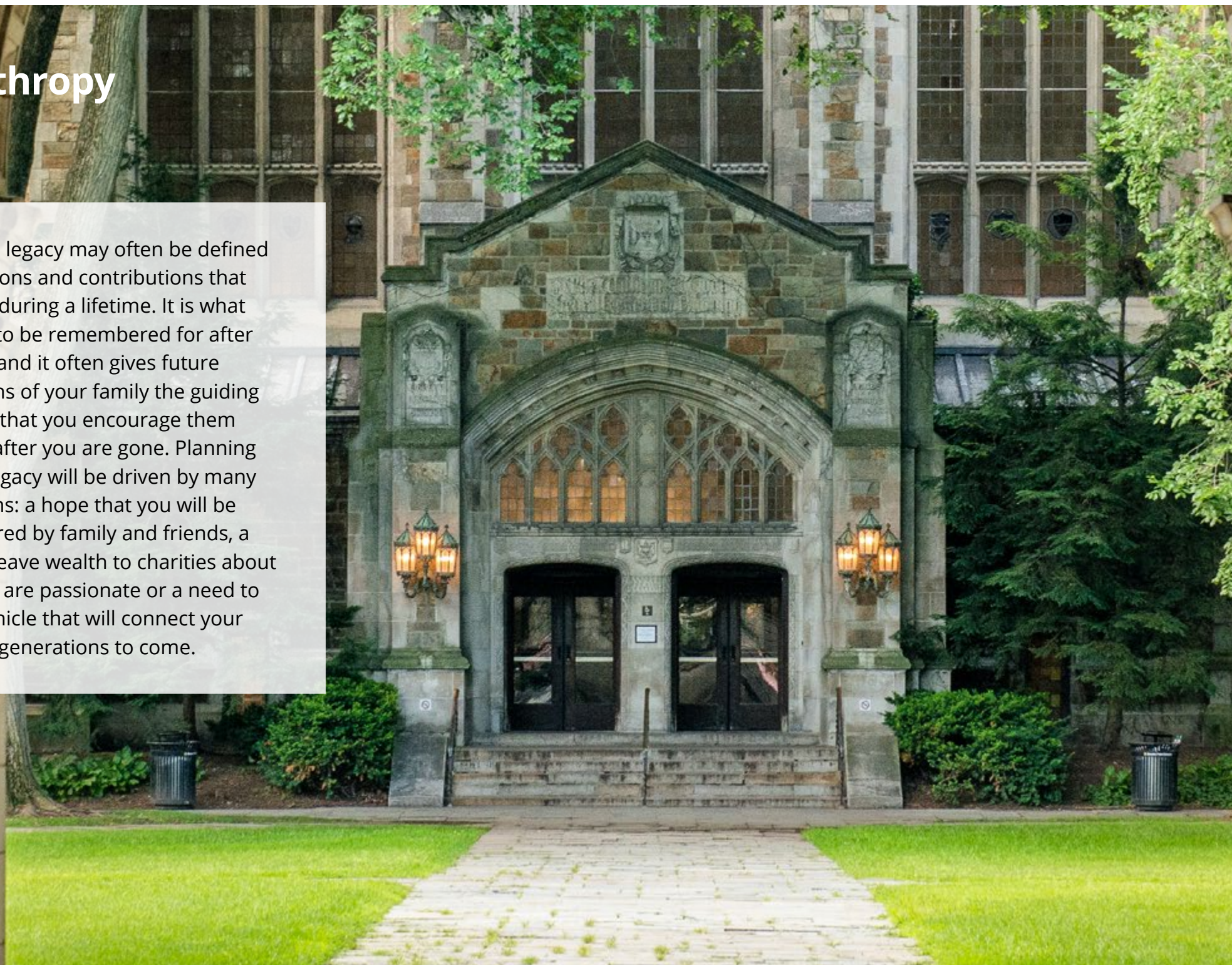


# Philanthropy

A person's legacy may often be defined as the actions and contributions that are made during a lifetime. It is what you want to be remembered for after you pass, and it often gives future generations of your family the guiding principles that you encourage them to live by after you are gone. Planning for your legacy will be driven by many motivations: a hope that you will be remembered by family and friends, a desire to leave wealth to charities about which you are passionate or a need to build a vehicle that will connect your family for generations to come.





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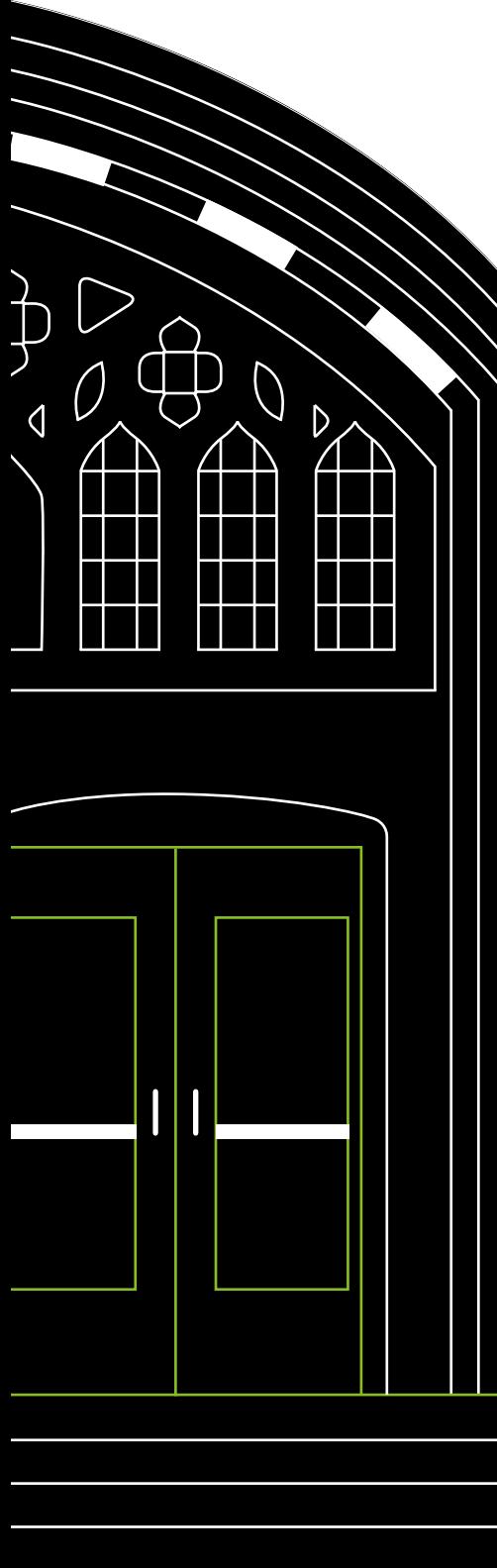
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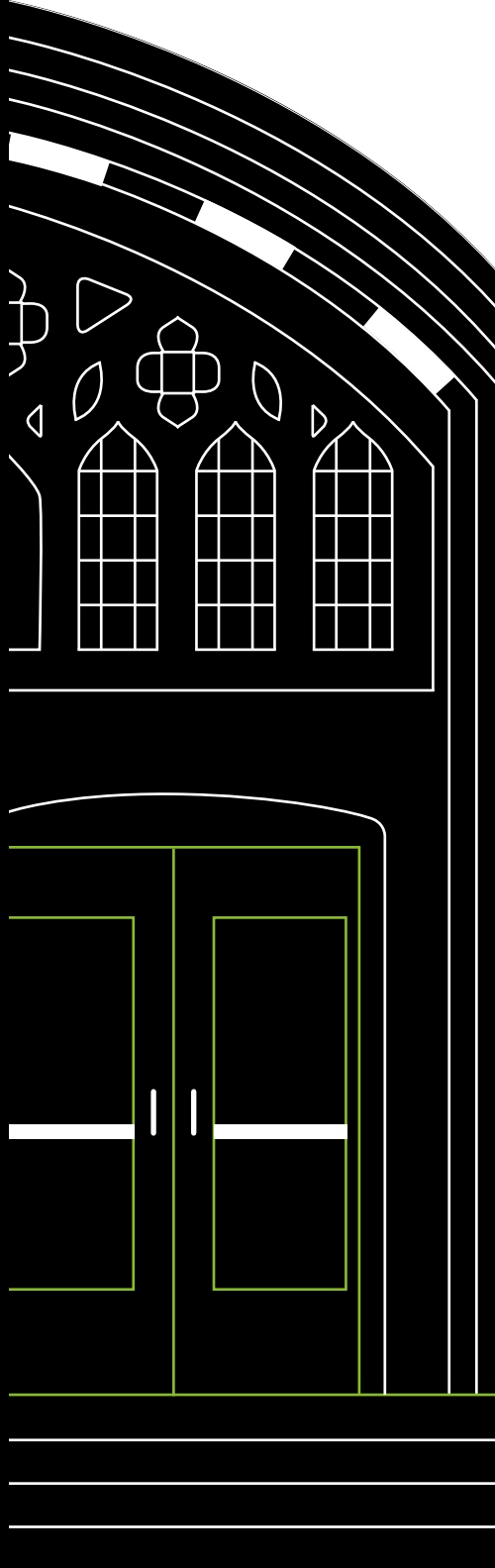
If you intend to build your legacy through charitable efforts, you may also recognize tax benefits. Arguably, a tax deduction for charitable contributions does not create great philanthropists, but it does enable people to give more. High net worth families often share their wealth through philanthropy for various reasons—reasons that sometimes can be very personal. Even philanthropists who know the intrinsic value of a donation to charity may seek to benefit the greater good in the most tax-efficient manner.

There are many options to help accomplish your charitable objectives. However, the right option depends on your particular goals over your lifetime. Some pitfalls exist that may reduce or totally eliminate the tax benefit received from charitable transfers. It is critical that you take time to understand the rules affecting both the amount of your deduction and when you will receive it prior to making a donation or charitable pledge.

#### Before starting charitable giving, ask yourself:

- How much wealth am I willing to part with?
- What type of assets do I have to work with?
- How much control do I want?
- What is the desired income stream for me, my family and my charity?
- What percentage of my income do I want to spend on philanthropy?
- Do I anticipate an income event that will enhance or limit the benefit I receive from a charitable donation?
- When does the charity need the funds to meet both my goals and the charity's need for the funds?
- What is my desired timing for receiving an income tax deduction for the charitable gift?





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The amount of charitable deduction that you will be allowed is directly impacted by the type of property you contribute, as well as the type of charitable organization receiving the donation. In many situations, you may choose to contribute cash to a charitable organization. Typically, when you contribute cash, you are allowed a deduction in the year of donation equal to 50 percent of your adjusted gross income (AGI), and any excess charitable contributions can be carried forward for the next five years.

While you may be able to offset income with a charitable deduction, the deduction itself is often not the deciding factor in making a donation.

In other situations, you may choose to contribute appreciated assets. The chart below summarizes the amount of charitable deduction allowed depending on the type of appreciated asset contributed and the annual AGI limitation applicable depending on the classification of the donee organization.

While you may be able to offset income with a charitable deduction, the deduction itself is often not the deciding factor in making a donation. Many individuals know which asset they desire to donate and whom they want to receive it. For example, it may be more tax efficient to donate appreciated securities held for more than one year rather than cash. If you donate the security, then you not only receive a charitable deduction equal to the fair market value of the securities contributed, but you also avoid paying capital gains tax on the stock's appreciation, as well as the 3.8 percent net investment income tax. By preserving the cash, you could purchase new investments with a "refreshed" higher basis. However, even knowing these rules, if you do not wish to surrender a particular security, then you may choose to donate cash despite the potential for a less efficient tax result.

Alternatively, you may be driven to achieve an immediate philanthropic goal. Consulting with a tax advisor to evaluate more tax-efficient funding options may uncover philanthropic goals that transcend

#### Contributions of appreciated property

Type of property	Type of organization	Contribution amount is	Deduction limited to
Ordinary income property	50% organization*	Adjusted basis (or FMV if less)	50% AGI
Long-term capital gain property	50% organization	Fair market value (FMV)	30% AGI
Long-term capital gain property (tangible personal put to unrelated use)	50% organization	Adjusted basis (or FMV if less)	50% AGI
Long-term capital gain property (reduced deduction elected)	50% organization	Adjusted basis	50% AGI
Qualified appreciated stock	30% organization**	FMV	20% AGI
Short-term capital gain property	30% organization	Adjusted basis (or FMV if less)	20% AGI

\* 50% organizations: Public charities, private operating foundations, and certain private non-operating foundations

\*\* 30% organizations: Private non-operating foundations not meeting the definition of a 50% organization

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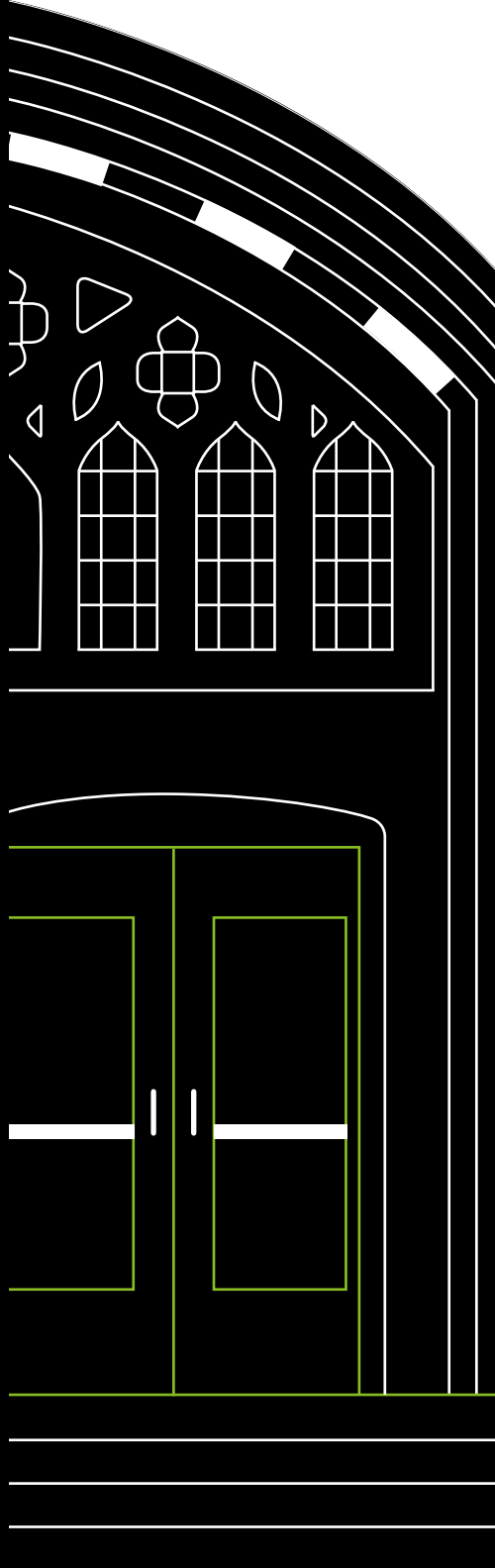
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tax deductibility in a given year. In that circumstance, if your donations exceed the amount that may be deductible, then you may carry the excess contributions forward five years, but the 50 percent, 30 percent, and 20 percent limitations continue to apply in those future years. Additionally, in any subsequent year, the current year contributions must be claimed before any carryovers can be considered. If carryovers involve more than one year, a first-in, first-out principle is applied.

However, sometimes large donations do not carry forward but are completely eliminated by an overall phaseout of your itemized deductions. The Pease limitation, named for its author, Representative Donald Pease (D-Ohio), requires higher-income individuals to reduce the total amount of most itemized deductions allowed. Under current income tax rates, depending on facts and circumstances, the value of a deduction may range from 39.6 percent to only 4 percent. The chart below summarizes the impact of

the Pease limitation on the total itemized deductions allowed.

While you may desire to make an immediate gift, a tax advisor may assist by projecting the deductibility over time for increased efficiency of the deduction. This critical information will help you to determine how to achieve your desired philanthropic goal at a mutually agreeable time for both the charity and you.

#### Pease limitation is equal to the lesser of:

- 3% of AGI over the applicable threshold
- 80% of itemized deductions

#### 2017 thresholds are:

- \$261,500 for single filers
- \$313,800 for joint filers

#### Limitation applies to:

- Deductions for taxes
- Mortgage interest expense
- Charitable contributions
- Miscellaneous itemized deductions

#### Limitation does not apply to:

- Investment interest expense
- Casualty losses
- Medical expenses
- Gambling losses



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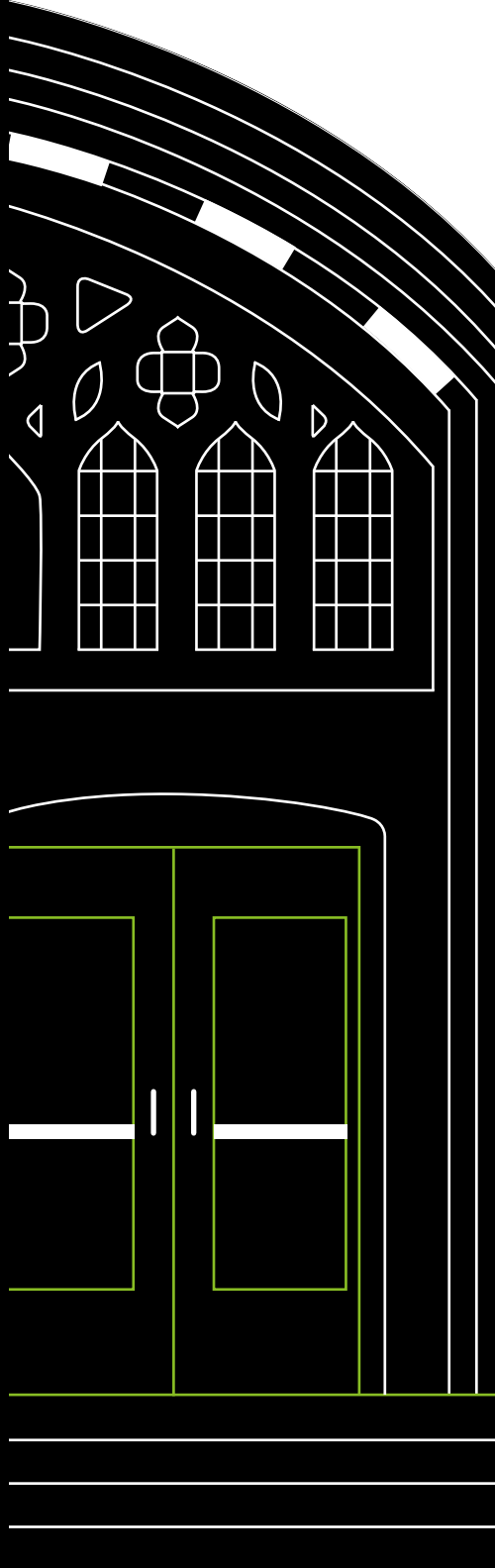
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# Contributions of complex assets

Sometimes the asset that you want to contribute is more complex than cash or publicly traded stock. Unique rules apply to contributions of complex assets.

### Partnership interests

Donation of a partnership interest may result in issues for the charity that should be anticipated. An individual who contributes a partnership interest to a 50 percent organization generally receives an income tax deduction equal to the FMV of the property, assuming it is long-term capital gain property. If you decide to donate a partnership interest, such as an interest in a fund, then you must obtain an appraisal for the transfer of any interest with a value greater than \$5,000 that is transferred to a charity.

Charitable gifts of partnership interests are inherently more complicated than gifts of publicly traded securities. For example, a charity may be less willing to accept an interest in a partnership that will produce taxable income not substantially related to the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption. This is called unrelated business taxable income (UBTI). Unless the charity can be assured of receiving sufficient cash distributions from the partnership to pay the resulting tax liability on the UBTI, it may not be willing to accept the gift.

Additionally, you should consult with a tax advisor regarding whether there may be a deemed sale related to partnership debt allocated to you and if the amount of the charitable deduction may be reduced to the extent of ordinary income recapture on the partnership interests transferred. Unlike in noncharitable situations where there may be no gain depending on whether your basis exceeds the debt at issue, a transfer to a charity almost invariably gives rise to gain because the donor's basis must be allocated between the charitable element and the sale element. It may be that if you are considering donating a partnership interest with associated suspended passive losses, then you should consider selling the interest, recognizing the suspended loss, and making a charitable gift of the sales proceeds.

### Individual retirement accounts (IRAs)

If you are age 70½ or older, another specific asset you may consider gifting is a contribution from an individual retirement account (IRA) to an eligible charitable organization. These contributions are not subject to the above limitations in certain circumstances. You may transfer up to \$100,000 annually directly from the IRA trustee to the eligible charity. Distributions from employer-sponsored retirement plans, including simplified employee pension plans, are not eligible. If these IRA requirements are met, then you do not include the amount of the distribution as taxable income. However, the taxpayer does not receive a corresponding charitable deduction for the amount transferred to charity.



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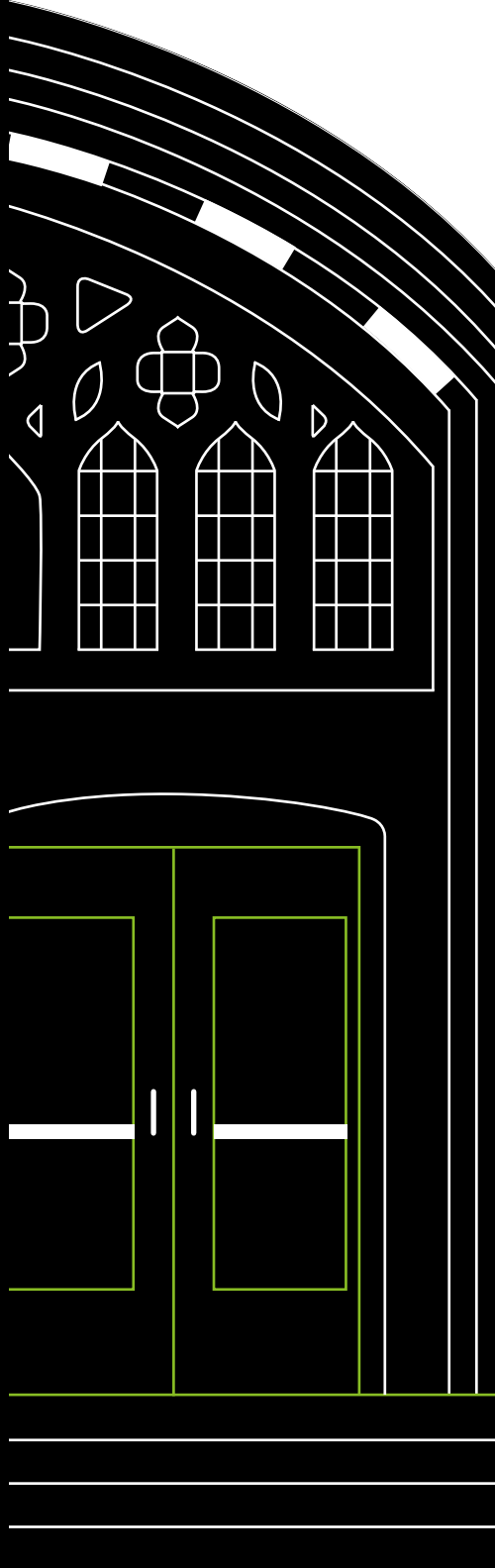
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# Contributions of complex assets

You may want to gift art or an antique to a cultural institution. It is important to analyze and implement appropriate donation strategies, consult on related-use requirements, and review appraisal requirements for income and transfer tax returns.



### Art and antiques

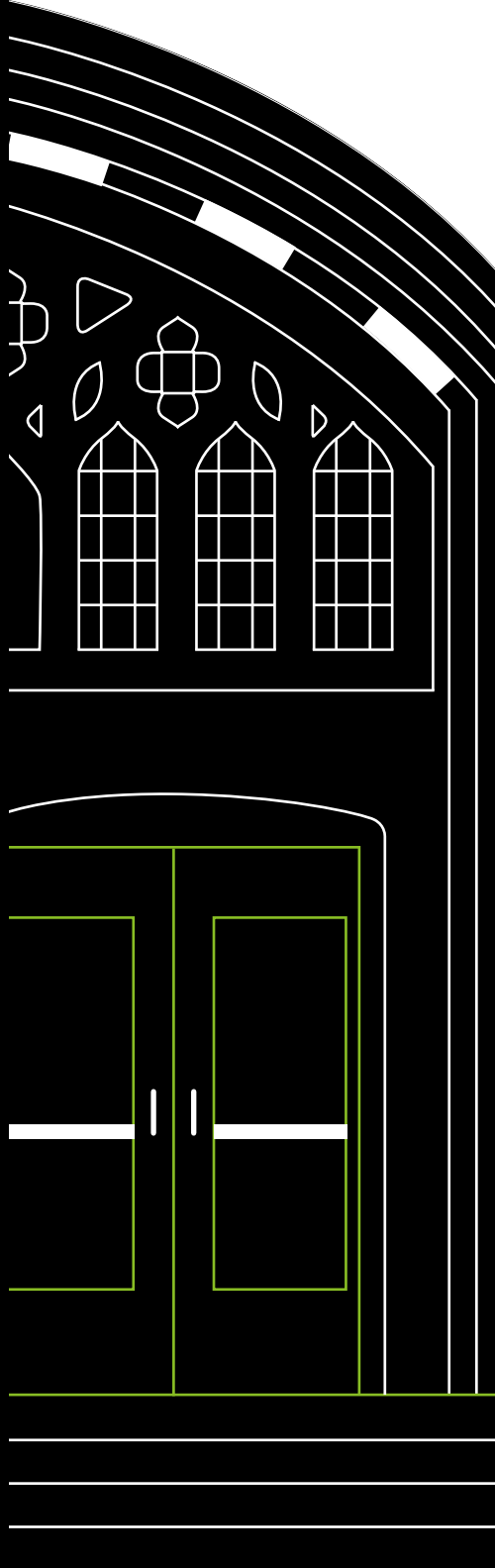
You may want to gift art or an antique to a cultural institution. It is important to analyze and implement appropriate donation strategies, consult on related-use requirements, and review appraisal requirements for income and transfer tax returns. Additional considerations may include fractional donations and charitable remainder trusts. For art and other tangible personal property with a long-term holding period, the charitable deduction is FMV only if the property will be put to a use related to the exempt purpose of the charity. For more about these rules, please review the “Unique assets” section of the 2017 Essential tax and wealth planning guide.



### Conservation easements

If you have a particular piece of land in mind with specific conservation objectives, you may consider a conservation easement that would allow you to keep ownership and control while those objectives are achieved. A conservation easement gives power over the land to a qualified private land conservation organization, sometimes called a “land trust,” or a government municipality to constrain the owners’ use of the land to achieve certain conservation purposes.

A qualified appraiser must determine the value of the easement donation. For income tax purposes, the value of the donation equals the difference between the fair market value of the property before and after the easement takes effect. For estate tax purposes, the deceased’s estate will be reduced by the value of the donated conservation easement. As a result, taxes will be lower because heirs will not be required to pay taxes on the extinguished development rights. The conservation easement “runs with the land,” meaning it is applicable to both present and future owners of the land. As with other real property interests, the grant of a conservation easement is recorded in the local land records and becomes part of the property’s chain of title.



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# Recordkeeping

When making donations, you should consult with tax advisors regarding the recordkeeping requirements necessary to sustain the charitable income tax deduction. For a monetary gift of any amount, either a written record (such as a credit card statement or canceled check) or a written contemporaneous acknowledgment from the charity is required. For donations of \$250 or more, a written acknowledgment from the charity is required, stating the amount of any benefits received in return for the donation. In this circumstance, a canceled check is not sufficient to support the deduction, nor is an acknowledgment received after a tax return has been filed. These rules apply even if the donation is

made to your own family foundation. The acknowledgment letter from the charity must include any benefits received from the donation. If none are received, the acknowledgment letter must say so.

When property other than cash, inventory, and publicly traded securities is donated to charity and such property is valued above \$5,000, the property must be appraised and summarized on the donor's income tax return to claim a charitable deduction. If the value exceeds \$500,000 (\$20,000 for artwork), the appraisal must be attached to the donor's income tax return, whether the donor is an individual, partnership, or corporation.

When making donations, you should consult with tax advisors regarding the recordkeeping requirements necessary to sustain the charitable income tax deduction.

#### Non-cash contributions requirements

Value of donation	Documentation required
<b>\$250 to \$500</b>	A written acknowledgement from the charitable organization is required
<b>\$501 to \$5,000</b>	In addition to written acknowledgement, taxpayer must show the: <ul style="list-style-type: none"> <li>• Means of acquisition</li> <li>• Date acquired</li> <li>• Adjusted basis of the property</li> </ul>
<b>More than \$5,000</b>	Most contributions over \$5,000 require a written appraisal



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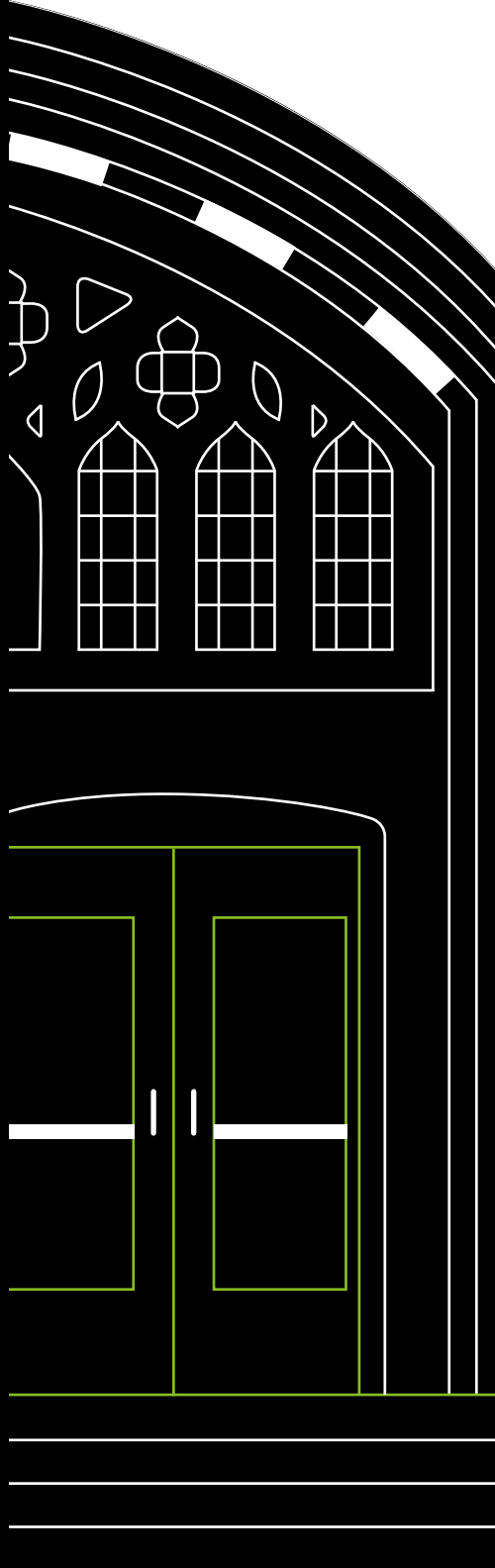
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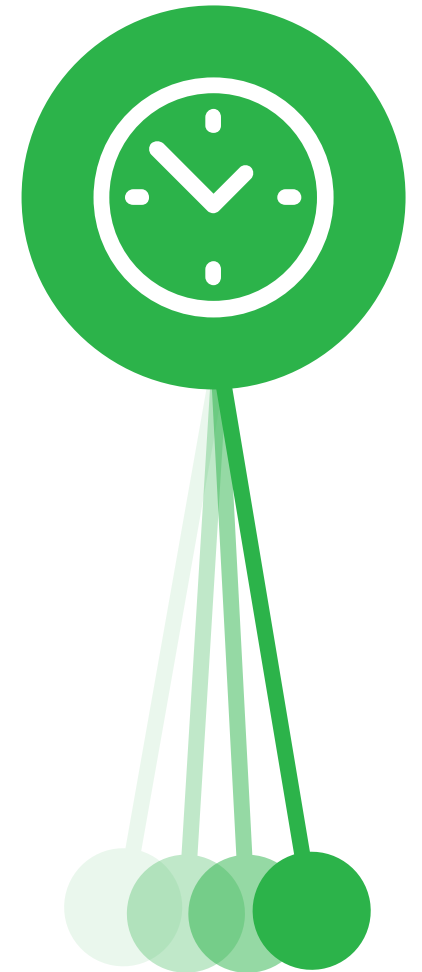
# Timing considerations

Simple issues with timing may create a risk of being denied the donation in the current year or at all. Generally, timing for charitable donations follows the “mailbox” rule, which means that if the check is in the mail on December 31 of a given year and the check is cashed in a reasonable amount of time thereafter, then you may deduct it. Similarly, for donations charged on credit cards on or before December 31, the payment of the charge can occur in the following year. For gifts of securities, the security must have been transferred out of the donor’s brokerage account by close of business on December 31. For gifts of real estate, state law will control when the donation became effective, but the transfer will likely need to be recorded before the end of the year. For other assets, state law will control. You should consider consulting with legal counsel regarding whether they can provide an opinion about the effective date of complex, last-minute donations.

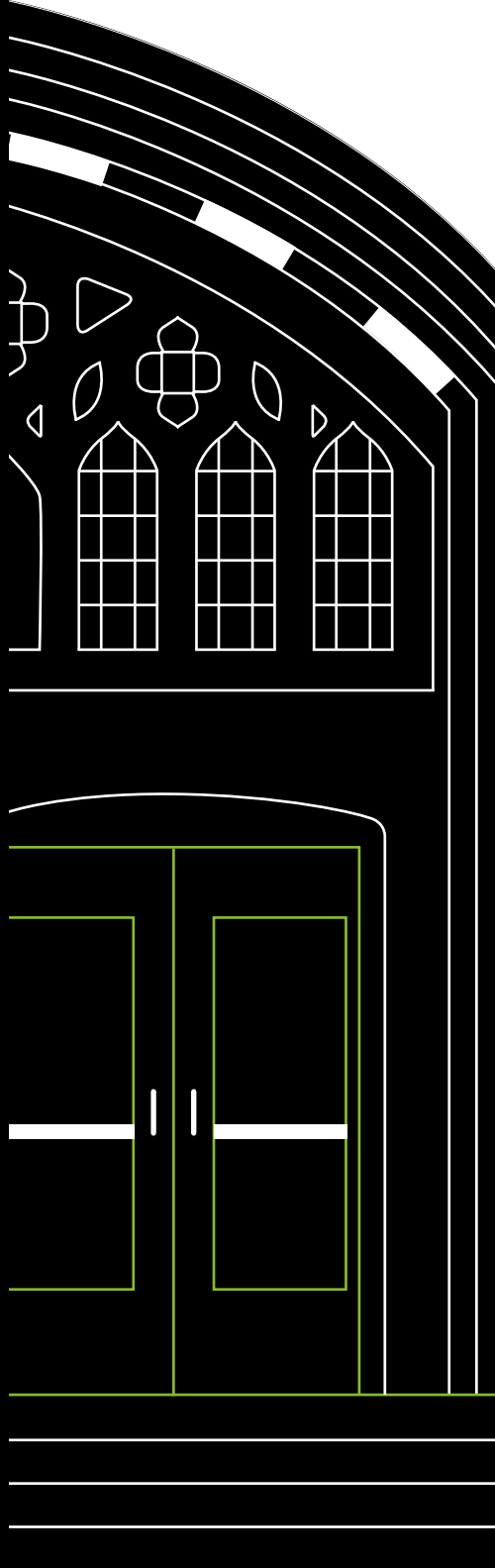
The timing rules create a higher risk that deductions may be lost when the timing of an asset donation relates to an imminent liquidity event. The issue to be considered is whether you must still recognize the income pursuant to the assignment of income rules. A gift of appreciated property will generally not result in income to the donor so long as he or she gives the property away entirely before the property gives rise to income

by way of sale. Many last-minute donations are not at risk, especially if they are simply a donation of stock followed by a public sale of the stock by the charitable donee. However, in more complicated cases, such as a corporate redemption, you should seek counsel as to whether or not the donation may be made without the donor having to recognize the income.

All of these factors—type of asset, type of charity, timing of the donation, and record keeping—make planning for a philanthropic goal complicated. Strict adherence to tax rules is not necessary to benefit the common good. However, it may indeed be possible for you to receive the simultaneous benefit of feeling that you have made an impact on the goals of the charity while also making an impact on your overall tax burden. In the end, if the gift is made in a more tax-efficient manner, then you will have more assets remaining to be able to achieve future philanthropic goals. Therefore, it is extremely important that you plan ahead—perhaps years in advance—to achieve your intended goals.







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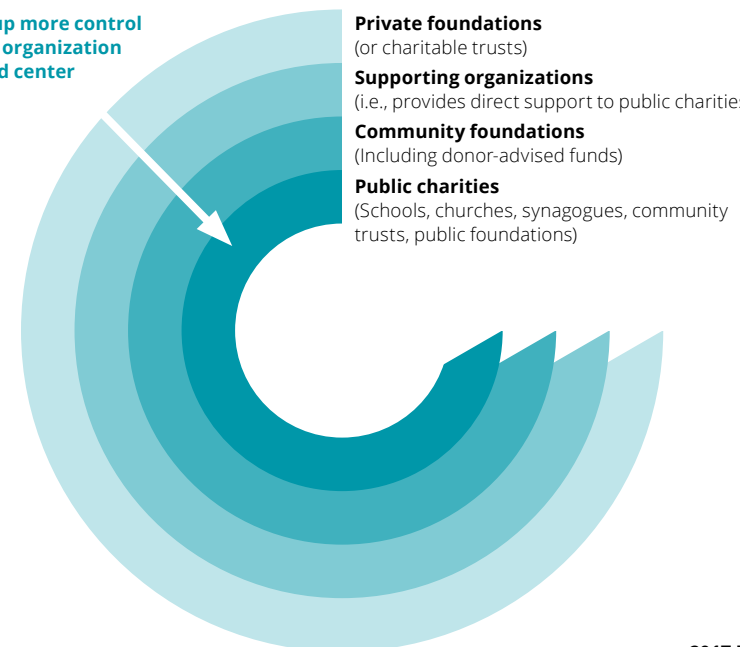
If you wish to engage in more complicated planning, it may be possible to maintain partial control over an asset being contributed to a charity or, in limited situations, to maintain a cash-flow stream from the asset. If control is your primary concern, then using a vehicle such as a donor-advised fund or a private foundation may be subject to discussion. However, if a cash flow stream is desired, then a split-interest charitable trust may be more advisable.

### Donor advised fund (DAF)

A DAF is a fund that is managed under the tax umbrella of a public charity such as a community foundation. You would make an irrevocable gift of property (such as stock held for greater than one year) to the host charity and receive a tax deduction equal to the fair market value of the property in the year of the gift. Assets are deposited into an investment account where they can grow tax free. Only one acknowledgement letter for the donation to the fund is

required instead of one receipt from each charity receiving a donation from the DAF, which can significantly simplify recordkeeping for tax purposes. You retain the right to advise, but not to direct, the host charity in administering the affairs of the DAF. Depending on the policies of the host charity, advice may include naming the fund, managing investments, recommending grants, and selecting a replacement advisor at the death of the donor. DAFs cannot benefit you directly or any other private interest.

Donor gives up more control  
as charitable organization  
moves toward center



If you wish to engage in more complicated planning, it may be possible to maintain partial control over an asset being contributed to a charity or, in limited situations, to maintain a cash-flow stream from the asset.

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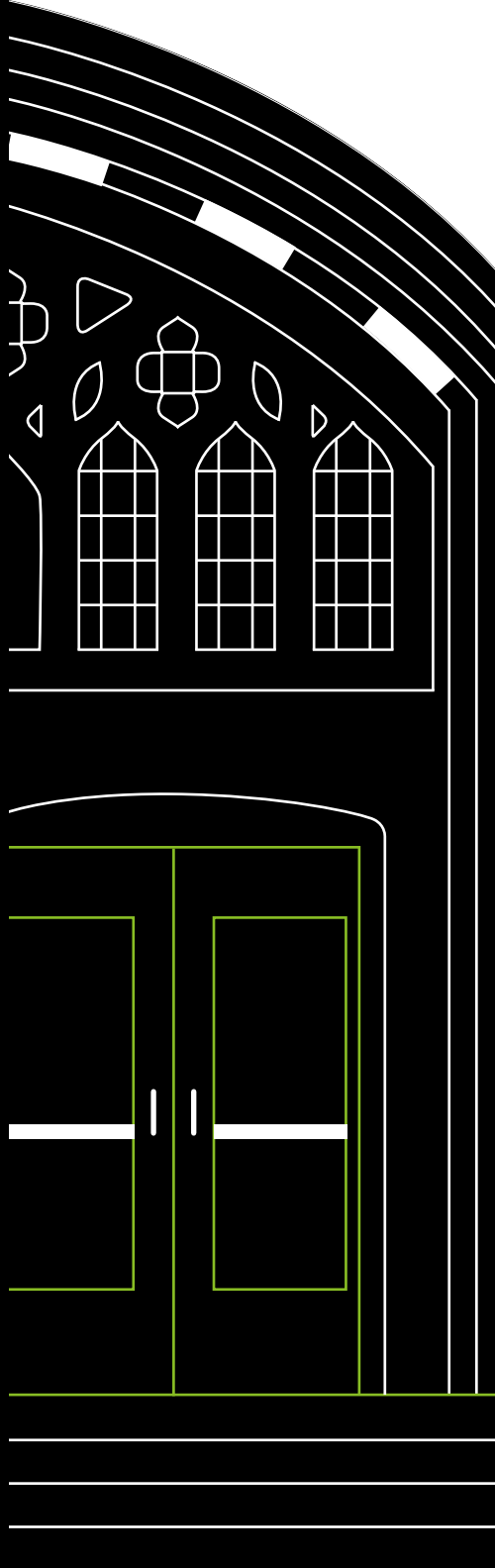
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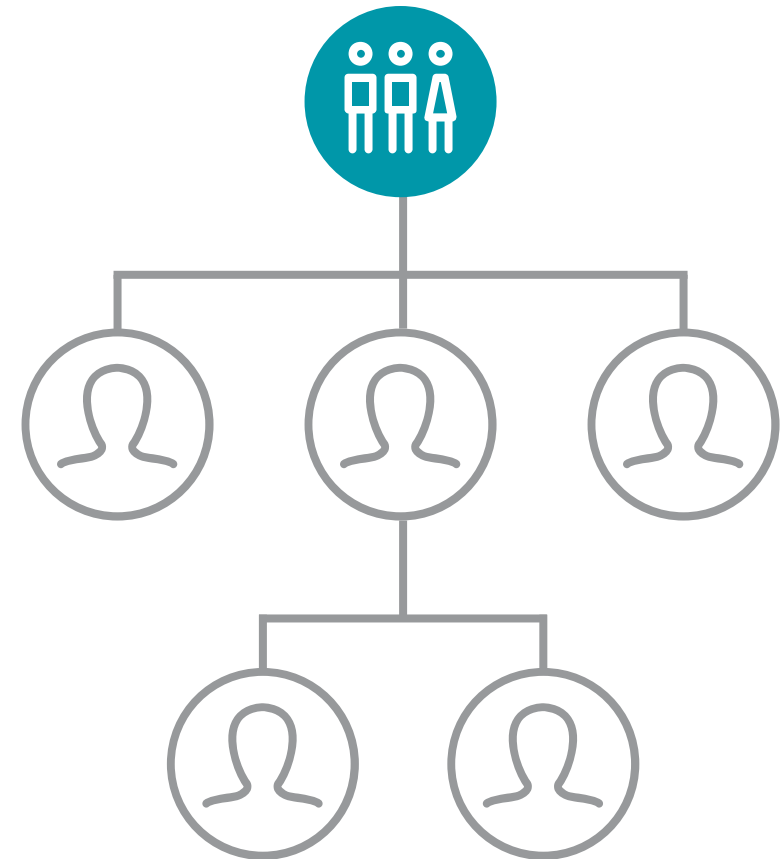


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# Charitable planning approaches

### Private foundation

A private foundation is formed to administer the charitable interests of an individual or family, according to their wishes. Income tax deductions are generally less favorable than those to public charities. You would receive a charitable deduction subject to the 30% AGI limit for contributions of cash. If you are donating appreciated securities or assets, you would be subject to the 20% AGI limit and the value would generally be your adjusted basis unless it was a donation of “qualified appreciated stock.” You would not retain any rights to the assets, but could retain certain rights to administer the foundation, subject to the self-dealing rules. Some donors prefer a private foundation because it allows them or their family more control over giving. A private foundation can be used to “fund” several years of normal charitable giving. Private foundations can also be used to give assets that are not easily divided, such as real property, or provide a means to fund foreign charitable endeavors. There is a minimum annual asset distribution requirement. While a private foundation may be a significant part of the legacy you leave and the vehicle that brings your family together after your passing, you should consider the administrative complexities of maintaining a private foundation when you assess whether it is the right vehicle for you.



## Philanthropy

# Charitable planning approaches

The chart below summarizes the factors you should consider when evaluating where to contribute assets.

### Matching your charitable vision to the right planned giving strategy

Planned giving options	Private foundation	Donor advised fund	Public charity
<b>Deductible contributions?</b>	Yes	Yes	Yes
<b>Contribution limit?</b>	30% of AGI for cash contributions; 20% of AGI for noncash	50% of AGI for cash contributions; 30% of AGI for noncash	50% of AGI for cash contributions; 30% of AGI for noncash
<b>Donor controls grantmaking?</b>	Yes	No, but donor can advise	No
<b>Donor controls investment decisions?</b>	Yes	No. Donor may choose investment plan, but sponsoring organization has control	No
<b>Donor manages operations and administers organization?</b>	Yes	No. Donor pays a fee to sponsoring organization to provide administrative services	No
<b>Annual distribution requirements?</b>	Yes (5% of fair market value of non-charitable use assets)	No	No
<b>Organization subject to income/excise tax?</b>	Yes (1% or 2% excise tax on net investment income and an income tax on unrelated business income)	No, unless there is unrelated business income	No, unless there is unrelated business income
<b>Organization subject to excise tax for prohibited actions?</b>	Yes. Potential excise tax due for engaging in acts of "self dealing," having "excess business holdings," and making "jeopardizing investments" or "taxable expenditures."	Yes. Potential excise tax on excess business holdings, taxable distributions, and excess benefit transactions	Generally, no. (Potential excise tax on political activities.)
<b>Organization required to file an annual tax return?</b>	Yes (Form 990-PF)	No. An annual filing by sponsoring organization, not each separate donor advised fund	Yes (Form 990)

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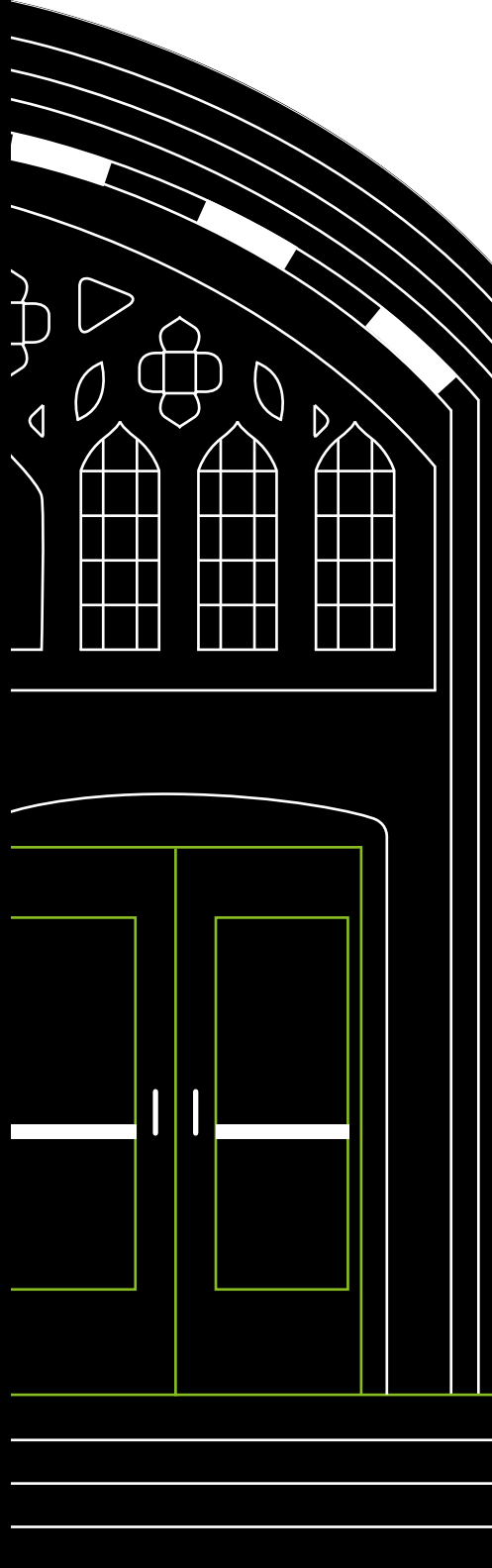
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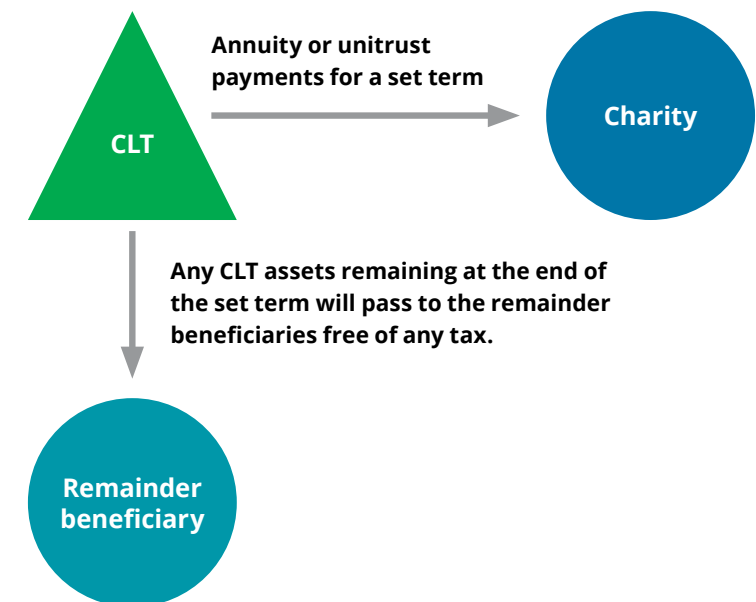
If a cash flow stream is desired, either prior to or after the asset is transferred to charity, then a split-interest charitable trust may be a tax-efficient alternative to transfer the asset. The financial interest from these trusts is split between the charitable and non-charitable beneficiaries (including the donor). The two most common kinds of split-interest charitable trusts are a charitable lead trust (CLT) and a charitable remainder trust (CRT). Both of these trusts are related, but they are fundamentally different.

The CLT will make distributions to a charity for a particular amount of time. After that, the assets within the trust, which are called the remainder interest, will pass to desired non-charitable beneficiaries. With the charitable remainder trust, the assets placed within the trust will provide distributions to the non-charitable beneficiaries (typically the donor) for a certain time period or lives of the beneficiaries. The assets will then become property of the charity. These two trusts are inverses of one another and are taxed in significantly different ways.

### Charitable lead trust

A CLT can be designed to pay in two different ways: as a fixed annuity payment or a unitrust amount to the charity. This means that the charity can be paid a fixed dollar amount annually or a fixed percentage of the FMV of the assets in the trust. A CLT may be useful when the asset being contributed has a high potential for future appreciation. It may also be appropriate if your heirs are still young and not capable of assuming control of a substantial

amount of assets. In creating and funding a CLT, you would make final arrangements for the disposition of the assets by your estate but defer the time when your beneficiaries can actually take control of and receive property. In the interim, the charity receives ongoing and immediate benefit from the trust. When assets do eventually pass to the beneficiary or beneficiaries, they are not subjected to federal transfer tax. Timing for the charitable deduction depends on the terms of the trust.



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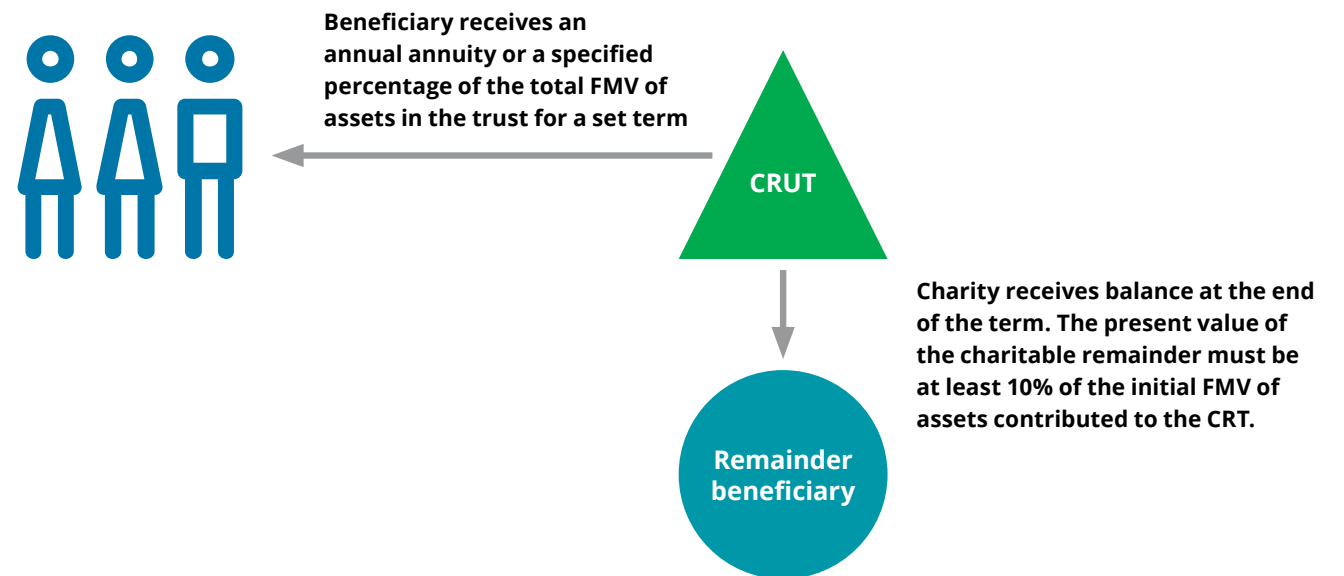
# Charitable planning approaches

### Charitable remainder trust

Alternatively, a CRT will first pay the beneficiary, which could be yourself, before the remaining assets are permanently awarded to the charity. Like the CLT, the payment to the beneficiary can be an annuity, which is a fixed dollar amount, or a unitrust, which is a fixed percentage of the fair market value of the assets in the trust.

The amount distributed each year must be set at the creation of the trust to be at least 5 percent of the initial FMV of the trust assets. A CRT may be a good planning option if you have an appreciated asset that you would like to sell and diversify, but be able to defer the gain over time. Income is taxed only when the income is distributed out, assuming there is no UBTI.

Income distributions keep their character and any applicable preferential rates. CRTs are exempt from the 3.8 percent net investment income tax. You would receive a charitable deduction in the year of transfer equal to the remainder value for the charity, which must be at least 10 percent of the amount contributed.



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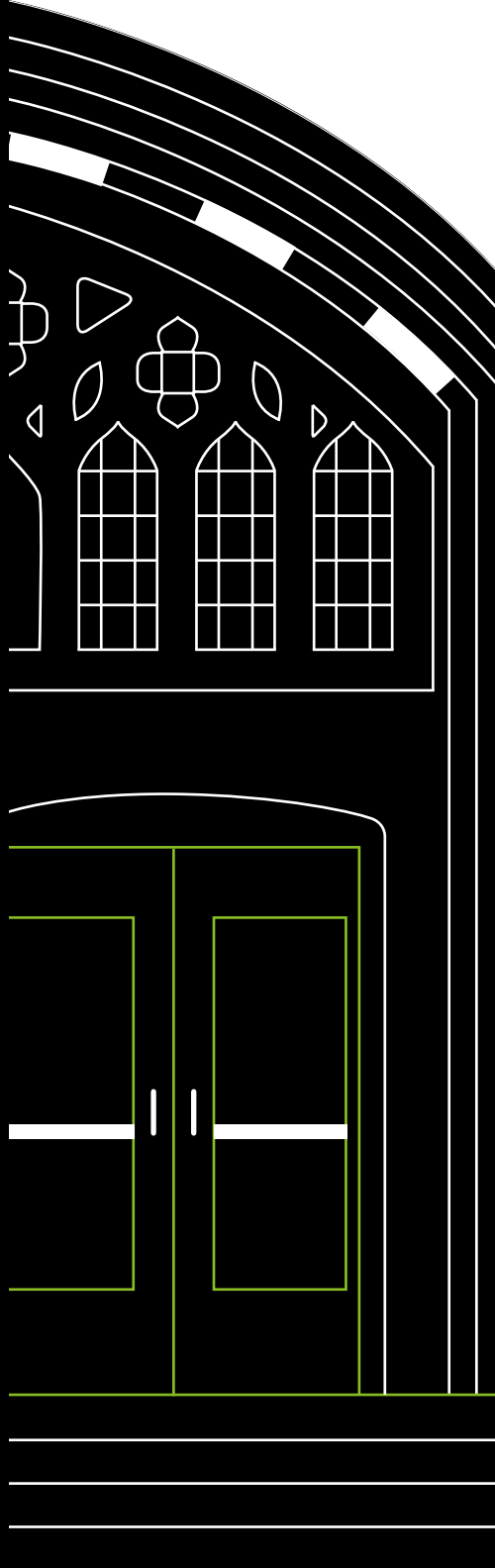
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# Year-round personalized planning for philanthropic goals

For those trying to achieve tax efficiency, there are many areas that require thoughtful consideration: the type of asset to donate, the timing of the gift, the vehicle to use to fund the gift, and the type of organization to receive it.

Planning for philanthropic goals is one aspect of implementing a long-term commitment to holistic tax planning. As we analogized in our earlier edition's discussion of year-round personalized income tax planning, you likely will identify many different planning levers each and every year which can be used to position yourself to achieve your personal goals, philanthropic or otherwise.

These levers are ammunition that can be used to provide a more tax-efficient result. Charitable contributions are often the largest controllable lever for an individual. For those trying to achieve tax efficiency, there are many areas that require thoughtful consideration: the type of asset to donate, the timing of the gift, the vehicle to use to fund the gift, and the type of organization to receive it. It is critical to work with an advisor specializing in this area to navigate your way through these decision points effectively for the sake of both your philanthropic goals and your tax planning.

