

New Charitable Giving Rules in 2016

Perhaps lost in all the tax changes announced by the newly minted Liberal government late in 2015 were changes announced by the Harper government in its day which will also take effect to provide tax support measures for charitable giving. Here is a summary of some of those that you may wish to keep in mind as you assist your clients with their estate planning and charitable giving in 2016 and beyond.

Charitable, Crown, cultural or ecological donations made in a taxation year will entitle you to claim a non-refundable tax credit to a maximum annual claim for charitable donations of 75% of your net income for the year. Donations made in excess of that amount may be carried forward for five years. In 2014, the government extended this carryforward period to 10 years for gifts of ecologically sensitive land made after February 10, 2014.

But for many individuals, the largest charitable donation they will make is a charitable bequest under their Will. In the 2014 federal budget, the government announced changes for charitable bequests that will significantly impact donation planning on death. The changes impact existing wills, as well as donation planning going forward. Gifts that qualify as a charitable bequest are currently deemed to be made by the deceased immediately prior to their death. Such gifts may be claimed as a donation credit on the deceased's final tax return or their return for the year immediately preceding the year of death. Where a charity is named as the beneficiary of an RRSP, RRIF, TFSA or insurance policy beneficiary the value of the plan will also be treated as a charitable bequest. Donation credits claimed in an individual's final two taxation years are limited to the lesser of total charitable gifts made for the year, including charitable bequests, and 100% of the individual's net income. The 75% net income restriction does not apply.

For deaths occurring on or after January 1, 2016 such gifts will be deemed to have been made by the estate at the time the gift is transferred to the qualified donee. The value of the gift will be determined at the time the gift is actually made, not immediately prior to death. If property other than cash is gifted and the value of the property increases from the time of death to the time the gift is made, the estate will realize a gain on the increase in value but the full value of the property will also qualify as a donation. If the value decreases, the gift amount will be that lower value and the estate will also realize a loss. For gifts made in the first year of the estate, losses arising from the gift can be carried back to the deceased's final return to be used against capital gains.

For 2016 and following deaths there is added flexibility of when donation credits can be claimed if a gift is made by an estate that is a graduated rate estate (GRE). In those cases a donation credit claim can be allocated between various tax returns to maximize the benefit of the gift. Those returns are the return of the estate in the taxation year the property is transferred to the donee, any preceding taxation year return of the estate, the deceased's final personal tax return, and deceased's personal tax return for the year immediately preceding the year of death. A GRE is a testamentary trust that meets certain conditions and which is eligible to apply graduated tax rates to income that is taxed in that trust. Among other things, the GRE estate requirement generally means that the donation must be made within 36 months of death.

With changes like these coming for donations on death, it is prudent to revisit gift planning goals and charitable bequests. Be sure that the estate maintains its GRE status. Beware of residual gift planning as the new donation rules may not work well where a charity is a residual beneficiary of an estate. Planning should be done prior to death to ensure the credit claim will be available in the appropriate year.

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