Philanthropy and Giving Back

A guide for philanthropic and charitable giving strategies

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Philanthropy and charitable giving

Philanthropic and charitable giving opportunities come in many forms. Often the motivation to support a charity derives from an emotional connection with a loved one, a personal experience, or simply a desire to make a positive difference.

Your current charitable giving may include cash donations made in response to specific requests, a donation of your time, or ongoing financial support through a pre-authorized donation plan. However, for more strategic gifting, consider incorporating charitable giving into your wealth management plan. A formalized giving strategy can be much more fulfilling, providing an opportunity to leave a legacy while also offering some very attractive tax incentives.

What constitutes a gift?

Generally speaking, for tax purposes, a gift is a voluntary transfer of property with no benefit or consideration for the donor (other than any resulting tax credit realized). Allowable gifts include cash, gifts in kind such as stocks and real estate, and rights to future payments such as life insurance proceeds. There are also special categories for "certified cultural property" and "ecological property." You may make a "present gift" that a charity can use now, or a "deferred gift" that is only available in the future, generally after your death. Gifts must be in the form of money or other property, so the value of donated time or services cannot be claimed as a donation for tax purposes. However, expenses reimbursed to a volunteer by cheque can be signed back to the charity, thereby qualifying as an eligible donation for tax purposes.

Other examples of items that do not qualify as gifts for tax purposes are donations of used clothing or worn-out furnishings, as well as any part of a donation, known as the "amount of an advantage" as defined under the federal Income Tax Act in respect of the gift, for which a personal benefit is received or enjoyed. For instance, the portion of the cost of a ticket to a fundraising dinner that corresponds to the value of the meal and entertainment. In other words, a donation tax receipt is issued for the eligible amount of a gift, which is equal to the total fair market value of the property gifted, less the "advantage" received by the donor in exchange for the donation.

Basic tax rules for charitable donations

While there are rules governing gifts other than cash, you can contribute almost any property of value (for example, securities, RRSPs, RRIFs, life insurance benefits and real estate) to a registered charity.

Although charitable donations are not made solely for the tax benefits, the federal and provincial government provides favourable tax incentives that encourage Canadians to be generous with their charitable giving strategies.

Individuals

Individuals who make charitable donations to a qualifying charity (or "qualified donee") that is registered with the Canada Revenue Agency (CRA) are entitled to a credit against their tax otherwise payable. For federal tax purposes, where the gift is under $200, the credit is calculated at the lowest federal personal tax rate on the amount of the gift. In December 2015, the federal government announced the introduction of a new top federal marginal tax rate of 33% on taxable income greater than $200,000, along with some changes for higher-income donors. As a result, from 2016, the federal tax credit is calculated at the top 33% marginal rate for donations in excess of $200, but only on the portion of donations made from income that is subject to the new top marginal tax rate. For any donations in excess of $200 where the individual's taxable income is less than $200,000, the previous top federal marginal tax rate of 29% applies. A comparable credit is also available for provincial tax purposes with special rules applying in various provinces. It is important to review these rules depending on an individual's province of residence. The maximum amount of all donations that may be claimed as a credit in each year is limited to 75% of the individual's annual net income and any excess donation amount that cannot be claimed in the year can be carried forward for five years, subject to the 75% limit each year.[1]

Strategies for maximizing tax credits may include saving receipts for small annual donations for up to six years, including the current year, and making one combined claim in a year when your income is larger such that the tax credit claimed on the same donations is maximized. Also, married or common-law couples may pool receipts and report them on one tax return.

Corporations

When a donation is made by a corporation, the corporation receives a deduction, as opposed to a tax credit, when computing its taxable income. For federal tax purposes, corporations are also subject to the 75% net income limit that applies to individuals.

Gifts to U.S. charities

The tax treaty between Canada and the U.S. provides some limited tax relief for gifts made by Canadians to U.S. charitable organizations. Generally, Canadian resident individuals and corporations that have U.S. source income can claim a gift to a U.S. charity if the charity meets specific conditions - that is, the charity is generally exempt from U.S. tax and it could qualify in Canada as a registered charity if it were a resident of Canada and established in Canada. A donation claim may be made on the U.S. gifts of up to 75% of the net U.S. source income reported on the Canadian tax return. However, under limited circumstances, you may be able to claim the amount of gifts to certain U.S organizations up to 75% of your net worldwide income. For example, a claim will not be restricted to the net U.S. source income if the gift is to a U.S. college or university at which you or a member of your family is or was enrolled in or if your gift is to a registered U.S. college or university as referenced in a publicly available list maintained by CRA.[2] Certain other listed foreign charitable organizations to which the government of Canada has made a recent gift may also quality.

Gifts made by will and estate donations

Gifts are often made by Will, where the donor ("testator") states that on their death, property is to be given as a bequest or legacy to a specific charity or to a charity that is to be chosen by the executors. The gift can be cash or property, such as art or securities.

Prior to 2016, where the gift was made by the testator and the Will specified the amounts and donees, it was generally deemed to have been made immediately before death (although the estate may have made the actual transfer at a later date) and a tax credit was available for the testator's terminal return. Any unused credits could be carried back and used to reduce tax in the year immediately prior. The tax credit could offset 100% of net income for the year of death and the prior year. This credit is particularly beneficial in the year of death since the deceased is deemed to have disposed of all capital assets immediately before death (subject to certain exceptions such as for spousal rollovers) at fair market value, thereby realizing all accrued capital gains in the year of death. Similar provisions also applied where individuals designated a qualified donee as the beneficiary of RRSPs, RRIFs, TFSAs or life insurance policies (referred to as a "designated donation").

However, donations that were made by an individual's estate (which were not pursuant to the terms of the Will) did not qualify for this treatment and could only be applied against the estate's income tax liability, which may not have been sufficient to allow the full benefit of the donation tax credit to be realized. Accordingly, new legislation was introduced to allow increased flexibility in the tax treatment of charitable donations in the context of a death occurring after 2015. Specifically, donations made by Will (and designated donations) are no longer deemed to be made immediately before death, as was the case under the previous legislation. Instead, these bequests are deemed to have been made by the estate at the time the property is actually donated to the qualified donee. As a result, there are additional planning opportunities for certain qualifying estates, defined as graduated rate estates.[3] Where applicable, estate trustees will have additional flexibility to apply the donation tax credit, resulting from donations made during the first 36 months of an unadministered estate, to

i) the taxation year of the estate in which the donation is made;
ii) an earlier taxation year of the estate; or
iii) the last two taxation years of the deceased individual.

Additional new legislative amendments that apply after 2015 added further flexibility to apply a donation credit to income of the estate in the year of donation or the last two taxation years of the deceased, where the donation is made by a (former) graduated rate estate within 60 months of death.

In light of these recent changes, you should consult with your tax and estate professional to fully review the possible tax implications and benefits of any charitable bequest strategy within your existing estate plan.

Types of gifts

Gifts in kind

Gifts of capital property

The donor of capital property is deemed to have received proceeds of disposition equal to the fair market value of the donated property. If the fair market value of the property is greater than its cost, a capital gain is realized, 50% of which is subject to tax as a taxable capital gain. In addition, if the donated property is depreciable capital property, there may be recapture of a previously claimed Capital Cost Allowance (CCA) which will be fully included in income.

The capital gains tax on a donation of capital property to a charity may be reduced by designating the transfer price (or proceeds of disposition) as an amount not more than the fair market value of the property and not less the amount of the adjusted cost base of the gift, or any "advantage" received, whichever is greater. The donor is deemed to have disposed of the property for the designated amount, and to have made a gift for that amount, when calculating the donation tax credit. This allows the donor the opportunity to avoid realizing a capital gain (by designating an amount equal to the adjusted cost base) or to limit the amount of the capital gain to an amount that may be offset by a capital loss.

Gifts of qualifying securities

By donating publicly-traded securities directly to a charity, you may reduce the tax you would otherwise have to pay on the sale of your investments. Although a donation of property is considered a disposition for tax purposes, tax incentives provide that the taxable capital gain realized on a donated publicly traded security can be eliminated. Whether you donate cash from the sale of your investments or the securities themselves, you will receive a tax receipt for the full amount of your donation, regardless of the tax treatment of the capital gain.

The table below illustrates how this special incentive increases the impact of a charitable donation, when the property donated is a qualified security instead of the cash proceeds from the sale of a security.

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Benefit of Donating Appreciated Securities

Tax on disposition	Sell security and donate cash		Donate security	
Capital gain on sale of security	$50,000		$50,000	
Taxable portion of capital gain	50%		0%	
Taxable capital gain	$25,000		$0	
Income tax payable (50%)[4]		($12,500)		($0)
Donation Credit				
Charitable donation amount	$50,000			
Add tax savings from donation (50%)[5]		<u>$25,000</u>		<u>$25,000</u>
Net Tax savings		$12,500		$25,000
Net cost to donate $50,000 (Donation amount less net tax savings)		$37,500		$25,000

The example assumes an individual owns a security with a current value of $50,000 and a nil tax cost base. It further assumes that the sale results in a capital gain of $50,000 and the entire proceeds are donated to a charity. In the first situation, the security is sold and the cash proceeds are donated. In the other situation, the security is donated directly to a charity.

As the table shows, a donation of securities may be preferable to a cash donation of equal value, particularly if you have already decided to dispose of the securities during the year.

This strategy of donating appreciated publicly traded securities may be used to reduce estate taxes, and at the same time creating a significant donation to a charity. Prior to 2016, tax legislation stated that the taxable capital gain from the deemed disposition on death of a qualifying security was nil where the security was donated to a qualified donee, pursuant to a Will. A special provision within the tax legislation also deemed the donation of the security to have been made by the individual immediately prior to his or her death even though the actual transfer may have occurred during estate administration. This treatment can be beneficial in allowing a donation tax credit to reduce taxes otherwise payable in the individual's final tax return (or in the year preceding death).

Recent amendments to the tax legislation, similar to those noted previously, also provide increased flexibility in the tax treatment of the donation of appreciated securities for deaths that occur after 2015. Specifically, a donation made by Will (and designated donations) is no longer deemed to have been made immediately before death, but is instead considered to have been made by the decedent's estate at the time the specific property is donated to the qualified donee. The value of the gift used for determining the donation tax credit is therefore the value at the time of the donation (or the time of transfer) of the property, which may be greater than the value of the securities immediately before the individual's death. This change in timing of valuation will cause any fluctuations after death in the value of the securities to impact the tax implications to the estate, and the deceased. In addition, there may be cash flow implications since the tax benefit of the donation of the appreciated securities (and the potential elimination of capital gains thereon) may not be realized until after the actual gift by the estate has been made, whereas any tax owing at death will be due at the time of filing the terminal return. Furthermore, a gift of property acquired by the individual's graduate rate estate on, or as a consequence of, the individual's death is not only exempt from any taxable capital gains as a result of the deemed disposition rules that apply to the individual upon death, but also exempt from any taxable capital gain by the graduated rate estate. In addition, the estate trustees have the same additional flexibility to apply the donation tax credit to reduce tax for either the estate or the individual decedent as discussed in the section on gifts made by will and estate donations. The same additional legislative amendments previously discussed that extend the time period in which donations made by an individual's former graduated rate estate also applies to the gift of publicly-traded securities. For more information on the tax savings associated with a donation of securities in the year of death, please refer to our concept sheet "Donating Appreciated Securities".

Gifts of shares or proceeds acquired through employee stock options

Although the benefit received on the exercise of employee stock options generally represents employment income – not a capital gain – it is also possible to reduce or eliminate the tax burden on this income benefit by donating the sale proceeds, or the shares themselves acquired through the exercise of employee stock options.[7] To be eligible for this incentive, the option shares must be publicly traded securities and the shares (or proceeds acquired through the options) must be donated to a qualifying charity.

The stock option benefit must also be eligible for the 50% deduction available on the qualified exercise of certain securities. Assuming these qualifications are met, the reduced income inclusion is available if the shares are donated in the year acquired and within 30 days of exercising the option. In addition, in the case of a "cashless exercise," the reduced income inclusion may also be available if the employee directs their financial professional to immediately dispose of the securities acquired from the employee stock options and deliver the proceeds to a qualifying charity. Note

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that if the value of the shares decreases in the (maximum) 30-day period before making the donation, or if only some of the shares (or aggregate proceeds) received by exercising the options are donated, the tax deduction will be reduced proportionately.

As the tax rules for employee stock options and the related rules used to determine the charitable donation credits are complex, please consult with your tax advisor to determine whether this strategy is appropriate for your situation and how it should be implemented.

Gifts of flow-through shares

A popular strategy since March 2006 – in light of the elimination of the capital gains tax liability on qualifying donations of publicly traded securities ¬– is the donation of (publicly traded) flow-through shares. These shares typically have a low or nil tax cost base as the eligible resource expenses renounced (or flowed through) and deducted by the investor reduce the tax cost base of the investment.

Changes enacted in the tax law originating from the 2011 Federal Budget have limited the tax benefits associated with this strategy. The exemption from capital gains tax on the donation of flow-through investments has been restricted to the excess of the (cumulative) capital gains over the original cost of acquiring the flow-through investments. This will make the strategy less attractive in the future – although there may be limited grandfathering for flow-through securities acquired prior to the budget changes. Given the complexity of this new legislation and the limited interpretative guidance provided thus far, anyone contemplating a donation strategy involving flow-through investments should consult with a tax advisor to confirm the anticipated results. In addition to the concerns regarding these amendments, which may restrict the donation incentives, the renounced expenditures claimed from flow-through investment may create other tax issues; for example, the application of alternative minimum tax which will reduce the current tax benefit of flow-through deductions.

Corporate charitable giving

Corporate charitable giving can also provide the same tax benefits as individual giving, through the potential elimination of any capital gains tax on a qualifying gift of publicly traded securities, and a tax deduction equal to the fair market value of the gift.

A corporation does not receive a tax credit for the gifted qualified securities; instead, it is entitled to a deduction equal to the value of the gifted property. This results in a reduction of the tax that would otherwise be payable on income earned by the corporation, subject to a limit of 75% of its current net income with the potential to carry forward any excess for up to five years.

For a Canadian-controlled private corporation which donates a qualifying publicly traded security, the 100% non-taxable capital gain portion is added to its Capital Dividend Account (CDA). This notional account, when positive, may be paid to shareholders on a tax-free basis, which could facilitate the withdrawal of funds from the company to its shareholders. For more details on the specific tax benefits, please see our concept sheet entitled "Donating Appreciated Securities".

Gifts of art and cultural or ecological property

Art

Unless it is inventory, artwork is generally considered to be personal-use property (in other words, mainly for personal use and enjoyment). To reduce the compliance and administrative burden of calculating the capital gain or loss on personal-use property, the adjusted cost base and proceeds of disposition of such property is deemed to be at least $1,000 such that no capital gain is realized unless the proceeds are greater than $1,000. However, if the property was acquired after February 27, 2000, as part of an arrangement in which the property is to be donated to a charity and its fair market value is less than $1,000, it is no longer treated as personal-use property and any resulting capital gain will be taxable.

Cultural property

Gifts of certified cultural property to a designated institution or public authority are treated similarly to the donation of appreciated securities in that gifts of such property do not trigger a capital gain. In addition, the donor can claim a tax credit (or a deduction, if the donor is a corporation) for the fair market value of the property, limited to 100% of net income (versus 75% normally). Any unused credits can be carried forward for five years. There are special rules for determining the fair market value of cultural property, with the determination being made by the Canadian Cultural Property Export Review Board. The Board must certify the property and designate the institution. In certain circumstances, charities receiving gifts of cultural property are subject to a penalty tax if they dispose of the gifted property within ten years of its receipt.

Graduated rate estates can benefit from similar capital gains tax advantages on the disposition of certified cultural property to those applying to the donation of appreciated securities. That is, for deaths after 2015, where the property was acquired by a graduated rate estate as a consequence of an individual's death, and where the donation of the certified cultural property is made by a graduated rate estate, no capital gain will arise when the estate actually makes the gift. The estate trustees have flexibility in choosing when to claim the donation tax credit; to reduce the tax liability of the decedent in his or her final (or prior) tax year, or the tax liability of the estate in the year of donation or prior tax year. Similarly, if the gift is made

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between 36 and 60 months after the individual's death by the individual's former graduated rate estate, further flexibility is also available to apply a donation credit to the income of the estate in the year the donation is made or in the last two taxation years of the deceased individual.

Ecological property

Similar rules exist for the donation of ecologically sensitive property to the Crown, a municipality, or a charity that is approved for the conservation and protection of the environment. There are tax incentives for owners of ecologically sensitive land to protect that land while at the same time qualifying for a tax benefit. How the property is actually conveyed will depend on legal issues; in some cases, there may be split ownership.

The fair market value of ecological property such as land or easements over land can be difficult to establish. The Minister of Environment makes the determination in a complex and well-defined process, which includes a right of appeal if the amount determined is not acceptable to the donor. As is the case with gifts of cultural property, a charity accepting a gift of ecological property is subject to a penalty if it disposes of the property within ten years or changes the use of the property without the consent of Environment Canada. In the 2014 Federal Budget, the period for which deductions or credits for gifts of ecologically sensitive land could be carried forward was increased from five to ten years.

Again, similar tax advantages also apply to eliminate the capital gain arising upon the disposition of ecological property by a graduated rate estate as described with those of disposition certified cultural property. That is, for deaths after 2015, where the property was acquired by a graduated rate estate as a consequence of an individual's death, and where the donation of the ecological property is made by a graduated rate estate, no capital gain will arise at the time the gift is made. The estate trustees can claim the donation tax credit to reduce the tax liability of the decedent in his or her final (or prior year) tax return or the tax liability of the estate in the year of the donation or a prior year of the estate. Similarly if the gift is made more than 36 month, but not more than 60 months, after the individual's death by the individual's former graduated rate estate, further flexibility is also available to apply a donation credit to the income of the estate in the year the donation is made or the last two taxation years of the deceased individual.

Gifts of life insurance

The gift of an insurance policy allows a donor to make a large gift for a relatively small cost. There are several ways in which a charity can benefit from gifts of insurance policies.

A donor can apply for a new life insurance policy on his or her life, and upon issue, transfer the policy to a charity and pledge to pay the premiums directly to the insurance company. The charity will issue a tax receipt to the donor for the premiums paid. Upon the death of the donor, the charity will receive the death benefit directly from the life insurance company; however, this will not be considered a gift from the donor. The major disadvantage of this method of donation, from the perspective of the charity, is that it has no way of ensuring that the donor will pay the premiums. If the donor does not pay, the charity can either surrender the policy or pay the premiums from its own funds.

Alternatively, the donor can transfer an existing policy to the charity and agree to pay the future premiums. The charity can issue a tax receipt to the donor for the fair market value of the gift, which may be greater than the cash surrender value of the policy (for whole life or universal life policies), less any outstanding policy loans. The charity would also issue a tax receipt for the future premiums the donor pays. The donor may have an income inclusion on the gift of the policy if its fair market value exceeds its tax cost.

Finally, a donor can continue to own a life insurance policy and name a charity as the beneficiary. In this case, the donor will not receive a tax receipt for the premiums paid or the value of the policy, as nothing has yet been given to the charity. As the named beneficiary, the charity will receive the death benefit on the donor's death. The fair market value of the gift is deemed to be the fair market value of the right to the transfer at the time of the individual's death, which is essentially the value of the death benefit.

As described previously, new legislation has introduced greater flexibility in the tax treatment of estate donations for deaths occurring after 2015, including those involving life insurance. A donor can use life insurance proceeds to fund a bequest to a charity in a Will, or the donation can be made by the individual's graduated rate estate. On the donor's death, the graduated rate estate receives the life insurance proceeds free of tax, pays the bequest to the charity and the charity issues a tax receipt. The donation tax credit can then be used to reduce tax in 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. Similar provisions also apply where an individual has designated a qualified donee as the beneficiary of a life insurance policy. Again, additional legislative changes have added further flexibility to apply a donation to income of the estate in the year of donation or the last two taxation years of the deceased, where the donation is made within 60 months of death by a (former) graduated rate estate.

Gifts of residual interests

A donor with philanthropic objectives – but with concerns over their lifetime income or providing income for a spouse or family members

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– has the ability to give real estate or personal property to a charity while maintaining the right to use the property for his or her lifetime. In this regard, a potential approach would be to establish (or settle) an irrevocable charitable remainder trust by transferring assets to a trust, retaining the right to receive payments of income for life (with no encroachment of capital) or the use of other property such as real estate or art, with the balance of capital being transferred to the charity on death.[6] The CRA considers a gift to have been made in the context of settling a charitable remainder trust when the transfer of property to the trust has been completed and the equitable interest in the trust has vested in the charity as a capital beneficiary. As such, the settlor of the trust (donor) is entitled to a donation credit and the charity can issue a tax receipt at the time of the donation for an amount based on the value of the property that will eventually be transferred to the charity on the donor's death. The calculation takes into account the present value of the property and the life expectancy of the donor, such that the older the donor, the greater the tax credit will be. It is typically best to obtain an experienced valuator in this regard.

Considerations include the costs associated with establishing and maintaining the trust, the cost of calculating the amount of the upfront charitable donation credit as well as all the tax and legal complexities involved in settling the trust, In addition, care should be taken to determine the appropriate amount of capital for initial settlement. Further consideration should also be given to your future financial requirements and those of your family before establishing this type of trust; once it is set up, the capital cannot be withdrawn. The capital remains intact and is transferred to the charity upon your death.

Charitable gift annuities and insured annuities

A charitable gift annuity provides an opportunity to make a charitable donation while setting up an income stream for yourself. It has the advantage of allowing you to assist the charity and receive an income stream without the need to manage your own investments. Most charities will arrange to buy an annuity from an insurance company rather than issuing a gift annuity directly. The donor owns the annuity and receives an annuity income for a specified number of years, or for life. Where an amount is transferred to a charity and the donor receives a stream of annuity payments, the amount of the gift will be equal to the excess of the amount transferred by the donor over the amount that would be required to purchase an annuity providing the same payments.

The donor receives a guaranteed income each year from the annuity, with part or all of the income being a tax-free return of capital. As a result, the after-tax income you receive may be greater than the earnings on a similar sum invested in a vehicle such as a Guaranteed Investment Certificate (GIC). Couples may prefer a joint and last survivor annuity which provides payments until both individuals have died.

The tax advantages of an annuity and a donation of a life insurance policy can be combined to achieve your philanthropic goals in an efficient tax strategy sometimes referred to as a charitable insured annuity. The donor takes out a life insurance policy and either donates it to a charity or names the charity as the beneficiary as discussed previously. The donor then purchases an annuity, and uses the annuity income to pay the policy premiums. The timing of the policy donation will dictate whether you receive an annual charitable donation receipt for the premium payments or a single tax receipt for the proceeds of the insurance policy paid as a death benefit, but in either scenario this strategy can generate a tax-efficient retirement income while enabling a significant donation to a charity of your choice.

Donations of RRSPs, RRIFs and TFSAs

As previously discussed, donations that are made as a consequence of designating the proceeds of RRSPs, RRIFs or TFSAs to a charity on death will qualify as gifts that are eligible for a charitable donation tax credit. The balance of an RRSP or RRIF on death is treated as ordinary income in the year of death unless a spouse is named as beneficiary (or successor annuitant, for a RRIF) so a direct designation to a qualified donee/charity can provide a tax credit to offset income. The de-registration of a TFSA does not trigger any income to the annuitant in the year of death. The new rules for estate donations discussed previously continue to support donations of RRSPs, RRIFs, and TFSAs, though the rules deem the gift to have been made by the decedent's estate. If it is a graduated rate estate, the trustees have flexibility in claiming the corresponding donation tax credit against the income of the decedent in his or her final (or prior) tax year, or the income of the estate in the current or an earlier tax year.

Endowment and donor-advised funds

Many charities will accept a gift that is set up as an endowment – where the charity invests the gift and uses the income for a purpose specified by the donor, such as funding ongoing programs offered by the charity, or a scholarship or research fund for an educational institution. Many types of gifts can be used for an endowment fund, including a gift of life insurance, the proceeds of an RRSP or RRIF, or a traditional bequest of cash under a Will.

Community foundations are locally run public entities that build and manage endowment funds to support charitable activities in their communities. They often serve as a knowledge hub, helping donors target their support to address pressing societal needs and promising opportunities. They can guarantee the fulfillment of a donor's

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charitable intent in perpetuity, and will undertake the responsibility to ensure that all gifts received and endowment funds established are used for the purposes directed by the donor. For some, donor-advised funds offered by community foundations provide an attractive, cost-effective alternative to the establishment of a private foundation. Community foundations are registered charities that are designated by the CRA as public foundations under the Federal Income Tax Act. Thus, gifts made to community foundations generate a charitable tax receipt and produce income tax advantages. For example, gifting appreciated public shares to a community foundation can also result in the elimination of capital gains tax, as previously discussed.

Private foundations

If you are intending to bequeath several hundred thousand dollars or more to charity, you could consider establishing a private foundation. Unlike other charities, private foundations are able to receive more than 50% of their capital from one person, or from a group of related people. The directors of a private foundation can award grants on a case-by-case basis, thereby assisting charitable work by others, or the foundation can make contributions to other registered charities.

A private foundation is an alternative philanthropic vehicle that can provide flexibility for your planned charitable giving, and can involve family members as a whole to promote family philanthropy and build a lasting legacy. The design of private foundations requires careful planning for constating documents and foundation objectives, and involves both up-front and ongoing administrative costs. In addition, there are various restrictions relating to investment and charitable activities of private foundations that need to be monitored, so careful planning is required during their structuring phase.

Similar tax advantages exist when donating to a private foundation to those applying to donations to other types of charities. Specifically, publicly traded securities are exempt from capital gains tax when donated by an individual or corporation. In addition to the tax advantages, a private foundation provides a suitable philanthropic vehicle for those who wish to retain control over and involvement in grant decision making, to pass on their values through family giving, to involve family members in the decision-making process, and to focus on issues of personal importance.

Conclusion

Whatever strategy you choose, it can be rewarding to contemplate the positive effects of your gift at work in your lifetime and beyond. Adding a philanthropic component to your estate planning can result in significant tax savings, while addressing your desire to leave a lasting legacy. To learn more about planned giving strategies, please contact your BMO financial professional, and for assistance in determining the specific tax and legal implications of any gifting strategies, please consult with your accountant or estate planning lawyer.

Footnotes

1 Changes originating from the 2016 Quebec Budget have removed the 75% limitation for 2016 and subsequent taxation years in calculating the qualifying Quebec provincial donation tax credit. In addition, favourable new terms for calculating the tax credit for Quebec tax purposes were introduced beginning for the 2017 taxation year.

2 Beginning in 2018, registered universities outside Canada no longer need to be prescribed in Schedule VIII of the Income Tax Regulations. For more information see CRA link for registered list of universities: https://www.canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-prescribed-universities-outside-canada.html

3 After December 31, 2015, the graduated rate estate of an individual at any time is the estate that arose on and as a consequence of the individual's death, if that time is no more than 36 months after the death and the estate is at that time a testamentary trust. There can only be one graduated rate estate associated with an individual and it must be designated as such in the estate's T3 return for its first taxation year and include the individual's Social Insurance Number in its return of income each year before and after 2015. All references to an estate in this paper are to a graduated rate estate.

4 Based upon an assumed top marginal tax rate.

5 Assumes individual is subject to the new top federal tax bracket, has made other donations of at least $200 in the year and has sufficient other income to avoid the limit on donation claim to 75% of net income (100% in the year of death).

6 In the province of Quebec, there may be other structures that are simpler and cheaper to maintain, such as the usufruct or a substitution.

7 Proposed changes to the taxation of employee stock options will restrict access to this incentive. Please see our publication entitled "Taxation of Employee Stock Options" for further details.

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