



Charitable Planning

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A. Introduction

- Why Give?
 - Doing good for community
 - Doing good for yourself and your family
- In 2020, \$471 Billion was donated to charitable causes:
Giving USA – 2021 Annual Report

“Charities ought to be a tax expenditure that is still preserved because civil society is one of the most important components of American life, of getting people involved in our communities I think that is a very important thing to preserve and that’s pretty much as a supply side or low tax-rate guy.” Paul Ryan (Aug. 20, 2014)

A. Introduction

- Internal Revenue Code encourages philanthropy
 - Income tax system provides meaningful taxpayer benefits
 - Itemized deduction is allowed for individual and corporate taxpayers generally for value of gift; not required to donate income against which deduction is claimed
 - Limited non-itemizer deduction available in 2021; not extended
 - Donation of appreciated asset is not treated per se as realization event for capital gains tax purposes
 - Charitable transfers are excluded broadly from estate and gift tax systems and do not attract tax liability
 - Overlap in income and estate/gift tax systems but meaningful differences

B. Income Tax Deduction

- Income tax deduction rules are impacted by numerous considerations, including:
 - Is donee recognized entity described in Internal Revenue Code (IRC) Section 170(c)?
 - Is there a transfer? If so, is it without consideration, or is there quid pro quo? Is it substantiated?
 - Does transfer constitute outright transfer of all donor's interest? If not, is donor transferring permitted partial interest?
 - Are there conditions attached to gift that affect its validity or value?
 - What type of recognized entity receives gift?
 - Broad-based distinction between private foundations and all other entities (commonly referred to as public charities)
 - What type of property is gifted? Does donor's status affect nature of property?

B. Income Tax Deduction

- Charitable contribution is gift to or for use of:
 - US, state or local government for exclusively public purposes
 - Corporation, trust, or community chest, fund or foundation (i) created or organized in US or US state or under federal or state law, (ii) organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or to foster amateur sports competition or for prevention of cruelty to children or animals, (iii) with no private shareholder or individual inurement and (iv) not disqualified from tax exemption by reason of political campaigning/lobbying
 - War veterans post or auxiliary if organized in US and no private inurement
 - Domestic fraternal society operated under lodge system if used exclusively for charitable purposes (individual taxpayer only)
 - Certain nonprofit cemetery companies if no private inurement

IRC §170(c)(1)–(5)

B. Income Tax Deduction

- Domestic gating issue
 - Donee recipient must generally be domestic entity or domestic government unit
 - No deduction for direct gift by individual to foreign charity, even if charity has obtained exemption under IRC §501(c)(3)
 - No deduction for gift to domestic organization which flows through to foreign charity if domestic organization exercises no independent control and serves as conduit: Rev. Rul. 63-252, 1963-2 C.B. 101; Rev. Rul. 66-79, 1966-1 C.B. 48
 - Limited treaty exceptions (Canada, Mexico and Israel)

B. Income Tax Deduction

- Must be (i) transfer of (ii) cash or property
 - Donor must part with dominion and control
 - Donor may earmark contribution for specific purpose without losing deduction provided that purpose is charitable (e.g., scholarship fund; construction costs of charity-owned building)
 - Donor may also control eventual use or distribution of contributed assets provided assets committed to charitable purposes (e.g., funding private foundation)
 - Pledges, even if enforceable, do not create immediate income tax deduction since donor has not relinquished control of funds; deduction is only available when pledge payment is made
 - Enforceable pledge does not create debt for income tax purposes; accordingly, no capital gain recognition if pledge is later satisfied with appreciated property: Rev. Rul. 55-410, 1955-1 C.B. 297; Rev. Rul. 64-240, 1964-2 C.B. 172
 - No deduction for contribution of services: Treas. Reg. §1.170A-1(g)

B. Income Tax Deduction

- Transfer must be voluntary with no expectation of “procuring financial benefit commensurate with the amount of the transfer”: Treas. Reg. §1.170A-1(c)(5)
 - Incidental benefit (promotion of goodwill, naming rights) does not disqualify deduction, or reduce amount deductible
 - But receipt of financial benefit – seat at fundraising dinner – impacts amount of donor’s deductible donation under Quid Pro Quo rules
 - For gifts of \$75 or more, charity must inform donor of estimated value of goods or services provided by charity: IRC §6115
 - De minimis exceptions (inflation adjusted) for low cost articles and insubstantial benefits: Rev. Proc. 90-12, 1990-1 C.B. 471; Rev. Proc. 2021-45, 2021-48 IRB 764; IRS Publication 1771
 - No deduction allowed for gifts to institutions of higher education in return for right to purchase tickets for athletic events: IRC §170(I)

B. Income Tax Deduction

- Larger gifts must be substantiated
 - Donor may not claim deduction for contribution of \geq \$250 unless donor has contemporaneous written acknowledgement (paper or electronic form) of gift from charity that contains
 - (i) amount of cash or description of property donated
 - (ii) statement whether charity provided any goods or services (other than intangible religious benefits, certain membership benefits or token benefits) to donor in exchange for contribution and
 - (iii), if goods/services provided, description of and good faith estimate of value of such goods/services: IRC §170(f)(8)

B. Income Tax Deduction

- For property donation of $\geq \$500$, donor must have records of date of acquisition, manner of acquisition and cost basis, and must file Form 8283 (Noncash Charitable Contribution) with return: Treas. Reg. §1-170A-13(b)(3)
- For property donation (excluding marketable securities) of $\geq \$5,000$ ($\geq \$10,000$ for closely-held stock), donor must obtain qualified appraisal and attach summary to return
 - Detailed requirements for qualified appraisal are set out in Treas. Reg. §1.170A-17
 - If donation is worth $\geq \$500,000$, appraisal must be filed with return
 - For artwork donation, threshold for filing appraisal is \$20,000

B. Income Tax Deduction

- Donor must give entire interest in property owned or fraction of “each and every substantial interest or right” owned by donor
- No deduction for:
 - Gift of stock with respect to which donor retains voting rights: Rev. Rul. 81-82, 1981-2 C.B. 78
 - Gift of life estate created for purpose of making gift (contrast gift of life estate previously given by someone else to donor): Treas. Reg. §1-170A-7(a)(2);
 - Gift of right to use building rent-free: Treas. Reg. §1-170A-7(a)(1)
- Special rules for fractional interest gifts of tangible personal property: IRC §170(o)
- Partial interest rule is, however, defined by its exceptions: IRC §170(f)

B. Income Tax Deduction

- Conditions attached to gift may impact deductibility:
 - If condition precedent, no deduction allowed until condition is satisfied: Treas. Reg. §1.170A-1(e)
 - If condition subsequent that could defeat gift (e.g., gift of real estate for specific purpose, with reversion if not used for purpose), no deduction allowed unless likelihood of condition resulting in loss of gift is so remote as to be negligible
 - Permissible restriction on gift may reduce value of gift
 - Gift of land with contemporaneously imposed covenant that land could only be used for agricultural purposes results in deduction based on value charity receives (diminished by covenant), not value of what donor had before transfer (full development rights): Rev. Rul. 85-99, 1985-2 C.B. 83

B. Income Tax Deduction

- Type of recipient charitable organization impacts how deduction is determined and limits on amount deductible against current year income
- Two general categories – public charities (PCs) and private foundations (PFs)
- Four board classifications of PCs:
 - Inherent PCs (churches, schools, hospitals): IRC §§509(a)(1) and 170(b)(1)(A)(i-v)
 - Publicly supported organizations: IRC §§509(a)(1) and 170(b)(1)(A)(vi)
 - Gross receipts organizations: IRC §§509(a)(2)
 - Supporting organizations (SOs): IRC §§509(a)(3) and 170(b)(1)(A)(viii)

B. Income Tax Deduction

- All other organizations treated as PFs
 - Certain PFs are treated, however, like PCs for income tax charitable contribution deduction rules, including
 - Private operating foundations (POFs) (conduct own charitable programs): IRC §170(b)(1)(F)(i)
 - Pass-through foundations (PTFs) (distribute all contributions in year of receipt, with 65 day rule post year-end rule); status can vary from year-to-year: IRC §170(b)(1)(F)(ii) and Treas. Reg. §1.170A-9(h)

B. Income Tax Deduction

- Type of property contributed also impacts how deduction is determined and limits on amount deductible against current year income
- Value of gift of property that would produce ordinary income or short-term capital gain on sale is limited to value reduced by ordinary income/short-term capital gain: IRC §170(e)(1)(A)
 - Real estate if sale would trigger recapture of depreciation
 - Assets held by dealer
 - Assets created by donor (e.g., artwork)

B. Income Tax Deduction

- Long-term capital gain property generally produces full fair market value deduction and avoidance of capital gains tax on appreciation
 - Exceptions to full fair market value deduction include:
 - Gifts of artwork or other tangible personal property, unless reasonable to anticipate that charity will use property for educational, charitable or scientific purpose (i.e., use related to charity's exempt function): IRC §170(e)(1)(B)(i)
 - Gifts of intellectual property rights: IRC §170(e)(1)(B)(iii)
 - All gifts of taxidermy: IRC §170(e)(1)(B)(iv)
 - Any asset transferred to a PF (other than an operating or pass-through foundation), except for qualified appreciated securities (which may be impacted by donor's status within corporation): IRC §§170(e)(1)(B)(ii), 170(e)(5)

B. Income Tax Deduction

- Exception to gain recognition applies if assignment of income rule invoked
 - Don't wait too long; donor must not be committed to sell at time of gift: *Ferguson v. Comm'r*, 108 T.C. No. 14 (1997), *aff'd* 99-1 U.S.T.C. 50.412 (9th Cir. 1999)
 - Also don't compel charity to redeem donated stock; as long as charity not committed to offer stock for redemption, gift followed by redemption will not be taxed as dividend to donor shareholder: Rev. Rul. 78-197, 1978-1 C.B.

B. Income Tax Deduction

Type of Property Donated	Public Charity	Donor Advised Fund	Private Foundation	Private Operating or Flow-Through Foundation
Cash	Deductible up to 60% of AGI	Deductible up to 60% of AGI	Deductible up to 30% of AGI	Deductible up to 60% of AGI
Property with 1+ Year Holding Period (e.g., real estate, LP interests)	FMV deductible up to 30% of AGI Appraisal required Cost basis deductible up to 50% of AGI	FMV deductible up to 30% of AGI Appraisal required Cost basis deductible up to 50% of AGI	Cost basis deductible up to 20% of AGI Appraisal required	FMV deductible up to 30% of AGI Appraisal required Cost basis deductible up to 50% of AGI
Publicly-Traded Securities with 1+ Year Holding Period	FMV deductible up to 30% of AGI Appraisal summary required Cost basis deductible up to 50% of AGI	FMV deductible up to 30% of AGI Appraisal summary required Cost basis deductible up to 50% of AGI	if QAS, FMV deductible up to 20% of AGI; if not, cost basis up to 20% of AGI; Appraisal summary required	FMV deductible up to 30% of AGI Appraisal summary required Cost basis deductible up to 50% of AGI
Tangible Personal Property (e.g., work(s) of art)	FMV deductible up to 30% of AGI if put to related use; if not, cost basis deductible up to 50% of AGI Appraisal required	Likely cannot be put to related use, so generally cost basis deductible up to 50% of AGI Appraisal required	Cost basis deductible up to 20% of AGI Appraisal required	FMV deductible up to 30% of AGI if put to related use; if not, cost basis deductible up to 50% of AGI Appraisal required

B. Income Tax Deduction

- Fine print of IRC §170(b)(1)
 - AGI means adjusted gross income without regard to any NOL carry back into year of gift; referred to as “contribution base”
 - FMV means fair market value determined in accordance with IRC principles
 - Deduction amounts in excess of AGI limits may be carried forward for 5 years (or until donor’s death, if earlier); special 15-year rule for qualified conservation contributions by corporate farmers/ranchers
 - Qualified appreciated stock (QAS) means stock (i) for which market quotations are available on established securities market (ii) which is capital gain property in donor’s hands and (iii) in company of which the donor (and his or her family members) will have contributed less than 10 percent in value, counting prior gifts
 - Gifts for use of PC (which means gift to trust for benefit of PC – e.g., grantor lead trust) are subject to 30% limit, even if made in cash
 - 60% cash gift limit will revert to 50% in 2026

B. Income Tax Deduction

IRC 170(b)(1)	PC/PF	Cash	STCG (cost basis)	LTCG (no cost basis election)
Sub. G	PC	60%	N/A	N/A
Sub. A	PC	50% minus Sub. G gifts	50% minus Sub. G gifts	50% minus Sub. G gifts subject to Sub. C max
Sub. C	PC	N/A	N/A	Limited to 30% max (see Sub A)
Sub. B	PF	Lesser of (i) 30% and (ii) 50% minus Sub. G gifts minus Sub. A gifts	Lesser of (i) 30% and (ii) 50% minus Sub. G gifts minus Sub. A gifts	Lesser of (i) 30% and (ii) 50% minus Sub. G gifts minus Sub. A gifts subject to Sub. D max
Sub. D	PF	N/A	N/A	Limited to max of lesser of (i) 20% and (ii) 30% minus Sub. C gifts
Sub. E	50% (100% if qualified rancher/farmer) minus all other gifts allowable under IRC §170			
Sub. F	Modifies PF rules for certain PFs			

C. Estate and Gift Tax Deduction

- General Rule: Estate Tax
 - Deduction permitted for bequests
 - To US governmental entities, for exclusively public purposes
 - To or for the use of corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or to foster amateur sports competition, or to prevent cruelty to children or animals
 - To a trust or fraternal society under terms of which bequest is used exclusively for religious, charitable, scientific, literary or educational purposes or for prevention of cruelty to children or animals
 - To domestic war veterans' post incorporated by Act of Congress
 - To ESOPS, but only if qualified gratuitous transfer of qualified employer securities: IRC §2055(a)

C. Estate and Gift Tax Deduction

- Not limited to bequests to domestic corporations; and trust purposes not restricted to use in US
 - Foreign organization must satisfy prohibitions against private inurement, political activities and lobbying
 - Transfer to foreign government for public purposes not within scope of deduction; however, bequest to foreign government for exclusively charitable purposes will qualify: Rev. Rul. 74-523, 1974-2 C.B. 304
 - Only 5 bilateral treaties in force that reference deductibility of charitable gifts and bequests for estate and gift tax purposes: Canada, Denmark, France, Germany and Sweden
- Deduction is unlimited
 - No distinction between PCs and PFs
 - No distinction between type of property transferred
 - Partial interest rules apply, with some modifications (including works of art and real property easements)

C. Estate and Gift Tax Deduction

- General Rule: Gift Tax
 - Rule is comparable to estate tax rule (but not identical); no geographic limitations, except with regard to foreign governmental entities; no distinctions between gifts to PCs and PFs and for type of property transferred: IRC §2522
 - Special exclusion for transfers of property to organizations exempt from tax under IRC §501(c)(4)-(6); transfers on death to such organizations are not excluded from estate tax, are not eligible for charitable deduction and are instead taxable transfers

C. Estate and Gift Tax Deduction

- Estate/gift tax rules applicable to non-resident aliens (NRAs)
 - Estate and gift taxes are imposed only on US situs property
 - Broader definition for estate tax purposes; includes stock issued by domestic US corporations and debt issued by US government entities and persons: IRC §2104
 - In contrast, no gift tax applies to transfer of intangible personal property by NRA who is not a covered expatriate: IRC §2501(2) and (3)
 - Charitable deduction is available only for bequests/transfers:
 - To or for use of any US political entity for exclusively public purposes
 - To or for use of any US domestic corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for prevention of cruelty to children or animals
 - To trust, but only if bequest is to be used in US by trustees exclusively for religious, charitable and like purposes: IRC §§2106(a)(2), 2522(b)

D. Permitted Partial Interest Gifts

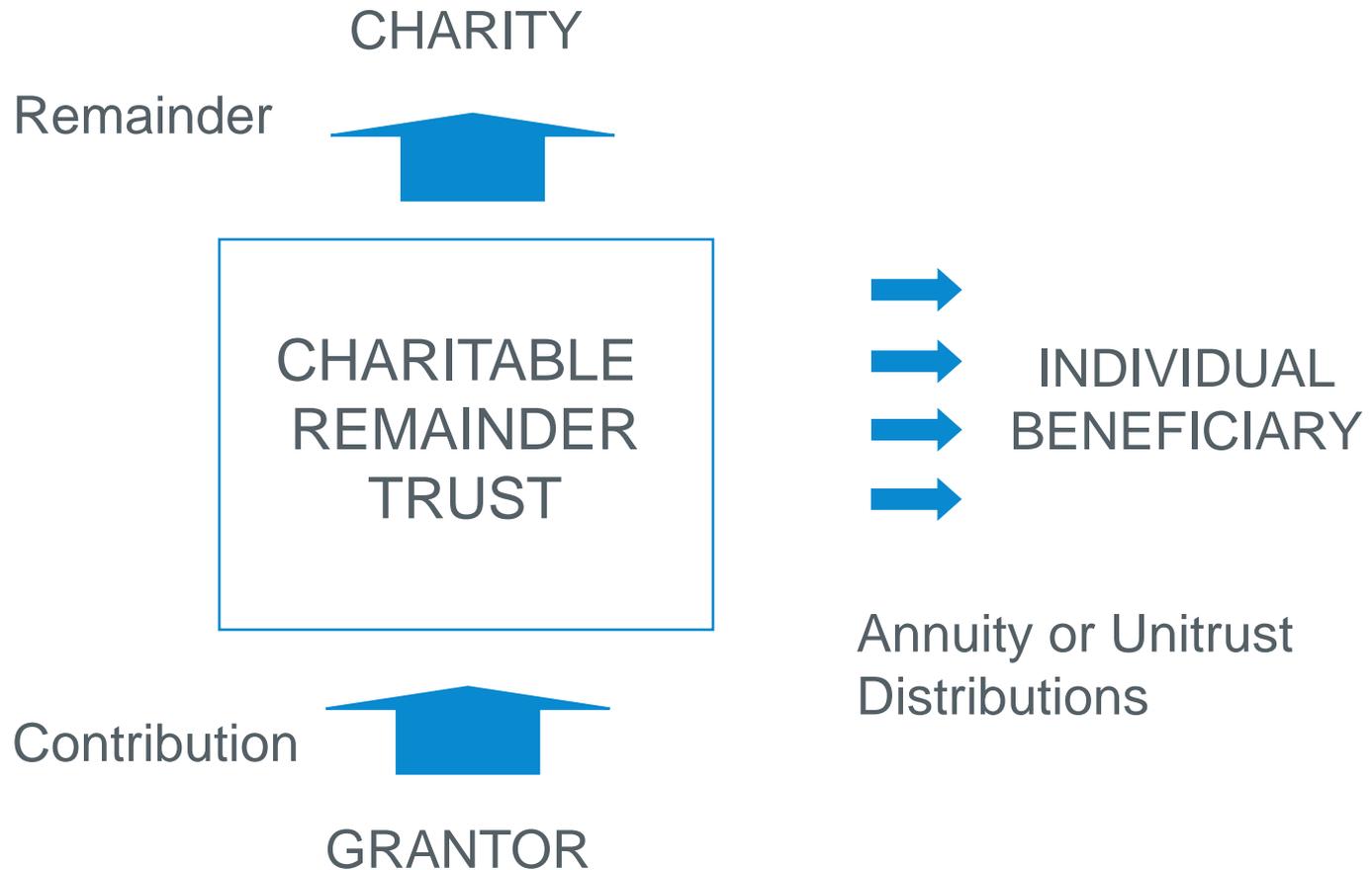
As noted previously, partial interest rule defined by its exceptions:

- Charitable Remainder Trusts (CRTs)
- Charitable Lead Trusts (CLTs)
- Pooled Income Funds (PIFs)
- Remainder Interests in Personal Residence or Farm (RIPFs)
- Qualified Conservation Easements (QCEs) (not covered in this presentation)
- Charitable Gift Annuities (CGAs)
 - Latter is not partial interest gift but instead bargain sale transaction

D. Permitted Partial Interest Gifts

Charitable Remainder Trusts (CRTs)

- How CRT works:



D. Permitted Partial Interest Gifts

- Funding can occur during lifetime or at death; most property can be transferred (but not S corporation stock); some assets present challenging tax issues (tangible personal property; mortgaged or co-owned real estate)
- CRT must not qualify as grantor trust for income tax purposes
- CRT should not have multiple donors (other than married couple): PLR9547004
- Few restrictions on who can serve as trustee; independent trustee may be desirable if CRT is unitrust variant and holds any non-marketable securities to avoid annual qualified appraisal of trust assets

D. Permitted Partial Interest Gifts

- Lead beneficiaries can be:
 - Donor, spouse, child, grandchild or other individual
 - Trust for “financially disabled” beneficiary as defined in IRC §6511(h)(2)(A)
 - Charities (provided that at least one lead beneficiary is not charity and has non de minimis interest); no income tax deduction available for lead distributions to charity
 - Other entities, including trusts, but only if “term of years” CRT
- Lead beneficiaries can have concurrent or consecutive interests; trustee can have authority to sprinkle lead interest among permissible beneficiaries where CRT is for joint individual beneficiaries or for term of years

D. Permitted Partial Interest Gifts

- Charitable beneficiaries
 - Must be described in IRC §§170(c), 2522(a) and 2055(a) to qualify for tax deductions on establishing trust; foreign charity is not eligible beneficiary
 - May want beneficiary to be public charity under IRC §170(b)(1)(A) so that higher AGI limits available for income tax deduction and deduction determined by FMV, not cost basis
 - Often named in document, but donor can retain right to name/change charitable beneficiaries after trust is established or can give that power to someone else (including lead beneficiary)
 - Must provide mechanism for selecting qualified alternative charitable beneficiary to ensure CRT's qualification

D. Permitted Partial Interest Gifts

- Types of CRTs:
 - Charitable Remainder Annuity Trust (CRAT) – Payout is fixed dollar amount, or fixed percentage of value of initial contribution; no additional contributions permitted but no valuation of assets, other than initial valuation, required: IRC §664(d)(1)
 - Charitable Remainder Unitrust (CRUT) – Four variants, all of which have payout determined annually with reference to fixed percentage of value of trust assets determined under consistent method; payout varies; additional contributions are permitted: IRC §664(d)(2)

D. Permitted Partial Interest Gifts

- Standard (SCRUT) – Payout is value of fixed percentage of FMV of trust assets determined on valuation date/by consistent valuation method
- Net Income CRUT (NICRUT) – Payout is lesser of net income and value of fixed percentage of FMV of trust assets as so determined; cannot use Uniform Principal and Income Act unitrust approach to determining income; special rules for treating realized capital gains as income (post-contribution gain only)
- Net Income with Make-up CRUT (NIMCRUT) – Same as NICRUT, except that in years when net income exceeds percentage amount, excess income can be distributed to make up for prior years in which net income was less than percentage amount
- FLIPCRUT – Payout structure initially same as NICRUT/NIMCRUT, but trust flips to SCRUT in year immediately following triggering event
 - Triggering event cannot be in control of donor, beneficiary, or trustee
 - Permissible triggering events include sale of unmarketable (but not marketable) securities or other property, beneficiary's marriage or divorce, birth of child, or beneficiary reaching certain age
 - If initially NIMCRUT, lose make-up account when trust flips to SCRUT

D. Permitted Partial Interest Gifts

- Lead payout requirements
 - Minimum annual payout is 5% of FMV of trust assets (CRUT) or initial contribution (CRAT); maximum payout is 50% of FMV of trust assets/initial contribution
 - Percentage tests to ensure sufficient remainder interest:
 - Present value of remainder interest must be at least 10% of funding value of CRAT or CRUT, or 10% of value of additional contributions to CRUT
 - For CRAT, probability that trust assets will be exhausted by annuity payments must be < 5%: Rev. Rul. 77-374, 1977-2 C.B. 329
 - Payout cannot increase during trust term, even if increases are fixed at inception: Rev. Rul. 80-104, 1980-1 C.B. 135

D. Permitted Partial Interest Gifts

- Duration of lead term
 - Fixed term of years not to exceed 20 years, or term measured by lives of one or more beneficiaries alive when CRT is created
 - Term cannot be measured by lives of other individuals
 - Cannot tack fixed term on to end of term determined by lives of beneficiaries
 - Term can be subject to qualified contingency which shortens term (e.g., remarriage of beneficiary); contingency cannot extend term: IRC §664(f)
 - Term may also be shortened by later donation of remaining unitrust/annuity distributions to charitable remainder beneficiary if permitted by trust instrument and if doctrine of merger applies

D. Permitted Partial Interest Gifts

- Other key provisions:
 - Certain private foundation rules - self-dealing and rules against expenditures for prohibited purposes - apply to all CRTs: IRC §§508, 4941, 4945 and 4947
 - Self-dealing prevents CRT and donor from co-owning real estate
 - If charities are included among lead beneficiaries, CRT may also be subject to rules on excess business holdings and jeopardy investments
 - Investment restrictions impermissible if prevent realizing reasonable amount of income or gain from sale or disposition of trust assets
 - If there is succeeding non-charitable lead interest following donor's death, trust document must provide that no estate taxes attributable to inclusion of trust property in donor's estate can be recovered from trust property
 - Trust must include limited revocation power to maintain status as qualified CRT
 - IRS issued model documents in series of Revenue Procedures in 2003 and 2005; useful roadmap but are not complete trust documents

D. Permitted Partial Interest Gifts

- Tax consequences for donor
 - Income tax deduction upon funding for present value of charitable remainder interest
 - Valuation depends on funding amount; nature, size and frequency of payments to lead beneficiaries; length of term or actuarial life expectancy of beneficiaries; IRC §7520 interest rate
 - No additional deduction for NICRUT or NIMCRUT, even though lead payments are likely to be less than stated percentage amount
 - Deduction subject to AGI limitations based on type of funding asset and whether remainder beneficiary is required to be public charity

D. Permitted Partial Interest Gifts

- Gift tax charitable deduction for present value of charitable remainder interest: IRC §2522(c)(2)(A)
 - Special marital deduction rule, as long as donor and spouse are only non-charitable beneficiaries and spouse is US citizen: IRC § 2523(g)
 - Other interests potentially subject to gift tax unless such interests are successor interests and donor retains testamentary right to revoke: Treas. Reg. §§ 1.664-2(a)(4) and 1.664-3(a)(4); Treas. Reg. § 25.2511-2(c).
 - If right to revoke may be exercised inter vivos, CRT may not be valid: PLR 8430006.
 - Annual exclusion can be applied to interest in year of funding if interest takes effect immediately; cannot be applied year to year

D. Permitted Partial Interest Gifts

- For estate tax purposes, value of trust includable in donor's estate under IRC §2036 if donor is beneficiary, donor retains right to revoke successor beneficiary's interest, or donor retains right to change charitable remainder beneficiaries; also possible to create new CRT at death
 - Estate tax charitable deduction is allowed for DOD value of charitable remainder interest: IRC §2055(e)(2)(A)
 - Special marital deduction rule if spouse is only non-charitable beneficiary after donor's death: IRC §2056(b)(8)
- For GST tax purposes, transfer to CRT cannot be direct skip because charity is beneficiary: IRC § 2613(a)(2)
 - Distributions from CRT to grandchild will be taxable distributions
 - Can allocate GST exemption to trust when established, but for CRT to be GST tax exempt, donor must allocate exemption to all non-charitable interests, even if individual beneficiaries are not all skip persons: IRC § 2642(a)(1) and (2)

D. Permitted Partial Interest Gifts

- Tax treatment of CRT
 - Trust is tax exempt under Code §664(c); highly appreciated assets can be sold and gains realized without immediate tax liability
 - However, UBTI received by CRT is taxed at rate of 100%, and UBTI remains in tiering system to be potentially subject to income tax in hands of beneficiary: Treas. Reg. § 1.664-1(c)(1)

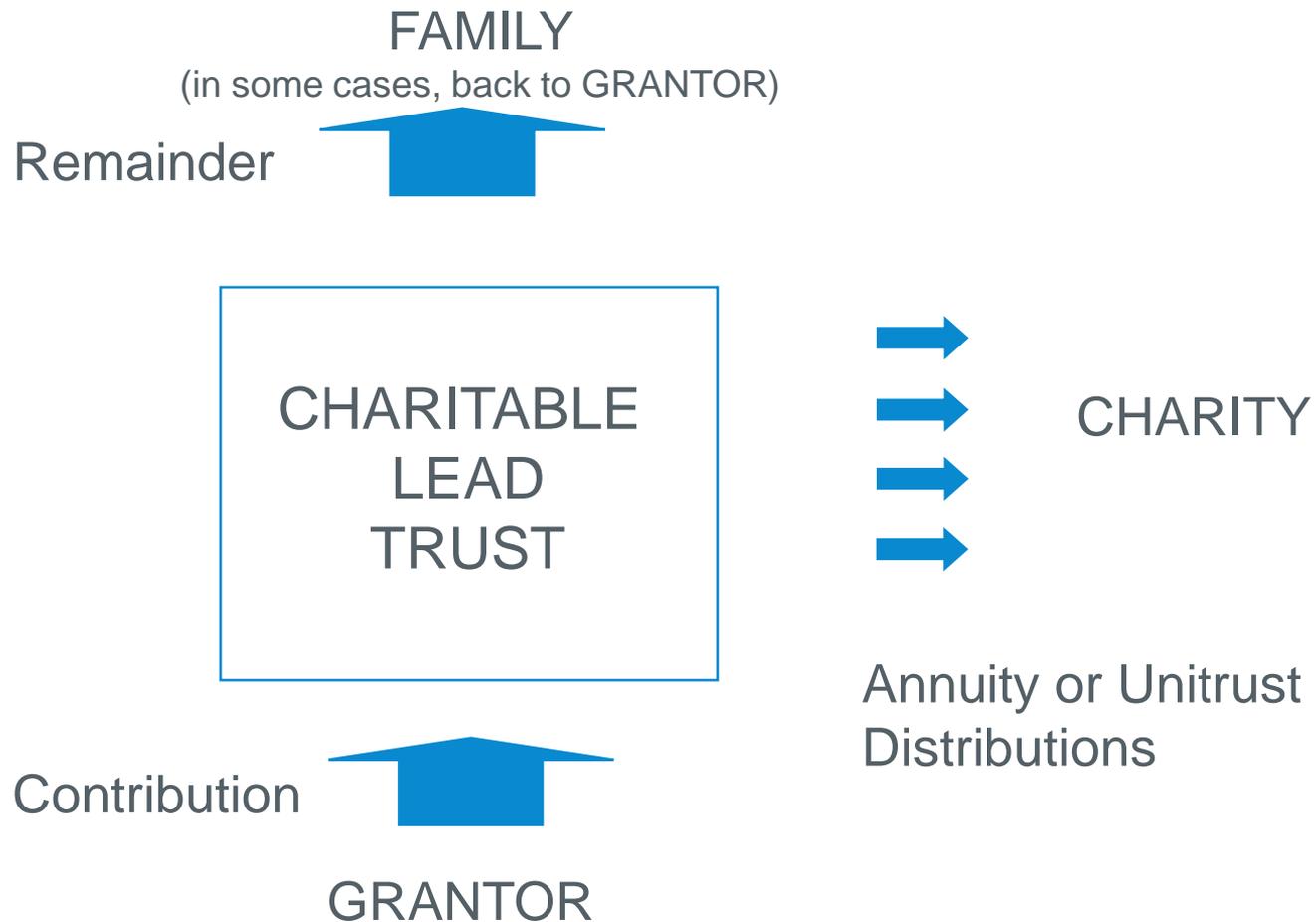
D. Permitted Partial Interest Gifts

- Tax treatment of distributions to individual beneficiaries
 - Distributions are taxed for regular income tax purposes under IRC §664
 - Current year/historic income in CRT is captured in four separate tiers; when distribution is made, deemed to consist of income to extent of amounts in tiers on “worst-in, first-out” basis
 - First two tiers broken into different classes, determined with reference to highest applicable income tax rate: Treas. Reg. § 1.664-1(d)
 - Ordinary income (rent/interest/royalties/non-qualifying dividends, then qualifying dividends); then
 - Capital gain (short-term, then collectibles, then depreciation recapture, then long-term); then
 - Tax-exempt income; then
 - Return of principal
 - Within each tier, if item of income is net investment income, IRC §1411 tax rate is added to normal income tax rate to determine “worst” classes within the tier for distribution (in other words, each class now has an NII sub-class and a non-NII or excluded income class)

D. Permitted Partial Interest Gifts

Charitable Lead Trusts (CLTs)

- How CLT Works:



D. Permitted Partial Interest Gifts

- Mirror image of CRT, but critical differences
- Can be qualified or non-qualified; latter will not be discussed
- Primarily wealth transfer vehicle
 - Properly structured lead interest qualifies for gift and/or estate tax charitable deduction: Treas. Reg. §§20.2055-2(e)(2)(vi) and 25.2522(c)-3(c)(2)(vi).
 - Donor receives no up-front charitable contribution income tax deduction on funding inter vivos CLT unless CLT is structured as grantor trust: IRC §170(f)(2)(B)
- Although trust itself is not tax-exempt, certain private foundation rules apply: IRC §§508(d)(2) and 4947(a)(2)
 - Prohibition against self-dealing and taxable expenditures
 - Prohibition against jeopardy investments and excess business holdings if charitable interest >60% of aggregate value of funding assets; CLAT must prohibit not only purchase but also retention of jeopardy investments

D. Permitted Partial Interest Gifts

- CLTs must have one of two payment structures: IRC §§2055(e)(2)(B) and 2522(c)(2)(B)
 - Charitable Lead Unitrust (CLUT) – payment to charity is percentage of annual FMV of trust assets determined on fixed annual valuation date or in accordance with fixed formula
 - Payment cannot be reduced to annual trust income if less than percentage amount; no net income or net income with make-up or FLIP variants
 - Trust may receive further contributions after initial funding
 - Charitable Lead Annuity Trust (CLAT) – payments to charity must be in form of guaranteed annuity
 - Payments do not need to be same dollar amount annually, as long as value of annuity is ascertainable when trust is created: Rev. Proc. 2007-45, §§ 3 and 5.02(2); Rev. Proc. 2007-46, §§ 3 and 5.02(2)
 - No guidance on permitted escalation; cf. grantor retained annuity trusts
 - If trust income exceeds annuity, trust can provide for payment to charity of excess income: Treas. Reg. §§ 20.2055-2(e)(3)(vi)(d) and 25.2522(c)-3(c)(2)(vi)(d)
 - Additional contributions after initial funding are not permitted: Rev. Proc. 2007-45, §§ 4.5, 5.05 and 7.5; Rev. Proc. 2007-46, §§ 4.5 and 5.06

D. Permitted Partial Interest Gifts

- Payments must be made at least annually; no minimum or maximum payout as in CRT context
- Term of CLT can be structured for a fixed period or for life or lives
 - No limit on fixed term (other than state law perpetuities rule, if any)
 - Measuring lives limited to donor, spouse, and individual who, with respect to all non-charitable beneficiaries, is either lineal ancestor or spouse of lineal ancestor of those beneficiaries: Treas. Reg. §§ 1.170A-6(c)(2)(ii)(A), 20.2055-2(e)(2)(vi)(a) and (vii)(a), 25.2522(c)-3(c)(2)(vi)(a) and (vii)(a)
- Special actuarial rules if term is measuring lives
 - Mortality component of IRS Tables cannot be used if measuring life is terminally ill, meaning at least 50% probability that will die in 12 months; presumed not to be terminally ill if survive 18+ months
 - Guaranteed annuity in CLAT not considered payable for term if annuity expected to exhaust fund before end of term; for this purpose, each measuring life is assumed to live to age 110

D. Permitted Partial Interest Gifts

- Charitable Beneficiaries
 - Can be public charities, private foundations or foreign charities (but if grantor trust, income tax deduction affected by domesticity requirement and PC/PF status of beneficiaries)
 - Trustees can be given power to select charities during lead term (but caution if donor is trustee): Rev. Rul. 78-101, 1978-1 C.B. 301
 - Lead payments can be made to DAF where donor is advisor without estate/gift tax complications
- Remainder beneficiaries
 - Can be donor, donor's family, trusts for family or any other noncharitable beneficiary
 - Income, gift, estate and GST tax consequences of trust follow from choice of remainder beneficiaries
- IRS published model CLT forms in 2007 and 2008 in a series of Revenue Procedures: Rev. Proc. 2007-45 and 2007-46, 2007-29 I.R.B. 89; Rev. Proc. 2008-45 and 2008-46, 2008-30 I.R.B. 224

D. Permitted Partial Interest Gifts

- Tax Consequences to Donor
 - Estate, gift and income tax consequences all vary depending on how trust is structured
 - Gift tax consequences arise if third parties are named as remainder beneficiaries vs. reverter to donor
 - Trust property includable in donor's estate if reverter to donor, or if donor retains control over distribution of lead or remainder interest
 - Indirect control if lead payments made to foundation of which donor is director/trustee; cf. DAF, with donor-advisor
 - No upfront income tax deduction unless trust is structured as grantor trust for income tax purposes

D. Permitted Partial Interest Gifts

- GST tax issues arise (taxable termination or distributions) when remainder distributable to donor's grandchildren or more remote issue, or persons two or more generations below donor
 - Can allocate GST exemption to CLUT to achieve inclusion ratio of zero at outset; must allocate to full value of taxable transfer: IRC §2642(a)(2)
 - Can allocate GST exemption to CLAT at outset, but inclusion ratio is not determined until end of charitable lead term: IRC §2642(e)
 - Almost impossible to achieve inclusion ratio of zero in CLAT because exemption allocated is only adjusted by IRS §7520 rate used to determine charitable deduction
 - If investment performance exceeds IRS interest rate, mixed inclusion ratio will arise; if investment performance lags, exemption is wasted
 - Late allocation of exemption may prevent GST tax, but no leverage

D. Permitted Partial Interest Gifts

- Tax treatment of CLT
 - Testamentary CLTs and most inter vivos CLTs are nongrantor taxable trusts, subject to Subchapter J
 - CLT gets income tax deduction under IRC §642(c) for lesser of taxable income and amount paid to charity; if annuity/unitrust amount paid after close of year to which it relates, trust may elect to treat payment as made in year for which it was owed
 - No carry-back/carry-forward of unused deduction if payout exceeds income
 - CLT pays income tax on undistributed income and capital gain; in addition, if trust earns income that would be treated as UBTI, trust is only permitted deduction against UBTI subject to percentage limitations applicable to individuals: IRC §§512(b)(11) and 681(a)
 - Amount paid to charity carries out proportionate share of all classes of income; ordering provisions that attempt to carry out classes of income subject to higher marginal tax rates are not effective: Treas. Reg. §1.642(c)-3 and -5.

D. Permitted Partial Interest Gifts

- Inter vivos CLT can be structured as grantor trust (e.g., reversion to donor; power to substitute assets of equivalent value without consent of trustees held by someone other than donor)
- Donor entitled to income tax deduction for present value of lead interest when grantor CLT funded; five-year carryforward available
 - Gift is treated as “for the use of” charity; income tax deduction is limited to 30% of donor’s contribution base (20% if property contributed is capital gain property and charitable recipients not limited to PCs): IRC §170(b)(1)(B)(i).
- Donor is taxed on trust’s income for balance of term, with no additional offsetting charitable deduction when lead payments are made to charity
 - If lead payment is made by distribution in kind of appreciated assets, donor realizes capital gain income equal to appreciation in assets distributed
- Income tax advantage is in most cases one of deferral, rather than elimination of income tax liability

D. Permitted Partial Interest Gifts

- If grantor trust status terminates during term of trust, up-front income tax deduction is subject to recapture: IRC §170(f)(2)(B)
 - Conflict between Code and regulations about method of calculating recapture
 - Code: total deduction received less discounted value of all income taxed to donor prior to loss of status
 - Regulations: total deduction received minus discounted value of all amounts required to be and actually paid to charity prior to loss of status: Treas. Reg. §§1.170A-6(c)(4), 1.170A-6(c)(5), ex.3
 - Difference intentional, and can be meaningful; model forms state that Code provisions prevail

D. Permitted Partial Interest Gifts

Other split interest gifts

- Remainder interest in personal residence or farm
 - Donor retains life/term use; charity receives remainder interest in all or part of property
 - Donor receives income, gift and/or estate tax deduction: IRC §§170(f)(3)(B)(i), 2055(e)(2) and 2522(c)(2)
 - Income tax deduction is discounted to reflect straight-line depreciation of real estate: IRC §170(f)(4)
 - Complications if there is mortgage on property

D. Permitted Partial Interest Gifts

- PIFs
 - PIF is taxable trust governed by IRC §642(c)(5) maintained by PC and funded with gifts (cash; long-term capital gain property) from multiple donors
 - Gifts are assigned units in fund, which pay out pro rata share of fund income (taxed as ordinary income) to one or more concurrent or consecutive beneficiaries for life
 - Units are paid to charity when all individual beneficiaries have died
 - Donor receives tax deduction for present value of charitable remainder interest
 - Deduction determined by using discount rate equal to fund's highest yearly rate of return during 3 years preceding gift; §7520 rate is not applicable; special rule for new funds: IRC §7520; Treas. Reg. §1.642(c)-6; Notice 89-60, 1989-1 C.B. 700

D. Permitted Partial Interest Gifts

Charitable Gift Annuities

- Donor's contribution to charity in exchange for annuity is bargain sale transaction, not split interest gift
- Governed by annuity contract; not a trust
- Annuity is backed by charity's general assets
- Annuity is determined by age of annuitant and expected rate of return on investments
 - American Council on Gift Annuities (ACGA) provides recommended rates; used by many charities
 - Average amount available to charity is 50% of funding amount
 - Lower than commercial annuity rates
 - Code contains some baseline requirements
- Often subject to state regulation, including registration and reserve funds

D. Permitted Partial Interest Gifts

- Tax consequences to donor
 - Income tax charitable deduction for difference between value of property transferred to charity and present value of annuity
 - Present value of annuity depends on actuarial life expectancy of annuitant(s), IRC §7520 rate, annuity payment frequency, and annuity starting date
 - Gift tax deduction for difference between property transferred and present value of annuity
 - Immediate annuity for someone other than donor or spouse is present interest gift that will qualify for gift tax annual exclusion
 - Marital deduction available for immediate gift annuity to spouse: Treas. Reg. §25.2523(b)-1(c)
 - Marital deduction not available if spouse's annuity is successor annuity to donor's annuity; important to retain revocation right to avoid current taxable gift

D. Permitted Partial Interest Gifts

- For estate tax purposes, if donor is sole annuitant, annuity is extinguished at death and nothing is includable in estate
 - Retained revocation right over successor annuity makes value of annuity includable under IRC §2038
 - Estate tax paid can be claimed as income tax deduction by successor annuitant under IRC §691(c)
 - Annuity for surviving spouse will qualify for marital deduction; one-half of joint-and-survivor annuity funded with joint property will be includable in first spouse's estate
- Immediate single life annuity for skip person is direct skip transfer for GST tax purposes
 - In two-life annuity, if first annuitant is not skip person but second is, no direct skip transfer when annuity funded, but taxable termination at first death; Code appears to make charity equivalent of trustee and liable to pay GST tax; consequently charity should not enter into such arrangement

D. Permitted Partial Interest Gifts

- Tax consequences for annuitant
 - Governed by IRC §72; part of each payment is ordinary income, part is return of principal
 - “Exclusion ratio” governs parts – investment in contract (non-charitable component of gross transfer to charity) divided by expected return (annual payment x life expectancy, adjusted for timing/frequency)
 - Once life expectancy reached and investment in contract fully recovered, 100% of payment is ordinary income
 - If death occurs before life expectancy, deduction available on decedent’s last return for unrecovered investment in contract
 - If CGA funded with appreciated property held more than 1 year, donor is first annuitant and annuity is non-assignable (except to charity), gain is reported ratably over donor’s life expectancy; otherwise donor recognizes gain immediately: IRC §1011(b)
 - Effect is that portion of each annuity payment that would otherwise be excludable as return of principal is taxed to donor as capital gain income
 - Both ordinary income and capital gain component of CGA treated as net investment income for IRC §1411 tax, regardless of when CGA funded

D. Permitted Partial Interest Gifts

- Tax consequences for issuing charity
 - CGA will be debt-financed property creating UBTI for charity unless:
 - Value of annuity is < 90% of contributed property
 - Annuity is payable over no more than two lives of individuals in being at time of gift
 - There are no minimum or maximum number of payments
 - Annuity amount is not adjusted by reference to income received from gifted property (i.e., cannot be tied to investment performance): IRC §514(c)(5)
 - Loss of Tax Exemption
 - Charity can lose tax exempt status if substantial part of activities consists of providing commercial type insurance, which includes issuance of annuities: IRC §501(m)
 - CGAs are excluded from definition of commercial type insurance provided portion of amount payable is deductible under IRC §§170 or 2055 and annuity complies with requirements of IRC §514(c)(5)

D. Permitted Partial Interest Gifts

- Variations of CGA
 - Annuity may be deferred to start at later date
 - Can be structured with optional start date, and different annuity amount depending on length of deferral; donor's deduction is determined by highest present value calculation of possible annuities
 - Charitable income tax deduction to donor will be greater (since deferred annuity will have lower present value)
 - Annuity will not qualify as present interest for gift tax purposes
 - CGA can increase in fixed steps
 - Income and gift tax deduction is determined by calculating present value of each step in payment schedule

D. Permitted Partial Interest Gifts

- Strategic uses of CGA
 - Simple way to make a planned gift
 - Ideally suited to smaller \$ gift
 - Deferred CGA can serve as retirement planning strategy
 - Good option when funding assets are problematic in CRT context
 - Tangible personal property
 - RE where donor wants to continue to reside
 - S Corp stock

D. Permitted Partial Interest Gifts

Actuarial valuation of partial interests

- Two components: mortality and interest/discount rate
 - Prior to 1989, both adjusted episodically
 - Now governed by IRC §7520
- Mortality experience tables are revised not less frequently than every 10 years: IRC § 7520(c)(3); however, latest tables published May 1, 2009
 - Tables must be used for all purposes
 - Includes CGAs, except exclusion ratio determined by mortality assumptions in Treas. Reg. § 1.72-7(c)(1)
 - Exceptions exist for terminal illness of measuring life and annuity exhaustion for CRAT: Treas. Reg. §§ 1.7520-3(b)(2) and (3)

D. Permitted Partial Interest Gifts

- Interest/discount rate is 120% of Federal mid-term rate, rounded to nearest 2/10s of a percent
 - Changes each month; for charitable deduction purposes, can elect either rate for month of transfer or rate for either of preceding 2 months: IRC § 7520(a)
 - Election made by statement attached to return; revocable if amended return filed within 24 months after later of date original return filed or due
 - Term of charitable split interest gift is irrelevant
 - Rates have fluctuated considerably:
 - Highest rate = 11.6% (May 1989)
 - Lowest rate = 0.4% (August - November 2020)
 - Rates > 6% between May 1989 and November 1998
 - Rates ≤ 6% between August 2001 and July 2006, and between September 2006 and today; since July 2010, rates ≤ 3% (except March 2018 – March 2019)

D. Permitted Partial Interest Gifts

- Impact of low interest rates
 - Advantageous (higher deduction): CLATs and remainder gifts of real estate
 - Low interest rates facilitate zeroing out of value of remainder in CLAT
 - Disadvantageous (lower deduction): CRATs and CGAs
 - CRATs may not be available to certain donors at lower interest rates because impossible to satisfy 10% remainder requirement or probability of exhaustion test
 - Unaffected: CRTs and CLUTs
 - 7520 rate only affects first-year payment frequency adjustment factor; if payment made at beginning of year, deduction identical regardless of discount rate

E. Using Retirement Assets

- In general, only way to use retirement assets for lifetime charitable gift is to make permitted withdrawal from plan, recognize income and then use withdrawn funds for gift
- Exception: qualified charitable distribution (QCD): IRC §408(d)(8)
 - QCD is excluded from income but counts towards required minimum distribution (RMD); not subject to AGI limits
 - Eight requirements:
 - QCD must be from IRA or Roth IRA, not 401(k) or 403(b) plan
 - IRA owner must be 70½ or older, even if IRA inherited; *cf.* RMD rule
 - QCD must be made directly to charity from IRA
 - Recipient organization must be public charity other than SO or DAF
 - Entire QCD must otherwise qualify for charitable income tax deduction; no quid pro quo is permitted; QCD cannot fund CRT, PIF or CGA
 - QCD must be taxable distribution
 - Taxpayer must obtain contemporaneous written acknowledgement from charity that describes amount contributed and that no quid pro quo
 - QCD cannot exceed \$100,000 per annum per taxpayer

E. Using Retirement Assets

- At death, retirement assets can be left to charity
 - Estate tax charitable deduction is available; charity does not pay income tax on retirement plan distribution
 - Spousal waiver required for most plans (but not IRAs)
 - Retirement plan account can be left to CRT
 - Partial estate tax charitable deduction
 - No immediate income tax liability unless retirement plan bears its own estate taxes, but plan distribution is 100% ordinary income in IRC §664 tiers
 - Converts payout to beneficiaries to lifetime payments or up to 20 year term payments, spreading out income tax consequences vs. limited deferral under recent SECURE Act changes to retirement plan distribution requirements following death of plan participant
 - Risk is that CRT beneficiary will die early

F. Charitable Vehicles

- Donor could create any of following types of entity to carry out charitable purposes
 - Public charity (PC)
 - Supporting organizations (SOs)
 - Donor Advised Funds (DAFs)
 - Private Foundation (PF)
 - Social welfare organization
 - Zuckerberg LLC

F. Charitable Vehicles

- Charity is PC if publicly supported under one of two tests: IRC §509(a)(1)
 - Must normally receive at least 1/3 of its total support from government units or general public
 - Calculated over trailing 5 year period
 - If meet requirement, charity is considered publicly supported PC for qualifying year and following year
 - Cap of 2% of total contributions considered public support when considering contributions from any one donor; means that concentrated contributions from limited funding sources can knock charity out of PC status
 - If public support ratio is between 1/10 and 1/3, facts and circumstances test can save PC status
 - Factors include continuous and bona fide fundraising program, board of directors from community, facilities/services/programs available to public, varied sources of support: Treas. Reg. §1.170A-9(f)(2)

F. Charitable Vehicles

- Charity is PC if gross receipts organization that satisfies two conditions under IRC §509(a)(2)
 - Must receive at least 1/3 of its total support from any combination of (i) gifts, grants, contributions and memberships fees and (ii) receipts from conducting exempt activities (admissions, sales of merchandise, performance of services, or furnishing facilities)
 - Cannot include receipts from any person or government unit to extent receipts exceed greater of \$5,000 or 1% of organization's support for year; grants are not subject to this limitation
 - Both grants and receipts from disqualified persons are entirely excluded from 1/3 calculation; disqualified person includes substantial contributor (at least \$5,000 and exceeds 2% of total contributions received by organization for year), directors and officers, close family members and related entities
 - Must receive no more than 1/3 of its total support from investment income and UBTI (so cannot rely on endowment)

F. Charitable Vehicles

- Charity is also PC if it qualifies as supporting organization (SO) under IRC §509(a)(3)
 - Three types of SO
 - Type I parent-subsidiary: “operated, supervised or controlled by” one or more publically supported organizations
 - Type II brother-sister: “supervised or controlled in connection with” one or more such organizations
 - Type III: “operated in connection with” one or more such organizations
 - Derive PC status from close relationship to supported PCs; many perform functions or provide services integral to charitable function of supported PCs

F. Charitable Vehicles

- All SOs are required to meet three tests:
 - Organizational test: must be organized and operated exclusively for benefit of one or more PCs
 - Operational test: must be operated, supervised or controlled by or in connection with one or more PCs
 - Control test: must not be controlled directly or indirectly by one or more disqualified persons
- Type III SO must also satisfy three additional tests – responsiveness test, notification test and integral part test
- SOs are subject to certain enhanced regulatory restrictions and potential excise taxes not applicable to other PCs

F. Charitable Vehicles

- Donor advised fund (DAF) is not separate charitable entity for tax purposes; instead it is segregated fund owned and maintained by existing PC (sponsoring organization) which is separately identified by reference to contributions of one or more donors and over which donor or donor's designee retains advisory role over distributions from fund and/or investment of fund assets : IRC §4966(d)(2)(A)
 - Certain funds are not considered DAFs: funds which support single identified PC; non-donor controlled, non-discriminatory scholarship funds; certain employer-sponsored disaster relief funds
 - Income tax deduction rules are generally same rules that apply to gifts to PCs: I.R.C. §170(f)(18)(A)(i) and (ii)
 - Gift and estate tax deductions are no different
 - Assets held in DAF at time of donor's death are not includable in donor's estate because donor does not control assets
 - DAFs are subject to enhanced regulatory restrictions and potential excise taxes not applicable to other PCs: IRC §§4943, 4958, 4966(a), and 4967

F. Charitable Vehicles

- DAFs are subject to enhanced regulatory restrictions and potential excise taxes not applicable to other PCs:
 - Taxable distributions - include distribution for any non-charitable purposes (e.g., lobbying), to any natural person, and to any organization other than PC, POF or pass-through foundation unless there is expenditure responsibility: IRC §4966
 - Prohibited benefits – not defined but include direct/indirect economic benefits which would have reduced or eliminated charitable contribution income tax deduction if benefit were received as part of original contribution (so no quid pro quo grants permitted): IRC §4967
 - Excess benefit transactions – any grant, loan, compensation or similar payment to any disqualified person, irrespective of reasonableness: IRC §4958
 - Excess business holdings – IRC §4943

F. Charitable Vehicles

- Private foundations (PFs) are residual class of charitable organizations
 - PFs have three characteristics
 - Single or concentrated source of contributions in guise of single individual or family or corporation; no public support test to satisfy
 - PF relies on income earned by endowed fund to support its charitable activities as opposed to annual fundraising
 - PF carries out charitable purposes primarily through grant making to other charities as opposed to direct operation of its own charitable programs
 - PF is typically controlled by contributor; no need for broad, independent board of directors/trustees
 - PF can be set up as trust, non-profit corporation, limited liability company or unincorporated association

F. Charitable Vehicles

- PFs suffer from several negative rule sets compared to other charitable organizations
 - Income tax deduction rules are less generous as previously outlined
 - PF pays 1.39% excise tax on its net investment income , including dividends, interest, rents and royalties and long-term and short-term realized capital gains: IRC §4940(a)
 - PF is subject to broadest set of regulatory restrictions and potential excise taxes not applicable generally to PCs:
 - Self-dealing: IRC §4941
 - Minimum distribution requirements: IRC §4942
 - Excess business holdings: IRC §4943
 - Jeopardizing investments: IRC §4944
 - Taxable expenditures: IRC §4945

F. Charitable Vehicles

- 501(c)(4) social welfare organization also available
 - Simple to establish; prior to 2016, no formal requirements to obtain tax-exempt status; must now provide notice no later than 60 days after established of intention to operate as social welfare organization on Form 8976
 - Must be exclusively (=primarily) engaged in promoting common good/general welfare of community; overlap with charitable purpose in that social welfare included in meaning of former under IRC §501(c)(3)
 - Can engage in unlimited lobbying/legislative activities; and not prohibited from engaging in political campaigns (although must be secondary to primary focus on social welfare)
 - Entity is exempt from income tax, although subject to tax on UBTI in same way as other tax-exempt entities

F. Charitable Vehicles

- Entity must prohibit private inurement, and is subject to excise tax on excess benefit transactions between disqualified person and organization under IRC §4958(e)(1); otherwise other regulatory restrictions/excise taxes inapplicable
- Negative rule sets:
 - No income tax deduction for contribution; but no realization event when transfer appreciated asset: *cf.* appreciated asset gift to political organization under IRC §527(e)(1) results in taxable gain under IRC §84
 - Trust may, however, receive income tax deduction under IRC §661
 - No estate tax deduction
 - But transfer is excluded from taxable transfer definition for purposes of federal gift tax : IRC §2501(a)(6)
 - Partial interest rules do not apply; can transfer common stock to 501(c)(4) organization, retain voting rights and have excluded transfer

F. Charitable Vehicles

- “Zuckerberg” LLCs
 - Much publicity when announced
 - But just an LLC
 - No charitable tax benefits until LLC makes distribution of assets to another charity
 - Often set up for family office purposes and to assist family with future charitable planning/charitable grant making

G. Charitable Vehicles – Summary Comparisons

	Federal Income Tax Charitable Contribution Deduction Limitations for Individuals; Gift and Estate Tax Treatment	Qualified Charitable Distribution (QCD) from Individual Retirement Accounts (IRAs)	Controlled/Prohibited Activities
Public Charity - 509(a)(1) and 509(a)(2) (Excluding Donor Advised Fund (DAF) Sponsoring Organization)	<p>Income tax deduction allowed for cash contributions to public charities in an amount up to 60% of an individual's adjusted gross income (AGI) for a taxable year. The percentage is typically lowered to 30% for contributions of long-term capital gain property.</p> <p>Income tax deduction for long-term capital gain property is typically based on fair market value (FMV) on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all contributions.</p>	<p>Public charities (other than DAF sponsoring organizations and supporting organizations (SOs)) are qualified organizations to which QCDs may be made.</p>	<p>Regulated activities include:</p> <ul style="list-style-type: none"> Excess benefit transactions; Excessive lobbying; and Political expenditures.
Private Non-Operating Foundation	<p>Income tax deduction allowed for cash contributions to private non-operating foundations in an amount up to 30% of an individual's AGI for a taxable year. The percentage is lowered to 20% for contributions of long-term capital gain property.</p> <p>Contributions of long-term capital gain property (other than qualified appreciated stock) are deductible only to the extent of donor's tax basis in the property.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all contributions.</p>	<p>QCDs may not be made to a private non-operating foundation, unless the foundation qualifies as a pass-through foundation or is structured as a common fund.</p>	<p>Regulated activities include:</p> <ul style="list-style-type: none"> Minimum distributions; Self-dealing with disqualified persons (absolute rule; no need to show detriment to foundation or benefit to disqualified person); Excess business holdings; Jeopardy investments; and Taxable expenditures, including any expenses to influence legislation, influence outcome of election or engage in voter registration.

G. Charitable Vehicles – Summary Comparisons

<p>Private Operating Foundation</p>	<p>Income tax deduction allowed for cash contributions to private operating foundations in an amount up to 60% of an individual's AGI for a taxable year. The percentage is typically lowered to 30% for contributions of long-term capital gain property.</p> <p>Income tax deduction for long-term capital gain property is typically based on FMV on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all contributions.</p>	<p>Private operating foundations are qualified organizations to which QCDs may be made.</p>	<p>Regulated activities include:</p> <p>Charitable expenditures/assets;</p> <p>Self-dealing with disqualified persons (absolute rule; no need to show detriment to foundation or benefit to disqualified person);</p> <p>Excess business holdings;</p> <p>Jeopardy investments; and</p> <p>Taxable expenditures, including any expenses to influence legislation, influence outcome of election or engage in voter registration.</p>
<p>Donor Advised Fund</p>	<p>Income tax deduction allowed for cash contributions to DAFs in an amount up to 60% of an individual's AGI for a taxable year. The percentage is typically lowered to 30% for contributions of long-term capital gain property.</p> <p>Income tax deduction for long-term capital gain property is typically based on FMV on the date of contribution.</p> <p>Gifts and bequests qualify for unlimited gift and estate tax deductions.</p> <p>Partial interest rule applies to all contributions.</p>	<p>QCDs may not be made to a DAF.</p>	<p>Regulated activities include:</p> <p>Excess benefit transactions, expanded so that all grants, loans, compensation or similar payments to a donor, donor-advisor or related person/entity are automatically treated as an excess benefit in the full amount of the transaction, regardless of reasonableness; an expanded definition of disqualified person also applicable to ordinary excess benefit transactions;</p> <p>Excessive lobbying;</p> <p>Political expenditures;</p> <p>Excess business holdings; and</p> <p>Taxable distributions:</p> <ul style="list-style-type: none"> Distributions to individuals, Distributions to an organization that is not described in 170(b)(1)(A), namely a private non-operating foundation, tax-exempt organization that is not a public charity, or disqualified SO, unless expenditure responsibility is exercised, and Distributions for non-charitable purposes; and <p>Distributions that result in a "more than incidental" benefit to a donor, donor-advisor or related person/entity.</p>

G. Charitable Vehicles – Summary Comparisons

Supporting Organization (509(a)(3) Organization)

Income tax deduction allowed for cash contributions to SOs in an amount up to 60% of an individual's AGI for a taxable year. The percentage is typically lowered to 30% for contributions of long-term capital gain property.

Income tax deduction for long-term capital gain property is typically based on FMV on the date of contribution.

Gifts and bequests qualify for unlimited gift and estate tax deductions.

Partial interest rule applies to all contributions.

QCDs may not be made to any type of SO.

Regulated activities include:

Type I:

Excess benefit transactions; general rule expanded so that (i) any loan to a disqualified person and (ii) any grant, loan, compensation or similar payment to a substantial contributor or related person/entity is automatically treated as an excess benefit in the full amount of the transaction, regardless of reasonableness;

Excessive lobbying; and

Political expenditures.

Type II:

Same as Type I plus:

Excess business holdings, if SO accepts a contribution from a donor who controls a supported organization or a related person/entity.

Type III (functionally integrated):

Same as Type I.

Type III (Non-functionally integrated):

Same as Type I plus:

Excess business holdings.

Social Welfare Organization (501(c)(4) Organization)

No income tax deduction.

Gifts are excluded from transfers subject to gift tax.

Bequests are subject to estate tax.

Partial interest rule not applicable.

QCDs may not be made to social welfare organizations (QCDs may only be made to charitable organizations).

Regulated activities include:

Excess benefit transactions; and

Payments for political campaign activities may be taxable.

G. Charitable Vehicles – Summary Comparisons

	Entity Level Taxation	Distribution Requirements	Disclosure of Donor Identity	Degree of Donor Control
Public Charity - 509(a)(1) and 509(a)(2) (Excluding DAF Sponsoring Organization)	None, unless charity realizes unrelated business taxable income (UBTI) or participates in an excess benefit transaction.	None (except for certain research organizations).	Although charity may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of a donor's gift), such information is exempt from public disclosure.	Donor(s) do not typically control, although donor(s) may be members of board and, in that capacity, may help direct investment and use of assets.
Private Non-Operating Foundation	<p>Private non-operating foundation must pay tax on its net investment income. Otherwise, entity is not subject to tax unless it realizes UBTI or fails to comply with certain of the excise tax provisions applicable to private foundations.</p> <p>Certain related persons may also be subject to tax under the private foundation excise tax rules.</p>	<p>Must make qualifying distributions equal to at least 5% of the average FMV of foundation's net investment assets annually.</p> <p>Distributions that constitute taxable expenditures prohibited. In particular, grants to non-functionally integrated Type III SOs and certain other SOs are prohibited unless foundation exercises expenditure responsibility.</p>	Certain identifying information with respect to donors must be included on Form 990-PF and is subject to public disclosure.	Donor(s) may control.
Private Operating Foundation	<p>Private operating foundation must pay tax on its net investment income (unless it qualifies as an exempt operating foundation). Otherwise, entity not subject to tax unless it realizes UBTI or fails to comply with certain of the excise tax provisions applicable to private foundations.</p> <p>Certain related persons may also be subject to tax under the private foundation excise tax rules.</p>	<p>Must (i) spend at least 85% of the lesser of its adjusted net income or minimum investment return on expenditures directly for active conduct of exempt activities and (ii) meet either assets, endowment or support test.</p> <p>Distributions that constitute taxable expenditures prohibited. In particular, grants to non-functionally integrated Type III SOs and certain other SOs are prohibited unless foundation exercises expenditure responsibility.</p>	Certain identifying information with respect to donors must be included on Form 990-PF and is subject to public disclosure.	Donor(s) may control.

G. Charitable Vehicles – Summary Comparisons

Donor Advised Fund	<p>None, unless DAF sponsoring organization realizes UBTI or DAF or sponsoring organization, participates in an excess benefit transaction.</p>	<p>None, but many DAF sponsoring organizations have policies that require certain minimum activity level.</p>	<p>Although DAF sponsoring organization may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of gift), such information is exempt from public disclosure.</p>	<p>DAF sponsoring organization owns the assets of DAF and is ultimately responsible for control of DAF (distribution and investment). Donor(s) (or donor-advisor(s)) may offer non-binding investment and distribution advice.</p>
Supporting Organization	<p><u>All Types:</u> None, unless SO realizes UBTI or participates in an excess benefit transaction.</p>	<p><u>Type I, Type II and Type III (functionally integrated):</u> None, although SO must carry out activities that benefit its supported organization(s).</p> <p><u>Type III (non-functionally integrated):</u> Must annually distribute to or for the use of one or more supported organizations an amount equal to or exceeding the greater of 85% of its adjusted net income or 3.5% of the FMV of its investment assets (calculated based on the immediately preceding tax year).</p> <p>Must also meet attentiveness test that requires certain levels of support be provided to supported organizations.</p>	<p><u>All Types:</u> Although SO may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of a donor's gift), such information is exempt from public disclosure.</p>	<p><u>Type I:</u> Substantial contributors may not control. SO is controlled by its supported organization(s).</p> <p><u>Type II:</u> Substantial contributors may not control. SO is controlled by persons who control its supported organization(s).</p> <p><u>Type III (functionally integrated):</u> Substantial contributors may not control. SO is not required to be controlled by its supported organization(s), but must satisfy responsiveness, notice and integral part requirements.</p> <p><u>Type III (non-functionally integrated):</u> Substantial contributors may not control. SO is not required to be controlled by its supported organization(s), but must satisfy responsiveness, notice and integral part (distribution and attentiveness) requirements.</p>
Social Welfare Organization (501(c)(4) Organization)	<p>None, unless organization realizes UBTI, participates in an excess benefit transaction or makes taxable political campaign expenditures.</p>	<p>None.</p>	<p>Although organization may be required to include certain contributors' identifying information on Schedule B of its Form 990 (due to the size of gift), such information is exempt from public disclosure.</p>	<p>Donor(s) may control (but, if donor does control, potential estate tax issues with respect to assets held in 501(c)(4) attributable to donor's contributions to organization).</p>

H. Common Charitable Objectives

- How to Give to Foreign Charity and Get Income Tax deduction
- How to Best Create Endowment for Small or Newer Charity
- How to Support Benefit Event
- How to Give Scholarship Grant to Individual
- How to Help Needy Individual or Support Disaster Relief
- How to Give Anonymously
- How to Satisfy Promise to Give
- How to Make Charitable Bequest During Lifetime and Maintain Flexibility Over Recipient
- How to Afford Making Charitable Bequest During Lifetime

H1. Foreign Charity Gifts

- Is there “American friends of” 501(c)(3) PC (AFOO) for foreign charity?
 - Type of PC organized to support one or more foreign charities
 - Blueprint for qualification set out in Rev. Rul. 66-79, 1966-1 C.B. 48
 - Donor can claim charitable contribution income tax deduction so long as donor does not earmark contribution and AFOO exercises discretion and control
 - At least majority of AFOO board must be independent of foreign charity
 - AFOO board should approve (or pre-approve) grants to foreign charity for specific projects or specific administrative or operating expenses before soliciting or paying over funds
 - AFOO controls fundraising activities in US

H1. Foreign Charity Gifts

- If no AFOO, possible to give through DAF or PF
 - DAF or PF distribution to foreign charity, however, requires expenditure responsibility (ER) or equivalency determination (ED): Rev. Proc. 2017-53, 2017-40 IRB
 - ER has five basic elements designed to ensure that grant will be used appropriately for charitable purposes
 - Databases on ED now exist to facilitate distributions
 - Some sponsoring organizations offer DAFs that specialized in foreign charity gifts
- Also possible to give through Subchapter J trust
 - IRC §642(c) deduction is available without AGI limits and without domesticity requirement for amounts paid from trust for charitable purposes under trust's governing instrument

H2. Endowment for Small or Untested Organization

- While anxious to support new entity or small charity, donor may be reluctant to part with significant gift directly to organization; options
 - Fund DAF and make regular distributions; terminate DAF once concerns pass
 - Fund through PF, but restrictions, administrative burdens and costs
 - Fund through SO, but limits on control retained by donor
 - Use CLT with discretionary lead beneficiary provisions

H3. Supporting Benefit Event

- Give Directly to Public Charity
 - Amount of donor's deduction will be reduced by fair market value (not cost) of any return benefits received by donor under special quid pro quo rules
- Why not give through DAF or PF?
 - Could result in donor being subject to excise taxes for having received “more than incidental benefit” (DAF context) or “more than incidental or tenuous benefit” (PF context)
- Same analysis applies to charity membership dues (e.g., museum) where return benefits are more than incidental

H4. Scholarships

- Give Directly to Public Charity
 - Caveat: Cannot earmark gift for a specific individual
- Give Through PF
 - Caveat: PF must obtain IRS pre-approval of objective and non-discriminatory selection procedure before scholarships are paid
- Give Through Non-DAF Fund at Sponsoring Public Charity
 - Exception in DAF rules allows donor to set up a fund that makes grants to individuals for travel and study so long as independent committee (not controlled by donor or family members and appointed by sponsoring organization) selects individuals using objective and non-discriminatory selection procedures similar to those for PF grants to individuals for travel and study: IRC §4966(d)(2)(B)

H5. Giving to a Needy Individual or Following Disaster or Accident

- Give Through Public Charity or PF
 - Caveat: Cannot earmark gift for a specific individual
 - Caveat: Public charity or PF must make determination of need
- Why (sometimes) not DAF?
 - “Taxable distribution” excise tax will be imposed if DAF makes a grant to an individual: IRC §4966(c)(1)(A)
 - Exception exists for certain employer-sponsored disaster relief funds

H6. Giving Anonymously

- Give through DAF
 - Assumes DAF does not bear name of individual or family
- Give to PC below Form 990 Schedule B disclosure threshold
 - Threshold for “fundraising” public charity is the greater of \$5,000 or 2 percent of total contributions and grants received in given year
- PF information is in public domain under general regulations that require disclosure of Forms 990 and 1023
- Use (c)(4) organization, but no income tax deduction

H7. Satisfying Binding Pledge

- Give directly to PC
 - If donor has set up CRT and retains right to designate remainder charities, donor cannot satisfy pledge by making subsequent irrevocable remainder designation (impermissible self-dealing)
- Why not give through PF?
 - Could result in donor being subject to excise taxes for having received “more than incidental or tenuous benefit”
 - If donor wants to use, PF must enter into pledge at outset; donor’s later partial satisfaction of PF’s pledge not problematic
- Can DAF be used?
 - Thought that same analysis applied - “more than incidental benefit” – but IRS Notice 2017-73 suggests otherwise if sponsoring organization makes no reference to pledge when making distribution
 - Some sponsoring organizations will not, however, permit grant to satisfy binding pledge

H8. Prefunded Flexible Charitable Bequest

- Give to DAF
- No required distributions
- In most cases, can either leave directions for what should happen to fund at death (revocable until death), or name successor advisors to make recommendations for distributions from fund
- But remember, it is “advised” fund, not “directed” fund

H9. Addressing Economic Benefit Concerns of Making Larger Charitable Lifetime Gift

- Would like deduction, but concerned about financial impact of gift
- Don't make outright gift; use one of split interest gift vehicles or CGA
- May be able to turn capital into higher yielding investment, particularly when deduction benefit is factored in, and consequently feel “better off”

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