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# 20<sup>TH</sup> ANNUAL CHURCH AND CHARITY LAW SEMINAR

Mississauga – November 14, 2013

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## The Basics of Charitable Donations Including the First-Time Donors Super Credit

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	<b>THE 20<sup>TH</sup> ANNUAL CHURCH &amp; CHARITY LAW™ SEMINAR</b> Mississauga – November 14, 2013
	<b>The Basics of Charitable Donations Including the First-Time Donor's Super Credit</b> By Karen J. Cooper, LL.B., LL.L., TEP kcooper@carters.ca 1-866-388-9596 © 2013 Carters Professional Corporation
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<b>A. INTRODUCTION</b>	
This presentation will address:	
<ul style="list-style-type: none"><li>• What is a gift?</li><li>• What is the basic tax credit/deduction structure?</li><li>• What is the first-time donor's super credit?</li><li>• What are proper receipts?</li></ul>	
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<b>You are eligible for a charitable tax credit or deduction if:</b>	
<ul style="list-style-type: none"><li>• You made a gift of money or property to a qualified donee;</li><li>• You received an official receipt from the qualified donee; and</li><li>• You file an income tax and benefit return</li></ul>	
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**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 a function of government in Canada that applied for registration;

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- 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*

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**B. WHAT IS A GIFT?**

- According to the common law, a gift is defined as a voluntary transfer of property without valuable consideration

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**New legislative amendments**

- New legislative amendments to the *Income Tax Act* created a new concept of “gift” for tax purposes which permits a donor to receive benefit, provided that the value of the property donated exceeds the benefit received by the donor
- Concept is commonly referred to as “split-receipting”

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**New legislative amendments**

- A gift will permit some consideration to be received by the donor
- New split receipting rules apply
- New broader definition of “advantage” may reduce the amount of a charitable receipt

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**Three conditions (ITN#26)**

1. There must be a voluntary transfer of property to the donee with a clearly ascertainable value
2. Any 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

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**Split receipting - Formula**

- Charitable donation receipts must now reflect the following formula:  
$$\begin{array}{rcl} \text{Eligible Amount} & = & \text{Fair Market} \\ \text{of Gift} & & \text{Value of the} \\ & & \text{Property} \\ & & \text{Donated} \end{array} \quad \square \quad \begin{array}{l} \text{Advantage} \\ \text{Received by} \\ \text{Donor} \end{array}$$
- Must be a voluntary transfer of property with a clearly ascertainable value

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**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
- If donor receives an advantage, donee must accurately determine the fair market value of the advantage
- The gift, minus the advantage, must be a voluntary transfer of property and meet the intention to make a gift threshold

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**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"

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- 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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- 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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- 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

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- 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)
- Example: A charity receives a gift of land from a donor who has received some type of benefit from a developer who owns property adjacent to the donated property in exchange for making the gift - Receipt will reflect the value of the benefit
- Naming rights are not advantages if there is no prospective economic benefit associated with the naming rights

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**What is not a gift?**

- Examples 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

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**C. WHAT IS THE BASIC TAX STRUCTURE?**

**1. Basic Tax Credit**

- 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 \$1000 cash - She can claim a tax credit:  
 $(15\% * \$200) + (29\% * \$800) = \$262$

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### 2. Basic Tax Deduction

- Subsection 110.1(1) provides a deduction for corporations of the total amount of the eligible amounts of any gifts made in the year or 5 preceding years
- Example: Xco donates \$1000 cash - Xco can deduct \$1000 from its taxable income (provided it has income in excess of \$1,333)

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### 3. Basic Tax Credit/Deduction Rules

- Corporations and individuals may carry forward unused charitable gifts for 5 further years provided an amount or portion of an amount is claimed only once
- Example: In 2010, Kate decides to donate \$100,000. Her annual income is \$60,000. In 2010, 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 2011 tax year or for the following 4 years

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- 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 savings plans
  - Bequests

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**D. FIRST-TIME DONOR'S SUPER CREDIT ("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 has 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

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- Example: Eligible first-time donor claims \$500 of charitable donations in 2013. All donations are donations of money. The first-time donor's FDSC and non-refundable charitable donations 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
<b>Total FDSC and CDTC</b>		<b>\$242</b>

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## E. OFFICIAL RECEIPTS

- Must be issued in accordance with the requirements of the *Income Tax Act* and CRA's policies
- Must only receipt donations that are "gifts"
- Comply with split receipting rules
- Include required information on receipts
- Ensure accuracy of information on receipts

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- Checklist for official receipts for gifts of cash:
  - Statement that it is an official receipt for income tax purposes
  - Name and address of the charity as on file with the CRA
  - Charity's registration number
  - Serial number of the receipt
  - Place or locality where the receipt was issued

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- Day or year the donation was issued
- Day on which the receipt was issued if it differs from the day of donation
- Full name and address of the donor
- Amount of the gift
- Value and description of any advantage received by the donor
- Eligible amount of the gift

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- Signature of an individual authorized by the charity to acknowledge donations
- Name and website address of the CRA
  
- For non-cash gifts (gifts in kind):
  - There are additional elements that must be included

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