BY DOUG CARROLL

Insuring Gift Giving

Getting the best tax bang for your charitable dollar

Life insurance has long been a favoured tool for planned charitable giving.

Compared to a discretionary one-time cash gift or even periodic donations, insurance offers greater confidence and certainty to both donor and charity; confidence in terms of charitable intentions being executed, and certainty as to the figures that can be worked into respective personal and organizational planning.

That certainty is bolstered by the nature of an insurance contract. As long as premium payments are made, payment of the death benefit is assured. But how efficient is the funding of the arrangement?

TAX CREDIT MECHANICS

As background, charitable donations are entitled to very generous tax credits. Federally, the first $200 obtains a credit at the lowest bracket rate of 15 per cent, with amounts above given credit at top bracket rates. (Provinces provide similar treatment using their respective rates.) The federal top credit is 29 per cent if the taxpayer/donor's income is below $200,000 — or new for 2016 onward, 33 per cent if income is above this level.

For a given tax year, a person can claim a donation amount up to 75 per cent of net income. Any unused donations can be carried forward to be claimed up to five years into the future. On death, up to 100 per cent of terminal year income can be offset by donations, with any excess allowed to be carried back to apply against 100 per cent of the preceding year's net income.

Note that significant rule changes have been implemented for deaths occurring after 2015, though importantly the 100%/100% rule continues. The changes are most significant for donations made *after* death by an estate, and are generally beyond the scope of the current discussion, but will be addressed briefly as we move on to look at coordination with insurance.

STRUCTURE OPTIONS

Two key decisions need to be made when using life insurance in charitable giving: choice of policyholder and choice of beneficiary. The timing and amount available for the tax credit claim follow from the chosen *Policyholder–Beneficiary* structure, as summarized in the table below:

Policyholder	Beneficiary	Tax benefit – Lifetime	Tax benefit – Death
Donor	Charity	None	Death benefit
Charity	Charity	Annual premium (plus net disposition value, if any)	None
Donor	Estate	None	Death benefit (or part of it)

Donor–Charity

This is likely the most common arrangement. The donor keeps full control over the insurance policy, along with the responsibility to pay annual premiums, though there is no tax benefit while the donor is living.

On death, the insurance proceeds are paid directly to the charity as beneficiary. As both capital assets and registered plans are deemed disposed at death (excluding spousal rollovers), this aligns a large donation with a large income inclusion. Add to that the application of the 100%/100% rule and large tax savings can be generated — though for the estate (and in turn the beneficiaries), not for the donor personally.

Charity–Charity

In this arrangement, all of the tax benefit is enjoyed by the donor personally.

The donor either pays the premiums directly to the insurance company or donates the required funds to the charity, which in turn pays the premiums. Before proceeding, this should be verified in writing with both charity and insurer to assure the annual donation receipt is properly issued to the donor.

Unless there are enormous premium obligations and low annual income (a logically unlikely scenario), the 75 per cent limit on annual donation amount usage will not come into play. However, if the donor transfers an existing policy to the charity (as opposed to a newly issued policy), the tax receipt for any cash surrender value could yield a large initial credit. This would be a policy disposition with an attendant taxable policy gain (assuming it had been in place for a number of years), so the net result should be calculated and understood before proceeding along this route.

On death, the insurance proceeds are paid to the charity, with no tax effect on the deceased, the estate, or beneficiaries.

Donor–Estate

Quite often a donor is uncertain how much will be in the estate, and wants to hedge bets so both charitable intentions and personal obligations are met. By having the proceeds come into the estate, the donor will be able to use the will to provide a distribution formula that balances those interests. And though this could expose the proceeds to probate tax/fees depending on province, this is a small nuisance in the face of failing to satisfy final wishes.

As in the *Donor–Charity* structure, there is no tax benefit while the donor is living.

On death, the proceeds will come into the estate and be distributed in accordance with the will provisions. Under the most recent tax amendments, if the estate makes the donation within 60 months (five years) then the credit can be applied in the year of donation, any prior estate year, or in the terminal return or the year preceding death. And again the 100%/100% rule is preserved.

Where larger dollar amounts or more complex needs exist — donor or beneficiary creditors, business dispositions, disabilities, assets with untaxed gains — more complex structures involving new or existing trusts or corporations may come under consideration. First determine where and when the tax benefits will be of most use, and then structure the insurance to fit the purpose. F

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