

Estate Donations: 7 Years After

Malcolm Burrows
Head, Philanthropic Advisory Services
malcolm.burrows@scotiawealth.com

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Estate Donations

- In 2016, the 36-month Graduated Rate Estate (GRE) regime produced changes to the taxation of charitable donations at death
- Subsections 118.1(5.1+) provided tax rules for estate donations, including:
 - Gifts by will
 - Direct designation gifts of life insurance
 - Direct designation gift of RRSP/RRIFs and TFSAs

Gifts by Will

PRE-GRE CHANGES IN 2016

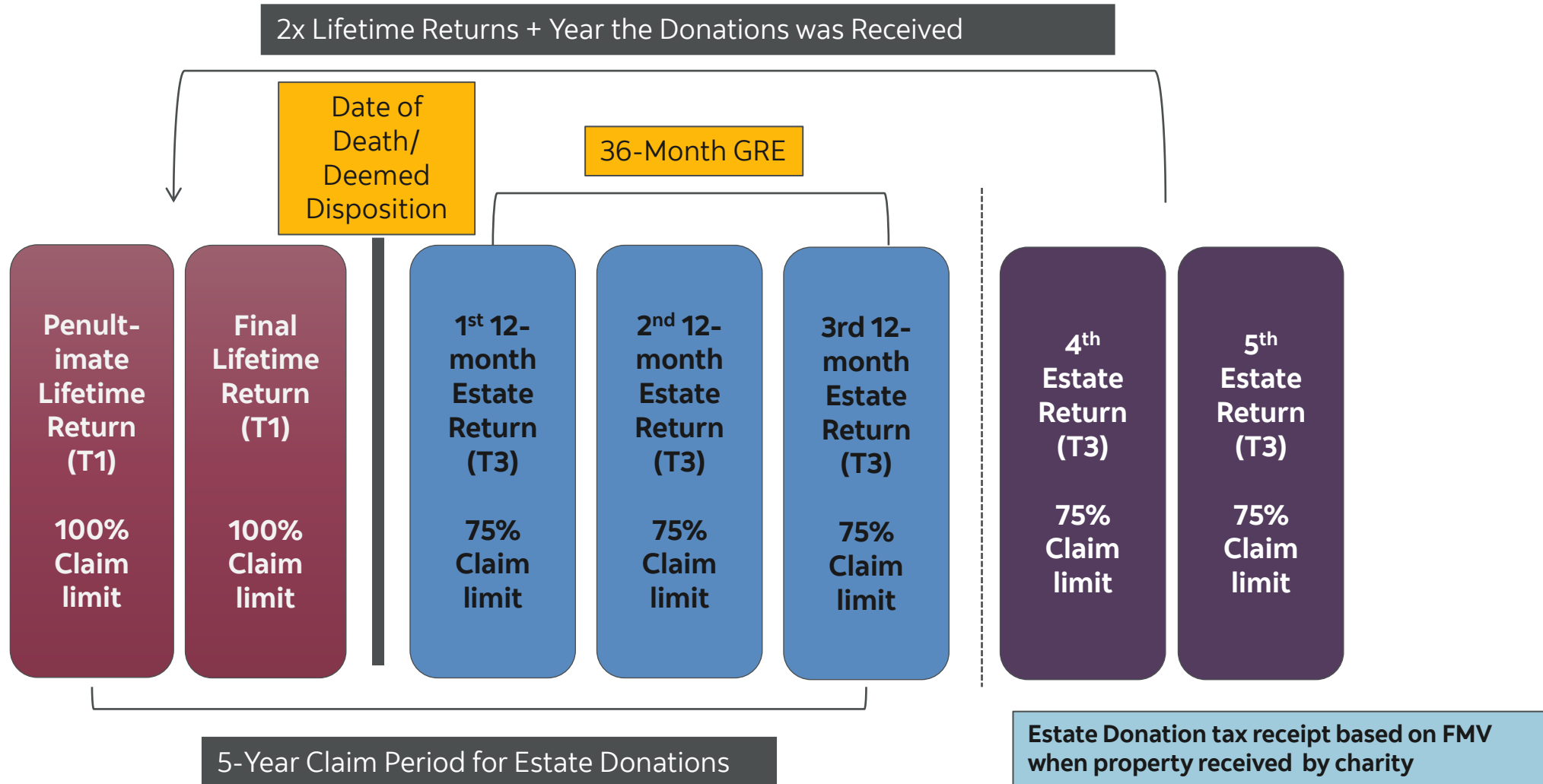
- A gift by will was deemed to occur at death – even without requirement to transfer funds to charity
- Aligned with deemed disposition of taxable property to provide tax relief in Terminal T1
- Tax receipt from charities often filed with no effect
- Previous regime for gifts by will was treated as lifetime gift, not an estate donation and there was no prescribed claim period
- Had some advantages, but separated lifetime returns and estate returns, and limited post-mortem planning

Estate Donations

POST-GRE CHANGES

- Designated an “estate donation”, not a lifetime gift
- No tax relief without funds being transferred to a charity
- Tax receipt is issued for fair market value (FMV) received by charity
- Estate must transfer donation within **60 months** of death to receive extended claim period
- Deemed disposition at death remains, creating an immediate tax liability
- Property transferred must be property held by deceased at death or property substituted - eliminates borrowing for donation

Estate Donations Post 2016

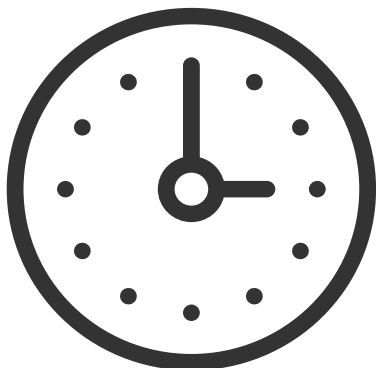


How are lawyers, charities and executors managing these rules seven years later?

10 observations on a not-so-new regime.



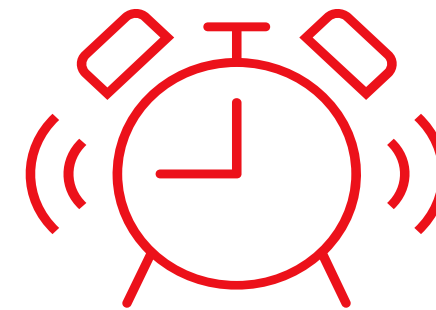
1. Executors incented to make larger donations earlier



- Deemed disposition immediately prior to death can often result in a hefty tax bill for the estate
- Front loading the distribution to charity allows for a faster and smoother administration of the estate for everyone

2. Have executors changed distribution practices?

- Many executors continue to file the terminal T1 before donating to charity
- Creates inefficiencies and additional work for executors
 - Filing for T1 Adjustment Request
 - Waiting for Notice of Re-Assessment & tax refund
 - Constant follow up with CRA
 - As a result, longer wait time for charities to receive distributions
- Added challenge of post-Covid slowdowns – including obtaining probate



3. Declare GRE to receive the full claim room



- Executors need to declare the estate is a GRE when filing first T3. This unlocks flexibility to claim the donation tax credits.
- There can only be one GRE per deceased person.
- In B.C., to avoid probate on the deceased's business assets, it is quite common for business owners to have multiple wills.
- However, there is legally only one estate, even though two wills exist.
- Collaboration between executors is essential to ensure all assets of the deceased qualify as single GRE for income tax purposes.

4. Illiquid property



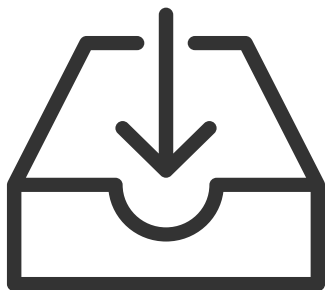
- Estate must transfer donation within **60 months** of death to receive extended claim period
- What happens when much of the value of the estate is locked up in illiquid properties?
- Important to determine if a charitable beneficiary can accept illiquid property such as private company shares or land.

5. Estate donation loop for residual bequests

- Charities may to receive estate distributions over several years
- A distribution to charity is a donation. If there is sufficient income and claim room to use the tax credit, the tax refund represents a further distribution to the residual beneficiaries.
- An “estate donation loop” is created with potentially an infinite number of refiling with CRA!
- At what point should executors stop refiling?
- Some advocate replacing residual bequests with legacies for charities. Thoughts?



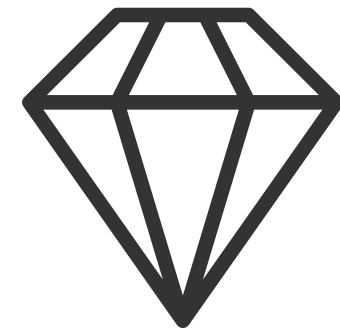
6. Are all tax receipts being filed by the estate?



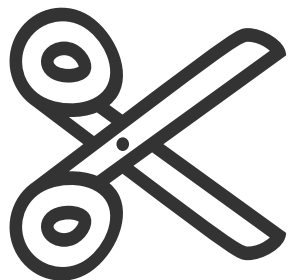
- When does your charity sign a final release?
- When all tax receipts have been re-filed and all tax refunds have been received!
- This is different from getting a CRA clearance certificate.
- With the flexibility in allocating the donation tax credits between T1 and T3 returns, there is a higher chance that all donation tax credits get fully utilized – which means more for charity.

7. More transparent link between receipt & tax filings

- Pre 2016, tax filings and tax receipts could not be easily reconciled with what the estate claimed on the terminal T1.
- Under the current regime, there is a clear link between tax receipts and donation tax credits claimed on the terminal T1.
- Helps charity and executor to reconcile accounts
- Easier to spot inconsistencies for follow up.



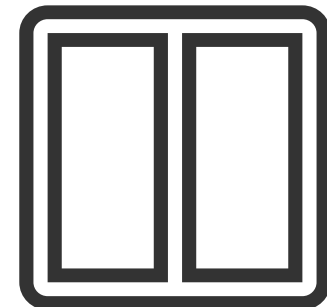
8. Old 'Donate to Eliminate' tax clause is broken



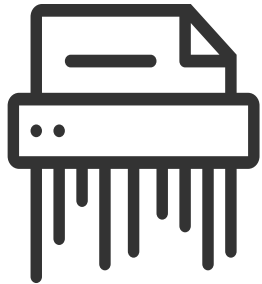
- Pre 2016, a gift by will was deemed to occur just before death, which coincided with the deemed disposition of capital and other taxable property.
- Old “Donate to Eliminate” based on the pre-2016 rules
- Under the current regime, donation occurs when the property is delivered to the charity during the estate administration process – often multiple distributions
- Rather than a single tax bill to eliminate, the total tax savings are claimed in several tax returns. Makes it hard for an executor to calculate ideal donation amount.

9. Estate donations involving holding companies

- If the deceased donor is shareholder of a private company, in the past, double taxation occurs:
 1. At death, as capital gains, due to deemed disposition of shares
 2. When assets of the corporation are liquidated and funds are distributed as a dividend back to the estate, for eventual distribution to the estate's beneficiaries.
- Estate donations regime enables more flexible planning to reduce double taxation
- For example, executors may avoid double taxation with a “pipeline transaction” in which the estate transfers the private company shares to Newco, which are then donated.



10. Lost tax relief from testamentary charitable trusts



- CRA has taken the position that the present value of the remainder interest of a testamentary Charitable Remainder Trust (CRT) cannot be an estate donation.
- The requirement is that the gift, made by a GRE, is a property that was acquired by the estate on and as a consequence of the death.
- CRA concluded that gift is the equitable interest in the CRT and that the equitable interest cannot have been acquired by the estate on and as a consequence of death.

Thank you