

were being established, they became the obvious destination for funds from (now) unwanted smaller private foundations. One of the attractions (beyond being able to shed onerous compliance problems) was that named donor-advised funds could be created so that a long-term vehicle for private giving with a family name attached could be implemented.

While we have no data available, our instinct is that in the early decades of the establishment of community foundations, much of their core funding came from the wind-up of private foundations.

We recently had some discussions with people at the Ottawa Community Foundation and in the course of those talks found that with a major variation, that phenomenon is continuing. The variation is that the transferred funds are not coming from private foundations (the creation and operation of which these days is much more sophisticated than in the 1970s) but from charities which find that they cannot efficiently raise new money but which have capital.

Their inability to grow (often because they operate in small communities which are shrinking) makes the option of wind-up appealing. They also find that the stringent rules relating to continuance of a federal corporation or, in Ontario, the upcoming changes for Ontario non-profit corporations, create an incentive to wind up. But they do have capital which was earmarked for specific charitable purposes, often based on helping local agencies. The solution they have found in many cases has been to do a wind-up and transfer the funds to the larger community foundations in their area where they benefit from professional investment and are relieved of all the reporting requirements.

Examples from the Ottawa Community Foundation include the Ottawa Deaf Centre, the Ottawa Public Library Foundation, and the North Hatley Village Improvement Society Fund to give a flavour of organizations which saw the benefit of this form of winding-up.

As with individuals who set up donor advised funds, negotiations with the community foundation can create specific rules which will ensure that annual income will be used within the community which was the beneficiary of the original charity. And of course the name of the original charity can be incorporated into the name of the specific fund which is created so that continuity with the original charity is created. Usually, members of the original charity will be “advisers” to help determine how annual income is used within the original community.

Of course, the benefits are not limited to small town charities. We often run into situations where charities for one reason or another no longer wish to continue to operate. But a transfer of funds to a community foundation offers a road to walking away while ensuring that the accumulated capital will still be used in a manner which is consistent with the purposes for which it was raised.

Charities which are contemplating a wind-up for whatever reason should consider the community foundation option. It is important that those operating the charity negotiate terms with the foundation to ensure (if that is desired) that the funds are used in an appropriate manner and that the name of the charity is linked to the fund which is created. Our experience has been that all community foundations will work diligently to try to accommodate the wishes of a winding-up charity, just as they do with individual donors who wish to set up a fund within the foundation.

## Tax Credit for Donations of Blood and Body Parts?

*Richard Yasny*

Can you get a tax credit for donating blood? What about for gifting organs? *Income Tax Act* [subsection 118.1\(3\)](#) allows you a tax credit based on your “total gifts” for the year, including amounts you donated to “qualified donees” in the year or five preceding years. Canadian Blood Services is a charitable organization. So, why couldn’t you get a tax receipt the next time you donate some blood? And most hospitals and universities are charities or have charitable foundations. Why couldn’t your estate get a tax credit for your organ donation?

Under common law, “gift” means property, not services.<sup>1</sup> One might wonder whether blood or organs are property but “property” is defined broadly in the ITA to include “a right of any kind whatever”. So, it’s hard to think that a person’s right to give blood or organs and choose how they may be used is not property, even if one somehow might argue that a person’s blood or body is not property itself.

Another question that might arise is whether it’s legal to sell blood or organs. Clearly, a gift is not a sale and a gift of blood or organs to a charity, university or hospital is clearly not illegal in Canada. So, this is really a question about whether one could properly fix an “eligible amount” for a gift of blood or an organ if it isn’t legal to sell it. For donation credits, an “eligible amount” of a gift is defined in ITA [subsection 248\(31\)](#) by reference to its “fair market value”, which, as CRA says in [IC 89-3](#), “is the highest price, expressed in terms of money or money’s worth, obtainable in an open and unrestricted market between knowledgeable, informed and prudent parties acting at arm’s length, neither party being under any compulsion to transact”. Though one might wonder whether legality could affect the “open market”, it’s clear from CRA assessments of drug traffickers that it does not doubt that seized drugs have a determinable market value for tax purposes.<sup>2</sup>

<sup>1</sup> *Slobodrian v. M.N.R.*, 2003 FCA 350, [2004] 1 C.T.C. 124, 2003 D.T.C. 5632, at para. 11.

<sup>2</sup> See e.g., *Desroches v. The Queen*, 2013 TCC 81, 2013 CarswellNat 2452, 2013 D.T.C. 1184, at para. 4.

Also, subject to provincial restrictions, it is legal in Canada to pay for blood plasma donations. As Health Canada notes, “[i]n fact, paid plasma donors are currently critical to ensuring a sufficient supply of plasma products in Canada”. And though sale of blood is illegal in some provinces (and Ontario’s Minister of Health announced on March 14 the government’s plan to prohibit sale of blood in Ontario<sup>3</sup>), according to Health Canada, Manitoba has allowed paid donations for more than 30 years.<sup>4</sup> Also, it seems that paid donations of blood are legal in the United States, and the fact that a market may be restricted clearly does not prevent determination of fair market value. (See, for example ITA subsection 118.1(10), which provides for FMV determination for Canadian cultural property, trade in which is restricted under the *Cultural Property Export and Import Act*.<sup>5</sup>)

Another question is whether a disposition of blood or organs triggers a taxable capital gain. Regardless of the answer, blood seems sheltered by the rule in ITA section 46 that effectively exempts from tax any gains on personal-use property worth \$1,000 or less. But would blood or organs be “capital property”, which section 54 defines to mean “(b) any property ... any gain or loss from the disposition of which would, if the property were disposed of, be a capital gain or a capital loss, as the case may be, of the taxpayer”? And a “capital gain” is defined through sections 39 and 40 by reference to “proceeds of disposition”, which can include compensation for destroyed property. Despite these definitions, generally, CRA and the Courts consider damages for personal injury to be excluded from income.<sup>6</sup> So, it’s possible that dispositions of one’s blood or organs are not taxable events, even though the property may have value.

Leaving aside the issue of whether these donations also trigger taxable capital gains on the disposition, there might be an issue over the timing of an organ donation on death. Under ITA subsection 118.1(5), a gift by will is deemed to have been made before death, so that the donation tax credit can apply to offset the capital gains deemed under ITA subsection 70(5) to arise before death on all one’s capital property. As most organ donations are made by designations outside a will and seem to take effect on death, not before, one might need to consider whether subsection 118.1(5) could apply. This problem might be resolved by the 2014 budget’s proposed changes to the timing rules for “Estate Donations”, depending on how the proposals are drafted in a bill.

But as a practical matter, will the charities want to give these receipts? Canadian Blood Services depends on provincial governments for about 96 percent of its \$1 billion of annual revenue and on the federal government for about another 1 percent. It wouldn’t make sense to start writing cheques (which

a tax credit is like) on the accounts of one’s major funders without their approval. Also, in 2012-13, CBS reports that demand for whole blood fell; so it seems CBS has no incentive to issue tax receipts to stimulate donations of whole blood. At the same time, plasma demand is rising and CBS only expects to get 30 percent of its supply through donations, while paying for the rest (or their derived products).<sup>7</sup> Would tax donation receipts increase plasma or organ donations? Maybe not enough to justify the related costs including lost government tax revenues.

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<sup>7</sup> CBS 2013 Annual Report to Canadians, pp. 27 and 42-43.

## Unique Manitoba Tax Credit for Corporations

Most provinces move more or less in lock-step with the federal government when it comes to tax credits for charitable donations. But since 2011, Manitoba has had a unique system for corporations which gives them a tax credit (not a deduction) against provincial tax.

The Manitoba Neighbourhoods Alive! tax credit (MNA!TC) is a non-refundable credit available to corporations that make an eligible donation of money to a Manitoba charity to help establish and operate an eligible social enterprise that will assist Manitobans facing barriers to employment.

To qualify for the credit, the eligible donations must be made after April 12, 2011, and before January 1, 2020, and the eligible social enterprise must have begun operation after April 12, 2011.

A corporation can claim a MNA!TC under section 7.18 of the *Income Tax Act* (Manitoba) if the corporation:

- is a taxable Canadian corporation with a permanent establishment in Manitoba;
- made an eligible donation of not less than \$50,000 to a Manitoba charity within the previous four tax years;
- made an eligible service contribution to the Manitoba charity in the tax year for the benefit of the eligible social enterprise assisted by the eligible donation;
- did not donate more than \$200,000 to the Manitoba charity in support of the same eligible social enterprise; and
- received a receipt from the Manitoba charity to whom the eligible service contribution was provided in a form approved by the Minister of Finance for Manitoba.

The terms eligible donation, eligible service contribution, and eligible social enterprise are defined in section 7.17 of the *Income Tax Act* (Manitoba):

<sup>3</sup> See <http://news.ontario.ca/mohltc/en/2014/03/preserving-ontarios-voluntary-blood-donation-system.html>.

<sup>4</sup> See <http://www.hc-sc.gc.ca/dhp-mps/consultation/biolog/plasma-consult-eng.php>.

<sup>5</sup> <http://laws-lois.justice.gc.ca/eng/acts/C-51/page-2.html#h-4>.

<sup>6</sup> See *Archived IT-365R2 “Damages, Settlements and Similar Receipts”* at para. 2.