



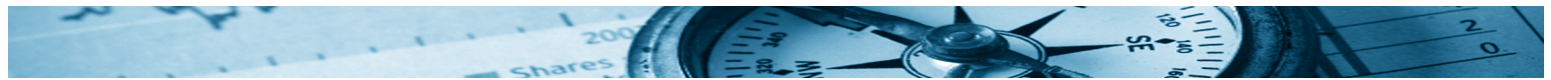
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# Charitable Remainder Unitrust (CRUT)





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## What is it?

A charitable remainder unitrust, or CRUT, is a trust with both charitable and noncharitable beneficiaries. When the trust is created, the charity's interest in the trust assets is a "remainder interest," which means it is second in line to someone else's interest. For this reason, this trust is characterized as a remainder trust. A CRUT works like this:

- You transfer property to a trust. It can be most anything (cash, securities, real property, an original painting).
- You choose a qualified charity (a charity must be a "qualified" one in order for your contributions to be tax deductible).
- You designate a noncharitable beneficiary. This person can be anyone — you, your spouse, your mail carrier.
- You determine, within set guidelines, how much money the noncharitable beneficiary is to be paid each year out of the trust assets. IRS rules require this payment to be at least 5%, but no more than 50%, of the fair market value of the trust assets, which are revalued every year.
- You determine how long the trust will last. It can be for the life of the noncharitable beneficiary (or joint lives for multiple beneficiaries) or for a fixed period of years up to 20 years.
- At the end of the stated period of time, all the remaining trust assets pass to charity.

**Example(s):** Rob decides to donate some money to his favorite crime-fighting charity. He transfers \$200,000 to a CRUT and names his partner, Chet, the noncharitable beneficiary. Rob sets the payment rate at 10% and the life of the trust at 15 years. The result is that every year for 15 years, Chet will receive an annual payment equal to 10% of the value of the trust assets for that year. In the first year, Chet will receive \$20,000, which is 10% of the fair market value of the trust assets for that year. In the second year, if the trust assets increase in value to \$230,000, Chet will receive 10% of this amount, or \$23,000. After 15 years, all the remaining money in the trust will pass to charity.

The distinguishing feature of a CRUT is that the annual payment to the income beneficiary is directly linked to the value of the trust assets and thus fluctuates from year to year. When the trust assets increase in value, so does the annual payment to the income beneficiary. Also, new contributions to a CRUT are allowed. A CRUT can be established to take effect either during your life (a living or inter vivos trust) or at your death (a testamentary trust). A CRUT operates in an identical manner in either situation. The reasons you might choose one over the other include tax consequences and the ability to see your trust in operation. For example, in the living trust situation, you are entitled to an immediate income tax deduction for the present value of the remainder interest that will pass to charity. There are several variations in the world of CRUTs. In addition to the standard CRUT, there is the net income only charitable remainder unitrust (NI-CRUT), the net income with makeup charitable remainder unitrust (NIMCRUT), and the "flip" unitrust (Flip-CRUT). Unless otherwise noted, this discussion pertains to the standard CRUT.

**Caution:** On March 30, 2005, the Treasury and the IRS announced that for CRUTs created on or after June 28, 2005, a donor's spouse may be required to sign an irrevocable waiver of his or her right to elect a statutory share of the donor's estate, and that failure to do so may result in the CRUT failing to qualify for tax exempt status, and the donor may be unable to take the initial income tax deduction. The Treasury and the IRS have since extended the safe harbor date of June 28, 2005, pending further guidance from the IRS. See IRS Rev. Proc. 2005-24 and Notice 2006-15 for more information, and consult a tax professional.

## When can it be used?

**You want to donate to charity but want a noncharitable beneficiary to receive an income stream for life or a period of years**

By establishing a CRUT, you can donate to your favorite qualified charity and reap some tax benefits while simultaneously retaining an income stream provided by the donated assets. The income stream is in the form of an annual payment that is a fixed percentage of the value of the trust assets for that year. The payment is made to your designated beneficiary at least once per year.

## Strengths

### **Provides income tax deduction**

When you establish a charitable remainder unitrust (CRUT) during your lifetime, you receive an immediate income tax deduction for the present value of the remainder interest that will pass to charity (assuming you itemize deductions). This deduction is available even though the charity may not benefit from your gift for many years. Your deduction is limited to 20%, 30%, or 50% of your adjusted gross income, depending on the type of charity and the type of property donated to charity (via the trust). (For 2018 to 2025, the 50% limit is increased to 60% for certain cash gifts.) However, any deduction that cannot be used because of the adjusted gross income limitations may be carried forward for up to five years.



### ***Provides an income tax haven for assets that have appreciated substantially***

There is no IRS rule that says you must be 100% charitably motivated to establish a CRUT. Thus, it's perfectly acceptable, and even preferable, to set up a CRUT and fund it with an asset that has appreciated substantially in value (for example, stock, a closely held small business, or real property). When the trust sells the asset, it pays no capital gain or income taxes on the sale. The trust can then invest the proceeds and provide you or your designated beneficiary with an income stream from a much larger principal than if you had sold the asset yourself and paid capital gain tax. The income beneficiary of the CRUT must include annual distributions in gross income.

**Example(s):** Steve, a bachelor, owns \$200,000 of stock in an apparel company that he purchased 20 years ago for \$10,000. If he were to sell the stock now, he would owe capital gain tax of nearly \$28,500 (assuming a capital gains tax rate of 15% and no other variables), leaving him only \$171,500 to invest. Instead, Steve can set up a CRUT and use his stock to fund it. The trust can then sell the stock and reinvest the entire \$200,000, which is exempt from capital gain tax.

**Caution:** At one time, creative individuals established CRUTs that sought to convert highly appreciated assets into cash while at the same time avoiding a substantial portion of tax on the gain. These CRUTs, called "accelerated CRUTs," had a short life (two or three years) and paid out a high percentage of the trust assets each year. With creative accounting practices, the income beneficiary received nearly the entire amount of the asset donated to the trust with only minimal capital gain tax. Accelerated CRUTs are no longer allowed under current law.

### ***Allows for the additional contribution of assets***

The IRS allows you to contribute to a CRUT as often as you wish. So, if you fund your CRUT with a large amount of cash and then later decide you want to add your stamp collection, you can. The advantage is you can increase the annual payment to the income beneficiary by donating more assets to the trust, because the beneficiary's payment is based on the value of the trust assets. You can even "pour over" future bequests from your will into the CRUT.

**Example(s):** Melissa establishes a CRUT with three prized paintings. Two years later, she writes her will and, among other provisions, specifies that her three prized paintings are to be added to the CRUT. The result is that on her death, the paintings will be added to the trust.

### ***Allows annual payment to increase when value of trust property increases***

Because the annual payment is linked to the value of the trust assets, it can increase when the value of the trust property increases. The trust assets are revalued every year on the same date (the revaluation date), at which time the new payment for the year is determined. So an income beneficiary can benefit from a skilled trustee who, through wise investments, increases the value of the trust assets.

### ***Provides you with positive social, religious, and/or psychological benefits for donating to your favorite charity***

Yes, the tax benefits can be great. In addition, donating to charity can be a real morale booster.

### ***Reduces potential federal estate tax liability***

If all the requirements of a CRUT are met, the IRS allows the executor of your estate to deduct the present value of the remainder interest that will pass to charity from your gross estate. This will reduce the size of your gross estate. Essentially, once the value of the charity's interest is determined (using special IRS tax tables), the entire amount may be deducted from your gross estate.

**Example(s):** In his will, Matt establishes a CRUT for the life of his friend Jill, with the remainder to go to an animal humane society. Assuming that the present value of the remainder interest to charity is \$75,000, Matt's estate executor Dick will be entitled to subtract \$75,000 from Matt's gross estate. However, the value of the income stream to be paid to Jill will be included in Matt's gross estate.

## **Tradeoffs**

### ***Requires an irrevocable commitment***

If you have any doubts about donating to charity, you should think twice before establishing a CRUT. Once you fund it, there's no turning back. You can't even amend a CRUT once the ink is dry and it's properly executed (though you can change the charity).

### ***Assets donated to charity are assets lost to your family***

Once you decide to donate a portion of your estate to charity with a CRUT, these assets are forever removed from your inheritable estate.

**Tip:** This reality has prompted the creation of "wealth replacement trusts," so called because their purpose is to replace the wealth lost to your family. A wealth replacement trust is often an irrevocable life insurance trust (ILIT). The idea is that the donor uses part of the income stream generated by the CRUT to pay premiums on a life insurance policy in an amount roughly equal to the amount to be passed to charity. The policy is then held in trust and distributed to the family on the donor's death (free of income tax), thus "replacing the wealth."





### **Involves more complicated administration**

The administration of a CRUT is more complicated than the administration of its sister, CRAT (charitable remainder annuity trust). For one thing, the IRS requires the trust assets to be revalued annually. Also, the trustee must account for and value any new property that is contributed to the trust.

### **Annual payment may decrease when value of trust property decreases**

Because the annual payment is linked to the value of the trust property, it can decrease in amount when the trust property decreases in value due to poor investment performance.

**Tip:** However, the IRS permits, but does not require, the invasion of principal (or capital gains) if the actual income earned by a CRUT in a given year is insufficient to meet the required payment. So, if the income beneficiary is your mother-in-law and she could use the money, the trustee has the ability to invade the principal.

### **Value of charity's remainder interest at time of creation of CRUT must be at least 10% of trust assets**

The present value of the remainder interest to charity must be at least 10% of the value of the property contributed to the trust as of the date of each contribution. This figure is determined by using special IRS tax tables, which take into account the age of the income beneficiary, the amount of trust assets, and the specified percentage rate. This rule prevents you from setting up a CRUT with payments over the life of a very young income beneficiary. In such a scenario, it is possible that by the time the income beneficiary died, there would be nothing remaining for the charity.

**Example(s):** A 48-year-old donor would be prohibited from setting up a 9% CRUT for the donor's lifetime (assuming a 3% interest rate) because the remainder value for charity, using the IRS tax tables, would be only 9.933%.

## **How to do it**

### **Consult a competent legal advisor**

A legal professional well versed in the area of charitable remainder unitrusts (CRUTs) should be consulted. A CRUT is subject to many technical requirements and must be drafted with the utmost care in order to gain favorable tax benefits. Often, additional advisors (such as tax professionals, accountants, and/or CERTIFIED FINANCIAL PLANNERS™) will be necessary to devise the best strategies and analyze the numbers.

### **Pick a noncharitable beneficiary**

The noncharitable beneficiary can be you, a spouse, another family member, or a friend. You can pick more than one noncharitable beneficiary.

**Tip:** If you and your spouse, or your spouse, are the only noncharitable beneficiaries, the interest transferred to your spouse qualifies for a gift tax or estate tax marital deduction.

**Caution:** If you set up a lifetime CRUT with a very young income beneficiary, make sure you satisfy the rule that the value of the charity's remainder interest at the time of the creation of the CRUT is at least 10% of the trust assets.

**Caution:** For a lifetime CRUT, if the noncharitable beneficiary is other than you or your spouse, you have made a gift for federal gift tax purposes, part of which may qualify for the annual gift tax exclusion. If you are the grantor and a beneficiary of the CRUT and die during the trust term, the CRUT will be included in your gross estate for federal estate tax purposes, but will generally qualify for a charitable deduction and, if your spouse is the only other noncharitable beneficiary, a marital deduction.

### **Pick a charity you wish to donate to and verify that it is a "qualified charity"**

The IRS allows you to deduct contributions only to qualified charities. Generally, qualified charities are those operated exclusively for religious purposes, educational purposes, medical or hospital care, government units, and certain types of private foundations. Every year, the IRS publishes a list of all qualified organizations in IRS Publication 78, commonly known as the "Blue Book." Check to make sure your charity is listed in this publication.

**Tip:** Once you have picked a charity, IRS regulations require you to choose an alternate charity in case the one you picked is not in existence when the trustee is to deliver the trust assets.

**Tip:** Once you have picked a charity, it is a good idea to contact the charity to make sure it is willing to accept such a gift.

**Tip:** Alternatively, the IRS does not require you to pick a charity when the CRUT is established. You can thus set up a fully operational CRUT and reserve the choice of charity for a future date. However, the trust must set forth the specifics of when and how the charity will be identified. Be sure the charity you ultimately pick is a qualified one.

### **Identify the asset(s) you want to use to fund the trust**

You can use any type of property to fund the trust (e.g., cash, securities, real property, life insurance, a rare collectible in excellent condition).

**Caution:** While you can use any type of property to fund the trust, restrictions associated with certain types of property may



effectively prevent their use. For example, stock in a closely-held business is often subject to a buy-sell or other agreement that restricts to whom the stock can be transferred. As another example, certain types of trusts are not able to be S corporation shareholders; effectively, this means you would not be able to fund a CRUT directly with S corporation shares.

**Tip:** It is preferable to transfer an asset that has appreciated substantially in value because the trust is exempt from capital gain tax on the sale of any property.

**Tip:** Most CRUTs pay the income beneficiary on a quarterly basis, in which case the beneficiary will begin receiving income a few months after the CRUT's inception. This arrangement can pose problems for the trustee. If the asset you use to fund the trust takes some time to sell, the trustee will not have the cash available to pay the beneficiary. So, it is a good idea to fund the CRUT, at least in part, with marketable securities and/or cash. You don't want to place a parcel of real estate in the trust and assume a quarterly payment will be forthcoming to the beneficiary.

**Tip:** If you name yourself trustee of your CRUT, or if the noncharitable beneficiary or a related party (as defined by the IRS) is the trustee, the IRS requires you to obtain a "qualified appraisal" for all "unmarketable assets." Unmarketable assets are those that are not cash, cash equivalents, or marketable securities (e.g., a closely held business or real property). This rule is to prevent self-dealing in the appraising of hard-to-value assets.

#### **Set the annual valuation date for the trust assets**

The trust assets are revalued once every year on the same date. This is called the "valuation date," and it is set in the trust document. IRS regulations allow the unitrust amount to be paid within a reasonable time after the close of the year. Consequently, you can pick December 31 as your annual valuation date.

#### **Determine how long the trust will be in existence and set the payment rate**

You control the duration of the trust. The trust can be in existence for the life of the noncharitable beneficiary (or joint lives for multiple beneficiaries) or for a fixed period of years up to 20 years. The payment rate is set as a specified percentage of trust assets, which are revalued every year. Once the percentage amount is set, it remains the same over the life of the trust. It must be at least 5%, and no more than 50%, of the fair market value of the trust assets for that year.

**Caution:** Once you establish the duration of the CRUT and the payment rate, you must analyze the numbers to make sure you comply with the rule that the present value of the charity's remainder interest be at least 10% of the trust assets.

#### **Select a trustee**

Once an asset has been transferred to a CRUT, it is the trustee's responsibility to manage, invest, and conserve this property. The trustee has a dual fiduciary responsibility: to generate income for the noncharitable beneficiary and to preserve the trust assets for the charity. It helps to choose a trustee who is experienced and well versed in the area of CRUTs.

**Tip:** If you want to appoint the charity as trustee, it is a good idea to contact the charity to make sure it is willing to serve in this capacity.

**Caution:** You can appoint yourself trustee. However, you are then responsible for investing the assets to produce income sufficient to make the required payment to the income beneficiary. In addition, as trustee, you are required to keep abreast of and comply with new IRS regulations on CRUTs in order to gain favorable tax benefits. You are also responsible for valuing all new property donated to the trust.

**Tip:** If you are both trustee and income beneficiary, some states require that a cotrustee be appointed who is not a beneficiary.

#### **Coordinate the CRUT with your existing will and/or living trust**

It is a good idea to make sure your CRUT is coordinated with any other estate planning documents to achieve an integrated plan. A competent professional should undertake this review.

#### **File Form 5227 — Split Interest Trust Information Return**

Even though a CRUT is exempt from federal income tax, you must still file Form 5227 (Split Interest Trust Information Return) every year the CRUT is in existence. Further, if it is your first year filing Form 5227, you must also include a copy of the trust instrument and a written declaration that the document is a true and complete copy.

## **Tax considerations**

### **Income Tax**

#### **Income tax deduction for donor of charitable remainder unitrust (CRUT) established during donor's lifetime**

If you itemize deductions, the IRS allows you to take an immediate income tax deduction for the present value of the remainder interest that will pass to charity. You are entitled to receive the deduction in the year that you establish the CRUT, even though the charity may not benefit from your gift for several years.

Your allowable deduction for the given year is limited to either 50%, 30%, or 20% of your adjusted gross income (AGI), depending



on the type of property donated to charity (via the trust) and the classification of the charity as either a public charity or a private foundation. (For 2018 to 2025, the 50% limit is increased to 60% for certain cash gifts.) If you cannot take the full deduction in the given year, you may carry over the difference for up to five succeeding years (assuming you still itemize deductions in those years).

**Tip:** Generally, a "public charity" is a publicly supported domestic organization, whereas a "private foundation" does not have the same broad base of public support. IRS Publication 78 notes whether a charity is a public or private one.

**Technical Note:** The amount of your deduction is calculated using special interest rate tables established by the IRS. The current rules require the value of a remainder interest to be calculated in a certain fashion. It is calculated by using an interest rate that is 120% of the federal midterm rate then in effect for valuing certain federal government debt instruments for the month the gift was made. In addition, the calculation uses the most recent mortality table available to determine the mortality factor. Special computer programs now exist to make this calculation easier.

**Example(s):** Tammy, a 67-year-old woman, places \$250,000 in a CRUT. She designates herself income beneficiary for life and sets an annual payment of 9% of the trust assets, with payments to be made quarterly (at the end of each period). Assuming a 3% interest rate (using the IRS tax table described above), her allowable income tax deduction using the tax tables is \$73,390. If Tammy's AGI for the year is \$80,000 and her charity was a public charity (allowing for a 50% deduction), Tammy will have an allowable income tax deduction of \$40,000 for the current year. The remaining \$33,390 (the difference between her authorized deduction and her allowed deduction) is then carried over to subsequent years. In the second year, Tammy can deduct \$33,390 (assuming her AGI remains the same and she still itemizes deductions).

#### **Income tax consequences for income beneficiary of CRUT**

If you are the income beneficiary of a CRUT, you will owe income tax on any income payments you receive. So, although a CRUT can escape capital gain tax on the sale of an asset, this benefit does not pass on to you. You must pay income tax on any part of this income that is distributed to you.

The IRS uses a special accounting procedure to determine the tax on the income distributed to you.

#### **Gift Tax**

##### **No gift tax if you and/or your spouse are sole beneficiaries**

If you and/or your spouse are the only income beneficiaries of a CRUT, you do not owe gift tax. The income stream to your spouse falls under the unlimited marital deduction.

**Caution:** In community property states, husband and wife are treated as equal owners. If community property is used to fund a trust that benefits only one spouse or if separate property of one of the spouses is used to fund a trust that provides lifetime benefits to both parties, there is a recognized gift to the other spouse. This may have implications under the particular state's gift tax law.

##### **Possible gift tax if someone other than spouse is beneficiary**

If the income beneficiary of a CRUT is someone other than you or your spouse or in addition to you or your spouse, gift tax rules come into play. The present value of the income stream to the beneficiary is determined at the time the gift is established. If the value is more than the \$16,000 (in 2022) annual gift tax exclusion, a gift tax must be paid, unless a portion of your applicable exclusion amount (\$12,060,000 in 2022) is available to offset the tax due.

**Caution:** Any portion of the gift tax applicable exclusion amount you use during life will effectively reduce your estate tax applicable exclusion amount that will be available at your death.

#### **Estate Tax**

##### **Reduces size of gross estate**

One of the best features of a CRUT is its ability to reduce the size of your gross estate. When you establish a testamentary CRUT, the executor of your estate can deduct the present value of the remainder interest being left to charity from your gross estate. The smaller your gross estate, the less chance you have of owing estate tax.

**Example(s):** Gary establishes a testamentary CRUT. Assume that at his death, the present value of the charity's remainder interest is determined to be \$150,000 (using special IRS tax tables). Consequently, the executor of Gary's estate will be entitled to deduct \$150,000 from his gross estate.

**Caution:** If you are the grantor and a beneficiary of the CRUT and die during the trust term, the CRUT will be included in your gross estate for federal estate tax purposes, but will generally qualify for a charitable deduction and, if your spouse is the only other noncharitable beneficiary, a marital deduction.

## **Questions & Answers**

**Can you establish a charitable remainder unitrust (CRUT) and name yourself the sole income beneficiary?**





Yes, you can be both the donor and the sole income beneficiary. However, once you establish a CRUT, it must still be irrevocable, even if you are the income beneficiary.

**Can you name more than one income beneficiary?**

Yes, you can name more than one income beneficiary. However, if you create a CRUT with a life term for each beneficiary, you may run afoul of the rule requiring the present value of the remainder interest to charity to be at least 10% of the trust assets. For example, a husband and wife, each 50 years old, would be disqualified from establishing a CRUT for their lives if the annual payment amount were more than about 6.6% of the trust assets.

**Can you choose more than one charity as the charitable beneficiary?**

Yes, you can choose more than one charity as the remainder beneficiary, as long as the trust document sets forth your right to do so and specifies how the trust assets will be distributed. Of course, you must make sure that the second (or third or fourth) charity constitutes a "qualified organization" under IRS rules. Otherwise, you risk losing favorable tax treatment.

**Can you replace the trustee during the life of the CRUT?**

Yes. As long as the trust agreement provides for it, you can replace the trustee.

**You are the income recipient of a CRUT. How does the IRS determine the income tax you will pay on this distribution?**

The extent to which the payment is taxable depends on the character of the payment, which in turn is determined under a special income tax calculation formula unique to charitable remainder trusts. Charitable remainder trusts include charitable remainder annuity trusts (CRATs) and CRUTs.

**Technical Note:** The IRS uses a four-tier accounting procedure, also called the "ordering rules," to determine the tax character of the income distribution to the beneficiary. The acronym used to describe this accounting rule is WIFO, which stands for "worst in, first out." The amounts distributed by a CRUT are classified as follows:

- Ordinary income, to the extent of ordinary income earned by the trust in the current year, along with any undistributed ordinary income from prior years (ordinary income includes dividends)
- Capital gain (including qualified dividends), to the extent of the capital gains earned by the trust in the current year, along with any undistributed capital gain from prior years
- Nontaxable income, to the extent of the nontaxable income earned by the trust in the current year, along with any undistributed nontaxable income from prior years
- Principal

The highest tax the IRS imposes is on ordinary income. If the required annual payment cannot be paid out of ordinary income, it is then paid from capital gains. If the payment still cannot be met after exhausting capital gains, it is paid from tax-exempt income and finally, if necessary, from the principal of the trust.

**Tip:** The trustee must keep track of all sales and gains by the trust in order to make these calculations. This is a daunting task often completed by a computer tracking system. This is one more reason to question whether you really want to appoint yourself trustee.

Also, the IRS cares about the type of property you use to fund the CRUT. If you contribute nonappreciated property (like cash), the payment to the income beneficiary constitutes a return of principal, and no income tax is due. By contrast, if you contribute appreciated property (like stock), the payment from principal has income tax consequences for the income beneficiary. The income tax will be in the form of a capital gain tax to the extent that any part of the payment is attributable to gains that were untaxed prior to the asset being transferred to the trust. In other words, the donated asset carries with it the tax characteristics that existed prior to the asset being transferred to the CRUT.

**What is an "accelerated CRUT?"**

An accelerated CRUT is no longer permitted under current law. Under prior law, an accelerated CRUT was a standard CRUT with an extremely short term (two or three years) and an "accelerated" payout. It was funded with an asset that had appreciated substantially in value. Using creative accounting practices, the donor got back as much value of the asset as possible, free of capital gain tax.

**Example(s):** Ron sets up a CRUT in January of year one with \$500,000 of stock he purchased 20 years ago for \$50,000. Ron designates himself income beneficiary, sets the life of the trust for two years, and sets the annual payout rate at 80%. Suppose that in year one, the trustee does not sell the stock. Thus, the trust has no income for year one. Ron, however, is still owed a payment of \$400,000 (80% of \$500,000). Under old IRS rules, the trustee was allowed to pay the income beneficiary "within a reasonable period of time after the close of the taxable year." So here's where the creative accounting comes into play. In January of year two, the trustee sells the stock and receives \$500,000. Shortly thereafter, the trustee pays Ron \$400,000 to satisfy the year one payout requirement. The trustee also makes a separate payment to Ron of \$80,000, which is the required payout for



year two (80% of the remaining \$100,000). At the end of year two, the remaining \$20,000 passes to charity.

**Example(s):** Here is the result based on a literal reading of the ordering rules the IRS uses to characterize income paid out to an income beneficiary. The \$400,000 payout in year one is classified as a return of principal because the trust did not have any current or prior undistributed ordinary income, capital gain, or tax-exempt income in year one (because the trustee had not yet sold the stock). So Ron enjoys the entire \$400,000 free and clear of all taxes. The \$80,000 payout in year two is treated as capital gains income (because the trust had capital gains income in year two from the sale of stock), so Ron must pay a capital gain tax of \$12,000 ( $15\% \times \$80,000$ , assuming no other variables). The end result is that through the trust, Ron has sold a \$500,000 asset with a \$50,000 cost basis and ended up with \$468,000 in cash (as well as a charitable contribution deduction in year one). By contrast, if Ron had sold the stock himself, he would have owed higher capital gain taxes.

Recently, the IRS implemented a new regulation that has effectively shut down this accelerated CRUT technique. Specifically, the IRS now requires all CRUTs and CRATs (charitable remainder annuity trusts) to distribute the annual payment to the income beneficiary in the taxable year when the payment is due.

So, in the above example, the trustee would have had to pay out \$400,000 in year one. To do so, the trustee would have had to sell the stock, thus generating capital gain income in the same year as the distribution. So the \$400,000 would be subject to capital gain tax.

Only standard CRUTs and CRATs are affected by this rule. Thus, NI-CRUTs (net income charitable remainder unitrusts) and NIMCRUTs (net income with makeup charitable remainder unitrusts) will still be allowed to make any required payment to the income beneficiary within a reasonable time after the close of the taxable year.

#### ***What are the advantages of using a CRUT over a CRAT (charitable remainder annuity trust)?***

Although a CRAT and CRUT are both charitable remainder trusts, there are differences between them. A CRAT pays out to the income beneficiary a fixed amount every year for the life of the trust. The amount is set as a percentage of the trust assets, which are valued only once at the inception of the CRAT. If the amount cannot be paid from the current income earned by the trust, the principal must be invaded. By contrast, a CRUT pays out a fixed percentage of the value of the trust assets every year, which is determined on an annual basis. So the payment fluctuates with the value of the assets. A CRUT will often provide that if the payment cannot be paid from the current income earned by the trust, the principal may, but need not be, invaded. If the trust assets appreciate substantially, the noncharitable beneficiary will receive a greater payout. Second, once a CRAT is funded, additional contributions of property are prohibited. By contrast, new property can be added to a CRUT. These differences make the CRUT more complicated and more difficult to administer.



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