

Planned charitable giving

When you donate to your favourite charity, you can make a meaningful difference in people's lives while also gaining the opportunity to reduce your taxes. That's charitable giving.

Planned giving is a strategic approach to charitable giving that makes optimal use of financial structures and tax rules for the mutual benefit of both you and the charity. It can be done during your lifetime or at your death through a Will or certain beneficiary designations.

This *InfoPage* discusses the tax rules and other considerations involved in charitable giving and planned giving.

Buy low, donate high

Keep in mind that the Canada Revenue Agency has been denying charitable tax credits in "buy-low, donate-high" schemes. In these arrangements, a donor received a receipt higher in value than the actual cost of the donated property. The value of a gift you make to charity is now limited to your own cost of the property.

Donation tax credit for high-income earners

Donation	\$20,000
Taxable income	\$215,000
Excess taxable income over \$200,000	\$15,000
Donation credit limit of \$15,000 @ 33%	\$4,950
First \$200 @ 15%	\$30
Remainder of \$4,800 @ 29%	\$1,392
Total federal donation tax credit	\$6,372

The donation credit

Donations to a registered charity in Canada are eligible for a tax credit. The first \$200 you donate is eligible for a federal tax credit of 15% of the donation amount. Depending on where you live, you can also claim an additional provincial tax credit of 4% to 20%. On average, this adds up to a combined rate of 25%, or a refund of about \$50 on your \$200 donation.

If your donations exceed \$200, you can claim a federal tax credit of 29%, while the provincial credit ranges from 11.16% to 24%. On average, you'll receive a refund of 45% of your donation.

The introduction of the new (2016) 33% federal bracket for income in excess of \$200,000 impacts the tax credit for charitable donations. As indicated, the federal credit is worth 15% on the first \$200 of annual donations and 29% on amounts over \$200. Respectively, those were the prevailing lowest- and highest-bracket rates. The addition of the 33% bracket would have automatically increased the over-\$200 credit rate from 29% to 33%. As the credit rate applies irrespective of the income of the donor/taxpayer, this would have made an already-generous benefit even more so. Instead, the higher 33% credit rate will be available only to the extent that a taxpayer has income over \$200,000. This assures that high-income taxpayers will not be deterred from donating, while preserving the value of the credit for others. To illustrate how this will work, suppose a person with taxable income of \$215,000 donated \$20,000. Only \$15,000 would be entitled to the 33% credit rate, with \$4,800 at 29% and \$200 at 15%.

Note that the donation tax credit reduces the amount of tax you owe, rather than your taxable income. This means that the credits are generally worth the same for Canadians of every income level.

If your annual charitable donations don't amount to much more than \$200, consider saving your receipts until you accumulate a larger amount and can take advantage of the higher tax credits. You may also combine your receipts with those of your spouse or common-law partner.

You are allowed to carry your donations forward for five years. As well, during your lifetime, you may claim donations of up to 75% of your net income annually.

In the year of death, donations can be as much as 100% of your net income, and any excess donations can be carried back to offset as much as 100% of the preceding year's income.

2014 estate donation changes

The 2014 Federal Budget introduced new legislation to allow greater flexibility for estate-related donations for deaths occurring after 2015. In the year of death, the amendments no longer deem that donations are made immediately prior to death. Instead, donations made by the Will and/or direct beneficiary designations are deemed to be made by the estate at the time the property is donated. The trustee (executor) of the deceased's estate will then have the flexibility to allocate the available donation among the taxation year of the estate in which the donation is made, an earlier year of the estate or in one of the last two taxation years of the deceased individual. The added flexibility would be available only where the estate qualifies as a graduated rate estate (GRE) and the property has been acquired as a consequence of the individual's death. Since a GRE is limited to no more than 36 months from the date of death, industry concerns were raised over the amount of time given to facilitate the donation in complex estates and/or in situations where there was ongoing estate litigation. In response to these concerns, further amendments have been proposed[†] to allow donations by an estate to benefit from the above-noted added flexibility where the donation is made after the 36-month period of a GRE provided the following conditions have been met:

- The estate donation is made within 60 months after the individual's death
- The estate ceased to be a GRE because the 36-month time limit has expired
- The estate continues to maintain the GRE requirements

To be a GRE, the estate must be a testamentary trust arising as a consequence of the death of the individual, no more than 36 months have passed since the date of death, the estate is designated as a GRE on the first tax return and the estate is the only designated GRE for the deceased.

First-time donor's super credit

If you have not donated to a charity recently (or ever), the 2013 Federal Budget introduced a new first-time donor's super credit. This credit is a temporary, non-refundable credit that allows a first-time donor to claim an additional 25% tax credit on top of the existing federal amount for charitable donations up to \$1,000 made to a qualified donee. In order to be considered a first-time donor, the individual or the individual's spouse or common-law partner must not have claimed the charitable donation tax credit in any taxation year after December 31, 2007. This tax credit is available to qualified individuals on donations of cash made after March 20, 2013 and before January 1, 2018.

[†] At the time of writing, these proposals are not yet substantively enacted.

Example

To see the effect of donating securities in-kind, compare the tax treatment of Michael and Sharon below. Both are at an assumed top marginal tax bracket of 45%.

	Michael (cash donation)	Sharon (in-kind donation)
Market value of donation	\$100,000	\$100,000
Adjusted cost base	(20,000)	(20,000)
Capital gain	\$80,000	\$80,000
Taxable gain (50% vs. 0%)	\$40,000	\$0
Tax on capital gain (at 45%) (A)	(\$18,000)	(\$0)
Tax benefit on gift (at 45%) (B)	\$45,000	\$45,000
Net tax benefit (A + B)	\$27,000	\$45,000
Tax saving from donating shares instead of cash		\$18,000

Donating private corporation shares or real estate

Federal Budget 2015 introduced a capital gains exemption where shares of a private corporation or real estate are disposed and the proceeds from the disposition are donated within 30 days. The amendments provide for a formula that reduces the capital gain that would otherwise be subject to tax on the proportion of all or a portion of the proceeds of disposition from the sale that is donated. Generally, the donation of private shares or real estate may be made *inter vivos* or testamentary provided that the individual is, or was, a Canadian resident. There are specific anti-avoidance rules where it is found that the transaction, or series of transactions, is entered into to facilitate the capital-gains-exempt treatment on the donated proceeds of the private shares or real estate through a non-arm's-length transaction or through affiliates to evade the anti-avoidance rules and/or to seek to retain the ability to profit from the property. The 2016 Federal Budget announced the government's intention not to proceed with this measure originally announced in the 2015 Federal Budget.

Donating securities in-kind

If you have mutual funds or other securities that have increased in value, consider donating them in-kind. The 2006 Federal Budget eliminated the taxation of capital gains on in-kind transfers of publicly traded securities and mutual funds that occur on or after May 2, 2006. (The 2006 budget applied to registered charities, and the rules were extended to registered private foundations in the 2007 budget.) You will still receive a donation receipt for the fair market value of the securities on the date of the transfer.

If you decide to transfer your securities in-kind, you will need to coordinate the transfer with your chosen charity. If the charity does not have an existing account with your financial institution, it will be required to submit an account application form along with its corporate resolution. In addition, it may provide a request to redeem the securities immediately. This is just in case the securities drop in value after the date of transfer. The charity is still required to issue a charitable receipt for the full value as of the date of transfer. Then when you complete your Schedule 3 at tax time, you will also need to attach Canada Revenue Agency (CRA) Form T1170, Capital Gains on Gifts of Certain Capital Property.

Publicly listed securities acquired with employee stock options can similarly be gifted to a registered charity. Your employment benefit that is included in your taxable income is reduced similarly to 0% as a result of the 2006 Federal Budget.

Note that the 2011 Federal Budget requires a capital gain to be recognized when donating newly acquired flow-through shares. The rules apply where a taxpayer acquired flow-through shares on or after March 22, 2011, without regard to the charitable donation in-kind capital gain exemption.

Tax consequences of gifting

Gifting may have immediate tax consequences that you will need to consider before transferring your gift to a registered charity. For example, if you are gifting an asset other than cash or in-kind securities, you will have an immediate taxable capital gain, but will not be taxed on future capital gains.

Gifts of life insurance

Another common method of gifting is through a life insurance policy. There are several different ways of using a policy to benefit a charity. One way is to purchase a new policy to be owned by the charity, based on your life expectancy, with the charity as the beneficiary. You pay the premiums during your lifetime, for which you receive an annual donation receipt.

An existing policy can also be transferred to the charity. The amount of the donation is the cash-surrender value of the policy in the year of transfer, and subsequent premiums will generate donation receipts in the later years. Be aware that the policy is deemed disposed on transfer, and tax may be due at that time. (These policies do not benefit from the special rules for in-kind securities.)

You can also simply name a charity as the beneficiary of a policy you hold in your name. Upon death, the death benefit of the policy will be paid to the charity, and your estate will receive a tax credit. This will qualify as a donation made in the terminal year, allowing for the 100% offset of net income and potential carryback to the prior year detailed above.

Alternatively, you could name your estate as the beneficiary of the life insurance policy, with a bequest of the proceeds to the charity in your Will. You may wish to do the latter if the proceeds will first be used to pay final expenses. Again, the carry-back rules to terminal year will generally apply. If, however, the executor has been given discretion in the amount of the donation, the CRA may deem this to be the estate's donation and disallow any carryback. Accordingly, the desired effect should be clearly discussed with the lawyer drafting the Will.

As previously discussed, the 2014 Federal Budget proposes to provide the trustee (executor) more flexibility in determining which year to claim the donation credit.



Gifting your RRIF

You may find yourself in the enviable position of not requiring the income from your RRIF in your retirement years. Instead, if you decide you'd rather help your favourite charity, you can reduce your tax at the same time. If you donate the annual income from your RRIF to a charity, you'll receive a donation receipt in return.

In addition, you can name the charity as the beneficiary of the RRIF or RRSP so that upon your death the charity will receive the proceeds of your plan. The designation can be made directly on the plan or through a Will. Keep in mind that the date-of-death value of your RRIF or RRSP will be included on your final income tax return.

When naming a charity as beneficiary, make sure to indicate the proper name of the charity, to avoid confusion.

Advanced strategies

There are several strategies that are somewhat more complex that you may wish to consider, especially if you have a sizable amount to donate. The explanations below are somewhat simplified. In order to properly implement these strategies, you should obtain professional advice.

Charitable gift annuities. Your donation is used to purchase an annuity that generates a guaranteed annuity payment to you based on your life expectancy, with part of each payment being taxable as interest and the remaining part of the payment being a tax-free return of capital.

Residual interest in real property. Perhaps you would like to make a substantial gift to charity, but your only major asset is your home. You could donate the residual interest in your home to your chosen charity but continue to have the use and enjoyment of it for as long as you live. When you make the transfer to charity, you will receive a tax receipt for the residual value of the home. (This should be calculated by an actuary.) You must deduct the tax credit within five years. If the home is a principal residence, there will be no capital gain upon the transfer due to the principal residence exemption. As well, because your home does not form part of your estate, probate tax will not be applied.

Charitable remainder trust. In this strategy, you establish an *inter vivos* trust and make the charity the capital beneficiary. The income from the trust is payable to you as the donor during your lifetime. Real property or personal property such as stocks or paintings can be transferred to the trust, with the charity as the capital beneficiary.

At the time of transfer, the ownership of the property will vest with the charity and you will receive a donation receipt. Again, an actuary would need to calculate the value of the residual interest.

What are your best options?

Charitable giving, and planned giving in particular, are considerations in estate planning. These should be considered along with effective tax planning and other general estate-planning priorities. As every individual's situation is unique, it is important to consult with your advisor, lawyer and/or tax advisor to determine your best options. It is wise to review your plan from time to time or as your circumstances change.

**For more information about this topic, contact your advisor,
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