usually involve the item in question being purchased at a substantially lower price than its purported much higher fair market value, and that a donation receipt being issued by a registered charity for the fair market value when the item is donated**
- **The proposed amendments also curtail the use of limited recourse debt, which is a form of tax shelter in which the tax-payer incurs a debt for which recourse is limited and which can reasonably be considered to be related to a charitable gifting arrangement**

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v) Details of the "deemed fair market value" rules

- **Valuation of fair market value (FMV) of donated property**
- **FMV of donated property will be deemed to be the lesser of**
  - **The fair market value of the property and**
  - **The cost (or the adjusted cost base where applicable) of the property to the tax-payer immediately before the gift is made**

in the following three situations:

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(i) If the donor acquired the property through a "gifting arrangement" i.e. a donation tax shelter scheme

(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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- **New provision also requires a "look-back" to see if the property had been acquired within the 3 or 10 years by a non arm's length person and if so then the "deemed fair market value" applies to the person**
- **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 gift is made as a consequence of the donor's death**

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- A shareholder has transferred property to a controlled corporation in exchange for shares and the shares are donated, or a rollover transaction to a corporation for the same purpose of donating shares
- Where the donor has acquired property from a transferor (such as a spouse) on a tax-deferred rollover basis

- New rules to prevent a donor from avoiding the deeming provision by disposing of property to a charity and then donating the proceeds of disposition, rather than the donor donating the property directly to the charity ("substantive gifts")
- The new deeming provision is also subject to anti-avoidance rules

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D. THE TREATMENT OF VARIOUS TYPES OF CONTRIBUTIONS BY CORPORATIONS

1. Preliminary comments

- Corporate giving may involve different forms of contributions, 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

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- 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

- This section of the presentation reviews the treatment of some of the more common forms of corporate giving

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2. Corporate sponsorship vs. gifts

a) Meaning of “sponsorship

- **“Sponsorship” is not defined in the ITA**
- **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**

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b) Differences between a gift and a sponsorship

Charitable donation	Sponsorship fee
A corporation may deduct the eligible amount of a gift up to 75% of net income, plus 25% of certain taxable capital gains, and 25% of any capital cost recapture	A corporation may deduct 100% of a sponsorship fee as a business expenses under section 18 of the ITA
A charitable tax deduction can be carried forward for a period of five years	A sponsorship fee must usually be deducted within the fiscal year in which it was made
Receipt will be added to D.Q. obligation	No receipt so no addition to D.Q. obligation

- **A corporation may deduct 100% of a sponsorship fee as a business expenses under section 18 of the ITA provided that it meets six tests**

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- **The expense is of an income nature and not a capital expenditure**
- **The expense is reasonable in amount**
- **The expense is incurred for the purpose of earning income**
- **The expense is not a personal expenditure**
- **The expense is not expressly prohibited by the ITA**
- **The expense does not constitute an “abusive tax avoidance”**

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- **What is reasonable is a question of fact, by comparing the expense in question with amounts paid in similar circumstances in comparable businesses**
- **For example, if a business received recognition as a donor in a 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**

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- **Sometimes, it might be difficult to find appropriate comparables, especially when some benefits associated with the contribution may not be quantifiable**
  - **e.g. 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**

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- **When a corporation makes a contribution to a charity, it could be**
  - **100% charitable donation**
  - **100% sponsorship fee**
  - **Partly charitable donation and partly sponsorship fee – possible because of the new split-receipting rules**

  a) Scenario 1 - 100% charitable donation
  - **Where a corporation received no benefit in return for having made a gift**

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– **It is also possible that the corporation 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**
– **e.g. The recipient charity provides the corporate donor with a small appreciation gift or a one-line acknowledgement of the gift in its annual report**

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b) Scenario 2 - 100% sponsorship fee

– **Where a corporation makes a contribution to a 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 be entitled to write off the contribution made by claiming a business expense for advertising, marketing or promotion**

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– **It may also involve a situation where the advantage received by the corporation exceeds 80% of 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**
– **e.g., 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.**

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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**
- **The charity would need to assess the amount of the advantage received and issue a split-receipt to the corporate donor for the eligible amount**
- **The corporation would be entitled to deduct the non-receipted portion of the contribution as a business expense**

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- **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 (Canada Revenue Agency, *Registered Charities Newsletter* No. 22, March 2005)**

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**

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- **Special rules apply to some types of gifts in kind, such as gifts from business inventory, gifts of capital property, gifts of Canadian cultural property, and gifts made by artists, dealer or collector**
- **See CRA's *Interpretation Bulletin* IT-297R2, "Gifts in Kind to Charity and Others"**
- **Needs to comply with the split-receipting rules when issuing receipts**

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 and the corporation will need to include the value as income of the corporation, or capital gain or capital loss, and recapture of capital cost allowance if the property was depreciable property**

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- **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**
- **Special rules apply to donation of capital property**
  - **Subsections 110.1(2.1) and (3) of the ITA contain specific rules that apply to gifts of capital property by corporations to charities**
  - **Proposed amendments in Bill C-33 re FMV**

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- **Special rules also apply to gifts of non-qualifying securities and situations involving loan back arrangements**
  - **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 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 as having been made and a tax deduction allowed**

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- **A loan back arrangement is where 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**
- **A detailed review of the rules that govern in this regard is outside the scope of this presentation**

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 fair market value of the gift is usually determined by obtaining an appraisal of the value of the gift by a qualified appraiser**

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- **Property of little or only nominal value to the donor, e.g. used clothing, will not qualify as a gift in kind**
- **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**

c) Appraisals

- **If the value of the property donated is anticipated to have a fair market value greater than $1,000, CRA recommends that a charity have an independent appraiser or valuator determine the fair market value of the items donated**

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- **The appraiser should be**
  - **Knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follows the Uniform Standards of Professional Appraisal Practice or the standards of the profession**
  - **Knowledgeable about and active in the marketplace for the specific property and about the elements of a properly prepared and credible valuation report**
  - **Independent and not be associated with the donor, the charity, or another party associated with the purchase, sale, or donation of the property**

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- **CRA considers it reasonable for a qualified employee of the charity accepting the gift to conduct the appraisal 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 somewhat over $1,000, such as a gift to a thrift store**
- **However, this option would not be available if the charity does not have any employee that is qualified in this regard**

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d) Date of donation

- **The value of the gift is to be valuated on the 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**

4. Inventory

- **Special rules apply to donation of inventory by businesses**

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- **When a charity receives 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**
- **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. In that case, no receipt would be issued by the charity**
- **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**

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  - **Instead, the business may write off the cost of the inventory by claiming a business expense for advertising, marketing or promotion purposes as reviewed above**
- **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**
  - **However, this increase in its income is offset by the business obtaining a donation receipt from the charity and claiming a charitable tax deduction**
  - **For example:**

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Sale of bread	**$50,000**
Plus the FMV 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**

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- **Generally, gifts of inventory are exceptions to the FMV deeming provision in Bill C-33 reviewed above when determining the fair market value of the inventory for purposes of gifting the inventory to the charity**
- **Property of little or only nominal value to the donor will not qualify as a gift in kind, for example a corporation donates its obsolete inventory to a charity when the corporation has already written off the value of the obsolete inventory**

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- **Gifts of medicine from inventory**
  - **The March 19, 2007 federal budget proposes to allow a special deduction for corporations that make donations of medicines from their inventory to registered charities that have received a disbursement under a program of the Canadian International Development Agency in respect of activities of the charity outside of Canada**
  - **The medicine must meet the requirements of the *Food and Drugs Act*, and cannot be food, cosmetic, a medical device, a natural heath product or a veterinary drug**

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- Corporations will be allowed to claim a special additional deduction equal to the lesser of 50 percent of the amount, if any, by which the fair market value of the donated medicine exceeds its cost and the cost of the donated medicine
- This measure will apply to gifts made on or after March 19, 2007

5. Services

- At law, a gift is a voluntary transfer of *property* without consideration
- Contributions of services (i.e. time, skills, effort) are not property

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- 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
  - CRA suggests that these two transactions be conducted by way of an exchange of cheques
  - 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

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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, 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

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- **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**
  - **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**

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- **For example, 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**

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- **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**
  - **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**
  - **The issuer would then be entitled to a donation receipt in an amount for the value of the gift certificate**

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

• **Where 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**

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- **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**

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• **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**
• **In determining the value of a gift certificate, 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 and (b) its usefulness**

7. Loan of funds

• **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**

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- **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 forgives the indebtedness, then the corporation would be entitled to a donation receipt for the amount of the debt forgiven**

8. Free use of property

- **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, e.g. 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**

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- **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**
- **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**
- **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**

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- **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**

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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**

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- **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 charity must be reasonably sure that the name it records on the receipt is that of the true donor**
  - **In these circumstances, CRA suggests that the charity request a written declaration as to the identity of the true donor from the party providing the donation**
  - **CRA indicates that this guideline also applies to a gift from a partnership in which both spouses are business partners**

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- **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**
- **Another example would be where an individual acts as trustee or agent for another person in making a gift to a registered charity**

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F. USE OF PARALLEL CORPORATE FOUNDATIONS

- **A corporation can establish a corporate foundation to carry out its charitable giving program**
- **There are many advantages for doing so, e.g.:**
  - **For large conglomerate corporations, the corporate giving programs are not always coordinated, which sometimes confuses 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**

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- **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**

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- **Having a corporate foundation can also help build an asset base for consistent long-term charitable giving even when corporate profits are down**
- **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**

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- **The corporation may collaborate with its corporate foundation so that its charitable program would be complementary to the business goals of the company**
  - **e.g. A company that is in the technology field may wish to have its corporate foundation focus on charitable work in educating youth**
- **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?**

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- **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 foundation set out in its constating documents**

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- **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**

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- **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***
  - **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**

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- **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?**
  - **Public foundations must transfer more than 50% of their annual income to qualified donees, whereas charitable organizations are limited to transferring not more than 50% of their income to qualified donees**
  - **The decision will, in part, depend on whether the corporate foundation would be able to operate within the more stringent requirements and limitations imposed on private foundations**

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  - **For example, the newly proposed 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 to be in control of the charity or represent more than 50% of the directors, trustees, officers or similar officials of the charity**

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- **Therefore, if the corporate foundation would be funded solely by the company and is under the control of 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:**
  - **Private foundations are subject to the newly proposed excess business holding rules contained in the March 19, 2007 federal budget**
  - **Private foundations are prohibited from engaging in any business activities**

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- **Private foundations are not permitted to incur debts other than debts for current operating expenses, the purchase and sale of investments, or the administration of charitable activities**
- **Private foundations cannot acquire control of another corporation, except by gift but within limits**
- **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) are subject to a penalty tax if the interest payable to the foundation does not meet a minimum rate of return**

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– **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?**

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- **Funding issues:**
  - **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**

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- **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**

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- **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 OPGT**
- **The foundation would be required to disburse a minimum amount of gifts it received in order to meet the applicable disbursement quota under the ITA, etc.**

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