

CAGP Golden Horseshoe Valuation Issues and Receipts: What Are Your Responsibilities?

John Loukidelis, Simpson Wigle LLP
John Rockx, KPMG LLP

Things to Come



What we will cover

- What are a charity's legal obligations under the ITA when issuing a receipt for a non-cash gift?
- What sanctions can the CRA apply to a charity and its personnel for improperly issuing receipts?
- What due diligence should a charity undertake to discharge its obligations under the ITA?

Receipts and Non-cash Gifts



What does the Act say?

- A taxpayer is entitled to a deduction in respect of the “eligible amount” of a gift.
- The eligible amount is the *fair market value* of the property donated less the *value* of any benefit conferred in respect of the gift.

Receipts and Non-cash Gifts



Information on the Receipt

- The Regulations require a charity to provide the following information on a receipt for a non-cash gift:
 - the date on which the donation was received;
 - a brief description of the property;

Receipts and Non-cash Gifts



Information on the Receipt

- the name and address of the appraiser of the property (if an appraisal is done); and
- the fair market value of the property at the time that the gift was made.

Receipts and Non-cash Gifts



The Regulations Amended

- Finance will amend the Income Tax Regulations to provide that receipts must also contain “a description and the amount of the advantage, if any, and the eligible amount of the gift.”

Valuation



The Charity's Task Under the ITA

- The charity, then, must provide two values:
 - the fair market value of the property donated; and
 - the value of the advantage.

Valuation



Valuation Described

- ***Gold Coast Selection Trust Ltd. v. Humphrey*, [1948] A.C. 459 (H.L.):**
“Valuation is an art, not an exact science. Mathematical certainty is not demanded, nor, indeed, is it possible.”

Sanctions



De-registration

- The CRA can de-register a charity that issues a receipt “otherwise than in accordance with this Act or the regulations or that contains false information”.

Sanctions



De-registration

- A de-registered charity:
 - is subject to Part V tax (“revocation tax”); and
 - cannot issue receipts.

Sanctions



Civil Penalties

- The CRA has said that, in appropriate circumstances, it could apply the civil penalties to a charity and its personnel.
- These penalties can be severe (\$100,000 or more)

Sanctions



Civil Penalties

- **163.2(4):**

“Every person who makes, or participates in, assents to or acquiesces in the making of, a statement to, or by or on behalf of, another person (in this subsection ... referred to as the “other person”) that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct ...”

Sanctions



Civil Penalties

- **163.2(4) (cont'd):**

"... is a false statement that could be used by or on behalf of the other person for a purpose of this Act is liable to a penalty in respect of the false statement."

Sanctions



Civil Penalties

- There are two conditions precedent to the application of 163.2(4):
 - making a “false statement”; and
 - doing so knowingly or where the person would know “but for circumstances amounting to culpable conduct”

Sanctions



Civil Penalties

- A receipt containing an inaccurate fair market value is probably a “false statement”.
- “Knowingly”: In general, the onus would be on the CRA to prove a statement was made knowingly, but the standard of proof would be civil not criminal (according to the CRA).

Sanctions



“Culpable Conduct”

“culpable conduct” means conduct, whether an act or a failure to act, that:

- (a) is tantamount to intentional conduct;**
- (b) shows an indifference as to whether this Act is complied with; or**
- (c) shows a wilful, reckless or wanton disregard of the law.**

Due Diligence



Choosing Your Appraiser

- Whom can you rely on to meet your obligations under the ITA?

Due Diligence



The Expert Witness

- The rules of evidence prevent a witness giving an opinion in testimony unless the witness is an “expert”.

Due Diligence



The Expert Witness

- Who is an expert?

“One who by experience has acquired special or peculiar knowledge of the subject of which he undertakes to testify, and it does not matter whether such knowledge has been acquired by study or scientific works or by practical observation.” Rice v. Sockett (1912), 27 O.L.R. 410 at 413, 8 D.L.R. 84 (Ont. C.A.)

Due Diligence



The Expert Witness

- The CRA says the “expert” should:
 - have training and experience relevant to the task at hand; and
 - be neutral and objective.

Due Diligence



The CRA Views

- 1. The person who determines the fair market value of the property that is the subject of the gift should be competent and qualified to evaluate the particular property being transferred by way of a gift. Ideally, the appraiser should be a member of a relevant professional association. Becoming a member of the association should require formal study and certification.**

Due Diligence



The CRA's Views

- 2. The appraiser should be independent. The appraiser should not be “financially associated” or otherwise connected with the donor or the property that is the subject of the donation.**
- 3. The appraiser should be knowledgeable about the property and the market or markets in which such properties are bought and sold.**

Things to Come



What we will cover

- **Examples of gifts-in-kind and types of appraisers and valuers**
- **When should a professional appraisal be obtained?**
- **Overview of real estate appraisers and business valuers**
- **Practical considerations when retaining an appraiser**
- **Levels of appraiser assurance and reporting**

Typical Gifts-in-Kind



- Public company stocks, bonds, stock options, mutual fund units, investment trust units etc.
- Real estate (e.g. land, buildings, easements, ecological properties)
- Private company shares
- Partnership interests
- Machinery, equipment, furniture and antiques

Typical Gifts-in-Kind



- Works of art
- Cultural property
- Jewellery, coins, stamps, rare books
- Donations subject to a life interest or donor benefit
- Life insurance policies
- Assets with a cash flow stream (e.g. royalty, license)
- Other

Fair Market Value Definition



Definition of Fair Market Value (FMV)

Fair Market value is “the highest dollar value for a property or asset in an open and unrestricted market, between a willing buyer and a willing seller who are acting independently of each other, expressed in terms of money or money’s worth.”

Professional Appraisers



Common Types of Professional Appraisers and Valuators

- Real Estate Appraisers (AACI , CRA)
- Chartered Business Valuators (CBV)
- Machinery and Equipment Appraisers
- Life Insurance Specialists (CLU)
- Accountants - Financial Analysis (CA, CGA, CMA)
- Specialty Appraisers - Art dealers, gemologists etc.

When to Use An Appraiser ???



When Should a Professional Appraisal Be Obtained ???

- A charitable receipt is to be issued to the donor
- Donated asset is not readily convertible into cash
- No public indicators of Fair Market Value
- High dollar value attached to donation (> \$1,000)
- Unusual or specialized nature of the gift
- Gifts with benefits accruing to donor (e.g. life interest)

When to Use An Appraiser ???



When Should a Professional Appraisal Be Obtained ???

- Verification of a donor-provided appraisal report
- Apparent FMV of gift does not pass the "Smell Test"

Real Estate Appraisers - Overview



Real Estate Appraisers - Overview

- Appraisal Institute of Canada (AIC) is the organization that designates real estate appraisers in Canada who meet quality standards and follow Code of Professional Ethics
- AIC awards AACI, CRA and P. App. Designations
- 4500 members in Canada
- Regulates uniform appraisal and reporting standards

Real Estate Appraisers - Overview



Types of Real Estate Appraisers

- **AACI - Accredited Appraiser Canadian Institute - appraise commercial, industrial, institutional, residential & recreational properties, vacant land, easements, farm properties etc.**
- **CRA - Canadian Residential Appraiser - provide appraisals of residential properties and building lots, often a designation for real estate brokers**

Real Estate Appraisers - Overview



Real Estate Appraisers - Formal Study

- AACI's and CRA's are required to complete formal course of study
- Practical experience requirements
- Monitored by discipline committee
- Different levels of reporting and assurance exist

Real Estate Appraisers - Overview



Valuation Approaches

- **Cost Approach - cost to reproduce / replace property**
- **Income Approach - value based on cash flows**
- **Comparison Approach - value based on the sale prices of comparable properties**

Chartered Business Valuers



Overview

- Chartered Business Valuers (CBV's) are regulated by the Canadian Institute of Chartered Business Valuers (CICBV)
- Approximately 1,000 CBV's in Canada
- Specialize in valuing public and private businesses and business interests
- CICBV began in 1971

Chartered Business Valuers



Formal Studies and Education

- Formal program of studies plus final exams after undergraduate university degree
- Two years of practical experience required
- Annual membership dues
- Compulsory annual professional education requirements
- Discipline committee run by CICBV
- Adhere to formal code of ethics and practice standards

Practical Considerations



Practical Considerations When Hiring an Appraiser

- Is appraiser qualified and accredited ??
- Is appraiser independent and unbiased ??
- Cost - get a quote in advance
- Level of assurance required (opinion, estimate of value)
- Likely level of scrutiny by CRA, donor and other parties

Practical Considerations



Practical Considerations When Hiring an Appraiser

- Nature of final deliverable from appraiser (letter, full report etc.)
- Need for an advance ruling on value from CRA ???
- Donor may also require appraisal for determining capital gain on donated asset

Levels of Assurance



Levels of Assurance

- Reporting titles and levels vary by type of appraiser
- Opinion Report - highest level of assurance, suitable for highest level of scrutiny (e.g. Court, public markets, high dollar value etc.)
- Estimate of Value Report - mid-range level of reporting - lower scope of work performed, lower cost
- Valuation Calculations - quick and informal FMV letter

Levels of Assurance



Levels of Assurance

- Appraisal Institute of Canada has various levels of reporting - Full Narrative Report, Regular Narrative Report, Short Narrative Report, Residential Appraisal Form etc.

Questions and Wrap Up



- **Any questions ???**