

BARRISTERS  
SOLICITORS  
TRADEMARK AGENTS

**CIBC WOOD GUNDY NATIONAL  
BUSINESS CONFERENCE**  
Toronto – October 11, 2012

**The Use of Private Foundations  
For Planned Giving**

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**INTRODUCTION**

- As of August 31, 2012, there are 5,180 private foundations registered with CRA (out of a total of 85,981 registered charities)
- Effective use of a private foundation could be a very useful and flexible planned giving tool for an individual
- There may be restrictions when it is suitable to use a private foundation

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**OVERVIEW**

- What is a private foundation
- Types of registered charities
- Rules that apply to private foundations
- Advantages of using private foundations
- Limitations on using private foundations
- Factors to consider when establishing a private foundation

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**A. WHAT IS A PRIVATE FOUNDATION?**

- Private foundations is one of three types of registered charities
  - Charitable organizations
  - Public foundations
  - Private foundations
- Recent amendments to the *Income Tax Act* (“Act”) seem to be blurring the distinction between the types of registered charities, particularly between a charitable organization and a public foundation

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- Charitable organizations - overview
  - Devotes all of its resources to charitable activities carried on by the organization itself
  - Generally considered to be a “doer” organization
  - May be established as a corporation, an unincorporated association or a trust
  - Cannot be controlled by a group of related directors/trustees, and no part of its income may be payable to or otherwise available for the personal benefit of a proprietor, member, shareholder, trustee or settlor

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- Charitable Foundations - overview
  - Constituted and operated exclusively for charitable purposes, which may be either a public foundation or a private foundation
  - Generally considered as a “spending” or “funding” organization by providing funds to other charitable organizations or “qualified donees” to carry out their charitable activities
  - May carry on a limited amount of charitable activities

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- May be established as either a corporation or a trust — but not as an unincorporated association
- Two types of charitable foundations: public and private
- Like a charitable organization, a public foundation cannot be controlled by a group of related directors/trustees
- A private foundation is defined in the Act as simply a foundation which is not a public foundation

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**B. RULES THAT APPLY TO PRIVATE FOUNDATIONS**

- Rules that apply to private foundations are complicated
- Having a working knowledge of the rules that apply to private foundations can effectively facilitate gifts from donors when they give through their private foundations
- Important for charitable organizations and public foundations not to be inadvertently re-designated as private foundations
- Will need to monitor legislative changes

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- Can have arm's length directors and can have control by major donor
- 3.5% disbursement quota, subject to \$25,000 asset threshold
- No business activities
- May give gifts to other qualified donees or carry on own charitable activities
- May conduct fundraising and receive gifts from others
- Cannot incur debts other than debts for current operating expenses, the purchase and sale of investments or the administration of charitable activities
- Cannot acquire control of any corporation
- Complicated excess corporate holdings rules – reporting and divesting requirements

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- Tax benefit of donation of certain gifts
  - Special rules apply regarding donation of various types of gifts
  - 2007 federal budget eliminated capital gains tax incurred on the donation of publicly-listed securities to private foundations
  - Donation of ecologically sensitive land to private foundations – no exemption of capital gains tax
  - Donation of non-qualifying securities is subject to serious restrictions
  - Restrictions concerning loanbacks and non-qualified investments
  - See section of PowerPoint on “limitations”

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**C. ADVANTAGES OF USING PRIVATE FOUNDATIONS**

- Donor can retain control over assets donated to the private foundation
- Donor can retain control over the investments of donated assets
- Donor may involve other family members in the private foundation and instill altruistic philanthropic values in them
- Public recognition of the donor and his/her family in the community

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- Donor can “design” what charitable causes the private foundation would support
  - Charitable objects set out in its constating documents
  - Must be exclusively charitable in nature and within the recognized four heads of charitable purposes
- Can be used as a passive charitable funding vehicle, or conduct active charitable activities
- Foundation can be used to build up an asset base for charitable work
- Foundation can hold endowment funds or make endowed gifts

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- Donor can retain privacy of his/her personal affairs
- Donor can control timing of his/her gift to the foundation and the timing of making gifts by the foundation
- Other persons (family members and others) can donate to the foundation

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**D. LIMITATIONS ON USING PRIVATE FOUNDATIONS**

- Additional administrative and financial compliance requirements, e.g.
  - Following required corporate procedures
  - Corporate filings
  - Filing annual Registered Charities Information Returns (Form T3010)
  - Keeping adequate books and records
  - Issuing donation receipts in accordance with the requirements under the Act

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- Subject to the applicable provincial statutes that apply to charities, for example
  - Oversight of the Ontario Public Guardian and Trustee
  - *Charities Accounting Act*
  - *Trustee Act*
- Private foundation is subject to many restrictions under the Act in relation to its operations, for example
  - Cannot carry on any business activities
  - Cannot incur debts other than debts for current operating expenses, the purchase and sale of investments, or the administration of charitable activities
  - Cannot acquire control of another corporation, except by gift but within limits
  - Must comply with the DQ requirements

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- Donation of ecologically sensitive land to private foundations – no exemption of capital gains tax
- Donation of “non-qualifying securities” to private foundations is also subject to serious restrictions
- Restrictions on private foundations involves rules concerning loanbacks and non-qualified investments

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**E. FACTORS TO CONSIDER WHEN ESTABLISHING A PRIVATE FOUNDATION**

- Is there any charity that the donor would feel comfortable donating to that would meet the donor’s philanthropic desires and achieve the donor’s tax and estate planning?
- What would be the charitable objects of the private foundation and what types of charitable causes would the foundation support?
- What should be the legal form of the private foundation?
- Under what jurisdiction should the foundation be incorporated?

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- How should the foundation be structured? Who would be on the board and how would the donor exercise control on the foundation? Does the donor have other trusted family members who can sit on the board?
- Will the foundation receive funds from the donor, family members or other individuals?
- Will the foundation hold endowed funds or grant endowed gifts?
- Will the foundation be a passive funder or will the foundation carry on active charitable programs?

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