

Update

Estates and Trusts Law

April 9, 2007

Federal Budget Proposes Elimination of Capital Gains Tax on Gifts of Publicly-Traded Shares to Private Foundations

Elimination of Capital Gains Tax on Donations

The latest federal budget proposes to bring donations of publicly-listed securities to private foundations in line with the treatment of donations of publicly-listed shares to charitable organizations and public foundations by eliminating the taxation of capital gains triggered by such donations, effective March 19, 2007.

There will be limits on a private foundation's shareholdings that will take into account the holdings of persons who do not deal at arm's length with the foundation.

Safe Harbour

A foundation will be in a "safe harbour" if its holdings of each share class of a corporation which it holds total 2 per cent or less, and no special action or report will be required.

Monitoring Phase

If at any time in a foundation's taxation year its holdings in a class of shares of a corporation exceeds 2 per cent of the outstanding shares of that class, the foundation

will be required to report to the Canada Revenue Agency regarding all its shareholdings of that corporation and those of any non-arm's length persons. The foundation will also be required to report material transactions by the foundation or non-arm's length persons for any period in which the foundation was outside the safe harbour.

Divestment Required

A divestment of shares will be required when the foundation is outside the safe harbour and the foundation and all non-arm's length persons together hold more than 20 per cent of all outstanding shares in any share class of a corporation. The foundation will incur penalties unless the combined shareholdings are reduced (within a certain period, determined by how the excess arose) to 20 per cent or less of that share class or until the foundation's holdings do not exceed 2 percent. The initial penalty will equal 5 per cent of the value of excess holdings.

This change in legislation opens up new planning opportunities for those clients who already have a private foundation or are contemplating one.

Please contact any member of our Estate Planning or Charities Group if you would like further information on these proposed changes.

Maureen Berry

mberry@goodmans.ca 416.597.4287

Patricia Robinson

probinson@goodmans.ca 416.597.4144

Mariana Silva

msilva@goodmans.ca 416.597.5148

Jana Steele

jsteele@goodmans.ca 416.597.6274