

Making the Most of Your Gift – Donate Marketable Securities



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Rosemary Macklem, BCom'83, Executive Director, National Tax, KPMG LLP, and James M. Parks, Law'71, Counsel, Gardiner Roberts LLP. Queen's is pleased to welcome Ms. Macklem as the new Chair of the Gift Planning Advisory Committee and thanks Mr. Parks for his dedication and service as the inaugural Chair of the Committee, established in 2012. The primary objectives of the Gift Planning Advisory Committee are to guide and support to the University's Gift Planning endeavours and to act as advocates for the program. Committee members are appointed based on their estate, trust, tax, insurance and financial planning expertise, and are nationally recognized as leaders in their respective fields of practice. All are Queen's graduates who generously share their expertise with other alumni on timely philanthropic, estate, tax and other financial planning matters. To learn more about the Gift Planning Advisory Committee and its members, visit queensu.ca/alumni/gpac.

Have you already decided how much you would like to give to your favourite charity? If so, you might want to consider donating publicly listed securities instead of cash. A gift-in-kind of marketable securities, if properly structured, will benefit from special tax rules that can save you additional tax dollars and reduce the cost of making your gift.

Donation Tax Credit

Typically, if you donate cash or property, your donation tax credit will be worth up to 57% of the cash amount or the property's fair market value, depending on various factors including your province of residence. (In Ontario, for example, the maximum donation tax credit for 2016 is 50.41% of the gift amount.)

Giving Marketable Securities in Life

In general, if you sell or donate property, you have to recognize any accrued capital gain or income on the property. Special rules are available, however, to encourage donations of marketable securities such as shares. Where these are donated to a charity, the capital gain that would otherwise result in making a gift will be tax-exempt. Because of these special rules, you will be better off if you donate your securities directly instead of selling them and donating the cash proceeds.

Consider the following example:

Sarah lives in Ontario and in 2016 has taxable income above \$220,000, which means she is subject to the combined top marginal personal tax rate of 53.53%. Since only one-half of capital gains are included in income the effective tax rate on her capital gains in 2016 is 26.77%. If she holds eligible securities with a \$1,000 unrealized capital gain she can enjoy additional tax savings of \$268 by giving these securities directly to a charity versus first selling them and donating the cash proceeds. For Sarah, the benefits of donating shares will increase at the same uniform rate of 26.77% for any progressively larger accrued capital gain - as illustrated in the table below. The tax savings are in addition to the donation tax credit she will be entitled to, which in 2016 could be up to 50.41% of the value of the gifted securities.

Charitable Bequests – Giving Back With Your Securities

Another option is to donate your marketable securities through your will. The gift is treated as if it was made when your estate actually transfers the securities to the charity and is valued at the securities' fair market value at that date. If your estate qualifies as a graduated rate estate and the donation is made within 36 months of your death (or within 60 months under proposed new rules), your donation will be exempt from capital gains tax. The tax credit

can be used in the year of death or the year before that if that is more advantageous. This is discussed more fully below.

Don't Lose Your Donation Credit

Generally, you can claim donations to a maximum of 75% of net income for the year (and carry forward unused donations up to five years). This limit is increased to 100% for the deceased's tax returns in the year of death or the year immediately before.

Large bequests may cause you or your estate to exceed these income limitations, so careful planning is required to ensure your donation tax credit is not lost.

For example, you may want to donate certain securities or other property during your lifetime, and give the remainder by way of your will to make full use of your available donation credits.

Factors to Consider for Gifts by Will

Once you've decided to donate securities, you will need to take certain steps. Before 2016, gifts made by will were considered to be made by the deceased and the tax credits were available in their terminal return. Under recent amendments, a gift by will is now considered to be made by the estate. However, where the estate qualifies as a graduated rate estate and certain criteria are met, the executors can choose to claim the tax credits in the year of death or the year before. This could be advantageous if there are significant capital gains resulting from dispositions which are deemed to occur at fair market value on death for all capital property if there is no "rollover" to a spouse or a qualifying spouse trust.

The benefits of the gift can be claimed by the estate in the year in which the transfer is completed or, in some cases, in the estate's two previous years.

Executors will generally have to review all of the factors, including tax payable in the year of death or the year before, and any tax that was paid by the estate in years before the gift is completed.

The current rules impose a 36-month time limit following the individual's death, during which time the executors must actually transfer the securities to the charity to claim the credit in any of the year of death or prior year of the deceased and the year of transfer by the estate or its two previous years, if applicable. Under proposed amendments, this will be extended to 60-months, a move intended to provide relief for situations in which the estate may not be settled as a result of litigation or other issues that could delay a transfer. However for transfers after 36 months, credits can be claimed only in that year by the estate or in the year of death and prior year of the deceased, but not in the two previous estate years. The value of the gift will be the value of the securities at the time of the transfer. The value used to determine any capital gain in the deceased's final tax return from the deemed disposition on death will be the value at the date of death. However, since gains on donated public securities are exempt from tax, the value should not make any difference, subject to the 75% maximum donation limitation on income for years other than the year of death and prior year, as discussed above.

The transfer of marketable securities is generally accomplished by an electronic transfer by brokers, from an account owned by the deceased on instructions from the executors acting in accordance with the will, to an account maintained by the charity. In some cases, share

Accrued Capital Gain on Securities	Tax Cost			Tax Savings of Direct Donation of Securities
	Sell Shares Donate Proceeds	Donate Securities Directly		
\$1,000	\$268	–	\$268	
\$5,000	\$1,339	–	\$1,339	
\$10,000	\$2,677	–	\$2,677	
\$50,000	\$13,385	–	\$13,385	
\$100,000	\$26,770	–	\$26,770	

certificates are physically delivered to the charity or its broker. The effective date of transfer and the value at that time will depend on the method used.

Since the value of marketable securities will fluctuate, there may be discrepancies between the value of the securities at the date of death or during the administration of the estate, when the charity is notified by the executors, and the value on the day on which the actual transfer occurs. Executors will have to take into account the timeliness of completing a transfer, particularly in times of volatile markets, to avoid criticism.

Prior to the recent amendments, gifts made by will could create uncertainty, depending on the amount of discretion with respect to the terms of the gift.

If the executors were given too much latitude, CRA treated the gift as having been made by the executors rather than by the deceased. Now gifts by will are always considered to have been made by the estate. It is usually a good idea to give the executors flexibility in deciding whether to donate securities. The will can set out the

amount of a gift, and give the executors discretion to satisfy it by transferring securities. The number of securities to be transferred will then depend on the value at the time of the transfer. The will can also direct the executors to consider the tax implications before deciding how to proceed. The will usually provides that a receipt of a responsible officer of the charity will be a sufficient discharge to the executors to confirm the gift.

Your professional advisors can help you arrange any new donations, whether during your lifetime or through your estate. Queen's Gift Planning professionals can work with you and your advisors to ensure your donation can be accepted and used as intended. You and your broker can electronically transfer your gifts of securities into the Queen's account by using our Gift of Securities Form. Please contact our Gift Services Office at gifts@queensu.ca or 1-800-267-7837 (toll-free in Canada and the US) or 613-533-2060 to request our Gift of Securities Form.

Readers may also wish to read the recent article in the Fall Financial Planner on the new charitable donation rules at queensu.ca/alumni/newrules.



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