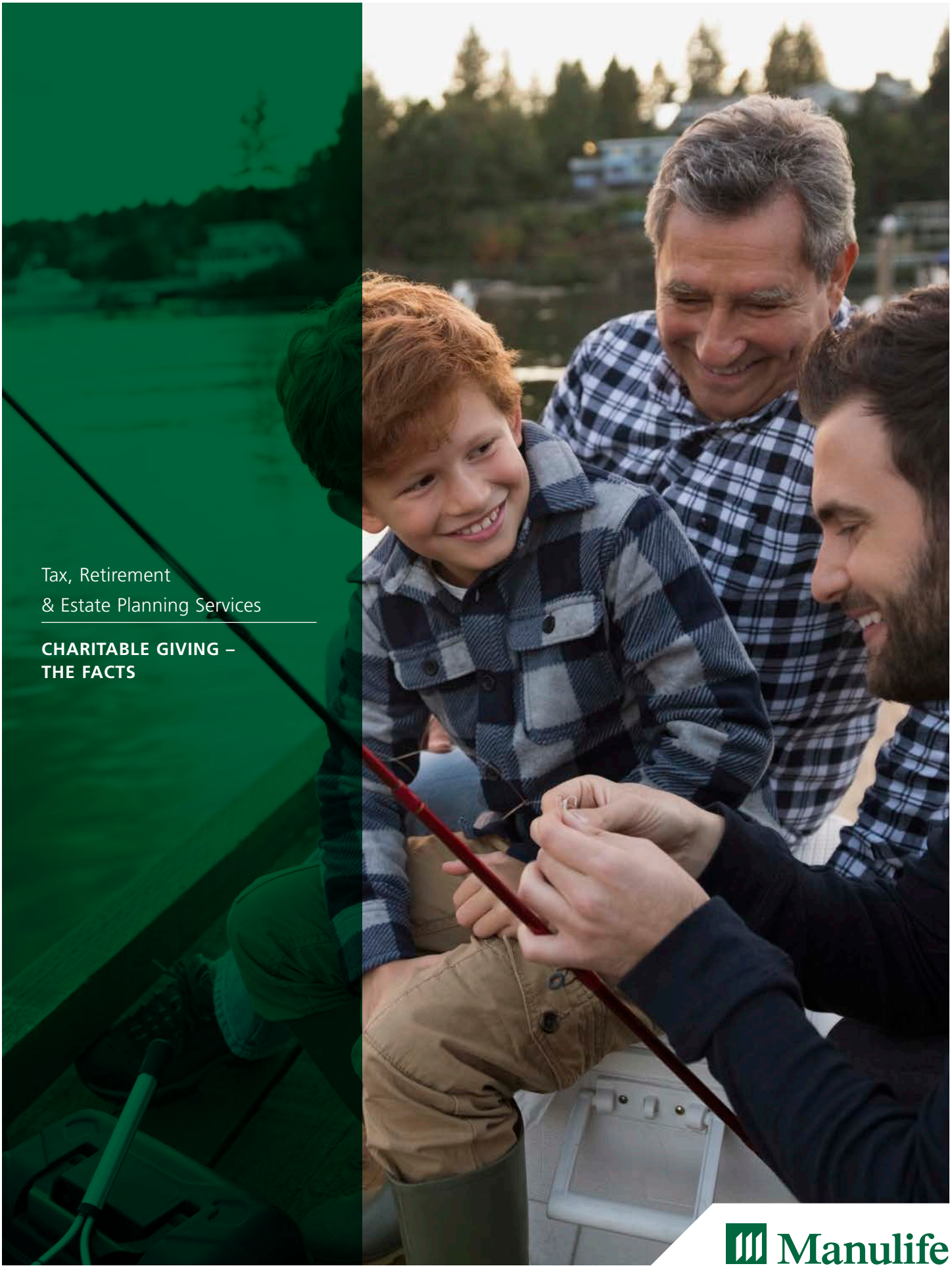
Tax, Retirement
& Estate Planning Services

CHARITABLE GIVING – THE FACTS



Manulife

Giving to charity is a strong tradition in Canada. But with cutbacks, the amount of public funding received by charitable organizations from the government has been dramatically reduced. This leaves many organizations in a precarious financial situation: with more fiscally conservative governments, aging populations and escalating operational costs, many charities are faced with the reality of being unable to maintain effective levels of service.

In response to Canada's economic reality, individuals, organizations and corporations are stepping forward to help fill the funding void that governments have left behind. And with good reason – not only do charitable donations provide individuals and organizations with the satisfaction of giving back to their communities,[1] but Canadian tax laws ensure that there has never been a more tax-advantaged time to give.

To help bridge the gap between donors and charitable organizations, Manulife has prepared this guide on giving assets to charity to provide an overview of how donors can optimize their charitable gifts. Through proper tax planning and an understanding of different planned giving options, donors and charities can work hand-in-hand to achieve maximum benefits while enhancing our communities' overall quality of life.

This guide is distributed on the understanding that Manulife is not engaged in rendering legal, accounting or other professional advice. If legal or other expert assistance is required, the services of a competent professional should be sought.

After reviewing this document, Manulife recommends you consult your tax advisor before acting upon any of the information provided.

[1]Most charities are very grateful for the opportunity to thank donors while they are still alive. However, charities usually need permission from the donor in order to publicly acknowledge the gift.

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What to be aware of

This guide incorporates tax rules up to February 2017. Note that rates and other information may change as a result of legislation or regulations issued after this guide went to print.

Warning: The Canada Revenue Agency (CRA) cautions that participating in tax shelter gifting arrangements is likely to result in a tax bill!

While donors have many charitable options to consider, they need to be aware of the risks of participating in certain tax sheltered donation arrangements.

These types of arrangements include: gifting trust arrangements, leveraged cash donations, and buy-low donate-high arrangements. Promoters of such arrangements must obtain a tax shelter number from the CRA. This is used to identify the tax shelter and its investors, but offers no guarantee that a donor will receive the tax benefits.

The CRA has audited many tax sheltered gifting arrangements. Generally, they have been successful in either reducing the tax credit to no more than the cash donation, or denying the 'gift' completely. Interest and penalties may also apply.

For more information about tax shelters and how you can protect yourself, see the CRA's website – cra-arc.gc.ca/gncy/lrt/vshlt-eng.html

WHAT QUALIFIES AS A CHARITY?

For an organization to qualify as an official charity – one that can legally issue tax receipts – it must be registered with the CRA. Without this qualification, the donor will not be able to obtain tax benefits from the gifts that they provide. There are approximately 85,000[2] charities registered by the CRA. If a donor has questions as to whether a charity is legitimate, they can confirm the organization's charitable registration number by calling the CRA directly or by visiting cra-arc.gc.ca/chrts-gvng/menu-eng.html.

There are many types of organizations that have been approved by the CRA to issue charitable receipts.

Some of these include:

- Registered charities (including Canadian universities and colleges)
- Registered Canadian amateur athletic associations
- National arts service organizations
- Municipalities
- Municipal or public bodies performing a function of government in Canada
- Prescribed universities outside Canada
- Foreign charitable organizations that have received a gift from Her Majesty in right of Canada
- Low-cost housing corporations for the aged
- Her Majesty in right of Canada, a province, or a territory, and the United Nations and its agencies

[2]www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/nwslttrs/cnnctn/cnnctn04-eng.html

Definition of a "gift"

If a gift to charity is to obtain special tax considerations, it must qualify as a "voluntary transfer of property without valuable consideration" under CRA guidelines. This means that when a gift is made by an individual or corporation, it is done so without the expectation of the donor receiving something in return. Property under this definition typically falls under one of the following categories:

- Cash
- Gifts in kind (typically stocks, bonds and real estate)
- Certified cultural property (works of art, historical or other cultural artefacts)
- The proceeds of a life insurance contract

Gifts that may have monetary value but do not qualify for charitable tax receipts include:

- Gifts for which a personal benefit will be received (for example, payments to a charitable organization for daycare services)
- Gifts of personal time or services like consulting work or manual labour
- Gifts with nominal value like used clothing, old furniture or outdated computer parts

CRITERIA FOR A GIFT

The CRA has outlined the following criteria for a gift:

- There must be a voluntary transfer of property to the charity and the property must have a value that can be clearly determined. Note that this still precludes a receipt for a donation of services.
- Any advantage received by the donor from the charity must be clearly identified and its value ascertainable.
- There must be a clear intent to enrich the charity. In this regard, a transfer of property will not be disqualified as a gift as long as the advantage to the donor does not exceed 80 per cent of the value of the property transferred to the charity. A second alternative allows for the donor to establish to the satisfaction of the Minister of National Revenue that the transfer was made with the intention to make a gift.

As an example, assume a donor wants to transfer a building with a fair market value of $300,000 to a registered charity. The charity assumes liability for the $100,000 outstanding mortgage.

The donor would be eligible to claim a donation amount of $200,000 (i.e. the "eligible amount" of the gift). If the outstanding mortgage was for more than $240,000 (80 per cent of $300,000), the donor could apply to the Minister of National Revenue for a determination as to whether the transfer was made with the intention to make a gift.

SMALL GIFTS OF APPRECIATION

Generally, the "eligible amount" of a gift (i.e. the amount for which a donation receipt can be issued) will be the value of the property transferred to the charity, less the amount of the advantage provided to the donor. However, certain advantages are of nominal value, and are considered too minimal to affect the value of a gift.

Advantages that have a combined fair market value (FMV) that is not more than $75 or 10 per cent of the FMV of the gift, whichever is less, are considered too minimal to affect the amount of the gift. A charity does not have to subtract these advantages from the FMV of the gift when issuing receipts.

Example

An individual donates $100 to a charity and in return receives a mug valued at $6 and a pen valued at $2.

- FMV of gift $100
- Combined value of advantages $8
- De minimis threshold
  (lesser of $75 or 10 per cent of value of gift) .. $10

Since the combined value of the advantages ($8) is less than the de minimis threshold ($10), the charity does not need to subtract these advantages from the value of the gift when issuing the receipt.

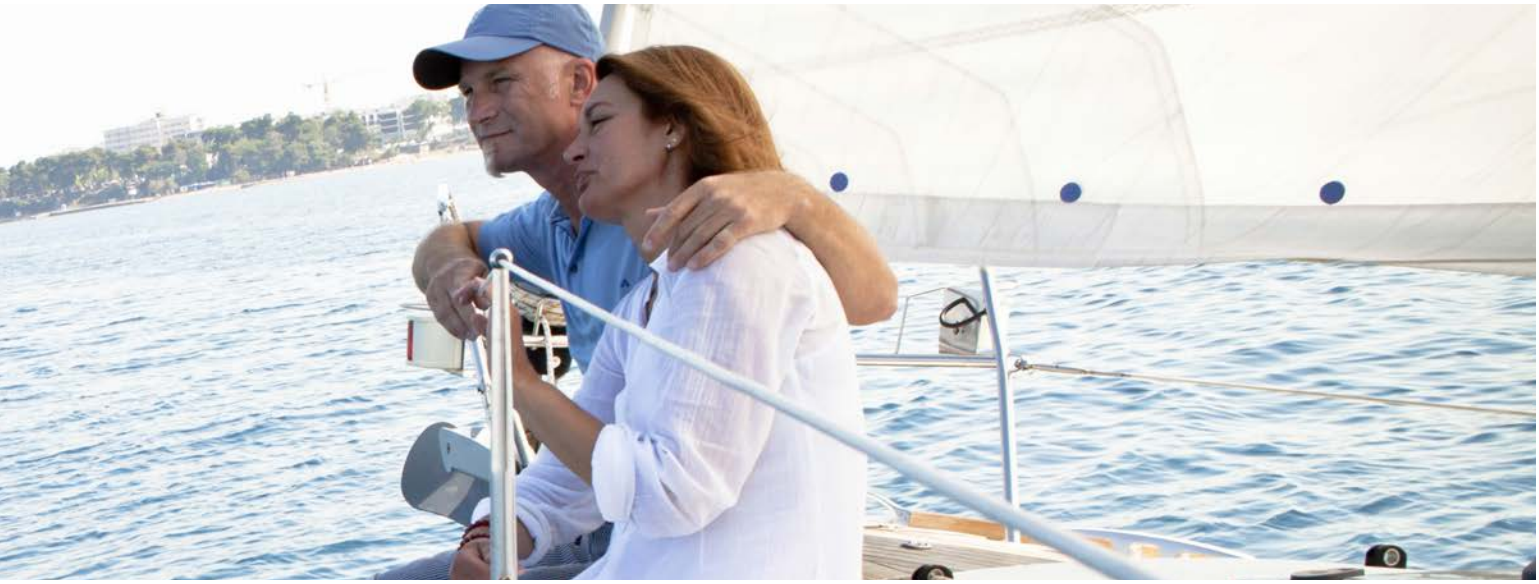
If the FMV of the advantages had been $11 or more, the charity would have to subtract the advantages from the value of the gift when issuing the receipt.

In addition, if the FMV of the advantages had been more than $80 (80 per cent of the FMV of the gift), the intention to make a gift threshold would not have been met and the charity could not issue a receipt.

The de minimis rule does **not** apply to:

- cash or near-cash equivalents (for example, redeemable gift certificates, vouchers, and coupons).
- the object of a fundraising event (for example, the meal at a fundraising dinner, or the green fees, cart rental and meal at a golf tournament).

The charity must always subtract the value of these items from the FMV of the gift before issuing a receipt.



Disbursement quota reform

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). For tax years ending before March 4, 2010 registered charities were required by the CRA to spend at least 80 per cent of all donations (the "disbursement quota") for which tax receipts had been issued each year by the end of the following year.

For tax years ending after March 3, 2010, the requirement for registered charities to spend 80 per cent of the previous year's tax-receipted donations no longer exists.

Rather, the disbursement quota calculation is now based on the value of a charity's property not used for charitable activities or administration.

The disbursement quota is calculated as follows:

Charitable organizations
If the average value of a registered charity's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds $100,000, the charity's disbursement quota is:

- 3.5 per cent of the average value of that property.

Public and private foundations
If the average value of a registered charity's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds $25,000, the charity's disbursement quota is:

- 3.5 per cent of the average value of that property.

Tax guidelines for charitable donations

What follows is a brief summary of the tax rules that apply to all charitable donations:

- Individuals will receive a non-refundable federal tax credit of 15 per cent on the first $200 donated to charity. Donations in excess $200 will qualify for the top federal tax credit rate of 33 per cent to the extent an individual's income exceeds the threshold for the top marginal federal tax bracket. Otherwise the federal tax credit rate of 29 per cent will apply on annual donations over $200. In addition, individuals will receive a non-refundable provincial/territorial tax credit (amounts differ depending on the province/territory).
- An individual can claim an amount for total donations of up to 75 per cent of net income, plus 25 per cent of any taxable capital gains and recapture of depreciation related to the gift portion of the donation of capital property. For example, if an individual has net income of $40,000 (with no taxable capital gains), he can claim total donations of $30,000. The federal and provincial/territorial non-refundable tax credits would then be applied to the $30,000.
- After federal and provincial/territorial taxes and surtaxes are taken into account, an individual at the top income level can expect tax savings around 50 per cent (depending on the province/territory) for every dollar donated over $200.
- The 2013 federal budget introduced a temporary First-Time Donor's Super Credit (FTDSC) that supplements the Charitable Donations Tax Credit (CDTC) with an additional 25 per cent non-refundable federal tax credit for first-time donors on up to $1,000 of donations. The donation must be in the form of cash to qualify for the FTDSC. An individual will be considered a first-time donor if neither the individual nor the individual's spouse or common-law[3] partner has claimed the CDTC or FTDSC in any taxation year after 2007. The FTDSC will be available for donations made on or after March 21, 2013 and may be claimed only once in a taxation year after 2012 and before 2018.
- Donations can be used in the current year or carried forward up to five years except for donations of ecological gifts which can be carried forward for up to 10 years.
- Married and common-law couples can pool their donation receipts to maximize their tax credits.

EXAMPLE

Mrs. Johnston has $300 of donations and Mr. Johnston has $100 of donations. If they claimed them separately, they would receive a non-refundable federal tax credit of $74

($200 x 15 per cent + $100 x 29 per cent
+ $100 x 15 per cent)

However, if they claimed all the donations on one tax return, they would receive a non-refundable federal tax credit of $88

($200 x 15 per cent + $200 x 29 per cent)[4]

[4] Assumes that neither Mr. or Mrs. Johnston is in the top federal tax bracket and therefore don't qualify for the 33 per cent federal tax credit rate on donations in excess of $200. Doesn't take into account provincial/territorial tax credits.

[3] Spouse or common-law partner as defined in the *Income Tax Act* (Canada).

- If an individual donates property, under certain circumstances, the donor can elect to dispose of the property at a value no greater than the FMV (the amount the property can be sold for) and not less than its adjusted cost base (ACB)[5]. Use this value to determine the eligible amount of the gift.
- Donors can claim total donations made in the year of death up to 100 per cent of net income in the year of death and the preceding year.
- Under the new estate donation rules where a gift is made by a Will, by a direct designation under a life insurance policy, Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) or Tax Free Savings Account (TFSA) or by the estate, the gift is deemed to be made by the estate (and no other taxpayer, i.e. not the individual) at the time the property is transferred to the charity (and at no other time, e.g. not necessarily at death). This establishes for all estates (whether the estate is the graduated rate estate ("GRE") or not) who is seen to have given the gift and the timing of that gift.
- A GRE is as an estate that arose on and as a consequence of the death of an individual if the estate is at that time a testamentary trust; the estate designates itself as a GRE in its first tax return for the year ending after 2015; no other estate has designated itself as a GRE of the deceased individual; and the deceased's social insurance number is provided. A GRE can only last as such for up to 36 months following the date of death of the individual (the "GRE Period").
- If a gift is made by the estate and the estate is a GRE at the time, or would otherwise meet the requirements to be a GRE but the 36 month period has been exceeded and the gift is made within 60 months of death, the executor will have the flexibility to claim these donations among and up to:
  - 100 per cent of the net income in the deceased individual's last two taxation years;
  - 75 per cent of the net income in the year of the gift or in the five years (10 years for for ecological gifts) following the year of the gift; or
  - 75 per cent of the net income of a prior taxation year of the GRE.
- If the gift does not qualify as gift by a GRE, the executor can only claim donations up to 75 per cent of the net income in the year of the gift or in the five years (10 years for ecological gifts) following the year of the gift.
- For corporations, donations are generally deductible against income subject to certain limits.

TIPS

For individuals who wish to give to a charity, there are a number of useful tips that can be followed:

- Ensure that the organization has a CRA charitable registration number. A charity cannot issue a valid tax receipt without one.
- Many charities will not issue a receipt if the amount of the donation is less than $10.
- Married and common-law couples can pool their donation receipts to maximize their tax credits. This will help avoid having two $200 "thresholds".
- Donors may want to defer claiming small amounts and wait until a future year when the total amount to be claimed will exceed $200. For example, if the donor made a donation in 2017, they could carry it forward as far as 2022 and claim it in that year.

[5] Technically the elected value can not be less than the greater of: i) any advantage in respect of the gift; and ii) the ACB of the property (or, if the property was depreciable property, the lesser of its ACB and the undepreciated capital cost of the class of the property).

Donating cash

When considering a donation to charity, perhaps the most common method by which Canadians give is simple cash gifts.

ADVANTAGES

Cash gifts can easily be donated to charities in response to fundraising drives, telemarketing campaigns, direct-mail campaigns and even door-to-door appeals. For many individuals, there are a number of immediate advantages to donating cash since it is easy to provide, involves little in the way of planning and the charity receives an immediate benefit. Other positive attributes of cash donations include:

For the donor:

- No costs are incurred to make the donation.
- There is no obligation to commit future time or resources to the charity.
- The donor receives a donation receipt which results in a non-refundable tax credit that can be used in the current year or carried forward to a future year.

For the charity:

- It obtains immediate access to funds.
- The nature of the gift is highly "liquid".
- It can often use the money as it sees fit.

DRAWBACKS TO CONSIDER

For people making larger donations, however, there are a number of disadvantages to giving cash. Often cash donations may not be the most tax-advantaged way for donors to give. Other considerations include situations where the donor wishes to provide guidance as to how the money will be used. In this instance, it may be more difficult to assure that the donor's wish is fulfilled in a manner that conforms to their original objectives. Furthermore, a cash gift lowers current income and savings rather than deferring the payment to a future date – a fact that can affect the amount that many donors can afford to give. For the majority of Canadians however, cash gifts remain the preferred method of donating to charity. This is especially true for people donating smaller amounts. But for individuals looking to donate larger amounts, or who wish to leave a lasting legacy after their death, Manulife suggests a more planned approach. By doing so, the donor can ensure they maximize the benefits to the charity, while receiving significant tax and estate benefits of their own.

Gifts in kind

An increasingly popular option among donors giving to charities is gifts in kind. Under this option, the donor forgoes giving a charity a highly liquid form of asset like cash in favour of an alternative type of tangible asset. Under certain circumstances, gifts in kind receive special tax considerations under CRA guidelines.

To qualify as a gift in kind, the asset must be a donation of tangible property, and not a service. Assets that commonly qualify are:

- Stocks, bonds, and other publicly listed securities.
- Segregated fund contracts.
- Real estate and other capital property.
- Certified cultural property. These are items that are of "outstanding significance and national importance" and would include art and historical artefacts.
- Ecological property. These are lands, covenants and easements (a right-of-way or a similar right over another's land) that are important to the preservation of Canada's environmental heritage.
- Depreciable property such as equipment.
- Other assets of discernable value like the inventory of a business.

ADVANTAGES

An important benefit of gifts in kind is that they can provide for a simplified means of transferring property from the donor to a charitable organization. Once the fair market value of the asset that is being donated is determined, the charity can issue a tax receipt to the donor based upon the value of the underlying gift. In this manner, the donor is not required to "cash in" or sell the property in question.

DRAWBACKS TO CONSIDER

The most notable disadvantage of gifts in kind is that the donor must pay tax on 50 per cent of any capital gain realized in the year of disposition (special rules apply for donations of publicly-traded securities, certified cultural property and ecological property). This means that if the donor owns property that has appreciated greatly in value, not only will they be donating the asset to the charity, they will also be asked to pay any capital gains tax outstanding. Because of this reason, Manulife suggests potential donors seek professional tax advice before donating gifts in kind.

DONATING PUBLICLY TRADED SECURITIES AND SEGREGATED FUND CONTRACTS

Certain types of property provide special tax benefits under CRA guidelines. The most notable of these would be the donation of segregated fund contracts and publicly-traded securities like stocks, bonds and mutual funds. Normally when transferring the ownership of these assets to a charity, the donor would have to pay tax on 50 per cent of the capital gains realized from the asset's appreciation in value. But under a special government incentive program to encourage charitable giving, the capital gains inclusion rate is reduced to zero per cent. In other words, the tax on any capital gains arising from the disposition of these assets donated directly to a charity has been eliminated – a significant incentive for donors with large capital gains, or for those who wish to purchase a qualifying investment now with the intention of donating it after it appreciates. Although this special incentive program was supposed to be temporary, the federal government made it permanent because of its success. This special treatment also applies to qualified investments given to a registered charity that is a private foundation. It should be noted that, effective February 25, 2008, the zero per cent inclusion rate was extended to capital gains realized on the exchange of unlisted securities (other than prescribed interests in a partnership) for publicly traded securities.

Note that transfers of ownership of publicly traded securities and segregated fund contract on death will only qualify for the nil capital gains inclusion rate if the donation is made by the estate and the estate is a GRE at the time or would otherwise meet the requirements of a GRE but the 36 month period has been exceeded and the gift is made within 60 months of death.

Mr. John Franklin is considering a $90,000 donation to his favourite charity. He is in the top tax bracket of 50 per cent and has enough income to be able to claim the full amount of the donation receipt in the year it is made. He also owns a segregated fund contract with a fair market value of $90,000 and an adjusted cost base of $40,000. His capital gain on the contract is $50,000. In the following table, the first column illustrates what would happen if Mr. Franklin liquidates the segregated fund contract and donates the cash proceeds to charity. The second column illustrates what would happen if Mr. Franklin donates the segregated fund contract instead. The end result is that by donating the segregated fund contract rather than cash, Mr. Franklin could save $12,500 on his tax return.

	Cash donation ($)	Donating the Segregated Fund Contract ($)
Taxable capital gain	25,000	0
Donation amount	90,000	90,000
Tax on capital gain	12,500	0
Tax savings from donation	(45,000)	(45,000)
Tax (savings)/cost	(32,500)	(45,000)

For illustration purposes only.

DONATING CERTIFIED CANADIAN CULTURAL OR ECOLOGICAL PROPERTY

Under certain CRA tax provisions, donors who wish to give significant cultural or historical items can claim donations of up to 100 per cent of net income made in the year of the gift. Any capital gain that is realized upon the donation to a designated institution or public authority will not be subject to taxation. In addition, the donor may be able to use any capital losses on the property. These provisions are especially attractive for individuals wishing to donate significant works of art or historical artefacts to museums and galleries. For a donor to take advantage of this provision, the Canadian Cultural Property Export Review Board must certify the property.

A donor can also claim donations of up to 100 per cent of net income for donations of ecological gifts. For gifts of these properties (other than to a private foundation) made after May 1, 2006, the net capital gain is zero. To obtain this benefit, the land must be certified by the Ministry of the Environment.

Note that a cultural or ecological gift on death will only qualify for these tax benefits and effectively avoid tax on any capital gains if the donation is made by the estate and the estate is a GRE at the time or would otherwise meet the requirements of a GRE but the 36 month period has been exceeded and the gift is made within 60 months of death.

For information on how to obtain certification for these types of property, contact the Registered Charities Directorate at the CRA.

TIPS

For individuals considering a gift in kind to charity, there are a number of useful tips that can be followed:

- Many gifts have an objective fair market value. For example, publicly-traded stocks, mutual funds and segregated fund contracts have a value that is listed daily. For assets that do not have an objective fair market value, it may be necessary to obtain an appraisal. For gifts valued at under $1,000, generally the CRA will accept the charity's assessment of the fair market value of the gift. For gifts whose estimated value exceeds $1,000, a qualified third party should be consulted for a more objective appraisal.
- The donor can elect to dispose of the property at a value not greater than the FMV (the value that the property can be sold for), and not less than the ACB[6]. The tax receipt received by the donor will reflect the amount chosen as the eligible amount of the gift. This could be done for gifts of appreciated property, other than publicly-traded securities, such as artwork, real estate, and privately-held companies, to reduce the tax paid on the capital gain.
- The donor should ensure the charity is able to accept the gift. Some charities may have restrictions in their by-laws as to what type of property they can accept.

[6] Technically the elected value can not be less than the greater of: i) any advantage in respect of the gift; and ii) the ACB of the property (or, if the property was depreciable property, the lesser of its ACB and the undepreciated capital cost of the class of the property).

Donating registered plans (RRSPs, RRIFs)

For individuals who are considering leaving all or part of their retirement savings to charity, gifting the proceeds of a registered plan can be an attractive option.

Upon the death of the individual, the proceeds of the registered plan are paid out to the charity. The executor (or liquidator) of the donor's estate will include the full balance of the registered plan in the deceased's final tax return and will receive a charitable receipt from the charity for the same amount. If the donation is made at the time the estate is a GRE (and normally it would be) this amount can be allocated, subject to certain limits, amongst the deceased's final two tax returns, the estate return that year, a previous tax year of the GRE or carried forward up to five years, whatever is most advantageous. [7]

ADVANTAGES

One of the key benefits of giving in this way is that the donor retains complete control over the assets until death. This means that even if the individual has worked with a charity to arrange for the future transfer of assets, the donor can still revoke that decision by designating a new beneficiary. The flexibility of this option could prove beneficial if the donor decides to leave all or part of their plan's assets to their dependants. Situations that may prompt a donor to revoke the charity as a beneficiary include a dependant's sudden illness, bankruptcy, divorce or any other significant change in their life. In addition, the funds in the registered plan are available to the individual for use, if needed, in their retirement years.

Another advantage of naming a charity as beneficiary of a registered plan is that the payment to the charity is usually pretty quick. Furthermore, because the funds do not flow through the deceased's estate the chances that any potential estate litigation could delay a charitable distribution are significantly reduced. Such delays could jeopardize the donation qualifying as a gift by an estate that is a GRE, or an estate that would otherwise meet the requirements of a GRE but the 36 month period has been exceeded and the gift is made within 60 months of death, and the potential tax benefits that come with it in selecting which years to allocate the charitable donations.

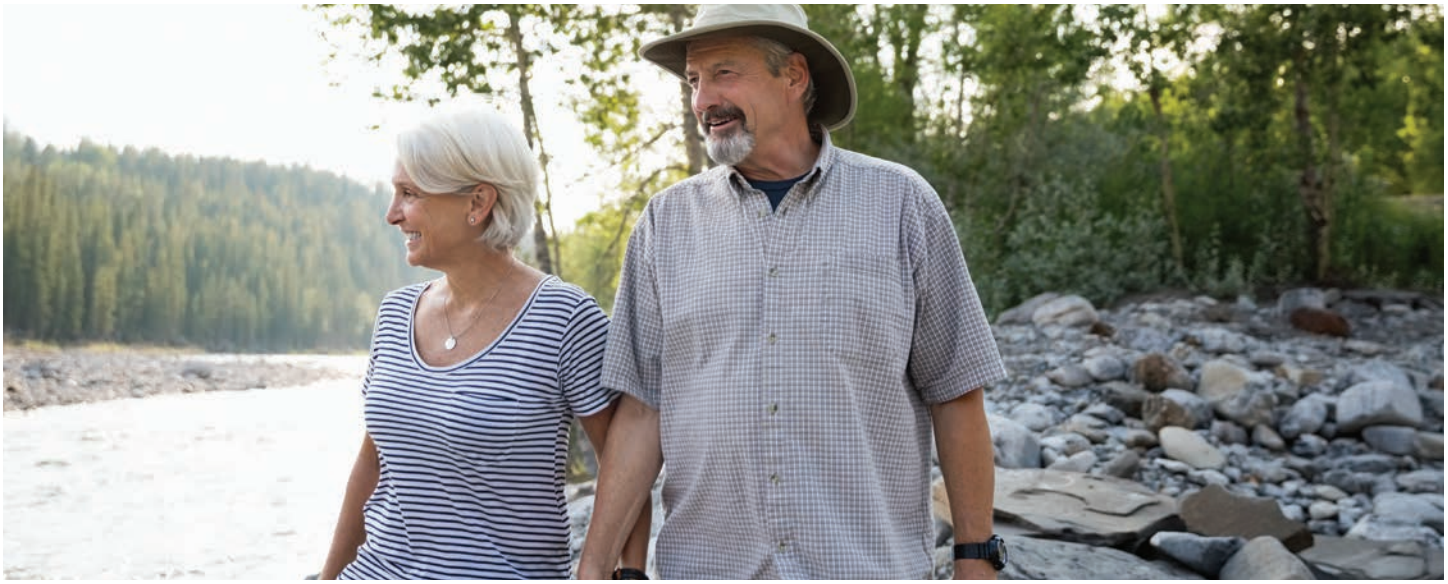
TIPS

For individuals who are considering the gift of a registered plan to charity, there are a number of useful tips that can be followed:

- Donors must designate the charity as the beneficiary of the registered plan's assets [8].
- Donors should regularly review their beneficiary designation and ensure that the charities chosen to receive funds continue to exist and retain their official charitable status.
- Donors should consult a tax planner to ensure that they properly plan for and maximize the tax benefits.
- Donors with heirs should discuss their intention to give all or part of their plan assets to a charity upon death.
- If the donor is planning on leaving a substantial amount, steps should be taken to ensure that the estate will be able to use the entire donation receipt.
- For individuals who wish to leave the proceeds of their plan to a charity without reducing the value of the estate left to heirs, wealth replacement insurance can help make up the difference (see the section "Life Insurance as a Wealth Replacement Strategy" on page 24).

[8] In Quebec, you cannot name a beneficiary on a registered plan unless the underlying product is a segregated fund contract or an annuity type investment product. Alternatively, you can choose to designate a charity as an heir to your registered plan through your will.

[7] If the donation is made at the time the estate that would otherwise meet the requirements of a GRE but the 36 month period has been exceeded and the donation is made within 60 months of death, this amount can be allocated, subject to certain limits, amongst the deceased's final two tax returns, the estate return that year, any prior year that the estate was a GRE or carried forward up to 5 years.



DRAWBACKS TO CONSIDER

The value of the registered plan is included as income in the year of death. However, the tax owing on this amount can usually be eliminated by the value of the donation credit.

To make sure that the benefits of giving in this way outweigh any potential drawbacks, Manulife recommends that donors consult a tax professional before proceeding.

EXAMPLE:

Ms. Donor had an RRSP worth $200,000. Since she had no dependants, Ms. Donor named her favourite charity as the beneficiary of her RRSP.

When Ms. Donor passed away in June, her income for that year was $100,000 (not including the RRSP). Ms. Donor's marginal tax rate is 45 per cent. In this case, the entire tax bill from the RRSP inclusion can be offset by the tax savings from the donation as we are assuming that her estate qualifies as a GRE in the year of the donation. If Ms. Donor had other donations exceeding $100,000, the executor (or liquidator) may not be able to use the entire $200,000 in the year of death, but could potentially carry it back to the preceding year or use it in the estate in the year of the donation or any of the following five years.

Normally, when an individual has no spouse or minor or infirm dependants, the value of the registered plan is included fully in the final tax return and creates a liability. If the plan is donated to charity, and qualifies as a gift from a GRE, the value of the donation receipt can offset the tax on the income inclusion. So instead of $110,000 going to the beneficiary named in the will and $90,000 going to the CRA, the entire $200,000 can be given to the charity.

	Ms. Donor's final return – with a donation ($)	Ms. Donor's final return – without a donation ($)
Income from RRSP	200,000	200,000
Donation amount	200,000	NIL
Tax on income @ 45%	90,000	90,000
Tax savings from donation @ 45%	90,000	NIL
Tax cost	NIL	90,000
Net proceeds available to be paid to charity or beneficiaries	200,000	110,000

For illustration purposes only. Assumes the donation qualifies as a gift from a GRE at the time.

Bequests

For donors planning to gift larger amounts, a bequest, or the means by which a donor gives assets to charity through a declaration in a will, has traditionally been a popular way to give. The structure of the bequest is usually drawn up by a legal advisor and settled after death through the services of the executor (or liquidator). Before proceeding, Manulife recommends that the donor seek the services of an experienced estate legal advisor to ensure a bequest is established in the most appropriate way.

ADVANTAGES

There are many advantages to bequests. One of the primary benefits of bequests is the flexibility they provide. For instance, assets allocated to the charity within a will remain under the control of the donor until death. This means that capital does not have to be tied up and can be used as the donor sees fit. In addition, the gift can be revoked at any time by simply changing the will. Furthermore, the type of asset to be bequeathed can take on many forms: real estate, proceeds from an insurance contract, cash, a defined percentage of an estate – the variations are endless. If the donor stipulates that the donation amount is to be a percentage of the estate, it keeps the donation in line with the value of the assets as they change in value, and it also ensures that the estate will be able to meet other obligations.

An additional advantage is that if instructed, the executor (or liquidator) of the estate can choose to value the asset between its FMV (the value the asset can be sold for) and its ACB[9]. This means that there is the potential to eliminate or reduce any capital gains realized on the disposition of the asset. However, the value chosen is also used to determine the eligible amount of the gift.

TIPS

For individuals considering a bequest to a charity, there are a number of useful tips that can be followed:

- Ensure that the amount of the gift and the name of the charity are clearly stated within the will.
- It may be advantageous if the donor gifts an asset through a will rather than donating the cash proceeds from the asset's sale. For example, stock, bonds and other publicly-traded securities benefit from a reduced capital gains inclusion rate if the estate is a GRE at the time or would otherwise meet the requirements of a GRE but the 36 month period has been exceeded and the gift is made within 60 months of death.
- Donors should consult a tax planner to ensure they properly plan for and maximize the tax benefits.
- The donor should regularly review their will and ensure that the charities chosen to receive funds continue to exist and retain their official charitable status.

[9] Technically the elected value can not be less than the greater of: i) any advantage in respect of the gift; and ii) the ACB of the property (or, if the property was depreciable property, the lesser of its ACB and the undepreciated capital cost of the class of the property).

DRAWBACKS TO CONSIDER

Bequests have a number of significant disadvantages that can undermine their value for donors interested in giving assets to charity. Although starting in 2016 one of the traditional disadvantages has disappeared. Previously an individual had to be careful to ensure that their will didn't give the executor to much discretion to make a gift. The CRA could consider the gift to be made by the individual's estate and not the will and thus not be eligible to be claimed on their terminal tax return. With the new estate donation rules this is no longer a concern. There is no longer a distinction between a gift by will and a gift made by the estate. The new estate donation rules merely require that the subject of the gift be property (or substituted property) that was acquired by the estate as a consequence of death.

However, a number of other disadvantages to bequests remain. Surviving dependants could challenge the will in court, potentially annulling the donor's original intentions. Another drawback is that creditors could also have their day in court. If the donor of the estate owes money at the time of death, a creditor could establish a legal claim on the remaining assets held by the estate. Another downfall of bequests is their potential cost. For example, probate[10] and estate administration fees may absorb a considerable percentage of the estate's value before it moves on to its rightful heirs. And because a probated will is considered a public document, the donor's privacy cannot be guaranteed. Lastly, consider that delays in the distribution of bequests, due to estate litigation for example, could jeopardize the bequest qualifying as a gift from a GRE and the tax benefits that come with it. Specific bequests would be preferred as opposed to gifts from the residue of the estate in this regard.

Additional factors that should be considered before drawing up a bequest are:

- There are no tax savings provided to the donor during life. The tax benefits will depend on the donation rules at the time of the gift.
- Assets are not donated to the charity until after death.
- The donor will not witness the benefits their gift will provide.
- If the donor's financial situation changes, the size of the bequests provided for in the will may need to be adjusted.

EXAMPLE:

Mr. John Johnson, a widower, died on February 5th. In his will, he left his favourite charities a total of $75,000. However, one of his children brought a court application challenging the validity of his will. At the same time, an old business creditor brought a lawsuit for unpaid bills.

The charitable bequests could not be paid until the cases were resolved which took five years. By this time the bequests no longer qualified as a gift from a GRE. As a result, the executor could only claim donations up to 75 per cent of the net income in the year of the gift or in the five years following the year of the gift. Unfortunately the estate didn't have sufficient income to make full use of the charitable tax credits.

For illustration purposes only.

[10] Probate fees are not applicable in Quebec.

Charitable gift annuity

A charitable gift annuity is an attractive option for donors wishing to make a planned gift to charity. The principal benefit of a charitable gift annuity is that it not only provides the donor with a guaranteed level of income for a set number of years, or for life, it also provides an immediate gift to charity – all from the same capital source.

A charitable gift annuity works in the following manner:

- The donor gives a lump-sum donation to a charity with the understanding that the charity will provide a fixed amount of income back to the donor over a specified term, or for life. The life annuity can include a guarantee period as well.
- The charity can either fund the annuity to the donor itself, or like most organizations, can use the lump-sum donation to purchase an annuity from an insurance company.Generally, if the charity purchases an annuity from the insurance company, the payments are made directly to the donor.
- The donor receives a tax receipt equal to the amount donated less the cost of the annuity.
- The donor is taxed on the interest portion of each annuity payment received.
- The difference between the cost of purchasing the annuity and the amount of the original donation is then set aside for the charity's immediate needs.

Additional benefits of charitable gift annuities include:

- The donor can receive an immediate donation receipt if the amount of capital given to the charity is greater than the cost of the annuity.
- With an annuity, there is no need to pay for ongoing investment management services or administration fees.
- A charitable annuity allows the donor to give during their lifetime rather than postponing the gift until after death.
- Only a portion of each annuity payment is taxable in the hands of the donor (depending on the age of the donor at the time the annuity is purchased there may be no taxable portion of the annuity).

DRAWBACKS TO CONSIDER

The most notable drawback to charitable annuities is that once established, they are irrevocable.

TIPS

For individuals considering a charitable annuity, there are a number of useful tips that can be followed to make the most of their donation:

Couples can consider arranging a joint and last survivor annuity with the charity in question to ensure the surviving spouse's income stream remains intact.

Donors with excess capital can consider investing a portion of the annuity payments received into a life insurance policy to provide for capital replacement after death.

A portion of the annuity becomes taxable to the donor when received. Each payment is comprised of an interest component and a return of capital component. The income portion will be included in the donor's income for tax purposes.

AN ALTERNATIVE METHOD

The benefits of a charitable gift annuity can also be accomplished by purchasing a prescribed annuity in the donor's name and donating the difference between what would have been given to the charity and the cost of the annuity directly to the charity. The amount of the charitable donation, the amount of the annuity payments and the taxable portions of the annuity payments will all be the same (see the example below). The same drawback also applies in that once the annuity is purchased it is irrevocable.

However, the donor may enjoy the additional benefits of not being concerned with having the gift disqualified if the advantage back to the donor is over 80 per cent of the value of the amount given to the charity. Furthermore, the donor is not restricted in terms of who is named as beneficiary of the annuity which may be an issue with some charitable gift annuities.

CONCLUSION

Whether a charitable gift annuity is purchased or a lump sum is donated and an annuity is purchased in the donor's name directly, it is possible to provide a guaranteed income stream for the life of the donor. This may be an attractive feature for potential donors invested in traditional interest-bearing securities such as GICs[11] who are concerned about out-living their capital.

EXAMPLE:

Mrs. Donor, age 71, has $90,000 she'd like to give to her favourite charity but she also wants to ensure she has some income to help provide for living expenses. According to her calculations, $5,000 per year will be enough.

The charity receives $90,000 from Mrs. Donor. However, they need to ensure they have the funds to pay Mrs. Donor her $5,000 per year for as long as she lives. To mitigate this risk, the charity buys an annuity from an insurance company to provide $5,000 per year on the life of a 71-year-old woman.

If the cost to the charity is approximately $65,000, the excess amount of $25,000 is for the charity's immediate use. (Note: the cost of the annuity is shown for illustration purposes only and is not calculated based on the rates effective on the date of publication) Mrs. Donor will also receive a charitable donation receipt for $25,000. The $65,000 annuity will qualify as a prescribed annuity and a portion of each payment may be considered taxable.*

*** Note that for a charitable gift, Mrs. Donor would get the same results if she purchased the $65,000 prescribed annuity personally and donated the excess amount of $25,000 to the charity.**

For illustration purposes only.

[11] For this article, GIC refers to both insurance company issued Guaranteed Interest Contracts as well as Guaranteed Investment Certificates issued by other financial institutions.

Charitable remainder trusts

For wealthier individuals looking to make very large gifts to a charity, establishing a charitable remainder trust may prove to be an attractive planned giving option – especially if the donor is looking to secure both income and meaningful tax relief during their lifetime. The arrangement is also appealing to the charity as it obtains immediate legal title to the property without having to worry about the possibility of the donor changing their mind.

Working through trust and estate legal advisors, a donor establishes a charitable remainder trust by transferring property to a trust. The donor is considered to have disposed of the property upon transfer and may realize a capital gain or loss. The trust documents instruct the trustee to pay all of the income earned within the trust to the individual but requires the property to be transferred to a charity at some later date, usually upon the death of the donor. Once the charity is named as the beneficiary of the trust, it cannot be removed or revoked.

After death, the assets are then passed on to the designated charity. If the donor has a spouse, the charitable remainder trust could be set up so that the property passes to the charity only after the death of the second spouse but careful consideration of the tax consequences is necessary.

ADVANTAGES

A key benefit of a charitable remainder trust is that it can provide significant tax relief during the donor's lifetime. When the trust is established, a tax credit is issued back to the donor based upon the trust's residual interest – a calculation based upon the trust's fair market value and an estimate of the donor's life expectancy. Because charitable remainder trusts tend to be used for larger charitable donations, the tax credit issued back to the donor is often of considerable value.

Another key feature of charitable remainder trusts is that they can provide an additional source of income. Once assets are donated to the trust, any income generated can be paid back to the donor. And while this income will not receive privileged tax treatment, the donor will benefit knowing the underlying assets will eventually be passed on to charity.

Charitable remainder trusts also allow the donor to retain control and use of the assets within the trust. For example, the donor can alter how the trust's assets are invested to generate additional income, or if the asset is real property, the donor can maintain the right to use the property. By retaining this control, the donor can find comfort knowing that they still have a say in how the trust's assets are managed.

Additional advantages to charitable remainder trusts include:

- Upon the death of the donor, assets held within the trust will not be subject to probate[12] or estate administration fees.
- The donation cannot be contested by dependants or other beneficiaries of the estate.
- The donor can elect the proceeds of disposition on the asset transferred into the trust provided it is not greater than the FMV (the value that the asset can be sold for), and not less than the ACB[13]. The value chosen is also used to determine the eligible amount of the gift.

[12] Probate fees are not applicable in Quebec.

[13] Technically the elected value can not be less than the greater of: i) any advantage in respect of the gift; and ii) the ACB of the property (or, if the property was depreciable property, the lesser of its ACB and the undepreciated capital cost of the class of the property).

DRAWBACKS TO CONSIDER

As with every planned giving option, there are drawbacks to charitable remainder trusts that make them unsuitable for some donors. An important consideration is their cost. Because charitable remainder trusts can be complicated and require the expertise of a lawyer, they are commonly expensive to set up and maintain. Experts suggest that donors only consider this option when planning gifts in excess of $200,000.

Once established, the beneficiary of a charitable remainder trust cannot be revoked. This means that once a charity is named the beneficiary, the donor cannot change their mind. Furthermore, once capital is donated to the trust, it cannot be removed. The donor may redirect how the assets are allocated, but the underlying principal amount cannot be withdrawn.

Another drawback of charitable remainder trusts is that income from the investments held within the trust is taxable in the donor's hands until death. However, this shortcoming must be weighed against the considerable benefit that the initial tax credit provides.

A transfer of assets to the trust results in a taxable disposition. If publicly-traded securities are transferred to the trust, any capital gain realized on the transfer will not be eligible for the reduced inclusion rate as the transfer is not considered a direct transfer to a charity.

Because of the difficulty in valuing the "residual interest" of some assets, professional advice should be sought before choosing the assets to be transferred into the trust.

Finally, there is uncertainty as to how testamentary charitable remainder trusts will be treated as a result of the legislative changes effective starting in 2016. It is unclear as to whether an executor could treat the trust's residual interest as a gift from a GRE at the time of the death of the donor and take advantage of the tax benefits that come with it.

TIPS

For individuals considering the establishment of a charitable remainder trust, there are a number of useful tips that can be followed to make the most of their donation:

- Due to the cost associated with establishing and maintaining a charitable remainder trust, this option should only be considered for donations in excess of $200,000.
- A donor may have to obtain a professional evaluation of the trust's assets to determine its residual value.
- The donor should confirm the tax implications and then consider allowing the proceeds of the trust to pass on to the charity after both spouses die.

Donating the proceeds of insurance

Donating a policy during life

For individuals looking for alternative ways to give, leveraging the benefits of insurance can be a very effective way to donate to charity. The gift of a permanent life insurance policy during life, for example, provides donors with an affordable means to make a large contribution.

Here's how it works:

- The donor arranges with a charity to purchase a life insurance policy based on the donor's life.
- The charity is named as the owner and the beneficiary of the policy. This ensures that the charity will receive the proceeds upon the donor's death.
- The donor then makes regular payments to the charity or to the life insurance company to make the premium payments that keep the policy "in force".
- Upon the donor's death, the proceeds of the policy pass directly to the organization.

A donor also has the option of transferring an existing policy to a charity. In this case, the donor transfers ownership of the existing policy to the charity and the charity is named as the beneficiary of the contract. In return, the donor receives a tax credit based on the fair market value of the policy (less any advantage to the donor), or where the gift of life insurance is made within three years of purchase or within 10 years if it is reasonable to assume the policy was acquired with the intention to make a gift, the donation is deemed to be the lesser of fair market value and the policy's adjusted cost basis.[14] The donor may have some income to include as the policy is treated as having been disposed of.

ADVANTAGES

There are a number of advantages of giving the proceeds of an insurance policy to charity that makes this option stand out when compared to other alternatives. First, it can provide individuals with an affordable means to leave a very substantial gift to charity. Second, because the insurance policy is owned by the charity, it is not considered part of the donor's estate. This means that the proceeds will pass directly to the charity upon the donor's death, without the possibility of the transaction being contested by creditors or heirs. And finally, because the charity is both the owner and beneficiary of the policy, the donor can receive donation receipts for the premiums paid on the insurance policy during their lifetime.

DRAWBACKS TO CONSIDER

The most notable drawback to donating the insurance policy during life is that once the ownership is transferred to the charity, it cannot be revoked. Another important consideration is the long-term commitment that is required on the part of the donor.

The policy premium must either be "paid up" (meaning enough premiums are paid up front to keep the policy in force), or premiums must continue to be paid. If the donor decides to stop making premium payments, the charity must decide if it wants to continue making the payments on behalf of the donor. To avoid this issue some charities will only accept gifts of life insurance policies that are "paid up".

[14] Fair market value is a question of fact. Consulting a valuation professional for assistance is recommended.

Donating proceeds upon death

Donating the proceeds of life insurance upon death is another planned giving option accomplished by naming the charity as the beneficiary of the policy. But unlike donating the proceeds from an insurance policy during life, this option provides donors with the ability to retain control over the eventual proceeds until death.

ADVANTAGES

Like designating the charity as a beneficiary of a registered plan, the donor will retain control over the asset – in this case the policy – during their lifetime. This means the donor can access the surrender value of the policy, or designate a new beneficiary at any time. In addition, when the donor dies, the proceeds of the policy will be paid directly to the charity, bypassing probate[15] and estate administration fees. Furthermore, a charitable tax receipt equal to 100 per cent of the death benefit will be issued to their estate. If the donation qualifies as a gift from a GRE at the time (and normally it would) this amount can be allocated amongst their final two tax returns or used in the estate return that year, a previous tax year of the estate or carried forward up to five years, whatever is most advantageous.

Another advantage of naming a charity as beneficiary of a life insurance policy that is similar to a registered plan is that the payment of the death benefit is usually quick and the assets flow outside of the deceased's estate significantly reducing the chances of any potential delays due to estate litigation issues. Such delays could jeopardize the donation qualifying as a gift by an estate that is a GRE, or an estate that would otherwise meet the requirements of a GRE but the 36 month period has been exceeded and the gift is made within 60 months of death, and the potential tax benefits that come with it in selecting which years to allocate the charitable donations.

DRAWBACKS TO CONSIDER

Because the donor retains control over the policy, they will not receive any tax relief during their lifetime.

[15] Probate fees are not applicable in Quebec.

Life insurance as a wealth replacement strategy

For individuals who would like to donate assets to charity without eroding the value of the estate left to their heirs, wealth replacement insurance is becoming a popular option.

Here's how it works:

- The donor wants to donate an asset to a charity but does not want to deflate the value of the estate left to their heirs.
- To help make up for the difference, the donor purchases a life insurance policy based on their life; the donor's heirs are named as beneficiaries. The idea is to purchase a life insurance policy that would have the same approximate death benefit as the fair market value of the asset that is to be given to the charity.
- The donor either gives the asset to the charity now or at death.
- Upon the death of the donor, the heirs receive the proceeds of the insurance policy in cash, in lieu of the asset donated to charity. Using this strategy, both the charity and the donor's heirs receive equal treatment according to the donor's wishes.

TIPS

By purchasing a life insurance policy with an increasing death benefit, the value of the policy can increase over time. This option could help compensate the heirs for the increasing value of an asset that is donated to charity.

If the donor has a spouse, they can reduce the cost of the insurance premiums by purchasing a joint second to die policy.

ADVANTAGES

Wealth replacement insurance provides a number of benefits when compared to leaving other tangible assets to heirs. First, the beneficiaries receive the proceeds of the insurance policy tax-free and in cash. This can be a considerable benefit when compared to leaving tangible assets that may have to be sold in order to pay capital gains tax, or real estate where the asset cannot be easily divided or sold. Second, the transition of assets may be simplified by avoiding probate[16] and estate administration fees if there are named beneficiaries. And last of all, the heirs will receive the proceeds in a timely manner – a significant benefit to consider during their special time of need.

DRAWBACKS TO CONSIDER

Due to fluctuations in the market value of an asset, the value of the policy may be less than the value of the asset donated to charity.

[16] Probate fees are not applicable in Quebec.

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[17] At December 31, 2016.

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