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Succeeding at Succession

The Tax Aspects of Finding Lost Opportunities in the Intergenerational Transfer of Family Cottages

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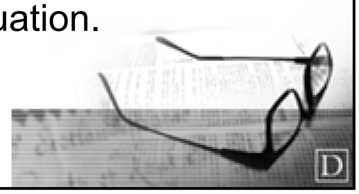

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Goal of this Presentation

- To outline the tax tools you need to discuss transferring certain family properties or rights to environmental charities.

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Outline

1. How are cottages held?
2. Donating at Death
3. Residual interests in cottages donated
4. Cottages held by no shares
5. Cottages held by for profits
6. Cottages held by trusts
7. Shares of family farm and fish corporations
8. (Bad) news regarding the sale of real estate and the donation of proceeds.
9. Donation of conservation easement
10. What is it?
11. What to know about their donation.

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Conservation Easements

The granting of legal rights over property is not different from a tax perspective than transferring title over the property itself.

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HOW ARE FAMILY COTTAGES HELD?

1. Individuals solely
2. Individuals with right of survivorship
3. Individuals as co-tenants
4. Non-share capital corporations
5. Private Corporations
6. Trust

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Tax Consequences

1. Deemed disposition on death of all assets affects individuals only
2. The accompanying tax bill can be offset with donation tax credits
3. Estates that don't have the cash to pay the tax owing must sell assets to pay the tax. This is an opportunity for you.
4. Donation of family cottage may create enough tax credits to allow the family to keep other assets (say RRSPs).

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Tax Consequences(continued)

5. The family does not have $400,000, it may sell the family cottage to pay the taxes. If the cottage is worth $400,000 its donation could result in donation tax credits of $180,000
6. BUT THEY ARE ALWAYS BETTER OFF SELLING RATHER THAN DONATING.

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Co-tenants

1. Individuals each own a share in the property. There is not necessarily a link between them
2. For tax purposes each owns their share as if the other does not exist.
3. Arrangements between the co-tenants may restrict the disposition or donation of a partial interest in the property

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Joint Tenants

1. Joint tenants have a right of survivorship.
2. On the death of the first owner, the entire property will pass to the second owner. There is no opportunity for the joint tenant to die to donate his/her interest. The entire discussion must take place with the last to die or as a group.
3. From a tax perspective the tax consequences are similar to that of the individual owning the property by itself.

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Non-share Corporations

1. Many families own their family cottage within a non-share (i.e. not-for-profit) corporation.
2. Not-for profits are not taxable, there is no tax benefit to the not-for profit donating to charity.
3. Members may donate their membership interest in the corporation to a charity. The charity would be a member like all others.
4. Most bylaws would restrict the membership of the corporation to families.

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Ownership By Private Corporation

1. Donations by private corporations result in deductions.
2. Therefore donations are only of benefit to corporations with other sources of income.
3. Individuals may donate the shares of their corporations. Typically there are restrictions on the receipts which may be issued in these circumstances so the charity will almost certainly wind up the corporation to own the property directly.

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Ownership by Trust

1. Occasionally properties will be owned by trusts with the beneficiaries of the property to be members of the family or others.
2. The legal owner (with the consent of beneficiaries) may consider donating the entire property to charity.
3. Almost impossible for the beneficial owner to donate his / her interest.
4. Donation of property from the trust will result in a tax credit against the other property owned by the trust.
5. Not a common situation

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Donation of Residual Interest

1. A residual interest exists where ownership of the property during one's lifetime belongs to the life interest holder. Interest in the property on the death of the life interest holder automatically passes to the residual interest holder.
2. The donation of residual interests results in a tax receipt based on the property donated and an actuarial calculation of the expected dates upon which the charity will take title on the entire property. Results in an immediate tax receipt for use on the individual's current income.

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Donation of Residual Interest (continued)

1. Residual interests are useful for high income individuals who require a current tax receipt and are philanthropically inclined.
2. If the property is certified an environmental property the other tax advantages of the donation of such property may apply.

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Farming and fishing corporations

1. Special tax rules exist for family farms and family fisheries. Typically these are corporations privately held by the farmer. Up to one million dollars of the appreciation in value in shares for these corporations is tax-free. And shares of these corporation are not subject to the deemed disposition rules if the shares are passed within the family.
2. On death if the family does not want the farm, donation of these shares would likely more than offset the taxes owing on the deemed disposition.

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New Donation of Real Estate Proceeds Rules

- Budget 2015 proposed new rules providing incentives for the donations of the proceeds of real estate years.
- The capital gain associated with real estate is tax-free proportionate to the percentage of the entire proceeds received donated to charity. i.e. if 80% of the sale price is donated to charity, 80% of the capital gain is tax-free.

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New Donation of Real Estate Proceeds Rules

The Law of Unintended Consequences

Problem – this incentivizes people to sell the real estate rather than to donate it as the donation of non-environmental property still results in capital gains.

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New tax rules on death

Not expected to especially affect donations of real estate.

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Valuing the Donation

1. Property in excess of $1000 should be independently appraised when issuing a receipt.
2. Know who to ask. Get a reasonable and defensible valuation.
3. If the donation is that of a residual interest contact an actuary.

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More Information

www.drache.ca

www.cra.gc.ca

Starting and Maintaining a Charity in Canada
See: www.runningacharity.ca

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