

As a Matter of Tax

from Manulife's Tax & Estate Planning Group

Determining the cost of life insurance as a charitable gift

During the CLHIA Roundtable (Q7, technical interpretation #2009-0316701C6) in May, 2009, the CRA was asked to confirm their current position on gifts of life insurance purchased with the intent of giving the policy to charity. The CRA's original response was provided at the APFF conference in October of 2008. (See *As a Matter of Tax* from March 2009 – Charitable giving involving life insurance – Food for thought.)

The CRA confirmed their original comments: proposed subsection 248(35) would apply so that the amount that can be received by a charity is the lesser of “cost” and “fair market value.”

In response to the CLHIA question, the CRA made the following additional comments:

In applying proposed subsection 248(35) of the ITA to a gift of a life insurance policy, the fair market value of the policy otherwise determined and the cost of the policy must be considered.

The CRA referred to prior commentary that discussed the relevant factors to consider when establishing fair market value. (See *As a Matter of Tax* from July 2008 – Value of a life insurance policy in different contexts.)

The CRA continued:

The cost of a life insurance policy is a factual determination. While premiums paid to acquire and maintain a life insurance policy may reflect the cost, this may not always be the case. We recognize that the Act does not specifically define the cost of a life insurance policy and we have brought this to the attention of the Department of Finance for consideration.

Well ... at least they mentioned premiums. That's a good start.

The one thing that bugs me is that proposed subsection 248(35) was introduced to curb hi-low charitable giving arrangements. The provision was drafted so that donors could not get inflated fair market value determinations and a charitable receipt for inflated



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amounts when they only paid a fraction of that amount to acquire the donated property. The cost was supposed to be the floor. With life insurance, particularly where there are surrender charges, could the fair market value be lower than the cost, assuming CRA would accept that the cost is the premiums paid to the point of transfer?

Remember, it's the *lesser* of the cost and fair market value otherwise determined. Both these things are questions of fact. When giving policies to charities, charities will want to have some comfort as to these factual issues because they're the ones at risk when they issue receipts. Donors may be asked to provide or fund the cost of providing professional valuations in these circumstances. I fear that charities will be less inclined to accept these gifts unless they can get more certainty regarding these two variables – cost and fair market value.

It is arguable that when an individual purchases a policy to give it to a charity and actually makes the donation shortly after the policy is issued, the cost and fair market value should be the premiums paid. The CRA's statements leave this as an open question. It just shouldn't have to be this complicated.

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