2002 Church and The Law Seminar – November 5, 2002

Practical Planned Giving Tips for Churches & Religious Charities

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Practical Planned Giving Tips For Churches and Religious Charities

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I. Testamentary Gifts

A. Gifts by Will

- Deemed to have been made immediately before individual died
- Higher ceiling available
- Charity credit may be used in terminal return to offset tax liability arising from deemed disposition on death and carried back one year

Issues in Gifts by Will

- Undue influence/conflict of interest
- Wrong name/misdescription
- Which branch
- Donor restricted gifts
  - identify restriction
  - is it acceptable
  - duties of charity:
    - duty to comply with restrictions/conditions once gift accepted
    - keeping track, record keeping
    - duty to protect and preserve
    - duty to invest

Problem Assets

- Problem assets:
  - land and/or buildings
    - not able to be used
    - environmental issues and other liability issues (negligence etc)
    - can't be sold
    - expenses (property taxes; insurance etc) and taxes associated with holding land
    - effect on disbursement quota
  - shares

Receipting Issues

- Prior Life Interest
  - encroachment on capital?

Are You Getting What You Deserve?

- Interest on Legacies
- Charity Tax Credit
- Duty to Review Executors' Accounts

Format of Executors' Accounts

- Archaic
  - List of assets
  - Revenue
  - Capital
  - Investment account

Areas of Concern

- Penalty payments
  - banks
  - tax authorities
  - premium payments
- Legal and accounting fees
- Executors' compensation
- Performance of assets during administration
- Charges
  - against income/capital
- Overpayment of tax

Executors' Compensation

- Compensation agreements / will or trust provisions
- Basis - not scientific process
  - Statuory s. 61(1) Trustee Act
  - Case law
  - Guidelines
    - 2.5% RR; RD; CR; CD
    - 2/5 X 1% C&M Fee
    - attempts to change
      - 2.5% Ł 3%
      - C & M Fee 2/5 X 1% Ł 3/5 X 1%

Releases, Indemnities

- Release
- Indemnity

II. Donations of Life Insurance

- Transfer policy
- Designate charity as beneficiary of proceeds

Transfer of Policy

- Premium payments
  - donor to charity or directly to insurer
  - what if donor stops making payments

Naming Charity as Beneficiary

- Pre 2000 Budget
  - not considered gift by will
  - to obtain receipt - name estate as beneficiary and make gift by will
- Now
  - can designate charity directly as beneficiary
    - probate tax avoidance
    - not subject to creditor claims
  - similar rules re RRSP/RRIF's

III. Charitable Remainder Trusts

- Defined
- Benefits
- CCRA Requirements
- Valuation
- Disbursement Quota
- Additional Capital Contributions

Charitable Remainder Trusts

- What is a Charitable Remainder Trust?
  - deferred giving - charity is gifted an equitable interest in the capital of the trust only after the expiration of the prior income interests
  - examples include testamentary spouse trusts with remainder to charity and inter vivos trusts for the benefit of the settlor with remainder to charity

Charitable Remainder Trusts

- Benefits
  - to both donors and donees
  - donor receives a tax credit at time of trust settlement but may retain entitlement to income earned in the trust throughout his/her life
  - donee charity will receive (eventually) significantly more money than if it just relied upon an annual cash drive (as with most forms of deferred giving)

Charitable Remainder Trusts

- Key CCRA requirements
  - transfer must be voluntary with no expectation of benefit
  - remainder interest must vest in the charity at the time of transfer to the trust
  - trust must be irrevocable

Charitable Remainder Trusts

- remainder interest will be considered to have vested in the donee charity if:
  - donee charity is in existence and ascertained
  - size of the beneficiaries' interests are ascertained
  - conditions attached to the gift are satisfied
- may be either inter vivos or testamentary
- power of encroachment during the life tenancy will bar the issuance of a charitable gift receipt (although it will not invalidate the trust)

Charitable Remainder Trusts

- How is the value of the charitable gift receipt to be calculated?
  - since the issuance of a charitable gift receipt occurs at the time of settlement of the trust, this is also the time at which valuation occurs
  - value will be present value of future interest

Charitable Remainder Trusts

- Inclusion of a power of encroachment renders the valuation process impossible and thereby bars issuance of a charitable gift receipt (charities are not permitted to issue gift receipts where the value of the property cannot reasonably be determined)

Charitable Remainder Trusts

- Disbursement quota issues
  - receipt today (assuming that there is no power of encroachment) for property charity may not actually receive for many years - could result in an inability to meet disbursement obligations
  - Income Tax Act accommodates this potential difficulty:
    - Testamentary Trusts: gifts of capital received under a will are excluded from the 80 per cent disbursement quota requirement until such time as they are spent
    - Inter Vivos Trusts: ten-year gifts are excluded from the 80 per cent disbursement quota requirement until such time as they are spent

Charitable Remainder Trusts

- Are subsequent capital contributions to a charitable remainder trust receiptable?
  - recent technical interpretation - an additional transfer of property to the charitable remainder trust is not a receiptable gift
  - rationale is that no new gift is being given to the beneficiary charity of the trust

IV. Valuation of Publicly Traded Shares

- Unique - value can vary from day to day
- May be different on the day that charity actually receives the shares as compared to their value at the time of the donor's death
- Appropriate value for receipting purposes will depend upon the interpretation of the will
  - i.e., is the gift of shares a specific or non-specific bequest?
- CCRA's position:
  - Specific Bequest – valued as at the date of donor's death
  - Non-Specific Bequest – valued as at date of transfer to charity

Valuation of Publicly Traded Shares

- Criteria to delineate specific from non-specific bequests
  - dominant criterion is whether the executors of donor's estate have discretion regarding the transfer of shares to the charity
  - if trustees have no discretion, then bequest is likely a specific bequest
    - i.e. "I direct my Executors to transfer my 100 shares of Public Co. to X Charity"
  - if trustees have discretion, then bequest is likely a non-specific bequest
    - i.e. "I direct my Executors to transfer half of the residue of my estate to X Charity"

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