

Nuts and Bolts of Charitable Remainder Trusts

Presented by

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Charitable Remainder Trusts

Advantages

1. Income tax-exempt
2. Fulfills charitable giving goals, albeit in a deferred manner
3. Remainder charities can be amended
4. Spousal interests can be made contingent without jeopardizing the marital deduction
5. "Incentive" contingency provisions can be used
6. Additional contributions may be made to CRUTs
7. Value of remainder interest is income tax deductible (inter vivos trusts)
8. Value of remainder interest is gift tax deductible (inter vivos trusts)
9. Value of remainder interest is estate tax deductible (testamentary trusts)
10. Remainder charity can be a private foundation (PF) or a donor advised fund (DAF)

Charitable Remainder Trusts

Disadvantages

1. No ability to increase payments if there is a financial hardship
2. No additional contributions may be made to CRATs
3. To qualify a spousal interest for the marital deduction, the spouse must be the only individual beneficiary of the trust
4. Distributions to beneficiaries are taxable, based on the “tier” system (ordinary income, capital gains, tax-exempt income, then return of principal)
5. Far more expensive to create and to administer than a charitable gift annuity

Candidates for Single Life CRUTs

		5% Payout Quarterly (End)	7% Payout Quarterly (End)	9% Payout Quarterly (End)
	7520	Minimum Age for	Minimum Age for	Minimum Age for
Month	Rate	10% Remainder	10% Remainder	10% Remainder
May-21	1.20%	29	42	50
May-22	3.00%	29	42	50
May-23	4.40%	28	42	49
May-24	5.40%	28	41	49
May-25	5.00%	28	41	49

Note: The 10% minimum remainder interest rule applies not only to new CRTs, but also to additional contributions to existing CRUTs.

Candidates for Single Life CRATs

		5% Payout Quarterly (End)	7% Payout Quarterly (End)	9% Payout Quarterly (End)
	7520	Minimum Age for	Minimum Age for	Minimum Age for
Month	Rate	10% Remainder	10% Remainder	10% Remainder
May-21	1.20%	63/76	72/84	77/89
May-22	3.00%	55/68	68/80	75/86
May-23	4.40%	42/51	63/77	72/85
May-24	5.40%	13	59/71	70/83
May-25	5.00%	31	61/74	71/84

Note: The second age shown is the age at which the Rev. Rul. 77-374 probability of exhaustion test first falls below 5%. Failure to meet this test may result in the disallowance of the charitable deduction and a disqualified trust.

Two Life CRUT Candidates (A Sampling)

		<u>Present Value of Remainder Interest</u>					
		Second Beneficiary's Age					
First Beneficiary's Age		20	25	30	35	40	45
	40	5.674%	6.740%	7.918%	9.167%	10.426%	11.628%
	45	5.998%	7.191%	8.550%	10.049%	11.628%	13.204%
	50	6.280%	7.583%	9.102%	10.828%	12.719%	14.691%
	55	6.522%	7.917%	9.574%	11.500%	13.674%	16.027%
	60	6.729%	8.199%	9.970%	12.069%	14.491%	17.189%
	65	6.904%	8.431%	10.297%	12.539%	15.172%	18.168%
	70	7.049%	8.618%	10.555%	12.911%	15.718%	18.959%
	75	7.166%	8.763%	10.751%	13.194%	16.137%	19.574%

Assumed: 5% Payout Quarterly (End) and 5.00% May 2025 sec. 7520 rate.

Application: Traditional IRA to 5% testamentary CRUT for life of child (age 65) and grandchild (age 30). Expected number of years until second death = 50.3 (2010CM Mortality Table).

Interest Rate Sensitivity: CRUTs

	7520	Present Value of
Month	Rate	Remainder Interest
May-21	1.20%	41.883%
May-22	3.00%	42.247%
May-23	4.40%	42.523%
May-24	5.40%	42.718%
May-25	5.00%	42.644%

Assumed: Single life CRUT, 5% Payout Quarterly (End); Donor Age 65.

Observation: As interest rates increase, CRUT remainders increase and vice versa.

Interest Rate Sensitivity: CRATs

	7520	Present Value of
Month	Rate	Remainder Interest
May-21	1.20%	16.543%
May-22	3.00%	30.624%
May-23	4.40%	39.079%
May-24	5.40%	44.116%
May-25	5.00%	42.187%

Assumed: Single life CRAT, 5% Payout Quarterly (End); Donor Age 65.

Observation: As interest rates increase, CRAT remainders increase more dramatically and vice versa.

Required Provisions

1. CRATs: The document must specify an annuity amount for a life, lives or a term of up to 20 years.
2. CRUTs: The document must specify a unitrust percentage for a life, lives or a term of up to 20 years. The unitrust percentage cannot be lower than 5% not higher than 50%.
3. A remainder interest must be created in a qualified exempt charity.
4. If the named charity is not qualified exempt at the time for distribution, an alternative charity must be named in the document or selected by the trustee.
5. There must be provisions for calculation of annuity/unitrust amounts in a short initial year and the final tax year.

Required Provisions

6. CRATs: Must prohibit any additional contributions.
7. CRUTs: May permit additional contributions.
8. Must include at least some private foundation prohibitions.
9. If a testamentary trust, it must date back to the date of death, with a provision for corrective payments to include interest for the period of deferral.
10. No investment restrictions may be imposed on the trustee.

Optional Provisions

1. CRATs: The annuity amount may be a percent of the initial net fair market value.
2. With an independent trustee, the annuity/unitrust amount may be allocated among a class of beneficiaries.
3. Based on a “qualified contingency”, part or all of the trust principal may be distributed to a charity. (See the last Will and Testament of Leona Helmsley for an example.)
4. The obligation to pay the annuity/unitrust amount may terminate with the payment prior to the death of the individual beneficiary.
5. A provision that permits the remainder charity to pledge its future interest in the trust as collateral for loans from third parties may be included.
6. A trustee power to invade principal for distributions to the remainder charity before scheduled termination may be included.

Trustee Powers and Duties and Administration Issues

- 10% Minimum Remainder Requirement
- Life CRATs only: 5% Probability of Exhaustion Test
 - Rev. Proc. 2016-42
- Tax Returns (Form 5227)
- Private Foundation Self-Dealing Rules (Sec. 4941)
- Private Foundation Excess Business Holdings Rules (Sec. 4943)
 - Need not apply to CRTs
- Private Foundation Jeopardizing Investment Rules (Sec. 4944)
 - Need not apply to CRTs
- S Corporations
 - CRTs are not permitted shareholders

CRUT Variations

“Income Exception” CRUT Variations

➤ NI-CRUT

- Pays the lesser of trust income or the unitrust amount.
- Preferable when payments of less than 5% of the annual value of the trust are desired.
- Since no ability to invade principal, guarantees that the initial funding amount will be delivered to charity.

➤ NIM-CRUT

- Same as NI-CRUT except that if there are excess earnings over the unitrust amount, any shortfall or deficit in the initial years could be repaid in later years.
- Preferable when shifting income into later years (like a retirement plan) is desired.

CRUT Variations

“Income Exception” CRUT Variations

➤ Flip-CRUT

- Starts as a standard CRUT.
- Converts to either a NI-CRUT or a NIM-CRUT after the happening of a triggering event.
- Any existing NIM-CRUT deficit is forfeited when the trust changes to a standard CRUT on the January 1 after the trigger event.
- Preferable when the expectation is that the income generated by the original donated asset will not be sufficient to fully fund the unitrust amount, but that such will no longer be the case after the original donated asset is sold.

The SECURE Act Opportunity

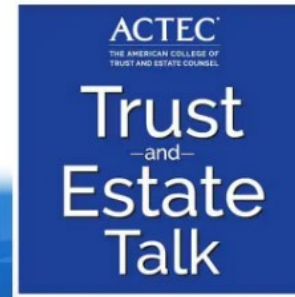
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“And finally, the best tax idea for IRAs that I have ever seen and I believe in is best for last: the charitable remainder trust, used much less than it should be.”

Source: <https://actecfoundation.org/podcasts/ira-estate-planning-tips/>

Sample Trust Forms

CRATs

a. Inter vivos

- i. One life: Rev. Proc. 2003-53
- ii. Term of Years: Rev. Proc. 2003-54
- iii. Two lives (consecutive): Rev. Proc. 2003-55
- iv. Two lives (concurrent and consecutive): Rev. Proc. 2003-56

b. Testamentary

- i. One life: Rev. Proc. 2003-57
- ii. Term of Years: Rev. Proc. 2003-58
- iii. Two lives (consecutive): Rev. Proc. 2003-59
- iv. Two lives (concurrent and consecutive): Rev. Proc. 2003-60

Sample Trust Forms

CRUTs

a. Inter vivos

- i. One life: Rev. Proc. 2005-52
- ii. Term of Years: Rev. Proc. 2005-53
- iii. Two lives (consecutive): Rev. Proc. 2005-54
- iv. Two lives (concurrent and consecutive): Rev. Proc. 2005-55

b. Testamentary

- i. One life: Rev. Proc. 2005-56
- ii. Term of Years: Rev. Proc. 2005-57
- iii. Two lives (consecutive): Rev. Proc. 2005-58
- iv. Two lives (concurrent and consecutive): Rev. Proc. 2005-59

Q & A

The End
Thank You!