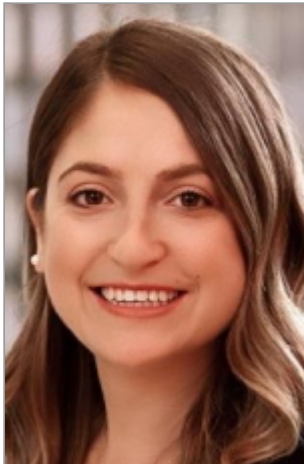


**Wills, Trusts & Estates****Smart giving: Charitable gifts under your will**By **Marly Peikes**

Marly Peikes

(October 8, 2021, 1:26 PM EDT) -- In the context of estate planning, it's important to consider whether you wish to benefit any charities after your death. Including a gift under your will is a good opportunity to make a gift that may otherwise not have been possible while alive or to increase the quantum of a gift to a charity you have been supporting during your life. In addition to satisfying any philanthropic objectives, there are also tax benefits with donating to charity under your will.

When you make a donation to an eligible charity, you will get charitable tax credits which can be used to reduce your income taxes. A person may claim tax donation credits in his or her annual income tax return for total gifts in a year up to 75 per cent of his or her net income (subject to certain exceptions). The charitable tax credit can be carried forward for up to five years. In the year of death, the limit for using the charitable tax credit is increased from 75 per cent to 100 per cent of net income.

The income tax bill on death can be sizable. There is a deemed disposition on death of all capital property resulting in capital gains being triggered. Additionally, on the death of the owner of a registered retirement plan, the fair market value of the plan at death is included as income on the terminal return.

Charitable tax credits can be used against 100 per cent of net income in the year of death, which can include, for example, large gains on private company shares or an investment portfolio or the income that will be payable on a registered retirement plan. The charitable tax credits can be used to reduce or even eliminate any income tax owing on death.

If a gift is made under a will and the deceased's estate is designated as a graduated rate estate (GRE) (as defined in the *Income Tax Act*), then there is flexibility to allocate donation credits between the deceased and the GRE.

If the estate makes a donation during the period the estate is designated as a GRE (which can be up to 36 months from the date of death of the individual), the charitable donation tax credit may be allocated among any of the following tax years:

- year of death of the individual;
- year immediately preceding death of the individual;
- year of the estate in which the gift is made;
- any prior year of the estate; or
- five following years of the estate.

Gifts can be made in cash or in-kind, which may also have additional tax considerations. Certain property will qualify for an inclusion rate of zero on any capital gains realized on the gift and there will be an elimination of the taxable capital gain on the appreciated value of the gift. In addition, the donation tax credit will be issued for the fair market value of the gift.

For example, if you die with a portfolio of publicly listed marketable securities with large accrued gains, then it may be advantageous to donate the securities in the portfolio to a charity as opposed to liquidating the securities and then donating the cash value after-tax. The power to pay a charitable

gift in cash or in-kind should be provided to the executors so that they can determine the most tax-efficient means to make the gift at the time.

In certain circumstances, it may be a good idea to talk to the director of planned giving at the charity you wish to benefit under your will to discuss the purpose of the gift if you intend to specify its use. Additionally, charities often wish to recognize donors who are providing gifts under their will, and you may have views on such recognition.

There are also other means of gifting, including designating a charity as the beneficiary of proceeds of a life insurance policy or retirement plan. For a detailed review of different ways of donating, check out our Advisory, Charitable Giving.

It's important to consider your philanthropic intent in the context of your estate planning and to seek professional advice to implement your charitable objectives.

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