

# PHILANTHROPIST'S GUIDE TO TAX EFFECTIVE GIVING

This guide has been prepared by Hanrick Curran Pty Ltd for valued donors of GMRF, providing general advice for an Australian resident individual wanting to donate during their lifetime or to leave money to charities and other deductible gift recipients under their will.

*This guide is accurate as at 1 February, 2015.*



*Gallipoli Medical Research  
Foundation proudly provide  
this general tax opinion to our  
valued donors.*



# Introduction

Hanrick Curran is pleased to provide this guide to tax effective giving to the generous donors contributing to enabling the great work performed by Gallipoli Medical Research Foundation (GMRF).

The Guide to Tax Effective Giving has been developed for Australian resident individuals wanting to donate during their lifetime or to leave money to chosen charities and other deductible gift recipients under their will.

The advice contained in this Guide is of a general nature, it is recommended that personal tax advice is sought to account for personal circumstances.

## About Hanrick Curran

Hanrick Curran is a Chartered Accounting Firm with Tax, Audit, Superannuation and Human Resources expertise. We have significant experience in performing the full range of Accounting, Tax and Audit engagements associated with the not-for-profit sector and tax effectively structuring bequeaths by individuals to charities.

The author, Jamie Towers, a Partner in Hanrick Curran, has a Masters Degree in Taxation and regularly advises on the topic of Tax Effective Giving.



## The Purpose of the Guide

The purpose of this guide is to inform the reader (including the executors of an estate) about the most tax effective way to make bequests to charities under a will and / or to contribute during your life to witness the application of your contributions. From our experience, there is a general lack of public knowledge and understanding about how estates are taxed and how potential bequestors can maximise their gift to charitable organisations.

The aim of this guide is to enable the bequestor to maximise the after tax amount of assets that is able to be transferred to charitable beneficiaries and to make the executor aware of how their actions can minimise tax in the estate. It is also to assist donors making contributions during their lifetime to achieve optimal tax efficiency in doing so.

This guide contains general advice only and is based on the current Australian income tax law as at the date of the guide. It does not contemplate the particular facts and circumstances of an individual so should not be relied upon without seeking personal advice. Hanrick Curran will not be held responsible for any losses caused as a result of seeking to rely on this guide.

## Inter Vivos Giving (giving whilst living)

While philanthropy of any kind is commended, only donations to entities that are a Deductible Gift Recipient (DGR) are able to be claimed as an income tax deduction under Australian law. A DGR is an entity that has been endorsed by the ATO as one where a tax deduction is able to be claimed for donations to that entity. It is important to note that not all charities are endorsed as a DGR. The Gallipoli Medical Research Foundation is a recognised DGR.

Tax deductible donations can be made in cash, or in kind (property). The table below summarises the tax deductions available.

Type of Gift	Deduction
Money	\$ Spent
Property purchased <12 months ago	Lesser of Market Value** and Cost
Trading Stock	If Disposed outside ordinary course of business and no election made Market Value**
Property Valued at >\$5,000 and purchased >12 months ago	Commissioner's Valuation*
Listed Shares value at <\$5,000 and purchased >12 months ago	Market Value**
Fundraising Tickets >\$150#	Cost of ticket less Market Value** of right to participate in fundraising event

\* Must apply for a private ruling to get a Commission's valuation

\*\* GST inclusive market value on the date of the gift

# Only deductible if Market Value of fundraising event does not exceed lesser of \$150 and 20% of cost of ticket

The rules for donations of assets are quite specific, so we recommend advice be sought in all circumstances.

A popular alternative to specific giving, that provides the donor with some more control over future gifts, is a Private Ancillary Fund (PAF). A PAF can provide ongoing income streams for nominated charitable beneficiaries into the future. Contact us for further information.

## General Rules about Taxation upon Death

At the time of death (or following granting of probate) a deceased person's assets pass from the deceased to their legal personal representative (executor).

A transfer of assets usually constitutes a Capital Gains Tax (CGT) event (taxing event). However, a specific exemption exists in the Tax Act to ensure that any capital gain or loss resulting from the transfer of assets owned by the deceased just before they died to their executor or a beneficiary is disregarded.

The exception to this rule is for transfers to exempt entities (entities exempt from taxation) that are not DGR. Transfers of assets under a will to a non-DGR charity or perhaps an overseas charity may result in a capital gain in the hands of the deceased (final tax return of the deceased).

Where an asset is transferred to an executor / beneficiary (except a non-DGR exempt entity), they are taken to have acquired the asset on the deceased's date of death and the tax attributes (cost base) of the deceased's assets are passed on to the executor or ultimate beneficiary.

Specifically, for assets acquired by the deceased before 20 September 1985 (pre CGT assets), the executor / beneficiary receives a cost base for CGT purposes equal to the market value of that asset on the date of death.

For assets acquired by the deceased on or after 20 September 1985, the executor / beneficiary inherits the cost base that the deceased had in those assets.

Where an asset passes to the executor who then passes the asset to the beneficiary as requested under the will, any capital gain or loss made by the executor upon transfer is also disregarded. The beneficiary receives a cost base as noted above.

When either the executor, or the beneficiary sells the asset, then any capital gain or loss will be calculated with reference to the cost base as noted above. Any resulting gain should be included in the assessable income of the seller (either the estate or the beneficiary as the case may be) and if the beneficiary is tax exempt that means no tax is ultimately payable.

## Taxation of the Estate – Guide for Executors

A deceased estate is a form of trust. The executor takes the role of a trustee and is obliged to administer the estate in the best interests of the beneficiaries.

Depending upon the affairs of the deceased, administration of the Estate may take a number of years. The executor's duties are to gather in all of the assets, ascertain and pay the liabilities of the estate, ascertain all of the beneficiaries and then distribute the estate to the relevant beneficiaries in accordance with the instructions under the will.

If the estate will earn income (e.g. interest on bank accounts, rental income, dividend income), or generate capital gains through sale of estate assets, then the executor should register for a tax file number for the estate (separate tax file number to the deceased) and complete an estate (trust) tax return.

As a deceased estate is a form of trust, trusts are only subject to taxation if there is no beneficiary that is 'presently entitled' to the income of the estate.

Present entitlement broadly means that the trustee has made the decision to 'distribute' that income to the beneficiary and the beneficiary can legally call on that income to be paid to them.

During the initial administration of the estate, the executors are ascertaining assets and liabilities so any income should generally be retained to meet liabilities until they are all known and provided for. During this period, there will generally be no beneficiary that is said to be 'presently entitled' to income of the estate (the taxing point).

In this situation, the trustee (executor) will be assessed on the income of the estate for that particular year. Once the tax return is lodged, the tax that is assessed becomes a liability of the estate.

During the first three years of an estate, the Commissioner of Taxation treats the estate like an individual taxpayer, so it is subject to marginal taxation rates. After three years, the trust will generally pay tax at the top marginal tax rate on all income.



Once the administration of the estate reaches a certain stage where all creditors have been ascertained and either paid or provided for, if there are sufficient assets to pay all creditors, then the income does not need to be retained and can therefore be distributed to beneficiaries.

The decision to make beneficiaries presently entitled to the income of the estate is made on or before 30 June each year.

From an estate perspective, once it has been ascertained that the creditors have been paid, or provided for from the assets of the estate, the income for that year is not required to be retained to pay for liabilities. The executor should acknowledge this in their notes / minutes and these should be retained in the event of an Australian Taxation Office (ATO) audit.

Generally under a will, there are specific beneficiaries (ie they receive a fixed dollar amount, or a particular asset), and then residuary beneficiaries (who received the remainder of the estate after creditors and specific beneficiaries have been paid).

It is the residuary beneficiaries that become presently entitled to the income of the estate. The executors should name the residuary beneficiaries as being presently entitled to the income of the estate in the estate (trust) tax return. Each residuary beneficiary will therefore be assessed on its proportionate share of the estate's net (taxable) income. The estate itself should not pay tax for that year.

## Minimising Estate Income Tax

To minimise taxation, if assets are required to be sold to help pay some of the liabilities of the estate, or cash is required to be paid to satisfy a specific beneficiary request, executors should consider

selling non-taxable assets (such as deceased's family home) or sell assets with the highest cost base to reduce the amount of assessable income in the estate.

In situations where the residuary beneficiaries are exempt entities (e.g. charities), then it is possible that no tax is payable on the income of the estate. For example, if the estate has been administered to the point where all creditors have been provided for, then the residuary beneficiaries can be presently entitled to the income of the estate. This means that the estate does not pay tax, but rather, the residuary beneficiaries are in receipt of assessable income. Where the residuary beneficiaries are exempt entities, then no income tax should apply to that income.

If the income of the estate includes franked dividends, the attached franking credits can be passed on to the exempt entities. While exempt entities do not generally lodge an income tax return, they can apply to the ATO for a refund of franking credits, so this makes such a distribution even more tax effective.

There is a tax anti-avoidance rule for exempt entities. This rule provides that if the trustee (executor) does not notify the exempt entities of their present entitlement to income within two months of the end of the financial year, then the law treats the present entitlement as never existing and will assess the trustee for tax on the income. Payment of that income will be treated as notification to the exempt entity.

Practically speaking, the executor does not need to have calculated the exact amount of the income to which the exempt entity would be entitled to by two months after the end of the year. The executor merely should notify the exempt entity that they are entitled to a proportionate share of the income of the

estate in accordance with the will and that the final amount will be ascertained and paid in due course.

## Recommendations

In order to maximise the benefit of bequests to charities as part of a will, and minimise the overall tax impost on the estate, we outline some recommendations:

### For the Bequestor

1. Name individuals as specific beneficiaries of assets with a high tax cost base or non-taxable assets such as the family home.
2. Name DGR Charities as residuary beneficiaries with instructions they should receive an in-specie transfer of remaining assets after the specific beneficiaries have been paid their entitlement. (This should achieve a tax-free transfer of the asset and give the best chance of minimising the tax on the income of the estate).
3. To the extent possible, cash or other non-taxable assets (such as family home) should be distributed to the specific beneficiaries and taxable assets (such as shares) be retained as residuary assets able to be distributed in-specie to charities.



4. Leave a letter of wishes and this guide with your will requesting that the executors maximise the extent of distributions to beneficiaries by minimising the tax impost on the estate. (The more information you can leave with the executors to assist, the easier this will be to achieve).

## For the Executor

1. Understand the wishes of the deceased.
2. Attend to administration of the estate and ascertain and provide for all creditors as quickly as possible to allow the residuary beneficiaries to be made presently entitled to the income of the estate.
3. If making exempt entities presently entitled to the income of the estate, they should be notified of (or paid) that income within two months of the end of the financial year.
4. Seek advice from qualified professionals (such as Hanrick Curran) to assist to minimise the tax impost on the estate.

Hanrick Curran has advised many individuals to maximise their philanthropy to charities through their will. We also prepare deceased estate tax returns and help executors to satisfy their fiduciary duties of maximising the estate (through minimising tax) which is distributed to beneficiaries.

We have also been successful in objecting to tax assessments where the income tax return has not been prepared correctly. This has resulted in hundreds of thousands of dollars of tax refunds being able to be distributed to charities and franking credit refunds being generated in the name of the charity.

## Conclusion

We trust this guide has been of assistance. If you wish to seek specific tax advice to maximise your tax effective bequest to charities, please contact Jamie Towers on 07 3218 3900 or [jamie.towers@hanrickcurran.com.au](mailto:jamie.towers@hanrickcurran.com.au).





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