



## Gifts of private company shares

A gift of private company shares can be a rewarding experience with a tax effective outcome for the donor. As part of family estate planning, a gift of private company shares can allow the donor to make a substantial gift to a favorite public charity, like the BC Cancer Foundation, as well as put in place the structure for long term family philanthropy and realize very positive tax results.

A gift of private company shares appeals to philanthropic entrepreneurs.

### **Benefits to the donor:**

1. Capital gains of up to \$750,000 are exempt from tax when shares of qualified private companies that operate active businesses in Canada are donated to a charity or otherwise transferred.
2. 50% of the capital gain on the transfer of the shares is taxable to the donor but the tax credit resulting from the charitable tax receipt (see the section *Tax receipt*, below) will exceed the tax on the capital gain and will be available to offset tax on other income as well.
3. If the shares are donated to a public charity, such as the BC Cancer Foundation, the donor receives an immediate tax receipt for the fair market value of the shares (see also the sections *Tax receipt* and *Fair market value*, below).

### **Donation:**

Shares of private companies are usually common or preferred. Common shares are growth shares of a company while preferred shares are usually set in value (see also the section entitled *Fair market value*, below). Owners of private company shares will usually donate preferred rather than common shares because, in this way, the gift will not affect the future growth of the company and the value of the gift is set and known.

### **Tax receipt:**

Gifts of private company shares that are made to a public charity rather than to a private foundation, by an individual who is at arm's length with that charity, will qualify for a charitable tax receipt. The donor will be considered at arm's length with the public charity if he or she is not an officer or a director of that charity, or a parent, spouse or child of an officer or a director of that charity. The tax receipt will be issued for an amount equal to the appraised fair market value of the shares (see also the section *Fair market value*, below).

Draft amendments to the Income Tax Act, Canada, provide that, if the donated shares were acquired within three years of making the gift, the fair market value of the donation (and therefore the amount for which the receipt will be issued by the charity) will be deemed to be the lesser of its normal value and its cost base for tax purposes. This rule does not apply to a gift of private company shares at death.

The charitable tax receipt can be used to obtain a tax credit against the donor's income tax payable, when the donor is an individual, or will be deductible in computing taxable income when the donor is a company.

### **The fair market value (valuation) of the shares:**

The generally accepted definition of fair market value is: "The highest price, expressed in terms of money or money's worth, obtainable in an open and unrestricted market, between informed and prudent parties, dealing at arm's length, neither party being under any compulsion to transact."

The fair market value of the donated shares should be determined through an appraisal conducted by an arm's length qualified appraiser. There are many factors that will affect the valuation of the shares. They include: company liquidity, dividend rights, and retractability of shares.

### **Liquidity of shares:**

The goal of the BC Cancer Foundation is to raise funds to support cancer research and care. As a result, at the time of the gift, the BC Cancer Foundation will wish to make arrangements that ensure the donated private company shares can be converted to funds that can support these programs.

One way to ensure that the shares will be converted to cash is for the Foundation to enter into an agreement with the donor that sets out a satisfactory schedule of redemption for the shares. Another, more long-term, method to accomplish the same result is for the company to take out an insurance policy on the life of the donor or of another member of the donor's family and put in place a shareholders' agreement that provides that the life insurance proceeds will be used by the company to redeem the shares from the Foundation. The Foundation may also consider holding the shares for a longer period of time in cases where the shares generate adequate dividends.

### **An important final note:**

Gifts of private shares can provide beneficial results for a donor but, in order to ensure that all relevant issues have been considered and addressed and that all Income Tax Act, Canada provisions and regulations are met, prospective donors should seek qualified legal and accounting advice.

### **For more information and to speak to someone personally and confidentially about making a gift, please contact:**

#### ***BC Cancer Foundation Provincial Office:***

Isabela Zabava, LL.B.  
Senior Director, Planned Giving  
Phone: 604.877.6157  
Fax: 604.877.6161  
Toll free: 1.888.906.2873  
Email: izabava@bccancer.bc.ca

### **For information about the BC Cancer Agency centre closest to you, please contact:**

#### ***BC Cancer Foundation Regional Offices:***

##### **Abbotsford**

Toll free: 1.877.751.0111

##### **Fraser Valley**

Toll free: 1.866.232.9974

##### **Southern Interior**

Toll free: 1.866.230.9988

##### **Vancouver Island**

*Victoria* – Toll free: 1.866.519.5550

*Nanaimo* – Phone: 250.729.8869

*The above information is general in nature and is not legal or tax advice. We can help you realize your wish to support cancer research and care in British Columbia by working with you and your financial and legal professional advisors.*