

# Building Your Legacy Using a Private Foundation

Like many Canadians, making the world a better place and creating a legacy aligned to your personal values, beliefs and convictions is an important wealth planning priority. Establishing a private foundation can help you achieve these priorities and give meaning and structure to your philanthropic goals. It can also help you to pass these values on to your children and grandchildren, by involving them and other family members in your giving strategy and family legacy.

## What is a private foundation?

A private foundation is a philanthropic vehicle that can provide great flexibility for charitable giving by you and your family. It is established and operated exclusively for charitable giving purposes, and can be structured as a trust or a not-for-profit corporation. Most foundations fulfill their charitable purpose through the disbursement of assets to registered charities or other qualified organizations. Private foundations can also carry out their own charitable programs.

## What are the advantages of a private foundation?

A private foundation provides flexibility for donors wishing to take a more strategic and long-term approach to their giving. The donor and the donor's family are generally trustees or directors of the foundation. As such, they remain in a position of influence and can control many aspects of the foundation's operations, including decisions on:

- How assets owned by the foundation are invested;
- Distribution of income earned by the foundation; and
- Grants made by the foundation to registered charities.

The private foundation can be named for the donor or the donor's family, thereby creating the opportunity to build a lasting philanthropic legacy in perpetuity, that survives the founder's death.

## Is a private foundation right for you?

If you are considering creating a private foundation, there are some key questions that you should first ask yourself:

- Are you looking for a charitable giving structure that will reflect your personal interests and values?
- Do you want to be personally engaged with the giving process and directing how the funds are spent?
- Do you want to engage your family in a cause or project in your community?

- Are you interested in taking a hands-on approach with grant-seekers?

If you answered yes to any of these questions, a private foundation may be a viable option for your charitable giving.

## How is a private foundation established?

To be a registered charitable foundation, the entity must apply for, and be granted registered charity status by the Canada Revenue Agency (the "CRA"). This involves crafting the constituting documents of the foundation and other governance documents, such as the by-laws, and then making an application to the CRA Charities Directorate. It is advisable to retain a lawyer experienced in charity law to oversee the application on your behalf.

## How do you fund and operate a private foundation?

Funding for a private foundation can come from personal, family or business assets. In order for a contribution to qualify as a gift for tax receipting purposes, it must be a transfer of property by the donor for which no consideration is expected. A private foundation's operators are generally managed by directors or trustees, the majority of whom are related by birth, marriage or business. While the investment of the foundation's assets can be managed by the trustees and directors, usually these powers are delegated to an investment management firm. Federal law requires that a minimum of 3.5% of the investable assets be disbursed each year for charitable purposes. A professional investment manager can help ensure that capital growth is maintained, and the 3.5% disbursement quota is met from the annual investment revenue.

## The tax treatment of gifts made to a private foundation

Gifts of cash and publicly-traded securities to a private foundation are eligible to be tax receipted for the property's fair market value at the time the gift is made.

An individual can claim a donation tax credit to reduce personal tax liabilities, and a corporation can offset corporate tax liabilities, subject to an annual net income limitation. In addition, the tax law allows for the full elimination of any capital gains tax on donations of publicly-traded securities to a registered charity, including private foundations.

### Sale of a business

Many private foundations are created to coincide with a significant event in the founder's life, such as the sale of a business. The sale of a business can result in a tax liability as well as significant cash proceeds, so the establishment of a private foundation at this time can provide some tax relief to the business owner. For more information on the tax treatment of gifts made to a private foundation, you should seek advice from a professional tax advisor.

### BMO's philanthropic services

Often creating and giving shape to one's charitable giving through a private foundation can be rewarding, while also a learning experience for those who are new to the concept.

BMO's Philanthropic Advisory Services experts can help establish and manage your private foundation. They can provide assistance in translating your values into a mission statement, and developing a charitable giving program aligned to your philanthropic priorities. They can also provide coaching support, help you research funding needs and opportunities, evaluate funding proposals, develop granting guidelines, monitor and evaluate your charitable projects, as well as provide financial and administrative services for your private foundation.



### Case Study: From business owner to philanthropist

Mr. V. who came from a humble background was the first in his family to attend university. He went on to become a very successful businessman, as a developer of large office buildings.

As he put it: he has always been a "giver, not a taker," as evidenced by his generous support of the local hospital and some universities in his province. His banker suggested that he consider a private foundation which would allow him to enjoy his philanthropy in a more measured way.

Mr. V. met with a philanthropic advisor at BMO Wealth Management to learn more about what a private foundation would entail. He was impressed by how easily and quickly a foundation could be created and, typical of most entrepreneurs, he liked the idea of having control over the management of the assets and granting. Within one month of Mr. V. deciding to proceed, his foundation was incorporated as a non-profit organization and registered as a charity with the CRA.

With the support of his philanthropic advisor, Mr. V. was able to identify his family's values, aspirations and charitable interests, culminating in the creation of a mission statement for his foundation. A granting strategy was developed to enable the foundation to meet its goal of supporting outstanding university programs.

Mr. V. donated publicly-traded shares to the private foundation. The shares had a book value of \$700,000 and a market value of \$2.2 million. Mr. V. was issued a tax receipt for the market value (i.e., \$2.2 million) of the shares to reduce his income tax liability, and he avoided the capital gains tax that he would otherwise have had to pay.



Contact your BMO financial professional who can refer you to a BMO Wealth Management philanthropic advisor.

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