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CHARITABLE GIVING

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† § ‡ Please see back cover for more information.

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INTRODUCTION

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

Canadians are donating their time, volunteering and fundraising for charities, and making 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 many of the good works that charitable groups provide to enhance the quality of our lives. But recently, governments have cut back on direct funding and it's now up to individuals and corporations to fill the gap. As a result, recent Federal Budgets have contained a number of changes in the form of tax incentives to encourage charitable giving by Canadians.

Charitable giving benefits both society and you the donor, if it is done properly, all the while helping the causes you care about. Large gifts should be part of your tax, financial and estate plan. It is strongly recommended that professional guidance be obtained from independent experts to ensure all of your concerns are met, prior to making any large gift.

The information contained in this publication reflects current tax laws and proposed legislation introduced at the time of printing.

CHARITABLE GIVING

Charitable giving can be defined as a gift to a charitable organization that is made in such a way that maximizes the 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 section covers the various options to consider for charitable giving.

WHAT IS A GIFT?

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

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

But certain donations are not considered gifts for tax purposes:

- *Time or services.* Suppose a lawyer does free legal work for a charity. He or she cannot claim the value of his/her time as a donation. They could, however, bill and collect from the charity and use the money to make an eligible cash contribution
- *Property of little value.* You are not entitled to a tax receipt for used clothing or worn-out furnishings
- *Gifts for which personal benefit is received.* Suppose you buy a $500 ticket to a fundraising dinner. If the meal and entertainment are valued at $100, your gift will amount only to the $400 difference.

WHAT IS A CHARITY?

The CCRA permits about 78,000 charities to issue tax receipts for donations. The list includes:

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

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

TAX BENEFITS

Qualified organizations also include:

- Governments and government agencies in Canada
- The United Nations and its agencies
- Foreign charities that received gifts from the Canadian government within the past tax year
- Foreign universities. There is a long list of "prescribed" schools that normally have Canadians as students
- U.S. charities. The CCRA 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.

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

PERSONAL CONSIDERATIONS

Most charitable gift planning arrangements that qualify for tax credits 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.

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

There is a 16% federal tax credit on the first $200 donated each year. Amounts over this threshold earn the maximum 29% federal tax credit. Your tax savings are then increased by reduced provincial taxes.

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 with the federal tax return using the new Tax On Income System (TONI) provincial forms. The provincial TONI also gives a lower provincial tax credit on the first $200 of donations and a higher tax credit on the excess. For example, **Figure 1** shows the tax savings for donations in excess of $200 assuming you are taxed at the top marginal rate:

FIGURE 1

Tax Calculation

Total donations	**$1,000**
Federal credit at 29%	$290
Provincial credit at 17%*	$170
Total tax savings	**$460**
Total tax savings as % of gift	**46%**

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

To maximize the donation tax credit, the CCRA 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 can also save receipts for up to six years (i.e. the current year and the following five years) and then make one combined claim to utilize the higher credit on gifts above $200.

The charitable tax credit is "non-refundable." That means if the credit is more than all the tax payable for the year, you are not 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's effective tax rate. At a tax rate of 50%, a $1,000 donation would save $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.

IS THERE A LIMIT?

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

WHAT IF I EXCEED THE LIMIT?

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

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

On your final tax return that is due after you die, or on your return for the year prior to death, your executors can claim a credit for contributions made by you in the year of your death or by the terms of your Will upon your death. The 75% limitation does not apply to gifts made in the year of death. The income limitation is increased to 100% of the donor's income for the year in which the donor dies and for the preceding year.

If your Will establishes a trust, there is no limit to the amount of income or capital gains that may be earned free of tax if paid to a charity. In other words, if a trustee donates the income earned in the trust to a charity, the charitable tax credit will likely offset any taxes that would be payable on that 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 charitable tax credit is normally based on the donated property's fair market value. You are encouraged to get one or more independent professional appraisals for more valuable tangible items as the CCRA looks closely at the valuations of gifted property.

If you donate capital property such as marketable securities or 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 fair market value and your adjusted cost base 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 would mean 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.

The 1997 Federal Budget announced special temporary rules for gifts of securities listed on stock exchanges prescribed by the government. Prescribed stock exchanges include Canadian exchanges (with the exception of the Over The Counter (OTC) market) and many major foreign exchanges. These proposals were subsequently expanded to include debt obligations, rights listed on prescribed exchanges, shares and units of mutual funds, interests in related segregated funds, trusts and certain other debt obligations. The amount of capital gain subject to tax has been reduced by half from 50% to 25% (for property donated after October 17, 2000). If the security is in a capital loss position, then the loss is not reduced by half. In October 2001, the federal government announced a proposal to make these special rules permanent. As well, for gifts made after March 15, 2000 the reduced rate will also apply on the Quebec tax return.

If you donate a large gift with substantial gains, you might have to pay Alternative Minimum Tax (AMT). The AMT calculation will take the non-taxable portion of your capital gain that is not normally taxed and add it to your income.

Donating property may produce greater tax benefits than donating cash. See **Figure 2** for a numerical comparison of donating publicly traded shares directly rather than selling the shares and donating the cash proceeds. Be sure to consult your tax advisor and charity before making a gift of property.

This rule does not apply for gifts made to private foundations or charitable remainder trusts.

FIGURE 2

Donating Cash Vs. Donating Shares
Marginal tax rate: 46%

	Sell shares and donate cash	**Donate shares directly**
FMV of donation **(a)**	$ 1,000	$ 1,000
Adjusted cost base	0	0
Capital gain	1,000	1,000
Taxable capital gain	500	250
Tax on capital gain **(b)**	230	115
Donation tax credit **(c)**	460	460
Total cost of donation = (a) + (b) – (c)	**770**	**655**

Net tax savings from donating shares: $115 ($770 – $655), 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 reduced by half (i.e. to only 25% from 50%). However, if an individual was exercising employee stock options in order to donate these shares to a charity, the employment inclusion did not receive the same beneficial tax treatment. The 2000 Federal Budget addressed this anomaly so that the donor would now only be taxed on one-quarter of the employment benefit if the shares acquired upon exercise were donated to a registered charity after October 17, 2000.

To be eligible for this measure, 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 fair market value of the share at the time the option was granted.

These measures apply for securities acquired after February 27, 2000.

Donations of employee stock option shares to a private foundation do not benefit from this preferential tax treatment. In this situation there would not be any tax advantage to donating the shares as compared with donating the cash proceeds from the sale of the shares.

DONATIONS OF PERSONAL-USE PROPERTY (THE ART DONATION SCHEME)

Personal Use Property (PUP) is any property that is owned by an individual that is 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, a $1,000 floor rule (adjusted cost base and proceeds) was established. Basically, when calculating the capital gain on the disposition of any item of PUP, the adjusted cost base would be the greater of the cost of the item or $1,000. Similarly, the proceeds of disposition will also be the greater of 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 capital gain upon disposition.

The 2000 Federal Budget amended these rules so that the $1,000 deemed cost base and deemed proceeds will not apply if property is acquired after February 27, 2000, as part of an arrangement in which the property is donated as a charitable gift.

Certain charitable donation arrangements have been designed to exploit these rules and enable individuals to receive an after-tax profit from such gifts. The schemes primarily targeted by this proposal are those in which donations of large quantities of potentially overvalued pieces of art, each appraised at $1,000 or less, are donated. This change will make these schemes far less advantageous to any individual considering participation.

CHARITABLE GIVING OPTIONS

Charitable giving can—and should—be tailored to your unique set of circumstances. Consider your age, and how much 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. These tax rules are explained in a separate section in this publication. But let's review the key rules:

- Each year you can claim a non-refundable charitable tax credit for charitable donations and gifts to the Crown, to an amount not exceeding 75% of your net income. There is no limit on donations of Canadian cultural property and ecologically sensitive land.
- No capital gains will be recognized for donations of certified cultural property to designated institutions.
- If your total charitable donations and gifts to the Crown exceed the 75% limit, you can claim the excess over the next five years. Each year, the carry-forward 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 9) 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 7 to 13.

SIMPLE CASH GIFTS

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

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

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

To maximize the tax credit, based on the CCRA's administrative practice, spouses can pool donation receipts and report them on one tax return. If you make small annual donations, you can save receipts for up to six years, which includes the current year, and then make one combined claim.

GIFTS IN KIND

A "gift in kind" means 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 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 CCRA may not consider the entire contribution a gift eligible for a tax benefit because the business received "a right, privilege, material benefit or advantage" in return.

BEQUESTS UNDER A WILL

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

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

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

- Your estate may not get full value for the tax credit. Your net income in the year of death and the preceding year may not be high enough to allow a credit to be claimed for all donations, especially if you die early in the year.
- Your charitable intentions could be thwarted by your province's family and succession laws that provide certain dependents (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 dependents that would challenge your Will in court. Therefore, get professional advice when drafting or revising your Will.
- A charitable bequest does not avoid probate taxes. In most provinces, probate taxes will be due on your estate's probatable value, before distributions are made.

If an investor decides to bequeath a portion of their estate to a charitable organization, then the CCRA has stated that the specific property or the amount of the gift should be clearly stated in the Will in order to claim the donation credit. In some circumstances, the residue of the estate could be accepted as a specified amount if a charity was to receive a specified portion, say 50% and another charity was to receive the other 50%. By bequesting a percentage of your estate instead of an absolute dollar amount, the amount of your gift is automatically kept in-line with the amount of your wealth. Most individuals will also identify the specific charity or charities in their Will.
However, the CCRA has stated that if a specific charity is not named in the Will, and the executor has discretion in which charity to donate to, then it may still be possible for the donation credit to be claimed. In this case, the terms of the Will should provide for a donation of a specific property, a specific amount or a percentage from the estate.
It should be clear from the terms of the Will that the executor is required to make the donation after the payment of the estate's debts and that the donation is made to a qualified charitable organization.

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

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

DONATIONS OF AN RSP/RIF

Under former income tax rules, donations made as a consequence of a beneficiary election on an RSP/RIF paid directly to a charity upon the death of the planholder do not qualify for the charitable donation tax credit. To obtain the donation tax credit, the RSP/RIF assets had to be made as a bequest under a Will. However, probate taxes would then apply on the value of the RSP/RIF assets. The year 2000 Federal Budget proposed that for deaths occurring after 1998, naming a charity as a beneficiary of an RSP/RIF will now qualify the bequest as a charitable donation and as a result,

PERSONAL AND ESTATE PLANNING CONSIDERATIONS IN CHARITABLE GIVING

FIGURE 3

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

* Notarial Wills in Quebec do not have to be probated

probate taxes can be avoided. However, to qualify for the donation tax credit, the transfer of an RSP/RIF should occur no later than 36 months after the individual's death. Note that as of the date of this publication, RBC does not permit charitable organizations to be named as a designated beneficiary of an RSP/RIF. However, this policy is currently under review.

PRESENT GIFT OF A LIFE INSURANCE POLICY‡

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

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

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

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

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

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

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

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

‡Please see back cover for more information.

DEFERRED GIFT OF A LIFE INSURANCE POLICY

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

With a present gift of a policy, you cannot change beneficiaries. With a deferred gift, you can, whenever you want. Furthermore, the 2000 Federal Budget proposed to allow the donation credit on a deceased's final income tax return to those donors that designate charities as beneficiaries of their life insurance policies. The amount of the donation on the deceased's final income tax return would equal the amount of the death benefit of the policy paid by the insurance company.

CHARITABLE GIFT ANNUITIES

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

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

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

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

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

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

CHARITABLE REMAINDER TRUSTS

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

Essentially this is a living trust you establish by contributing cash or other property. Throughout your lifetime you will 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 to ensure the trust funds

‡Please see back cover for more information.

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 set-up and annual administration associated with the trust.

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

Capital gains tax will apply if you contribute capital property with accumulated capital gains, but your tax credit may offset the capital gains tax bite. Note that the reduced capital gains inclusion rate of 25% (from 50%) as discussed on page 5 would *not* apply for gifts of capital property to charitable remainder trusts. The credit is based on the amount involved, the prevailing interest rate, and your life expectancy. The older you are when making the contribution, the more valuable the tax relief will be. Tax relief can run as high as 70% of the transfer's value for those in their 80s.

Each year you will receive and pay tax on any income realized by the trust if it holds investment assets. The capital stays intact and goes to the charity when you die without going through probate. But you cannot withdraw any capital in the meantime. Make sure to consider future financial requirements for you and your family before establishing the trust. It is very important that you seek professional tax advice before proceeding with this type of arrangement.

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 when wealthy donors wanted to dispose of property with substantial capital gains. The ability to value the gift between cost and market value enabled them to plan their tax credits so that they minimized or avoided tax while creating a lasting legacy.

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

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

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

For those with lesser amounts 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.

There are now over 1,000 Canadian foundations with reported assets of more than $3 billion. More than 80% of these organizations are private family foundations.

CONCLUSION

Your favoured 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 by way of cash. Your advisor can also assist you in this regard. Not all charities want to or can administer some of the Charitable Giving techniques discussed in this publication. Therefore, talk to 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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