Strategic Planning
Session IV
The Philanthropic Review: Your Plan and Analysis

Robert Kleinman FCPA, FCA

October 26, 2021

PearTree

The Steps

1) Determine where are the taxable incomes and the tax rates associated.
2) Do an estate plan analysis. Based on their assets, and if they passed away today what would be the tax results.
3) Based on 2 above what gift planning products are generally more suitable for Mark, Judy, Steve.

The Products

4) Examine marketable securities gifts by Mark, Judy or MJ
5) Gifts involving real estate
6) Insurance as a long-term gift (estate planning)
7) Charity Mining flow- throughs
8) Gifts involving private company shares
9) Examine trusts including remainder gifts

Taxable Incomes and Rates

PearTree

- Mark- fairly big personal tax return- 53.53%
- Judy- substantial income- 46%
  - Spouses can share receipts
- Steve-46%
- MJ- property income 50.17%- not substantial income unless sale
- Opco- 26.5% at high rate; 15% at low
- Realco- property income 50.17%; not substantial unless sale

Use of Donations Against Income

PearTree

- Can only use donations against 75% of income so amount of income is important (100% allowed on death, Canadian Cultural Property, etc., Quebec tax return)
- Any “tricks” here
- Remember it is based on net income not taxable income
- So personally received dividends are “grossed-up” (integration)- 75% is on grossed-up amount, not the actual dividend
- Corporations receiving Canadian dividends include these dividends in net income but then take a deduction for them in arriving at taxable income (in and out)- 75% is on net income

75% Extension in Holdco

PearTree

- Holdco earns 200,000 of income. Holdco wishes to make a donation of 200,000 and pay no tax. However Holdco is limited to 150,000 with a 50,000 carry forward. Will pay tax this year on 50,000.
- However Holdco owns 100% of Opco. Holdco causes Opco to make a 66,667 dividend to Holdco

Net Income Holdco- Earnings	200,000
Dividend from Opco	66,667
Net Income	266,667
Deductions	
Donation- lesser of 200k	
Or 75% of 266,667	200,000
Canadian dividends	66,667
Taxable Income	nil

Estates Analysis - Mark and Judy

PearTree

Assets	Value	ACB	Gain	Taxable
MJ Shares	13.2	0.75	12.45	6.225
RRSPs	2.25			2.25
Securities	3	2	1	0.5
Residence	4			
Taxable Income				8.975
Tax				4.487
Estate	22.45			
Net	17.963			

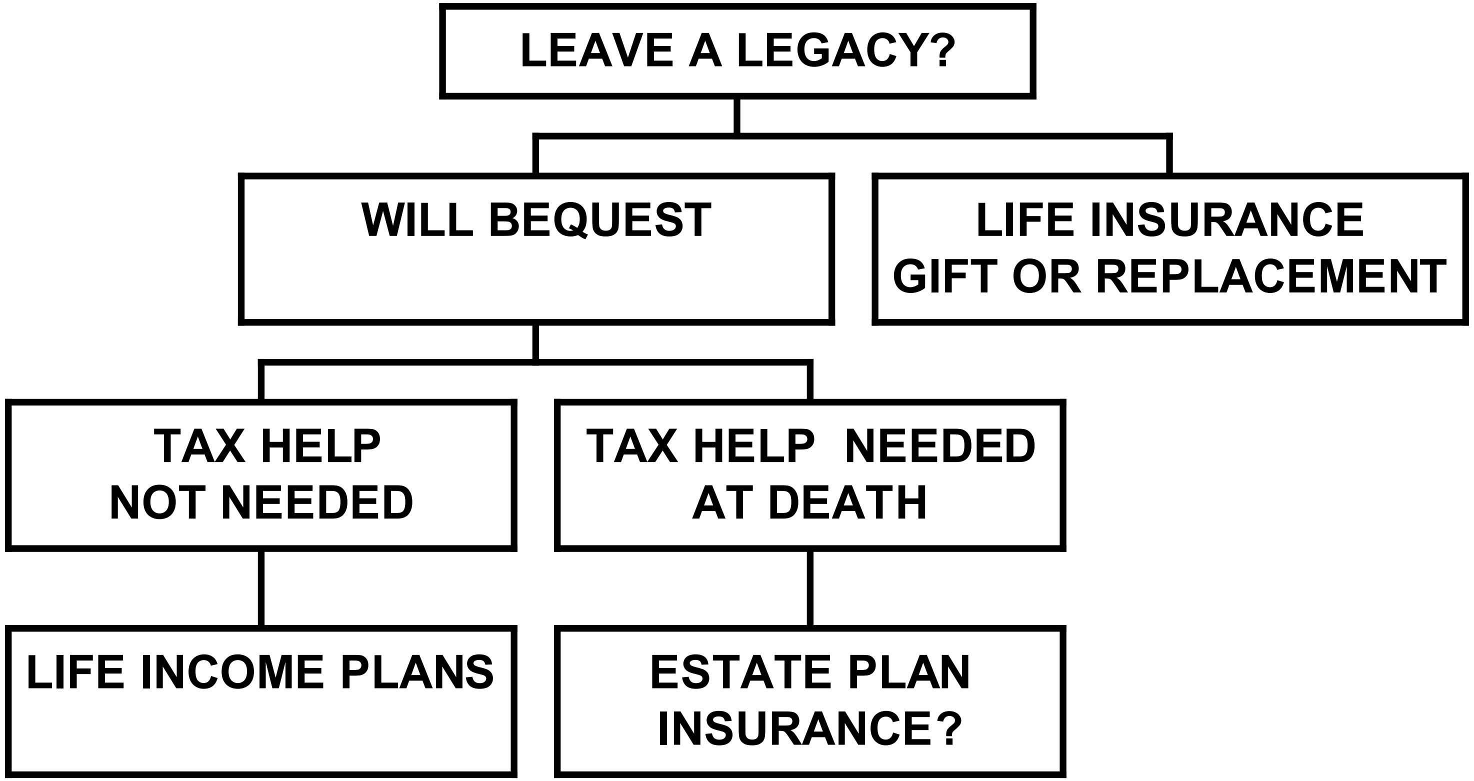
Estates Analysis - Steve

PearTree

Assets	Value	ACB	Gain	Taxable
Securities	1	.6	.4	.2
Insurance	.5			
Tax Recovery	.4			
Estate	1.54			
Charity	1.54			(1.54)

The Legacy Decision Tree

PearTree



Directions

PearTree

Mark and Judy

- Estate planning, Insurance?

Steve

- Life Income Plans

Mark and Judy Securities - Analysis

PearTree

Common Shares	Quantity	Market Price	Cost	Market Value	Gain	G/mv
ARC Resources Ltd	500	16.70	6,756	8,350	1,594	0.190898
Altagas Ltd	4000	30.90	126,578	123,600	-2,978	-0.02409
Agnico Eagle Mines Ltd	4000	36.37	119,876	145,480	25,604	0.175997
Agrium Inc	300	123.67	29,653	37,101	7,448	0.200749
Alimentation Couche-Tard	8000	60.91	357,002	487,280	130,278	0.267358
Inc-CI-B Subordinate				0	0	
ATCO LTD-CL I NON-VTG	240	35.70	12,456	8,568	-3,888	-0.45378
Brookfield Asset	500	43.65	14,156	21,825	7,669	0.351386
Bank Of Montreal	5000	78.08	163,968	390,400	226,432	0.58
Bank Of Nova Scotia	4000	55.97	123,876	223,880	100,004	0.446686
BCE INC COM NEW	1000	53.46	45,679	53,460	7,781	0.145548
Total			**1,000,000**	**1,499,944**	**499,944**	

MJ Securities - Analysis

PearTree

Common Shares	Quantity	Market Price	Cost	Market Value	Gain	G/mv
ARC Resources Ltd	500	16.70	6,756	8,350	1,594	0.190898
Altagas Ltd	4000	30.90	126,578	123,600	-2,978	-0.024090
Agnico Eagle Mines Ltd	4000	36.37	119,876	145,480	25,604	0.175997
Agrium Inc	300	123.67	29,653	37,101	7,448	0.200749
ATCO LTD-CL I NON-VTG	240	35.70	12,456	8,568	-3,888	-0.453780
Brookfield Asset	500	43.65	14,156	21,825	7,669	0.351386
Bank Of Montreal	5000	78.08	163,968	390,400	226,432	0.580000
Bank Of Nova Scotia	4000	55.97	123,876	223,880	100,004	0.446686
BCE INC COM NEW	1000	53.46	45,679	53,460	7,781	0.145548
Total			**642,998**	**1,012,664**	**369,666**	

Securities

- For Mark, Judy and MJ
  - Greatest gain is BMO
  - Highest gain/ market value is BMO as well at 58%

- What is actual net cost of gifts?

- Mark or MJ?

Marketable Securities

Examine Mark's Portfolio

- BMO 100,000
- ACB 42,000
- Gain 58,000

Cost of donation

- 53% credit 53,500
- Cap Gain Saving 15,400
- Savings 68,900

Cost of donation 31.1%

MJ's Security Analysis

PearTree

Examine MJ's portfolio

- BMO 100,000
- ACB 42,000
- Gain 58,000

Cost of donation

- 50.17% deduction 50,170
- Cap Gain saving 14,550
- Savings 64,720
- Value of Capital Dividend Account Add Dividend tax 45.3% Extra CDA 29,000

- So a normal dividend of 53,000 would get Mark 29,000 (save 24,000) and a dividend refund of 8,894 (from the capital gain) extra saving of 15,106
- **Total savings 64,720-79,106;**
- **Cost of donation 35.28-20.1%?????**

Real Estate

- Assume Realco will sell land for 1.2m (ACB 200,000)
- Will donate 200,000 cash within 30 days of disposition
- Canadian real estate
- What is capital gains exemption?
- SORRY- Proposed legislation not adopted!!!!

Principal Residence

PearTree

- Residual Interest gift of home in Toronto
- Value 4m
- Joint mortality 24 years (clue was in personal balance sheet)
- PV (4m, 24yrs, 3%)= 1,967,734 tax receipt
- What is the disposition?
- Principal residence- no taxable gain

Contract - Residual

THIS AGREEMENT

is made between _ (referred to hereinafter as "Life Tenant") and the, a registered charity having its principal office at (referred to hereinafter as "Charity").

Life Tenant, residing, has conveyed to Charity the real property commonly known as Montreal, Quebec ("the Premises"), reserving to himself a life estate in the Premises for and during his lifetime.

Life Tenant and Charity hereby enter into this Agreement establishing certain rights and responsibilities of each with respect to the Premises. Accordingly, Life Tenant and Charity hereby_ agree as follows: .

Payments by Life Tenant

1. Life Tenant shall be responsible for the payment of all property taxes, assessments, utilities, and any mortgages secured by the Premises. Life Tenant shall pay all amounts due for such expenses on a timely basis and shall keep accurate records of payments.

2. Life Tenant shall pay for all ordinary repairs, both internal and external, to the Premises, including but not limited to mechanical, electrical, and plumbing systems, as well as sidewalk, driveway, yard, roof, and deck maintenance.

3. If Life Tenant desires to make substantial improvements, such as for fixtures, additions, replacements, roofs, swimming pools, air conditioning, and other major improvements, Life Tenant shall have the option of making such improvements at Life Tenant's own expense or making a determination in advance as to whether Charity is willing to share in such expenditure. In the event that a major expenditure is necessary due to wear, tear, obsolescence, or Act of God, and such expenditure is. essential to the preservation of the value of the Premises, Life Tenant and Charity shall agree at that time as to the proportion of the expenditure to be borne by each party.

Contract - Residual

4. At his expense, Life Tenant shall insure the Premises and improvements against damage by fire or other hazard in an amount not less than the replacement cost of the Premises, and shall name Charity as an additional insured.

5. Life Tenant agrees to pay all taxes and other charges which may be a lien on the Premises as of the date of termination of the life estate. Maintenance and Inspection

6. Life Tenant shall maintain the Premises in good condition. No major improvements, including but not limited to additions and changes in floor plans, shall be undertaken without written consent of Charity.

7. In the event of loss or damage to the Premises by fire or other cause, Life Tenant, except as provided below, shall repair or rebuild the Premises to its original condition, but shall not be obligated to spend in excess of the proceeds received from the insurance coverage obtained by Life Tenant pursuant to Paragraph 4 of this Agreement. In the event of substantial loss or damage which makes it appear impossible or impractical to rebuild the Premises, Life Tenant and Charity jointly shall determine whether it is economical and feasible to repair or rebuild the Premises. If not, the proceeds received from the insurance coverage obtained by Life Tenant pursuant to Paragraph 4 of this Agreement shall be paid to Life Tenant and Charity in accordance with the then actuarial values of their respective life estate and remainder interests.

8. Charity shall have the right to inspect the Premises with reasonable notice given to Life Tenant, but in no event less than 30 days notice. Use of the Premises by Life Tenant

9. Life Tenant shall be entitled to use the Premises for Life Tenant's residence and for no other purpose without written permission of Charity. For purposes of preserving the value of the property, Life Tenant shall have the right to rent the Premises with the approval of Charity as to the tenant, although Charity shall have no right to approve or determine the amount of rent to be received. Both parties agree that they will not dispose, nor make any agreement to dispose, of any interest in the Premises during Life Tenant's lifetime except by mutual written consent. Termination or Other Ending of the Life Estate

10. Life Tenant shall have the right to terminate his life estate in the Premises by surrendering to Charity complete title to the Premises.

Art

- Owns a Kle, which Mark hates, except for the fact it has gone up in value
  - Consider gift to favourite charity with an aim to sell the piece for cash
  - do third party evaluation for receipt (Quebec different- receipt based on proceeds of disposition by charity)
- Art is disposed of at receipt value- capital gain realized

- No- trick question
- Subsection 248(35)
- Kle was purchased in 2019

248(35)

(35) Deemed fair market value [of donated property] — For the purposes of subsection (31), paragraph 69(1)(b) and subsections 110.1(2.1) and (3) and 118.1(5.4), (6) and (13.2), the fair market value of a property that is the subject of a gift made by a taxpayer to a qualified donee is deemed to be the lesser of the fair market value of the property otherwise determined and the cost or, in the case of capital property, the adjusted cost base or, in the case of a life insurance policy in respect of which the taxpayer is a policyholder, the adjusted cost basis (as defined in subsection 148(9)), of the property to the taxpayer immediately before the gift is made if

(a) the taxpayer acquired the property under a gifting arrangement that is a tax shelter as defined in subsection 237.1(1); or

(b) except where the gift is made as a consequence of the taxpayer's death,

(i) the taxpayer acquired the property less than three years before the day that the gift is made, or

(ii) the taxpayer acquired the property less than 10 years before the day that the gift is made and it is reasonable to conclude that, at the time the taxpayer acquired the property, one of the main reasons for the acquisition was to make a gift of the property to a qualified donee.

248(35) Exceptions

PearTree

7) Non-application of subsec. (35) — Subsection (35) does not apply to a gift

(a) of inventory;

(b) of real property or an immovable situated in Canada;

(c) of an object referred to in subparagraph 39(1)(a)(i.1); (note- Canadian Cultural Property)

(d) of property to which paragraph 38(a.1) or (a.2) applies; (note- this is listed securities)

(e) of a share of the capital stock of a corporation if

(i) the share was issued by the corporation to the donor,

(ii) immediately before the gift, the corporation was controlled by the donor, a person related to the donor or a group of persons each of whom is related to the donor, and

(iii) subsection (35) would not have applied in respect of the consideration for which the share was issued had that consideration been donated by the donor to the qualified donee when the share was so donated;

(f) by a corporation of property if

(i) the property was acquired by the corporation in circumstances to which subsection 85(1) or (2) applied,

(ii) immediately before the gift, the shareholder from whom the corporation acquired the property controlled the corporation or was related to a person or each member of a group of persons that controlled the corporation, and

(iii) subsection (35) would not have applied in respect of the property had the property not been transferred to the corporation and had the shareholder made the gift to the qualified donee when the corporation so made the gift; or

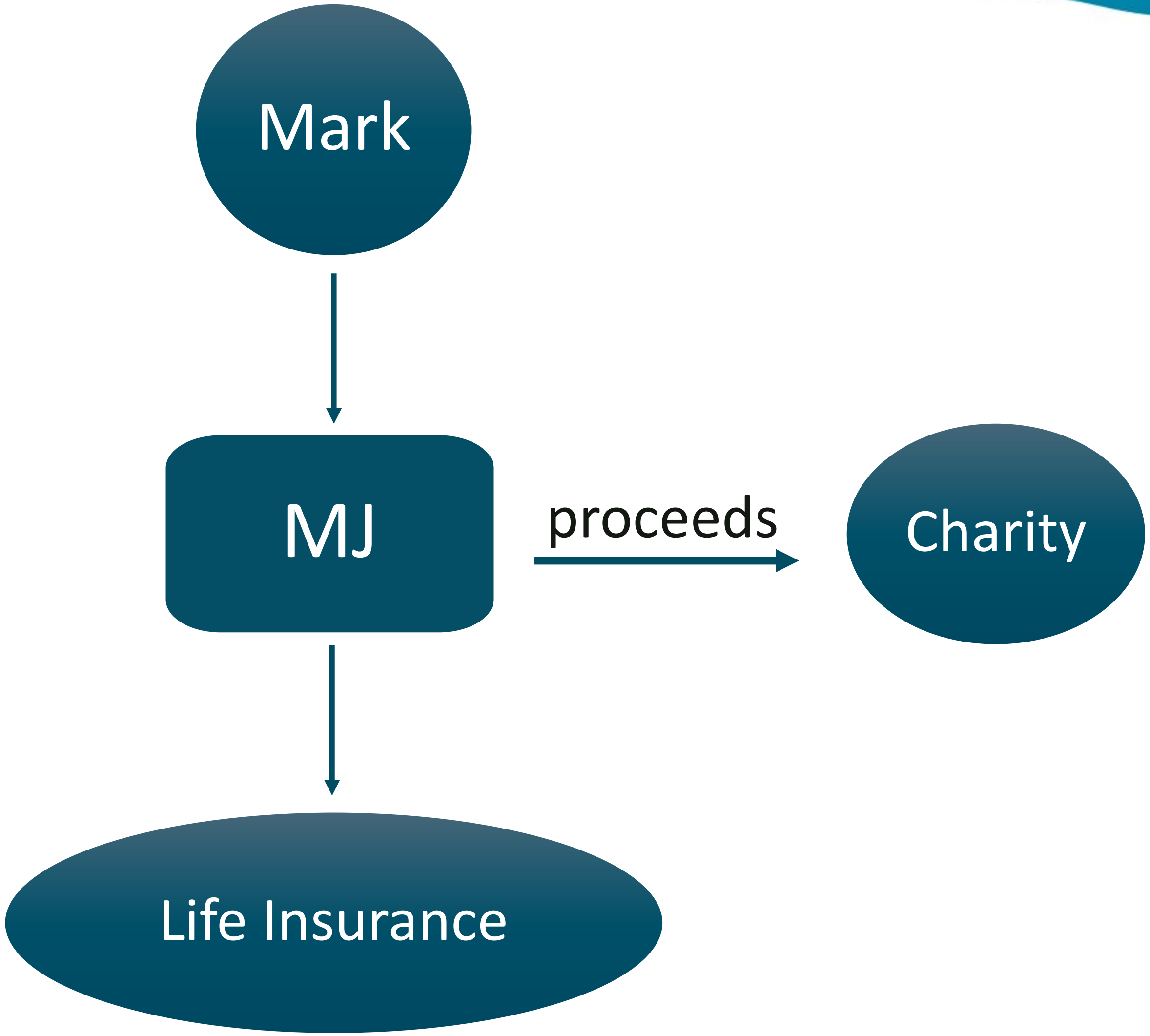
(g) of a property that was acquired in circumstances where subsection 70(6) or (9) or 73(1), (3) or (4) applied, unless subsection (36) would have applied if this subsection were read without reference to this paragraph.

Canadian Cultural Property

PearTree

- Advantages
  - can be used against 100% of income
  - can be carried forward ten years
  - capital gains exemption!!!
- 248 (35) exception!!

Estate Planning



Taxable Income:	1,000,000
Will Gift:	1,000,000
Tax:	0.00
Tax Saving	535,000
Insurance Cost	?

Mark and Judy - Estate Planning - Insurance

PearTree

The Plan

1. The corporation to purchase a 1,000,000 policy on a last-to-die basis.
2. On a last-to-die Mr. & Mrs leave 1,000,000 in their wills to the JCF.
3. At the second death, the corporation will receive 1,000,000 tax-free, and will remit 1,000,000 to the estate which will pay off the will gift.
4. The deceased' final tax return will utilize a 1,000,000 tax receipt from the from the Charity, saving 535,000 of tax.

Year	Premium	PV at 3%	Year	Premium	PV at 3%
1	$25,000	$25,000	13	$25,000	$17,534
2	$25,000	$24,272	14	$25,000	$17,024
3	$25,000	$23,565	15	$25,000	$16,528
4	$25,000	$22,879	16	$25,000	$16,047
5	$25,000	$22,212	17	$25,000	$15,579
6	$25,000	$21,565	18	$25,000	$15,125
7	$25,000	$20,937	19	$25,000	$14,685
8	$25,000	$20,327	20	$25,000	$14,257
9	$25,000	$19,735	21	$25,000	$13,842
10	$25,000	$19,160	22	$25,000	$13,439
11	$25,000	$18,602	23	$25,000	$13,047
12	$25,000	$18,061	24	$25,000	$12,667
Total Cost					**$436,090**

The cost of the life insurance, at present value,	436,090
With no life insurance purchase, the corporation would transfer to the estate $436,090, which the estate will pay 26.65% taxes, leaving the estate with	320,526
With a life insurance purchase, the estate will get a tax credit of $535,000 which, at present value, represents	263,185
Thus the net cost of creating 1,000,000 of charity is	57,342
If the cash is transferred as marketable securities- 50% ACB tax savings at death of $133,750: present value is	65,796
Net Cost of donation	-8,454

Gift acceptance policy- insurance

POLICIES ON WHICH THE DONOR WILL FUND THE PREMIUMS UNTIL DEATH

These policies are generally acceptable.

Before acceptance ensure that the policy has sufficient value to be worth maintaining. (i.e. a term policy where the premiums will increase to market rates every 5 years would not be acceptable).

As the donor will be paying the premiums, the donor may allocate the proceeds of disposition at death to various institutions and causes.

If the donor ceases to fund the premiums and the continues the payments of premiums, the allocations of the donor will be null and void and the future proceeds will be allocated to the ’s unencumbered fund.

If the allocations are to various institutions, but the instructions are to pay out the capital, and not just annual income, to those institutions, the will retain 10% of the funds, in consideration of the administration and risk assumed by the during the life of the policy.

Premiums not continued

POLICIES ON WHICH THE DONOR WILL NOT FUND FUTURE PREMIUMS

The unencumbered fund may fund the premiums if certain conditions are met.

The proceeds on death cannot be allocated by the donor; instead the proceeds will be added to the unencumbered fund.

All conditions must be met:

> The following calculation must exceed 7.5% of the face value of the policy: -value of the policy using actual mortality estimates and a 7% discount rate is to be used (To align with the investment objectives of the)
>
> The following calculation must yield a positive result: -value of the policy utilizing a market discount rate and a mortality assumption based on the premium limits of the policy (for example, if the policy is term to 100, then the deemed mortality is present age until 100).

OR -recalculation at 6% discount yields a positive result may be met. (A return of 6-7% can be acceptable) 250,000 will be the maximum annual premiums to be paid under program. If this total is reached the policy will be reanalyzed.

If the conditions cannot be met, but the has the ability to sell the policy to a third party immediately after donation for a suitable price then this would be acceptable.

Steve- Gift of Policy

PearTree

Year	Premium	PV at 3%	Year	Premium	PV at 3%
1	10,000	10,000	10	10,000	7,664
2	10,000	9,709	11	10,000	7,441
3	10,000	9,426	12	10,000	7,224
4	10,000	9,151	13	10,000	7,014
5	10,000	8,885	14	10,000	6,810
6	10,000	8,626	15	10,000	6,611
7	10,000	8,375	16	10,000	6,419
8	10,000	8,131	17	10,000	6,232
9	10,000	7,894			
Total Cost					**135,611**

The Plan

1. policy assuring 500,000
2. premiums total 10,000 term to 100
3. 3.0% interest
4. mortality 17 years
5. age 72 male

Cost of the life insurance	**$135,611**
Value of future insurance proceeds	**$302,508**
Net Value	**$166,897**

Test at Life to 100

PearTree

Year	Premium	PV at 3%	Year	Premium	PV at 3%
1	$10,000	$10,000	15	$10,000	$6,611
2	$10,000	$9,709	16	$10,000	$6,419
3	$10,000	$9,426	17	$10,000	$6,232
4	$10,000	$9,151	18	$10,000	$6,050
5	$10,000	$8,885	19	$10,000	$5,874
6	$10,000	$8,626	20	$10,000	$5,703
7	$10,000	$8,375	21	$10,000	$5,537
8	$10,000	$8,131	22	$10,000	$5,375
9	$10,000	$7,894	23	$10,000	$5,219
10	$10,000	$7,664	24	$10,000	$5,067
11	$10,000	$7,441	25	$10,000	$4,919
12	$10,000	$7,224	26	$10,000	$4,776
13	$10,000	$7,014	27	$10,000	$4,637
14	$10,000	$6,810	28	$10,000	$4,502
Total Cost					**$193,270**

The Plan

1. policy assuring 500,000
2. premiums total 10,000 term to 100
3. 3.0% interest
4. mortality 28 years
5. age 72 male

Cost of the life insurance at present value	**$193,270**
Value of future insurance proceeds	**$218,538**
Net Value	**$25,268**

Test at 7%

PearTree

Year	Premium	PV at 3%	Year	Premium	PV at 3%
1	10,000	10,000	10	10,000	5,439
2	10,000	9,346	11	10,000	5,083
3	10,000	8,734	12	10,000	4,751
4	10,000	8,163	13	10,000	4,440
5	10,000	7,629	14	10,000	4,150
6	10,000	7,130	15	10,000	3,878
7	10,000	6,663	16	10,000	3,624
8	10,000	6,227	17	10,000	3,387
9	10,000	5,820			
Total Cost					**135,611**

The Plan

1. policy assuring 500,000
2. premiums total 10,000 term to 100
3. 7.0% interest
4. mortality 17 years
5. age 72 male

Cost of the life insurance	**$104,466**
Value of future insurance proceeds	**$158,287**
Net Value	**$53,821**

Analysis of Steve Policy Transfer

PearTree

- An actuary must do valuation, but it appears value is 166,897
- Receipt could be given for this amount
- What is the taxation on the disposition of the policy
- Gain (not capital) for proceeds over ACB
- Proceeds for a policy in 148(9) is cash surrender value
- Steve would have typically no income
- Could shelter his tax bill for at least 3 years!!
- From charity point of view
- Receiving a gift of 166,897
- Is it worth the risk?
- Tests work out
- Note no exception for 248 (35)

Charitable Mining Flow-Throughs

- If available can reduce cost of giving to 25%, or 3%, depending on the structure
- Every one is unique so numbers may vary
- Risks

  1) mining company does not do what it is supposed to:

  2) Charity is associated with it;

  3) Must register as a tax shelter promoter????

  4) Cannot be seen as selling or vouching for it

  5) The charity should understand mechanisms and determine gift acceptance policy for these gifts

Mining

- On the other hand hundreds of millions of dollars of gifts have been done this way, with the various governments' review, awareness and through the rulings process acceptance

So

1) the planned giver should be aware and understand how they work;

2) "There are donors of ours who have made their gifts via mining shares. I and our charity cannot vouch for these shelters; however speak to your tax advisor."

3) Everything in this course should be referred to the donor's advisors.

Private Company Shares

PearTree

- Sale in 2021- New rules?????????
- NO NEW RULES!!!!

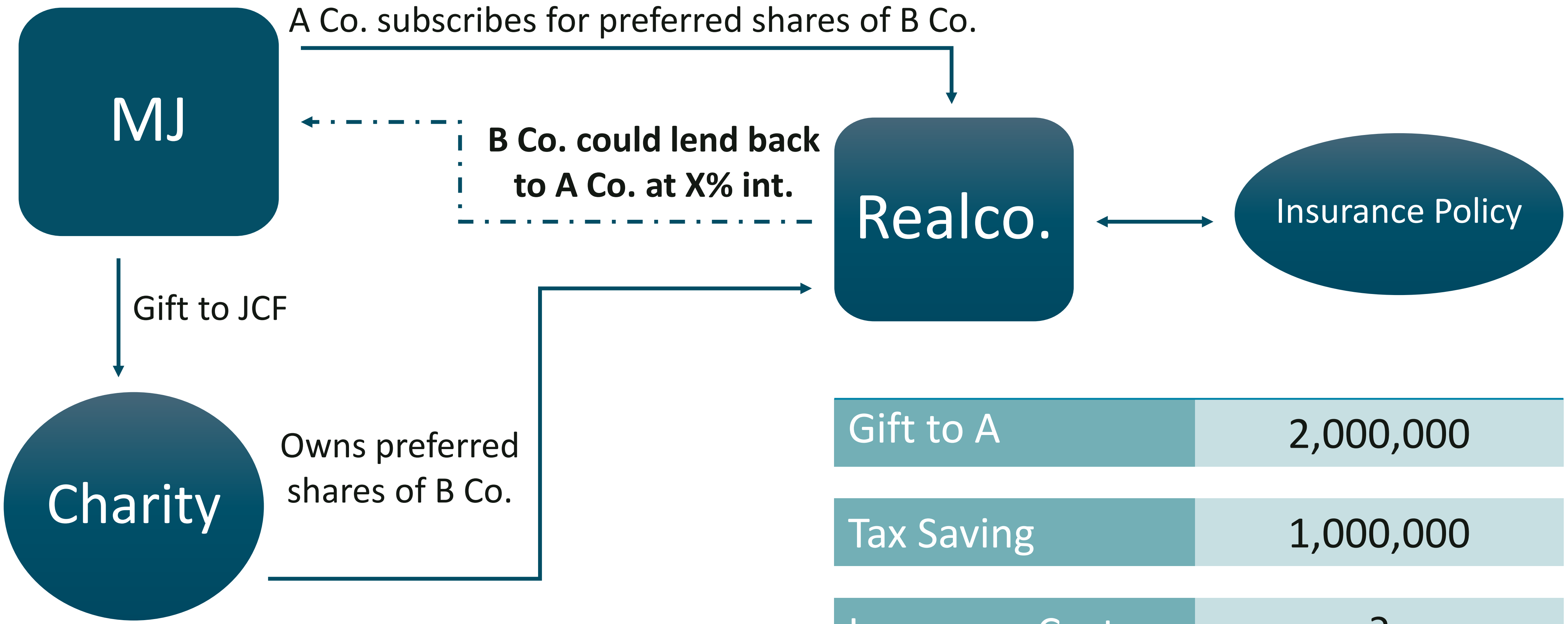
Sale of Opco by MJ- PREFERRED SHARES

PearTree

- 2 million of preferred
- Gift to Charity
- Insurance on children
- Saves 1 million in cash flow
- Continuation of estate freeze

Cumulative Preferred Shares

PearTree



Gift to A	2,000,000
Tax Saving	1,000,000
Insurance Cost	?

Preferred Shares- Illustration

PearTree

Cash Flow For Donor	
Gift Of Preferred Shares	2,000,000
Insurance Premiums	(402,882)
Tax Savings	1,000,000
Net Cash Cost For Donor	597,118
Benefit For Estate	
CDA Benefit – Tax Savings On Taxable Dividend	218,638
Total Net For Donor’s Family	
Life Expectancy 25 Years, Interest 4.5%	805,756

The Catch

- How can you give a receipt for 2m on preferred shares
- What if they were 4% cumulative
- Annually Realco would pay 80,000 in dividends to Charity
- Would receive back a dividend refund of 38.33% or 30,664
- Net annual cost of philanthropy 49,336
- At death of insured the shares are redeemed and Charity received 2m
- By the way, can you give a receipt for private company shares?
- Insurance can back up redemption

Non-Qualifying Securities- Problem: Is MJ NQS?

(13) Non-qualifying securities — For the purpose of this section (other than this subsection), where at any particular time an individual makes a gift (including a gift that, but for this subsection and subsection (4), would be deemed by subsection (5) to be made at the particular time) of a non-qualifying security of the individual and the gift is not an excepted gift,

(a) except for the purpose of applying subsection (6) to determine the individual's proceeds of disposition of the security, the gift is deemed not to have been made;

NQS Shares -MJ Appears To Be Caught

PearTree

(18) Non-qualifying security defined — For the purposes of this section, “non-qualifying security” of an individual at any time means

(a) an obligation (other than an obligation of a financial institution to repay an amount deposited with the institution or an obligation listed on a designated stock exchange) of the individual or the individual's estate or of any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time;

(b) a share (other than a share listed on a designated stock exchange) of the capital stock of a corporation with which the individual or the estate or, where the individual is a trust, a person affiliated with the trust, does not deal at arm's length immediately after that time;

Exceptions - We Are Ok With Public Charity

(19) Excepted gift — For the purposes of this section, a gift made by a taxpayer is an excepted gift if

(a) the security is a share;

(b) the donee is not a private foundation;

(c) the taxpayer deals at arm's length with the donee; and

(d) where the donee is a charitable organization or a public foundation, the taxpayer deals at arm's length with each director, trustee, officer and like official of the donee.

Class B Preferred Shares

- Super Capital Gains Exemption Shares- high ACB low PUC
- Mark makes a gift of 100,000 Class B preferred
- Redeemed for cash the next day by MJ
- No gain on gift- high ACB
- On redemption a deemed dividend (proceeds less PUC)
- MJ can receive a 38.33% dividend refund and Mark a 53.5% tax credit
- So 91,833 coming back off a 100,000 gift
- 129 (1.2) Dividends deemed not to be taxable dividends — Where a dividend is paid on a share of the capital stock of a corporation and the share (or another share for which the share was substituted) was acquired by its holder in a transaction or as part of a series of transactions one of the main purposes of which was to enable the corporation to obtain a dividend refund, the dividend shall, for the purpose of subsection (1), be deemed not to be a taxable dividend.

Gift Acceptance Policy- Shares

PearTree

1. The policy of The Charity is to inform, serve, guide, or otherwise assist donors who wish to create funds at the, but never under any circumstances to pressure or unduly persuade. In particular, whenever a gift involving an irrevocable transfer of assets is under consideration, every effort should be made to ensure that completing the gift would not jeopardize the donor’s personal or financial security.

2. Persons acting on behalf of The shall in all cases strongly advise that the donor discuss the proposed gift with independent legal and/or tax advisors of the donor's choice so as to ensure that the donor receives a full and accurate explanation of all aspects of the proposed charitable gift. Furthermore, the donor will also be advised to consult with their own family as to the potential impact of the gift.

3. All significant gifts must be reviewed and approved by the Executive Director. Before acceptance, relevant information about the property shall be ascertained, including a copy of any appraisal secured by the donor. The also reserves the right to secure its own appraisal before accepting the property and issuing a donation receipt. For gifts of shares of private companies, the President or First Vice-President must also approve.

Continued

Gifts of Shares in Privately-Owned Companies and Other Business Interests

A. Description

Donors may make gifts of privately-owned shares and partnership interests.

These can be accepted by the so long as the assumes no liability in receiving them and would not be subject to penalties. In some instances the corporation is willing to redeem privately-owned shares, or other stockholders are willing to purchase them.

B. Guidelines

1. Privately-owned shares may be accepted if they will not subject the to penalties or adverse consequences and can likely be sold in the future to the corporation, to other stockholders, or to others interested in acquiring the corporation or the shares can produce a fair annual income return.

   The shall follow the same appraisal procedure as for real estate, and shall issue a donation receipt based on the appraisal it considers reflective of the value of the shares.

2. The shall complete the worksheet- Policy re: Gifts of Private Company Shares.

Private Company Share Gift Checklist

Definition: This policy applies to gifts of shares which are held by individuals and not traded on a stock exchange.

Procedure: Before accepting such gifts, the following checklist should be completed

1) **Determine status of shares under the Act** • Are they non-qualified securities? • Is the gift an excepted gift? • Is the donor at arm's length to JCF?
2) **Describe the shares to be gifted** • number, class, redemption value, voting, retractability, participation, dividend rate, cumulative, cost basis, paid-up-capital • Are they subject to a buy-sell agreement?
3) **How and when were the shares acquired** • Will their fair market value be deemed to be their cost?
4) **Will the shares be redeemed immediately?** • If not, what is the advisability of holding an investment in the company? • Evaluate the company to ensure it is viable. • Holding companies are preferred to operating companies, with liquid investments preferred to illiquid. • The company should not be cross guaranteeing. • JCF should have confidence that the company will not be stripped of its assets, by salary or dividend
5) **Liquidation** • Is there a plan for redeeming the shares? • Should insurance be purchased in the company to back up the value of the shares and to ensure an ultimate redemption?

Checklist- Cont'd

PearTree

6) **Dividends** • How will they be paid? • Are the shares cumulative? • At what rate? • Will the company be eligible for a dividend refund?

7) **Valuation** • Given the tax effects is value important (if a FMV receipt will not be available or necessary then valuation is less important) Otherwise valuation is key to a proper receipt. The act of valuation to support a value may lead to changes to the shares gifted, i.e. cumulative dividend feature added.• Who will be engaged to perform the valuation? • Who will pay for the valuation (the donor?)? • See Richard Wise article.

8) **Annual Audit** • Who are the auditors? JCF will want to review annual financial statements of the company. JCF to receive annual confirmation of value maintenance and any guarantees issued by the company.

9) **Professionals** • Ensure the donor receives independent professional advice, an independent valuator is engaged, and JCF considers receiving its own professional advice.

10) **Resolution of the Board** • As a consequence of the transfer of shares, a Resolution of the Board or Executive should be made to accept the gift and allowing, say the Executive Director, to represent and sign on behalf of the JCF. • A copy of the gift Company's resolution shall be received.

11) **Quebec Notary** • Many lawyers hold that this form of gift should be notarized in Quebec.

12) **Tax Receipt** • The receipt should indicate the eligible amount of the gift (the fair value of the shares), a description of the gift e.g. 10,000 Class A preferred shares of ABC Co., name and address of the valuator and the actual date of the gift.

Steve – Direction life income plans

1) Transfers 100,000 to CRT

- He will benefit for life; to charity at death
- At death his receipts will be unused; start using them
- PV (100,000, 17 years, 3%) 60,501 receipt today- saving 27,830
- Reduce instalments- do it every year- always leave emergency money

2) Transfer BMO 100,000 ACB 60,000 to CRT

- Do not get exemption ; disposition taxable
- Elect under 118.1(6) between ACB and FMV- limiting factor is receipt
- Elect at 60,501; so proceeds of disposition is this amount not 100,000
- Reduce capital gains

118.1(6)

Gifts of capital property — If this subsection applies in respect of a gift by an individual of property, and the individual or the individual's legal representative designates an amount in respect of the gift in the individual's return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be the individual's proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

> (a) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and
>
> (b) the amount determined under subparagraph (5.4)(b)(i) or (ii), as the case may be, in respect of the property.

Trusts - Steve

PearTree

Annuities (for charities not foundations)

- Charities do issue their own annuities
- NEW IDEA
- Transfer BMO to charity (no trust)- capital gains exemption
- Elect 118.1(6) at 60,501
- Take back consideration (split receipting rules) of an annuity of 3,000 a year for life
- Receipt is FMV less advantage
- Advantage is value of annuity or 39,499
- Receipt is 60,501
- Get CGE

Grandchild- Estate Planning

PearTree

- If a child or grandchild is physically or mentally infirm and is financially dependant (does not earn more than personal exemptions), can rollover tax-free RRSPs to his RRSP
- Mark and Judy can set up a special needs trust in their wills to benefit grandchild

Summary

PearTree

1) Marketable securities are a good source of gifting; particularly from MJ with Capital dividend account bump.
2) New real estate rules not applicable.
3) Principal Residence, rarely done but big tax savings
4) Especially if don't like the Kle, see if can be donated to museum.
5) Big estate planning insurance possibility. Can give hugely at little cost to children. Can ask Mark's broker for best policy types.
6) Steve should gift policy instead of giving it up.
7) Mark could ask accountant about mining shelters.
8) Class B shares of MJ a great gift.
9) Larger plan has until the end of MJ's year to effect.
10) CRT is of benefit to Steve- use up excess receipts.

PearTree

THANK YOU!!!!!!!!!!