ESTATE PLANNING: DONATING SHARES TO SAVE TAX

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TAX-FREE CAPITAL GAINS AND A DONATION RECEIPT – THE DOUBLE DIP

INTRODUCTION

When donating shares of a public company to a Canadian registered charity from a ***Graduated Rate Estate (GRE)*** in Canada, there are specific income tax rules that apply.

The *Income Tax Act (Canada)* provides favorable tax treatment for such donations, encouraging individuals to contribute to charitable organizations.

TAX BENEFITS

GRADUATED RATE ESTATE (GRE)

A GRE is the estate of a deceased person that, at the time of death, designates itself as a GRE on its income tax return for the year beginning immediately following the individual's death.

While multiple Testamentary Trusts can be created by someone's death, there can only be one designated as the GRE.

A GRE has access to certain tax advantages, including, as the name suggests, a ***graduated rate*** of taxation, for a limited period of 36 months after the death of the individual.

In essence, the tax brackets that the individual would have enjoyed can continue for the next 36 months even though tax credits, like the Basic Personal Amount are no longer available.

NO TAX ON CAPITAL GAINS DONATED

When public company shares are donated to a registered charity from a GRE, the capital gains realized on the donation may be exempt from tax. However, this exemption applies **only** if the *shares are donated directly* to the charity instead of being sold with proceeds given to the charity.

100% TAX RECEIPT

When donating shares of the public company, the registered charity will issue a tax receipt for the fair market value of the shares at the time of the donation. This receipt can be used to claim a charitable donation tax credit or deduction (as the case may be), which can reduce the tax liability of the Estate and more likely, the deceased's final personal tax return.

TIMING

The tax benefits associated with the donation of public company shares to a registered charity from a GRE are particularly pertinent in the year following the death of the individual.

During this time, the estate is still considered a GRE and can take advantage of the graduated rate of taxation, along with the specific benefits of donating such shares.

It's important for the executor or administrator of the estate to carefully consider the timing and method of the donation to ensure it aligns with the estate's tax planning strategy.

LEGISLATIVE CHANGES AND UPDATES:

Tax laws and regulations can change, so it's crucial to stay informed about any updates or modifications to the tax treatment of donations made by estates. This ensures compliance and optimization of tax benefits.

STEPS TO DONATE PUBLIC COMPANY SHARES TO A REGISTERED CHARITY

Verify Eligibility of the Estate - Ensure the estate qualifies as a GRE, which is eligible for special tax treatment for up to 36 months after the date of death.

Select the Registered Charity - Choose a registered charity that is eligible to receive such donations. It's important to confirm that the charity is able to accept shares of public companies.

Determine the Shares to Donate - Identify which shares of a public company held by the estate are to be donated. Evaluate the current market value and potential capital gains on these shares.

Obtain a Valuation - Get an accurate valuation of the shares to be donated, as the donation will be valued at the fair market value on the day of transfer to the charity. This valuation is necessary for the tax receipt.

Notify and Coordinate with the Registered Charity - Communicate with the charity about the intended donation. This is crucial as the transfer of shares involves specific documentation and coordination.

Transfer the Shares - Arrange for the direct transfer of shares from the estate’s brokerage account to the charity’s brokerage account. This process usually involves filling out a transfer form provided by the brokerage or charity.

REQUIRED FORMS AND DOCUMENTATION

Share Transfer Form - This form is used to facilitate the transfer of shares from the donor's account to the charity's brokerage account. It must be filled out accurately, detailing the shares being donated.

Form T1170, Capital Gains on Gifts of Certain Capital Property - This Canada Revenue Agency (CRA) form is necessary if claiming a deduction for a gift of capital property, such as public company shares, to a registered charity. It captures details of the gift and calculates the capital gains deduction available.

Form T3 Trust Income Tax and Information Return - If the donation is made by a GRE, it might be necessary to report this on the estate’s T3 return, particularly if there are implications for the estate’s income or capital gains.

Charitable Donation Receipt - The charity will issue a donation receipt reflecting the fair market value of the shares on the day of the transfer. This receipt is essential for claiming the charitable donation tax credit or deduction.

Record Keeping - Keep comprehensive records of the donation, including communications with the charity, valuations of the shares, transfer documentation, and the donation receipt. These records are important for tax filing and for any queries from the CRA.

CONCLUSION

Donating public company shares to a registered charity from a GRE is a strategic way to contribute to charitable causes while achieving tax efficiency for the estate. However, given the complexity of tax laws, consulting with a Chartered Professional Accountant (CPA) specializing in Canadian income tax is highly recommended to navigate these rules effectively.