WHEN CHARITABLE GIFTING MAKES 'TAX-EFFECTIVE SENSE'

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For some, charitable giving is part of a lifelong mission to help others and goes far beyond donating clothes or making small, one-off donations to support a favourite cause. For these people, charitable giving can form an integral part of their investments plan. This article looks at some tax-effective options available for clients wanting to undertake charitable giving.

Charitable advice and personal financial advice

Whether it's contributing to an organisation your clients support or helping family members in times of need, charitable giving is immensely important – and personal – for many clients.

Understanding a client's commitment to their charitable cause is an important responsibility of financial planners. This is especially true as many clients are inclined to put their charity ahead of their own financial goals and needs. Hence, part of any good advice is to balance their client's longer term financial objectives against these charitable giving intentions.

Direct donations

Gifts/ donations (cash)

Giving directly to an eligible charity is the most common way to donate. These donations can be fully tax deductible to your clients – whether as individuals or other tax entities and there are no upper limits on the amount that can be claimed or the number of charities that they may donate to.

Tip: For couple clients, they could maximise their tax deduction by considering making the donation in the higher income spouse's name.

To be tax deductible, a cash donation must meet all of the following conditions:

- be made to a deductible gift recipient (DGR). This can be checked by finding the charitable organisation on the ABN lookup site (abn.business.gov.au)
- amount of gift must be at least $2
- The client makes the gift voluntarily and does not materially benefit from their gift.

Case study

Bill attends a Christmas concert. He purchases his ticket for $20. On the night, he also makes a voluntary donation of $100. The $100 is a gift but the $20 for the ticket is not a gift.
spouse's name.

Cash contribution donations

Where the client receives a benefit from the gift, clients cannot claim a tax deduction as a gift, but they may still be tax-deductible as a 'contribution'.

An example of a tax deductible contribution includes where clients make a contribution to a fundraising event of greater than $150. As they receive a minor benefit from their attendance at the event, they have not made a gift, however they may claim a portion of their contribution - the amount in excess of $150 - as a tax deduction if they meet the following conditions:

To be tax deductible, the 'contribution' must:

- be made by an individual (other entities cannot claim a deduction from their contributions)
- be made to a DGR
- be for a right to participate in an eligible fundraising event, which is a DGR fundraising event conducted in Australia, including fetes, balls, gala shows, dinners, performances and similar events
- be a cash contribution over $150 (if the eligible event is a fundraising auction)
- not benefit the client to more than 20 per cent of the value of the contribution or $150, whichever is less.

Case study:

Ben contributes $300 for the right to attend a DGR's annual gala dinner fundraising event. The value of the ticket to attend the fundraising event is $50. Ben will be eligible to claim a tax deductible contribution of $250 ($300 - $50) because the:

- the cash contribution is more than $150
- ticket (the minor benefit received of $50) does not exceed the lesser of $150 and 20 per cent of the value of his contribution ($60).

Property contribution / donations

If a client makes a gift of property that the ATO have valued at more than $5,000, they may be able to claim a tax deduction.

'Property' has a wide meaning. As well as tangible objects (such as land), it includes rights and interests that can be owned, such as shares and ownership rights.

Property contributed within 12 months of purchased

Where the property (includes listed shares) was purchased by the client during the 12 months before making the contribution, the value of the contribution is the lesser of both:

- the market value of the property on the day that the contribution was made
- the amount the contributor paid for the property.

Property contributed after more than 12 months of ownership

If the gift is property valued by the ATO at more than $5,000 and the client purchased the property more than 12 months before donating it, they can claim a tax deduction for the amount the ATO values the property on their Valuation certificate.

Property (value less than or equal to $5,000) contributed after more than 12 months of ownership

Generally, one cannot claim a tax deduction for such property contributions, but there is a specific exception for listed shares as follows:

- For shares acquired more than 12 months ago, the amount clients can deduct is the market value of the shares
- For shares acquired in the last 12 months, they can claim a deduction for the lesser of the:
  market value of the shares on the day they donated them, or
  amount they paid for the shares.

Note: it's important to note that the donation of property is a disposal for capital gains tax (CGT) purposes.

The quote

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Tax and timing of tax deductions

Generally, clients claim the tax deduction in the income year in which they made the donation. However, they could make a written election to spread the tax deductions for a gift over a period of up to five income years (in any proportion), if the gift meets the following conditions:

- money of $2 or more
- property the ATO values at more than $5,000
- the election must be in the approved form and must be made before lodging the tax return for the year in which the gift was made.

(note: the election and variation forms vary depending on the gift and the DGR that receives it, so clients should contact the relevant DGR before making the gift).

Spreading the tax deduction over several years may help clients where they may have a higher taxable income in some years than others.

Further, deductions from donations cannot create or increase a tax loss.

Donations made by Centrelink clients

Centrelink/DVA clients may be subject to deprivation rules where they make gifts or donations without receiving adequate consideration.

Centrelink rules may allow for various concessions from the deprivation rules, for example, when clients make gifts to a Special disability trust or transfer their principal home to their children under an effective granny flat arrangement.

Indirect donations

Salary sacrifice arrangements

Clients may also arrange for gifts to be made to DGRs under a salary sacrifice arrangement with their employer. Under such an arrangement, the client directs part of their pre-tax salary to a DGR, and it's the employer who can claim for the tax deduction (not the client). Such a donation is not considered a fringe benefit.

Alternatively, where clients participate in their employer's 'Workplace Giving' programs, where part of their after-tax salary is donated to a DGR, the client may be entitled to claim the deduction.

Bequest through investment bonds

Besides enabling tax-free distributions on death (within or outside the 10-year investment period), investment bonds also have a special nomination mechanism allowing philanthropic bequests to charities, churches, hospitals, schools etc. This mechanism lets a nomination be made discreetly and, as a 'non-estate' asset, can help put these types of bequests beyond the legal challenge of Wills and legal estate beneficiaries.

Bequest with Life insurance

A life insurance bequest can be a valuable and generous gift that for small regular contributions, can allow a client (donor) to make a more substantial contribution to a cause or charity than would otherwise be possible. There are a couple of options for Life insurance bequests:

Option 1: leaving a sum of money to the charity which allows the charity to pay regular premiums on the insurance policy and as policy owner, the charity communicates directly with the insurance company.

Option 2: clients can also choose to nominate a charity as the beneficiary of an existing policy.

(Note: some life insurance policy company may even provide automatic charity donations at the time of claim to your client's chosen charity).

Setting up a private ancillary fund (permanent charitable option)

Clients may also set up a private ancillary fund (PAF) to collect donations from those closely related to them (but not from the public) and to invest those money and make donations to eligible charities. A PAF is a trust which can be set up during a client's lifetime or via the Will, but it must meet the following conditions:

- have a corporate trustee
- have one trustee or a committee of trustees, provided the trustee or one of the trustees is a 'responsible person' who has a general responsibility to the community and is not associated with the founder or is not a major donor.
- The trust must only donate to charities which have DRG status.
- Pays donations of at least 5% of the fund's assets per financial year.
- Maintains an investment strategy and complies with a range of investment restrictions.

A PAF is able to apply to the ATO to be endorsed as a DGR, which allows it to accept donations which can be tax deductible to donors and may also apply for income tax exempt status, GST and fringe benefits tax concessions.

This strategy is beneficial for clients who seek a more permanent and tax-effective charitable option.

Donating while alive vs through a Will

Eligible donations made by a client while they are alive are generally tax deductible, however donations made by the executor to a DGR is not eligible for a tax deduction. Hence, it is often recommended that clients consider giving part of their intended estate to charity prior to death (where possible).

Importantly, where the deceased estate donates property (rather than cash), the donation is non-deductible. However, an exemption from the CGT could apply, where the recipient organisation is an established DGR prior to the donor's date of death. CGT would otherwise apply where the client donates property while they were alive.

Case study:

Donation of property via the will to a non DGR

Greg is seeking to donate part of his share portfolio to a PAF, to be established via his will. The share portfolio will not be exempt from capital gains tax (CGT) when transferred to the PAF, as it did not exist at the time of death (ie it cannot qualify as a DGR). However, if he was to donate the share portfolio to a DGR, rather than the PAF, CGT exemption could apply.

Conclusion

Since charitable giving represents one of the most intimate aspects of personal finance, it's crucial that financial planners realise how to balance the altruistic desires of their clients while also ensuring their futures are secure.

Part of this process is also understanding the many viable options available where clients can make charity donations. These options can be quite complicated, due to their personal nature and other tax implications, estate and Centrelink issues. FS

Getting involved

Donating to charity doesn't necessarily mean a monetary donation. Volunteering of their time or even skills and expertise can be the perfect way for your clients' to know that they are really making a difference. For clients who are interesting in volunteering, they can either check their preferred charity's website, or visit this link: Go Volunteer to search for opportunities in their local area.

The quote

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