A guide for philanthropic and charitable giving

BMO Private Wealth

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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 benefit 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 governments provide 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, the credit is calculated at 15% on the first $200 donated and 29% on the portion exceeding $200. Additionally, for individuals with taxable income above the top Federal bracket, the credit increases to 33% on donations exceeding $200. The 33% rate applies only to the portion of donations made from income subject to the top Federal Marginal Tax Rate. For donations over $200 where the individual's taxable income is below the top bracket, the 29% rate continues to apply. 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. Individuals can claim eligible amounts of gifts up to 75% of their net income and any excess donation amount that cannot be claimed in the year can be carried forward up to five years, subject to the 75% limit each year.[1] 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 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.

To encourage donations by bequest – in the year of death – the maximum donation that can be claimed is 100% of the deceased's net income. Any donations that cannot be claimed in the year of death can be claimed on the deceased's previous year's tax return, also up to 100% of net income in that year.

In the year of death, except for transfers to a surviving spouse or qualifying spousal trust, individuals are deemed to dispose of their capital property at its fair market value immediately before death, triggering any accrued capital gains or losses, which can result in a large tax liability at death.

However, a charitable bequest can reduce this tax liability to the deceased (and/or the deceased's estate) by providing a donation tax credit and reducing the taxable portion of the deemed capital gains at death (e.g., on the donation of appreciated publicly traded securities). Moreover, the tax legislation allows increased flexibility in the tax treatment of charitable donations in the context of a death (occurring after 2015). Specifically, a donation made by Will (and designated donations such as those designating a qualified donee as a beneficiary under an RRSP, RRIF, TFSA or life insurance policy) is considered to be made by the individual's estate at the time the specific property is donated to the qualifying charity. The value of the gift will therefore be the value at the time of the donation, and the estate can carry forward any unused tax credit for five years from the date of the gift.

If there is a gift of property acquired by the taxpayer's graduated rate estate ("GRE")[2] on, or as a consequence of, the taxpayer's death, the estate trustees can apply the donation tax credit amongst any of the following within the aforementioned annual donation credit limits:

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.

Similar flexibility is also potentially available, where the donation is made within 60 months of death by a (former) GRE (provided it would otherwise qualify as a GRE but for the expiry of the 36-month period). In addition, the property donated by the GRE must have been held by the deceased or property substituted therefore. Please 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 than 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 mean that the taxable capital gain realized on a donated publicly traded security can be eliminated.[3] 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 on the following page 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.

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.

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 Tax Credit				
Charitable donation amount	$50,000		$50,000	
Add tax savings from donation (50%)[5]		$25,000		$25,000
Net tax savings		$12,500		$25,000
Net cost to donate $50,000		$37,500		$25,000

Provided the securities are donated by a GRE, the special tax incentives eliminating the capital gains tax on a gift of appreciated securities could also apply to deemed dispositions of property on death. For more information on the tax savings associated with a donation of securities in the year of death, please refer to our publication *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.

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 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.

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 publication, entitled *Donating Appreciated Securities*.

Gifts of private company shares

Donations of private company shares are ineligible for the incentive which eliminates the taxation of capital gains, as was described above for publicly traded securities. In addition, the charitable donation tax credit for certain "non-qualifying securities" (such as private company shares) cannot be claimed unless or until specific criteria are met. However, donating private company shares may still result in favourable tax consequences to the donor in a number of situations, but will entail proper valuation and consultation with tax and legal professionals. For more information, please see our publication *Donation of Private Company Shares*.

Gifts of art and cultural or ecological property

Art

Unless it is inventory, artwork is generally considered to be personal-use property[6] (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 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. In addition, anti-avoidance rules in the tax legislation introduced several years ago to counter "art-flips", can deem the value of a donation receipt issued for a non-cash gift to be the lesser of the gift's FMV and its cost to the donor immediately before the gift is made, particularly in situations where the gifted item was acquired less than three years before the time of donation (or 10 years where one of the main reasons for the acquisition was to make the gift).

Certified 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 their 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 between 36 and 60 months after the individual's death by the individual's former graduated rate estate, this additional flexibility may also be available.

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. However, the fair market value of ecological property such as land or easements over land can be difficult to establish. The Minister of Environment and Climate Change Canada ("ECCC") 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 with gifts of certified cultural property, a recipient of a gift of ecological property is subject to a penalty if it disposes of the property or changes the use of the property without the consent of the ECCC.

Notably, the period for which deductions or credits for gifts of ecologically sensitive land can be carried forward is ten years (vs. 5 years for other gifts).

Again, similar tax advantages also apply to eliminate the capital gain arising upon the disposition of ecological property by a graduated rate estate as previously described for certified cultural property.

Gifts of life insurance

The gift of a life 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 life insurance policies.

A donor can apply for a new life insurance policy on their 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, the tax legislation allows flexibility in the tax treatment of estate donations at death, 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, there is additional flexibility 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 – has the ability to give real estate or personal property to a charity while maintaining the right to use the property for their 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.[7] 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, potential capital gains tax on the transfer of the asset to 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. However, 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 generally taxable as ordinary income in the year of death – unless a spouse (or a qualified dependent) 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 this income. The de-registration of a TFSA does not trigger any income to the annuitant in the year of death. As outlined previously, the rules for estate donations of RRSPs, RRIFs, and TFSAs 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 their final (or prior) tax year, or the income of the estate in the current or an earlier tax year.

Alternative Minimum Tax

The Alternative Minimum Tax ("AMT") regime seeks to ensure that high income earners pay a minimum amount of income tax each year, and cannot artificially reduce their taxable income through excessive use of deductions or credits. Recent changes were made to the AMT regime effective for 2024, including broadening the AMT base, further limiting tax preference items (i.e., exemptions, deductions and credits) and increasing the AMT tax rate. Some high-income individuals claiming significant deductions and credits (including charitable donations resulting from the donation of publicly traded securities during lifetime) may be affected by these amendments, which are now in effect for 2024. For more information, please see our publication *Alternative Minimum Tax*.

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.

An alternative to an endowment is the donor-advised fund ("DAF"). DAFs have a seventy-year history in Canada and are a charitable giving vehicle established when a donor creates a fund through an initial contribution to a registered public charity. The donor benefits from a tax credit (individual donation) or tax deduction (corporate donation) when they contribute cash or other assets to the fund. Although contributions are irrevocable (meaning you can't withdraw donations if you change your mind or need extra cash), the donor retains an advisory role as to how much to contribute to various charities over time. Any remaining assets benefit from tax-free growth as long as the account remains funded.

There are more than 450 public foundations in Canada offering DAF solutions. The DAF charity is responsible for all administration and governance making it a popular and cost-effective alternative to a private foundation. The DAF charity BMO Private Wealth uses for its program is Charitable Gift Funds Canada Foundation. A BMO DAF can be established with a $25,000 donation while the founding donor is living or as part of an estate plan. A DAF is an excellent vehicle for a donor to use to create a legacy, involve family, and to fulfil their charitable intent in perpetuity.

Private foundations

A private foundation is a philanthropic vehicle that provides the flexibility of developing various types of grants by you and your family. It is established and operated exclusively for charitable-giving purposes and can be structured as a trust or a corporation. Most foundations fulfill their charitable purpose through the disbursement of assets to registered charities or other qualified donees but can also be constituted to carry out their own charitable programs. Unlike other charities, private foundations can receive more than 50% of their capital from one person, or from a group of related people. A private foundation is best considered when there is $3M to $5M in assets to invest to the capital of the foundation.

The design of a private foundation requires careful planning for constituting documents, defined articles and objectives, and the creation of bylaws. Retaining legal counsel, preferably a lawyer who specializes in charitable tax law in Canada, is advisable. They will ensure the best legal structure is established to achieve the short and long goals of the foundation. Once this work is complete the lawyer can also assist with applying for charitable status with the CRA. This entire process can take 6 to 12 months to complete and depending on the complexity of the foundation and its intended operations, can cost between $5,000 to $15,000.

Similar tax advantages exist when donating to a private foundation as 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, and to involve family members in the decision-making process. Private foundations are also excellent assets for creating a multi-generation legacy with impact and a 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 Private Wealth professional. For assistance in determining the specific tax and legal implications of any gifting strategies, please consult with your accountant or estate planning lawyer.

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[1] The 75% limitation does not apply in calculating the qualifying Quebec provincial donation tax credit.

[2] 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.

[3] Note that the tax benefits associated with a donation involving flow-through securities are limited by restricting the exemption from capital gains tax on the donation of flow-through investments to the excess of the (cumulative) capital gains over the original cost of acquiring the flow-through investments. Please consult with your tax advisor for further details.

[4] Based upon an assumed top marginal tax rate.

[5] Assumes individual is subject a top rate tax bracket of 50%, has made other donations of at least $200 in the year and has sufficient other income to avoid the limit on a donation claim to 75% of net income (100% in the year of death).

[6] Art will usually be considered Listed Personal Property ("LPP") for Canadian tax purposes, which is a subset of Personal Use Property (PUP). While losses on PUP cannot be claimed, a capital loss on a particular item that is considered LPP can be applied against capital gains realized on other LPP.

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

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