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**HOSPITALS AND FOUNDATIONS SEMINAR SERIES**

**Healthcare Philanthropy:  
Check-Up 2008**

**Toronto – May 28, 2008**

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**Donation Tax Shelters and  
Flow-Through Shares**

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

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**TOPICS COVERED**

- **Abusive donation tax shelters**
  - Common forms
  - Steps taken by the federal government to curtail them
  - Risks involved
  - Concerns for charities
- **Flow-through shares donation tax shelters**
  - What are they?
  - Concerns for charities and donors

For details, see paper “Tax Shelters and Charitable Donations – a Miss-Match” by Theresa L.M. Man and Charity Law Bulletin #116, at [www.charitylaw.ca](http://www.charitylaw.ca)

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**COMMON FORMS OF ABUSIVE DONATION  
TAX SHELTERS**

**1. Buy-low Donate-high Tax Shelters – The Classic**

- **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 (fmv) of the donated property that is substantially greater than the price paid by the taxpayer

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- The fmV of the donated property is usually supported by an appraisal, (usually arranged by the promoter)
- Often, the taxpayers never takes possession of the donated property, which instead is directly transferred or delivered to the charity
- Key: tax credit based on the high value of the receipt far exceeds
  - the taxpayer’s cost in purchasing the donated property and
  - capital gains taxes on the disposition of the property

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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, often 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
    - Receiving a tax receipt for the donation

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- The taxpayer’s adjusted cost base of the property would be equal to the trust’s cost, which is fmV, 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, maximizing the tax benefit the donor received

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**3. Leveraged Charitable Donation Tax Shelters**

- A typical scenario would involve a taxpayer
  - Borrowing a pre-arranged loan
  - Donating the loan and some additional cash to a charity
  - Receiving a donation tax 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 be sufficient to pay off the loan
- The tax credit would exceed the economic cost of the donation to the charity

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**STEPS TAKEN BY THE FEDERAL GOVERNMENT TO CURTAIL ABUSIVE DONATION TAX SHELTERS**

- As a matter of tax policy, the fact that the donor under a donation tax shelter is receiving a net economic benefit from having made the donation is inconsistent with the requirement that a valid gift must involve the donor being impoverished
- The Department of Finance and CRA have taken a number of steps to shut down abusive donation tax shelters

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**1. Legislative Changes to the *Income Tax Act***

- 2000 Federal Budget
  - Art-flips in the 1990s and up to Feb. 27, 2000
    - Promoters purchased artwork at discount prices (from artists or in a distress sale) and sold them to taxpayers
    - Taxpayers in turn donated the artwork to charities, where the fmv of the artwork donation would not exceed \$1,000

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- Ss. 46(1) of the ITA: the cost and proceeds of sale of personal use property are 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 therefore no tax consequences
- 2000 Federal Budget amended ss. 46(1) to exclude the application of \$1,000 *de minimis* threshold to “excluded property” as defined in ss. 46(5)
- CRA would still be open to challenge the accuracy of the fmv of the donated artwork

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- 2003 Federal Budget (February 2003)
  - Before the 2003 Federal Budget, the definition of “tax shelter” in ss. 237.1(1) of the ITA 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 were made that a potential purchaser would 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 also amended to clarify its application to property acquired under a “gifting arrangement” (defined in ss. 237(1) of the ITA) – where it is represented that a donation would generate tax credits or deductions equal to or exceeding the net cost of the property to the donor
- A “gifting arrangement” is essentially any arrangement in which it is reasonable to assume that a participant will make a gift of property to a qualified donee under the arrangement

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– A “gifting arrangement” also involves a situation where 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 proposals brought by the 2003 Federal Budget apply in respect of property acquired, as well as gifts, contributions and representations made, after Feb. 18, 2003

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– 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

- Registering and obtaining a tax shelter identification number
- Filing an annual information return (T5002) and tax shelter information supplementaries, T5003

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– Investors have to provide the tax shelter identification number to CRA before they can claim any tax credit or tax deductions

– The purpose of registration is to allow CRA to identify and track unacceptable donation tax shelters

– 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

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- **December 2003 to October 2007**
  - In December 2003, Finance released a new package of proposed amendments to the ITA (amending changes proposed in December 2002) on split receipting
  - Proposed changes further amended and consolidated into a new set of proposed amendments released on February 27, 2004, July 18, 2005, November 18, 2006 and October 29, 2007 (Bill C-10)

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- **Summary of amendments to curtail abusive donation tax shelters proposed as of October 29, 2007 in Bill C-10**
  - 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
  - Requires clear donative intent by the donor to benefit the charity
  - Broad definition of “advantage” includes:
    - The total value of all property, services, compensation, use or other benefits

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- 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
- “Advantage” also includes limited recourse debt
- 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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– 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:

- (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

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(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)

– 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 - if so then the “deemed fmv” applies to the person

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– The deeming provision does not apply:

- Gifts of inventory, real property or an immovable situated in Canada, certified cultural property, publicly traded shares, ecological gifts
- Where the gift is made as a consequence of the donor’s death
- 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 purpose of donating shares
- Where the donor has acquired property (such as from a spouse) on a rollover basis

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- **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 deeming provision is also subject to anti-avoidance rules**

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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**
- **For example:**
  - *News Release*, “Beware of tax shelter gifting arrangements,” August 13, 2007
  - *Taxpayer Alert*, “Warning: Participating in tax shelter gifting arrangement is likely to result in a tax bill!” August 13, 2007

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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
  - *Registered Charities Newsletter No. 29*, Winter 2008
- **Warning from Terry De March of CRA to the charitable sector in June 2007**

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- **CRA warns that**
  - **Participating in tax shelter gifting arrangements can jeopardize charitable status or expose them to monetary penalties**
  - **CRA intends to challenge and proceed with compliance actions against any arrangement that does not comply with the ITA**
  - **CRA intends to audit all such arrangements**
  - **Anyone considering participating in tax shelter donation arrangements should obtain independent legal and tax advice**

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- **The fact that investors in some of these tax shelter donation arrangements have not been reassessed should not be interpreted as CRA’s acceptance of the arrangement and that such audits may take more than one year to complete**
- **A tax shelter number is used for identification purposes only and offers no guarantee that the tax shelter transactions have been approved by the CRA**
- **New arrangements are being marketed that claim to be different from those for which the CRA has previously issued warnings, but in fact are not**

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**3. Reassessments of Taxpayers/Donors and Court Challenges**

- **The August 13, 2007 News Release indicates that:**
  - **CRA will audit every tax shelter gifting arrangement**
  - **CRA has audited over 26,000 individuals who have participated in these tax shelters and about \$1.4 billion in claimed donations have been denied**
  - **CRA will soon complete audits of another 20,000 taxpayers, involving close to \$550 million in donations**
  - **CRA is about to begin auditing another 50,000 taxpayers**

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- In general, court challenges by CRA have been launched 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 appraisals obtained by tax shelter promoters could be relied upon

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**4. Audits of Charities**

- In January 2008, CRA was reviewing 40 charities that have been involved with tax shelter arrangements
- Even charities that are third party recipients of gifts from charities involved with tax shelters are being questioned by CRA

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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
- Penalties may also be imposed – where donors knowingly accepted and did not question appraised values far in excess of the cost of the property

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- Ss. 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 ITA
- Amount of the penalty equals 25% of the tax understated
- May be civil actions by the taxpayers against the charities and possibly its directors

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**2. Third-party Penalties**

- S. 163.2 of the ITA 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
    - e.g. tax shelter promoters, appraisers and valuers
  - “Preparer penalty”- directed at those who provide tax-related services to a taxpayer
    - e.g. persons providing tax advice

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- See CRA Information Circular IC 01-1, “Third-Party Civil Penalties,” September 18, 2001
- CRA has 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”

**3. Penalties and Other Sanctions on Tax Shelter Promoters**

- Ss. 237.1(7.4) of the ITA - 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

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- **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**
- **Ss.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**

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- **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**
- 4. Intermediate Sanctions on Charities**
- **New intermediate penalties and sanctions for registered charities that do not comply with the requirements of the ITA were implemented as a result of the enactment of Bill C-33, which received royal assent on May 13, 2005**

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- **Incorrect receipts**
  - **Receipts containing incorrect information or not containing all of the information required by the ITA and the *Regulations***
  - **Penalty equals to 5% of the amount reported on a receipt (ss. 188.1(7)) and increased to 10% of the amount on the receipt upon repeat infractions within 5 years (ss. 188.1(8))**
- **False receipts**
  - **Receipts containing false statements**
  - **Penalty equals to 125% of the amount shown on the receipt (ss. 188.1(9)), and suspension of receipting privilege if total penalties under ss. 188.1(9) exceeds \$25,000 in a year**

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- **Application of New Intermediate Sanction by CRA - Notice of Suspension**
  - **On November 29, 2007, CRA announced that it had issued a Notice of Suspension to International Charity Association Network (ICAN), which was involved with tax shelter arrangements**
    - **The one-year suspension of charitable status was imposed because ICAN failed to maintain and/or provide, and failing to provide access to, books and records relating to its involvement with tax shelter arrangements (ss. 188.2(2) of ITA)**

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- **CRA explained that ICAN failed to maintain sufficient documentation to support payments and expenditures including \$26,372,685 in fundraising payments and \$244,323,422 in charitable program expenditures and failed to provide required documentation to the CRA**
- **This suspension is the first sanction of this sort imposed by CRA since the introduction of the intermediate sanctions**
- **The Tax Court of Canada (January 3, 2008) denied ICAN’s application for a postponement of the suspension**

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- **On December 3, 2007, CRA issued a Notice of Intention to Revoke ICAN’s charitable status**
- **ICAN filed a Notice of Objection with respect to CRA’s decision to revoke, and filed a motion to defer the period for publication of the Notice of Revocation until the disposition of its notice of objection and any subsequent appeal**
- **The Federal Court of Appeal (“FCA”) dismissed ICAN’s motion seeking deferment on April 2, 2008**

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– On March 5, 2008, CRA revoked the charitable status of the Francis Jude Wilson Foundation

- Foundation was involved in a donation tax shelter arrangement resulting in the Foundation receiving actual cash returns of only \$23,716 in fiscal 2005 and \$81,951 in fiscal 2006 while issuing receipts totaling \$10,560,650

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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
- Failure to meet the disbursement quota may be grounds for CRA to revoke a charity's registered status

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**6. Class Action by Investors**

- Recently, CRA investigated the donation tax shelter, **Banyan Tree Foundation Gift Program**, and is in the process of disallowing donation tax receipts claimed by donors for the period between 2003 and 2007
- A group of donors who participated in **Banyan Tree** commenced a class action law suit on **February 27, 2008** against the promoters of **Banyan Tree** for breach of contract and negligence
- To recover any losses the donors may suffer as a result of the CRA reassessments

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**CONCERNS FOR CHARITIES INVOLVED WITH DONATION TAX SHELTERS**

- **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 valuers 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 issues
  - Investment issues

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- DONATION OF FLOW-THROUGH SHARES – WHAT ARE THEY?**
- 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
- Attractive 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 invests 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, the investor typically exchanges the FTS for normal securities of the issuer (on a tax deferred basis)
- Since FTS are generally deemed to have an ACB of nil [ss. 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 or private foundation
  - There is no capital gains tax on the gain
  - The donor receives a donation receipt for the value of the FTS donated
- 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)

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- 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
- 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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- CRA advance income tax rulings
  - CRA approved FTS gifting arrangements in two of its recent rulings
  - February 6, 2008 ruling
    - The gifting arrangement included the donation of flow-through shares to a charity and a resource company arranged for a “liquidity provider” to purchase the FTS from the charity immediately after the donation (and prior to the completion of the hold period that would otherwise apply)

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- The arrangement provides liquidity to the charity and allows the donor and the charity to be certain concerning the appropriate value for the charity's official donation receipt
- This ruling generally approves of a donation giving arrangement that allows for the use of tax expenditure dollars to fund charities and their charitable activities
  - May 14, 2008 ruling
- However, caution is still needed in a number of areas because CRA's position may change if the facts are different

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**CONCERNS FOR CHARITIES AND DONORS FROM FLOW THROUGH SHARES**

- Correct donation receipt
  - Charities must exercise due diligence when issuing charitable donation receipts to ensure that the information on the receipts is accurate
- Advantage
  - Finance noted that the tax benefit arising from the donation tax credit or deduction would not be considered an advantage for the purposes of the definition in ss. 248(32)
  - The tax benefits arising as a result of the renounced exploration expenses or the investment tax credit are not considered to be advantages

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- Hold periods
  - If a charity received FTS that are subject to a hold period, it would not be permitted to sell and liquidate the FTS until the end of the hold period
  - It would be necessary for the charity to review a number of issues in this regard
    - Whether the length of the hold period is reasonable?
    - Whether the FTS would retain their value at the end of the hold period?
    - Whether the FTS would be marketable at the end of the hold period?

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- Valuation

- The charity issuing the receipt has the duty to ensure that the valuation of the donated FTS is accurate
- Where FTS may not be sold by the charity for a period of time, the accurate value of the eligible amount of the gift on the receipt becomes questionable
- In relation to donation of publicly-listed shares in general (not FTS), CRA has generally 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 fmV on normal and active market trading

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- A careful review of the facts of each situation would need to be made to determine the fmV based on many factors,
  - The size of the block of shares in relation to the whole, 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, requiring a look at trades over a longer period of time

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- If the FTS may not be sold by the charity for a period of time, the general rule of using the trading price may not be an accurate reflection of the eligible amount of the receipt to be issued by the charity
- As such, it might be necessary for the charity to obtain an independent appraisal of the value of the FTS, taking into account of the restrictions that the FTS are subject to

- Voluntariness

- If a donor enters into an arrangement that requires the donor to donate the FTS to a charity, there may be an issue whether the donation is voluntary

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- **Prudent investment**
  - If the charity is required to hold FTS for a period of time, it also brings into question whether the ownership of the FTS during the hold period is an appropriate investment that complies with the applicable trustee legislation
  - For example, the prudent investment standard is the *Trustee Act* (Ontario)

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- **Carrying on business**
  - Private foundations cannot carry on any business activities
  - A private foundation carrying on business activities may run the risk of being subject to an intermediate sanction of penalty tax or even revocation of charitable registration
  - If the investment of the FTS is in the form of an investment in units of a limited partnership, and if what is donated to the charities is units in the limited partnership, then such a donation could only be made to charitable organizations or public foundations, but not private foundations

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- **Excess business holdings rules**
  - New rules were introduced by the 2007 Federal Budget that limit the shareholdings of private foundations
    - A private foundation is permitted to hold a maximum of 2% of all outstanding shares in a particular class of shares in any one corporation
    - If the total shareholdings of a private foundation and certain non-arm's persons are over 2% of all outstanding shares of that class of shares in any one corporation, the private foundation will be required to disclose certain shareholding information in its annual information return

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- If the total shareholdings exceed 20%, the foundation will also be required to divest of the excess shares over the 20% threshold within certain time periods depending on how the excess arose
- Private foundations that received donations of FTS will need to carefully monitor the number of shares held in order to comply with the disclosure and divestment requirements
- There may be situations where a private foundation cannot accept certain FTS, e.g. if the private foundation is required to hold the FTS for a hold period that is longer than the period within which the foundation is required to divest of those FTS under the excess business holdings rules

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- Tax shelter identification number
  - Charities and donors should ensure that any FTS arrangement they are involved in, meeting the definition of a gifting arrangement, is registered with CRA
  - CRA warns 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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- Charities as promoters
  - It is possible that a charity may be deemed to be a promoter of a tax shelter in some situations
  - If a charity is recognized by CRA to be promoting a tax shelter aggressively or promoting a shelter in the course of carrying on a business, then the charity may be deemed to be a promoter of a tax shelter

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- **Tracking gifts of FTS**
  - Where charities receive donations of publicly-traded securities, they must be carefully identified whether they are FTS or other publicly-traded securities
  - Where FTS are received, these gifts must be carefully tracked and monitored, and liquidated as soon as possible, in order to avoid inadvertently holding the FTS as though they are regular publicly-traded securities

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- **Representations and professional opinions**
  - Care must be exercised to ensure the accuracy of representations contained in tax shelter materials regarding:
    - The potential tax savings of donation of FTS
    - The value of the FTS
    - The marketability of the FTS
    - Restrictions on the sale of the FTS
  - Legal and accounting opinions provided by promoters should also be reviewed carefully

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- As long as the federal government continues to uphold these two tax policies, it would appear that the donation of FTS might result in a win-win situation for both donors and charities, provided that donors and charities exercise due diligence in respect of the gift
- See Charity Law Bulletin No. 116, “Donation Tax Shelters Involving Flow-Through Shares”

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