Charitable Giving – Yes, Even in 2022

September 2022

Signs of the Times

(Photo taken at your local grocer, September, 2022)

Can it be that time of year already? Apparently, it can. When you visit the grocery market or other major shopping stores, you'll see that merchants are hard at work changing decorations and merchandise into that which can only be described as having more of a holiday look and feel. Well, the end of the year seems like this happens earlier each year, so we will devote this month's newsletter to our 3rd annual installment of (almost) year-end charitable giving.

Times May be Tough(er)

First, let's acknowledge that for many, it is challenging to talk about giving to charity during a market that in 2022, so far at least, has been less than stellar. Year-to-date, the S&P 500 index is down 18.78%, and the NASDAQ index is down nearly 28% (as of 09/21/2022).

Looking at a charitable giving during a bull market, total amounts gifted to charities in 2021 was $484.85 billion. This amount was 4% higher than in 2020, but a negative 0.7% when inflation is factored in. Giving dipped as a percentage of gross domestic product (GDP), from 2.2% to 2.1%.

Source: *Giving USA 2022*, published annually by the Giving USA Foundation with research from the Lilly Family School of Philanthropy at Indiana University.

According to Giving USA 2022, individuals made up 67% of all giving ($326.87 billion), followed by foundations at 19% ($90.88 billion), bequests at 9% ($46 billion), and corporations at 4% ($21.08 billion). Donations to religion topped the list at 27%, followed by human services and then grant-making foundations both at 13%. The religious giving number is down significantly from years past as a percentage of all giving. For example, it was 33% of all giving in 2000.

The vagaries of the stock market notwithstanding, our experience with many of our clients has been that there is still a strong desire to give to charity this year, and it is often not primarily motivated by income or estate tax savings.

"The mountains are calling, and I must go." -- John Muir

(Photo taken by Isaac Landry during a 2020 hike of the Maroon Bells Amphitheater near Aspen, CO.)

Recently, it's been reported that Yvon Chouniard, billionaire founder of the outdoor apparel company, Patagonia, decided to donate 98% of his company's shares to Holdfast Collective, a nonprofit that has indicated it will deploy Patagonia's roughly $100 million in annual profits to "fighting the environmental crisis and defending nature." Chouniard has also moved his family's 2% voting stock to an entity called the Patagonia Purpose Trust.

Not all charitable gifts are tax-motivated, and in fact not all even provide an immediate income tax deduction. Holdfast Collective is a 501(c)(4) organization, which is a nonprofit that can make unlimited political donations. As such, gifts to these types of organizations do not provide the donor with an income tax deduction. Also, since the Patagonia Purpose Trust is a family trust, Chouniard will owe $17.5 million in gift taxes for the gift of his 2% voting shares. However, by structuring the transfer of Patagonia stock this way, Chouniard and his family will maintain some level of control over Patagonia, but notably, they will also avoid capital gains taxes if the company were to be sold.

For most individuals, however, the ability to gift on a tax-efficient basis is very appealing. As we've done in prior years, let's reexamine a few of the charitable gifting ideas that should be considered by individuals as they seek to benefit charity and maximize any income or estate tax benefits.

Cash Donations

Giving cash is the simplest, and most common way to benefit charity. However, many taxpayers will not see a direct income tax benefit. The reason is that in 2022, for single taxpayers, the standard deduction is $12,950. For married taxpayers, it is $25,900. The sum of charitable contributions and other deductible items (i.e. property tax, state income tax, mortgage interest, etc.) would need to exceed the standard deduction available before the gift of cash to charity would yield any income tax break to the donor. Also, in 2022 any income deductions for these itemized cash donations will be limited to 60% of the taxpayer's Adjusted Gross Income (AGI).

Donations of appreciated stock, bonds, or mutual fund shares

Nearly as easy as donating cash, contributing stocks, bonds, or mutual funds that have appreciated over time has become increasingly popular. In addition to the charitable tax deduction, this strategy can help the taxpayer avoid the capital gains tax that would otherwise be due if the appreciated security had been sold by the taxpayer.

If the appreciated security has been held for more than one year when the donation is made, donors can claim the fair market value as an itemized deduction on their federal income tax return (assuming they itemize their deductions). The amount deducted in a single year can be up to 30% of the donor's AGI for stock donations.

By way of example, say Pete is a high-earning donor who has a taxable investment account with $100,000 of long-held stock that he bought for $20,000, and he wants to donate $100,000 to a favorite charity.

If Pete sells his stock he'll owe federal tax of 23.8% on his $80,000 long-term gain, leaving him with only $80,960 to donate and deduct. If he gives the stock directly to the charity, he won't owe capital-gains tax, and he'll get a deduction for the full $100,000. The charity will typically sell the shares and pocket the $100,000.

Bunching Donations

Since the 2017 "Tax Cuts and Jobs Act" overhaul most taxpayers no longer itemize their income tax deductions – instead claiming the standard deduction. For those who are planning to donate significant amounts to charity, they may be able to itemize and obtain a charitable tax break by "bunching" more than one year of charitable donations.

Let's look at Jack and Jill - a married couple who typically donate $15,000 per year. State and local taxes (SALT) capped at $10,000 per return plus the $10,000 of donations—come to less than the standard deduction of $25,900 for joint filers for 2022. That means there is no additional tax break (over and above the standard deduction) that is related to their charitable donation in 2022.

After some consideration Jack and Jill decide they can afford to shift their donations so that they give $20,000 one year and $5,000 the next. The result is they will have a total of $30,000 in Schedule A deductions every other year. Itemizing for those years will yield a larger charitable tax break, and they'll deduct more than $25,900 in the other years due to the standard deduction.

Donating private S-corp. or C-corp. stocks to charity

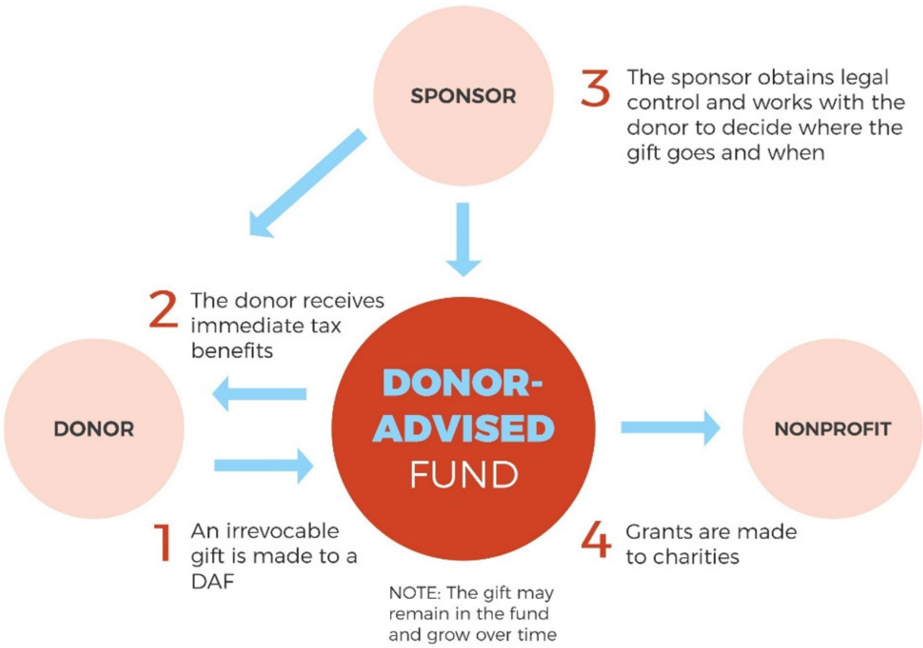
It is possible to deduct the full fair market value of privately held stock if the recipient organization is a public charity. But tactically, the answer depends on whether the charity is able to accept private stock as a gift. Most charitable organizations simply do not have the resources, expertise or appetite to efficiently accept and liquidate these types of assets, particularly in a time crunch at the end of the year. That said, some larger Donor Advised Funds do have the ability to handle this type of donation.

As with any transfer (via gift or otherwise) of a privately held company, the Fair Market Value of the stock would need to be determined by a qualified appraisal. This requirement will add cost and complexity to the gift.

S Corporations involve other considerations. The charity could be subject to Unrelated Business Income Tax (UBIT) on its portion of the S Corp's accounting income for each day it owns the S Corp stock, and UBIT will also apply to the sale of the S Corp stock by the charity.

Also, the donor should determine whether the contribution prior to the sale would result in an anticipatory assignment of income. If the IRS determines that the sale was prearranged, the donor may lose the ability to take a tax deduction and be required to pay capital gains tax.

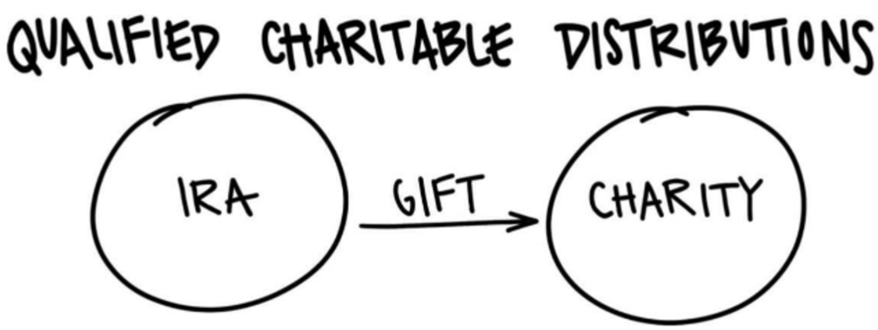
Donor Advised Funds



A Donor Advised Fund (DAF) is a charitable investment account that provides simple, flexible, and efficient ways to manage charitable giving. The money that goes into a Donor Advised Fund becomes an irrevocable transfer to a public charity with the specific intent of funding charitable gifts. This public charity serves as the administrator of the DAF. The Donor may be an individual, family, trust, Private Foundation, or corporation.

A donor advised fund offers an easier way for you to make a significant gift to charity over a long period of time. DAFs are also useful tools for donors who are also trying to bunch deductions. The DAF allows them to combine gifting into a single year for the tax benefit, and then use multiple years to distribute funds to charity as they had originally intended.

Using an IRA for donations



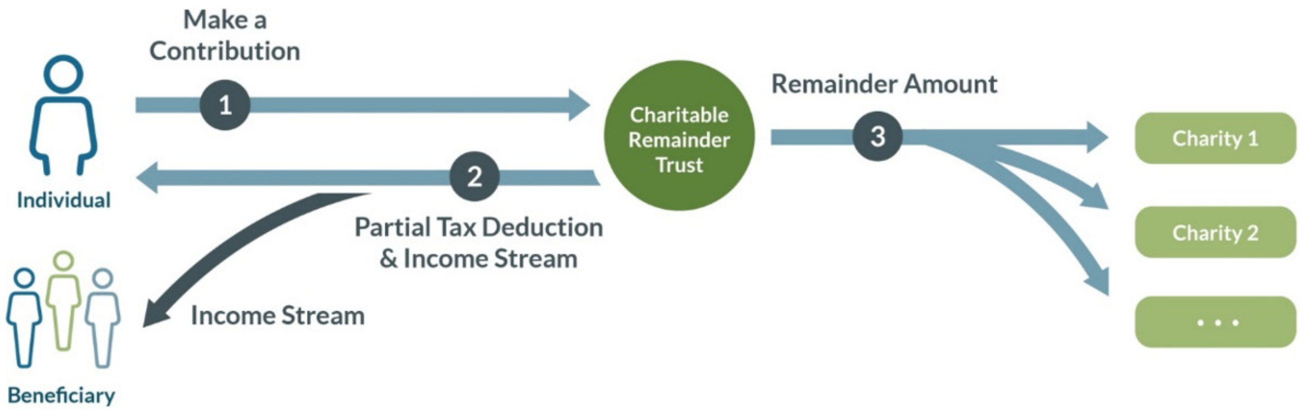
For some individuals, using your IRA to donate directly to charity may make sense. This strategy, called a QCD or qualified charitable distribution, permits owners of traditional IRAs who are 70½ or older to donate account assets totaling up to $100,000 a year directly to one or more charities. As an added benefit, these donations can count toward their annual required minimum distributions (RMDs) from their IRA.

QCDs may be particularly appealing if you have few other itemized deductions or if you are already close to your charitable deduction limitations. As the tax-free QCD is never reported as income or as a deduction, it is not counted against the charitable limits and does not require itemization to be effective.

For married couples, each spouse can make QCDs up to the $100,000 limit for a potential total of $200,000. The $100,000 per person limit applies to the sum of all QCDs taken from all IRAs in a year.

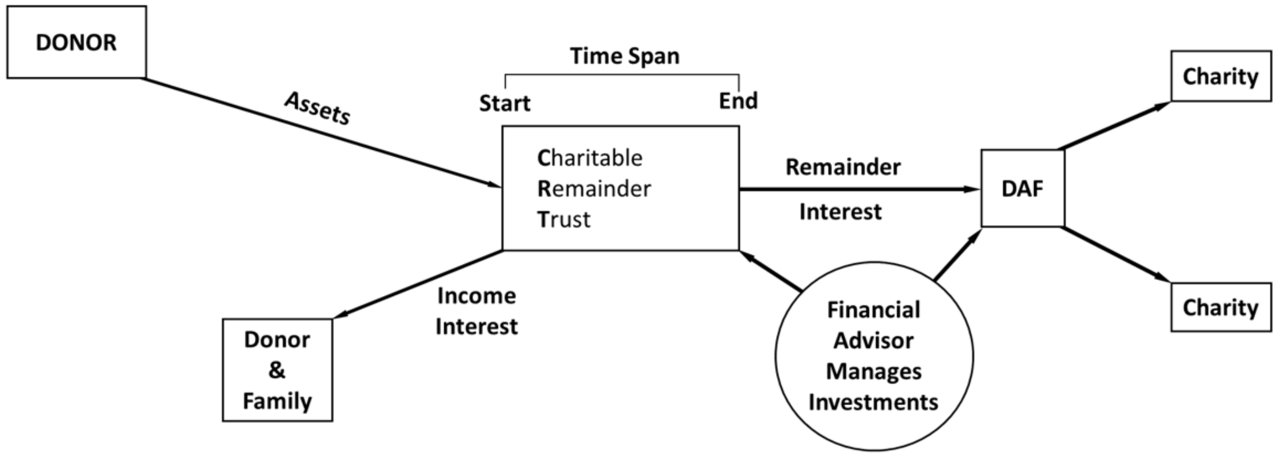
I get this question a lot – unfortunately, QCDs may not be made to Donor-Advised Funds. Also, a QCD must be performed before RMDs are taken – you cannot undo the RMDs otherwise.

Charitable Remainder Trust



A Charitable Remainder Trust (CRT) is a "split-interest" trust. This means it includes both charitable and non-charitable beneficiaries. A form of a CRT called a Charitable Remainder Unitrust (CRUT) distributes a fixed percentage of the trust's assets to the beneficiaries each year. At the end of the trust distribution period (for up to 20 years, or the donors' lifetimes), any remaining trust assets go to charity. This may be a good option for individuals who want an immediate charitable deduction and need an income stream during their lifetime.

Donors can create an opportunity for continuing family involvement by naming a Donor Advised Fund as the remainderman on a charitable remainder trust (CRT). Here's how it works:



Benefits:

1. Continuing family involvement.
2. This strategy eases the pressures associated with deciding the ultimate charities. The donor advised fund, as a 501(c)(3) charity, qualifies for the maximum and immediate tax deduction.
3. The donor can use the donor advised fund as the vehicle for their lifetime charitable giving.
4. When income from the CRT is no longer needed, the donor advised fund can become the charitable overflow to the CRT.
5. If a donor wants to accelerate a CRT to give more to charity now or in the near future, he/she can collapse the CRT into a donor advised fund.

What about using your IRA and a CRT to accomplish testamentary charitable objectives? Well, the SECURE Act of 2019 eliminated the stretch IRA for most non-spouse beneficiaries, and thus a Charitable Remainder Trust (CRT) is one of the few remaining vehicles to provide a tax-advantaged stream of income to heirs over a long period of time, and ultimately benefiting charity.

Another type of split-interest trust is known as a Charitable Lead Trust (CLT). Depending on the tax status of the CLT (grantor or non-grantor trust), the contribution may or may not be deductible to the grantor. It makes sense to discuss both the CRT and CLT trust options with your financial and estate planning advisors to determine which, if any, best meet your objectives.

Private Foundation

A Private Foundation is a tax-exempt organization (a trust, corporation, or hybrid) which a donor creates, funds, and controls for the primary purpose of making grants to charities and/or individuals. A Private Foundation funded during the donor's lifetime can provide philanthropic recognition to the donor and family. Through the management of the foundation, it can instill in the donor's heirs a sense of social awareness and responsibility that might not otherwise be present, while allowing them to be paid for their work on the governing board.

Along with providing a vehicle for your client's philanthropic impact for generations, private foundations can offer significant income and estate tax savings. One immediate benefit is that a donor will receive an income tax deduction for any amount they contribute to a private foundation up to 30% of the donor's AGI. The client can also choose to take the deductions over time.

After their first year of existence, a private foundation is required by law to give away at least 5% of the value of its assets annually.

Gifts of Artwork

While not as common, the donation of artwork that has significant value may also be considered by individuals. There are several tax-planning issues that should be considered before giving artwork to charity. Those considerations include determining the value of the artwork, the amount of the deduction, how the recipient intends to use the artwork, etc. It is very important to talk with a qualified professional with experience in this area when considering donations of artwork in exchange for a charitable income or estate tax deduction.

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Important reminders

Remember that donations must be made to a qualified charity, and donors can't deduct the portion of a contribution that provides a benefit to them, such as the donation to a university that provides the donor with tickets to team's football games.

Make sure to retain proper substantiation of your charitable contributions. To claim a charitable deduction for any contribution of cash, a check, or other monetary gift, you must maintain a record of such contributions through a bank record or a written communication (such as a receipt or letter) from the charity showing the name of the charity, the date of the contribution, and the amount of the contribution.

Conclusion

Don't wait until it's too late – either for your charitable giving or your holiday shopping! If you have are considering ways to make a significant tax-deductible contribution in 2022, you still have plenty of time.

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