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The Basics of Charitable Donations including the First-Time Donor's Super Credit

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2

OVERVIEW

- This presentation will address:
  - What is a gift?
  - What is the basic tax credit structure?
  - What is the first-time donor's super credit?

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3

A. THE BASICS

1. Donors are Eligible for Charitable Tax Credit if:

- Donors made a gift of money or property to a qualified donee;
- Donors received an official receipt from the qualified donee; and
- Donors file an income tax and benefit return

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2. What is a Qualified Donee?

- Registered charities;
- Registered Canadian amateur athletic association;
- Housing corporations in Canada set up to provide low-cost housing for the aged;
- Municipalities in Canada;
- Municipal or public bodies performing function of a government in Canada that applied for registration;

- United Nations and its agencies;
- Universities outside Canada with a student body that ordinarily includes students from Canada;
- Government of Canada, province or territory;
- Foreign organizations that applied to Minister for registration under subsection (26) *Income Tax Act* (“ITA”)

3. What is a Gift?

- According to the common law, a gift is defined as a voluntary transfer of property without valuable consideration
- Common law also requires an intent to give - an enrichment of the donee with a corresponding impoverishment of the donor
- New legislative amendments to the ITA created a new concept of “gift” for tax purposes which permits a donor to receive a benefit or consideration, provided that the value of the property donated exceeds the benefit received by the donor
- Concept is commonly referred to as “split receipting”

4. What is Split Receipting?

- Method used for calculating the eligible amount of a gift for receipting purposes when the donor has received an advantage in return for his/her donation

Split Receipting Formula

- Charitable donation receipts must now reflect the following formula:

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

- Must be a voluntary transfer of property with a clearly ascertainable value

Split Receipting Rules

- Split receipting rules broaden the circumstances in which a donor is entitled to a charitable gift receipt
  - Donors are now entitled to a charitable gift receipt even if an “advantage” is received as a result of making a gift to charity
  - The amount of the gift is the “eligible amount”, i.e., the fair market value of the property donated minus the value of the “advantage”

10

- 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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11

- Broad definition of “advantage” - 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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12

- Advantage can be provided to the donor or to a person or partnership not dealing at arm’s length with the donor
- 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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Three Conditions of a Gift (ITTN#26)

1. There must be a voluntary transfer of property to the donee with a clearly ascertainable value
2. Any benefit or advantage received or obtained by the donor or a person not dealing at arm's length with the donor in respect of the transfer must be clearly identified and its value ascertainable
3. There must be a clear donative intent to enrich the donee

Example

- Mary gifts $1,200 to a registered charity but recives two tickets to a gala dinner (FMV = $150), a beautiful coffee table book (FMV = $50), and her name appears in the annual report of the charity as a patron

Eligible Amount of Gift	=	FMV of Property Donated	−	Advantage Received by Donor
$1,000	=	$1,200	−	$200

5. What is Not a Gift?

- Example of transactions that do not constitute a "gift":
  - Pledged amounts which are not received
  - Donation of services
  - Payment of sponsorship fees
  - Loans
  - Provision of free use of property
  - Donations which are court ordered or otherwise compelled

16

B. WHAT IS THE BASIC CHARITABLE TAX CREDIT STRUCTURE?

- Subsection 118.1(3) provides a tax credit for individuals of the total amount of the eligible amounts of any gifts made in the year or 5 preceding years
- Example: Mary donates $1,000 cash - she can claim a tax credit:

  (15% * $200) + (29% * $800) = $262

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17

- Individuals may carry forward unused charitable gifts for 5 further years provided an amount or portion of an amount is claimed only once
- There is an upper limit of what a donor can claim of 75% of their taxable income
- Example: In 2012, Kate decides to donate $100,000. Her annual income is $60,000. In 2012, she can claim up to 75% of $60,000 ($45,000) as a charitable donation. Her resulting federal tax credit is $13,022. She can carry forward the remainder of the gift, $55,000 ($100,000 – $45,000), and use it in her tax return for the 2013 tax year or for the following 4 years

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18

- Her gift will also produce an Ontario tax credit calculated as follows:

  (5.05% * $200) + (11.16% * $44,800)
- Other provinces use other rates

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19

- Ordinary gifts include cash or near cash, e.g. cash, cheque, money order and credit card gifts
- The ITA contains special rules for other types of gifts:
  - Gifts of real estate
  - Gifts of publicly-listed securities
  - Gifts-in-kind
  - Ecological gifts
  - Gifts of cultural property
  - Gifts of life insurance
  - Registered retirement saving plans
  - Bequests

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20

- Donors should be encouraged to obtain legal or accounting advice in respect of these gifts or any other significant gifts to a qualified donee
- Resources available for details:
  - RC4407, *How to donate wisely: The Canada Revenue Agency and registered charities* (http://www.cra-arc.gc.ca/E/pub/xi/rc4407/README.html)
  - P113, *Gifts and Income Tax* (http://www.cra-arc.gc.ca/E/pub/tg/p113/README.html)
  - Imagine Canada, Charity Tax Tools (http://charitytax.imaginecanada.ca/topics/gifts-receipting/gifts)

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21

C. FIRST-TIME DONOR'S SUPER CREDIT ("FDSC")

1. What is the FDSC?

- *Income Tax Act*, subsection 118.1(3.1)
- New tax credit designed to encourage donors who have not donated within the last 5 years to give to charity
- Available only if the donor and spouse have not claimed a charitable donation tax credit in the 5 prior tax years
- When available, there is an additional, one time 25% tax credit for "first-time" donations of up to $1,000 cash

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- Therefore, for a gift of $500, there is an additional tax credit of $125 and for a gift of $1,000, an additional tax credit of $250
- The FDSC can only be claimed once between the 2013 and 2017 tax years

- Department of Finance officials estimate that up to 590,000 families are currently eligible for the FDSC
  - This includes single individuals and couples
- The Budget estimates the incremental cost of the FDSC at $25 million a year
  - This equates to $100 million in new donations

- Example: Eligible first-time donor claims $500 cash donation in 2013. The federal first-time donor's FDSC and charitable donation tax credit ("CDTC") are:

First $200 of charitable donations claimed	$200 X 15%	$30
Charitable donations claimed in excess of $200	$300 X 29%	$87
First-Time Donor's Super Credit	$500 X 25%	$125
Total FDSC and CDTC		**$242**

25

2. Examples Across Canada

Province	Current Cost of a $500 Donation	Cost of a $500 Donation with the FDSC
Alberta	$300.00	$175.00
British Columbia	$328.78	$203.78
Manitoba	$309.20	$184.20
New Brunswick	$310.37	$185.37
Newfoundland	$327.70	$202.70
Northwest Territories	$329.05	$204.05
Nova Scotia	$304.42	$179.42
Nunavut	$340.50	$215.50
Ontario	$339.42	$214.42
Prince Edward Island	$313.30	$188.30
Quebec	$271.00	$146.00
Saskatchewan	$316.00	$191.00
Yukon Territory	$330.64	$205.64

For more information & for detailed charts about the effect of the FDSC on donation costs across Canada, see http://www.imaginecanada.ca/node/18

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26

3. Questions?

- Does the FDSC only apply to the first charity a person donates to?
  - No. As long as a person is eligible to claim the FDSC, they can claim it on all of their donations (to a maximum of $1000) in the year of their choice up to and including 2017

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27

- If someone donates $20 this year, but $500 next year, does that mean they only get the FDSC for the first $20?
  - FDSC applies to the first claim that an eligible donor makes. Donors have up to 5 years to claim tax credits on their donations. Accumulating donations could be an effective strategy
  - If this person claimed the $20 donation on their 2013 income taxes, the FDSC would only be applied to this amount, returning $5.00 to the donor. However, if this person waited until 2014 and claimed both years' donations, the FDSC would apply to the full $520, returning $130 to the donor

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- How does the FDSC work with corporate matching-gift programs?
  - FDSC has no effect on any corporate match
  - You are still credited for charitable donations made, which are then matched in accordance with company policy. The FDSC affects (reduces) the net cost of your donation, not its amount

- Can the FDSC help donors to give more?
  - Yes. It enables donors to give more to causes that are important to them at no additional cost
    - For example, an eligible donor can now make a $50 donation for the exact same net cost as a $40 donation before the FDSC, regardless of income level

- Do all of my donations qualify for the FDSC, such as a donation of real property?
  - No. Only donations of <u>money</u> that are made after March 20, 2013 qualify for the FDSC

31

- How will a donor claim this charitable donation on his/her tax return?
  - A new line will be added to Schedule 9, *Donations and Gifts*
  - A donor will identify the eligible portion of the donation that he/she has claimed that are donations of money

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32

4. **For Information**

- CRA, First-Time Donor's Super Credit (http://www.cra-arc.gc.ca/gncy/bdgt/2013/qa01-eng.html)
- Imagine Canada, Caring Company Program (http://www.imaginecanada.ca/node/18)
- Charity Law Bulletin No.306, *2013 Federal Budget: New Donor Tax Credit, HSTand Anti-Tax Shelter Provisions Affecting Charities* (http://www.carters.ca/pub/bulletin/charity/2013/chylb306.htm)

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