



Wealth  
Management

# the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC FAMILY OFFICE SERVICES

Aaron Fennell, MBA, CFA  
Portfolio Manager & Investment  
Advisor  
Tel: 416-313-6397  
aaron.fennell@rbc.com

RBC Dominion Securities  
181 Bay Street, Suite 2350  
Toronto, ON M5J 2T3  
www.aaronwfennell.com

## Leaving a legacy

**Your charitable giving can have a real and lasting impact on your community and beyond. Legacy gifts allow you to continue to support a cause that's important to you and may provide you with substantial tax and estate planning benefits. This article discusses some of the legacy gift giving options you may want to consider.**

This article assumes you'll be making a donation to a qualified donee, such as a registered charity, that can issue donation receipts for tax purposes. In this article, the terms qualified donee and registered charity are used interchangeably.

### Bequests under a Will

One method of leaving a legacy gift is by making a bequest in your Will. Some potential advantages of bequests in your Will include:

- Your executor/liquidator may be entitled to claim a donation tax credit that may reduce your and your estate's taxes;
  - You can revoke the gift simply by changing your Will (assuming you have the capacity to do so); and
  - You may choose to bequeath a percentage of your estate instead of an absolute dollar amount so the amount of your gift is automatically kept in line with the amount of your wealth.
- Your charitable intentions could be thwarted by the family and succession laws of the province in which you reside that provide certain dependants (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 dependants who might challenge your Will in court. Be sure to seek legal and tax advice from qualified professionals when drafting or revising your Will; and
  - A charitable bequest made in your Will may be subject to probate taxes. In many provinces, probate taxes will be due on the value of your estate before distributions are made.

However, there are some details you should consider before making such a gift:



## Donation tax credit

Under the current rules, when a gift is made in your Will (or by beneficiary designation under a registered retirement savings plan (RRSP), registered retirement income fund (RRIF), tax-free savings account (TFSA) or life insurance policy), the donation is deemed to be made by the estate at the time the donation is made to a qualified donee. The donation tax receipt will be based on the fair market value of the gift at the time the property is transferred to the qualified donee.

Generally, you cannot claim a credit for donations exceeding 75% of the net income reported on your federal tax return in any particular year. However, in the year of death and the preceding year, you may claim donations of up to 100% of your net income.

The executor/liquidator of your estate may have some flexibility in the use of the donation tax credit if, at the time the donation is made, the estate is a graduated rate estate (GRE). A GRE is an estate that arises on and as a consequence of an individual's death and satisfies the following conditions:

- The estate is a testamentary trust for tax purposes;
- No more than 36 months have passed since the deceased's date of death;
- The estate designates itself, in its T3 return of income for its first taxation year, as the individual's GRE;
- No other estate is designated as a GRE of the individual (there can only be one GRE); and
- The estate includes the deceased individual's Social Insurance Number in its return of income for each taxation year of the estate that ends after 2015.

If the estate is a GRE at the time the property is transferred to the registered charity, the executor/liquidator generally has the flexibility to allocate the donation tax credit among:

- The taxation year of the estate in which the donation is made;
- An earlier taxation year of the estate;
- Any of the five taxation years of the estate subsequent to the donation; or
- The last two taxation years of the deceased individual.

If the executor/liquidator makes the donation in the fourth or fifth year of the estate, the estate may still qualify for some flexibility in claiming the donation. In order to qualify, the estate must continue to meet the requirements of a GRE, other than the 36-month existence

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requirement. In this case, the executor/liquidator may allocate the donation tax credit among:

- The taxation year of the estate in which the donation is made;
- Any prior year of the estate when it was a GRE (i.e., only in the first 36 months after death);
- Any of the five taxation years of the estate subsequent to the donation; or
- The last two taxation years of the deceased individual.

In addition, to benefit from this flexible use of the donation tax credit, the donated property must be property that was acquired by the estate on and as a consequence of the death (or property that was substituted for such property).

It also should be noted that the rules relating to the elimination of capital gains on the donation of publicly listed securities will be limited to donations made by GREs (or former GREs if the donation is made in the fourth or fifth year of the estate).

## Planning for the gift

As part of planning, it's important to ensure that the recipient charities are identified by their proper legal names. Further, if leaving a gift for a specific purpose, it's prudent to contact the registered 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, you may consider attaching an explanatory side letter to the Will. Although not legally binding on your executor/liquidator, it may help clarify your wishes to your beneficiaries. It is generally a good idea to discuss your Will with your executor/liquidator and have it professionally reviewed at least every three to five years. In addition, you should consider reviewing your Will when there's a change in your family situation or if you dispose of the property that's the subject matter of the charitable gift. It is important to discuss bequests you wish to make through your Will with a qualified legal advisor.

## Donation of a registered plan

If your financial institution allows, you may consider naming a registered charity as a beneficiary of your RRSP or RRIF (please note that you cannot directly name a beneficiary directly on the plan if you are a Quebec resident). When a registered charity is named as beneficiary on an RRSP/RRIF, the proceeds of your RRSP/RRIF are generally paid directly to the qualified donee upon death and may not be subject to probate.

For tax reporting purposes, the value of the RRSP/RRIF must be included in your income at the time of death. In order to be able to claim the donation tax credit on your terminal return to offset the taxes payable on your RRSP/RRIF, your estate must either qualify as a GRE at the time the RRSP/RRIF assets are transferred to the qualified donee, or, if 36 months have passed from the date of death, the transfer must occur in the fourth or fifth year of the estate and the estate must meet the other requirements of a GRE.

The donation of publicly traded securities inside an RRSP/RRIF does not qualify for the elimination of capital gains mentioned earlier in this article. This is because the assets of the RRSP/RRIF are first considered withdrawn from the plan before they are donated. The withdrawal of assets from an RRSP/RRIF is taxed as income, not a capital gain.

## Donating an insurance policy

Another method of making a gift is purchasing life insurance and donating the policy. You can choose to make an immediate gift of a life insurance policy or defer the gift until death.

### Immediate gift of a life insurance policy

You may have an existing policy you no longer need or you may be thinking of purchasing a policy specifically to make a donation. Typically, the policy will be a permanent life insurance policy. There are special rules that govern such gifts. A licensed life insurance representative can advise you on how these rules may apply to your policy.

If an existing policy is donated, you may receive a donation tax receipt for the fair market value (FMV) of the policy. However, in some cases, the FMV of the policy gifted to the charity may be reduced. It's important that you speak with a qualified tax advisor to determine the value of the donation.

If you're paying insurance premiums on an existing policy or purchasing a new policy, you will get a donation tax receipt when you make a premium payment. When you pass away, the charity receives the proceeds of the policy. Neither you nor your estate will receive any further tax benefits from this donation upon your passing.

If your financial institution allows, you may consider naming a registered charity as a beneficiary of your RRSP or RRIF (please note that you cannot directly name a beneficiary directly on the plan if you are a Quebec resident).

Some of the potential advantages of making a gift of a life insurance policy to a charity during your lifetime include:

- Depending on your age and health, a reasonably small outlay could fund a very large payment at death;
- If the charity needs money before your death and if the policy includes a cash surrender value, the charity may be able to use the insurance policy to obtain a loan or even cash it in; and
- The life insurance proceeds are paid upon 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, the proceeds will not be subject to probate. This will keep the gift private, if you desire, and bypass the probate process so the charity can receive the funds more promptly.

Some of the potential disadvantages that you should consider are:

- A transfer of the policy must take place and the registered charity must agree to become the owner of the insurance policy. As such, unlike a bequest, this transfer of ownership cannot be changed; and
- If you're donating an existing policy, you should 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 (ACB) of the policy. You can contact the insurance provider for the ACB of your policy. For most individuals, the tax credit from the donation will offset the taxes payable on the disposition of the policy.

### Deferred gift of a life insurance policy

You can name a registered charity as the beneficiary of your life insurance while retaining ownership of the policy.

A donation tax receipt will be issued for the amount of the death benefit received by the charity. Your executor/liquidator may have flexibility in how they wish to claim the donation as discussed earlier in the article.

Some of the advantages of a deferred gift of a life insurance policy include:

- The death benefit is paid outside of your estate and is not subject to probate; and
- Assuming you have the requisite capacity, you can change the beneficiary of the policy whenever you want. Whereas with an immediate gift of a policy, you cannot change the beneficiary.

The drawback of making a deferred gift is that you cannot benefit from the donation tax credit during your lifetime.

Please consult with a licensed life insurance representative to learn more about your insurance options.

### Charitable remainder trusts

If you wish to make a large gift to a qualified donee but are also interested in maintaining use of the gifted property during your lifetime or the lifetime of another person, you may want to consider setting up a charitable remainder trust. A charitable remainder trust can be established during your lifetime or in your Will.

A charitable remainder trust involves the transfer of property to a trust whereby the donor (or another person of the donor's choosing) retains a life interest in the property but makes an irrevocable gift of the residual interest to a registered charity. The person that retains a life interest in the property is referred to as the life tenant. This type of trust is structured so that the life tenant retains the use of and the income derived from the trust property for their lifetime. There is no ability to encroach on the capital of the trust while the life tenant is alive. On death, the property is transferred to the charity that is named as the beneficiary.

The main benefit of setting up a charitable remainder trust is that you're provided with immediate tax relief, but the life tenant can benefit from the property during their lifetime. As well, on the death of the life tenant, the remaining property in the trust will pass directly to the charity and will not be subject to probate.

When you contribute property with accrued gains in-kind to an inter vivos charitable remainder trust, you will be subject to tax on any unrealized capital gains accrued on the property. You will receive a donation tax receipt for the present value of the remainder interest that the trust receives. The donation tax credit from the donation may offset the taxes payable on any capital gains.

If you're interested in establishing a charitable remainder trust, speak to a qualified legal and tax advisor. You will need to consider the set-up costs and ongoing administration fees associated with the

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trust. You should also consider the future financial requirements for you and your family. Further, it is important to speak with the intended registered charity to ensure they can accept this type of gift.

### Choosing a trustee

Since you're setting up a trust, you'll need to think about who will manage the trust. The role of a trustee is an extremely important one, involving several key legal obligations and fiduciary duties, as well as significant managerial and administrative responsibilities. Trustees are faced with many complexities and obligations and may feel burdened by the tasks of administering a trust or may simply lack the time or expertise to undertake the role.

A trust company, like RBC Royal Trust, can help by acting as the trustee, co-trustee or as an agent for the named trustee to manage the trust assets. Some of the advantages of a corporate trustee include neutrality, availability, expertise and continuity for long-standing trusts. Appointing a corporate trustee can help ensure the administration of the trust is done in accordance with the relevant laws, relieve your family member or friends of the burden of administering the trust assets and mitigate any potential conflict among the trustees or with beneficiaries. A corporate trustee could be appointed while the settlor is alive or can be appointed to act as an agent for the named trustee after the settlor's passing according to a fee schedule, similar to compensation that may be payable to family members, friends or other trusted professionals acting as trustee.

If you have questions about who to appoint as a trustee or the typical responsibilities of a trustee, please speak to your RBC advisor to find out more about the services provided by RBC Royal Trust.

### Conclusion

If you're planning to make a legacy gift, it's important to incorporate the gift into your estate plan. Consider the different options available and evaluate them against your goals and personal situation. Speak with qualified tax and legal advisors to determine the best plan for you and your family.

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