

The Tax Consequences and Benefits of Charitable Giving Through A Will

People often choose to fulfill their philanthropic goals by making gifts to charity in their will. There are many benefits to this form of giving and one of them is the tax benefit. When an individual provides for a charitable gift in his or her will, his or her estate is entitled to a donation tax credit. If the estate qualifies as a “graduated rate estate” (GRE), the donation tax credit may also be used to reduce or completely offset the tax liability that arises from the deemed disposition of capital property that occurs upon death. In the year of death and the year prior to death, up to 100% of a taxpayer’s net income can be offset by charitable donations.

The property donated by a GRE must be owned by the deceased at the time of death. However, since January 1, 2016, charitable gifts in a will are deemed to have been made by the estate at the time the property is actually transferred to the charity. As such, the valuation of the gift for donation tax receipting purposes is the fair market value of the property at the time it is transferred to the charity. A GRE is defined in the Income Tax Act (ITA) as an estate that arose on and as a consequence of the death of an individual if:

1. the estate is at that time a testamentary trust (as defined in the ITA);
2. the executor designates the estate as a GRE on its first estate tax return for the year ending after 2015;
3. no other estate has designated itself as a GRE of the deceased individual; and
4. the deceased’s social insurance number is provided on the estate’s tax return.

It is important to note is that a GRE can only qualify as such for up to 36 months following the date of death of the individual. If, during those 36 months, the estate makes a charitable donation, the donation tax credit may be allocated among any of the following tax years:

Year of estate that the donation is made:

- Five following years of the estate.

As well as:

- Year of death of the deceased individual;
- Year prior to the year of death; and
- Any prior year that the estate was a GRE

The benefits are further enhanced when the property that is the subject of the donation is a publicly listed marketable security. In that case, the property can qualify for an inclusion rate of zero on any capital gains realized on such gifts. It is therefore more tax effective to provide for a gift of publicly listed marketable securities to charity in one’s will than to direct that the shares be sold on death and the net proceeds of sale be donated to the charity, as this would result in 50% of the capital gain being reported for income tax purposes.

As you give thought to your estate planning, it is important to recognize that, whether you make a specific bequest in your will or decide to allocate a percentage of the residue of your estate to charity, there are tax benefits. Therefore, it is important to seek professional advice at the planning stage if the intention is to make charitable gifts in a will. In addition, executors (liquidators in Quebec) should speak with professionals when it comes time to administer an estate with charitable gifts, as there may be tax consequences pertaining to the timing of donations as well as the property that is being donated.



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