

# Donating capital property to charity

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*A capital property donation may occur in a current year or at death, and in qualified circumstances a donor may be entitled to tax relief presently while retaining personal use of the property for life*

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## The charitable tax credit

Donations up to \$200 result in a tax credit at the lowest federal tax rate, while donations in excess of \$200 entitle the donor to a credit at the highest rate. (Corresponding provincial credits likewise approximately align with those brackets.)

A person can contribute sufficient to offset up to 75% of a current year's net income, with any unused credits allowed to be carried forward up to five years.

In year of death, up to 100% can be offset, and any excess can offset up to 100% in the year prior to death.

## Gifts of capital property

The making of a gift is considered to be a disposition for tax purposes. Generally, capital gains and recaptured depreciation are taxed when a disposition occurs.

When the gift is made to a charity, a donor may elect a disposition value anywhere from the adjusted cost base up to the fair market value for calculating both the tax on the capital gain and the charitable credit.

The usual 50% capital gains inclusion rate is halved to 25% for certain property: prescribed securities, mutual & segregated funds, and ecologically sensitive lands.

The donation of a principal residence will normally attract no capital gains tax.

*This material is provided for informational purposes and may contain tax and legal information specific to one or more provinces within Canada. It is not a legal, tax, insurance or investment opinion on any particular planning strategy or personal fact situation. Interested readers are encouraged to contact a competent professional advisor to further assist them.*

## Residual and remainder interests

Canada Revenue Agency Interpretation Bulletin IT-226R2 enables a donor to achieve a current tax credit, but to continue to enjoy the use of the property right up to death. The two common forms used are:

- Residual interest in real property
- Equitable interest in a trust, commonly known as a "charitable remainder trust"

### *Qualifying as a gift*

In order to qualify as a charitable gift:

- The donee charity is ascertained
- Size of all interests is ascertained
- Gift vests in donee at time of transfer
- Transfer must be irrevocable
- No reciprocal benefit to the donor
- Any conditions are satisfied
- It is clear that the donee will eventually receive full ownership and possession

### *Valuing the interest*

An actuary will determine value based on:

- Fair market value of the property
- Current interest rates
- Life expectancy of life tenants
- Relevant case-specific factors
- No tax credit if value is indeterminable or if capital can be encroach upon for benefit of anyone other than charity

### *Using a testamentary trust*

It is possible to create a charitable remainder trust out of a Will. The tax credit will arise in the donor/taxpayer's year of death. The spouse or other beneficiary will be the income beneficiary and will retain use of the property for life.

## Timing and control

*A capital donation will usually arise only where there is a strong affinity and/or close association between the donor and the charity. In reviewing the following issues, assume a donor has a principal residence to donate, but still may wish to benefit some personal beneficiaries who are not dependents.*

Lifetime donation	Donation at death	Remainder/residual interest
<i>Value of donation</i>		
<ul style="list-style-type: none"> <li>Fair market value</li> <li>Supported by reasonable evidence</li> </ul>	<ul style="list-style-type: none"> <li>Fair market value</li> <li>Supported by reasonable evidence</li> </ul>	<ul style="list-style-type: none"> <li>Portion of fair market value</li> <li>Determined by actuary</li> </ul>
<i>Charitable tax credit</i>		
<ul style="list-style-type: none"> <li>May offset up to 75% of net income in current and following 5 years</li> <li>If premature death occurs then the useable credits may be reduced</li> <li>The potential credit ranges from 100% (if premature death in year of donation) up to as much as 450%</li> </ul>	<ul style="list-style-type: none"> <li>May offset up to 100% of net income in terminal year (Jan 1 to date of death) with carryback to offset up to 100% of net income in year prior to death</li> <li>Depending on the date of death within the year, the potential credit will range between 100% and 200%</li> </ul>	<ul style="list-style-type: none"> <li>The lifetime rules apply to allow offset of 75% of net income in current year with 5 year carryforward</li> <li>If premature death occurs then the useable credits may be reduced</li> <li>Like a lifetime donation, range of potential credit is 100% to 450%</li> </ul>
<i>Control</i>		
<ul style="list-style-type: none"> <li>Passes immediately and irrevocably to charity on the date of donation</li> </ul>	<ul style="list-style-type: none"> <li>Only passes to charity at death</li> <li>Revocable prior to death</li> </ul>	<ul style="list-style-type: none"> <li>Retained by donor for life</li> <li>Irrevocably to charity at death</li> </ul>
<i>Ongoing cost issues</i>		
<ul style="list-style-type: none"> <li>Charity becomes fully responsible for the donated property as the donor has no further property interest</li> <li>Where the donated property is the donor's residence, the donor will obviously need to seek alternate accommodation</li> </ul>	<ul style="list-style-type: none"> <li>Donor has continuing responsibility for both day-to-day and capital maintenance of the property</li> <li>Donor may continue to live in or use the property without impediment</li> <li>Any growth in value accrues to donor, to be realized when donated at death</li> </ul>	<ul style="list-style-type: none"> <li>Donor has day-to-day responsibility</li> <li>Capital maintenance may be shared, with the bulk attributed to the charity</li> <li>If donor pays for capital expenses, some or all of that outlay may be treated as a further donation</li> <li>Any income goes to the donor</li> </ul>

## Role of life insurance

Some or all of the received (or anticipated) tax credit may be earmarked to pay for life insurance to support broader estate planning objectives:

*Value recovery for residual beneficiaries* – Replenish the property value back to an estate so that residual beneficiaries are no worse off financially

*Maintenance for surviving spouse* – Create a remainder trust with remainder to charity at spouse death, using insurance to support surviving spouse for life

*Leverage the charitable gift* – If there are no other beneficiaries, use lifetime tax credit for insurance with charity as beneficiary – ***In effect, donate twice***