Cross-Border Philanthropic Strategies

EXECUTIVE SUMMARY

This whitepaper serves as an introduction to developing a cross-border philanthropic strategy to maximize charitable donations, including:

- Plan Philosophy
- Designing a Plan: Tax Strategy
- Implementing a Plan: Donor Advised Funds, Private Foundations, Qualified Charitable Distributions, and Trusts

INTRODUCTION

“Charity begins at home”: For Americans abroad who have different notions of home or have had several homes in multiple countries, this simple axiom becomes more complex. Moreover, although charity begins at home, as theologian Thomas Fuller noted, “it should not end there”—the benefits of giving to charity far outweigh the complications for expats. Philanthropy can play a rewarding role in the lives of Americans abroad who wish to share some of their success to impact their new “home” by supporting charitable and educational causes. Indeed, the chance to donate their time and expertise in a different country and culture is what
motivates many Americans to move abroad in the first place. Moreover, philanthropy can also serve as an important tool in tax and legacy planning for reasons that go beyond simply limiting tax exposure. Whatever the particular philanthropic objective, navigating the challenges successfully through a well-developed philanthropic plan (including maximizing the tax deductions in the various countries involved), combined with an effective implementation strategy using the various tools at hand, will maximize the impact of charitable giving.

**DEVELOPING A PHILANTHROPIC PLAN**

As with investing, the best way to ensure successful charitable giving while abroad is to establish a comprehensive plan that addresses present circumstances and goals and anticipates future changes. While no plan can account for all of the changes in the life of an American abroad, a plan developed with knowledge of cross-border gifting issues can help Americans navigate these challenges as well as the various tax, estate, and regulatory issues involved.

The first step is to think about why contributions are being made. In addition to tax benefits, there are several common reasons people donate, the most relevant for financial planning are:

- **Impulse:** This describes giving that is spur-of-the-moment. The impulse philanthropist will give to many causes in a variety of places. Despite the fact that such giving is “unplanned,” a charitable giving plan can be developed around someone who prefers such “impulse” gifts.

- **Impact:** Impact philanthropists have a belief that their gift will significantly help a specific charity or solve a particular problem. If a gift’s impact is a particularly important motivation, families, giving, and financial education

Charitable giving can be an important tool in helping children and grandchildren understand investing and can also build cohesion amongst family members to avoid difficulties when an estate is passed on. Through vehicles such as a Donor Advised Fund or Private Foundation (see below), families can not only discuss the principles of investing and building wealth around these charitable funds, but also discuss the aims of wealth and their views on money as a family. By involving the children and grandchildren in decisions involved in charitable giving, a parent or grandparent cannot only pass on the practical knowledge of saving, investing, and financial planning, but also their philosophical views about these issues. Parents and grandparents can also identify possible sources of disagreement amongst family members in these conversations and prepare their estate plan accordingly. Additionally, allowing the various family members to discuss and provide input about the donation and management of this fund, a parent or grandparent can ensure that a wealth of experience can be passed on along with money.
a donor may focus on a smaller or more local charity. The donor will also likely focus her giving on fewer charities and less frequent giving. For instance, an American abroad might wish to give to the local heritage museum after her death.

- **Mission:** The mission philanthropist wishes to give to charities that have a vision consistent with her own or address a problem that she thinks is important. For instance, a donor may think that potable water in Africa is important and will give to several charities that support this goal in a variety of countries. In this case, a donor may give over a long period of time to many different organizations. Many times “mission-based” giving emerges from an individual’s own biography (for instance, a relative’s battle with a disease) or to encourage a charitable spirit in her children.

Thinking about the rationale for giving is integral to an overall gifting strategy. Such a strategy should also consider whether the gifts will be made while alive or posthumously: mission-dedicated philanthropy can extend across generations, while an impact philanthropist may wish to solve an immediate problem. By considering whether she wants to give all at once to one place or frequently to many places, a cross-border philanthropist can begin to select the gifting tools and strategies that best correspond to her goals.

**DESIGNING A PLAN: TAX STRATEGY**

Analyzing one’s motivations for giving can help answer more practical questions about where and when one gives. Once these questions have been answered, cross-border philanthropists need to begin considering the various strategies a charitable plan can incorporate. Proper use of these strategies can ensure that these goals met, and that giving is done in the most efficient way possible in all countries involved.

**Tax Strategy: IRS Rules on Gifts**

Charitable gifts during one’s lifetime can bring both immediate gratification and immediate tax relief in the form of an income tax deduction. However, an expat must learn the rules regarding the charitable deduction in the U.S. and her country of residence. This section will set forth basic points regarding the U.S. charitable income tax deduction.
The charitable deduction is a “below-the-line” deduction, meaning the deduction can only be claimed if deductions are itemized. In short, a taxpayer cannot claim the standard deduction and claim charitable deductions.

It also important to make sure that the contribution is made to a “qualified organization” (see the website for IRS Publication 78 data for a complete list). Next, one needs to determine whether a charity is public or private. Public charities are those qualified organizations that receive broad public, and often governmental, support, including public and private schools and educational/research foundations, religious institutions, hospitals and medical research organizations (e.g., the American Cancer Society). Purely private charities derive the lion’s share of their support from a relatively small group of individuals, such as a wealthy family (e.g., the Ford Foundation). Some charities that are technically private (such as certain private operating foundations, private charities that fund public charities and private operating foundations such as donor advised funds) are treated like public charities under many of the charitable deduction rules; basically, if the private charity uses its donations to fund public charitable causes, contributions to these charities may receive the more beneficial rules applied to donations to public charities.

The rules for cash contributions are relatively straightforward. A donor may receive a present-year deduction for contributions to public charities of up to 50% of her Adjusted Gross Income (AGI), but contributions to purely private foundations are entitled to present-year deductions up to 30% of AGI, and combined public and private charitable deductions are capped at a maximum of 50% of AGI for the current tax year. However, as of the 2015 tax year, there are limits on itemized deductions for higher earners (AGI above $258,250 filing single, $309,900 for joint filers), so the percentage of AGI limit may be considerably lower than 50%. If your generosity exceeds the AGI limitations for a present-year deduction, the non-deducted excess can be carried forward for up to five years.

Donations of a highly appreciated stock or other property such as real estate, art from your collection, etc., can take advantage of two tax incentives:

- a deduction of up to 30% of AGI (contribution to public charity, etc.) or up to 20% of AGI (contribution to purely private foundation) of the fair market value of the property at the time of the contribution; and
- avoidance of the capital gains taxes that would apply to taxable dispositions of the asset

Note that, if the gains are more modest in the stocks/bonds/other assets but the overall contributions will be a more considerable part of AGI, a donor may elect to value the gift at its original basis rather than market value, in which case the limitations for cash contributions (50% public/30% purely private) apply.

Finally, special rules apply to donations of other types of properties, such as automobiles or busi-
ness (i.e., depreciable assets) property, and donors need to be aware of the IRS rules governing substantiation of the valuation of contributions, both cash and non-cash alike. For more information, see IRS Publication 5115: Charitable Contributions.

**Tax Strategy: Cross-Border Giving**

A major consideration facing charitable donors who live overseas is that their gift may not receive a charitable deduction in their country of residence or, should they give to a charity in their country of residence, a deduction in the United States. However, because Americans abroad can largely avoid double taxation (via the Foreign Earned Income Exemption (FEIE) or tax credits), the most tax-efficient solution this dilemma is determining where the expat owes taxes: if an American abroad has no American tax liability (either because of the FEIE or because they live in a higher tax jurisdiction), giving to a charity in their country of residence for tax purposes is the most tax-efficient strategy.

If an expat taxpayer has a U.S. tax burden, but still wishes to give to a charity abroad, there are several simple solutions. First, the donor may give to a U.S.-based charity that does charitable work in the country of residence. Additionally, many foreign charities and organizations are listed as “Friends of” groups and are organized in a way to ensure that the donations are tax deductible in the United States. Moreover, several countries have bilateral gifting agreements with the United States (Canada, Mexico and Israel), so that contributions to a charity in one country can be deducted from the income tax paid in another.

Additionally, bequests (gifts made upon death) that are used to reduce the amount of estate tax owed can be made to “any corporation" organized for charitable purposes with no national or geographic restrictions in the United States. Because charitable bequests are not limited in the United States and in several countries with which the U.S. has treaties, this solution can significantly lower the tax exposures for an American living in a jurisdiction with higher estate taxes or lower tax exemption thresholds than in the U.S. Additionally, in six countries (Canada, Denmark, France, Germany, Greece and Sweden), contributions to U.S. entities can also be used to reduce the estate taxes in

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**Estate Tax Deduction Guidelines**

- The charitable estate tax exemption requires that the decedent has truly made a charitable bequest, rather than provided discretion for the administrator to make a charitable distribution.

- The charitable distribution must occur to secure the estate tax deduction.

- With limited exceptions, an estate may claim a deduction for a charitable contribution on the estate’s annual federal income tax return or the federal estate tax, but not both.

- Charitable bequests are not limited to some percentage of the taxable estate. In short, there are also no rules limiting the value of the deduction.
those countries. In these instances, a planned posthumous gift (in the U.S. or abroad) may help reduce estate or inheritance taxes. Ultimately, however, whenever one is doing estate planning of this nature she should consult with experts in the United States and in her country of residence.

**Implementing a Plan**

For most Americans, the tax benefits of lifetime gifting are particularly appealing, because of the ability to accomplish both an immediate income tax reduction, as well as a reduction of the ultimate taxable estate upon death. However, in the cross-border environment of the U.S. expat, the availability of a charitable deduction for bequests to foreign charities on the U.S. federal estate tax return, but not on the U.S. federal income tax return, is an added wrinkle. Ultimately, an expat’s charitable gifting plan should be thoughtfully designed to maximize the client’s charitable objectives, which in part means attaining maximum tax benefits on a global basis. Fortunately, there are several other financial and estate planning solutions available to donors who wish to approach their gifts in a more systematic manner. Each of these approaches can be useful to Americans abroad in a variety of ways to help them avoid or manage their tax burden, but each should be considered carefully in light of one’s charitable goals and tax burdens.

**Qualified Charitable Distributions**

Qualified charitable distributions (QCD) are a simple method of managing charitable giving that were made a permanent part of the U.S. tax code in late 2015. Consequently, they can now be an ongoing part of one’s taxable gifting strategy.

A QCD is a distribution from an IRA or other qualified retirement account made directly to a charitable organization. While such contributions are limited to $100,000, they provide a major advantage to taxpayers over withdrawing the money from an IRA and then contributing, because a QCD does not increase the donor’s AGI. Consequently, this can help lower taxes on other income or allow one to take a larger deduction than is otherwise possible. There are several limitations on such contributions:

- The donor must be over 70 1/2 and thus be taking Required Minimum Distributions (RMDs), but the RMD amount can be included in the QCD and avoid taxation
- Because IRAs are owned individually, not
jointly, gifts cannot be “split” amongst couples: one spouse cannot contribute $200,000 from her IRA and then claim $200,000 in deductions as gifts from the couple

- The gift must be made to a charity that qualifies for an individual charitable income tax deduction, but is not a supporting organization (as defined in IRS section 509(a)(3)).

Additionally, because there is no method for fixing mistakes in the QCD process (and a mistake would cause the tax deduction to be forfeited), care should be taken when distributions are made from the IRA trustee to the charity in question. Fortunately, many trustees have established a defined process for QCDs in order to minimize the chance for a mistake.

The QCD can help a cross-border investor in several ways, especially if she does not need the full income from these required distributions. First, IRA withdrawals are taxed at a taxpayers’ income tax (rather than the lower capital gains tax rate); consequently, donating in this manner is more tax efficient and can allow an investor to avoid the complications that can arise in paying taxes on cross-border IRA distributions. For example, a Non-Resident Alien (NRA) has a mandatory 30% withholding on these withdrawals. In contrast, a NRA would not pay U.S. Capital Gains on the sale and withdrawal of brokerage assets. By donating the IRA contributions directly to charity through a QCD, an NRA can avoid the significant dilution of their portfolio caused by more onerous tax treatment of IRAs.

**Private Foundations**

While they cannot receive QCDs, private foundations are another valuable tool for wealthy philanthropists. Private foundations (as opposed to public charities) are closely-held and supported organizations wholly dedicated to charitable purposes. Private foundations have the most leeway in making charitable contributions and allow for the widest variety of investment choices. However, with this freedom come a number of legal restrictions and compliance requirements that mean that the operation of a private foundation should not be considered except for the wealthiest of philanthropists. Foundations are responsible for significant tax reporting documentation, along with compliance reporting regarding themselves and the charities to which they give. Moreover, by law, 5% of the foundation’s assets must be distributed each year. This, coupled with the significant administrative costs of 2.5% to 4% plus the initial legal and organizational fees involved in establishing a foundation, means that a foundation must have a sizeable general fund (recommended between $1 million and $10 million minimum) in order to cover its expenses.

**Donor Advised Funds**

In light of their significant regulatory and tax compliance requirements, private foundations have lost some of their appeal among wealthy philanthropists. In their place, many philanthropists have turned to Donor Advised Funds, which are easier to establish and less costly to maintain.

Donor Advised Funds (DAF) are run by a U.S. pub-
lic charity (registered as a 501(c)3)), and they are frequently either run by the charitable arm of a brokerage services company (Schwab Charitable or Vanguard Charitable, for example) or by a large charitable organization (e.g., United Way International). An individual will make a large up-front contribution (either in cash or securities) to a Donor Advised Fund (usually more than $5,000 or $25,000), while retaining the right to advise the fund on how and where to contribute these funds. This initial contribution is tax-deductible (up to the tax limits) in the year that it is made and is not dependent on when the subsequent charitable grants are made. However, as a supporting organization, Donor Advised Funds are ineligible for QCDs (see above).

Within the DAF, the assets donated to the Fund will be invested either in a pre-constructed portfolio or at the discretion of the donor, thus allowing them to continue to appreciate and increase the amount available for donation. After the gift has been invested, these DAFs will then allow the donor to advise them to make contributions to a domestic or foreign charity above a minimum contribution requirement.

In the case of a foreign charity, if it has not yet been properly vetted by the DAF’s personnel, the DAF will determine whether or not the foreign entity is a reputable charitable organization before making the contribution. This process allows the donor to make a contribution to a charitable organization abroad while still receiving an American tax deduction and ensuring that the receiving organization is reputable. This vetting feature might be particularly useful for those donors who think of themselves as “impulse” donors, as they can contribute without worrying if the recipient organization is fraudulent organizations or other-

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<td>Donor Advised Funds</td>
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<td>Minimal (Some costs for vetting Foreign Charities)</td>
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<td>Private Foundation</td>
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<td>Several months Substantial legal and advisory fees</td>
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<td><strong>Required Grants</strong></td>
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<td>5% of Foundation Assets must be distributed annually</td>
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<td><strong>Possible Investments</strong></td>
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wise disreputable.

Donor Advised Funds provide a unique opportunity for Americans abroad, particularly if they face a large one-time liquidity event while living in a tax jurisdiction with either remittance-based taxation or a lower tax rate than the United States.

These funds could also be useful to an American who is retiring abroad. She could contribute to a DAF in order to limit her tax exposure in the United States in her last significant years of earning (especially if they are receiving deferred compensation upon retirement). This contribution would limit U.S. taxes while facilitating eventual gifting in their new home country.

Additionally, a whole family’s charitable impulses may be organized through a DAF. A U.S. based couple may want to help their children abroad make contributions to a non-profit in Africa. The parent will donate assets to the DAF and have the children direct the charitable gifts towards charities in Africa. Such a use of a DAF can provide tax benefits to the parents while also bringing them closer to far-flung family members.

**Common U.S. Charitable Trust Structures**

When designing a strategic charitable gifting plan, many affluent Americans utilize trust instruments to gift *part* of their interest in an asset to a charitable cause while *retaining* some interest in the asset for their own (or their heirs’) present or future use and enjoyment. These are complex arrangements that should only be incorporated into the plan with the assistance of estate planning lawyers and tax professionals who have been fully apprised of the client’s unique circumstances. What follows is a brief overview of four irrevocable charitable trusts that qualify for charitable deductions on federal income or federal gift tax returns while allowing the grantor to retain an interest in the property:

*Charitable Remainder Trusts:* In this case, the irrevocable trust is designed and funded in a manner so that the grantor will receive income from the trust for the remainder of the grantor’s life, and then the trust principal will be distributed to the charitable beneficiary(ies) of the trust. By designing the gift in this manner, the grantor will receive a current-year income tax deduction on the
present value of the charitable remainder interest in the trust. There are two options for a charitable remainder trust:

- A “CRAT” – the charitable remainder annuity trust – where the grantor funds the trust in one single transaction (cannot add to it later) and thereafter receives a fixed-dollar or fixed-percentage return for a fixed period or for life based on the initial trust value

- A “CRUT” – the charitable remainder unitrust – where the grantor receives a percentage of the trust value as determined annually for a fixed period or for life.

Charitable Lead Trusts: Here, the trust is designed and funded in a manner so that the charity is gifted the income stream from the trust for a fixed period, with the assets thereafter passing to a remainder beneficiary. The grantor owes gift tax on only the present value of the remainder interest, and the grantor receives a current-year income tax deduction on the present value of the interest granted to the charitable lead beneficiary(ies). As with the charitable remainder trusts, there are two options for a charitable lead trust:

- A “CLAT” – the charitable lead annuity trust – where the grantor funds the trust in one single transaction (cannot add to the trust)

- A “CLUT” – the charitable lead unitrust – where the grantor may add to trust assets over time.

While these charitable qualified interest trusts are special exceptions to the general federal gift tax rules on partial-interest gifts with clear income-tax advantages as well, the expat has to consider the tax implications in multiple jurisdictions.

Moreover, for the U.S. expat, there is a larger concern when contemplating the use of trusts in her strategic charitable planning: U.S. trusts are the product of distinct local (state) law, and their operation within the local and federal U.S. system has been the product of the evolution of this distinct legal and tax system. Once the grantor, trustee, or beneficiary crosses borders and becomes a tax resident and/or domiciliary of another country, there is a high likelihood that a new set of rules will apply that could have negative tax consequences. Most foreign countries have legal systems that either do not recognize trusts, or create tax rules that render an effective U.S. domestic trust design ineffective or even counterproductive when applied to an international context. For a fuller explanation, see our Guide to Cross-Border Estate Planning.

Accordingly, a charitable trust whereby the grantor relinquishes all interests, such as CLAT or CLUT in favor of charities (present) and heirs (remainder) might work as intended, provided that:

- The grantor establishes and fully funds the trust BEFORE becoming an expat (pre-immigration); and

- The remainder beneficiaries are not also leaving the U.S. with the grantor (e.g. immediate family members).

In all cases, competent planning with trusts will require fully coordinated estate planning expertise in all of the relevant jurisdictions.
CONCLUSION

There are many ways to share success with those less fortunate and/or to promote causes that will accomplish positive social, economic or scientific change. Developing a strategic philanthropic plan can help a family identify their favorite causes, their preferred style of gifting, the appropriate timing of gifting, and the strategies that will maximize the impact of their gifting through tax optimization.

Such pre-charitable planning is particularly critical for the expat, where there is a greater potential for the multiple legal systems and tax regimes to substantially alter the relative attractiveness of various gifting mechanisms and, therefore, the strategic choices to accomplish tax-efficient philanthropy. Like other aspects of financial planning, a philanthropic plan needs to be revisited when a family extends across national borders.


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