# PROPOSED SPLIT-RECEIPTING PROVISIONS UNDER THE *INCOME TAX ACT*

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On December 20, 2002 Canada Customs and Revenue Agency (CCRA) issued proposed guidelines on "split-receipting" in relation to gifts under the *Income Tax Act*.[1] Split-receipting refers to a situation where a donor gives a gift to a charitable organization and receives something of value or some other benefit in return. Under split-receipting, the donor receives a tax receipt for the value of the gift, minus the value of the item or benefit that was given in return. For example, if a person buys a ticket for a charity dinner and the cost of the ticket is $36, but the actual cost of the dinner is only $16, then the tax receipt is "split" so that the tax receipt would be for $20 — the value of the ticket ($36) minus the value of the dinner ($16).

Before the introduction of these guidelines, it was CCRA's view that if the donor received something in return for making a donation, then the gift was not a gift under the *Income Tax Act* and the donor did not qualify for a tax receipt. A donor had to give the whole gift and receive nothing[2] in return for it to be classified as a gift. Under the proposed guidelines, the amount of the gift eligible for a tax receipt is the excess of the value of the property transferred to the recipient (the gift) over the amount of the advantage provided to the donor. In the charity dinner example, the excess of the value of the property transferred to the recipient would be $20 because the value of the dinner is $16 and the total value of the property transferred to the recipient is $36.

The proposed guidelines from CCRA change this interpretation and allow charitable organizations to do split-receipting under certain circumstances. Even though the guidelines are still in draft form, CCRA has stated that the guidelines may be followed by donors and recipients starting on the announcement date (December 20, 2002), prior to amendments to the *Income Tax Act* and revisions to existing interpretation bulletins and publications that will reflect the changes.

## Circumstances Where Split-Receipting is Allowed

Under the new guidelines split-receipting is generally allowed under the following circumstances:

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[1] The proposed guidelines are contained in Income Tax Technical News, No. 26 at http://www.ccra-adrc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf and http://www.fin.gc.ca/toce/2002/02-107_1e.html

[2] Tokens of appreciation for the donor's gift did not disqualify the gift.

**1) The Transfer of Property Must Be Voluntary and the Gift Must Have an Ascertainable Value**

There must be a voluntary transfer of property to the recipient and this property must have a clearly ascertainable value.

**2) The Recipient Must Be Qualified to Receive the Gift**

The recipient of the property must be qualified under the *Income Tax Act* to receive the kind of charitable gift that is being made. For example, under the *Income Tax Act* an ecological gift may only be received by the federal government, a province, a municipality or a registered charity that has as one of its main purposes, in the opinion of the Minister of Environment, the conservation and protection of Canada's environmental heritage.

**3) Any Advantage Received or Obtained by the Donor Must Be Identified and its Value Ascertainable**

Any advantage or benefit received or obtained by the donor in making the gift must be clearly identified and the value of this advantage must be ascertainable. If the value of the advantage cannot be ascertained, no charitable tax deduction or credit will be allowed.

The amount of the advantage is the value, at the time the gift is made, of any property, service, compensation or other benefit that the donor has received or is entitled to receive, either immediately or in the future and either absolutely or contingently, as partial consideration for, or in gratitude for, the gift. In addition to the fair market value of the transferred property which must already be recorded on the official tax receipt, the value of the advantage or benefit to the donor and the eligible amount of the gift for which the donor may receive a tax deduction or credit must also be recorded on the tax receipt.

**4) The Donor's Intent to Enrich the Recipient of the Gift Must Be Clear**

CCRA recognizes that donor intent can be subjective and difficult to determine. At common law if the donor received something of value in return for giving the gift, then the common law presumed that the donor did not intend to give a gift. CCRA's guidelines change this presumption. Under the guidelines, the existence of an advantage or benefit to the donor will not automatically disqualify the gift from being tax deductible so long as the value of the advantage or benefit given to the donor **does not exceed 80% of the market value of the gift.**

For example, if the ticket price in the charity dinner illustration was $36, but the actual cost of the dinner was $30 (not $16, as in the previous example), then the donor may

not be eligible for a tax receipt because the benefit or advantage to the donor ($30) is greater than 80% of the ticket price (80% of $36 equals $28.80).

Even where the value of the advantage to the donor exceeds 80% of the fair market value of the transferred property, the gift may still qualify for a tax credit or deduction if the donor can establish to the satisfaction of the federal Minister of National Revenue that the transfer was made with the intention to make a gift. Thus, in the charity dinner ticket example, even though the advantage to the donor (a $30 dinner) exceeded 80% of the value of the ticket ($28.80), the donor could still be entitled to a tax credit if the donor can establish to the satisfaction of CCRA that the transfer was made with the intention to make a gift.

## Tokens of Appreciation

CCRA also recognizes that recipients of gifts will sometimes give a token of gratitude or appreciation to the donor. These tokens will not be regarded by CCRA as an advantage or a benefit for the purpose of determining whether or not the value of the advantage or benefit received by the donor exceeds 80 % of the value of the gift.

As long as the advantage received by the donor does not exceed the lesser of 10% of the value of the gift or $75, then the advantage is only a token of appreciation that will not be used to calculate the advantage received by the donor. In the charity dinner example, if every buyer of a ticket for the dinner received a pen worth one dollar, then the pen would not be counted as an advantage because it is worth less than 10% of the value of the gift (10% of the value of the ticket equals $3.60).

There is an exception to this rule, which depends on the nature of the token of appreciation. If the token is either cash or something that may be easily redeemed (such as gift certificates), then the token must be included in the calculation of the donor's advantage gained by giving the gift. Thus, in the dinner ticket example, if the donor received a one dollar gift certificate, this may be included in the calculations of the donor's advantage.

## Where the Gift Involves Land

Where property subject to a mortgage is donated, all relevant encumbrances and charges on the property will need to be taken into account in determining the value of the gift. For example, if a donor donates a piece of land worth $1,000,000 and the charitable organization assumes an outstanding "favourable" mortgage on the property worth $400,000, then the donor will have received an advantage of $400,000. Thus, the donor is eligible for a tax receipt of $600,000 — the value of the land ($1,000,000) minus the value of the advantage to the donor ($400,000).

A favourable mortgage is one where the terms of the mortgage are representative of the current market. An unfavourable mortgage is one where the terms of the mortgage are worse than the terms that could be obtained on a mortgage in the current market. For example, if the mortgage interest rate was higher than could be currently obtained, the mortgage would be unfavourable.

If the land in the above example were subject to an unfavourable mortgage, then the advantage received by the donor when the charity assumes the mortgage would be greater. For example, if the $400,000 mortgage had a high interest rate and the donor would have to pay a third party $450,000 to assume the mortgage, then the advantage to the donor would be $450,000 and the donor's tax receipt would be for $550,000 — the value of the land ($1,000,000) minus the value of the advantage to the donor of having the mortgage assumed by someone else ($450,000).

In the case of transfers of real property for less than fair market value, CCRA has not suggested any factor other than the percentage of value of the advantage to the donor (not greater than 80%) to indicate the intent of the donor.

## Examples of Split-Receipting

The following are two examples of split-receipting in the context of ecological gifts.

**Example 1:**

- Donor owns ecologically sensitive land with a certified fair market value of $500,000.
- Donor transfers the land to X Conservancy and receives $300,000 in return for the transfer.
- The transfer qualifies as an ecological gift.
- The eligible amount of the gift and the amount of the tax receipt is $200,000 — the value of the land ($500,000) minus the value of the advantage received by the donor ($300,000).

**Example 2:**

- Donor transfers ecologically sensitive land to X Conservancy.
- The transfer qualifies as an ecological gift.
- The land is mortgaged for $200,000.
- The assumption of the mortgage by X Conservancy is the only advantage to the donor from the transfer.
- The land has a certified fair market value of $500,000.
- The mortgage has an interest rate of 6% which is representative of the current market. Thus, it is a favourable mortgage.
- The eligible amount of the gift and the amount of the tax receipt is $300,000—the value of the land ($500,000) minus the value of the advantage received by the donor ($200,000).