

DONATING CAPITAL PROPERTY TO CHARITY

Under qualified circumstances,
donating capital property may
generate tax relief while retaining
some benefits of
the property

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The charitable tax credit

Charitable donations entitle donors to a three-tier tax credit. Charitable donations up to \$200 entitle an individual to a federal tax credit of 15%. Donations in excess of \$200 are subject to a 33% federal tax rate for net income exceeding \$205,843 (2018) indexed for donations made after 2015. Otherwise, the 29% federal tax rate applies to all donations made in excess of \$200. (Corresponding provincial credits approximately align with those brackets.) While alive, a person can claim eligible donations 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 the year of death, up to 100% of net income can be offset by charitable donations, and any excess can offset up to 100% of net income in the year prior to death.

Gifts of capital property

The making of a gift of capital property 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 an eligible registered charity, a donor may elect a disposition value anywhere from the adjusted cost base up to the fair market value for the capital property to calculate both the tax on the capital gain and the charitable credit. In case of qualifying appreciable capital property, any capital gain realized will not be subject to tax.

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

Residual and remainder interests

Canada Revenue Agency Interpretation Bulletin IT-226R2 enables a donor to achieve a current tax credit and 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 and is an eligible registered charity
- Size of all interests in the gift is ascertained charity
- 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 charity will eventually receive full ownership and possession

Valuing the interest

An actuary or certified appraiser will determine value of the gift based on:

- Fair market value of the property
- Current interest rates
- Life expectancy of life tenants
- Relevant case-specific factors

No tax credit is available if the value of gifted property is indeterminable or if capital can be encroached upon for the benefit of anyone other than the charity



Using a testamentary trust

It is possible to create a charitable remainder trust by 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 of the trust and may retain use of the property for life subject to the terms of the trust. On the spouse's or other beneficiary's death, the property is transferred to the charity.

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 scenarios, assume the taxpayer has a principal residence to donate, and may wish to benefit some family members who are not dependants

	Lifetime donation	Donation at death	Remainder/residual interest
Value of Donation	<ul style="list-style-type: none"> Fair market value Supported by reasonable evidence 	<ul style="list-style-type: none"> Fair market value Supported by reasonable evidence 	<ul style="list-style-type: none"> Portion of fair market value Determined by actuary or certified appraiser
Charitable Tax Credit	<ul style="list-style-type: none"> May offset up to 75% of net income in year of donation and following 5 years If death occurs less than 5 years after donation, unused tax credits may be lost 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> The lifetime rules apply to allow offset of 75% of net income in current year with 5 year carryforward If death occurs less than 5 years after donation, unused tax credits may be lost
Control	<ul style="list-style-type: none"> Passes immediately and irrevocably to charity on the date of donation 	<ul style="list-style-type: none"> Only passes to charity at death Revocable prior to death 	<ul style="list-style-type: none"> may be retained by the trust for the benefit of the donor subject to the terms of the trust. Irrevocable gift to charity at death
Ongoing Cost Issues	<ul style="list-style-type: none"> Charity becomes fully responsible for the donated property as the donor has no further interest in it Where the donated property is the donor's residence, the donor will obviously need to seek alternate accommodation 	<ul style="list-style-type: none"> Donor has continuing responsibility for both day-to-day and capital maintenance of the property Donor may continue to live in or use the property without impediment Any growth in value accrues to donor, to be realized when donated at death 	<ul style="list-style-type: none"> Donor may have day-to-day responsibility as provided in the trust Capital maintenance may be shared, with the bulk attributed to the charity If donor pays for capital expenses, some or all of that outlay may be treated as a further donation Any income goes to the donor while alive



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**

At the donating spouse's death, use insurance to support surviving spouse for life.

- **Leverage the charitable gift**

If there are no other beneficiaries, use charitable tax credit for the purchase of life insurance with a charity designated as the beneficiary — In effect, donate twice.



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