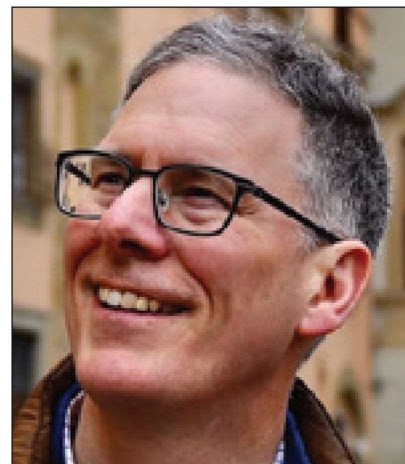

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Estate Donations: Six Years Later

The 2016 introduction of the Graduated Rate Estate (GRE) regime was accompanied by the "estate donations" rules. These *Income Tax Act* provisions altered the administrative and tax treatment of gifts by will, as well as direct designation gifts of life insurance, RRSP/RRIFs, and TFSAs. How are charities and executors managing with these rules six and a half years later?

I'd say the experience is mixed.

Estate Donation Features

Let me focus on gifts by will. The "estate donation" provisions changed fundamental attributes of gifts by will.

- A gift is deemed to be a donation of the estate, not of the donor during his/her lifetime.
- The number of returns on which a donation tax receipt may be claimed increased from two (final lifetime T1 returns) to up to seven (final two lifetime returns and five estate T3 returns).
- In the old regime, gifts were deemed to occur just before death at the same time as the deemed disposition of taxable property. Previously, gifts could be claimed without property being transferred to the charity. In the new regime, the executor needs to transfer funds to the charity, which then issues a receipt for fair market value. The tax receipt is filed by the executor to claim the donation tax credits for the estate.
- Under the old regime, there was no effective limit on the claim period. Under the new, the donation must be received 60 months after the date of death or it cannot be claimed.

Learnings

I spoke to a few charities and executors to find out their experience with the estate donation rules. There are a few practical issues that have emerged:

- Executors are making larger distributions to charity upfront in order to file the tax receipt on the terminal T1, which in some situations eliminates all tax owing. Failure to do so mean there may be a significant tax liability in the T1. Charities appreciate this sense of urgency, as money is received faster.
- Executors are facing pressure to distribute illiquid in-kind property to charity quickly. Examples of illiquid property include private company shares and art. Again, the goal is to get immediate tax relief, but that assumes the charity capable of receiving the property in-kind. In one case, the urgency to distribute property inkind was due to the closing of the 60-month distribution window. After 60 months, the donation would not be eligible for any tax relief.
- One charity, which had a 100% residual interest in an estate, reported that an executor had to be pushed to refile tax returns after the initial distribution gift had been made after two years. The result was $300,000 a tax refund for the charity. (Charities, make sure executors file tax receipts, otherwise you may be leaving money on the table.)
- The same charity with the residual bequest also reported experience with the "estate donation loop". That is, every distribution triggered a donation tax receipt necessitating the refiling of T1s and T3s. Every refiling generated more funds for distribution to the charity. In this case, the loop process happened three times before everyone decided enough is enough.
- The once popular "donate to eliminate" will clause is broken. This clause provided the executor with discretion to donate just enough to charity to eliminate (or mostly eliminate) the tax on the terminal T1. Due to the estate donation loop and the effect of refiling, there is no single formula that enables the executor to make a single discretionary donation to offset all taxes.

These are just a few issues that have emerged with the estate donation regime. If you have more stories to share, please send me an email. It would be helpful to hear what others are experiencing.

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