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Charitable Bequests

Nicola · Wednesday, July 11th, 2012

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An Overview

A bequest (also known as a gift by will or a testamentary gift) is a revocable gift made by Will to a charitable beneficiary. There are four basic types of bequests:

1. **specific bequest** (either a specific amount or a specific piece of property which is usually paid out before any residual gifts);
2. **residual bequest** (a share or percentage of the residue of estate);
3. **contingent bequest** (a “disaster clause” bequest that names an alternate beneficiary in case the terms of the original bequest cannot be met); or
4. **bequest subject to a trust** (Will establishes a testamentary trust that is funded at death; typically provides lifetime income to one or more named beneficiaries and a future gift to one or more charities).

Since a bequest is revocable, it can be amended or revoked at any time by the donor. [Click here for sample bequest wording](#) for an existing or new BenefAction fund.

Tax Treatment

At death, there is a “deemed disposition” of all capital property owned. This means that for tax purposes property is treated as if it were disposed immediately before death. There may be capital gains or losses triggered by the deemed disposition. Capital gains taxes owing are payable on the final lifetime income tax return and losses can be used to offset gains. Any capital gains or losses that occur after death are recognized on the estate tax return.

Under the Income Tax Act, an individual who makes a gift by Will to a registered charity or other qualified donee (specific organizations that can also issue tax receipts) is deemed to have made a gift immediately before death. The gift generates a non-refundable tax credit that can be claimed against tax owing. Depending upon how it is structured, a bequest subject to a trust may not generate any tax savings on the

final lifetime return.

A gift at death can be claimed against up to 100% of the individual's net income on the final two lifetime tax returns. If the bequest is too large to claim on the final return, the surplus can be carried back to the previous tax year. The 100% contribution limit can eliminate tax on the final two lifetime returns if the charitable bequest is large enough.

If you have allocated a significant portion of your estate to charity in your will (rule of thumb is 25%), you may have a planning opportunity. If the bequest is too large to be claimed on the final two lifetime returns, a portion of the eligible tax credit will be lost. To utilize the tax credit, it may be prudent to give a gift during life. Splitting a large bequest into a lifetime gift and a bequest can help significantly increase total tax savings. When properly planned, you will have the satisfaction of giving during life without any change in your lifestyle.

Examples of Charitable Bequests

Specific Bequest

Mr. & Mrs. Griffin name a specific bequest of \$50,000 in their Will for their favourite charity. When the second spouse dies, the bequest is paid out at the beginning of the estate administration process.

Residual Bequest for Legacy Fund

Steven and Wendy Jones name the Jones Family Fund at a public foundation as the residual beneficiary of Steven's Will. The Jones Family Fund is established at the same time as their Wills are executed. The Fund is established to support charities or causes of interest to Mr. & Mrs. Jones as chosen by their two adult children. They have the option of partially funding the Fund during life for philanthropic and tax planning reasons.

Charitable Testamentary Trust

Chen and Betty Tsi have an adult daughter with a severe physical disability. Their Wills create a testamentary trust to provide support to the daughter for the balance of her life. When the daughter dies, the remaining capital in the trust will pay out a charity that provides community based nursing services.

Testamentary Private Foundation

Andrea Wilson establishes a testamentary trust in her Will that will exclusively support charities of her choice. When she dies the trust will be registered with Canada Revenue Agency as a private foundation by her trustees in her memory. The objectives and terms of the private foundation are incorporated into the Will.

This article has been adapted by BenefAction with permission from the author, James Dunne, Wealth Advisor at ScotiaMcLeod in Toronto.

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