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Proposed Guidelines on Split-Receipting

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## **Proposed Guidelines on Split-Receipting**

### **Overview**

The Canada Customs and Revenue Agency (CCRA) has completed its review of what constitutes a gift for purposes of the *Income Tax Act* (the Act). This review was initiated as a consequence of the decisions in various court cases that seem to call into question whether the traditional meaning of gift under common law is still the appropriate standard. Furthermore, the traditional definition of gift disqualifies as a gift a transfer of property for partial consideration, notwithstanding that there is a clear gift element and donative intent, a result with which the government and, apparently, the courts are not comfortable.

Accordingly, after consultation with representatives of the Departments of Justice and Finance, the CCRA has developed interpretational guidelines that are to be followed in determining whether a transfer of property results in the making of a gift for purposes of the Act. On December 20, 2002, the Department of Finance released proposed amendments to the Act to facilitate the interpretative approach being adopted by the CCRA. As well, existing interpretation bulletins and publications will be revised to reflect these interpretative

guidelines, and to deal with a number of the more common gifting situations. While time will be allowed for interested parties to provide comments before the publications are so revised, these proposed guidelines may be followed in the interim.

Underlying the CCRA's interpretative approach to determining whether there is a gift in situations other than where there is an outright transfer of property for no consideration is that there be a clear donative intent to make a gift.

The key elements to this interpretative approach are as follows:

- (a) There must be a voluntary transfer of property to the donee with a clearly ascertainable value.
- (b) Any advantage<sup>1</sup> 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. If its value cannot be reasonably ascertained, no charitable tax deduction or credit will be allowed. In this regard, the donee will be required to identify the advantage and the amount thereof on any receipt provided to the donor in accordance with the proposed amendments to section 3501 of the *Income Tax Regulations*. In respect of valuations, the donee should consider obtaining a qualified independent valuation of the amount of the advantage.
- (c) Consistent with the case law, in order for there to be a gift there must be a clear donative intent to enrich the donee. It is recognized that the

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determination of donative intent is a subjective determination which can be difficult to establish. In this regard, it is proposed that the Act be amended<sup>2</sup> so that a transfer of property will not necessarily be disqualified from being a gift, provided the amount of the advantage does not exceed 80% of the value of the property transferred to the donee. In exceptional circumstances where the amount of the advantage exceeds 80% of the value of the transferred property, the transfer may still nevertheless qualify as a gift under the proposed amendments, provided the donor is able to establish to the satisfaction of the Minister that there was an intention to make a gift.

- (d) Generally, the proposed definition of an eligible amount of a gift<sup>3</sup> will be the excess of the value of the property transferred to the donee over the amount of the advantage provided to the donor. It is recognized that, whether in connection with fund raising events or direct gifts to a charity, a donor may be provided with some advantage because the donee wishes to provide the donor with a token of gratitude for making the gift. It is further recognized that the appreciation of such gifts will vary from donor to donor. Accordingly, the CCRA is prepared to administratively provide for a *de minimis* threshold that will simplify matters for both donors and donees where such advantages are of insignificant value. The current *de minimis* threshold set forth in the current version of Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*, will be revised to provide that the amount of the advantage received by the donor that does not exceed the lesser of 10% of the value of the property transferred to the charity and \$75 will not be regarded as an advantage for purposes of determining the eligible amount as set forth in the proposed definition. Note that the revised *de minimis* threshold will not apply to cash or near cash advantages (e.g., this may include redeemable gift certificates, vouchers, coupons).

### Guidelines

The following guidelines provide the CCRA's view of the manner in which the eligible amount and the amount of the advantage are to be determined with regard to various situations and fund raising events or activities, taking into account that, in many cases, there is not a readily available market value comparison of the

inducement or advantage provided to the donor. In particular, the guidelines address:

- fund raising dinners
- charity auctions
- lotteries
- concerts, shows and sporting events
- golf tournaments
- membership fees
- charitable annuities
- mortgaged property

### Fund Raising Events or Activities

The guidelines below have general application to all fund raising events or activities:

- The attendance of celebrities at fund raising events will not be viewed as an advantage per se. Any incremental amount paid for the right to participate in an activity with a particular individual (e.g., dinner, golf) would, however, not be viewed as a gift.
- The value of any complimentary benefits provided to all participants for attending the event (e.g., pens and keychains) and the value of door and achievement prizes that all attendees are eligible for by simply attending the event will be viewed as an advantage unless the aggregate value of such items, per ticket sold, does not exceed the lesser of 10% of the ticket price and \$75. For the purpose of establishing the eligible amount, and therefore the amount of the tax receipt, the value of door and achievement prizes will be aggregated and allocated on a pro rata basis to all participants.
- For the purpose of determining which items will be viewed as an advantage for purposes of applying the *de minimis* rule, the CCRA will adopt the position that the value of the activity that is the object of the fund raising event, while an advantage to be taken into account in determining the eligible amount, will not be included for this purpose (e.g., the value of a meal at a fund raising dinner, the value of a comparable ticket for a concert, the value of green fees, cart rental and meal at a golf tournament).

### Fund Raising Dinners

The value of a comparable meal provided by a comparable facility will have to be ascertained. If the event is held at a restaurant, then the price the restaurant would charge a regular customer would be the

comparable value. In this regard, it is acceptable to take into account group or banquet rates.

Generally, the right to participate in an auction to be held at the dinner will not be viewed as constituting an advantage.

#### Example

- A charity holds a fund raising dinner for which 500 tickets are sold at a cost of \$200 each.
- A comparable meal could be purchased for \$100, excluding GST, PST and gratuities.
- The door prizes are a trip having a value of \$3,000 and jewellery having a retail value of \$500 (\$3,500/500 or \$7 per attendee).
- Each attendee receives a logo pen and key chain with an aggregate retail value of \$10.

#### Determination of eligible amount:

Ticket price	\$200
Less: meal	<u>\$100</u>
Eligible amount	<u>\$100</u>

As a result of applying the *de minimis* threshold, the value of the door prizes and the complimentary items received by a donor will not be viewed as an advantage in determining the eligible amount, since the total value of such prizes and items is \$17 per donor, which is less than the lesser of 10% of \$200 (\$20) and \$75.

In this case, the amount of the advantage is \$100, which is not more than 80% of the ticket price (\$160). Accordingly, a tax receipt may be issued for the eligible amount.

#### **Charity Auctions**

Generally, it is CCRA's position that there will not be an eligible amount with respect to items obtained at charity auctions on the basis that the bid determines the value of the various items put up for auction.

However, where the value of an item is clearly otherwise ascertainable (e.g., there is a retail price for the item) and made known to all bidders in advance, an eligible amount would be present where the amount bid is in excess of the posted value. Where donative intent can be established, which may be the case where the posted value of the item does not exceed 80% of the accepted bid, a tax receipt may be issued for the eligible amount.

#### Example

- A corporate retailer donates a mountain bike to a charity and the charity puts it up for auction.
- The value of the bike is \$400 and this amount is posted with the item.
- Any successful bid of \$500 or greater would entitle the bidder to a donation receipt equal to the excess of the bid price over \$400 (i.e., the eligible amount is the excess).

The retailer donating the bike will be entitled to receive a tax receipt for \$400. If this represents a gift on the part of the retailer, the retailer will have revenue of \$400 pursuant to section 69 and a donation deduction of \$400. If the bike cost the retailer \$250, the result would be a profit of \$150 for tax purposes.<sup>4</sup>

It is the CCRA's opinion that with regard to certain personal items such as, but not limited to, the jersey of a hockey player, the right to play golf with a particular person, and the right to dine with a particular person, the value of the item will be the amount of the bid such that there will not be an eligible amount.

#### **Lotteries**

It is our view that participants in lotteries, while perhaps influenced in choosing which lottery they will participate in by the identity of the organizing charity, are primarily motivated by the chance to win the significant prizes that are offered. Therefore, in some cases, while there may be an element of donative intent, in our view the amount of the advantage cannot be reasonably quantified.

Accordingly, it continues to be our view that no part of the cost of a lottery ticket is a gift which may be receipted for income tax purposes.

#### **Concerts, Shows and Sporting Events**

While a particular event may be a charity fund raiser and all or a portion of the proceeds designated in favour of a charity, there will need to be clear evidence that the ticket price is in excess of the usual and current ticket price to allow a finding that there is an eligible amount. Where the amount of the advantage (including the usual and current ticket price) is 80% or less of the actual ticket price, a tax receipt may be issued for the difference. If there is no reasonably comparable event, then no portion of the ticket price can be viewed as an eligible amount.

**Example**

- Tickets are sold for \$200 to a fund raising concert featuring Performer X.
- Each participant receives a Performer X t-shirt that normally sells for \$20 and a CD that retails at \$15.
- Performer X put on a similar concert in Ottawa 8 months ago as part of her regular tour and the ticket price was \$100.

**Determination of eligible amount:**

Actual ticket price	\$200
Less: Comparable non-charity ticket price	\$100
Complimentary items	<u>\$ 35</u>
Advantage	<u>\$135</u>
Eligible amount	<u>\$ 65</u>

The value of the complimentary items is \$35, which exceeds the lesser of 10% of \$200 (\$20) and \$75. Accordingly, the complimentary items are regarded as an advantage and must be taken into account in determining the eligible amount.

In this case, the amount of the advantage is \$135. Since this amount does not exceed 80% of the actual ticket price (\$160), a tax receipt may be issued for the eligible amount (\$65).

**Golf Tournaments**

The following indicates the CCRA's view in determining the value of the various components that may be present at a fund raising golf tournament for the purpose of determining the amount of the advantage received by a participant.

1. Green fees
  - Normal green fees that would ordinarily be charged to a non-member playing the course at the time of the event.
  - No amount would be allocated to members where members are not required to pay green fees.
2. Cart rental
  - Regular cost of a cart rental.
3. Meals
  - Price that would be charged if the meal were purchased separately at the course.

4. Complimentary items

- Amount that would have to be paid to acquire the merchandise at the donating retail outlet or the outlet from which the merchandise was obtained.

5. Door and achievement prizes

- The retail value of all such prizes is to be aggregated and allocated pro rata to all attendees.

6. Hole-in-one prize

- Given that the approximate odds of a hole-in-one for an average golfer on any given par-3 are over 40,000 to 1 and the fact that such prizes are not guaranteed to be given (in fact, they are rarely awarded), the CCRA accepts that for any particular participant the value of the chance to win the prize is nominal, and therefore can be ignored.

7. Raffle tickets

- Where the raffle is conducted separately, the cost of raffle tickets is not considered a gift (this is essentially a lottery), and the value of the various prizes that will be won is not taken into account in determining the amount of the advantage.
- Note that if participation in the raffle is included in the participation fee, the prizes will be treated as door prizes.

**Example**

- A charity holds a fund raising golf tournament with a participation fee of \$200.
- There are 100 participants in the tournament some of whom are members of the golf course.
- The regular green fee for non-members on that day is \$50.
- Members are not required to pay green fees.
- The cart rental (included in the participation fee) is normally \$20.
- Each participant receives golf balls with a retail price of \$15.
- The retail price of supplied food and beverage excluding GST, PST and gratuities is \$30.
- The retail value of door and achievement prizes is \$2,000 (\$2,000/100 or \$20 per participant).
- The raffle tickets for a chance to win a number of other prizes are sold separately (i.e., the purchase of such tickets is not required).

- The hole-in-one prize is the use of an automobile for one year.

Determination of eligible amount

Participation fee		\$200
Less: Green fee	\$50	
Cart rental	\$20	
Complimentary items/door and achievement prizes	\$35	
Food and beverage	\$30	
Hole-in-one prize	<u>\$ 0</u>	
Advantage		<u>\$135</u>
Eligible amount (non-members)		<u>\$ 65</u>

The total value of the complimentary items and the door and achievement prizes of \$35 to each participant exceeds the lesser of 10% of the participation fee of \$200 (\$20) and \$75. Accordingly, such items constitute an advantage in determining the eligible amount.

In the case of non-members, the amount of the advantage is \$135 and a tax receipt may be issued for the eligible amount of \$65. If the amount of the advantage exceeded 80% of the participation fee (\$160), a tax receipt could not be issued due to the absence of donative intent.

In the case of members, the eligible amount would be increased to \$115 by the green fee that they would otherwise not have been required to pay.

If the golf course normally offers group rates this would be taken into account. In the above example, if the course offers a reduced green fee of \$40 for tournaments where there are more than 50 participants, then \$40 instead of \$50 would be used for non-member green fees, which would result in an eligible amount of \$75.

**Membership Fees**

Whether or not there is an eligible amount associated with the payment of membership fees or other amount to a registered charity of which an individual is a member will be determined on the basis of whether the membership fee or other amount exceeds the amount of the advantage. If the amount of the advantage is 80% or less of the payment to the charity, a tax receipt may be issued for the eligible amount.

Example

- The purpose of the registered charity is the promotion of Canadian theatre.

- For a contribution of \$250, a contributor will receive the following:
  - recognition as a donor in the charity’s newsletter;
  - a subscription to the charity’s quarterly newsletter (otherwise available free of charge);
  - the right to attend annual meetings;
  - a monthly calendar of performances (otherwise available free of charge);
  - an advance invitation to certain performances;
  - an invitation to dress rehearsals (open to the general public);
  - a pewter key chain (normally sold for \$10);
  - a discount for certain performances (value of \$40); and
  - parking vouchers (value of \$40).

Determination of eligible amount

Contribution		\$250
Less: Complimentary items		
Key chain	\$10	
*Discount	\$40	
*Parking vouchers	<u>\$40</u>	
Advantage		<u>\$ 90</u>
Eligible amount		<u>\$160</u>

Since the amount of the advantage (\$90) received by a contributor is less than 80% of \$250 (\$200), donative intent may be presumed and a tax receipt may be issued in the amount of \$160.

*\*The onus is on the charity to provide a value for these items. The value must be reasonable, given the facts of the particular situation.*

**Other Situations**

**Charitable Annuities**

The administrative position with regard to charitable annuities is withdrawn with regard to annuities issued after December 20, 2002. The income tax treatment provided for in the current version of Interpretation Bulletin IT-111R2, *Annuities Purchased From Charitable Organizations*, will continue to apply with regard to annuities issued before December 21, 2002.

The administrative position has no basis in law and cannot be continued as a consequence of the proposed subsection 248(33), which provides for a cost for

property acquired from the charity in the making of a gift.

Rather, where an amount is contributed to a charitable organization by a donor, and the advantage received by the donor is a stream of guaranteed payments for a period of time, the eligible amount will be equal to the excess of the amount contributed by the donor over the amount that would be paid at that time to an arm's length third party to acquire an annuity to fund the guaranteed payments.

Notwithstanding the withdrawal of the administrative position, charitable annuities are likely to continue as a means of fund raising, and may well be more advantageous to the donor.

Consider the following comparative example:

Facts:

- A donor makes a \$100,000 contribution to a charitable organization.
- The donor's life expectancy is 8 years (assume the donor lives 8 years).
- The donor is to be provided annuity payments of \$10,000 per year (\$80,000).
- The cost of an annuity that will provide \$80,000 over 8 years is \$50,000.

Tax treatment under current administrative practice:

- The donor receives a tax receipt for \$20,000 for the year of donation.
- The donor receives in total \$80,000 in annuity payments tax-free.

Tax treatment – proposed:

- The donor receives a tax receipt for \$50,000 for the year of donation.
- The donor receives in total \$80,000 in annuity payments, of which \$30,000 will be included in income over 8 years.

### **Mortgaged Property**

Where property subject to a mortgage is transferred to a charitable organization as a donation, all relevant factors, such as encumbrances other than mortgages, will need to be taken into account in determining the value of the transferred property. With regard to determining the eligible amount, the terms and conditions of the mortgage must be taken into account in determining the amount of the advantage. In other words, the implications of a "favourable" or "unfavourable"

mortgage must be reflected in the amount of the advantage received by the transferor that takes the form of being relieved of the mortgage. Accordingly, provided that the eligible amount is at least 20% of the value of the transferred property, a tax receipt may be issued for the eligible amount.

### **Example**

- A building is transferred to a charitable organization wherein the only advantage given by the charitable organization is the assumption of a mortgage placed on the building.
- The value of the building determined without reference to the mortgage is \$1,000,000.
- The amount of the outstanding mortgage to be assumed by the charitable organization is \$400,000.

In order to determine the eligible amount, it will be necessary to value the mortgage. If the terms and conditions of the mortgage (e.g., interest rate, term) are representative of the current market, the eligible amount in the above example would be \$600,000. If the terms and conditions of the mortgage were "unfavourable" (e.g., high interest rate) such that the mortgagor would have to pay a third party \$450,000 to assume the mortgage, the eligible amount would be \$550,000.

*If you have any comments relating to these guidelines, please send them to:*

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*We ask that you provide your comments before March 31, 2003. Should you require further information, please contact F. Lee Workman at (613) 957-3497 or Jenie Leigh at (613) 952-1505.*

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<sup>1</sup> As defined in proposed subsection 248(31).

<sup>2</sup> Proposed subsection 248(32).

<sup>3</sup> As defined in proposed subsection 248(30).

<sup>4</sup> If the retailer characterizes the transfer of the bike as a promotion or advertising expense, this will not result in any revenue or gift to the retailer, but the retailer will be entitled to include the bike cost of \$250 in its cost of goods sold.