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Disbursement Quotas and Related Matters for Churches and Charities

(Power Point Presentation)

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Overview
A. Disbursement Quota: Importance
B. Disbursement Quota for Organizations and Foundations
C. Inter Charity Gifts
D. Ten Year Gifts
E. Satisfying the Disbursement Quota
F. Frequently Asked Questions
G. Restricted Gifts
   (a) appeal to donors
   (b) is it a gift?
   (c) duty of charity to comply with restrictions
   (d) failure to comply

A. Disbursement Quota: Importance
• Important for Donors and Donees
• Nature of property gifted
• Nature of restrictions imposed
• Source of gift

B. Disbursement Quota for Organizations and Foundations
• Organizations: 80% of receipted donations
• Exceptions:
  • Gifts of capital under a will
  • Gifts subject to trust or direction to hold for at least 30 years
  • Gifts from other charities
• Foundations:
  • Same rule re 80% (except for gifts from other charities)
    + 4.5% of the average value of investment property

C. Inter Charity Gifts
• Gifts to charitable organization: not subject to DQ of organization
• Gifts to Foundation: Foundation must disburse 80% (Public) or 100% (Private) irrespective of whether receipt issued
• Exception:
  • Specified gifts
How Does the Issue Arise?

- Donor wishes to satisfy charitable pledge by gift from private foundation to public foundation
- Private Foundation wishes to wind up and transfer its property to community foundation
- Organization wants to set up parallel foundation for asset protection purposes

Specified Gifts

- Gifts from one charity to another designated by donor charity as a specified gift will not count toward satisfaction of DQ of donor charity
- Donee charity does not have to include amount of gift in its DQ
- Important for donee Foundation to make inquiries
- Also important for Organizations to ask because specified gifts not included in income of organizations which can’t disburse more than 50% of their income to qualified donees
- Inter-charity transfers of 10 year gifts also problematic

D. 10 Year Gifts

- CCRA documentary requirements
- Trust or direction
- Disbursement quota issues if encroach on capital during 10 year hold; if encroach on capital after 10 year period
- Capital gains not considered “income”
- 4.5% disbursement quota still applies
- Inter charity transfers of 10 year gifts
- Low investment returns

E. Expenditures Which Count Toward Satisfaction of Disbursement Quota

(i) funds expended by charity on own charitable activities or
(ii) disbursed to qualified donees
Funds Expended Directly on Own Charitable Activities
- Includes salaries of those performing the charitable work and disbursements for equipment used in charitable activity
- Can use “agents” so long as guidelines are followed
- Does not include amounts spent on management, general administration and fund raising

F. Frequently Asked Questions
- Can charity disburse funds to an entity that does not contribute a qualified donee once its DQ is met?
- What if DQ is exceeded in a particular year?
- What if DQ is not met in a particular year?
- Can a charity accumulate funds for large scale projects and still meet its DQ?

G. Restricted Gifts
(a) Appeal to Donors
- Certainty that specific objectives will be advanced
- Control
- Involvement
- Attempt to achieve benefit of private foundation while saving legal/accounting costs, and obtain access to expertise and advice of professionals

(b) Is it a Gift?
- When will excessive control defeat a gift?
  - Naming rights
  - Donor appointing nominee to Board
  - Agreement between donor and charity that charity will use gift for certain objectives
  - Excessive control by donor over investments or distributions or other limitations on charity’s right to deal with gift may lead to conclusion that there has been no gift
(c) Duty of Charity Holding Restricted Gifts
- Comply with restrictions
- Invest
- Protect and conserve charitable property
- Keep accounts
- Apply for cy-près if necessary

(d) Consequences for Failure to Comply
- Personal liability for breach of tax
- Liability to account for accrued interest
- Return of gift to donor
- Accountability to public (PGT in Ontario)
- Deregistration of charity

(e) Other Concerns with Restricted Gifts
- If restriction on:
  - objects of the gift
  - investment powers
  - ability to spend capital
- If no flexibility to vary the terms, required to get court approval for variation
- Court’s jurisdiction invoked if charitable purposes impossible or impractical
- Summary procedure available in Ontario under Charities Accounting Act (s.13) in certain circumstances
  - consent of all beneficiaries required
  - Cases: Barnes, Killam Estate

(f) Avoiding Restricted Charitable Gifts
- Restricted gifts - legal responsibility and exposure to liability
- Encourage gifting of unrestricted gifts
- Encourage donor advised funds
- Instruct fundraisers to understand and identify differences between unrestricted and donor restricted gifts
- Fundraising materials should include statement to explain gifts will be considered to be given to further general charitable purposes unless donor specifies otherwise
(g) Documenting Restricted Gifts

- Public fundraising appeals
  - Include clear statement that any surplus funds remaining could be used to further general charitable purpose of charity
- Specify name of trust/endowment
- Specify purpose of restricted gift in clear language to avoid failure of gift for lack of certainty
- Ensure object of gift is within charitable objectives of donee charity
- Review and approve donor restrictions
- Include cy-près clause if primary purpose becomes impossible or impracticable

Documenting Restricted Gifts

- Incorporate by reference administrative powers in bylaws
- Expressly permit commingling
- Specify if capital encroachments allowed after period of time
- If direction to accumulate income, consider
  - disbursements quota implications
  - Accumulations Act considerations
- If only income to be spent, consider cy-près clause to permit income to be redirected if insufficient for original purpose

- Clarify who has decision making powers and scope of any restrictions
- If absolute gift with some precatory donor input, clarify nature and extent of input and who can give input
- To ensure proper wording for testamentary gifts, develop precedent language and make available to general public; if advisor to donor, check with charity for proper name, precedent material
- Take care to ensure that fund is properly managed and invested in accordance with terms of the gift