

FINANCIAL PLANNER



Hidden Treasures in the Archives



Dr. Cheryl Susan McWatters, Artsci'77,
MBA'88, PHD'91

the more you start to see it her way. You also understand why she and her husband, John MacDiarmid, have decided to help them.

Currently the Father Edgar Thivierge Chair in Business History at the University of Ottawa, McWatters discovered the Archives when she was doing her Ph.D. at Queen's. McWatters's undergraduate and Masters degrees (Artsci'77 and MBA'88) are also from Queen's as are her husband's two engineering degrees (Sc'78 and MSc'87).

One of the things that sets the Queen's University Archives apart from those at other universities is the broad range of non-academic material it holds. In her

Talk to Dr. Cheryl Susan McWatters about the Queen's University Archives, and it's not too long before she calls it a "neglected gem." That's a little surprising – when most of us think of archives, it's words like "dusty" and "ancient" that come to mind. But the more she discusses the Archives, and her enthusiasm for them,

case, it was a century's worth of records from The Calvin Company, a local shipping firm once located on Garden Island just off Kingston. Her co-supervisor, Dr. G. Tulchinsky of the Department of History, told her that very little work had been done on them, and sent her off to take a look. "To be honest," she says, "I had never been to an archive before." Through the records, she was able to trace changes in the company's accounting methods and how they "affected its strategy, operations and eventual demise." Her research on the company formed the basis of her thesis.

The Archives became her academic home. "I spent so much time there," she says, "I thought they should name a table after me." She also discovered a community at work there, one that cut across academic boundaries. "Everyone gets to know each other, and you share in their success when they make an interesting discovery," she says. Original archival research still forms the basis of her scholarly work in the history of accounting and business.

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New Charitable Donation Rules are Coming – Are you Ready?

Various changes to the Canadian tax treatment of charitable gifts are on the horizon and are set to become law over the next few years. In 2016, changes to the rules dealing with estate donations will for the most part provide greater flexibility in claiming donation tax credits. And if enacted, recently proposed changes to eliminate capital gains on donations of private corporation shares and real estate will become law in 2017. These changes are generally beneficial to taxpayers as they enhance both flexibility and associated tax benefits in making donations.

ESTATE DONATION RULES

Benefits of Donation Tax Credits on Death

On death, Canadian income tax law treats a deceased person as having sold all of his or her capital property for fair market value, resulting in tax on any capital gains. Capital property typically includes real estate, non-registered investments, and artwork. The full value of any RRSPs or RRIFFs owned on death is also included in income. These rules usually result in a significant amount of tax owing on death. The example below illustrates the tax benefits associated with making a charitable gift on death:

Bob lives in Ontario and has no spouse. He owns an art collection that has appreciated in value by \$400,000 and a RRSP worth \$250,000. On Bob's death, his estate will owe approximately \$195,000 of tax. If Bob were to include a \$250,000 charitable gift under his will, his estate would be entitled to a donation tax credit of approximately \$100,000, decreasing the amount of tax owing on his death to about \$95,000. In effect, the net cost of the donation to Bob would be approximately \$150,000, given the tax savings.

The donation tax credit is calculated by multiplying the amount of the donation by the highest federal tax rate (29%) and, in the case of Ontario, by Ontario's highest tax rate in 2011 (11.16%), as opposed to its highest current tax rate, for a total rate of 40.16%. Ontario's highest tax rate in 2011 is used, as opposed to its highest tax rate for 2015, because such is required by the relevant legislation. The total of those two amounts is the amount of the donation tax credit. In the above example, the



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donation tax credit would be calculated as follows: $\$250,000 \times 40.16\% = \$100,400$ (which was rounded to \$100,000 for the purposes of the example). As set out below, however, there are certain limitations on the amount of a donation that can be claimed in a particular year.

If Bob had a surviving spouse or common-law partner, tax liabilities on his death could likely have been deferred until the death of Bob's spouse unless capital property was sold earlier.

Current Estate Donation Rules

Currently, an estate is entitled to a donation tax credit for any gift made by will or by beneficiary designation, such as where a charity is designated as the beneficiary of a RRSP, RRIFF, TFSA or life insurance policy. The credits can be applied against taxes owing in the year of death or the prior year up to 100% of the deceased's income in each of those years (the credit is limited to 75% in any other tax year). It is not possible to apply the credits against income earned after death.

Sometimes a gift made by will does not qualify for the above tax treatment. Where this is the case, the estate

will only be entitled to a donation tax credit in the year the gift is made and any of the five following years. This usually produces a bad result: estates often have little or no income after the deceased's death to apply the credits against (unlike in the year of death). A gift may not qualify if, for example, the executors have discretion to determine how much is to be given to charity or whether the gift is to be made at all.

One of the favourable benefits of the current rules is the sharing of donation tax credits by spouses and common-law partners ("spouses") – credits may be claimed by the deceased spouse's estate or by the surviving spouse. This sharing is often useful where the deceased has little or no tax owing in the year of death, such as where the deceased's estate qualifies for the tax-free transfer of property to a surviving spouse and taxes are deferred as a result.

New Estate Donation Rules

Under the new rules which apply to deaths after 2015, in addition to being able to apply donation tax credits against taxes owing in the year of death and the prior year, the credits can also be used by the estate in the year the gift is made to the charity and any prior year of the estate (up to a maximum of 75% of the estate's income in each of those years). These rules only apply to donations made by a "graduated rate estate" (GRE).

A GRE is new to Canadian tax law and means:

- a) an estate that arose as a consequence of an individual's death;
- b) no more than 36 months have passed since the date of death;
- c) the estate is considered a testamentary trust for tax purposes;
- d) the estate designates itself as a GRE;
- e) no other estate (relating to the deceased) designates itself as a GRE; and
- f) the deceased's social insurance number is provided in the estate's tax return.

The executors or other legal personal representatives (the "executors") on death must make the donation to the charity within 36 months after death in order to obtain the benefit of the new rules (since an estate does not qualify as a GRE after such time). Overall, the new rules offer more flexibility to allocate charitable tax credits within a five-year time frame of two years prior to death and three years after death.

If the executors fail or are unable to make the gift within 36 months after death, the estate will only be able to claim the credit in the year the gift is made or in any of the five following years. As noted earlier, this may

produce a bad result since the estate may have little or no tax in those years to apply the credit against.

In some cases, it will simply be impossible for the executors to make the gift within 36 months – for example, where the estate is tied-up in litigation or where the estate assets are illiquid. Where these types of obstacles are a concern, pending possible changes to the rules to address this issue, such as a process to provide for an automatic extension or eliminating the requirement that the gift must be made by a GRE, it may be preferable to designate the charity as the beneficiary (or one of the beneficiaries) of a registered retirement plan or life insurance policy as such proceeds pass outside of the estate and are generally paid out or transferred fairly quickly after death, or to consider other planning options.

The new rules also feature some unfavourable changes. There is an existing exemption from tax on gifts of publicly listed securities, ecological gifts and cultural property that will only be available to gifts made by a GRE after 2015. The sharing of donation tax credits between a deceased's estate and surviving spouse will also disappear—leading to a possible loss of credits if the estate owes little or no tax, as well as less flexibility in allocating charitable gifts between spouses.

The following example demonstrates how the new rules will work (some of the figures are approximated):

Laura died on December 31, 2016 in Ontario and was married at the time of her death. Her net income in 2016 was \$300,000. The net income of her estate in 2017 was \$100,000. Laura provided a charitable legacy of \$400,000 under her will, which was paid to the charity in 2018. In total, Laura and her estate are entitled to a donation tax credit of \$160,640 (i.e., $\$400,000 \times 40.16\%$). To eliminate the taxes owing in 2016 (i.e., \$114,000), Laura's executors under her will elect to apply \$285,000 of the donation against her income in 2016. To eliminate the taxes owing in 2017 (i.e., \$25,000), Laura's estate trustees elect to apply \$63,000 of the donation against her estate's income in that year (only \$63,000 of the donation is used in that year because that is all that is required to reduce taxes owing to nil). Unless Laura also had income in 2015 that the credit could be applied against, Laura and her estate would not be able to use the remaining \$52,000 of the donation and it would effectively be lost as her spouse is also unable to claim her unused donation. In effect, the net cost of the donation to Laura would

be \$261,000 (but would be even less if Laura or her estate had additional income).

While Laura and her estate are entitled to the total donation tax credit of \$160,640 noted above, she and her estate did not have sufficient income to utilize the full credit.

One drawback of the new rules is that if certain types of property are donated they may require additional valuations. For instance, if real estate is donated, it will often be necessary to determine its value at the time of death (for the purpose of the deemed sale on death tax rule outlined above) and also at the time of its transfer to the charity. Under the current rules, it is generally only necessary to determine the value at the time of death because those rules treat the donation as having been made immediately before death (the same time used for the deemed sale rule). The new rules, however, consider the donation to have been made when the property is actually transferred to the charity—typically being a date sometime after death. In order to avoid having a second valuation done at the time the property is transferred to the charity, which can be expensive depending on the nature of the property, in certain cases the preferred option may be to donate cash instead.

Overall, the new rules offer more flexibility to allocate charitable tax credits within a five-year time frame of two years prior to death and three years after death.

Proposed Capital Gains Exemption Rules for Gifts of Private Corporation Shares and Real Estate

The 2015 federal budget contained a welcome proposal to eliminate capital gains tax on donations of cash proceeds from the sale of private corporation shares and real estate. This exemption will be available where cash proceeds from the sale of shares of a private corporation or real estate are donated to a charity within 30 days of their sale to a third-party who is unrelated to the seller and the charity. The exempt portion of the capital gain will be determined by reference to the proportion of the cash proceeds that are donated (in case the donor does not wish to donate the entire sale proceeds).

These new proposals will in particular assist donors who have liquidity events and wish to make a gift at the time of a sale. Prospective donors should consider

seeking tax and legal advice at this time well in advance of any sale of shares and real estate to plan their donation in the most tax-effective manner.

In respect of donations by will, the proposed changes apply if the shares or real estate is deemed to have been disposed of on death (meaning that the shares or real estate must not pass to the deceased's spouse on death on a tax-deferred basis), a GRE subsequently sells the shares or real estate to a third-party, and the GRE makes an eligible donation within 30 days of the sale, among other conditions. If the shares or real estate passes to the deceased's spouse on a tax-deferred basis, the spouse will be able to claim the exemption in accordance with the new rules discussed further above.

Based on draft legislation released on July 31, 2015, the proposed changes are to become law in 2017, if enacted.

Charitable Outlook

Canada's charitable donation rules have seen many recent changes. Most of these changes are beneficial to taxpayers, providing more options to structure donations to minimize tax.

Readers may also wish to review the recent article on changes to the taxation of testamentary trusts by Glen Brown, which appeared in the Spring Financial Planner (contact the Gift Planning Office at gift.planning@queensu.ca for a copy of this issue).

It is important to seek advice from your professional advisors to address your individual circumstances when arranging any new estate donation. You may also wish to review existing estate donation plans to ensure that they will continue to meet your desired goals and objectives. Queen's Gift Planning professionals can work with you and your advisors to ensure your donation can be accepted and used as intended.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. The information is current to August 31, 2015. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Readers are cautioned to consult their own professional advisors to determine the applicability of information and opinions in this newsletter in any particular circumstances. This article is copyright; its reproduction in whole or in part by any means without the written permission of the copyright owner is forbidden.



The Library is Alive and Well

To anyone used to a modern trade paperback or wafer-thin E-reader, it's a surprise when we see a first edition of Edward Gibbons's *History of the Decline and Fall of the Roman Empire*. The tome, and there is no other word for it, is as tall and as wide as any fancy atlas and thicker than a big-city phone book. But then, oddly, at the other extreme, an early edition of Alexander Pope's *The Rape of the Lock* is so small that it almost feels miniaturized. Looking at them, we realize that reading these books when they first came out must have been a very different experience than reading the same material today.

For that insight, the Queen's community can thank Dr. Thomas Garrett (Meds'71) and his wife Wendy (Meds'71), the generous sponsors of the Helen K. Garrett Memorial Fund.

"Helen, my first wife, who died in July 1970, worked for the Douglas Library," says Dr. Garrett, who is a Professor of Medicine at Columbia University Medical Center in New York. "She was also very interested in English literature." In addition, he says, "Wendy and I both spent a lot of time studying in the library. I remember the purple room in the original Douglas Library, which now only exists in photos and memories."

Helen had been particularly interested in 18th century literature, so purchasing books and papers from that era formed the focus of the fund. As well as serving as a source for scholars, various items from the collection have been used in exhibits in the W.D. Jordan Special Collections and Music Library that highlight the changing experience of reading over time. The fund also provides for the conservation, restoration and repair of rare materials held in the special collections.

The Garretts donate to Queen's annually, "We wanted to give back to the university while we are still around," he says. As well as donating to the library, the two also give to their class fund, "especially related to the opening of the new medical education building. We anticipate continuing to do that."

Long-term residents of the United States, he and Wendy, who is an Associate Professor of Radiology at the New York University Langone Medical Center, also arranged



Dr. Thomas Garrett, Meds'71 and Dr. Wendy Garrett, Meds'71

a more substantial gift from their estate in support of the fund which will, he hopes, "have a permanent, meaningful impact on Queen's University. Part of my motivation relates to the fact that I received a lot of scholarship support during my six years at Queen's. That probably covered most of my expenses. In a more general sense, it is a means of paying back the debt we owe for a terrific education."

Libraries are changing as radically as the experience of reading itself. But whatever its future – perhaps more digital hub than storehouse of physical books – the library will continue to be central to the life of the university. And thanks to the Garretts' gift, future Queen's students will be able to marvel at how we once stored and took in information.

For more information on the Queen's Libraries, visit library.queensu.ca

McWatters and MacDiarmid have made donations to other parts of Queen's but, for the two of them, when it came to answering the question, "Where would our money actually have the most impact?" – the Archives seemed the best choice.

Inaugurated in 2012, the Geraldine Grace and Maurice Alvin McWatters Visiting Fellowship (named for her parents) provides up to \$4,000 to scholars, authors and artists who want to make use of the materials kept in the Queen's University Archives but are neither connected with Queen's nor a resident of Kingston. The money is intended to cover their expenses for a stay of a month or so during which they must use the archives on a full-time basis. As part of their fellowship, says McWatters, "they have to do some kind of public lecture or activity, to show what they have done" and to raise public awareness of the Archives and its value.

"So far," says McWatters, the recipients of the fellowship

have included, "a novelist writing a book about Eunice Whiting, and a specialist in military intelligence from the UK. Recently, there was a post-doctoral scholar from the University of Toronto. He was looking at towns that were eliminated by the St. Lawrence Seaway and the 401. Really high quality applications. I believe it has been very successful in promoting archival research and getting the collections known." As well as providing the financing for the fellowship, McWatters and her husband have remembered the Archives in their estate planning.

Neither of McWatters's parents had been to university, but they encouraged their children to attend and all of her siblings (as well as her husband's) graduated from Queen's. Naming the fellowship in memory of her mother and father was, she says, a way to thank them "for all the financial and moral support they gave us."

For more information about the Queen's University Archives, visit archives.queensu.ca.

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