The Tax Benefits of Charitable Giving

Wolters Kluwer

THE TAX BENEFITS OF CHARITABLE GIVING

Canadians have a well-deserved reputation for helping where there is need, both at home and around the world, in a number of ways. That generosity extends to donating substantial amounts to the great number of Canadian charities which exist to help those in need.

The most recent set of data issued by Statistics Canada on the subject of charitable giving by Canadians indicates that, for the 2010 taxation year, nearly 84% of Canadians made charitable contributions, and that the total of those donations reached nearly $10.6 billion. Those figures represented a 1.7% increase in the total amount donated over the comparable figure from 2007 as well as an increase of just over 4.2% in the number of donors. And, while the percentage of the Canadian population which made at least one charitable donation during the year varied from province to province, in every province that figure was at least 80%.

The data documenting charitable giving by Canadians was compiled by Statistics Canada, and is based on data from the Canada Survey of Giving, Volunteering and Participating, which was conducted with a sample of persons age 15 and over, totalling 15,482 respondents in 2010, and 21,827 respondents in 2007.

The Basic Tax Rules on Charitable Giving

What constitutes a charitable donation?

The definition of a charitable donation might seem to be self-evident, and in the most straightforward cases, it is. However, there are areas in which the answer is not quite so clear-cut. Our tax legislation does not provide an actual definition of a charitable donation: however, it does include a list of entities which are "qualified donees", and donations to such entities will entitle the donor to claim a tax credit for the amount of the donation. That list is as follows.

- registered charities;
- registered Canadian amateur athletic associations;
- registered national arts service organizations;
- housing corporations in Canada set up only to provide low-cost housing for the aged;
- municipalities in Canada;
- municipal or public bodies performing a function of government in Canada;
- the United Nations and its agencies;
- universities outside Canada with a student body that ordinarily includes students from Canada, provided these universities are listed in the income tax regulations;
- charitable organizations outside Canada to which the Government of Canada has made a gift during the 36-month period beginning 24 months before the time of the donor's gift; and
- the Government of Canada, a province, or a territory.

It can be seen at a glance that the question of who or what constitutes a "qualified donee" for purposes of the charitable donation tax credit is not as straightforward as might be imagined. It would, in fact, be very difficult in many cases for the average Canadian to determine whether a particular organization or entity did actually qualify. Consequently, the rules require organizations in all the categories listed above, with the exception of the United Nations and its agencies and Canada's federal, provincial, and territorial governments, to register with the Canada Revenue Agency (CRA) in order to be included on a publicly available list of qualified donees which is maintained by the CRA on its Web site.

There are actually several such lists available on the Agency's Web site, with each category having its own list. Links to the listings for registered Canadian amateur athletic associations, Canadian municipalities, municipal or public bodies performing a function of government in Canada, prescribed universities outside Canada, charitable organizations outside Canada which have received a gift from the government of Canada, and low-cost housing corporations for the aged are set out below. In addition to listing those organizations which are qualified donees at the current time, the CRA provides a listing of such organizations which have, temporarily or permanently, been disqualified from such status, and the reason for that disqualification. It should be noted as well that for some of these categories, the registration requirement is a relatively recent one, and consequently, the listing available on the CRA Web site for organizations in such categories is still in the process of development.

- Lists of registered Canadian amateur athletic associations
- Lists of Municipalities
  - Alberta
  - British Columbia
  - Manitoba
  - New Brunswick
  - Newfoundland and Labrador
  - Northwest Territories
  - Nova Scotia
  - Nunavut
  - Ontario
  - Prince Edward Island
  - Quebec
  - Saskatchewan
  - Yukon
- List of municipal or public bodies performing a function of government in Canada
- List of prescribed universities outside Canada
- List of charitable organizations outside Canada that have received a gift from Her Majesty in right of Canada
- List of low-cost housing corporations for the aged

The CRA takes a slightly different approach to its listing of registered charities. Instead of providing an actual listing, the CRA Web site offers a search function, available at http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html. The name of the particular organization must be entered and, if that organization is in fact a registered charity, the name, registration number, date of registration, and address of the charity will be shown. The Web site also includes a search function for charities whose registration has been suspended or revoked, either voluntarily or involuntarily.

Of course, since there is no overall listing of registered charities provided, it is necessary to know the name of a charity in order to use the search function to find it and determine its status. The best advice, where the exact name of a charity is not known (for instance, the basic search function will not adjust for the incorrect use of the plural when the singular is correct, as in Societies vs. Society), is to search using just one known word from the organization's name. That approach is likely to generate a listing of all registered charities whose name includes the search term, and, if the organization in question is in fact a registered charity, it will appear in that list.

Tax credit v. tax deduction

The tax benefit which is obtainable for charitable donations is structured as a tax credit rather than a tax deduction. The difference is a significant one, as a tax deduction reduces the amount of income on which the individual would otherwise pay tax, while a tax credit reduces the amount of tax payable on that income.

The tax credit provided for charitable donations is unique in that it is a two-level credit. All other federal personal tax credits are calculated by multiplying the credit amount by the federal tax rate applicable to the lowest income bracket. That federal tax rate is currently 15.0%. However, the charitable donation tax credit rules provide that the 15.0% credit rate applies to the first $200 in charitable donations made. Once donations exceed that $200 ceiling, the credit percentage of 33% applies to donations in excess of $200 to the extent the individual has taxable income in excess of $200,000; otherwise, a federal tax credit rate of 29% will apply.

Example

A taxpayer who earned $200,100 in 2016, and donates $500 to a registered charity would calculate the tax credit claimable on that deduction as follows:

$200 multiplied by 15% = $30

$200 multiplied by 29% = $58

$100 multiplied by 33% = $33

Total federal tax credit claimable = $121

The tax credit provided by the provinces and territories works in much the same way.

Limits on charitable donations

There is an overall limit on the amount of charitable donations for which a tax credit can be claimed in any given year, but it's a very generous one. In most cases (the year of death being an exception) the amount of charitable donations for which a tax credit can be claimed cannot be more than 75% of the taxpayer's net income for the year. Since almost no

one, no matter how generous, can afford to donate more than 75% of their income for the year to charity, there is, for practical purposes, no limit on the amount of charitable donations which the average taxpayer can make in a year and for which a tax credit can be claimed.

First-time donor super credit

A first-time donor (defined as someone who has not claimed a charitable donation credit since 2007) can claim an additional credit, on cash donations, of 25% on an amount up to $1,000. This means that a credit of 40% can apply to a $200 donation by a first-time donor, and a credit of 54% on an amount over $200 but not more than $1,000. This credit applies to such donations made after March 20, 2013, and before 2017.

Aggregating charitable donations within families

As noted above, once the amount of charitable donations in a year exceeds $200, the percentage tax credit claimable on "excess" donations can more than double, from 15% to 33% federally. The rules make it easier to reach that $200 threshold by providing that contributions made by spouses (including common-law spouses) can be aggregated and claimed on the tax return of either spouse. It is typically more beneficial for the spouse with taxable income in excess of $200,000 to claim charitable donations in order to take advantage of the 33% tax credit rate.

In addition, there is another circumstance in which it is beneficial for the donation claim to be made by the higher-income spouse. Residents of provinces or territories which levy a high income surtax (currently Ontario, Prince Edward Island, and the Yukon Territory) can obtain a tax advantage by having the total charitable contributions claimed by the higher-income spouse, as doing so will decrease the total tax payable on which the high-income surtax is calculated.

Deferring charitable contribution claims to a future year

In our tax system, in most cases, a personal tax deduction or credit must be claimed in the year in which the related expenditure is made and, where it is not, the credit or deduction is lost. There are a few exceptions to that general rule, and the timing rule for charitable deductions is one of them.

That rule is a fairly straightforward one, which provides that charitable donations can be claimed in the year they are made or in any of the five subsequent taxation years. Put another way, a taxpayer can claim charitable donations made in the tax year for which a return is being filed or in any of the subsequent five years. While donations carried forward from a previous year must be claimed before any current-year donations, there are no limitations on the amount of donations which can be carried forward in this way, other than the overall limitation of 75% of the taxpayer's net income for the year. Like the ability to combine donations made by both spouses, the carryforward of charitable donations increases the likelihood that a portion of those donations will qualify for the enhanced 33% tax credit.

Charitable donation receipts

No matter how large or small the amount, a charitable donation, in order to be eligible for the donation tax credit, must be supported by a receipt. Such receipts must include the charitable registration number of the organization which has received the donation. If the organization is unable to provide such a charitable registration number, it is not a registered charity. Donors are free, of course, to make donations to unregistered charities, but it should be remembered that such organizations have not received any official sanction with respect to their activities, and that donations to such organizations will not be eligible for a tax credit, at either the federal or provincial levels.

Donations in kind—donating things instead of money to charity

Although most charitable donations are monetary ones, whether made by cash, cheque, or credit card, some donors choose (and some charitable organizations seek) donations made "in kind" rather than in money. There are rules which govern the calculation of the amount which can be claimed for purposes of the credit and, as might be expected, those rules are more complex than those which govern "ordinary" charitable contributions.

There is no difference in the amount of the credit which may be claimed for donations made in kind—the usual three-level credit structure continues to apply. However, where a donation is made in kind it is necessary to determine the value of that gift for purposes of the available tax credit, as the amount on which the credit is claimed is generally equal to the "fair market value" (FMV) of the property donated. In some cases, it's easy to determine that FMV—as, for instance, in the case of an individual who donates a case of wine to be auctioned off at charity event. Where, however, the value of the property donated is less clear-cut and usually, where the value is greater, it's necessary to obtain the services of one of more appraisers qualified to determine the FMV of the property in question. That approach would be needed where a property like a work of art or real estate is to be donated.

The other difference between monetary charitable contributions and contributions in kind is that there are other tax consequences to the donor where contributions are made in kind. Specifically, the donor is considered to have sold (or "disposed of", in tax terminology) the property in question and capital gains tax may be payable by the donor on the difference between his or her original cost of the property and the FMV of that property at the time it is donated (and therefore disposed of).

It can be seen that the tax implications of making a donation in kind can be significant, and those implications can differ, depending on the way in which the gift is made and to whom. Taxpayers who are considering making such a donation, especially where the value of the property is significant or is not easily determined, should obtain professional advice on the best means of doing so.

A final note on contributions made in kind: only goods or money donated to charity can qualify for the charitable donations tax credit. Services donated, no matter how valuable, are not considered to be gifts which can qualify for the credit.

Contributions in the year of death

Many people provide for monetary contributions to charity in their wills, and such contributions are eligible for the charitable donations tax credit in the same way and in the same percentage amount as contributions made during the person's lifetime. There is one difference, however, in that contributions made in the year of death are not subject to the usual 75% of net income limitation. In the year of death, the amount which may be claimed is calculated as the amount of gifts donated in the year of death (including those made by will), plus the amount of any gifts made but not claimed during the previous five years, up to the total amount of the deceased's net income in the year of death. Where there is an excess, it can be claimed on the deceased taxpayer's return for the previous year, again up to the limit of total net income for that year.

Special purpose gifts and matching contributions

Periodically, and especially where there has been a significant natural disaster, the Canadian government will agree to match charitable contributions made by Canadians for relief efforts needed in connection with that disaster. Individual contributions made in such circumstances will also be eligible for the ordinary charitable donations tax credit in the usual way. However, it is usually the case that, in order for such contributions to be eligible for government-matching funds, they must be made within a specific time frame and must be made to identified organizations or types of organizations. In all such cases, it's a good idea to review the requirements imposed before making a charitable donation, in order to ensure that the donation is made in a manner which provides the greatest possible benefit to the relief effort involved.

Avoiding charitable scams

It is a seeming contradiction, but true nonetheless, that situations which bring out the best in people sometimes also bring out the worst. The area of charitable giving seems to attract more than its share of questionable or sometimes outright fraudulent individuals and organizations purporting to be genuine charitable endeavours. And, when donors are taken in by such scams, both they and the reputable charities to whom the donation in question might have gone are the losers.

Charitable scams seem especially prone to surfacing where there has been a well-publicized disaster somewhere in the world and people unaffected by that disaster—be it a hurricane, an earthquake, or a tsunami—are moved to help. In the rush to help, many ad hoc charitable funds or organizations are created, and donors aren't always sufficiently careful about ensuring the bona fides of the organization to which they are donating. In some cases, the fund or organization is an outright fraud, while in others it has been created by well-meaning individuals who nonetheless lack the experience or infrastructure required to put funds donated to the best possible use.

In all cases, the best means of ensuring that the legitimacy of a charitable organization is to confirm that it has a current, valid charitable registration number

issued by the federal government. Only organizations possessing such a number can issue a valid charitable donations receipts, and would-be donors should steer clear of any organization which claims that such a registration number is unnecessary or that it will provide a valid receipt at a later, unspecified date, once its charitable registration number is received.

The area of charitable donations also attracts another, more sophisticated kind of scheme. The promoters of these generally promise taxpayers that, for the expenditure of a relatively small sum of money, a charitable donation tax credit can be claimed and received for an amount many times that of the original donation. In some cases these are outright frauds, while in others they represent charitable donation tax shelters of an extremely aggressive kind, which will undoubtedly attract the attention of CRA auditors. In the worst case scenario, the taxpayer will end up repaying the amount of any charitable donation credit received, as well as penalties and interest amounts. When it comes to charitable donation tax shelters, the old rule applies—if it seems too good to be true, it probably is.

Conclusion

The great majority of charitable organizations in Canada are legitimate ones which do an enormous amount of good, both within our borders and abroad. Donations to such organizations benefit both the ultimate beneficiary of the donor's generosity, and the taxpayer who is able to claim a tax credit in respect of the donation made.

The CRA provides a great deal of information to assist taxpayers in planning their charitable donations and determining how to best structure such donations from a tax perspective. Most of that information is available on the CRA's Web site at www.cra-arc.gc.ca/chrts-gvng/menu-eng.html.

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