Personal Tax Planning

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CHARITABLE REMAINDER TRUSTS

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Many Canadians share their wealth with the less fortunate by making charitable donations during their lifetime as well as under their will. This article examines the pros and cons of making charitable donations through the use of a charitable remainder trust. Generally, a charitable remainder trust is an irrevocable trust that holds property contributed to it by the settlor/donor for the ultimate benefit of a registered charity or other qualified donee. The charity has a residual interest in the trust and eventually receives full ownership of the property. The income earned in the trust is usually paid to the income beneficiary as specified under the trust agreement. Provided that certain conditions are met, the charity may issue a donation receipt to the donor at the time the property is transferred to the trust.

The article first reviews the position of the Canada Revenue Agency (CRA) on the use of charitable remainder trusts and discusses the main tax issues associated with this structure for charitable giving. It then describes several planning opportunities based on the existing legislation and the CRA's current administrative position. Specifically, the article discusses how a charitable remainder trust can be used effectively in the following scenarios:

1. A client intends to make a significant donation under his will. However, he is concerned that he will not be able to take full advantage of the donation tax credit, as his income in the final two years of his life will be less than the value of his donation.
2. A client holds a stock portfolio with significant accrued capital gains. As the client gets older, he wants to convert his investment in stocks to an investment in bonds in order to generate more income on a regular basis. However, the client is concerned about the tax liabilities he would incur on selling the stocks.
3. An owner of a private company has received an offer to purchase his shares in the company from a third party. The shares have a nominal cost base and do not

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qualify for the capital gains exemption for qualified small business corporation shares. The client is concerned about the tax liabilities he would incur on selling the shares.

4. A client holds preferred shares in a private company with a high redemption value, nominal adjusted cost base, and nominal paid-up capital. The company has a significant balance in its refundable dividend tax on hand account. The client is concerned about the tax liabilities that would be incurred on a redemption or deemed disposition of the preferred shares.

The article shows that, if structured properly, a charitable remainder trust can play a significant role in an individual's financial plan as an effective planned-giving and estate-planning tool.

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