Tax Information Estate Gifts

IT'S SIMPLE
Your Legacy, Their Future

An estate gift, also known as a testamentary donation (in your Last Will and Testament), is a donation made upon the death of a donor. It can be made in three ways:

1. **A Gift Through a Will** – a charitable bequest
2. **Life Insurance** - designate a registered charity as beneficiary on a life insurance policy
3. **Registered Property** - designate a registered charity as beneficiary of a retirement plan: Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF), or Tax Free Savings Account (TFSA).

A Gift in Your Will

A gift in a Will is done by naming a charity as an estate beneficiary.

Donors can choose:

- a specific dollar amount, or specific property, such as securities
- a percentage of the estate or
- the remainder of their estate (residual bequest) once all other commitments are paid.

The following provides some general information and examples, and should not be considered appropriate for all situations, nor to be legal advice:

Specific bequest – "I give, devise and bequeath the sum of $xxx to the Charity to be allocated to highest priority needs in accordance with the terms of the charitable giving program."

Residual bequest – "I give, devise and bequeath all (or a portion) of the residue of my estate to the charity to be allocated to the highest priority needs in accordance with the terms of the charitable giving program."

"The staff at the NICU are amazing. Thank you from the bottom of our hearts. We will never forget everything you've done for us. We are so lucky to have the twins and we can't imagine our life any other way."

Myles and Addison's Mom, Marion

Children's
HEALTH FOUNDATION

The donor may also choose to provide some direction or flexibility around what assets the executor may use to fund the donation.

For example:
"I direct my trustee to make the gift in the manner, and using the estate assets which will provide the greatest income tax relief, including giving appreciated stocks, bonds, mutual funds and other public securities in place of cash."

Donation to an existing account: To make a donation upon death to an existing account in order to fulfill a pledge, the executor completes the donation form and other applicable paperwork as required based on the type of donation (i.e. transfer of securities form if securities are being donated directly) and sends it to the charity.

Life Insurance - Designate a registered charity as the beneficiary of a life insurance policy

Donors may designate a charity as the beneficiary on their life insurance policy (including an annuity). For example "Charity Name – John Doe Fund" would be the beneficiary. When the insured dies, provided the life insured owned the life insurance policy, the charity receives the life insurance proceeds directly. The proceeds would normally bypass the estate because there is a named beneficiary and therefore is not subject to probate. A tax receipt for the full amount of the death benefit received by the charity is issued in the name of the estate, to be used on the donor's final tax return. The donor should consult his or her legal and tax advisors when structuring their estate to ensure his or her wishes are properly documented.

Note: *Naming the charity as the beneficiary of a life insurance policy does not entitle the donor to tax receipts for the premiums paid. If ownership of the policy transferred to the charity while the donor is alive and the charity is named the beneficiary of the policy, the donor would generally receive a tax receipt for the cash surrender value or fair market value of the life insurance policy on the date of donation and for subsequent premiums paid for that policy upon receipt of proof of payment. This is not considered to be a testamentary donation and no further donation arises when the proceeds of the life insurance policy are paid to the charity upon death of the insured.*

Registered Property - Designate a registered charity as beneficiary of an RRSP, RRIF or TFSA

Generally speaking, in all provinces except Quebec, a charity can be designated as the beneficiary of a registered retirement savings plan (RRSP), a registered retirement income fund (RRIF), or Tax Free Savings Account (TFSA). For example, "Charity Name – John Doe Fund" would be the beneficiary. When the annuitant dies, the charity receives the proceeds directly, bypassing probate. A tax receipt for the fair market value of the RRSP or RRIF immediately prior to death is issued in the name of the estate, to be used on the donor's final tax return. The donor is responsible for taxes that arise on the deemed disposition of the registered plan donated. The donor should consult with his or her legal and tax advisors when structuring their estate plans.

Tax Treatment of Estate Gifts

Over the last decade, the federal government has made several changes to the Income Tax Act to provide incentives to Canadians to give back to the community. Most notable is the increased maximum annual donation amount. While alive, a donor can claim charitable donations up to 75 per cent of net income for the year. In the year of death and the year preceding death, a donor can claim charitable donations up to 100 per cent of net income.

Canadians may be able to significantly reduce the taxes payable upon death through a sizeable charitable donation. Once a testamentary donation has been made, the executor receives a tax receipt in the estate's name.

The donation receipt can be used to reduce the donor's income tax liability in the year of death. If part of the gift completely eliminates the deceased's tax liability for that year, the remainder can be used to reduce the donor's income tax liability for the year preceding death by re-opening the tax return for that year.

As part of the planning process, care should be taken to avoid making donations that exceed the net income threshold in the year of death. If it appears likely that this will occur, it may be prudent for the donor to consider making donations during life. There are considerable issues regarding the tax treatment of testamentary donations. It is important to consult a legal and tax advisor in all cases.

Gifting through a Holding Company

Personal Giving vs. Corporate Giving

When considering a charitable gift there are additional considerations if you have a private corporation. The rules for charitable giving are in many ways the same and different for personal and corporate giving. When making a charitable gift personally you receive a tax credit, which reduces tax that was otherwise payable. When a corporation makes a charitable gift, the corporation receives a tax deduction, which reduces its taxable income and is therefore tax payable.

The key difference between giving personally versus through a private corporation is that private corporations have a notional account called the capital dividend account. The existence of this account creates a financial planning opportunity which can make a charitable gift through a corporation particularly attractive.
Let's assume the holding company is worth $1,000,000 with a nominal cost base. The tax from the deemed disposition of these shares will occur on company owner's death or will be postponed to his/her spouse's death. Whenever it occurs, the deemed disposition on death will result in the shares being deemed sold at their fair market value immediately before death. The difference between the fair market value and the shares' adjusted cost base (ACB) will be taxed on the relevant final return.
In our example, the following would result:

Deemed proceeds $1,000,000 less ACB $0 = $1,000,000 capital gain of which 50% is taxable.

This results in tax of approximately $232,000 (let's round this up to $250,000).

You can make a properly-worded charitable bequest in a Will that would result in a charitable donation receipt being received that could be used to offset some of the tax on the final return. For example, you may wish to reduce the tax burden on death by half. To do this, you would make a $250,000 charitable bequest in the Will. The next question is: where will the funds come from to make the bequest?

If the holding company purchased and was the beneficiary of a $250,000 life insurance policy, the death benefit would be paid to the corporation on death. The excess of the death benefit over the policy's adjusted cost basis would be added to the company's capital dividend account and could be paid to the estate as a tax-free capital dividend. This capital dividend would be used by the estate to make the donation. Effectively, holding company dollars have been used to fund a personal donation thereby significantly reducing the tax burden upon death.

Notes:

Disclaimer: This material is intended to provide general information and should not be construed as legal or other professional advice. The information should not be used without consulting your own legal and tax advisors to determine its suitability for your unique estate planning and tax needs. Always seek expert advice and discuss your financial affairs with your professional advisors.

For more information on charitable giving at Children's Health Foundation, please call 519.432.8564 or 1.888.834.2496, or visit www.childhealth.ca/ ways-give/legacy-giving.

Children's HEALTH FOUNDATION

Charitable Registration No. 11885 2482 RR0001