



# CHARITABLE GIVING

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As a whole, Canadians are a caring group. We care about our social and religious institutions, community facilities, arts, education, research and hospitals. We care especially about those less fortunate than us.

Canadians donate their time, volunteer and fundraise for charities and make charitable donations. All of these efforts contribute to the country's social, medical, educational and cultural well-being.

For years, Canadians have looked to various levels of government to fund much of the good work that charitable groups provide to enhance the quality of our lives. But recently, governments have cut back on direct funding, and it's now up to individuals and corporations to fill the gap. As a result, recent federal budgets have contained a number of changes in the form of tax incentives to encourage Canadians to give charitably.

When done properly, charitable giving benefits both society and you, the donor, and you can help the causes you care about. If you are considering making large gifts, be sure to include these gifts in your tax, financial and estate planning. Prior to making any large gift, it is strongly recommended that you contact your professional tax and legal advisors to discuss the various charitable giving options outlined in this brochure to ensure all of your concerns are met.

Charitable giving in this guide is defined as giving a gift to a charitable organization in a way that maximizes tax and estate planning benefits to the donor. The gift may be a one-time donation, a series of payments over a set period or ongoing support. It may be a gift the charity can use now or a deferred gift, available to the charity in the future, perhaps even after your death. This guide discusses some of the options to consider when making a large gift to a charity.

### WHAT IS A GIFT?

The Canada Revenue Agency (CRA) considers a gift to be a voluntary transfer of money or property for which the donor expects and receives nothing of value in return. Gifts can take a variety of forms including:

- › Cash
- › Gifts in kind — Examples include securities such as stocks, bonds and mutual funds or real estate.
- › A right to a future payment — Life insurance proceeds are an example.
- › Certified cultural property — This is a special category for significant works of art and artifacts. Canadian museums have obtained many exhibits this way. The Canadian Cultural Property Export Review Board must certify the items.
- › Ecological gifts — This is a gift to the Crown of land that is considered by the Ministry of the Environment to be ecologically sensitive and important to Canada's environmental heritage.

But certain donations are not considered gifts for tax purposes:

- › *Time or services* — For example, lawyers who do free legal work for a charity cannot claim the value of their time as a donation. They could, however, bill and collect from the charity and use the money to make an eligible cash contribution.
- › *Property of little value* — You are not entitled to a tax receipt for used clothing or worn-out furnishings.

› *Gifts for which personal benefit is received* — Suppose you buy a \$500 ticket to a fundraising dinner and the meal and entertainment are valued at \$100; your gift will amount to the \$400 difference only.

### WHAT IS A CHARITY?

The CRA permits about 80,000 charities to issue tax receipts for donations including:

- › Canadian registered charities that perform charitable activities
- › Public and private foundations that fund the work of others and other charitable organizations
- › Registered amateur athletic associations

These groups must meet certain criteria. Generally, 80% of all donations received each year must be used up by the end of the following year. So without appropriate planning, a generous donor could create problems. Exceptions are made for bequests, or if the donor requires the charity to hold the gift for at least 10 years.

Qualified organizations also include:

- › Governments and government agencies in Canada
- › The United Nations and its agencies
- › Foreign charities that received gifts from the Canadian government within the past tax year
- › Foreign universities — There is a long list of prescribed schools that normally have Canadians as students.
- › U.S. charities — The CRA also grants tax credits on donations to U.S. charitable organizations. But those credits can only be applied for U.S.-source income. There are also special rules for Canadians who live near the border and work in the United States.

There are also charities and other deserving causes that are not registered with the CRA. They collect money from the public but cannot issue receipts that qualify for the charitable tax credit.

### PERSONAL CONSIDERATIONS

Most charitable gift planning arrangements that qualify for the tax credit are one-way transactions. You cannot take back the donation. Before making a large commitment, make sure you will have enough money to meet your future needs and those of your family. Also consider why you are giving to charity. In effect, you're making an investment in society. As with any investment, your primary consideration should be the personal rewards involved, not just the desire to save tax. Of course, the tax savings generated by the donations could result in additional amounts being available for donation.



## 3 > TAX BENEFITS

You may be able to claim a tax credit for charitable donations. With minimal planning, tax savings can fund close to 50% of your gift in some provinces.

There is a federal tax credit on the first \$200 donated each year at a rate that is equal to the lowest marginal tax rate. Amounts over this threshold earn the maximum 29% federal tax credit. Your tax savings may then increase when you apply the provincial tax credit. On donations over \$200, the provincial tax credit is usually equal to the highest marginal tax rate; however, this amount varies by province. In Alberta for example, the provincial tax credit on donations over \$200 exceeds the highest marginal tax rate of 39% and is at a rate of 50% for donations made after January 1, 2007.

In Quebec, the provincial donation tax credit calculation is done separately on the Quebec provincial tax return. Elsewhere, the provincial donation tax credit is done on the federal tax return using the Tax on Income (TONI) provincial form. As mentioned earlier, the provincial TONI system gives a lower provincial tax credit on the first \$200 of donations and a higher tax credit on the excess.

**Figure 1** shows the tax savings for donations in excess of \$200:

FIGURE 1	
Tax Calculation	
<b>Total donations</b>	<b>\$1,000</b>
Federal credit at 29%	\$290
Provincial credit at 17%*	\$170
<b>Total tax savings</b>	<b>\$460</b>
<b>Total tax savings as % of gift</b>	<b>46%</b>

\* Provincial tax of 17% represents an average of the highest marginal provincial tax rates under the Tax On Income System.

To maximize the donation tax credit, the CRA currently lets spouses pool donation receipts and report them on one spouse's tax return. It is generally preferable for the higher income spouse to claim the credit.

If you make small annual donations, you may also be able to carry forward the donations and not claim them for up to six years (i.e. the current year and the following five years) and then claim the combined donations to utilize the higher credit for gifts above \$200.

The charitable tax credit is non-refundable, which means, if the credit is more than all the tax payable for the year, you will not be paid the difference. You can, however, spread your claim over the next five years.

Donations by corporations generate a tax deduction, not a tax credit. The value of a tax deduction varies with the donor corporation's effective tax rate. For example, at a tax rate of 50% for passive investment income, a \$1,000 donation could save you \$500 in corporate income tax. In some situations owners of incorporated businesses may be better off contributing through their companies. If you are in this situation, you should consult with a qualified tax advisor. Donating capital property through a corporation is discussed in more detail on page 7.

### IS THERE A LIMIT?

Yes. Generally, each year you cannot claim credit for donations exceeding 75% of the net income reported on your federal tax return. For donations of ecologically sensitive land and Canadian cultural property, the limitation is 100% of the taxpayer's net income for the year.

**WHAT IF I EXCEED THE LIMIT?**

You do not lose your tax break if you exceed the 75% limit. The excess may be carried forward for up to five years. That means you could make a large donation now and claim the full credit as time goes by, still subject to the 75% limit in the year claimed.

Sometimes, it is best to spread out contributions while you are living. Postponing gifts until your death could deprive your estate of some of the tax benefits. However, exceeding the 75% limit by a significant amount may not be advantageous since the carryforward expires upon death.

On your final tax return that is due after your death, or on your return for the year prior to death, your executors (estate trustee with a Will in Ontario or liquidator in Quebec) may be able to claim a credit for contributions made by you in the year of your death or by the terms of your Will upon your death. The 75% limitation does not apply to gifts made in the year of death. The income limitation is increased to 100% of the donor's income for the year in which the donor dies and for the preceding year.

If your Will establishes a trust, there is no limit to the amount of income or capital gains that may be earned free of tax if paid to a charity. In other words, if a trustee donates the income earned in the trust to a charity, the charitable tax credit will likely offset any taxes that would be payable on the income earned within the trust. You might also give your trustee discretion to make donations, and then choose whether to claim a charitable credit or deduct the donation as an allocation of trust income.

In their May 2, 2006, budget, the federal government announced they would eliminate taxation of the capital gains triggered upon the disposition of publicly traded securities that are donated to charitable organizations and public foundations. (Publicly traded securities are securities traded on a prescribed stock exchange such as stocks, rights, mutual funds, interests in related segregated funds or bonds.) Then in the March 19, 2007, federal budget, the government announced they would eliminate taxable capital gains on publicly listed securities that are donated to a private foundation. These amendments do not eliminate allowable capital losses triggered from the donations of securities with an accrued capital loss.

The February 26, 2008 federal budget eliminates the taxable capital gain triggered on the conversion of certain unlisted exchangeable shares or partnership interests into publicly traded securities that are gifted to a registered charity on or after February 26, 2008, and within 30 days of the exchange. An additional condition requires that at the time the unlisted security is issued, it is exchangeable into the publicly traded security, and the publicly traded security is the only consideration received on the exchange.

The donation of exchangeable securities that are partnership interests may trigger a taxable capital gain that may not be eliminated where the adjusted cost base (ACB) of the partnership interest has been reduced by operating losses.

A charitable tax credit is normally based on the donated property's fair market value (FMV). For donations of property, you are encouraged to get one or more independent professional appraisals for more valuable tangible items as the CRA looks closely at the valuations of gifted property.

If you donate capital property such as investment real estate, you are considered to have disposed of the property, and therefore, you could face tax on any capital gain and recaptured capital cost allowance. Generally, the donation tax credit will more than offset this tax. However, if this is not the case, you are allowed to select any amount between the FMV and your adjusted cost base (ACB) of the donated property to be used as your proceeds of disposition and the amount of your gift.



When you donate capital property, the 75% net income limit is increased by 25% of the taxable capital gain and 25% of any capital cost allowance recapture included in your income as a result of the gift. This means that it may be possible to get a charitable tax credit in excess of the regular 75% net income limit when appreciated property is donated to a charity.

If you donate a large gift with substantial gains, you might have to pay Alternative Minimum Tax (AMT). Check with your tax advisor if your donation of property will trigger AMT based on your specific circumstances.

Donating property may produce greater tax benefits than donating cash. If you would like to maintain your position in a particular security and have the cash to make the donation, consider making a donation in kind using your security and the cash to replenish your position. This will allow you to benefit from the charitable donation tax credit plus get an increase in your ACB without paying tax on the capital gain triggered when making the donation.

**Figure 2** compares donating publicly traded shares directly to selling the shares and donating the cash proceeds. Be sure to consult your tax advisor and charity before making a gift of property.

FIGURE 2		
Donating Cash vs. Donating Shares Marginal tax rate: 46%		
	Sell shares and donate cash	Donate shares directly
FMV of donation (a)	\$2,000	\$2,000
Adjusted cost base	\$1,000	\$1,000
Capital gain	\$1,000	\$1,000
Taxable capital gain	\$500	\$0
Tax on capital gain (b)	\$230	\$0
Donation tax credit (c)	\$920	\$920
<b>Total cost of donation = (a) + (b) – (c)</b>	<b>\$1,310</b>	<b>\$1,080</b>
Net tax savings from donating shares: \$230 (\$1,310 – \$1,080), assuming that donations of \$200 have already been made.		

## CHARITABLE DONATIONS OF SHARES ACQUIRED WITH EMPLOYEE STOCK OPTIONS

As mentioned earlier, when an individual contributes a listed security to a registered charity, the regular capital gains inclusion rate is eliminated. Similarly, if an individual exercises employee stock options in order to donate these shares to a charity, the employment benefit inclusion will be eliminated.

To be eligible for this tax treatment, the shares acquired after exercise must be donated in the year and within 30 days of the employee stock option being exercised. Furthermore, the shares donated must be ordinary common shares and the strike price (i.e. employee's cost) to acquire the share must be no less than the FMV of the share at the time the option is granted.

Donations of employee stock option shares to a private foundation also benefit from this preferential tax treatment.

## OTHER TYPES OF DONATIONS

You may consider making a gift of a Personal Use Property (PUP). PUP is any property that is owned by an individual and used primarily for personal enjoyment. Examples of PUP include items such as jewelry, works of art, furniture and clothing.

The disposition of these items can generate a capital gain. In an attempt to eliminate the nuisance factor involved in keeping track of these small transactions for tax purposes, the government established a \$1,000 floor rule (adjusted cost base and proceeds). Basically, when calculating the capital gain on the disposition of any PUP item, the adjusted cost base is either the cost of the item or \$1,000, whichever is greater. Similarly, the proceeds of the disposition are also the greater of the actual proceeds or \$1,000. In this way, any PUP item with a cost and a value of less than \$1,000 will not trigger a taxable capital gain upon disposition.



Certain charitable donation arrangements have been designed to exploit these rules and enable individuals to receive an after-tax profit from such gifts. The 2000 federal budget proposed amendments to these rules so that the \$1,000 deemed cost base and proceeds would not apply if property was acquired after February 27, 2000, as part of an arrangement in which the property was donated as a charitable gift. Proposed changes to the Income Tax Act particularly target individuals who make donations of large quantities of potentially overvalued goods, such as pieces of art, each appraised at \$1,000 or less. The goal is to make these charitable donation arrangements far less advantageous to the donor.

In addition, CRA provides several warnings regarding the risks associated with other donation arrangements such as gifting trust arrangements, leveraged cash donations and buy-low-donate-high arrangements. CRA will apply proposed amendments to limit donations made under these arrangements to a maximum of the donor's out-of-pocket costs. In some cases, CRA may conclude that effectively no gift was made, and as a result, the donation tax credit will be zero. You should consult with a qualified tax advisor before considering such arrangements.

#### **CORPORATIONS DONATING PROPERTY INSTEAD OF CASH**

As mentioned earlier, corporations making a donation may qualify for a tax deduction that will reduce their taxable income. In addition, if the corporation donates publicly traded securities, such as shares, debt obligations, rights listed on prescribed exchanges, shares and units of mutual funds, interests in related segregated funds, trusts and certain other debt obligations, the taxable capital gains triggered when making the donation will likely be eliminated.

An additional benefit to a corporation is its ability to add the non-taxable portion of the capital gain to the Capital Dividend Account (CDA), which is 100% of the capital gain in the case of a donation. The balance of the CDA may be paid out to the shareholder as a tax-free dividend. As a result, a corporation making a donation in kind benefits from a deduction equal to the FMV of the asset, the elimination of the taxable capital gain on the gift and an increase in the balance of the CDA, allowing for a possible tax-free dividend to the shareholder.

If you are interested in making a donation through your corporation, you should consult with a qualified tax advisor to ensure the above rule is still in effect.



## 5 › CHARITABLE GIVING OPTIONS

Charitable giving can — and should — be tailored to your unique set of circumstances. Consider your age and the amount of money you will need to continue your lifestyle and meet family obligations. As you might expect, retirees can often afford to be more generous than young people in the early stages of establishing careers and families. Consider your tax situation and, of course, the personal value of supporting a cause you care about.

This section covers various forms of charitable giving. Except where noted, the tax rules are the same as the tax rules explained earlier in this publication. Let's review the key ones:

- › Each year you can claim a non-refundable charitable tax credit for charitable donations and gifts to the Crown up to, but not exceeding, 75% of your net income. There is no limit on donations of Canadian cultural property and ecologically sensitive land.
- › No capital gains will be recognized for donations of publicly traded securities to qualifying charities.
- › No capital gains will be recognized for donations of certified cultural property to designated institutions.
- › No capital gains will be recognized for donations of ecologically sensitive land.
- › If your total charitable donations and gifts exceed the 75% limit, you can claim the excess over the next five years. Each year, the carryforward claim and any new gifts are subject to the 75% limit. Although there is no carryforward for donations made in the year of death, up to 100% of net income can be claimed and any excess can be carried back one year.

Now, let's consider some of the available options.

**Figure 3** (see page 11) shows some of the financial and estate planning issues related to the various options for charitable giving. Each option is discussed in more detail on pages 8 to 15.

### SIMPLE CASH GIFTS

The simple cash gift is the most widespread form of charitable giving. It might be cash given to a volunteer fundraiser who comes to your door, a cheque sent in response to a mail or telephone campaign or a payment automatically deducted from your paycheque.

This form of giving enables those of even the most modest means to provide affordable support to their favourite causes. It also gives charities the flexibility of mounting both scheduled and special appeals.

The simple cash gift is the easiest donation to make. First, ensure the recipient organization has a CRA registration number. It's required on each receipt. To reduce administrative costs, most charities automatically issue receipts only for donations of at least \$10 or \$15. Keep that receipt and attach it to your tax return in order to claim the charitable tax credit.

To maximize the tax credit, based on the CRA's administrative practice, spouses may be able to pool donation receipts and report them on one tax return. If you make small annual donations, you may be able to carry forward donations made and not claim them for up to six years, including the current year, and make one combined claim to get a higher credit for gifts above \$200.

### GIFTS IN KIND

A gift in kind is a donation of tangible property instead of cash. This was discussed earlier in detail in the "Donating property instead of cash" section. Note that property of little value such as used clothing does not qualify for a tax credit. The donation of personal services also does not qualify for a tax credit. Special rules apply when artists and writers donate their works. There are also special rules for the donation of publicly traded securities, certified cultural property and ecologically sensitive land.

Remember, to be considered a gift, a transfer must be made without receiving anything of value in return. Suppose your business gives merchandise or supplies to a charity that then permits you to post advertising signs.

The CRA may not consider the entire contribution a gift eligible for a tax benefit because the business received something of value in return, such as a right, privilege, material benefit or advantage.

### DONATING FLOW THROUGH LIMITED PARTNERSHIP UNITS/Common Shares

The tax benefit of donating securities is enhanced when a mutual fund that was originally a flow through limited partnership unit is donated to a charity. When you invest in a flow through limited partnership unit, you are generally able to deduct expenses allocated by the flow through partnership up to a maximum of the amount paid for the flow through units. For example, if you purchased flow through limited partnership units for \$10,000, then you could receive deductions equal to \$10,000 (possibly over two to three years). At an assumed marginal tax rate of 46%, this would generate a tax savings of \$4,600. As a result, the ACB would be reduced by the amount of the deduction, which in our example results in a zero ACB. After 18 – 24 months, many of the flow through limited partnership units would roll over on a tax-deferred basis to a mutual fund, which could then be sold. The mutual fund would have a zero ACB (rolled over from the flow through units). Upon disposition of the mutual fund, you would trigger a capital gain equal to its FMV. If you donated the mutual fund to a charity, you would benefit from the eliminated taxable capital gain and the charitable donation credit.

Here is an example that illustrates the cost savings of donating the flow through mutual fund units instead of selling the mutual fund units and donating the cash proceeds. This example assumes that the FMV of the units remains the same after the holding period has passed.

	Sell flow through/ mutual fund and donate cash	Donate flow through/mutual fund directly
Flow through acquisition (a)	\$50,000	\$50,000
Deductions claimed	\$(50,000)	\$(50,000)
Tax savings @ 46% (b)	\$23,000	\$23,000
FMV of donation	\$50,000	\$50,000
Adjusted cost base	\$0	\$0
Capital gain	\$50,000	\$50,000
Taxable capital gain	\$25,000	\$0
Tax on taxable capital gain @46% (c)	\$11,500	\$0
Tax savings from donation tax credit (d)	\$23,000	\$23,000
Total cost of donation = (a) – (b) + (c) – (d)	\$15,500	\$4,000

It is important to note that flow through limited partnership units do not trade initially on a prescribed stock exchange and hence will not qualify for the eliminated taxable capital gain if they are donated. Typically to receive the favourable tax treatment, you have to wait until the flow through limited partnership units are converted into a mutual fund and donated in kind.

It is also possible to benefit from the deduction of flow through expenses by buying flow through common shares. If the shareholder buys newly issued shares, these special common shares will result in an immediate reduction of the ACB to zero and an entitlement to future deductions for a number of years. If then these flow through common shares are donated, their FMV will result in a donation tax credit and the taxable portion of the capital gain will be eliminated. However, given the unique characteristics of these shares, the original shareholder will be able to continue to deduct the flow through expenses for a number of years. These benefits are only available when the common shares are newly issued by qualifying corporations. The price paid for the newly issued shares is higher than their FMV immediately afterwards since there is a premium paid for the flow through deduction.

Therefore, the value of the donation tax credit on the common shares donated is lower than the price paid for them.

The measures in the February 26, 2008 federal budget related to the donation of exchangeable securities that are partnership interests (discussed on page 5) may affect the planning described above. It appears that these measures that may trigger a capital gain where the ACB has been reduced by operating losses may not apply to flow through shares where renounced deductions are claimed and used to reduce the ACB. However, it is not certain whether the same applies to flow through limited partnership units, and thus it is possible that the taxable capital gain that is triggered may not be eliminated if these measures will apply to flow through limited partnership units.

If you are considering donating flow through shares/units, please consult with your tax advisor and the charity you intend to make the gift to. If you are considering purchasing a flow through share/unit through a promoter where you are ultimately required to donate the flow through share/unit, please consult with your tax advisor and the charity as to whether this would be considered a gifting arrangement.

### BEQUESTS UNDER A WILL

Given that “you can’t take it with you,” a bequest made in your Will can be quite generous. That, in turn, may produce a valuable tax credit on your final tax return. That credit can save your estate a considerable amount of tax if you have RSPs or large holdings of capital property that will be deemed to have been disposed of at your death.

As already indicated, in the year of death and the previous year, you may be able to claim a credit for donations up to 100% of your net income.

Another advantage of making a bequest in your Will is that you can revoke the gift simply by changing your Will. But there are some cautions:

- › Your estate may not get full value for the tax credit. Your net income in the year of death and the preceding year may not be high enough to allow a credit to be claimed for all donations, especially if you die early in the year.
- › Your charitable intentions could be thwarted by your province’s family and succession laws that provide certain dependants (e.g. spouse, children) with the right to financial support. Your Will cannot take away this right. Thus it may prove difficult to “give it all away to charity” if you have dependants that might challenge your Will in court. Therefore, get professional advice when drafting or revising your Will.
- › A charitable bequest does not avoid probate taxes. In most provinces, probate taxes will be due on your estate’s probatable value before distributions are made.

The CRA has stated that, if an investor decides to bequeath a portion of their estate to a charitable organization, the amount of the gift or percentage should be clearly stated in the Will in order to claim the donation credit. In some circumstances, the residue of the estate might be accepted as a specified amount if a charity receives a specified portion, say 50%, and another charity receives the other 50%. By bequeathing a percentage of your estate instead of an absolute dollar amount, the amount of your gift is automatically kept in line with the amount of your wealth.

Most individuals will also identify the specific charity or charities in their Will. However, the CRA has stated that, if a specific charity is not named in the Will and the executor has discretion in which charity to donate to, then it may still be possible for the donation credit to be claimed. In this case, the terms of the Will should provide for a donation of a specific property, a specific amount or a percentage from the estate.

It should be clear from the terms of the Will that the executor is required to make the donation after the payment of the estate’s debts and that the donation shall be made to a qualified charitable organization.

FIGURE 3

## Personal and Estate Planning Considerations in Charitable Giving

Donation option	Minimum amount required	Can you revoke the gift?	Do you get income or use during lifetime?	Subject to probate?	Charitable tax credit available?	When can charity use gift?
Outright gift now of cash or property	None	No	No	No	Now	Immediately
Bequest under Will	None	Yes, by changing your Will prior to your death	Yes	Yes*	After death in your final tax return or return for the preceding year	After death
RSP/RIF	None	Yes, by changing your beneficiary election prior to your death	Yes	No	After death in your final tax return or return for the preceding year	After death
Charity is owner and beneficiary of insurance policy	Check with charity	No, if you don't pay your premiums, charity can pay them, reduce death benefits or cash in policy	No	No	Now and as you pay future premiums	Generally after death
Charity is the only beneficiary of insurance policy	Check with charity	Yes, as owner of policy you can change the beneficiary of the policy	Yes, if you can cash in the policy, but then there's nothing left for the charity	No	After death in your final tax return or return for the preceding year	After death
Charitable gift annuity	Depends on issuer	No	Periodic payout during lifetime	No	Now, based on the present value cost of the annuity	Immediately
Charitable remainder trust	\$200,000 – enough to justify required legal/trust fees	No	You can use property and receive all income generated	Only if gift made under your Will*	Now, based on gift value adjusted for life expectancy of life tenant	After death of life tenant (income beneficiary)
Endowment fund	Depends on purpose	No	No	Only if gift made under your Will*	Now, or on death for available gift under Will	Income immediately, or after death if gift made under your Will
Private charitable foundation	Several hundred thousand dollars as creation and operation require professional services	You can lend funds to the foundation to be repaid if needed. Loan can be forgiven at death or if money not needed	No, although you can control the investments and disbursements, subject to restrictions	Only if gift made under your Will*	For year of donation to foundation, but no credit for loan	You control the grants subject to minimum yearly quotas set by tax rules
Charitable Gift Fund	Varies generally \$25,000	No	No	No	Now	Grants subject to minimum quotas set by the tax rules

\*Notarial Wills in Quebec do not have to be probated.



When gifting property such as a cottage, make sure you update your Will if you sell the property while still alive. Make sure the recipient charities are identified by their proper legal names and, if leaving a large gift for a specific purpose, contact the charity in advance to ensure they can actually accept the gift for that specific purpose.

If there is any chance your survivors may question your decision, attach an explanatory side letter to the Will. Although not legally binding on your executor (estate trustee with a Will in Ontario or liquidator in Quebec), it will help clarify your wishes to your beneficiaries. Discuss your Will with your executors and have it professionally reviewed at least every three to five years or when there is a change in your family situation. You should discuss bequests you wish to make through your Will with your professional legal advisor.

### **DONATION OF AN RSP/RIF**

Changes in the 2000 federal budget allow a plan holder to name a charity as a beneficiary of an RSP/RIF and to qualify the bequest as a charitable donation. In addition, when a charity is named beneficiary on the RSP/RIF, the assets are paid directly to the charity upon the death of the plan holder, and probate taxes can be avoided.

However, to qualify for the donation tax credit, the transfer of the RSP/RIF should occur no later than 36 months after the individual's death. For tax reporting purposes, the value of the registered plan must be included in the income of the plan holder at time of death, and the donation tax credit will be used to offset the taxes payable on that amount.

The donation of publicly traded securities inside an RSP/RIF does not qualify for the eliminated taxable capital gain rule as these assets are inside the registered plan, and when the assets are taken out to make a donation, the FMV of the asset is considered an income inclusion, not a capital gain.

### **PRESENT GIFT OF A LIFE INSURANCE POLICY**

One alternative to a bequest in your Will is the donation now of an insurance policy on your life. It may be an existing policy you no longer need or one bought specifically for donation. Typically, it will be a whole life policy that has a cash surrender value.

Special rules govern such gifts. A life-licensed representative can advise you on how these rules may apply to your policy.

To donate the policy, you name the charity as beneficiary and owner. Unlike a bequest, that transfer of ownership cannot be changed.

If an existing policy is donated, you will receive a contribution receipt for the cash surrender value and any accumulated dividends or interest, less any outstanding policy loans. Be aware that the transfer of an existing policy is a taxable disposition. You will be fully taxed on the difference between the cash surrender value and the adjusted cost base. Your agent can tell you the cost base amount. For most people, the tax credit from the donation will offset the tax due.

You will also get contribution receipts in future years for any premiums you pay to keep the policy going.

With a cash bequest in your Will, your estate gets a tax credit based on the full amount given. By donating an insurance policy now, you may get tax credits for use now, but they are based only on the policy's value — not the death benefit ultimately paid out.

Aside from generating tax credits now, here are some other advantages of giving your charity a present gift of a life insurance policy:

- › Depending on your age and health, a reasonably small outlay could fund a very large payment at death. Of course, your age and/or health could also make the insurance quite expensive.



- › If the charity needs money before your death, it can use the insurance policy to obtain a loan or even cash it in.
- › The life insurance proceeds are paid on death directly to the charity. Since the policy is owned by the charity, and the charity is the beneficiary, the proceeds pass outside of your estate. Therefore probate taxes will not apply to the gift. That will keep the gift private if you desire, save your estate probate taxes and speed up the payment to the charity.
- › The charity is guaranteed its money no matter what happens to your estate. To ensure that guarantee is honoured, make sure the death benefit is fully covered by the Canadian Life and Health Insurance Compensation Corporation, an industry-run fund that pays claims (up to certain limits) if an insurer fails. If you become unable to pay the policy's premiums, the charity can reduce the death benefit so insurance remains in force but no more payments are due. It could also continue the payments itself to maintain the full coverage, or cancel the policy and collect the cash surrender value.

### DEFERRED GIFT OF A LIFE INSURANCE POLICY

You could name a charity as your life insurance beneficiary while retaining ownership of the policy. This arrangement is very similar to the bequest described earlier in that the death benefit is paid outside your estate and is not subject to probate taxes.

With a present gift of a policy, you cannot change beneficiaries. With a deferred gift, you can change beneficiary whenever you want. Furthermore, the 2000 federal budget introduced and enacted legislation to allow the donation credit on a deceased's final income tax return of donors who designated charities as beneficiaries of their life insurance policies. The amount of the donation on the deceased's final income tax return equals the amount of the death benefit of the policy paid by the insurance company.

### CHARITABLE GIFT ANNUITIES

A charitable gift annuity enables you to give a lump sum to a charity, other than a charitable foundation, and receive periodic income in return, usually monthly. It's designed for retirees; the older you are when the agreement is made, the higher your income. This arrangement is most beneficial for those aged 70 or over.

Charitable gift annuities are issued directly by some charitable organizations. Other charities make arrangements to buy the annuities from insurance companies.

Charitable gift annuities are irrevocable; you give up control of your money. With a directly issued single-life annuity, the charity invests the initial amount and provides you with payments for life.

The CRA has proposed to change their administrative practice on the tax treatment of charitable gift annuities issued after December 20, 2002. That is, they propose that a portion of the annual annuity payments received will now be taxable based on the expected lifetime annuity payments less the present value cost of this life annuity. Furthermore, the value of the gift now for tax purposes will be equal to the present value cost of the annuity. For annuities issued prior to December 21, 2002, if the annuity payments that the annuitant expects to receive are less than the amount paid, then the difference is the value of the gift for tax purposes, and the annuity payments received will continue to be non-taxable.

Couples can buy joint-and-last-survivor annuities that make payments until both die. Purchasers can also arrange a certain number of guaranteed payments to their beneficiaries. If the purchaser is willing to accept a lower annuity payment, a charitable donation receipt may also be issued at the time of purchase. As with any other contribution, the tax credit may be used over the next five years.

A life-licensed representative can discuss the merits of charitable gift annuities that are available in some provinces.

## CHARITABLE REMAINDER TRUSTS

Until recently, most people planning to leave large gifts to charity did so using a bequest under their Will. Unfortunately this method provides no income tax relief to the individual while alive, but rather, provides the tax benefits to their estate. One alternative to consider is the irrevocable inter vivos charitable remainder trust.

You establish this living trust by contributing cash or other property. Throughout your lifetime, you receive income from the trust, but upon your death, the “remainder” will pass directly to the charity you name as the beneficiary. This approach will provide immediate tax relief to you, instead of your future estate. The trust can be set up so that the property passes to the charity only when both spouses die. It is also possible to appoint a corporate trustee, such as Royal Trust, to ensure the trust funds are professionally managed according to the terms of the trust.

To establish a charitable remainder trust, have a lawyer experienced in estates and trusts draft a trust deed naming the charity as the trust’s capital beneficiary. That designation cannot be revoked. It is also important to discuss your plans with the charity to ensure that they are willing to accept this type of gift.

You start the trust by contributing cash or other property. Normally the trust will be worth at least \$200,000 initially or after a few contributions. Otherwise, it may not be worth the professional fees for the setup and annual administration associated with the trust.

The legal fees to set up the trust will depend largely on its complexity. Though common in the United States, charitable remainder trusts are less common in Canada. Your charity may be able to refer you to a knowledgeable lawyer.

Capital gains tax will apply if you contribute capital property with accumulated capital gains, but your tax credit may offset the capital gains tax bite. Note that the elimination of the taxable capital gain (as discussed on page 5) does not apply to gifts of capital property to charitable remainder trusts. The donation tax credit is based on the amount involved, the prevailing interest rate and your life expectancy. The older you are when making the contribution, the more valuable the tax relief will be. Tax relief can run as high as 70% of the transfer’s value for those in their eighties.

Each year you will receive and pay tax on any income realized by the trust if it holds investment assets. The capital stays intact and goes to the charity when you die without going through probate. But you cannot withdraw any capital in the meantime.

Make sure you consider future financial requirements for you and your family before establishing the trust. It is very important that you seek professional tax advice before proceeding with this type of arrangement.

One of the key benefits of using Royal Trust as your corporate trustee is the security of knowing you are engaging experienced professionals to protect the interests and requirements of your trust. Royal Trust can administer the trust and invest in assets according to the directions set out in the trust agreement. Speak to your advisor for more information on how Royal Trust can help.

## ENDOWMENT FUNDS

Many institutions operate endowment funds that provide scholarships, fellowships, bursaries and research grants. In some cases, wealthy individuals or families provide very large donations to fund, for example, a professorship. Endowment funds invest your gift and use only the income stream to fund ongoing projects.

### PRIVATE CHARITABLE FOUNDATIONS

A private charitable foundation is a non-profit organization usually funded by a single source or a small group. The foundation awards grants to support specific work by others or makes contributions to other registered charities.

Private foundations provide the greatest flexibility in charitable giving. Many of today's foundations were created because wealthy donors wanted to dispose of property with substantial capital gains. The ability to value the gift between cost and market value enabled them to plan their tax credits so that they minimized or avoided tax while creating a lasting legacy.

Unlike other forms of giving, a private foundation also provides flexibility in controlling the use of the money. The donation is not tied to a specific charity. Instead, the foundation's directors or trustees can award grants case by case, usually within guidelines set by the founders. There are now several large family foundations that no longer have ties to the original donor family.

Normally, an active charity cannot receive more than 50% of its capital from one person or group of related people. And at least half its directors must deal with each other at arm's length. Those requirements do not apply to private foundations, but private foundations face tighter rules related to their activities and investments.

The creation and operation of a private foundation is a highly specialized legal and estate planning area. It should be considered only by individuals willing to commit several hundred thousand dollars to charitable activities.

For those with less to give, there are also more than 50 non-political community foundations in Canada. They use money from many donors to benefit the particular city or region. Depending on the value, the gift may go into a general fund or be administered separately as directed by the donor.

There are special purpose foundations too. They invest money collected from the public and use the income to fund grants.

### CHARITABLE GIFT FUND

An alternative to a private foundation is a charitable gift fund. A charitable gift fund allows you to create an enduring charitable legacy, but without the time and expense required for a private foundation. With a charitable gift fund, you can donate cash or other assets to a fund administered by a registered public foundation. You receive a donation receipt equal to the value of the assets donated, and you can recommend how contributions are managed and which charities receive grants, subject to the foundation's final approval.

A charitable gift fund may be the right choice for you if you want to establish an enduring legacy and you prefer convenience over control. The minimum initial investment varies depending on the fund but may start as low as \$25,000.

RBC Dominion Securities Charitable Gift Program is a convenient way to make contributions to a charitable gift fund that is managed by one of the leading charitable foundations in the country.

The RBC Dominion Securities Charitable Gift Program is specifically designed for individuals and families wishing to support charitable causes in a meaningful way, without the time and cost associated with establishing a private foundation. It is an easy, convenient way to support charitable causes you care about, today and in the future, while receiving important tax benefits. Through this program, you can make initial and ongoing contributions to a charitable gift fund administered by the Charitable Gift Funds Canada Foundation (CGFCF), one of the leading charitable foundations in the country. Ask your advisor for our brochure on the charitable gift program and how this form of charitable giving may be right for you.

## 6 › CONCLUSION

### CONCLUSION

Your favourite charities may have a Gift Planning Officer who can help you select the most effective ways to make a donation. This is especially important if you are considering making a planned gift other than cash. Your advisor can also assist you in this regard. Not all charities want to or can administer some of the charitable giving techniques discussed in this publication. Therefore, talk to someone at your favourite charity before taking any action. Financial planners, estate planners, accountants and lawyers can also offer professional advice if required.



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