The Art of Giving

Where the Soul Meets a Business Plan

A Little Financial Advice • Canadian Adaptation

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www.artofgiving.com

The purpose of this document is to provide Canadian readers with the benefit of understanding some of the tax and charitable giving perspectives embodied in Canadian law as Chapter 16, in *The Art of Giving* provides for American law. As with Chapter 16, we urge readers to consult their attorneys or financial advisors as to fully appreciate the provisions as applied to individual situations. We are grateful to Elena Hoffstein of Fasken Martineau for her diligent adaptation of Chapter 16 to the Canadian scene.

Charitable Giving from a Canadian Perspective

IF YOU'RE LIKE MOST DONORS, you wouldn't mind taking advantage of the many tax benefits of your philanthropy. And why not? The Canadian government, no less than the American one, recognizes that private charity benefits everyone, and it has fashioned its tax laws to reflect that fact. There is one central feature of the Canadian system that is different from the American one: the charitable receipt. In the United States, the whole tax system governing charitable deductions is fairly irregular. Most nonprofits, but not all, offer receipts for the donations they receive, but they come in any number of forms--some on the institution's stationery, some as a proper business receipt, some as a scrawled note of thanks. None go automatically to the IRS, although all exist to be furnished to the IRS if proof of the gift is ever needed.

In Canada, the system is infinitely more organized. The charitable receipt is a standard, required feature of every donation to a registered charity in

the country; its form and content is regulated by Revenue Canada. Once you make a donation, you receive a charitable receipt for the value of the gift. If you do not get one, for tax purposes you might as well not have made the gift. You'll need the receipt to claim a charitable tax credit. The registered charities are not necessarily in Canada. Some are outside of it—but they are deemed by Revenue Canada to be of sufficient benefit to Canada that donors are eligible for a charitable receipt. For example, Columbia University is considered a worthy charity, not because it benefits society, but because enough Canadian students are enrolled that Canada receives a material benefit from any donation to the university.

The Canadian tax-savings advice that follows can get technical in spots, and you may not need to take in all of it. So, again, feel free to skip ahead to the aspects of the tax laws that are of particular interest to you.

Please bear in mind, however, that neither of us is a tax lawyer, and that any financial move that you are considering should be run by someone who is. Further, we are offering only general and hypothetical examples that may not be pertinent to all potential donors. And finally, the examples that follow are often simplified approximations, and should not be taken as financial advice. Readers should do their own due diligence, and consult with their financial advisors, lawyers and accountants to determine the tax consequences for them in their province and at their income level.

With that disclaimer, to begin:

Writing a check

By far the simplest tax benefit is the one that comes from writing a check to a registered charity or other "qualified donee,"—a status accorded by the Canadian tax authorities. The Canadian income tax system encourages charitable gifts by granting positive tax credits—not deductions as in the U.S.--to individual donors. The first $200 you donate is eligible for a

federal tax credit of 15 percent of the donation amount. After the first $200, the federal tax credit increases to 29 percent of the amount over $200. In addition, you will likely be eligible for a provincial tax credit, which varies among provinces. Generally, you can claim all or part of this amount up to a limit of 75 percent of your net income. For gifts of certified cultural property or ecologically sensitive land (which we will discuss later) you may be able to offset up to 100 percent of your net income.

In order to claim these tax credits, you will need that charitable receipt, which is a record of the value of the gift after any benefits related to the gift (the banquet dinner, the CD set) have been taken out. If these benefits exceed 80 percent of the gift, no charitable receipt will be issued.

Appreciated publicly traded securities

It gets more complicated from there, though. Say that, instead of cash, you want to give publicly traded stock with significant gains. An "appreciated security" like a share of Bell Canada, say, that has markedly increased in value. If you bought that share at $10, and it is now selling at $100, you have a built in gain of $90. If you'd simply sold that share and kept the proceeds, you'd have to pay capital gains tax on the taxable portion of the $90 (in Canada, the taxable portion is only 50 percent of the gain). But if you give the share to your alma mater, then the university can sell the share and credit you for its full value and also spare you the pain of paying the capital gains tax that you'd owe if you sold the share yourself. Appreciated publicly traded securities therefore offer a "three-fer." You get a charitable tax credit for their full value, you get to apply that full value against as much as three-quarters of your income and you avoid paying any capital gain tax.

Donor-advised funds

You don't need to give your donation directly to the charity. Instead, you can take advantage of the various community foundations that will set up

donor-advised funds that serve as "substitute foundations," holding your donations until you decide where you'd like to direct them. There are community foundations throughout Canada which offer these services to donors and charities. Various financial institutions offer them through related tax exempt public charities; Scotiabank does this through the Aqueduct Foundation and TD Waterhouse, through the Private Giving Foundation. It's easy: You donate your money to a community foundation that sets it aside in a donor-advised fund, and you can take the tax credit that tax year for the full value of the gift. Later, when you have decided on the causes you wish to back, you "recommend" to the institution where to send the money. The institution has the responsibility to make sure that your donation goes to a registered charity or "qualified donee," to use the official term, and that you are not getting anything in return.

We use the word "recommend" because these funds are no longer yours. They belong to the community foundation to which you've given them, and that institution's board of directors is legally responsible for determining how the funds are disbursed. Thus, you can't *tell* the fund to send $1,000 to the Canadian Cancer Society; you can only "advise" it to do that. Hence the name. The advice is invariably followed, but the terminology reveals the essential truth of the arrangement.

Two cautions: There is no second charitable credit for this gift when it is ultimately distributed to another charity; your ticket can only get punched once. And once you have put the money in a donor-advised fund, you can't take it back out for your personal use. Such limitations aside, the services that community foundations and donor advised funds offer have great appeal for donors, sparing them the expense and hassle of setting up their own foundation.

It is in this realm of appreciated assets that matters can get quite complex for the donor, so complex that, if the gift you have in mind gets anywhere close to six figures, you should probably gather a team of professionals to

advise you, even beyond the tax lawyer we recommend. A financial planner would certainly be advisable, but also an estate lawyer (even for people under forty who would otherwise not be thinking of estate planning), and an accountant.

Gifts of physical assets

Let's start with physical assets. There is a wide range of assets that appreciate in value, and that donors have passed along to charities instead of cash. In most cases, the organization simply keeps the object. An art museum might be very happy to have a Group of Seven Canadian landscape painting to add to its collection, or an archive overjoyed to receive some papers of Pierre Trudeau. In making these gifts, the donor can claim a charitable tax credit for their value on the date of donation. Even if that Group of Seven painting was purchased for just a few hundred dollars when the artist was still obscure, the donor can claim as a charitable tax credit its full value now, no matter how many millions it is currently worth. But remember: to gain the charitable tax credit, the donor must receive an official charitable receipt stating the value of the gift.

An important caveat. In the case of gifts of art and other cultural property, the donor can avoid paying capital gains tax on the appreciated value of the donated property only if the donated property qualifies as a "certified cultural property" and is donated to an approved institution for this kind of gift, such as the National Gallery of Canada or the Vancouver Art Gallery. A certified cultural property is one that has been deemed to be of outstanding significance and national importance to Canada by the Canadian Cultural Property Export Review Board. It makes Canada Canadian. The charitable tax credit available to donors as a result of a gift of such a property can also be applied against up to one hundred percent of their net income.

With respect to gifts of other appreciated assets that don't qualify as gifts of certified cultural property or publicly traded securities, Canada handles the

capital gains involved in charitable donations of such property differently from the United States. South of the border, donors are free to have the property independently appraised, and that value is the one that is assigned to the gift. If you were an American and you purchased that Group of Seven painting for, say, $500, and it is now worth $1 million, you would escape capital gains of up to 50 percent of your adjusted gross income over five years, but you would be on the hook for the rest. A Canadian donor in that situation (assuming that the Group of Seven painting did not qualify as certified cultural property) could choose to value his gift at any price between the cost basis up to its full market value and thus set it at a point that leaves him paying no capital gain. But this means that the value of his charitable tax credit, that other feature of the Canadian tax code, is also reduced accordingly.

We should also note that in any one tax year, the Canadian donor can apply charitable tax credits against up to three-quarters of his taxable income—but he can carry forward that charitable credit on that basis for each of the next five years.

As for determining that valuation: there is a fudge factor. Just as different realtors will give you different estimates for the price of your house, so will different appraisers. In the case of the Group of Seven painting, for example, a museum that had a particular interest in twentieth century Canadian landscapes would value it far more highly than a museum that specialized in seventeenth century portraiture and had little interest in the Group of Seven. It would probably also value it more highly than an independent auction house like Christie's or Sotheby's. To satisfy the tax man, the valuation must be current, and the appraiser should be independent from the donor and from the charity.

Donating land

The land trust is a wonderful asset for the landscape, as it preserves open

space forever. It is the product of thoughtful donors who are eager to keep their property pristine, safe from ever being developed, and are happy to enjoy a substantial tax write-off, too.

The process is best explained by example. Let's say an elderly couple owns a hundred-acre spread in the Alberta foothills. They're getting on, their kids have moved away, but they want to keep their property out of the hands of developers after they die.

In this case, the couple might decide to deed eighty acres to a land trust to keep the property undeveloped, while they themselves take a nice charitable tax credit for the value of the land. Now, before they can give it to a charity, that charity must obtain an independent appraisal of it, and it also must establish that it can actually make use of the property.

Know, too, that there are some extra tax incentives for gifting "ecologically sensitive lands" to certain qualified recipients. Ecologically sensitive land? That's land that has been certified by the Minister of the Environment as an essential piece of Canada's environmental heritage. As for the extra tax incentives, they include a cut in capital gains, and a tax credit of up to 100 percent of the donors' net income.

Provincial laws vary, however. Ontario, for example, has until recently prohibited charities from holding land for extended periods without actually using it. So check with a lawyer in the province where the gift is to be made before you proceed.

Surprisingly, you can give it away-—and still keep it. In Canada, in the case of that ecologically sensitive land, a donor can gift that land to a local land bank, and then continue to live on it. That way, she receives from the land bank the charity tax receipt for the present value of the "remainder interest," a sum based on how soon the land bank is likely to receive its gift.

A similarly paradoxical arrangement can be worked out for art. Rather than

give your cherished Group of Seven painting to the National Gallery of Canada outright, you can donate it on the condition that you retain literal possession for the rest of your life. So, even after it is given away, it stays exactly where it has always been, on the wall over the couch in your parlor. You can claim a charitable tax credit for the painting's full value, less the value of the interest that you have retained. Although the gift is not consummated until your death, your charitable tax credit is applied against your taxable income now.

An important caveat is that the extra tax incentives available for gifts of certified cultural property do not apply when a life interest in the property (such as the right to keep it on your wall) is retained by the donor. In addition, in the example above, the National Gallery will retain a "partial interest" in the Group of Seven landscape. That means it will have some rights over the painting during your lifetime, including the power to make sure that you are properly protecting the painting from harm.

Donating Flow-through Shares

These derive exclusively from the oil/gas and mining industries, which are such central aspects of the Canadian economy, that they have become a fairly common source of charitable gifts. Yet what flows through is not oil, gas or minerals, but the tax deductions available to the owners and investors when the rigs are exploring for oil or gas, or are in the early stages of developing a field. Generally, the deductions are not particularly valuable to young companies in exploration mode, but the "flow through shares" can be monetized and donated to a registered charity. The donor receives a double benefit: the tax deductions and the charitable tax credit resulting from the gift.

Giving Jewellery

While securities, art and land are three of the most popular assets to donate

to a nonprofit, there are many others. Indeed, almost anything of value can be given to the charity of your choice. Jewellery is one. That requires only an appraisal by a reputable dealer. With it, you can give that diamond brooch of your great aunt's to the Royal Ontario Museum and get a charitable tax credit for the full appraised value. If the museum chooses not to display the piece, it may then sell it to a dealer and use the proceeds to expand its endowment, make other purchases or fund programs. Revenue Canada requires that, even in the case of a prestigious recipient like the Royal Ontario Museum, the donor turn to a reputable, independent appraiser to determine the fair market value.

Donating your car

You've probably heard the pitch: Instead of selling your used-up old car, give it to the local inner-city health clinic, or arts organization. Unless the charity uses the car for another purpose like delivering food to seniors or donating the car to help an individual keep a job, generally your charitable credit is limited to the proceeds from the sale of the car. You get the charitable credit, the charity gets the value of the car. So goes the pitch. The only problem is that the charity *doesn't* get the full value of the car. Not being in the business of buying or selling cars, the charity assigns that task to a middle-man, who may take a hefty percentage of the proceeds, giving the remainder to the charity. Beware.

Intellectual property

There are plenty of intangibles to take to the charity marketplace, as well, such as intellectual property. For example, in America, the songs of Richard Rogers went to sustain a Richard Rogers Foundation. Book rights, copyright, patents—all of these can provide considerable income over time for a charity.

Foundations

For the lucky few who are considering starting their own private foundation to dispense their gifts, they should know that it doesn't make much sense unless they have at least $1 million a year to give away, or the foundation they're contemplating is part of your multimillion estate plan. Anything less and the legal fees and overhead are prohibitive. But if they do have that much to put into philanthropy, they will need to decide if they would rather create a foundation or a charitable organization.

Foundations and Charities: What is the difference?

Foundations are generally grant-making organizations. That is, they don't perform any charitable activities themselves. They don't operate homeless shelters. Instead, they make grants to the organizations that do. Foundations come in two varieties, each of which is treated somewhat differently in the tax code. A private foundation is usually a family affair, run by a group of relatives; a public foundation, by contrast, is usually made up of unrelated individuals who come together out of a common interest.

Charitable organizations, by contrast, make few if any grants, but rather devote their resources to providing charitable services themselves such as running a soup kitchen. Like public foundations, they are usually run by unrelated individuals.

All registered charities in Canada, whether foundations or charitable organizations, are required to make annual charitable disbursements. How much? Roughly speaking, it should pay out 80 percent of the total value of the donations received in the previous year, and at least 3.5 percent of the value of the charity's assets.

Charitable Trusts

There are plenty of other vehicles for your charitable donations, some of them quite complicated. Indeed, because of their complexity many of them are now being superseded by those donor-advised funds that are so much easier to operate. Still, other mechanisms are being used by donors to fulfill their giving objectives.

One is the Charitable Remainder Trust. Here, the donor places assets in a special trust that allows him to take out any income that is derived from the assets during his lifetime. In exchange, he has arranged for the "remainder," or the assets go to charity upon his death. Hence the name.

The instruments get considerably more complex from there. A donor might donate an existing life insurance policy--gaining a charitable receipt for the "cash surrender value", meaning the amount that the insurance company will pay if the policy is cancelled while the insured is still alive. (If a new policy lacks such value, the donor gains a charitable receipt only for the premiums he still pays.) Conversely, a donor can hold on to her life insurance policy but give her death benefits to a charity.

For further advice…

If you're puzzled, as you may well be, there are a range of philanthropic advisors who specialize in navigating these uncertain waters for donors. Be wary, though, for they themselves aren't always especially reliable. Like certain unscrupulous investment advisors, some steer their clients into a charitable entity not because it is objectively better for the donor, but because they have a stake in it, making it better for them. A more sensible way may be to go through your local community foundation, which tends to be markedly more dispassionate, as they serve a variety of non-profits in their community and are relatively low-cost and have knowledgeable staff who can assist a prospective donor. Independent philanthropic advisors are also a good resource.

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Praise for *The Art of Giving*

"In *The Art of Giving*, Charles Bronfman and Jeffrey Solomon offer the reader a rare gift: honesty, practicality, experience, savvy, self awareness. Together, the donor and the professional guide us through the vineyards of philanthropy better than the solo practitioner or the cloistered academic."
— Reynold Levy, *President, Lincoln Center for the Performing Arts*

"Drawing with insight, experience and humor on their separate paths through philanthropy, Charles Bronfman and Jeffrey Solomon have created a crisp, insightful guide for donors pursuing the true test of success: changing the world for the better."
— Diana Aviv, *President and CEO, Independent Sector*

"Charles Bronfman has devoted his life to philanthropy and he writes therefore with comprehensive knowledge, providing us with new and thoughtful ideas for all of us who would like to follow in his footsteps. His book should be read by all those whose lives are touched by philanthropy."
— Jacob Rothschild, *Honorary President, Institute for Jewish Policy Research*

"A superbly written, insightful, 360 degree explanation of 'streetwise, effective philanthropy' from two pros who know the field. *The Art of Giving* offers a fine and readable course for donors of any size."
— Lester Crown, *Chairman, Henry Crown and Company*

"In *The Art of Giving*, Charles and Jeff offer pragmatic and plainspoken guidance, and their considerable wisdom is offered with respect, warmth and empathy."
— Melissa A. Berman, *President & CEO, Rockefeller Philanthropy Advisors*