The best tax advice you'll ever receive: AVOID CHARITABLE TAX SHELTERS

Kim G C Moody FCPA, FCA, TEP
May 21, 2013

Last week, a longtime colleague of mine sent me a link to some promotional material that a charitable tax shelter had recently distributed. The material was trumpeting a "win" in the Federal Court regarding a procedural matter for a taxpayer involved in a charitable tax shelter. To celebrate the co-called "win," the tax shelter was offering a discount, for a limited time to subscribers of its latest offering. As I read the material, my stomach turned because for those of you who know me, I despise charitable tax shelters.

Charitable tax shelters in Canada come in all shapes and sizes. The most common ones involve variations that use trusts whereby you magically become a beneficiary of a trust that holds high cost base property that the "donor" ends up "donating" to an affiliated charity. In many cases, the "donor" will have to satisfy a "debt" that is attached to the trust property (which ultimately is the amount that the "donor" pays to be involved in the charitable tax shelter). Admittedly, the schemes are more complicated than that described, but suffice it to say that when you blow through the smoke, the "donor" will end up with a charitable tax receipt that has a much higher face amount than what has been paid by the "donor." From a pure cash flow perspective, the amount of "tax savings" will exceed the entrance price to be involved in the charitable tax shelter. Possible "donors" are often told that they are "crazy" to not acquire the shelter since they will be better off from a cash perspective.

The Canadian courts have a long history of denying the "tax benefits" of such schemes. Some of the recent leading cases are Marechaux , Nash, and Klotz. Two of the bigger technical issues that are often examined are whether the "donor" in fact made a gift and the value of the "donated property." Suffice it to say these schemes are littered with technical issues and holes that keep tax geeks like me spinning. The Canada Revenue Agency ("CRA") also has a long history of stating that they will attack and reassess charitable tax shelters; and you can find some of their statements here, as well as here. In fact, one of the largest audits in the CRA's history has involved charitable tax shelters with over $5 billion of reassessed "donations." Over the last decade, the Department of Finance has introduced tax legislation in an attempt to shut down the charitable tax shelter industry. For example, subsections 248(34) and (35) were first proposed in late 2003 in an attempt to shut down the "acquire low, donate high" schemes which involved "donors" acquiring property at an apparent significant discount from its fair market value ("FMV") but then donating such property (which could have been art, medical supplies, computers, software, etc) at its apparent higher FMV. Another example is the recent 2013 Federal Budget which proposed that taxpayers who wish to object to their charitable tax shelter reassessment will now have to "pay to play." In other words, "donors" who wish to object to their reassessment (that denies the charitable donation tax credit) will have to pay to the government 50% of the disputed amounts in order to have their objection proceed (you can find more information about such a proposal in our firm's Budget summary).

Notwithstanding these judicial, legislative, and administrative attacks on charitable tax shelters, they continue to flourish and trumpet their "strategies" to anyone who will listen. While Canada is certainly a free country and people are free to do what they want, it is upsetting to me and many other legitimate tax practitioners that these promoters continue to wheedle taxpayers out of their hard earned money with false promises and faulty logic. Too many times I have found that charitable tax shelter promoters target those who are financially desperate and are more than willing to listen to a “strategy” that can help improve their financial situation. Even more insiduous is that the promoters prey on the “donors'” charitable intentions: “Oh, and I can help out the poor too?? Wow…..how come I didn’t know about this before?” is often the thought that will go through a potential “donor’s” mind. The promoters will often attack the potential “donor’s” advisors (such as their existing accountant or lawyer) and state that most accountants, lawyers or tax advisors don’t know about these types of strategies. Hogwash.

Unfortunately, these unwitting taxpayers ultimately fall victim to the old adage, “if it sounds too good to be true, it is.” The victim’s future will likely be dominated by disputes with the CRA (and that’s never pleasant or inexpensive). If you’re the type of person that likes to debate technical matters with Canada’s tax administrator or the courts and have an abundance of time, money and emotional resources, then charitable tax shelters may be just for you. On the other hand, if you’re risk averse and simply want to sleep at night, then please avoid these scams… charitable tax shelters are a big step backwards.