- # DONATIONS OF LAND TO REGISTERED CHARITIES IN CANADA

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- **WELCOME**

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THANK YOU

To SUSAN MANWARING and MALCOLM BURROWS

and

CAGP

For giving permission to use material from previous presentations given by them

TOPICS

- Gifts of Residual Interests in Real Estate ("GRI's")
- GRI's and Other Real Estate Gifts- the Tax Consequences
- The Canadian Ecological Gift Program
- Gift Acceptance Policies
- Case Study

1. GRI' S

- Donor irrevocably transfers real property to the charity, retaining a life interest, or term of use of the property
- Charity issues tax receipt for the present value of its future interest
- On death/at end of term, asset passes to charity
- CRA Bulletin IT226R

Non-Tax Benefits of GRI

- GRI will not:
  - form part of the donor’s estate
  - be subject to probate fees
  - be subject to provincial dependant’s relief legislation
  - though beware of fraudulent conveyance legislation

Split Receipting Rules

- Charitable donations are recognized to the extent of the "eligible amount"
  - Eligible amount = fair market value of property transferred to charity minus "advantage"
  - "Advantage" = benefit to the donor or non-arm's length person
  - Advantage can be provided to donor/other from other than the donee charity

Valuation

- CRA administrative policies only at this point
- Charity needs to consider:
  - Property and current market
  - Date of gift
  - Interests in property
  - Approach to determine present value of future interest - formula or actuary

Valuation (Cont’d)

- Charity needs to consider (cont’d):
  - Current interest rates
  - Life expectancy of life tenant(s) or the term of the trust
  - Appraiser:
    - Independent from charity and donor
    - Knowledgeable on standards of professional appraisals and on item(s) being appraised

Receipt

- Charity needs to consider:
  - Deemed fair market value of property
  - Advantage
  - Intent to make a gift
  - Voluntary transfer of property
  - Transfer must be irrevocable (no encroachment)
  - Gift must vest with the Charity at the time of transfer
  - Value of the beneficiary(ies) interest must be ascertainable

Receipt (Cont’d)

- Information on receipt to comply with Income Tax Act Regulations pertaining to receipts and recommend including name of Appraiser(s), if applicable.

Responsibilities

- Donor typically responsible for:
  - Safe and appropriate maintenance of property
  - Insurance coverage
- Must be documented in agreement

Principal Residence GRI- Considerations

- what happens if the Donor decides or needs to live elsewhere?
- The options that could be considered are:
  - the property be sold and the proceeds invested (presumably producing taxable income for the Donor during the Donor's lifetime)
  - the property be held by the Charity and a notional rent paid (on a taxable basis) to the Donor or
  - the property be sold and a replacement property of the same value be purchased by the Charity subject to an equivalent life interest for the Donor

Other Issues to Consider

- What happens if:
  - A new partner/companion enters the Donor's life
  - Donor becomes upset with the charity
  - Property increases significantly in value and Donor questions if he/she can receive more tax credit or questions initial approach in valuing receipt?
  - One day the Donor "regrets" the decision to do the gift and wants to reverse the gift? Or their children do?

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Discussions with the Donor

- Does the Charity know this Donor?
  - History of relationship - trust
  - Capacity to make gift
  - Motivation to make gift (intent)
  - Advantage received by Donor
- Does the Donor fully understand the gift arrangement?

Discussions with the Donor (Cont' d)

- Donor' s network? Are they engaged and supportive?
- Establish access/rights to monitor Charity' s interest.
- Clarify who is responsible for what (Charity/Donor)?
- Arrangements in advance to alert the Charity regarding the Donor' s death.

Confirming the Gift

- Donor and charity representation
- Appropriate level of disclosure
- Confirm recognition and stewardship
- Confirm designation:
  - Liquidate and use proceeds as designated
  - Retain and use property

Confirming the Gift (Cont'd)

- Appraisals
- Deed of Gift/Agreement
- Transfer of property

Life Tenant Period

- Stewardship meetings – twice a year:
  - Thank you
  - Updates related to Donor's interests
  - Special issues discussed/resolved:
    - Confirm payment of insurance premiums, utilities, taxes and fees, if any
    - Discuss any issues related to the condition of property or use of property

Realizing Interest

- Triggered by death/term/specified event
- Contact donor’s representative
- Working with representative/solicitor to:
  - obtain necessary documentation to “claim” property (e.g. death certificate)
  - access and secure property

Realizing Interest (Cont’d)

- Working with representative/solicitor to (cont’d):
  - vacate premises if real estate, or transport if other moveable property.
- Arrange to liquidate &/or assume responsibility for property and cover associated costs
- Apply proceeds or property as per Deed of Gift

2. GRI’S AND OTHER REAL ESTATE GIFTS- THE TAX CONSEQUENCES

- Gifts of Real Estate which trigger tax
  - Vacation properties
  - Residential properties – not principal residence
  - Commercial properties
  - Bare land
- Taxed at capital gains rate at 50% inclusion rate

- Tax credit based on appraised fair market value
- 50% of gain taxable to donor
- Maximum amount of credit is 75% of net income per annum
- + 25% taxable gain arising from the gift
- + 25% of the recapture associated with gift
- Carry-over period for excess contributions is 5 years
- In the case of farm property and CCPC, the donor may elect to claim some of the lifetime capital gains exemption

Recapture

- Owners of taxable real estate may claim depreciation of the building using the capital cost allowance (CCA)
- Provides tax deduction within prescribed limits
- When property is disposed/gifted, the CCA is recaptured and brought back into income
- This cost is often significant
- With 25%+ contribution “bump up” the recapture can be sheltered using the tax credit within the first year

Gift of Principal Residence

- Principal residences are tax exempt
- Tax credit based on appraised fair market value
- None of gain taxable to donor
- Can only deduct up to 75% of net income in any one year – carry forward 5 years

3. CANADIAN ECOLOGICAL GIFT PROGRAM

- Applies to outright gifts of land designated ecologically sensitive, as well as conservation easements or covenants
- More than 180 eligible charities may receive eco-gifts – list on Environment Canada website
- Since program inception in 1995: 941 eco-gifts worth $583 million, protecting 142,300 hectares (Environment Canada 2012-02-17)

- To qualify a charity must have a primary purpose such as "the conservation and protection of Canada's environmental heritage" <u>and</u>
- Apply to Environment Canada to be so designated

- Recipients of eco-gifts are responsible for maintaining the biodiversity and environmental heritage of the property in perpetuity
- Need a plan regarding environmental stewardship, monitoring, visitor safety and remediating environmental hazards

Easements

- Partial donations are known as an “easement”, “covenant” or “servitude”, which are defined as “a right to use over the land of another”
- Definitions within provincial and territorial legislation vary

Easements (Cont’d)

- All easements donated through the Ecological Gifts Program must be registered on title and bind future owners to the terms of agreement and include rights of assess provisions for monitoring
- Under the terms of these agreements, which are determined by the donor, the donor continues to own the land and may live on it, sell it, or pass it on to heirs
- The recipient ensures that the restrictions put on the property are followed in perpetuity, regardless of who owns the land

The Program

- Tax benefits:
  - Nil capital gains on eco-gifts
  - 100% contribution limit associated with eco-gifts
  - Receipts will be issued for fair value of the eco-gift
  - Donors can claim a credit or deduction (corporate donors) for the value of the gift up to 100% of their net income and carry forward remaining credit or deduction for 5 years
  - Similar tax benefits to gifts of cultural property

- In order to benefit from the Program, a report must be filed with the Minister of Environment describing the ecologically sensitive nature of the gift
- Minister must 'certify' the land as 'ecologically sensitive land'

Valuation

- Donor must submit an appraisal report setting out fair market value of the land
- Minister reviews the report and issues a Notice of Determination of the fair market value of the gift
- Donor has opportunity to dispute amount determined by the Minister

Tax Receipt

- Charity may rely on the Notice of Determination in determining the fair market value of the gift for purposes of preparing the tax receipt
- Split receipting often applies, as some significant gifts are "bargain sale" gifts – part sale; part gift

3. GIFT ACCEPTANCE POLICIES FOR REAL ESTATE GIFTS

- Charity's readiness/interest in accepting/ managing the property
- Gift Acceptance Policy or Guidelines should address:
  - Consistency with other relevant policies (e.g. those governing collections, real property, investments, designations, awards, naming, etc.)
  - Clarity on valuation procedure, (ie. appraisers); process to reconcile conflicting valuation

- Handling of costs (inspections, appraisals, maintenance, insurance, taxes, land transfer tax, utilities, liquidation or other costs associated with realizing interest in property)
- Requirement to seek counsel (charity and donor)

- Real property acceptance considerations:
  - Environmental assessment (Level I and Level 2)
  - Value of the property
  - Title
  - Marketability

- Real property acceptance considerations:
  - Credit risks
  - Family law issues
  - Condo? Status certificate and condo corporation information

- Costs typical of a property owner:
  - Property taxes / school taxes
  - Maintenance and repair costs
  - Condominiums:
    - Monthly condo fee
    - Additional costs imposed by Condo Corporation
    - Updates on key issues related to Condo Management (AGM Vote/Proxy)

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Gift of Land – Case study

Facts -

Ducks Unlimited Canada (DUC) contacted by US owners of lodge and wetlands in Canadian prairies for possible donation

Proposed gift part of campaign to restore local wetlands

Owners would consider donating property provided that:

(1) An appraisal of property resulted in a satisfactory value;

(2) Donation could be completed in 2012; and

(3) They would retain use of lodge for one month/year for 5 years

Appraisal

Winter, 2010 – Owners engaged a qualified Canadian appraiser and the value of the property was appraised at $1 Million

The Flood

Spring, 2011 - Wetland flooded and lodge received water damage

Mitigation of flood damage by charity and donor

Owners had adequate flood insurance

DUC provided assistance to get materials and personnel to the lodge for flood mitigation, damage assessment, alarm repairs and a required reappraisal

Reappraisal after flood – Fall, 2011

Appraiser took into account the insurance in place, did a “to be restored” approach to the reappraisal and the appraised value did not change

Lodge Use and Hunting rights

Lodge use for one month/year over 5 years
has substantial market value

If benefit built into donation - value of donation would be diminished

Appraisal of property did not include value of substantial
personal property in and around the lodge

Personal property worth at least as much as the value of the lodge

Entered into agreement with donor prospects for transfer
of personal property in consideration of allowing them one month's
use of the lodge for the 5 years

Tax issues

Donor prospects subject to significant Canadian capital gains on the donation

Donation through American Friends of Cdn. Land Trusts

Exemption from capital gains on donations from U.S. citizens
to qualified Canadian conservation organizations - DUC

Purpose –

To encourage US citizens to donate ecologically valuable property
to qualified Canadian conservation organizations to be preserved

Process –

Donation made to AFOCLT and subsequent transfer of the property
to DUC

More information - http://afoclt.org/

Application Process to AFOCLT **– 6 months**

DUC applied to AFOCLT for “qualified grantee status”

Need to demonstrate that DUC had the history, organization, finances, mission and expertise to hold and manage lands

Requirement for a detailed property description verifying its ecological significance and specific landscape features

Environmental assessments ensuring no negative environmental issues

Approval of organization’s stewardship plan

Engaging a U.S. appraiser to conduct an “appraisal review” of the Canadian appraisal

Contributing factors to successful gift of land

Donor Prospect

Wish for lodge and wetlands to be maintained by competent conservation organization

Desire to contribute to local wetland restoration project

Encouraged by process to exempt gift from capital gains in Canada

Contributing factors to successful gift of land

<u>Donor Prospect and Conservation Organization</u>

Trust established early and positive relationship critical

Providing donors with assistance during flood served to strengthen relationship

DUC and the donors worked as a positive team to overcoming hurdles

THIS IS WHAT GIFT PLANNING IS ALL ABOUT

QUESTIONS?

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