May 2021

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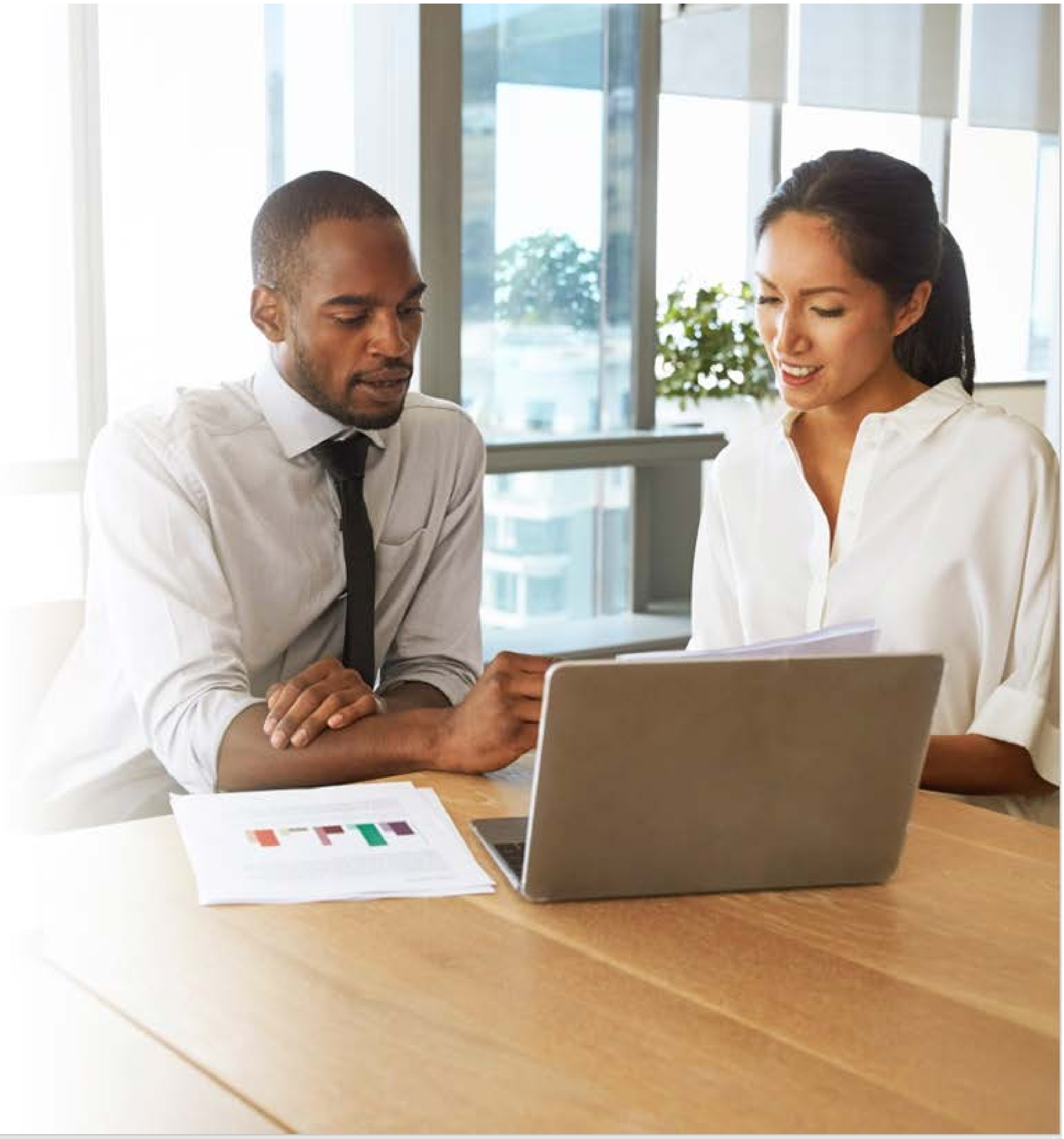
Planned Giving – A Guide for Advisors



WHY SUN LIFE CREATED THIS GUIDE

Canada's charitable tax credit rules allow Clients to optimize their tax and estate plan. They can receive a tax credit and feel good about helping the charities of their choice.

The gifting of a life insurance policy can be an attractive option for Clients as prospective donors. It's also an important strategic charitable giving tool.

We prepared this guide to outline the various ways Clients can donate with a life insurance policy and to assist advisors in understanding their obligations when assisting Clients. This guide reflects tax rules up to May 2021. Tax rates and other information may change as a result of new legislation.

The information presented in this document is for general information only. Sun Life does not provide legal, accounting, taxation or other professional advice to advisors or Clients. Before you or a Client acts on any of the information contained in this guide, please obtain advice from qualified professionals. Tax and accounting professionals can thoroughly examine the Client's situation and provide you with the best tax planning option suited to the Client's needs.

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TOPICS COVERED IN THIS GUIDE

The following are the topics that will be covered in this guide:

- Donations support many causes – choices of charities
- Tax treatment of charitable donations
- Planned giving strategies using life insurance
    - Opportunity #1 - Donate a new policy
        - How it works
        - Tax advantages and consequences
    - Opportunity #2 - Donate an existing policy
        - How it works
        - Tax advantages and consequences
    - Important notes for Opportunities #1 and #2
    - Opportunity #3 - Donate the death benefit proceeds
        - How it works
        - Tax advantages and consequences
    - Important notes for Opportunity #3
- Life insurance and publicly listed securities – a combination strategy
    - How it works
    - Tax advantages and consequences
- Opportunity #4 - Life insurance as a wealth replacement strategy
    - How it works
    - Tax and non-tax advantages
    - Tax advantages on all gifts
    - Important items to note
- Opportunity #5 - RRSP/RRIF Insurance
    - How it works

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DONATIONS SUPPORT MANY CAUSES – CHOICES OF CHARITIES

There are over 85,000 charities registered with the Canada Revenue Agency (CRA).[1] Only charities that are registered with the CRA can issue official donation tax receipts for gifts they receive. Some of these charities include:

- Organizations like the Red Cross and the Canadian Cancer Society
- Canadian universities and colleges
- Canadian amateur athletic associations
- Registered journalism organizations
- Foreign charities that have received a gift from Her Majesty in right of Canada
- Low-cost housing corporations for the aged
- Municipal or public bodies performing a function of government in Canada
- Municipalities
- Universities outside Canada
- Her Majesty in right of Canada, a province, or a territory, and the United Nations and its agencies

To confirm if the Client's charity is registered with the CRA, you or the Client can check on the CRA's website at this address:

https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale=en.

Alternatively, you can also call the CRA.

It is important to note that an advisor cannot recommend a specific charity to a Client. Clients must choose their own charities that suit their philanthropic inclinations. If Clients seek your input regarding charitable options they should be guided to a selection of charities to choose from.

[1] http://sectorsource.ca/research-and-impact/sector-impact#:~:text=There%20are%20over%20170%2C000%20charitable%20and%20nonprofit%20organizations%20in%20Canada.&text=85%2C000%20of%20these%20are%20registered,by%20the%20Canada%20Revenue%20Agency).

TAX TREATMENT OF CHARITABLE DONATIONS

The following is an overview of the tax treatment of charitable donations in Canada:

- Donors are entitled to a three-tier tax credit: federal, provincial, and an enhanced credit for individuals in the highest tax bracket.
- Donors will receive a federal tax credit of 15% for donations up to $200, plus the applicable provincial credit.[2]
- For gifts over $200, the federal tax credit is 29%, plus the applicable provincial credit.
- As of 2016, there is also a federal tax credit of 33% applicable to taxable income in excess of certain amounts over $200,000 (and indexed thereafter).[3] The credit is then enhanced by a parallel provincial tax credit (20% to 30% (first $200)) and 40-54% (over $200).
- An individual at the top income level can expect tax savings up to 54% for every dollar donated over $200 (depending on the province of residence).
- A donor can donate as much as they want, and receive a donation tax receipt for their entire donation. However, in any given year a donor can only claim a charitable tax credit for total donations equal to or less than 75%[4] of net income[5] for the year (100% in Quebec).
- Individuals can carry forward any excess donations up to five years. For example, if John gives his local hospital foundation a gift of $200,000, and his net income that year is $80,000, he can claim a charitable donation tax credit for $60,000 in the year of the gift, $60,000 for each of the next two years and $20,000 in the fourth year. Alternatively, he can spread the donation out equally over six years and claim credits for $33,333 each year (assuming his

[2] Provincial tax credit rates vary between 5.05% and 21% in 2021.

[3] For 2021, this amount is $216,511.

[4] This limit is increased to 100% of net income certain gifts of ecologically sensitive lands and "certified cultural property".

[5] Net income is calculated by subtracting all allowable deductions from total income for the year. It's used to determine federal and provincial or territorial non-refundable credits, or any social benefits you receive like the GST/HST credit or the Canada child benefit.

income doesn't change and he makes no other donations). He has flexibility in structuring the donation as long as he is within the annual 75% limit.

- Donations used in the year of death or the immediately preceding year may be used against 100% of net income in those years. For example, let's assume again that John's net income in his year of death is $80,000. If he left $160,000 to his favorite charity in his will when he passed away in 2019, his charitable receipt will be $80,000 for 2019. The remaining $80,000 can be carried back to his 2018 income tax return. This generally requires filing an amendment of the previous year's tax return. Also, the estate must be a "graduated rate estate" (GRE).[6] Again, there is a five-year carryforward of gifts within the estate and the maximum amount of donations an estate can claim in a year is 75% of net income.
- Charitable donations made by both spouses/partners may be totaled and claimed by either person.

PLANNED GIVING STRATEGIES USING LIFE INSURANCE

Below are the three most common methods of donating a life insurance policy:

OPPORTUNITY #1 - DONATE A NEW POLICY

Clients can donate a new policy. The charity is both the owner and beneficiary of the policy.

How it works:

- The Client purchases a new life insurance policy and pays the first premium.
- The Client then donates the policy to a charity and transfers the ownership of the policy to the charity. The charity is now the new owner of the policy.

[6] A GRE is an estate arising on an individual's death. The advantages of a GRE is that it will have access to marginal tax rates in its first 36 months as opposed to paying tax at the highest marginal tax rate for *inter vivos* (lifetime) trusts. Also, the testator has flexibility in allocating a charitable tax credit (either on the terminal tax return or in the year prior to death). The estate must designate itself as a GRE in its tax return. Only one GRE per deceased person is permitted.

- The charity is also named as policy beneficiary on the application or at the time of the policy ownership transfer.
- After the Client donates the policy to the charity, the Client continues to pay the premiums.
- After the Client dies, Sun Life pays the death benefit to the charity.

Tax advantages and consequences:

- The Client will receive a charitable donation tax receipt for the premiums.
- The Client may also receive a charitable donation tax receipt for the fair market value (FMV) of the policy on transfer. Subsection 248(35) of the *Income Tax Act (Canada)* (the "ITA") deems the policy's FMV to be the policy's adjusted cost basis (ACB) if the Client had acquired the policy within the past three years, or if the Client had acquired the policy within the past ten years, and one of the main reasons for acquiring it was to donate it to a charity. However, the ACB of a typical policy in its first year after the payment of one premium payment will be very small.
- If the deeming rule under subsection 248(35) does not apply, an actuary will be needed to determine the policy's FMV.[7]
- The donation will be treated as a disposition for tax purposes under subsection 148(7) of the ITA.[8] For a donation of a newly issued life insurance policy, the tax consequences will probably be nil because the policy likely would not have a cash value greater than its ACB

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[7] The factors the actuary can consider are listed in CRA's Information Circular 89-3, "Policy Statement on Business Equity Valuations," August 25, 1989 and include: the policy's cash surrender value (CSV), the policy's loan value, face value, the state of health of the insured and his/her life expectancy, conversion privileges, other policy terms, such as term riders, double indemnity provisions, and replacement value.

[8] Subsection 148(7) requires the transferring policy owner to determine the taxable amount of the disposition by subtracting the policy's ACB from its "value". Its value is the greatest of the fair market value of any consideration received in exchange for the policy, the policy's cash surrender value (CSV), or its ACB. With donations, the donor receives nothing in exchange for the policy, so the policy's value will be the greater of its CSV or ACB.

immediately after its issue. It is still important, however, to determine before making the donation what the likely tax consequences of the disposition will be, and to obtain tax advice on how any taxable gain will affect the donation.

- The charity will receive the death benefit on a tax-free basis. Charities are tax-exempt entities, and death benefits paid from exempt life insurance policies are tax-free. The death benefit, however, is not a donation and will not qualify for a charitable donation tax receipt.
- Probate fees (estate administration tax in Ontario) will not apply.
- The CRA is indifferent as to whether the Client pays the premiums directly, or donates the premium amount to the charity so that the charity can pay the premiums.
- The Client should ensure that their other life insurance needs are met.

OPPORTUNITY #2 - DONATE AN EXISTING POLICY

Clients can donate an existing policy. This may be a good option if the Client no longer needs the policy. As in the above strategy, the charity is the owner and beneficiary of the policy.

How it works:

- The Client donates an existing policy that has been in force for some time.
- The Client simply transfers ownership of the policy to the charity and names the charity as beneficiary. Alternatively, the charity can name itself as beneficiary after becoming owner of the policy.
- The Client continues to pay the premiums.
- After the Client dies, Sun Life pays the death benefit to the charity.

Tax advantages and consequences:

- The tax consequences are the same as outlined in Opportunity #1 above. To obtain the maximum donation tax receipt, it's best to donate a policy that the Client has owned for at least ten years, or, where the Client has owned the policy for between three and ten years, to have documentation supporting the position that none of the main reasons for acquiring the policy was to donate it to a charity. A needs analysis completed at the time the Client acquired the policy could help.

- The donation will be treated as a disposition for tax purposes under subsection 148(7) of the ITA. If the policy's cash surrender value (CSV) is greater than its ACB, the Client will have to include the difference in income. If there is a taxable gain, the life insurance company will send the Client a T5 slip to report the taxable gain to the CRA. **It's best to understand how much taxable gain there is in the policy before the Client donates it, and to obtain tax advice on how any taxable gain will affect the Client's donation.**

IMPORTANT NOTES FOR OPPORTUNTIES #1 AND #2

- This gift is irrevocable. This means that the Client gives up control of the policy. The Client will no longer be able to change ownership of the policy or the beneficiary designation. Nor will the Client be able to access cash from the policy through policy loans, third party loans or full or partial surrenders. If the Client later becomes unhappy with the charity, they could stop paying premiums. The charity, however, would have the following options:
    - continue to pay the premiums from other donations
    - use the policy's cash value to keep the policy in force, or
    - surrender the policy for its cash value.
- There is a method for partly mitigating the loss of control when a policy is donated to charity: donate the policy to a public foundation. Many public foundations will assume ownership of a policy, and will agree to direct the proceeds to a charity or charities of the Client's choice. The Client can change the charity or charities from time to time simply by providing new instructions to the public foundation. This does not change the irrevocable decision of gifting the policy to the foundation, but it does provide flexibility as to which charity or charities will benefit from the proceeds.

- The CRA is indifferent as to whether the Client pays the premiums directly, or donates the premium amount to the charity so that the charity can pay the premiums.
- The Client should ensure that their other life insurance needs are met.

OPPORTUNITY #3 - DONATE THE DEATH BENEFIT PROCEEDS

The Client is the owner of the policy. The Client can name a charity of choice as the beneficiary of the policy. This might be a good option if the Client has owned a policy for a long time. The Client also maintains the flexibility of changing the beneficiary of the policy.

How it works:

- The Client only needs to name the charity as beneficiary of the policy.
- The Client continues to pay the premiums.
- After the Client dies, Sun Life pays the death benefit to the charity.

Tax advantages and consequences:

- The charity receives the death benefit proceeds on a tax-free basis.
- The Client's estate will receive a charitable donation tax receipt for the policy proceeds.
- The Client, however, will not receive a charitable receipt for the premiums.
- There is no disposition of the policy.
- If the Client names the charity directly as beneficiary of the policy, the death benefit proceeds will not be subject to probate fees (estate administration tax in Ontario) or claims from any of the Client's creditors.[9]
- As mentioned, the Client maintains the flexibility of changing the beneficiary at any time.
- In both cases where an estate is named as beneficiary or the charity is named as beneficiary, there may be possible dependent relief claims for support. (See for example, s. 58 and s. 72(1)(f) of the *Succession Law Reform Act (Ontario)*).

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[9] Clients can also name their estate as beneficiary of the proceeds, but the proceeds will be subject to probate fees (estate administration tax in Ontario). Please note that there are no probate fees in Quebec. The proceeds may also be exposed to creditors' claims and estate litigation claims.

IMPORTANT NOTES FOR OPPORTUNITY #3

- The CRA is indifferent as to whether the beneficiary designation is irrevocable or revocable. The tax result is the same.
- The death benefit will not qualify as a donation if the charity is named as beneficiary on a corporately-owned policy.

LIFE INSURANCE AND PUBLICLY LISTED SECURITIES – A COMBINATION STRATEGY

Another opportunity is to gift publicly-listed securities[10] as well as a life insurance policy. This "combination" strategy has many tax benefits. For example, this strategy not only provides for a gift to the charity, but it also eliminates the capital gains tax that would otherwise result from gifting the securities. It is more tax efficient to donate the securities than to sell them and donate the proceeds.

How it works:

- The Client donates publicly-listed securities to a charity.
- The Client also gifts a life insurance policy using Opportunities #1 or #2 above.
- The charity can use the dividends from the securities to pay for the remaining premiums on the policy. Alternatively, the charity can sell the securities and use the sale proceeds to pay for the remaining premiums.

[10] "Qualifying marketable securities" include: shares, bonds, warrants and options listed on prescribed stock exchange (Toronto, Vancouver, New York), mutual fund shares and units, segregated fund units, prescribed debt obligations and stock option shares. Only advisors with a securities license can advise on matters regarding a publicly traded security. Advisors who are life insurance licensed and mutual fund registered and who do not have a securities license may not discuss securities with Clients.

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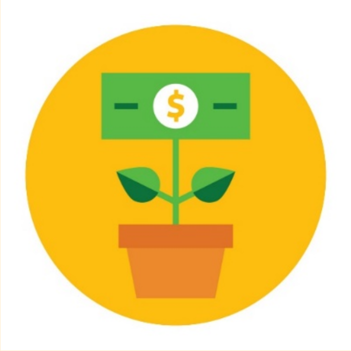
Tax Advantages and consequences:

- When the Client gifts the securities to the charity, the Client eliminates the capital gains tax.
- The Client will receive a charitable donation tax credit for the FMV of the securities.
- The Client will also receive a charitable donation tax credit for the value of the policy when it is transferred to the charity. (Please see footnote 7 above for the factors in valuing a policy.)
- The Client is relieved of any further premium obligations.
- The donation of a life insurance policy is a potentially taxable disposition of that policy and the comments made regarding opportunities #1 and #2 above also apply.

An example of this strategy is demonstrated in the following chart:

Tax on Disposition of Publicly Listed Securities		**Charitable Tax Credit on Gift of Publicly Listed Securities**	
Fair market value	$50,000	$50,000	Tax Tip: Charity can sell securities and use proceeds to pay for future premiums or use dividends from the securities to help pay for premiums. 
Cost	10,000	N/A	
Taxable Gain	40,000	0	
Taxable capital gain	20,000	0	
Tax Due (50% rate assumed)	**$10,000**	**Total charitable tax credit (40%) = $20,039**	

In this example, the donor sells securities for $50,000 and would face a total tax bill of $10,000 (as can be seen in the first column). The second column shows a charitable tax credit of $20,039 if the donor donates the securities. The charity now pays for the premiums on the policy from the securities' sale proceeds and/or using the dividends from the securities. In some cases, the dividends or the proceeds from selling the securities might not be enough to pay for the ongoing premiums. Therefore, the charity may need to find additional funds to keep the policy from lapsing.

Therefore, the donor's total tax savings is $30,039 ($10,000 + $20,039) from the capital gains tax saved on the donation of the securities and the charitable tax credit on the donation of the securities. The charity also benefits from receiving valuable assets such as the securities and a life insurance policy. This strategy results in a win-win situation for both the donor and the charity.

Another aspect to this strategy is that the donor can continue to pay the premiums and the charity could sell the securities immediately after the donation. The donor would receive an additional charitable tax credit on the premium payments. And, the charity would receive cash right away from the sale of the securities.

Please note: Only advisors with securities licenses can advise on matters regarding a publicly traded security. Advisors who are life insurance licensed and mutual fund registered and who do not have a securities license may not discuss securities with Clients. Also, the Client should consult the charity in advance when making these types of gifts.

OPPORTUNITY #4 – LIFE INSURANCE AS A WEALTH REPLACEMENT STRATEGY

Instead of donating a life insurance policy to a charity, the Client may want to donate other assets. To replace those donated assets, Clients can purchase a life insurance policy as wealth replacement insurance. Clients can choose policy beneficiaries of their choice. This will enable

Clients to see the positive impact of a charitable donation during their lifetimes without diminishing their family legacy.

How it works:

- The Client donates a valuable asset to a charity. Examples of assets to donate can include:
  - publicly listed securities
  - non-registered segregated fund contracts
  - real estate
  - certified cultural property and ecologically sensitive land
  - cash or equivalents (for example, guaranteed income certificates, T-bills)
  - artwork, jewelry and other personal property[11]
  - income or capital from an *inter vivos* or lifetime trust
- The Client uses the tax savings (discussed below) to help purchase a life insurance policy.
- The Client names a beneficiary of choice under the policy.

Tax and non-tax advantages:

- **Publicly listed securities:** As discussed above, the Client will not pay capital gains tax on gifts of publicly listed securities.[12]
- **Non-registered segregated fund contracts:** There is also no capital gains tax on gifts of non-registered segregated fund contracts.
- **Real estate:** Generally 50% of the capital gain is included in income and subject to tax.
- **Certified cultural property and ecologically sensitive land:** Capital gains arising on the donation of these types of property are generally not taxable. Also, the annual donation limit is increased to 100% of net income on gifts of these properties. For ecologically

[11] Subsection 248(35) of the ITA would deem the donation to be the lesser of the FMV or cost of the gift if the gift was made within three years of purchase or within ten years if it reasonable to conclude that one of the main reasons for acquiring the property was to gift it to a charity. In these situations, Clients will need to consult with their tax advisors.
[12] Gifts of private corporation shares are not eligible for this special capital gains treatment. Generally, 50% of the capital gain that arises from the disposition of private corporation shares is subject to tax.

sensitive land, any unused donations can be carried forward over ten years (five years more than for regular donations).[13]

Tax advantages on all gifts:

- The Client will receive a charitable donation tax receipt on the donation of the assets to the charity.
- The charity receives immediate support and Clients fulfill their charitable giving objectives during their lifetimes.
- On the Client's death, the beneficiaries will receive a tax-free inheritance of life insurance proceeds.
- By naming beneficiaries, the proceeds will not be subject to probate fees (estate administration tax in Ontario) and creditor claims.

Important items to note:

- Clients can opt for a policy that increases in value as a donated asset may have done - that is, the Client can purchase a policy with an increasing death benefit.
- Neither the life insurance premiums nor the death benefit proceeds are donations eligible for a charitable donation tax receipt.
- The client needs to be aware of alternative minimum tax (AMT). For example, this tax may have to be paid if the Client has certain large deductions or capital gains in a year and their property donations result in additional gains. Clients need to check with their tax advisors to ensure that AMT does not arise.
- If any of the above property is gifted to a charity through a will, the estate must be a GRE in order for the estate to receive a charitable tax receipt.

[13] The gift of ecologically sensitive land must be made after February 10, 2014.

- The proceeds from the sale of the asset may not be enough to fund the ongoing premiums. In such a scenario, the Client may need to use other funds to keep the policy from lapsing.
- The Client should consult the charity in advance when making these types of gifts.

OPPORTUNITY #5 - RRSP/RRIF INSURANCE

Another variation on the wealth replacement strategy is "RRSP or RRIF insurance". This can be an excellent strategy for those that are philanthropically inclined and want to make a donation. The added bonus to this strategy is that the donation tax receipt can offset the tax on the RRSP/RRIF income.

How it works:

- The Client owns an RRSP/RRIF. Let's use an example of an RRSP worth $200,000.
- The Client names a charity of choice as the beneficiary of the RRSP/RRIF.
- The Client purchases a life insurance policy worth $200,000 and names family and/or friends as the beneficiaries under the policy.

Tax advantages and consequences:

- Upon the Client's death:
    - The policy beneficiaries will receive the life insurance policy death benefit on a tax-free basis.
    - The life insurance proceeds will not be subject to probate fees, creditors' and/or estate litigation claims.
    - The charity will receive the RRSP/RRIF proceeds and the charity will issue the client's estate a donation tax receipt for the value of the RRSP/RRIF proceeds.

- The RRSP/RRIF proceeds will be included in the Client's income.[14] However, if this gift is made by the GRE, the Client's estate will receive a tax credit up to 100% of net income in the year of death (and the preceding year). Therefore, the RRSP/RRIF donation tax receipt can offset the tax on the RRSP/RRIF income.

[14] This will be included in income under ss. 146(8.8) of the ITA.

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SUMMARY OF OPPORTUNITIES #1, #2, #3, #4, #5

The opportunities are summarized below in the following table:

Opportunity	Owner of Policy	Beneficiary	Taxpayer's tax benefit during life	Tax benefit at death
#1 – Donate a new policy	Charity	Charity	Annual premium and value on transfer is a donation	None
#2 – Donate an existing policy	Charity	Charity	Annual premium and value on transfer is a donation	None
#3 – Donate the death benefit proceeds	Taxpayer	Charity	None	Death benefit is a donation
#4 – Life insurance (LI) as a wealth replacement strategy	Client	• Client's beneficiaries (LI proceeds) • Charity (donated asset)	Tax receipt on donation of asset	Beneficiaries receive tax-free LI proceeds
#5 – RRSP/RRIF Insurance	Client	• Charity (RRSP/RRIF) • Family/Friends (LI proceeds)	None	RRSP/RRIF is a donation and donation tax receipt offsets RRSP/RRIF tax

CRA CRITERIA FOR A GIFT

- The CRA has outlined the following criteria for a gift[15]:
    - There must be a voluntary transfer of property to the charity and the property must have a value that can be clearly determined.
    - If any "advantage" was received (compensation or other benefits) in return for the donation (that is, tickets, meals), the eligible gift for purposes of the donation is the FMV of the donation minus the FMV of the advantage received.
    - The above rule only applies to gifts that are above the *de minimis* threshold of $75 or 10 per cent of the value of the gift. When the FMV of an advantage received for a gift is more than 80% of the FMV of the gift itself, the CRA generally considers that there is no true intention to make a gift. Therefore, a charity cannot issue a charitable donation tax receipt. However, in some cases, the intention to make a gift threshold has not been met but there was a clear intention to make a gift. In these cases, Clients must be able to prove to the CRA that they intended to make a gift.

IMPORTANT CONSIDERATIONS

ADDRESSING THE INSURANCE NEED

- A life insurance policy is a solution to a genuine insurance need. Charitable gifting is something to contemplate after a Client has purchased a policy and the Client and his/her advisors have addressed the insurance need.
- Always discuss the Client's specific reasons for insurance. You must document a full needs analysis to support the case for charitable giving involving life insurance.

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[15] See the CRA website at: https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift.html.

- Documentation of the Client conversation and needs analysis is also required when the Client is donating an existing policy. It is important to capture the Client's rationale for the donation including other coverage they may have in place to meet their own insurance needs. You want to ensure that these considerations are well documented in the event of a subsequent inquiry or dispute by a family member or beneficiary of the original policy.

CONFLICT OF INTEREST CONCERNS

- Always ensure there is no conflict of interest, especially between the advisor recommending the policy and the intended policy beneficiary.
- As noted earlier, an advisor cannot recommend a charity to a Client. Clients must choose their own charity that suits their philanthropic inclinations.

UNDERWRITING CONSIDERATIONS

- Sun Life does not support charitable giving in the following situations:
  - Borrowed fund charitable strategies where there is no prior history of giving or association[16]
  - Borrowed fund charitable strategies with split dollar or shared ownership arrangements[17]
  - Split dollar and shared ownership arrangements.
- There is a maximum amount of insurance any individual can obtain. Therefore, as Clients use up their insurability for charitable purposes, the amount of coverage that is available to them personally is similarly reduced.

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[16] With any leveraged situation, Sun Life will perform a suitability review examining such items as the nominee/trust arrangements to confirm the Charity is not a beneficial owner.

[17] An example of a charitable shared ownership structure would be where the donor enters into an agreement with the charity to share ownership of the policy. The donor will own the policy's cash value while the charity will own the pure insurance part of the policy, or death benefit. The donor will continue to pay all the premiums. But the charity will give the donor a charitable donation tax receipt only for that part of the premium that pays for the death benefit.

- The underwriting department expects some level of past charitable giving commensurate with the amount of insurance for which the Client is applying. For example, if there is no past history of giving, this may limit the amount that Sun Life will approve. Alternatively, Sun Life will look for some close personal or family association to a particular charity.
- A question can arise as to whether a charity may even be able to own a life insurance policy on a Client's life since it does not have an insurable interest in the life of a donor. Most *Insurance Acts* state that if a donor gives consent, a charity can own a policy on the Client-donor's life. It is important to make sure that the applicable provincial or territorial laws allow the Client to consent to the charity owning the policy on his or her life.

WHO SHOULD APPLY FOR THE POLICY?

A charity can apply for a policy, but it is better for the Client donor to do so. One reason is privacy. If the underwriting process results in the client being rated or declined, that underwriting decision is passed on to the applicant. The Client likely would not want the charity to be made aware of his or her general status. The Client's personal medical information would not be shared.

It is also better for the Client to apply for the policy as it avoids the complication of requiring the charity's signing officers to apply for the policy on its behalf.

TAX SHELTERED DONATION ARRANGMENTS

It is important to note that the CRA applies special scrutiny to any arrangement that it determines to be a "tax shelter". Briefly, the CRA defines tax shelters as donations or arrangements where a participant receives a tax benefit/deduction that is equal to or in excess of the cost they contributed. Some examples include buy-low and donate-high arrangements, gifting trust arrangements, leveraged cash donations and leveraged insured annuity arrangements. The CRA has audited many of these arrangements and has been successful in reducing the tax credit claimed or denying the gift completely.

Tax shelter promoters must obtain a tax shelter identification number from the CRA. The CRA uses this number to identify the tax shelter and its participant investors. The number, however, does not guarantee that a donor will receive the associated charitable tax credits.

REGULATIONS ASSOCIATED WITH DONATIONS OF POLICIES

Most Insurance Acts in Canada make it an offence for someone who "traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or any person...."[18]

In the fall of 2019, there was much uncertainty created with the charitable gifting of life insurance policies in British Columbia (BC). The BC Financial Services Authority (BCFSA, formerly the FICOM) took the position that a charity accepting life insurance policies as donations would contravene the anti-trafficking provisions of section 152 of B.C.'s *Insurance Act* and whether it might be a breach of provincial insurance laws. In May 2020, the BCFSA clarified its position and is now of the view that, when an insured makes a donation directly to a *bona fide* charitable organization, none of the three ways of donating (Opportunities #1, 2 and 3 discussed above) are generally prohibited. However, the BCFSA did not clarify what constitutes a bona fide charity or under what circumstances these types of donations would be prohibited.

Other provincial and territorial insurance regulators have yet to comment publicly on this. Until some regulatory consensus is reached, there will remain some risk that, under some circumstances, donating a life insurance policy might contravene anti-trafficking laws. In the meantime, advisors should avoid taking steps that might be seen to be "trafficking" or "trading" in insurance policies e.g. soliciting clients to sell their insurance policies without regard to their current insurance needs.

[18] See for example section 152 of British Columbia's *Insurance Act*, RSBC 2012 Chapter 1 (B.C. *Insurance Act*).

DISBURSEMENT QUOTA AND LIFE INSURANCE GIFTS

The requirement that charities distribute 80 percent of total gifts each year was eliminated on December 5, 2010. The 10-year enduring property rule (which helped planned gifts avoid the 80% disbursement rule) was also eliminated. Charities must now disburse 3.5 percent of the value of their assets for charitable purposes every year.[19] However, the value of a life insurance policy is deemed to be nil.[20] The elimination of the 80 percent quota allows for a simpler process for Clients wishing to donate life insurance policies.

HOW YOU CAN HELP CLIENTS

You can help Clients in the following ways:

- Review the various aspects of the Client's financial and estate plans.
- Help clarify the Client's planned giving goals.
- Recommend planned giving and financial strategies.
- Pinpoint problems and opportunities.
- Help carry out the Client's gift plan.
- Monitor Clients' plans over time to ensure that they continue to be the best for them.
- Discuss the considerations above with the Client and ensure that all recommendations and decisions are well documented.

[19] Section 149.1 of the ITA.

[20] Regulation 3702(1)(b)(vi) of the ITA.

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OTHER PLANNED GIVING RESOURCES

Please see the following resources from the Insurance Tax Solutions Group located on our website:

- Planning Giving – A Guide for Clients
- Charitable tax credit calculator
- a recording of our Planned Giving Presentation given on the March 26, 2020

Sun Life

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WHY CHOOSE SUN LIFE?

Sun Life is a leading international financial services organization. We have a 150-year history of honouring our commitments – to our customers, partners, shareholders and communities.

Sun Life Financial is a strong, well-capitalized company with solid financial ratings. We are committed to the highest standards of business ethics and good governance. We practice sound risk management and strive to build sustainable, healthier communities for life.

Our strength also comes from the diversified nature of our business, as we operate in a range of financial services businesses and in many countries around the world.

At Sun Life, our Purpose is clear: to help our Clients achieve lifetime financial security and live healthier lives.

Anchored by our proud history, we continuously look for ways to bring innovative, insightful and simple solutions to Canadians, so they can feel confident that they have a financial partner that cares about their well-being and that they can trust.

We continue to build that trust through our unwavering commitment to our Clients. When we help Clients with their financial management needs, and their health and well-being goals we are enabling them to gain the freedom to live their lives their way, from now through retirement.

Every day, we do what we do to give our Clients peace of mind for their futures and for their families' futures – to make Life brighter under the sun.

WE'RE DEDICATED TO HELPING YOU ACHIEVE A LIFETIME OF FINANCIAL SECURITY.

For more information and resources visit www.sunlife.ca,
or call 1 877 SUN-LIFE (1 877 786-5433).

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Notes

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