

CHARITABLE GIVING

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A pair of hands, one from the left and one from the right, are gently holding a single, ripe apple. The apple is red with yellow streaks and has a short stem. The background is a soft, out-of-focus light brown color. The text of the table of contents is overlaid on the left side of the image.

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INTRODUCTION

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. In recent years, 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 needs are met.



CHARITABLE GIVING

Charitable giving in this guide is defined as giving a gift to a charitable organization in a way that achieves both personal donation goals and at the same time provides 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 gift to a charity.

WHAT IS A GIFT?

In most cases, the Canada Revenue Agency (CRA) considers a gift to be a voluntary transfer of money or property for which the donor expects and receives no consideration.

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.
- Gifts of ecologically sensitive land — This is a gift of land (including a covenant, an easement or, in the case of land in Quebec, a real servitude) you make to Canada, or one of its provinces, territories, or municipalities or a registered charity approved by the Ministry of the Environment. The land must be considered important to the preservation of Canada's environmental heritage.

It is possible that a transfer of property from which you received an advantage or as a result of which you received an advantage will still be considered a gift for the purposes of the Income Tax Act as long as the CRA is satisfied that the transfer of property was made with the intention to make a gift. An advantage is the value you receive in exchange for making a gift. For example, if you donate \$1,000 to a charity and receive two tickets to a sporting event worth \$50 each, the value of the advantage is \$100 and the eligible amount of your gift will be \$900.

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.

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
- Governments and government agencies in Canada
- Registered national arts service organizations
- The United Nations and its agencies
- Foreign charities that received gifts from the Canadian government and are registered as a qualified donee under the Income Tax Act
- Foreign universities — There is a 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 against U.S.-source income. There are also special rules for Canadians who live near the border and work in the United States.

These groups must meet certain criteria. The 2010 federal budget eliminated the rule requiring charities to spend at least 80% of their previous year's tax-receipted donations. However, there is a minimum disbursement quota that a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees. If the average value of a registered charity's property not used directly in charitable activities, or administration during the 24 months before the beginning of the fiscal period exceeds \$100,000, the charity's disbursement quota is 3.5% of the average value of the property. The threshold for public and private foundations is \$25,000.

PERSONAL CONSIDERATIONS

Most gifts that are made to a qualified charity 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.



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 and territories.

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 attract a federal tax credit at the highest marginal tax rate. 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. For example, the provincial tax credit on donations over \$200 exceeds the current Alberta tax rate of 10% and is at a rate of 21%.

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.

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 (i.e. not claim the donation for the current year and up to the fifth year) 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 of your the taxes 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 9.

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

FIGURE 1	
Tax Calculation	
Total donations	\$1,000
Federal credit at 29%	\$290
Provincial credit at 16%*	\$160
Total tax savings	\$450
Total tax savings as % of gift	45%

* Provincial tax of 16% represents an average of the highest marginal provincial tax rates under the Tax On Income System.

IS THERE A LIMIT?

Yes. Generally, each year you cannot claim a credit for donations exceeding 75% of the net income reported on your federal tax return. For donations of ecologically sensitive land and certified cultural property, the claim is not limited to a percentage of your 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 can make a large donation now and claim the full credit as time goes by, while still being 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 limit 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.



DONATING PROPERTY INSTEAD OF CASH

The government of Canada has eliminated the taxation of capital gains triggered upon the disposition of publicly traded securities donated to a registered charity or other qualified donee. Publicly traded securities include: a share, debt obligation, or right listed on a designated stock exchange, mutual funds, an interest in a related segregated fund trust or a debt obligation. Capital losses triggered from the donations of securities can still be claimed.

In addition to publicly traded securities, capital gains realized on the donation of ecologically sensitive land to a qualified donee other than a private foundation or on the donation of cultural property to a qualified donee are not subject to tax. It is still possible to claim capital losses within specified limits.

In 2008, the Government of Canada eliminated 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 or qualified donee 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.

When the securities are electronically transferred, the value is generally based on the value of the securities on the date the charity receives them. However, it is possible that the donor and charity have a written agreement stating that the securities were effectively transferred prior to the charity having physically received the securities. The Income Tax Act does not provide guidance as to how a gift of securities should be valued. CRA generally accepts the closing bid price or mid-point between high and low trading prices on the day the security is received.

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 ACB and your FMV 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
Total cost of donation = (a) + (b) – (c)	\$1,310	\$1,080
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 or qualified donee, the employment benefit inclusion will be eliminated.

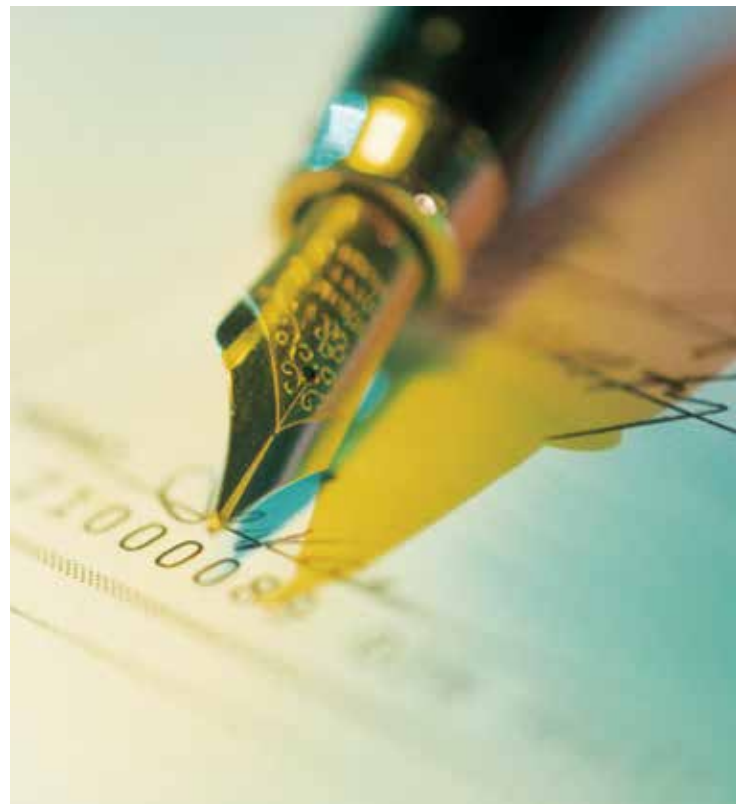
To be eligible for this tax treatment, the shares acquired after exercise must be donated in the year and within 30 days of the employee stock option being exercised. Furthermore, the shares donated must be ordinary common shares and the strike price (i.e. employee’s cost) to acquire the share must be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

OTHER TYPES OF DONATIONS

You may consider making a gift of 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 (applies to ACB and proceeds). Basically, when calculating the capital gain on the disposition of any PUP item, the ACB 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.

It should be noted that if you acquire PUP for donation to a qualified donee in circumstances where it is reasonable to conclude that the acquisition of the property relates to an arrangement, plan, or scheme promoted by another person or partnership, the above rules do not apply. If this situation





applies to you, calculate your capital gain or loss using the actual ACB and proceeds of disposition.

In addition, you should be aware of the risks associated with other donation arrangements such as gifting trust arrangements, leveraged cash donations and buy-low-donate-high arrangements. CRA has audited many of these gifting arrangements. In general, CRA will 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 or rights listed on a designated stock exchange, 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 an in-kind 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.

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 up to, but not exceeding, 75% of your net income. There is no limit on donations of certified 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 14) 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 11 to 19.

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 even those with modest means to provide affordable support to their favourite causes. It also gives charities the flexibility to mount both scheduled and special appeals.

The simple cash gift is the easiest donation to make. The qualified charity's CRA registration number is 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 make one combined claim to get a higher credit for gifts above \$200 in a future year.

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 INVESTMENTS

In the past, the tax benefit of donating securities was enhanced when a flow-through common share or a share of a mutual fund corporation that was originally a flow-through Limited Partnership unit was donated to a charity. Upon disposition of the flow-through common share or the share of a mutual fund corporation, a capital gain would have been triggered equal to its FMV as its ACB is generally \$0 or very close to \$0. If you donated the flow-through common share or the share of a mutual fund corporation to a charity, you would have benefited from the elimination of the entire taxable capital gain and the charitable donation tax credit.

In 2011, the federal government introduced new rules to limit what they saw as excessive tax benefits that resulted from the elimination of the taxable capital gains on the donation of flow-through securities by effectively taxing the portion of any capital gain up to the original cost of the shares. As a result of these new rules, a deemed capital gain may be triggered when flow-through securities are donated. The deemed capital gain is equal to the lesser of the actual capital gain triggered on the donation and the "exemption threshold" amount. In very simplified terms, your exemption threshold is equal to the original cost of all flow-through shares of the same class less any cumulative capital gains realized on the disposition of flow-through shares in the same class. What this all means is that the exemption from capital gains tax will be available only to the extent that the actual capital gain on the donation of flow-through securities is in excess of your original cost amount.

The new rules do not apply to flow-through common shares acquired before March 22, 2011 or mutual fund corporation shares that are received in exchange for flow-through limited partnership units acquired before August 16, 2011 (no contributions to the partnership can be made on or after August 16, 2011).

Here is an example to illustrate the impact of the new rules. You purchased 500 flow-through shares of XYZ Co. for an original cost of \$50,000. You later donate all 500 shares of XYZ Co. when the FMV is \$45,000. Under the old rules, the taxable capital gain would be zero.

Under the new rules, (assuming the 500 shares were purchased on or after March 22, 2011 or the shares were received in exchange for flow-through limited partnership units acquired on or after August 16, 2011), a deemed capital gain of \$45,000 is triggered and is subject to capital gains tax. The exemption threshold is calculated as the original cost of \$50,000. The deemed capital gain is calculated as the lesser of:

- a) the actual capital gain on the donation (\$45,000); and
- b) the exemption threshold (i.e. the original cost amount of \$50,000).

The following table illustrates how the new rules have eliminated the cost savings of donating the flow-through share class of property instead of selling it and donating the cash proceeds. Continuing with the example above, the FMV of the shares decreased by \$5,000 to \$45,000.

	Sell flow-through class of property and donate cash	Donate flow-through class of property directly (old rules)	Donate flow-through class of property directly (new rules)**
Initial flow-through investment (a)	\$50,000	\$50,000	\$50,000
Deductions claimed	\$(50,000)	\$(50,000)	\$(50,000)
Tax savings @ 48%* (b)	\$24,000	\$24,000	\$24,000
FMV of donation	\$45,000	\$45,000	\$45,000
Adjusted cost base	\$0	\$0	\$0
Capital gain/deemed capital gain	\$45,000	\$45,000	\$45,000
Taxable capital gain	\$22,500	\$0	\$22,500
Tax on taxable capital gain @ 48% (c)	\$10,800	\$0	\$10,800
Tax savings from donation tax credit (d)	\$21,600	\$21,600	\$21,600
Total cost of donation = (a) – (b) + (c) – (d)	\$15,200	\$4,400	\$15,200

* The above illustration uses an assumed top marginal tax rate of 48%

** The above assumes that all 500 shares/units were acquired after March 22, 2011/August 16, 2011 and as such, the exemption threshold is \$50,000.



Although the new rules limit the ability to claim an exemption from capital gains tax on the donation of a publicly listed flow-through class of property to the amount of capital gains realized in excess of the original cost, this only eliminates one part of the tax benefit that currently exists. If you acquire flow-through shares or flow-through LP units and subsequently donate them (or substituted property – mutual fund shares) to a registered charity, you can continue to benefit from resource deductions allocated to you and a charitable donation tax credit based on the

FMV of the securities but you will be taxed on any capital gain up to the original cost of the security.

If you are considering donating flow through shares/units, please consult with your tax advisor and the charity to which you intend to make the gift. 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 to which you intend to make the gift as to whether this would be considered a gifting arrangement.

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
RRSP/RRIF	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 difference between the donation amount and the 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, there are 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.

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 RRSPs 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 the family and succession laws of the province or territory in which you reside 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. Seek 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.

For charitable donations made in context of a death that occurs in 2016 and subsequent years, donations made by Will or by designation under a RRSP, RRIF, TFSA or life insurance policy will no longer be deemed to be made by an individual immediately before death. Instead, the donations will be deemed to be made by the estate at the time the donation is made to a qualified donee.

The executor/liquidator of an individual’s estate has the flexibility to allocate the available donation among:

- The taxation year of the estate in which the donation is made;
- An earlier taxation year of the estate; or
- The last two taxation years of the deceased individual.

For donations made relating to deaths prior to 2016, the executor/liquidator should speak with a qualified tax advisor to determine whether the donation tax credit can be claimed on the deceased’s terminal return or in the estate.

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. You may also choose to bequeath a percentage of your estate instead of an absolute dollar amount so that the amount of your gift is automatically kept in line with the amount of your wealth.

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.

Generally, when a gift of securities is made based on instructions in a Will, the gift is deemed to have been made for the purposes of the charitable donation tax credit by the individual immediately before death. The value of the gift is the value immediately before death and not when the property is received by the charity.

DONATION OF AN RRSP/RRIF

You are able to name a charity as a beneficiary of an RRSP/RRIF and to qualify the bequest as a charitable donation. In addition, when a charity is named beneficiary on the RRSP/RRIF, the assets are paid directly to the charity upon the death of the annuitant, and probate taxes can be avoided.

To qualify for the donation tax credit, the transfer of the RRSP/RRIF 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 the 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 RRSP/RRIF 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 is to make a donation 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-insurance licensed representative can advise you on how these rules may apply to your policy.

To donate the policy, 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 ACB of the plan. Your agent can tell you the ACB amount. For most people, the tax credit from the donation will offset the taxes payable.

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 to making a gift of a life insurance policy to your charity during your lifetime:

- Depending on your age and health, a reasonably small outlay could fund a very large payment at death.
- 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 upon 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 Assuris, 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 the 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 can also name a charity as the beneficiary of your life insurance 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 beneficiaries whenever you want. There is legislation in place that allows the donation tax credit to be claimed on the deceased's final income tax return if a charity is designated as the beneficiary of their life insurance policies. The value 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 on a monthly basis. 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 Income Tax Act treatment of charitable annuities determines that the eligible gift amount is equal to the excess of the amount contributed by the donor over the amount that would be required to purchase an annuity from an arm's length third party to fund the guaranteed payments.

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. As with any other contribution, the tax credit may be used over the next five years.

A life-insurance 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. 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 should 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 used less frequently in Canada. Your chosen charity may be able to refer you to an experienced legal advisor.

Capital gains tax will apply if you contribute capital property with accumulated capital gains, but your tax credit may offset the taxes payable. Note that the elimination of the taxable capital gain (as discussed on page 7) 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.

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 during your lifetime.

Make sure you consider future financial requirements for yourself 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 RBC 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. In addition, 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.

The RBC 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 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 Charitable Gift Funds Canada Foundation, one of the leading charitable foundations in the country. Ask your RBC advisor for our brochure on the charitable gift program and how this form of charitable giving may be right for you.

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 RBC 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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