



# Gifts and Income Tax

## 2011

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Canada Revenue  
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## **Is this pamphlet for you?**

Are you an individual planning to give money or other property to a registered charity or other qualified donee? Do you own land or a building, or have stocks or bonds that you would like to give to a registered charity? Do you own an oil painting, stamp collection, etching, sculpture, antique, or coin set that you would like to give to a gallery or museum? Are you having your gift appraised? If so, the decisions you make may affect your tax situation.

This pamphlet will provide you with information about making a gift in 2011. It includes income tax changes that have been announced, but were not law at the time of printing.

If you require information about a gift made in a previous year, you will need a version of this pamphlet for the year in which you made your gift. You can get previous versions of this pamphlet from our Web page at **[www.cra.gc.ca/E/pub/tg/p113](http://www.cra.gc.ca/E/pub/tg/p113)** or by calling **1-800-959-2221**.

La version française de cette publication est intitulée LES DONNS ET L'IMPÔT.

**NOTE:** In this publication, the text inserted between square brackets represents the regular print information.

## **What's new for 2011 and 2012?**

**Donations of publicly listed flow-through shares** – Under proposed changes, if you donate property to a qualified donee after March 21, 2011, that is, at the time of the donation included in a **flow-through share (FTS) class of property**, and you have an exemption threshold in respect of the FTS class of property, you may be deemed to have a capital gain. For more information, see Capital gains realized on gifts of certain capital property on page 46 [19].

**Recovering tax assistance for returned property** – Under rare and unique circumstances, there may be a legal requirement for a donee to return a gift. Under proposed changes, a qualified donee who returns a property to a taxpayer after March 21, 2011, that is, either the original property previously donated by the taxpayer, or another property returned as compensation for, or in substitution for, the original property, may be required to file an information

return with us, and to provide a copy to the taxpayer. As a result, the taxpayer's prior donation claim may be reassessed in respect of the returned property. For more information, see Receipts on page 28 [13].

**Granting of options to qualified donees** – Under proposed changes, for options granted to qualified donees after March 21, 2011, no official donation receipt may be issued to the qualified donee until such time as the qualified donee exercises or sells the option.

**Gifts to registered charities and other qualified donees** – Under proposed changes, effective on the later of January 1, 2012, and the date the legislation receives Royal Assent, certain qualified donees are required to register with us in order to be included on a publicly available list that we maintain. For more information, see "Gifts to registered charities and other qualified donees" on page 13 [7].

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# Definitions

In this section, we define some terms that we use in this pamphlet.

**Adjusted cost base (ACB)** – Usually the cost of a property plus any expenses to acquire it, such as commissions and legal fees. It also includes capital expenditures, such as the cost of additions and improvements to the property. You cannot add current expenses, such as maintenance and repair costs, to the cost base of a property. For more information on ACB, read Chapter 3 of Guide T4037, CAPITAL GAINS.

**Arm's length transaction** – A transaction between persons who act independently of each other. Related persons are not considered to deal with each other at arm's length. Related persons include individuals connected by a blood relationship, marriage or common-law partnership, or adoption (legal or in fact). Also, a corporation and a shareholder who controls the corporation are related.

Unrelated persons usually deal with each other at arm's length. However, this might not be the case if one person is under the influence or control of the other, or if the persons are considered to

be acting in concert. For more information, see Interpretation Bulletin IT-419, MEANING OF ARM'S LENGTH.

**Eligible amount of the gift** – Under proposed changes, this is the amount by which the fair market value (FMV) of the gifted property exceeds the amount of an **advantage**, if any, received or receivable for the gift. Under proposed changes, there are situations in which the eligible amount may be deemed to be nil. For more information, see "Receipts" on page 28 [13] and "Deemed fair market value" on page 34 [15].

Under proposed changes, the **advantage** is generally the total value of any property, service, compensation, use or any other benefit that you are entitled to as partial consideration for, or in gratitude for, the gift. The **advantage** may be contingent or receivable in the future, either to you or a person or partnership not dealing at arm's length with you.

For example, you donate \$1,000 to the Anytown Ballet Company, which is a registered charity. In gratitude, the company provides you with three tickets to a show that are valued at \$150. You are therefore considered to have received an **advantage** of \$150. The **eligible amount** of the gift is \$850 (\$1,000 – \$150).

Under proposed changes, the advantage also includes any limited-recourse debt in respect of the gift at the time it was made. For example, there may be a limited-recourse debt if the property was acquired through a tax shelter that is a gifting arrangement. In this case, the eligible amount of the gift will be reported in box 13 of Form T5003, STATEMENT OF TAX SHELTER INFORMATION. For more information on gifting arrangements and tax shelters, see Guide T4068, GUIDE FOR THE PARTNERSHIP INFORMATION RETURN (T5013 FORMS).

**Fair market value (FMV)** – This is usually the highest dollar value you can get for your property in an open and unrestricted market, between a willing buyer and a willing seller who are acting independently of each other.

**Note**

For the purposes of this pamphlet, there are certain situations in which the FMV will be deemed to be less than the actual FMV of the property described above. For more information, see "Deemed fair market value" on page 34 [15].

## Gifts and income tax

If you made a gift of money or other property to certain institutions, you may be able to claim federal and provincial or territorial non-refundable tax credits when you file your income tax and benefit return, provided that you receive an official receipt from the institution(s). If you lived in Quebec on December 31, claim your provincial tax credit on your Quebec income tax return.

In most cases, a gift is a voluntary transfer of property without valuable consideration to the donor. However, under proposed changes, a transfer of property for which you received an **advantage** (as defined on page 9 [5] ) will still be considered a gift for purposes of the INCOME TAX ACT as long as we are satisfied that the transfer of property was made with the intention to make a gift. An intention to make a gift will generally be presumed when the fair market value (FMV) of the advantage **does not exceed 80%** of the FMV of the transferred property.

### Note

If the amount of the advantage **exceeds 80%** of the FMV of the transferred property, we may still consider the transfer to be a gift

for purposes of the INCOME TAX ACT. For more information, write to the Charities Directorate, Canada Revenue Agency, Ottawa ON K1A 0L5, or call the Charities Directorate at **1-800-267-2384**.

It is the **eligible amount** (as defined on page 9 [5] ) of the gift that is used to calculate your non-refundable donation tax credits.

The tax consequences of a gift depend on such facts as whether it is:

- a gift to a qualified donee such as a registered charity;
- a gift of ecologically sensitive land;
- a gift of certified cultural property to a designated institution or a public authority under the CULTURAL PROPERTY EXPORT AND IMPORT ACT;
- a gift of a share, debt obligation or right listed on a designated stock exchange, a share of the capital stock of a mutual fund corporation, a unit of a mutual fund trust, an interest in a related segregated fund trust or a prescribed debt obligation;

- under proposed changes, a gift of publicly listed flow-through shares acquired after March 21, 2011; or

- a gift of non-qualifying securities.

It will also depend on whether the property was capital property, listed personal property, or inventory of a business.

## **What gifts can you claim?**

### **Gifts to registered charities and other qualified donees**

You can claim a tax credit based on the **eligible amount** of the gift you give to a qualified donee. Qualified donees generally include:

1. registered charities;
2. registered Canadian amateur athletic associations;
3. registered national arts service organizations;

4. housing corporations in Canada set up only to provide low-cost housing for the aged;
  5. municipalities in Canada;
  6. under proposed changes, municipal or public bodies performing a function of government in Canada;
  7. the United Nations and its agencies;
  8. universities outside Canada with a student body that ordinarily includes students from Canada provided these universities are listed in Schedule VIII of the Income Tax Regulations;
9. charitable organizations outside Canada to which the Government of Canada has made a gift either during the donor's tax year, or in the 12 months just before that period (or, under proposed changes, effective on the later of January 1, 2012, and the date the legislation receives Royal Assent, during the 36 month period beginning 24 months before the time of the donor's gift); and

10. the Government of Canada, a province, or a territory.

Under proposed changes, effective on the later of January 1, 2012, and the date the legislation receives Royal Assent, qualified donees of the types listed in numbers 4, 5, 6, 8, and 9 on page 14 [above], are required to register with us in order to be included on a publicly available list that we maintain. This will further assist donors in determining which organizations may issue official donation receipts.

Generally, you can claim part or all of the **eligible amount** of your gifts, up to the limit of 75% of your net income for the year. You may be able to increase this limit if you give capital property (including depreciable property). For details, see "Calculating your increased donation limit" on page 50 [21].

## **Non-qualifying gifts**

Special rules apply if you make a gift of a non-qualifying security, such as shares of a corporation you control, or obligations, or any other security issued by yourself (other than shares, obligations, and

other securities listed on a designated stock exchange and deposits with financial institutions). For details, including information about proposed changes, go to [www.cra.gc.ca/gncy/bdgt/2011](http://www.cra.gc.ca/gncy/bdgt/2011) or see Guide T4037, CAPITAL GAINS.

## **Gifts to U.S. charities**

Generally, if you have U.S. income, you can claim any gifts to U.S. charities that would be allowed on a U.S. return. You can claim the **eligible amount** of your U.S. gifts up to 75% of the **net U.S. income** you report on your Canadian return. However, you may be able to claim the **eligible amount** of your gifts to certain U.S. organizations up to 75% of your **net world income**. You can do this if you live near the border in Canada throughout the year and commute to your principal workplace or business in the United States, and if that employment or business was your main source of income for the year. Similarly, your claim will also not be restricted to net U.S. income if your gift is to a U.S. college or university at which you or a member of your family is or was enrolled or if your gift is to a prescribed university as referenced in the list of qualified donees on page 13 [the previous page].

## **Gifts to Canada, a province, or a territory**

You can claim a tax credit based on the **eligible amount** of gifts to the Government of Canada, a province, or a territory. Government gifts do not include contributions to political parties. The amount that qualifies for the tax credit is limited to **75%** of your net income. Enter the eligible amount on **line 2** of Schedule 9, DONATIONS AND GIFTS.

Gifts to Canada include **monetary** gifts made directly to help reduce Canada's debt. If you made such a gift, which will be used only to service the public debt, you should have been provided with a tax receipt for the gift. To make such a gift, which should be made payable to the Receiver General, send it, along with a note asking that we apply it for this purpose, to: Place du Portage, Phase III, 11 Laurier Street, Gatineau QC K1A 0S5.

## **Gifts of ecologically sensitive land**

You can claim a tax credit based on the **eligible amount** of a gift of ecologically sensitive land (including a covenant, an easement, or, in the case of land in Quebec, a real servitude) you made to Canada, or

one of its provinces, territories, or municipalities, or a registered charity approved by the Minister of the Environment.

Under proposed changes, gifts of ecologically sensitive land made to a municipal or public body performing a function of government in Canada, will also qualify for a tax credit.

The Minister of the Environment, or a person designated by that minister, has to certify that the land is important to the preservation of Canada's environmental heritage. The Minister will also determine the fair market value (FMV) of the gift.

For a gift of a covenant or an easement, or a real servitude (in Quebec), the FMV of the gift will be the **greater** of:

- the FMV of the gift otherwise determined; and
- the amount of the reduction of the land's FMV that resulted from the gift.

The FMV of the donated property, as determined or redetermined by the Minister of the Environment, will apply for a 24-month period after the last determination or redetermination. If you make a gift of the

property within that 24-month period, it is the last determined or redetermined value that you use to calculate the **eligible amount** of the gift, whether you claim the gift as a gift of ecologically sensitive land or as an ordinary charitable gift.

Your claim for a gift of ecologically sensitive land is not limited to a percentage of your net income.

The Minister of the Environment (or if the land is located in Quebec, the ministère du Développement durable, de l'Environnement et des Parcs) will issue you a certificate indicating the FMV of the gifted property and that the property is important to the preservation of Canada's environmental heritage. Attach this certificate to your income tax and benefit return. Enter the **eligible amount** of the gift of ecologically sensitive land on **line 342** of Schedule 9, DONATIONS AND GIFTS.

You may have a capital gain or loss for the land that you donated. For information, see the section called "Capital gains and losses" on page 45 [19].

## **Gifts of certified cultural property**

Special incentives have been put in place to encourage Canadians to keep in Canada cultural property that is of outstanding significance and national importance. Under the CULTURAL PROPERTY EXPORT AND IMPORT ACT, people can donate this type of property to Canadian institutions and public authorities that have been designated by the Minister of Canadian Heritage.

You can claim a tax credit based on the **eligible amount** of gifts of certified cultural property. The **eligible amount** of your gift is calculated based on the fair market value (FMV) of the property, as determined by the Canadian Cultural Property Export Review Board (CCPERB).

The FMV of the donated property, as determined or redetermined by the CCPERB, will apply for a 24-month period after the last determination or redetermination. If you make a gift of the property within that 24-month period, it is the last determined or re-determined FMV that you use to calculate the **eligible amount** of the gift, whether you claim the gift as a gift of cultural property or as an ordinary charitable gift.

Your claim for a gift of certified cultural property is not limited to a percentage of your net income.

If you donate cultural property, certified by the CCPERB, to a designated institution or a public authority, the CCPERB will issue you Form T871, CULTURAL PROPERTY INCOME TAX CERTIFICATE, indicating the FMV of the gifted property. Attach this certificate to your income tax and benefit return. Enter the **eligible amount** of the gift of certified cultural property on **line 342** of Schedule 9, DONATIONS AND GIFTS.

You do not have to report, or pay tax on, any capital gain that you realize when you donate certified cultural property to a designated institution or a public authority. You can, however, deduct capital losses within specified limits. For more information, see Guide T4037, CAPITAL GAINS.

For more information on the certification of cultural property donations, see the section called "The CULTURAL PROPERTY EXPORT AND IMPORT ACT" on page 54 [23].

## Carrying forward tax credits

You do not have to claim, on your income tax and benefit return for the current year, the **eligible amount** of gifts you made in the year. It may be more beneficial for you to carry them forward and claim them on your return for any of the next five years. No matter what your choice is, you can claim them only once.

You have to claim tax credits for gifts you carried forward from a previous year **before** you claim tax credits for gifts you give in the current year. If you are claiming a carryforward, attach a note to your return indicating the year of the return with which you submitted the receipt, the portion of the **eligible amount** you are claiming this year, and the amount you are carrying forward.

Usually, you can claim gifts on the return you receive. However, you have to use a T1 General INCOME TAX AND BENEFIT RETURN if you are claiming:

- gifts of certified cultural property;
- gifts of ecologically sensitive land; or
- most gifts in kind (see "Gifts in kind" on page 24 [11] for details).

## Gifts in the year of death

If you are preparing an income tax and benefit return for a deceased person, you can claim the **eligible amount** of gifts that the person gave in the year of death including those that the person bequeathed in the will. The amount claimed must be the **lesser** of:

- 100% of the deceased person's net income; and
- under proposed changes, the **eligible amount** of the gift(s) donated in the year of death (including gifts by will), **plus** the unclaimed portion of the eligible amount of any gifts made in the five years before the year of death.

Any excess can be claimed on the return for the previous year (up to 100% of the deceased's net income for that year).

You may be able to claim a charitable donation tax credit on the deceased person's return for a donation of a direct distribution of proceeds to a qualified donee who is the designated beneficiary of a registered retirement savings plan (RRSP), including a group RRSP, a registered retirement income fund (RRIF), a tax-free savings account (TFSA), or a life insurance policy including a group life

insurance policy. This does not apply if the qualified donee is a policyholder under the life insurance policy or is the assignee of the life insurance policy.

You have to attach official tax receipts and other required forms to the return on which you are claiming the gifts. However, there are exceptions to this rule. For more information, see Guide T4011, PREPARING RETURNS FOR DECEASED PERSONS.

## **Gifts in kind**

A gift in kind refers to a gift of property (other than cash) such as capital property (including depreciable property) and personal-use property (including listed personal property). These terms are defined in the "Definitions" section in Guide T4037, CAPITAL GAINS. A gift in kind does not include a gift of services.

### **Do you have property to donate?**

Here are some things to keep in mind when you donate property:

- If you plan to give away property, any capital gain you have made on the property since you got it may be subject to tax. For more information, see "Capital gains and losses" on page 45 [19].
- Your own situation will affect the tax status of the gift. If you are an artist, dealer, collector, or individual carrying on a business, different tax rules apply when you donate property from your inventory.
- You have to decide to which organization you are going to donate your property. We cannot advise which museum, art gallery, archive, municipality, or institution you should approach. Remember that the tax implications may differ depending on the way in which you make the gift and to whom.
- Once you have chosen a qualified donee, and have determined that it is willing to accept your gift, you or the qualified donee may need to have the property appraised to determine its fair market value.

## **Donation appraisals**

Donors and qualified donees often approach appraisers, dealers, and other people who are knowledgeable about particular objects to get

appraisals for income tax purposes. Determining fair market value (FMV), as defined on page 10 [5], can be a complex process. You must consider numerous facts regarding the property.

You may need to get one or more appraisals to establish the FMV of the property you are donating. Use the appraised FMV to calculate the eligible amount of the gift unless the deemed FMV rules apply (see page 34 [15] for details). The eligible amount is used to calculate the tax credit you can claim on your income tax and benefit return. The appraised FMV is also used in calculating any capital gain or loss you may have from donating your property.

### **Who should appraise a gift?**

For every situation, whether the property is **personal property**, **real property**, or **intangible property**, donors and qualified donees are encouraged to contact a professional appraiser, valuator, or other individual who is accredited in the field of valuation. That individual should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE or the

standards of the profession. Also, he or she should be knowledgeable about and active in the marketplace for the specific property.

The chosen individual should be independent. For instance, he or she should not be associated with the donor, the qualified donee, or another party associated with the purchase, sale, or donation of the property.

The individual should also be knowledgeable about the elements of a properly prepared and credible valuation report.

Where the FMV of the property to be gifted is less than \$1,000, a professional appraisal will probably not be required, but the donor should keep all documents supporting the determination of the FMV, in case we ask to see them.

### **The appraisal report**

The appraisal or valuation report should be based on the principles, theories, and procedures of the applicable valuation discipline and follow the standards of the profession. The report has to be an estimate of the FMV of the property as of the date of donation. Also,

if you owned the property on Valuation Day (December 31, 1971), you may need to get a valuation reflecting the value on that date.

### **Note**

The Canadian Cultural Property Export Review Board (CCPERB) has requirements for appraisals. Before applying for certification, please consult the Review Board Secretariat. Contact information for the secretariat is given on page 57 [24].

### **Donation date**

The donation date is the date that the gift is made. The donation date may not be the date of physical delivery, since a property may be on loan to the qualified donee before the actual donation date.

### **Receipts**

Under proposed changes, the **eligible amount** of a gift is deemed to be nil if the donor fails to inform the donee of information that would be relevant to the application of the rules that would cause the

eligible amount of a gift to be less than the FMV (see "Deemed fair market value" on page 34 [15] ).

For donations of gifts in kind, the qualified donee can issue an official donation receipt after the property has been appraised. The receipt should show the FMV or deemed FMV of your gift. It will also show the eligible amount of the gift.

If your gift comes under the CULTURAL PROPERTY EXPORT AND IMPORT ACT, and the COPERB has certified it, you will receive Form T871, CULTURAL PROPERTY INCOME TAX CERTIFICATE, from the Board. Attach Form T871 and the official receipt from the qualified donee accepting your gift, to your income tax and benefit return.

If your gift is ecologically sensitive land that the federal Minister of the Environment or his delegate has certified as important to the preservation of Canada's environmental heritage, you will receive a CERTIFICATE FOR DONATION OF ECOLOGICALLY SENSITIVE LAND. Attach the certificate and official receipt to your return.

If the land you give is located in the province of Quebec, you will instead receive a CERTIFICATE RESPECTING GIFTS OF LAND WITH

ECOLOGICAL VALUE OR SERVITUDES ENCUMBERING LAND WITH ECOLOGICAL VALUE, issued by the ministère du Développement durable, de l'Environnement et des Parcs. Attach the certificate and the official receipt to your return.

Generally, the eligible amount that qualifies for the tax credit applies for the year you give the gift. You can choose the part of the **eligible amount** of the gift you want to claim in the year and you can carry forward any unused part for up to five years.

If you are filing a paper return, include your Schedule 9, as well as your official receipts showing either your or your spouse's or common-law partner's name. You do not have to attach receipts for amounts shown in box 046 of your T4 or T4A slips, in box 48 of your T3 slips, in box 103 of your T5013 slips, or on financial statements showing an amount a partnership allocated to you. If you receive a T5003 slip(s) with an amount in box 13, you must submit this slip as well as a charitable donation receipt that you will receive from the charity. You must also complete and attach to your return Form T5004, CLAIM FOR TAX SHELTER LOSS OR DEDUCTION.

You may have included with a previous return, a receipt for a donation you are claiming for the current year. If so, attach a note indicating the return with which you submitted the receipt. However, if you are filing electronically, keep all of your documents in case we ask to see them.

Under proposed changes, where a qualified donee returns a property to you after March 21, 2011, that is, either the original property that you previously donated, or any other property that may reasonably be considered compensation for, or a substitute for, the original property and where the fair market value of the original property is more than \$50, the qualified donee must file an information return with us. The qualified donee must send the information return to the Audit Section, Compliance Division of our Charities Directorate. The qualified donee must also provide a copy of this information return to you. We may then reassess your tax return for the applicable tax year to reduce the amount of your prior claim, and to amend the reporting of the disposition of the original property. For more information, go to [www.cra.gc.ca/gncy/bdgt/2011/qa23-eng.html](http://www.cra.gc.ca/gncy/bdgt/2011/qa23-eng.html).

## Gifts of capital property

Capital property includes depreciable property, and any property that, if sold, would result in a capital gain or a capital loss. Capital property **does not include** the trading assets of a business, such as inventory.

The following properties are generally capital properties:

- cottages;
- securities, such as stocks, bonds, and units of a mutual fund trust; and
- land, buildings, and equipment you use in a business or a rental operation.

### Note

All references to fair market value (FMV) in this section are subject to the deemed FMV rules as discussed under "Deemed fair market value" on page 34 [the next page].

If you donate capital property, we consider you to have disposed of that property for proceeds **equal** to the FMV of the property. You have

to report any capital gain on your income tax and benefit return in the year you donated the property. In some cases, you may be able to claim a capital loss in the year you donated the property.

However, if you make a gift of capital property to a registered charity or other qualified donee such as Canada or one of its provinces or territories, and the FMV of the donated capital property, otherwise determined, is **more** than its adjusted cost base (ACB), you may designate an amount that is **less** than the FMV to be the proceeds of disposition. This may allow you to reduce the capital gain otherwise calculated.

The amount that you may choose to designate in respect of the donation **cannot be greater than** the FMV and **not less** than the greater of:

- any **advantage** in respect of the gift; and
- the ACB of the property (or, if the property was depreciable property, the lesser of its ACB and the undepreciated capital cost of the class of the property).

Use the amount you choose as the proceeds of disposition when you calculate any capital gain. Also use this amount to determine the **eligible amount** of the gift, which you need to calculate the tax credit.

If, when you made the donation, the FMV was **less** than the ACB, the proceeds of disposition must equal the FMV of the donated property. This amount will be used to calculate any capital loss on the disposition of a non-depreciable capital property and the **eligible amount** of the gift, which you need to calculate the tax credit.

For more information, see Interpretation Bulletin IT-288, GIFTS OF CAPITAL PROPERTIES TO A CHARITY AND OTHERS.

### **Deemed fair market value**

Under proposed changes, for a gift of property made to a qualified donee, the fair market value (FMV) of the property gifted will be deemed to be the lesser of the property's:

- FMV otherwise determined; and
- its cost (or ACB if it is capital property) immediately before the gift was made.

**This limitation** applies to property that was acquired under a gifting arrangement that is a tax shelter. Unless the gift is made as a consequence of the taxpayer's death, this limitation also applies if the property was acquired:

- less than **3** years before the day the gift was made; or
- less than **10** years before the day the gift was made and it is reasonable to conclude that when the property was acquired, one of the main reasons for the acquisition was to make a gift of it.

If a gifted property was acquired in a non-arm's length transaction during the 3-year or 10-year period, the cost (or ACB if it is capital property) of the gifted property will be deemed to be equal to the lower of the cost to the donor and the lowest cost to a party to the non-arm's length transaction.

The limitation does **not** apply to gifts of:

- inventory;
- real or immovable property located in Canada;
- certified cultural property;

- ecologically sensitive land (including a covenant, an easement, or, in the case of land in Quebec, a real servitude);
- a share, debt obligation, or right listed on a designated stock exchange;
- a share of the capital stock of a mutual fund corporation;
- a unit of a mutual fund trust;
- an interest in a related segregated fund trust;
- a prescribed debt obligation;
- a share of the capital stock of a corporation issued by the corporation to the donor, if immediately before the share was gifted, the corporation was controlled by the donor or other persons related to the donor, **and** if the limitations described on page 34 [15] would not have otherwise applied; or
- a property by a corporation if the property was acquired by the corporation in consideration for shares of the corporation's capital stock in a rollover transaction and, immediately before the gift, the shareholder from whom the corporation acquired the property (or other persons related to the shareholder) controlled the

corporation, **and** if the limitations described on page 34 [15] would not have otherwise applied.

If a donor attempts to avoid the limitations described on page 34 [15] with the acquisition or disposition of a property before gifting it, the eligible amount of the gift is deemed to be nil.

If the limitations described on page 34 [15] would have otherwise applied to a gift of a particular property, and where that property is instead sold to a registered political organization or candidate, or a qualified donee and where all or part of the proceeds of disposition is property that is the subject of a gift or monetary contribution, the FMV of the gift is deemed to be an amount equal to the **lesser** of the FMV of the property sold and its cost, or a pro-rata portion thereof.

If the property was acquired through a tax shelter that is a gifting arrangement, the eligible amount will be reported in box 13 of Form T5003, STATEMENT OF TAX SHELTER INFORMATION.

### **Note**

Despite numerous warnings and audit actions by the Canada Revenue Agency (CRA), some taxpayers are still participating in

gifting tax shelters. If you are considering entering into a gifting tax shelter arrangement, you should obtain independent professional advice from a tax advisor before signing any documents. For more information, you can go to our web page at [www.cra.gc.ca/nwsrm/lrts/2008/1081204-eng.html](http://www.cra.gc.ca/nwsrm/lrts/2008/1081204-eng.html).

### **Gifts of securities acquired under a security option plan**

You can claim an additional deduction on **line 249** of your income tax and benefit return for donating publicly-listed shares of corporations or mutual fund units you acquired through your employer's security option plan. However, you must meet **all** of the following conditions:

- You acquired a security under an option that was granted to you as an employee of a corporation or a mutual fund trust.
- You disposed of the security in the year it was acquired, and not more than 30 days after its acquisition, by donating it to a qualified donee.
- You are entitled to claim a security option deduction on line 249.

The additional deduction is equal to 50% of the amount of the taxable benefit, which may effectively exempt from tax the employment benefit associated with the exercising of the stock option.

When calculating the amount of the additional deduction that can be claimed on line 249, you determine the employment benefit by using **the lesser of:**

- the FMV of the security at the time of acquisition; and
- the FMV of the security at the time of disposition (through donation).

You may have a capital gain on the disposition of the security. For more information, see "Capital gains and losses" on page 45 [19].

### **Granting of options to a qualified donee**

Under proposed changes, you may not claim a gift in respect of an option to acquire a property that is granted to a qualified donee after March 21, 2011, until such time as the qualified donee either exercises or sells the option. At that time, the amount of the gift that you may claim is generally equal to:

- where the option is exercised by the qualified donee, the FMV of the underlying property **minus** any consideration that you receive from the qualified donee for the property or the option; or
- where the option is sold by the qualified donee, the **lesser of**:
  - the FMV of the underlying property; and
  - the FMV of any consideration, other than a non-qualifying security of any person, received by the qualified donee for the option,**minus** any consideration that you receive from the qualified donee for the option.

## **Are you an artist?**

If you are an artist, we usually consider any works you create and own as inventory, not capital property. When an artist creates a work of art intending to sell it but instead donates it to a qualified donee, we consider the gift to be a disposition of property from the artist's inventory.

As an artist, if you donate a gift from your inventory and if the gift's fair market value (FMV) is **more than** its cost amount, you can designate any amount for the value of the donated property as long as it is:

- not greater than the FMV; and
- not less than the greater of:
  - the amount of any **advantage** in respect of the gift; and
  - the cost amount.

Use the amount you choose for the value of the gift as proceeds of disposition to determine your income. This amount will also be used to calculate the **eligible amount** of the gift, which you need to calculate the tax credit.

If, at the time you made the donation, the FMV is **less than** the cost amount, the proceeds of disposition must equal the FMV of the donated property. This amount will also be used to calculate the **eligible amount** of the gift, which you use to calculate the tax credit.

As an artist, you may donate a **work of cultural property** you created, from your inventory, to a designated institution or public authority. If you do this, and the Canadian Cultural Property Export Review Board (CCPERB) certifies the gift, we consider that you received proceeds of disposition equal to the **greater** of the cost amount of your gift and the amount of any **advantage** in respect of the gift. The amount that qualifies for the tax credit on certified cultural property will be based on the **eligible amount** of the gift, provided you meet all other requirements outlined in the section called "Gifts of certified cultural property" on page 20 [9].

### **Note**

An artistic endeavour occurs when you are in the business of creating paintings, murals, original prints, drawings, sculptures, or similar works of art. An artistic endeavour does not include reproducing works of art.

When you calculate your income from an artistic endeavour, you can choose to value your ending inventory at nil. If you do this, we consider the cost amount of your gift to be nil. Your choice stays in effect for each following year, unless we allow you to change it. For

more information, see Interpretation Bulletin IT-504, VISUAL ARTISTS AND WRITERS.

## **Are you an art or antiques dealer?**

If you buy and sell art, antiques, rare books, or other cultural property as a business, and you donate one of these objects, we consider the objects as part of your inventory, not capital property or personal-use property. Therefore, we consider the proceeds to be business income based on the fair market value of the donated property at the time you donated it. You can claim a tax credit based on the **eligible amount** of the gift if it otherwise qualifies.

If your gift is from a private collection that you maintain apart from those works we consider to be your business inventory, the usual rules for donating capital property or personal-use property apply.

## **Listed personal property**

Personal-use property includes a special class of property called **listed personal property**. Items in this class usually increase in value.

Listed personal properties include:

- prints, etchings, drawings, paintings, sculptures, or other similar works of art;
- jewellery;
- rare folios, rare manuscripts, or rare books;
- stamps; and
- coins.

We consider all or any part of such properties, a part interest in them, or any right to them, as listed personal property. You should have a Valuation Day value established for any listed personal property you acquired before December 31, 1971, that is worth more than \$1,000, either separately or as a set. In most cases, you may find an indication of the fair market value for many of these items by checking dealers' catalogues, or by asking art antiques, coin, jewellery, or stamp dealers.

Special rules may apply to personal-use property and listed personal property. For more information, see Guide T4037, CAPITAL GAINS.

## Capital gains and losses

To have a capital gain or loss, the property involved has to be capital property. You will find examples of capital property in the section called "Gifts of capital property" on page 32 [14].

If you donate capital property, we consider you to have disposed of that property. You have to report any resulting capital gain or loss on your return for the year that you donate the property.

You need to know the following three amounts to calculate a capital gain or a capital loss:

- the proceeds of disposition (generally the fair market value of the property at the time of donation);
- the adjusted cost base (ACB) of the property; and
- the outlays and expenses you incurred when donating the property.

You have a capital gain when you dispose of a capital property for **more** than its ACB plus the outlays and expenses incurred to dispose of it.

When you dispose of a non-depreciable capital property for **less** than its ACB plus the outlays and expenses incurred to dispose of it, you have a capital loss.

For details, see Guide T4037, CAPITAL GAINS.

## **Capital gains realized on gifts of certain capital property**

If you donated certain types of capital property to a registered charity or other qualified donee, you may not have to include in your income any amount of capital gain realized on such gifts. You may be entitled to an inclusion rate of **zero** on any capital gain realized on such gifts.

### **Note**

For donations of ecologically sensitive land to a private foundation, the inclusion rate of zero does not apply.

The inclusion rate of **zero** applies if you donate the following property:

- a share of the capital stock of a mutual fund corporation;
- a unit of a mutual fund trust;

- an interest in a related segregated fund trust;
- a prescribed debt obligation;
- ecologically sensitive land (including a covenant, an easement, or, in the case of land in Quebec, a real servitude) donated to a qualified donee other than a private foundation (see "Gifts of ecologically sensitive land" on page 17 [8] for details); and
- a share, debt obligation, or right listed on a designated stock exchange.

For donations of publicly traded securities, this treatment is extended to any capital gain realized on the exchange of shares of the capital stock of a corporation for those publicly listed securities donated when:

- at the time they were issued and at the time of disposition, the shares of the capital stock of a corporation included a condition allowing the holder to exchange them for the publicly traded securities;
- the publicly traded securities are the only consideration received on the exchange; and

- the publicly traded securities are donated within 30 days of the exchange.

In cases where the exchanged property is a partnership interest (other than prescribed interests in a partnership), the capital gain will generally be the **lesser** of:

- the capital gain otherwise determined; and
- the amount, if any, by which the cost to the donor of the exchanged interests (plus any contributions to partnership capital by the donor) exceeds the ACB of those interests (determined without reference to distributions of partnership profits or capital).

Under proposed changes, if you donate property to a qualified donee after March 21, 2011, that is, at the time of the donation included in a **flow-through share (FTS) class of property**, in addition to any capital gain that would otherwise be subject to the zero inclusion rate discussed earlier in this section, you are deemed to have a capital gain from the disposition of another capital property equal to the **lesser of:**

- the amount of your **exemption threshold**, at that time, in respect of the FTS class of property; and
- the total capital gains from the actual disposition.

For more information, go to

**[www.cra.gc.ca/gncy/bdgt/2011/qa23-eng.html](http://www.cra.gc.ca/gncy/bdgt/2011/qa23-eng.html)**.

If there is no **advantage** received in respect of the gift, the full amount of the capital gain is eligible for the inclusion rate of **zero**. However, if there is an advantage in respect of the gift, only a portion of the capital gain is eligible for the inclusion rate of zero. The rest is subject to an inclusion rate of **50%**.

The amount subject to the inclusion rate of **zero** is calculated using the following formula:

$$A \times (B \div C)$$

Where

**A** = the capital gain

**B** = the eligible amount of the gift

**C** = the proceeds of disposition

Report all donations of these properties on Form T1170, CAPITAL GAINS ON GIFTS OF CERTAIN CAPITAL PROPERTY, whether the inclusion rate is **50%** or **zero**. Report the applicable amounts calculated on this form on **line 132 and/or line 153** of Schedule 3, CAPITAL GAINS (OR LOSSES).

### **Note**

The capital gain realized on an exchange of partnership interests for publicly listed securities that are then donated should not be reported on Form T1170. Instead, it should be reported directly on line 174 of Schedule 3.

## **Calculating your increased donation limit**

If you donate cash or other property to a registered charity or other qualified donee in the year, your total donations limit will generally be **75%** of your net income for the year. However, you can increase your total donations limit if you donate **capital property** in the year. If you

received an **advantage** in respect of the donation of the property, include, in your calculations, only the portion of taxable capital gains and recapture of depreciation that related to the gift portion of your donation.

To do so, complete Chart 1 on the next page, and enter the result on Schedule 9, DONATIONS AND GIFTS. Your donations limit cannot exceed your net income for the year.

**Chart 1 – Gifts of capital property**

Amount of current-year taxable capital gains from capital property donated in the year	\$	<u>                    </u>	<b>1</b>
Amount of current-year capital gains deduction from capital property donated in the year	–	<u>                    </u>	<b>2</b>
Line 1 <b>minus</b> line 2	\$	<u>                    </u>	<b>3</b>

**Enter this amount on line 339 of Schedule 9.**

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You can also increase your total donations limit if you have to include a recapture of depreciation on your current-year income tax and benefit return as a result of donating the property.

To do so, complete Chart 2 below, and enter the result on Schedule 9. Your total donations limit **cannot exceed** your net income for the year.

### Chart 2 – Gifts of depreciable property

Class No. of property _____		
Amount of recaptured depreciation included on your current-year return		\$ _____ <b>1</b>
<hr/>		
Net proceeds of disposition of the current year donated property for this class	\$ _____	<b>A</b>
Capital cost of the current year donated property for this class	\$ _____	<b>B</b>

Enter the amount from line A or line B,  
whichever is less. \$ 2\*

Enter the amount from line 1 or line 2  
whichever is less. \$ 3

**Enter this amount on line 337 of Schedule 9.**

If you included on your 2011 income tax and benefit return recaptured depreciation from more than one class, complete a separate Chart 2 for each class, add the results, and enter the total on line 337 of Schedule 9.

\* If you donated more than one property in this class in the year, complete lines A and B for each property and enter the total on line 2.

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For more information, see Interpretation Bulletin IT-288, GIFTS OF CAPITAL PROPERTIES TO A CHARITY AND OTHERS, and Interpretation Bulletin IT-478, CAPITAL COST ALLOWANCE – RECAPTURE AND TERMINAL LOSS.

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# The Cultural Property Export and Import Act

The INCOME TAX ACT and the CULTURAL PROPERTY EXPORT AND IMPORT ACT (CPEIA) provide tax incentives to individuals who want to sell or donate significant movable cultural property to Canadian heritage institutions or public authorities.

The Canadian Cultural Property Export Review Board (CCPERB) is responsible under the CPEIA for certifying property as cultural property that is of "outstanding significance and national importance."

It is also responsible for determining the fair market value of such property for income tax purposes.

When you donate cultural property to a designated Canadian institution or public authority and the CCPERB certifies it, you do not realize a capital gain. You use the **eligible amount** of the gift to calculate the non-refundable tax credit. The amount you can claim as a non-refundable tax credit is limited to the total amount of tax still payable after claiming your credits for any other charitable gifts.

After the CCPERB certifies your donation of cultural property, it will provide you with Form T871, CULTURAL PROPERTY INCOME TAX CERTIFICATE. However, it must first receive written confirmation from the institution or public authority that the legal transfer of ownership of the donation was made, and that the gift is irrevocable.

## **Certification of cultural property**

Cultural property may be anything from paintings and sculptures to books and manuscripts to ethnographic and decorative art material. This property does not have to be of Canadian origin.

If you want your gift to be certified under the CPEIA, you need to contact the CCPERB. Contact information for the Review Board Secretariat is given on page 57 [the next page].

The CCPERB may determine that an object is of "outstanding significance and national importance" because of its:

- close association with Canadian history or national life;
- aesthetic qualities; or

- value in the study of the arts or sciences.

Certification by the CCPERB is only necessary if you want us to treat your donation as a gift of cultural property. It is not necessary if you want us to treat your donation as a gift to a registered charity or other qualified donee.

## **Designated institutions and public authorities**

To be eligible to have cultural property certified, an institution or public authority has to be designated by the Minister of Canadian Heritage before the legal transfer of ownership of the property takes place.

Designation ensures that institutions receiving cultural property have the appropriate measures in place to collect, preserve, and make cultural property accessible to the public for research or display purposes.

"Category A" designation status is granted indefinitely to institutions and public authorities that are well established and meet all of the criteria for designation.

"Category B" status is granted exclusively in relation to the proposed acquisition of a specific object or collection. The concerned institution must meet most of the criteria for designation, and prove its ability to effectively preserve the specific property for which certification by the CCPERB is desired.

If you have any questions about designation or the certification of cultural property, or if you would like to get the CCPERB's publication called APPLICATIONS FOR CERTIFICATION OF CULTURAL PROPERTY FOR INCOME TAX PURPOSES – INFORMATION AND PROCEDURES, contact the Review Board Secretariat in one of the following ways:

<b>Telephone</b>	<b>819-997-7761</b>
<b>Toll free</b>	<b>1-866-811-0055</b>
<b>Fax</b>	<b>819-997-7757</b>
<b>Email</b>	<b><a href="mailto:bcm-mcp@pch.gc.ca">bcm-mcp@pch.gc.ca</a></b>
<b>Web site</b>	<b><a href="http://www.pch.gc.ca/ccperb">www.pch.gc.ca/ccperb</a></b>

## **For more information**

### **What if you need help?**

If you need help after reading this publication, visit our Charities Directorate Web page at **[www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)** or call **1-800-267-2384**.

To verify if a charity is registered under the INCOME TAX ACT, and to access its information returns, please consult the **Charities Listings** available from our Web page at **[www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)**.

### **Forms and publications**

If you would like to get any of our forms or publications mentioned in this pamphlet, go to **[www.cra.gc.ca/forms](http://www.cra.gc.ca/forms)** or call **1-800-959-2221**.

### **Teletypewriter (TTY) users**

TTY users can call **1-800-665-0354** for bilingual assistance during regular business hours.

## **Tax Information Phone Service (TIPS)**

For personal and general tax information by telephone, use our automated service, TIPS, by calling **1-800-267-6999**.

## **Our service complaint process**

### **Step 1 – Talk to us**

If you are not satisfied with the **service** that you have received from us, you can make a formal complaint. Before you do this, we recommend that you try to resolve the matter with the CRA employee you have been dealing with or call the telephone number that you have been given.

If you are not pleased with the way your concerns are addressed, you can ask to discuss the matter with the employee's supervisor.

### **Step 2 – Contact CRA – Service Complaints**

The CRA – Service Complaints program is available to individual and business taxpayers, as well as benefit recipients. This program gives you another level of review if you are not pleased with the results

from the **first step** of our complaint process. Generally, service-related complaints refer to the quality and timeliness of the work that we performed.

To bring your complaint to the attention of CRA – Service Complaints, complete Form RC193, SERVICE-RELATED COMPLAINT, which you can get by going to **[www.cra.gc.ca/complaints](http://www.cra.gc.ca/complaints)** or by calling **1-800-959-2221**.

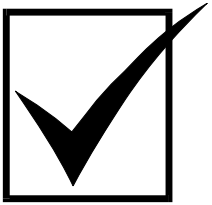
### **Step 3 – Contact the Taxpayers' Ombudsman**

If, **after following steps 1 and 2**, you are still not satisfied with our service, you can file a complaint with the Office of the Taxpayers' Ombudsman.

For information about the Taxpayers' Ombudsman and how to file a complaint, please visit **[www.oto-boc.gc.ca](http://www.oto-boc.gc.ca)**.

## **Your opinion counts!**

If you have any comments or suggestions that could help us improve our publications, we would like to hear from you. Please send your comments to:



Taxpayer Services Directorate  
Canada Revenue Agency  
750 Heron Road  
Ottawa ON K1A 0L5