

Reaching out*

Charitable Giving Guide for Donors



*connectedthinking

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Charitable Giving Guide for Donors (2008 Edition)

October 2008

“We are here to add what we can to life, not to get what we can from it.”

William Osler

This booklet is on our website: www.pwc.com/ca

Contents

Introduction	1
Thoughtful, Productive Charitable Giving	1
Tax Relief for Donors – Individuals, Trusts and Corporations	1
Using this Publication	2
Current Rules and Future Changes	2
Individual Donors	4
Tax Credit for Charitable Donations	4
Receipts	4
Reporting Your Donations	4
Annual Donation Limit	5
Gifts of Capital Property	5
Donations at Death	6
Lifetime Giving	8
Gifts of Inventory	8
Corporate Donors	9
Tax Deduction for Charitable Donations	9
Reporting Corporate Donations	9
Annual Donation Limit	9
Corporate Sponsorship	10
Gifts of Services	10
Gifts of Inventory	10
Gifts of Capital Property	11
Cross-Border Giving by Canadian Donors	12
Gifts to Non-Resident Qualified Donees	12
Gifts to U.S. Charities	12
Innovative Donations	13
Donations of Employee Stock Option Shares	13
Gifts of Life Insurance	13
Gifts of Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs)	14
Gifts of a Residual Interest in a Trust or Estate	14
Charitable Annuities	14
Gifts of Publicly Listed Securities	15
Gifts of Canadian Cultural Property	15
Gifts of Ecological Property	15
Gifts to the Crown	15
Private Foundation Giving	17
Public Foundation and Community Foundation Giving	17
Appendices	18
A – Top Combined Individual Marginal Income Tax Rates—2008	18
B – Combined Corporate Income Tax Rates—2008	19
PricewaterhouseCoopers Contacts	20

Introduction

Thoughtful, Productive Charitable Giving

Over the last two decades, charitable giving in Canada by private individuals and their businesses has grown in both quantity and scope. In part, this is a consequence of Canadian government tax policies that have supported charitable giving from the private sector. As well, donors have become more sophisticated in the ways they support charities. From this, a philanthropic planning industry has arisen.

Ideally, donors should consult with the intended charity recipients, particularly if unusual or substantial gifts are being made, or when gifts are made with conditions. Even the most valuable gifts from well-meaning donors can create burdens that some charities may not be equipped to deal with. By coordinating with the recipients, donors can be confident that their generosity will have a positive and lasting effect on both the charities and the communities they serve.

We hope that this publication will help to stimulate discussion with your PricewaterhouseCoopers adviser about your philanthropic goals and that it will ultimately lead to thoughtful and productive charitable giving.

This guide provides an overview of donation strategies and income tax incentives available to Canadian residents that make charitable donations. By highlighting strategies and tax incentives, we hope to encourage philanthropy and charitable giving by Canadians, which will benefit both our local and worldwide communities.

Tax Relief for Donors – Individuals, Trusts and Corporations

Charitable giving offers benefits to both the donor and the communities served by the charities receiving the donations. Canada supports private-sector charitable giving by granting:

- tax credits for donations made by individuals and trusts; and
- tax deductions for donations made by corporations.

Qualified donees

To receive tax benefits, donations must be to qualified donees. These are:

- registered Canadian charities (including Canadian universities and colleges);
- registered Canadian amateur athletic associations;
- certain non-profit housing corporations for the elderly;
- the United Nations and related agencies;
- Canadian or provincial governments, crown foundations and municipalities;
- foreign charities to which the government of Canada has made a gift in the donor's taxation year or in the 12 months preceding that year;
- prescribed foreign universities; and
- municipal or public bodies that perform a function of government in Canada.¹

1. Draft amendment (Bill C-10) applicable to gifts made to municipal or public bodies after May 8, 2000. Because of the October 14, 2008 federal election, Bill C-10 has expired, and its provisions will have to be reintroduced in a new bill if the new government wishes to enact the legislation. However, Bill C-10 will be referred to as such in this publication.

Using this Publication

Reaching Out: Charitable Giving Guide for Donors will help you (as an individual, trust or corporate donor), the charities you support, and your professional advisers determine the most cost- and tax-efficient way to structure your charitable giving. The publication will help you consider how your gift can be structured to:

- maximize the benefits to the charity; and
- ensure that the receipt of the gift does not impair the charity's ability to fulfill its obligations under Canada's *Income Tax Act*.

Rules that apply to individuals are discussed first (starting on page 4). Trust donors generally are treated like individuals for tax purposes. Rules for corporations are next (starting on page 9), followed by a short discussion of cross-border giving (page 12). Finally, a variety of innovative donation strategies are explained (starting on page 13). These can help you meet your philanthropic, tax and other objectives.

Throughout, examples illustrate how you may be able to reduce your taxes and significantly increase the amount you put in the hands of your favourite charities. Appendices provide individual and corporate tax rates.

While this publication provides valuable information, it cannot replace professional tax advice. For further information or assistance with your donation strategy, call your PricewaterhouseCoopers adviser or any of the individuals listed on page 20.

Current Rules and Future Changes

The 2008 edition of *Reaching Out: Charitable Giving Guide for Donors* refers to the federal income tax rules. Provincial income tax rules vary. Federal rules and tax changes affecting donors will automatically apply to:

- individual donors in all jurisdictions except Quebec; and
- corporate donors in all jurisdictions except Alberta, Ontario (for taxation years ending before 2009²) and Quebec.

This publication reflects enacted and draft federal and provincial tax legislation up to October 31, 2008.

Tax rates and other information in this booklet may change as a result of legislative or regulatory amendments issued after the publication date. Before proceeding with your donation, be sure you are relying on up-to-date tax rules.

Recent substantial legislative changes are described on the next page.

2. Commencing with taxation years ending after December 31, 2008, Ontario corporate taxpayers will harmonize with federal corporate income tax rules.

Capital gains tax relief

In recent years the federal government has promoted private giving to the charity sector through generous tax incentives for individuals, trusts and corporations that make gifts to charities. These incentives have progressively increased since 1997, culminating in tax measures announced in the 2006, 2007 and 2008 federal budgets, most of which have been enacted.

The 2006 and 2007 budget measures provide full relief to a donor from capital gains tax on the accrued gains from the donation of certain publicly listed securities to Canadian public charities and private foundations. The 2008 budget measures extend the capital gains tax exemption to gains realized on the exchange of certain unlisted securities (shares or partnership interests) for publicly listed securities that are donated to a registered charity within 30 days of the exchange.

Split receipting³

Draft legislation, known as the split-receipting tax rules, changes what constitutes a gift for tax purposes. The common-law definition of “gift” is a voluntary transfer of property by the donor to a donee for which no consideration is expected in return by the donor or a person related to the donor. The draft legislation was introduced in 2002 by the Department of Finance in response to various court cases that determined that the common-law meaning of “gift” was not always appropriate when applied to partial gifts if the donor or a person related to the donor receives an advantage.

These draft rules provide guidelines on what constitutes a gift for the purposes of tax receipting, tax credits and tax deductions. They are intended to legislate that the tax benefit to a donor should reflect the net economic effect to the donor of having made the gift (before considering the income tax benefit).

Anti-avoidance provisions

Draft rules limit the eligible amount of a gift for tax-receipting purposes to the donor's cost of the property. These rules are intended to apply to property acquired under a tax shelter gifting arrangement.⁴

A similar limit applies if a gift is made within three years of the property's acquisition (or within ten years if one of the main reasons to acquire the property was to donate it).⁴ An exception to this limit applies if the gift is made as a consequence of the donor's death or if there has been a non-arm's length acquisition of the property within the three- or ten-year period (in which case the eligible amount of the gift is limited to the lower of the donor's cost and non-arm's length person's cost for the property).⁴

The following donated properties are also exempt from this limit:⁵

- inventory;
- real property located in Canada;
- certified cultural property;
- ecologically sensitive land;
- shares, debt obligations or rights listed on a designated stock exchange (a prescribed stock exchange in the former rules);
- shares in a mutual fund corporation, units in a mutual fund trust and segregated fund units;
- prescribed debt obligations;
- shares of a corporation controlled by the donor or persons related to the donor immediately before the gift; and
- property of a corporation, if the property was acquired:
 - by the corporation in consideration for shares of the corporation in a rollover transaction; and
 - from a controlling shareholder or a person related to a corporation.

3. Draft amendment (Bill C-10) applicable to gifts made after December 20, 2002. Because of the October 14, 2008 federal election, Bill C-10 has expired, and its provisions will have to be reintroduced in a new bill if the new government wishes to enact the legislation. However, Bill C-10 will be referred to as such in this publication.

4. Draft amendments (Bill C-10) applicable to gifts made after July 17, 2005. Because of the October 14, 2008 federal election, Bill C-10 has expired, and its provisions will have to be reintroduced in a new bill if the new government wishes to enact the legislation. However, Bill C-10 will be referred to as such in this publication.

5. Draft amendment (Bill C-10) applicable to gifts made after 6:00 pm EST on December 5, 2003. Because of the October 14, 2008 federal election, Bill C-10 has expired, and its provisions will have to be reintroduced in a new bill if the new government wishes to enact the legislation. However, Bill C-10 will be referred to as such in this publication.

Individual Donors

Tax Credit for Charitable Donations

In general, the Canadian tax system is designed to grant individuals tax credits at the top marginal tax rate. For illustrative purposes, the examples in this publication assume a combined federal and provincial or territorial top marginal tax rate of 45% (22.5% on capital gains). Therefore, for the amount of annual donations exceeding \$200, you will receive a 45% tax credit, which provides you with a 45¢ tax saving for each dollar donated. (The saving is higher in Alberta; see Appendix A, page 18.) A smaller credit applies to the first \$200 of donations made in the year.

The actual tax credit will vary depending on the province or territory in which you reside. Appendix A on page 18 provides 2008 top combined marginal tax rates, by province and territory. Tax rates are subject to change. If you are planning a significant donation, check with your PricewaterhouseCoopers adviser or the individuals listed on page 20 to ensure you are using the appropriate tax rate.

Receipts

To claim a donation tax credit, you must submit an official donation receipt with your personal (or trust) income tax return, or retain the receipt if you file your return electronically. The official donation receipt should include:

- a statement that it is an official receipt for income tax purposes;
- the name and Canadian address of the charity;
- the registration number assigned to the charity;
- the serial number of the receipt;
- the place or locality of issuance of the receipt;
- your name (i.e., first name, initial and surname, if the donor is an individual) and address;
- for a cash donation, the full date or the year in which the donation was made by the donor;

- for a non-cash donation:
 - the date on which the donation was made;
 - a description of the property; and
 - the name and address of the appraiser of the property (if applicable);
- the date on which the receipt was issued if different than the date on which the donation was made;
- the contribution amount of:
 - the cash donation; or
 - the fair market value of the property at the time the gift was made;
- a description and the amount of the advantage, if any;⁶
- the eligible amount of the gift;⁶
- the signature of a responsible individual who has been authorized by the charity to acknowledge donations; and
- the name and current website of the Canada Revenue Agency.

Reporting Your Donations

All eligible amounts of donations made should be reported in your tax return for the year the gift is made, even if the total gift exceeds your annual donation limit (see page 5). This will help track your carry-forward donation amounts and minimize the risk of lost donation receipts. Donations not claimed in the year in which they are made can be used in any of the five subsequent taxation years, subject to the annual donation limit for those years.

You can claim the donation tax credit for gifts made by your spouse or your common-law partner, according to the Canada Revenue Agency's administrative policy. Of course, two people cannot claim a tax credit for the same donation.

6. Draft amendment (Bill C-10) applicable to gifts made after December 20, 2002, and to gifts made to municipal or public bodies after May 8, 2000. Because of the October 14, 2008 federal election, Bill C-10 has expired, and its provisions will have to be reintroduced in a new bill if the new government wishes to enact the legislation. However, Bill C-10 will be referred to as such in this publication.

Annual Donation Limit

Your annual donation claim limit normally is 75% of net income (100% in the year of death and the year immediately preceding death). In certain circumstances, your annual donation limit will be higher than 75% of net income (see **Gifts of Capital Property** on this page). In addition, the annual donation limit is 100% of net income for the following gifts:

- gifts of ecologically sensitive land; and
- Canadian cultural property.

Generally, net income includes your total income received from all sources, such as employment, pension, interest, dividends, capital gains and business, less certain items, such as Registered Retirement Savings Plan (RRSP) deductions, carrying charges and employment expenses.

Donations exceeding your annual donation claim limit can be carried forward and claimed in any of the five subsequent years.

Example A—Donation Tax Credit

In 2008, Ms. Cooper has net income of \$200,000. She donates \$150,000, allowing herself the maximum tax credit for the year (i.e., 75% of \$200,000).

	Without donation	With donation
Net income	<u>\$200,000</u>	<u>\$200,000</u>
Income tax ¹	75,000	75,000
Donation tax credit	0	(67,500)
Net tax liability	<u>75,000</u>	<u>7,500</u>
Charity receives	0	150,000
After-tax cost of donation	n/a	<u>\$82,500</u>

1. The \$75,000 tax is less than 45% of \$200,000 because the assumed 45% top marginal rate applies only to taxable income above a certain level (\$123,184 in 2008).

Example B—Annual Donation Limit

Ms. Cooper reports net income of \$200,000 in each of 2008 and 2009. She donates \$300,000 to her favourite charity in 2008.

	2008	2009
Net income	<u>\$200,000</u>	<u>\$200,000</u>
Donation made during the year	300,000	0
Limit (75% of net income)	<u>150,000</u>	<u>150,000</u>
Excess donation carried forward	150,000	0
Donation claimed	<u>150,000</u>	<u>150,000</u>
Charity receives	300,000	0
Donation tax credit	<u>(67,500)</u>	<u>(67,500)</u>
Total after-tax cost of donation	<u>\$165,000</u>	

Gifts of Capital Property

It may be beneficial to donate capital property, rather than first selling the property and then donating the cash proceeds (or after-tax proceeds) from the sale. The annual donation limit is increased by 25% of:

- any taxable capital gains triggered on the donation of capital property; and
- income from recapture of capital cost allowance on the donation of depreciable property.

Taxable disposition

A donation of capital property is viewed as a disposition for tax purposes. If the property has an accrued gain, the donation will trigger a capital gain (50% of which is taxable). However, preferential capital gains treatment is provided for gifts of qualifying publicly listed securities, Canadian cultural property and ecologically sensitive land (see **Gifts of Publicly Listed Securities**, **Gifts of Canadian Cultural Property** and **Gifts of Ecological Property** on page 15).

Donation receipt

A donation receipt is issued for an amount by which the fair market value of the property exceeds the amount of any advantage or benefit to which you, as the donor, or a person related to you, are entitled. Be sure that you establish an appropriate fair market value for the donated property.

If you donate property other than publicly listed securities, you may require the assistance of a valuations expert to determine an appropriate value for the donated property. This is not likely to be an issue for small donations. However, for larger ones, a professional valuation could minimize subsequent disputes with the Canada Revenue Agency.

When gifts of capital property are made as part of certain gifting arrangements and tax shelters, the value of the donation may be reduced significantly for donation tax receipt purposes (see **Anti-avoidance provisions** on page 3).

Tax-effective strategy

To benefit fully from your donation tax credit, both your net income for tax purposes and taxes payable, in the year of the donation and the subsequent five years, must be sufficient to allow you to claim the entire tax credit.

Private-company shares or debt

Gifts of private-company shares or debt are subject to complex tax rules. The tax benefits that result from these gifts may be subject to dollar limits and may depend on the timing of recognition of the gift for tax purposes. A detailed discussion of these rules is beyond the scope of this publication. If you are considering this type of donation, you should consult your PricewaterhouseCoopers adviser or any of the individuals listed on page 20.

Donations at Death

Special rules that apply to donations made at death are discussed below.

Annual donation limit at death

In the year of death, the 75% annual donation claim limit increases to 100% of net income. While the 100% limit may appear attractive, it may be to your benefit to consider a lifetime gift, to take advantage of the opportunity to claim the tax credit over six years (see **Lifetime Giving** on page 8).

Charitable donations made through your will are deemed to be made in the year of death, and can be claimed on your final tax return. Any excess donations can be carried back one year, and the 100% limit applies to them.

Example C—Annual Donation Limit at Death

Mr. Price died on July 1, 2009. His net income was \$100,000 in 2009 and \$300,000 in 2008. His will provided for a \$300,000 donation to charity. He made no other donations in 2008 and 2009.

What tax credits can be claimed for Mr. Price by his executors, and when?

	2008	2009
Net income	\$300,000	\$100,000
Donation made during the year	0	300,000
Limit (100% of net income)	300,000	100,000
Excess donation carried back to 2008	n/a	200,000
Donation claimed	200,000	100,000
Donation tax credit	(90,000)	(45,000)
Total after-tax cost of donation		\$165,000

Capital property versus cash

Your estate can make a bequest to a charity and obtain tax relief (see **Example D**). You may leave your estate in a better position if you make the bequest in the form of capital property rather than having your estate first sell the property and then donate the cash proceeds from the sale (see **Example E**). Tax benefits associated with gifts of capital property are outlined under **Gifts of Capital Property** on page 5.

Example D—Effect on Net Worth of Donation of Shares

Mr. Price has decided to donate to charity 1,000 shares of Publico, a publicly listed corporation, on his death. He purchased the Publico shares for \$1,000 and they are now worth \$100,000. He wants to evaluate the effect of the donation on his estate. His current net worth is \$1,000,000.

What is the after-tax cost to his estate of making the donation?

	Sell shares and keep the cash	Donate shares ¹
Net worth before sale/donation	\$1,000,000	\$1,000,000
Donation	n/a	(100,000)
Tax on capital gain	(22,275)	0 ¹
Donation tax credit	n/a	45,000
Net worth after sale or donation	<u>977,725</u>	<u>945,000</u>
After-tax cost of donation	<u>n/a</u>	<u>\$32,725</u>

1. See **Gifts of Publicly Listed Securities** on page 15.

Example E—Donations at Death

Ms. Cooper died on June 1, 2008. At her death, the value of her estate before tax was \$750,000, comprising publicly listed shares with a fair market value of \$250,000 and \$500,000 cash. Her net income for 2008 (before the gain on the shares) was \$200,000. Her will provides for a \$250,000 donation. The estate's trustees are deciding whether to donate the shares (cost \$2,500) or cash.

What is Ms. Cooper's income tax liability as reported in her final return?

What is the after-tax value of her estate?

	Donate cash	Donate shares ¹
Other income (January 1 to June 1)	<u>\$200,000</u>	<u>\$200,000</u>
Tax on other income ²	75,000	75,000
Tax on the capital gain resulting from the donation of shares	n/a	0 ¹
Tax on the capital gain resulting from the deemed disposition of shares ³	<u>55,688</u>	<u>n/a</u>
Tax in year of death (before donation tax credit)	130,688	75,000
Less: donation tax credit	<u>(112,500)</u>	<u>(75,000)</u>
Net tax	<u>18,188</u>	<u>0</u>
After-tax value of estate: Cash	250,000	500,000
Shares	250,000	0
2008 net tax liability	<u>(18,188)</u>	<u>0</u>
After-tax value of estate after donation	<u>\$481,812</u>	<u>\$500,000</u>
Additional donation tax credit available to carry back to 2007 [(250,000 x 45%) - 75,000]		<u>\$37,500</u>

1. See **Gifts of Publicly Listed Securities** on page 15.

2. The \$75,000 tax is less than 45% of \$200,000 because the assumed 45% top marginal rate applies only to taxable income above a certain level (\$123,184 in 2008).

3. At the date of death, the shares are deemed to be disposed of for proceeds of disposition equal to the fair market value (unless transferred to a spouse or common-law partner). Therefore, if the shares are not donated, a capital gain of \$247,500 (\$250,000-\$2,500) is triggered on Ms. Cooper's death, resulting in tax of \$55,688 (22.5% of \$247,500) on the capital gain.

Death of a Private Company Shareholder

For investments held in your private holding corporation, the income tax rules are intended to leave you indifferent as to whether it is you or your holding corporation that makes a donation. However, in certain situations, such as large donations made at death, the value of the donation credit may be partially or entirely lost if the donation is not properly matched against your tax liability arising at death. For advice on how to best plan for this type of situation, call your PricewaterhouseCoopers adviser or any of the individuals listed on page 20.

Lifetime Giving

You may be better off making a donation in annual instalments during your lifetime rather than making a significant donation upon death, because you will be able to maximize the tax credit. As a result, you will leave a larger estate for your beneficiaries, or will have more assets available for donation.

Example F—Donation Spread over Several Years

Mr. Price wants to donate \$600,000 to his favourite charity. He plans to donate \$150,000 in each of the next four years, and anticipates earning \$200,000 per year in each of the next four years.

What is his total income tax liability over the next four years?

	2008 to 2011	
Net income (over 4 years)	<u>\$800,000</u>	
Donation made (over 4 years)	<u>600,000</u>	
Income tax	300,000	= \$75,000 for each of four years ¹
Donation tax credit	<u>(270,000)</u>	
Net income tax	<u>\$30,000</u>	

1. The \$75,000 tax is less than 45% of \$200,000 because the assumed 45% top marginal rate applies only to taxable income above a certain level (\$123,184 in 2008).

Example G—Cash Donation in Year of Death

Mr. Price's will provides that a cash donation of \$600,000 be made upon death. Mr. Price dies in 2011. His annual net income from 2008 to 2011 is \$200,000. He made no other donations in that period.

What is his total income tax liability for taxation years 2008 through 2011?

	2008 & 2009	2010 & 2011	Total
Net income	<u>\$400,000</u>	<u>\$400,000</u>	<u>\$800,000</u>
Maximum donation ¹	<u>0</u>	<u>333,333²</u>	<u>333,333</u>
Income tax	150,000 ³	150,000 ³	300,000
Donation tax credit	<u>0</u>	<u>(150,000)</u>	<u>(150,000)</u>
Net income tax	<u>\$150,000</u>	<u>\$0</u>	<u>\$150,000</u>

Comparing Mr. Price's cumulative after-tax positions for 2008 through 2011 highlights the tax effectiveness of making the donations over his lifetime:

	Lifetime giving (see Example F)	Bequest (see above)
Net income	\$800,000	\$800,000
Net income tax	<u>(30,000)</u>	<u>(150,000)</u>
After-tax income	<u>770,000</u>	<u>650,000</u>
Unused donation	<u>\$0</u>	<u>\$266,667²</u>

- As noted under **Annual Donation Limit at Death** on page 6, the donation claim limit is 100% of net income in the year of death. Excess donations made in the year of Mr. Price's death can be carried back to 2010 and applied against 100% of his net income. Mr. Price cannot obtain donation tax credits for 2008 and 2009.
- Only \$333,333 of the \$600,000 donation is required to eliminate the \$150,000 tax liability for 2010 and 2011. As a result, the tax benefit on unused donations of \$266,667 (\$600,000 – \$333,333) is lost.
- The \$150,000 is less than 45% of \$400,000 because the assumed 45% top marginal rate applies only to taxable income above a certain level (\$123,184 in 2008).

Gifts of Inventory

See **Gifts of Inventory** under **Corporate Donors** on page 10.

Artists

If you are an artist who donates works of art from your own inventory, special rules apply when determining the value of the gift. The rules give you some flexibility when establishing the proceeds of disposition (i.e., some value between the work's fair market value and its cost amount, but not less than the advantage amount, if any).

Corporate Donors

Tax Deduction for Charitable Donations

For donations to qualified donees, corporate donors are entitled to tax incentives similar to those available to individual donors. However, corporations receive tax deductions, rather than tax credits. In general, the amount of a donation multiplied by the corporation's income tax rate yields the tax saving resulting from a donation.

A corporation's tax rate depends on several factors, including the nature of income earned, the nature of the corporation, its taxable income level, and the provinces and territories in which it has permanent establishments. Tax rates are subject to change. Appendix B on page 19 provides 2008 combined corporate tax rates.

If your corporation is planning a significant donation, check with its PricewaterhouseCoopers adviser or any of the individuals listed on page 20, to ensure it is using the appropriate tax rate.

Reporting Corporate Donations

To claim a donation tax deduction, donations of \$100 or more should be specifically listed (name of charity recipient and the eligible amount of the donation) on Schedule 2 of the corporate tax return. Donations under \$100 should be aggregated and the total entered as one amount. Official donation receipts need not be filed with the corporate tax return, but should be retained with the corporation's records. (See **Receipts** on page 4 for the information that should be included on the official donation receipt.)

Donation deductions are subject to net income limitations. Donations not claimed in the year in which they are made can be claimed in any of the five subsequent tax years, subject to the annual donation limit for those years. As well, donation deductions are discretionary in that the corporation can choose not to claim the maximum allowable deduction in the year the gift is made or in any of the five subsequent taxation years. A corporation can choose to claim a different provincial deduction than that claimed federally if it files corporate income tax returns in Alberta, Ontario (until taxation years ending after December 31, 2008) and/or Quebec. Quebec's carry-forward period for excess donations extends twenty (rather than five) taxation years after the year the gift was made.

Annual Donation Limit

A corporation's annual donation claim limit is normally 75% of its annual net income. The annual donation limit is 100% of annual net income for the following gifts:

- gifts of ecologically sensitive land;
- Canadian cultural property; and
- gifts to the Crown in the right of Ontario, when computing Ontario corporate taxable income only (until taxation years ending after December 31, 2008).

Example H—Donation Tax Deduction

Price Corporation has net income of \$1,000,000 in 2008. It makes cash donations of \$700,000 to charities in 2008.

	2008
Net income for tax purposes	\$1,000,000
Donation made during the year	700,000
Limit (75% of net income)	<u>750,000</u>
Excess donation carried forward	0
Donation deduction claimed	<u>(700,000)</u>
Taxable income of the corporation	<u>300,000</u>
Charity receives	<u>\$700,000</u>

Corporate Sponsorship

Your corporation can deduct expenditures incurred in the course of carrying on a business, such as advertising and promotion, if it can demonstrate that the expenses are reasonable and are incurred to produce income from property or business. When your corporation sponsors a charitable event, it may be doing so to promote business and to enhance revenue generation through the advertising of its business, brand, product or services. The disbursement to the charity in this case may be better characterized as a business expense and not as a gift to a qualified donee (see **Qualified donees** on page 1). These expenses are not subject to annual donation limits, but would be subject to normal business expense deductibility rules.

Gifts of Services

A gift of services is a gift of time, skills and effort. It is considered distinct from a gift of property. Under tax law, a gift of services is not recognized as a gift for tax purposes for which a donation tax receipt can be issued by the recipient charity.

It is possible for your business (whether incorporated or not) to render an invoice to the charity for services provided to the charity, for the charity to pay for the services from its funds, and for the business to voluntarily donate an (equivalent) amount to the charity at a subsequent time. That donation would qualify as a gift for which a tax receipt can be issued. However, your business is required to recognize the income for the services as remuneration or as business income.

Gifts of Inventory

A gift of the inventory of your (incorporated or unincorporated) business to a charity is valued at the fair market value of the inventory items. A donation tax receipt can be issued by the charity for that amount. Your business is considered to have sold the donated inventory at that fair market value. That amount of notional sales revenue must be included in its business income. The donation deduction effectively offsets the revenue inclusion and your business treats the cost of the inventory as an expense (i.e., cost of goods sold or donated).

Example I—Donation of Inventory

Coopers Corporation donates its inventory costing \$40,000 to a charity during 2008. The retail value of the inventory is \$100,000. Coopers Corporation's other net income for 2008 is \$1,000,000.

What is the pre-tax cost of a donation of inventory?

Other net income	\$1,000,000
Deemed sales revenue	100,000
Cost of good sold	<u>(40,000)</u>
Net income before donation	1,060,000
Less: deduction for donation	<u>(100,000)</u>
Net income after donation	960,000
Pre-tax cost of donation	<u>\$40,000</u>

Pharmaceutical medicine manufacturers

If your corporation is a manufacturer of pharmaceutical medicines that is donating medicines to a qualified donee, it is entitled to claim a donation deduction equal to the fair market value of the donated inventory. Your corporation is entitled to an additional deduction for gifts made after March 18, 2007, if the recipient of the gift of medicines is a qualified donee that has received funding from the Canadian International Development Agency (CIDA) and the gift is for charitable activities to be conducted outside of Canada. Additional restrictions apply for gifts of medicines made after June 30, 2008.⁷

Gifts of Capital Property

A gift of capital property to a charity results in a disposition of the property. This generally creates a capital gain or loss that must be recognized for tax purposes. The fair market value of the property at the time a gift is made determines:

- the value of the contribution for tax receipting purposes; and
- the deemed proceeds of disposition.

For tax purposes, the donation is the amount of the contribution that exceeds the amount of any advantage or benefit to which your corporation or a person related to the corporate donor is entitled.

If the property has an accrued gain, 50% of the capital gain is taxable to your corporation. However, preferential capital gains treatment is provided for gifts of qualifying publicly listed securities, Canadian cultural property and ecologically sensitive land (see **Gifts of Publicly Listed Securities**, **Gifts of Canadian Cultural Property** and **Gifts of Ecological Property** on page 15).

Donating capital property that is depreciable can result in:

- a recapture of capital cost allowance or a terminal loss; and
- a capital gain or loss.

The annual donation limit is increased by 25% of any taxable capital gains and 25% of any income from recapture.

7. Draft legislation and regulations announced on May 16, 2008.

Cross-Border Giving by Canadian Donors

Gifts to Non-Resident Qualified Donees

Canadian tax laws provide tax relief for gifts by Canadian donors to certain foreign charities.

Canadian donors can make gifts to some foreign universities and colleges and receive the same domestic tax benefits as for gifts to Canadian qualified donees. A prescribed foreign university or college is an institution that has provided evidence to the Minister of National Revenue that:

- its student body ordinarily includes Canadian students;
- it requires students to meet minimum academic entrance requirements; and
- it is able to confer degrees at the baccalaureate level or higher.

In addition, Canadian donors are also entitled to Canadian tax benefits for gifts to foreign charitable entities to which the Canadian government has made a gift in the same year or in the 12-month period preceding the year of the gift. These qualifying foreign charities are listed in Information Circular IC 84-3R5-Attachment, “Gifts to Certain Charitable Organizations Outside Canada,” which is updated periodically.

Gifts to U.S. Charities

The Canada-United States Tax Convention provides limited tax relief for gifts made by Canadian donors to U.S. tax-exempt organizations that would qualify to be Canadian registered charities if they had been established in Canada and were resident in Canada.⁸ The tax relief is generally limited to the lesser of:

- the gifts made to U.S. tax-exempt organizations; and
- 75% of the donor’s U.S. source income (unless the gift is made to a U.S. university or college that the donor or a member of his or her family is attending or has attended, in which case there is no U.S. source income limitation).

Canadian individual donors who reside near a Canadian-U.S. border and who regularly commute to their principal places of employment or business in the U.S. are entitled to claim donations made to U.S. charitable organizations that are religious, charitable, scientific, literary or educational tax-exempt organizations created under U.S. laws as if they were donations made to Canadian charities.

A deceased Canadian that is not a U.S. citizen has some opportunities to reduce his or her U.S. estate tax through donations of U.S. assets to U.S. charities,⁹ although these are limited. As well, a deceased Canadian resident who makes a donation to a U.S. charity can elect the value of the gift for purposes of determining the proceeds of disposition for the donated property. The elected price can be no lower than the purchase price and no higher than the fair market value of the property at the time of the gift.

8. Generally, U.S. tax-exempt organizations that qualify as paragraph 501(c)(3) entities under the Internal Revenue Code, are qualifying entities for purposes of the Tax Convention.

9. Article XXIX of the Canada-United States Tax Convention, 5th Protocol, effective the later of January 1, 2008, and the date the Protocol is ratified.

Innovative Donations

Structuring and implementing a tax-effective donation strategy, particularly for non-cash donations and donations made via an individual donor's will, require careful planning to maximize the tax benefits of the gifts. Individuals, trusts and corporations can contribute to charities in several innovative ways, some of which are outlined below. Some are available only to individual donors (indicated by **I**) or trust donors (**T**), while others are available to corporations (**C**).

Donations of Employee Stock Option Shares **I**

Exercising your employee stock option can result in taxable employment income. This income is taxed like a capital gain. That is, the income inclusion rates on the exercise of these stock options is 50%. However, under certain circumstances, the donation of these shares to:

- public charities (i.e., charitable organizations and public foundations) is subject to an income inclusion rate of:
 - 25% for donations made before May 2, 2006; or
 - zero for donations made after May 1, 2006; and
- private foundations is subject to an income inclusion rate of zero for donations made after March 18, 2007.

Assuming the shares qualify, to take advantage of the reduced income inclusion rate, you must donate the shares:

- in the year they are acquired; or
- within 30 days after their acquisition.

You can take advantage of the reduced income inclusion rate by exercising your stock option and directing the broker or dealer to sell the shares immediately, and then donating all or part of the proceeds to charity (a cashless exercise).

Gifts of Life Insurance **I**

Donating your life insurance policy

You are eligible for a donation tax credit in respect of the donation of an insurance policy that is absolutely assigned to a registered charity at the time of the gift. That is, the charity must be the owner and beneficiary of the policy and you cannot retain any right to the policy. Recent guidance by the Canada Revenue Agency provides that the fair market value of the policy at the time of

the gift is the appropriate value for donation tax receipting purposes. Factors considered in the valuation of a policy include its cash surrender value, loan value, face value, life expectancy of the insured, conversion privileges and other policy terms. Future premium payments made by the donor to maintain the policy after it is given to the charity may qualify for donation tax purposes.

Donating your life insurance proceeds at death

Instead of donating your policy, you may wish to donate the proceeds of a life insurance policy to a charity upon your death. You can do this either by naming a charity as a beneficiary under your will or by designating a charity as the beneficiary of your life insurance proceeds. The charity will receive the tax-free life insurance proceeds and your estate will be eligible to claim a donation tax credit. In this case, your future premium payments do not qualify for a donation tax credit.

Example J—Designating a Charity as the Beneficiary

Ms. Cooper would like to make a significant donation to her favourite charity. She has a life insurance policy that will pay \$100,000 upon her death. Ms. Cooper is evaluating whether she should let the policy lapse or continue to pay the premiums and designate the charity as the beneficiary. Ms. Cooper's net income in the year of her death is expected to be \$200,000.

What is her estate's final position in the year of death?

	No insurance	Insurance
Net income	\$200,000	\$200,000
Tax ¹	(75,000)	(75,000)
Donation tax credit	0	45,000
After-tax position of estate	125,000	170,000
Charity receives	0	100,000
Total value to estate and to charity	\$125,000	\$270,000

As the figures show, use of insurance improves the after-tax position of the estate by \$45,000 (from \$125,000 to \$170,000). However, the lifetime cost of insurance premiums must also be taken into account.

1. The \$75,000 tax is less than 45% of \$200,000 because the assumed 45% top marginal rate applies only to taxable income above a certain level (\$123,184 in 2008).

Gifts of Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs)

You can make a registered charity the beneficiary of your Registered Retirement Savings Plans (RRSPs) or Registered Retirement Income Funds (RRIFs). As noted below, this can reduce your provincial probate fees. Ordinarily, the value of your RRSP and RRIF assets is included in your taxable income at death unless the plan assets are transferred to your spouse or common-law partner. You can, instead, provide the plan assets to a person that is financially dependent on you. Upon your death, a charity designated as the beneficiary will receive the plan proceeds and you are entitled to a donation tax credit in your final (i.e., year of death) tax return equal to the value of the plan assets.

Example K—Designating an RRSP

Ms. Cooper died on July 1, 2008. Excluding her RRSP, her net income at her death was \$250,000. She had no spouse or common-law partner and owned an RRSP valued at \$200,000 on July 1, 2008.

What is her estate's final tax liability for 2008?

What would her estate's position be if she had designated a charity as the beneficiary of her RRSP?

	No designation	Designation
Non-RRSP income	\$250,000	\$250,000
RRSP income	200,000	200,000
Taxable income	450,000	450,000
Income tax ¹	(172,500)	(172,500)
Donation tax credit	n/a	90,000
After-tax position of estate	277,500	367,500
Less donation	n/a	(200,000)
Estate retains	277,500	167,500
Charity receives	0	200,000
Total value to estate and to charity	\$277,500	\$367,500

1. The estimated \$172,500 tax is less than 45% of \$450,000 because the assumed 45% top marginal rate applies only to taxable income above a certain level (\$123,184 in 2008).

Reducing your provincial or territorial probate fees

By designating a charity as the beneficiary of your insurance policy or of your RRSP or RRIF, you might also reduce your estate's provincial or territorial probate fees. For example, in Ontario, assets transferred to a designated beneficiary will pass outside of the estate and will not be included on the estate's final list of assets for provincial probate tax purposes. Your legal adviser can help you determine if this is the case in your province.

Probate fees are summarized on page 9 of *Tax Facts and Figures: Canada 2008*, which is available at www.pwc.com/ca/taxfacts.

Gifts of a Residual Interest in a Trust or Estate

You can transfer property to a trust, name a registered charity as the capital beneficiary and claim a donation equal to the fair market value of the trust's residual interest. The residual interest is equal to the present value of the trust's capital. This could be done during your lifetime or upon death. The terms of the trust could be such that you, and/or another designated beneficiary (the "income beneficiary"), would be entitled to receive the annual income earned by the trust. The capital of the trust ("residual interest") would be paid to the charity upon the death of the income beneficiary.

In many cases, to assign a value to the residual interest, a valuation is required. The value is determined by various factors, such as the nature of the underlying assets, the investment policy and the anticipated timing of the distribution of the trust's assets. If a value cannot be reasonably determined (e.g., when the terms of the trust allow for the withdrawal of capital), no donation tax receipt is allowed.

Charitable Annuities

A charitable annuity is an arrangement under which you transfer capital to a charitable organization that uses the capital to purchase an annuity, allowing you a guaranteed stream of payments for life at a specified rate (which depends on life expectancy) or for a fixed term. The eligible amount of the contribution is equal to your initial contribution less the net present value of the stream of annuity payments.

Gifts of Publicly Listed Securities

CIT

In 1997, two tax incentives were introduced for qualifying gifts of appreciated marketable securities to public charities:

- the donation claim limit for these gifts was increased; and
- the capital gain inclusion rate was reduced from 50% to 25%.

The capital gains inclusion was further reduced from 25% to zero for qualifying gifts made after May 1, 2006. The zero inclusion rate applies to gifts of:

- shares, debt obligations and rights, if listed on a designated stock exchange;¹⁰
- shares in a mutual fund corporation, units in a mutual fund trust and segregated fund units; and
- prescribed debt obligations.

For donations made after March 18, 2007, the capital gains exemption for qualifying gifts of publicly listed securities applies to donations to private foundations. As a result, inclusion rate was reduced from 50% to 0%.

Donations of qualifying publicly listed securities acquired through employee stock options benefit from similar relief (see **Donations of Employee Stock Option Shares** on page 13).

For the capital gains exemption to apply, the actual securities must be transferred to the charity (i.e., the gift will not qualify for the reduced rate if the securities are sold and the cash proceeds are donated).

Gifts of Canadian Cultural Property

CIT

Donations of Canadian cultural property can be claimed up to 100% of net income, and any capital gain arising on the donation of the property is not taxable. The Canadian Cultural Property Export Review Board certifies qualifying Canadian cultural property and determines its fair market value. The qualification of property as Canadian cultural property depends on its relative importance to Canadian culture, history and national heritage.

Gifts of Ecological Property¹¹

CIT

Encouraging gifts of ecologically sensitive land has been a federal government objective in recent years. The capital gains tax arising on the donation of ecologically sensitive land and related easements, covenants and servitudes has been eliminated for gifts to public charities after May 1, 2006¹² and for gifts to private foundations after March 18, 2007. The annual claim limit is 100% of net income for these gifts.

The federal Minister of Environment (or le Ministère du Développement durable, de l'Environnement et des Parcs, in the case of land in Quebec) certifies and values land donations. These donations must be to the Canadian federal or provincial government, a Canadian municipality or a registered charity whose main charitable purpose is to preserve and protect Canada's environmental heritage.

Gifts to the Crown

CIT

Crown gifts, including gifts to Canada, a province or Crown foundation, are subject to the same annual income limit (generally, 75% of personal or corporate net income) as gifts to other qualified donees. The one exception is the deduction, for Ontario tax purposes, of 100% of the net income of a corporate donor that has a permanent establishment in Ontario and donates to the Crown in the right of Ontario (until taxation years ending after December 31, 2008).

10. For income tax purposes, the Department of Finance considers "designated stock exchange" to include the Toronto and Montreal exchanges, tiers 1 and 2 of the TSX Venture Exchange, the NYSE, NASDAQ (excluding the over-the-counter bulletin board) and most other major foreign exchanges.

11. Draft amendment (Bill C-10) applicable to gifts made after December 20, 2002, modifies the definition of total ecological gifts. Because of the October 14, 2008 federal election, Bill C-10 has expired, and its provisions will have to be reintroduced in a new bill if the new government wishes to enact the legislation. However, Bill C-10 will be referred to as such in this publication.

12. Capital gains arising from gifts of ecologically sensitive land made before May 2, 2006, to public charities are subject to a 25% inclusion.

As noted on page 4, examples assume that individuals pay tax at a combined federal/provincial or federal/territorial rate of 45% (22.5% on capital gains).

Example L—Donation by an Individual of Capital Property versus Cash

Mr. Price is considering a \$100,000 donation to his favourite charity, and has sufficient net income to claim the full amount of the donation in the year in which it is made. His assets include a valuable art collection and 1,000 shares of Publico, a publicly listed corporation.

The shares and the art each have a fair market value of \$100,000 and an original cost of \$1,000. The art in this example is neither Canadian cultural property (see **Gifts of Canadian Cultural Property** on page 15) nor an asset subject to the draft gifting arrangement provisions (see page 3), which are treated differently for tax purposes.

Mr. Price is evaluating three options: selling the Publico shares and giving the cash to charity, transferring to a charity the Publico shares having a fair market value of \$100,000, or donating the art. The donation will be made in 2008.

What is the net tax benefit of the donation?

	Sell shares and donate cash	Donate shares ¹	Donate art
Proceeds of sale/donation	\$100,000	\$100,000	\$100,000
Cost	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
Capital gain	<u>99,000</u>	<u>99,000</u>	<u>99,000</u>
Income tax on capital gain	22,275	0	22,275
Donation tax credit	(45,000)	(45,000)	(45,000)
Net tax (benefit) from donation	<u>\$(22,725)</u>	<u>\$(45,000)</u>	<u>\$(22,725)</u>

1. See **Gifts of Publicly Listed Securities** on page 15.

The following example assumes a corporate income tax rate of 48%. Appendix B on page 19 provides 2008 combined corporate income tax rates.

Example M—Donation by a Corporation of Capital Property versus Cash

Instead of making the \$100,000 donation personally, Mr. Price is considering making the donation through his investment holding company, Price Holdco. Price Holdco has sufficient net income to claim the full amount of the donation in the year in which it is made. Price Holdco also has a valuable art collection and 1,000 shares of Publico, a publicly listed corporation.

The shares and the art each have a fair market value of \$100,000 and an original cost of \$1,000. The art in this example is neither Canadian cultural property (see **Gifts of Canadian Cultural Property** on page 15) nor an asset subject to the draft gifting arrangement provisions (see page 3), which are treated differently for tax purposes.

Price Holdco is evaluating three options: selling the Publico shares and giving the cash to charity, transferring to a charity the Publico shares having a fair market value of \$100,000 or donating the art. The donation will be made in 2008. Price Holdco has other investment income of 200,000.

What are the corporate income taxes implications of the donation?

	Sell shares and donate cash	Donate shares ¹	Donate art
Proceeds of sale/donation	\$100,000	\$100,000	\$100,000
Cost	<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
Capital gain	99,000	99,000	99,000
Less: capital gain exemption	n/a	(99,000)	n/a
Other investment income	200,000	200,000	200,000
Donation deduction	(100,000)	(100,000)	(100,000)
Taxable income	<u>199,000</u>	<u>100,000</u>	<u>199,000</u>
Income taxes of the corporation	<u>\$95,520</u>	<u>\$48,000</u>	<u>\$95,520</u>

1. See **Gifts of Publicly Listed Securities** on page 15.

Private Foundation Giving



A private foundation is a philanthropic vehicle that can provide great flexibility for charitable giving by you, your family and related corporate entities. Often, private foundations are vehicles for family philanthropy that can extend beyond your lifetime. Because the board of directors or the trustees of a private foundation generally do not deal at arm's-length with you as the primary donor, you remain in a position to influence or control of the foundation's operational and granting decisions.

Set-up and ongoing operating costs should be considered when contemplating the creation of a private foundation.

Private foundations can be effective tools for charitable giving. However, private foundations are subject to governance rules that can restrict certain of their activities and limit their shareholdings in public and non-public corporations depending on:

- the percentage of share ownership by the foundation and by persons not dealing at arm's-length with the foundation; and
- how the foundation came to own its shares.

In light of these complexities, careful planning should be undertaken when contemplating the use of a private foundation in your philanthropic strategy.

Public Foundation and Community Foundation Giving



Charitable foundations serve the philanthropic needs of communities by using your donations to fund endowments. Endowments preserve the capital of the fund for a period, either as directed by your instructions to the charitable foundation or in accordance with the terms of the endowed fund. Public foundations, a form of charitable foundation, grant funds to operating charities that have been identified for support. A community foundation is a specific kind of public foundation whose assets are used to support a designated geographic area and particular sectors of the community (e.g., arts, social services, education, environment and health).

Public foundations can accommodate your philanthropic giving goals if you wish to support either:

- a particular operating charity whose fundraising is done through the public foundation; or
- a number of charities, by having your contributions managed by the foundation for future granting to those charities.

They can provide you with the following benefits:

- the cost saving of not having to create and manage your own private foundation; and
- relief from governance and administrative responsibilities, including:
 - management oversight of the foundation's assets;
 - regulatory compliance obligations; and
 - recordkeeping and disbursement of funds to other charities.

A public foundation can act on your non-binding guidance on which charities should be the recipients of the foundation's support in what is called "donor-assisted" funding. Gifts to public foundations can be made with recognition or with anonymity depending on the donor's preference.

Some financial institutions and investment management firms have established public foundations as a way of supporting their clients' plans for philanthropic giving.

Appendices

Appendix A

Top Combined Individual Marginal Income Tax Rates—2008

The examples in this publication assume a top marginal income tax rate of 45%. Your actual rate depends on the province or territory in which you reside at the end of the year.

For more information on income tax rates for individuals, see *Tax Facts and Figures: Canada 2008*, available at www.pwc.com/ca/taxfacts.

Calculation of tax credits for charitable donations

Annual donations over \$200 receive a tax credit at the top marginal tax rate for interest and ordinary income, except in Alberta, which has a combined federal-Alberta donation tax credit equal to 50%. In all jurisdictions, a smaller tax credit applies to the first \$200 of annual donations.

2008 Top Combined Marginal Tax Rates				
Applies to taxable income above \$123,184				
	Interest and ordinary income	Capital gains	Canadian dividends	
			Eligible	Non-eligible
Alberta	39.00%	19.50%	16.00%	26.46%
British Columbia	43.70%	21.85%	18.47%	31.58%
Manitoba	46.40%	23.20%	23.83%	37.40%
New Brunswick	46.95%	23.48%	23.18%	35.40%
Newfoundland and Labrador	45.00%	22.50%	28.11%	33.33%
Northwest Territories	43.05%	21.53%	18.25%	29.65%
Nova Scotia	48.25%	24.13%	28.35%	33.06%
Nunavut	40.50%	20.25%	22.24%	28.96%
Ontario	46.41%	23.20%	23.96%	31.34%
Prince Edward Island	47.37%	23.69%	24.44%	36.63%
Quebec	48.22%	24.11%	29.69%	36.35%
Saskatchewan	44.00%	22.00%	20.35%	30.83%
Yukon	42.40%	21.20%	17.23%	30.49%
Non-resident¹	42.92%	21.46%	21.53%	28.98%

1. Non-resident rates for interest and dividends apply only in limited cases; generally, interest (commencing 2008, other than most interest paid to arm's-length non-residents) and dividends are subject to Part XIII non-resident withholding tax.

Appendix B

Combined Corporate Income Tax Rates—2008

A corporation's tax rate depends on the provinces and territories in which it has permanent establishments. In general, the corporation's tax saving is its tax deduction from a donation multiplied by its tax rate.

For more information on corporate income tax rates, see *Tax Facts and Figures: Canada 2008*, available at www.pwc.com/ca/taxfacts.

2008 Combined Corporate Income Tax Rates				
	General (non-M&P)	Manufacturing & processing	CCPC active business up to \$400,000¹	CCPC investment income
Federal only	19.50%		11.00%	34.67%
Alberta	29.50%		14.00%	44.67%
British Columbia	31.00%		15.00%	46.16%
Manitoba	33.00%		13.00%	48.16% ⁴
New Brunswick	32.50%		16.00%	47.67%
Newfoundland and Labrador	33.50%	24.50%	16.00%	48.67%
Northwest Territories	31.00%		15.00%	46.17%
Nova Scotia	35.50%		16.00%	50.67%
Nunavut	31.50%		15.00%	46.67%
Ontario	33.50%	31.50%	16.50%	48.67%
Prince Edward Island	35.50%		14.47%	50.67%
Quebec	30.90% ²		19.00%	46.07% ²
Saskatchewan	32.00%	29.50%	15.50%	47.16%
Yukon	34.50%	22.00%	15.00% (M&P: 13.50%)	49.67%

1. The provincial threshold is higher than \$400,000 in Alberta, Ontario and Saskatchewan.
2. Quebec's Bill 37, which was tabled on December 4, 2007, revises 2008 combined federal/Quebec rates by:
 - increasing the general and M&P rate for non-insurance financial institutions and oil refining companies from 30.90% to 31.4%;
 - reducing the general inactive rate from 35.75% to 30.90%; and
 - reducing the CCPC investment income rate from 50.92% to 46.07%.

Because an election will take place in Quebec on December 8, 2008, it is uncertain whether these changes will be enacted.

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