RAWLINSON & HUNTER

Structuring a Family's Charitable Giving

A family may wish to establish their own structure for charitable giving so that multiple generations have an opportunity to be involved; to create a legacy that may continue over future generations; and to irrevocably commit funds to charitable purposes without having to identify particular charities or charitable projects they wish the funds to be applied to.

ESTABLISHING A STRUCTURE IN THE UK

The main advantage of establishing a UK (or EU) charity is the UK tax relief afforded to the donor. The tax relief is most relevant to UK domiciled individuals who do not have access to the remittance basis and are within the scope for inheritance tax but also for those earning in the UK.

- The donor is able to, effectively, give to a recognised charity out of pre-tax earnings, resulting in a potential 45% income tax saving.
- Gifting assets to charity could save potential 20% capital gains tax for the donor.
- There are potentially significant inheritance tax advantages for the donor. The donation made to charity is not subject to inheritance tax. Furthermore, a donor may reduce the standard 40% inheritance tax rate to 36% where at least 10% of their net estate is left to charity.

For recognition for tax purposes from HMRC, a charity must be based in the UK, EU, Iceland, Liechtenstein or Norway, be established for charitable purposes, registered with the Charity Commission (or equivalent) and run by "fit and proper persons".

The charity itself does not need to pay tax on its income and gains if they are used for charitable purposes but does have reporting and compliance obligations to HMRC.

The downside to establishing a charity in the UK is the relatively high levels of compliance and bureaucracy which come with the need to register with the Charity Commission, HMRC and (potentially) Companies House. A charity must be run to ensure compliance with the law and its governing documents which contain the charity's purpose and rules for how it must operate. The charity must deliver only the charity's purposes. This said, it is often the robust regulatory framework that attracts those wishing to establish charities due to the reputational risks that come with fund charities.

A CHARITABLE STRUCTURE OUTSIDE THE UK & EU?

Establishing an offshore charitable structure if there is no need to obtain UK tax relief on donations is an attractive option. It can allow for greater flexibility in relation to the structure, management and administration of the entity and avoids possible restrictions on causes the entity may support which would otherwise arise from the requirement to deliver the charity's purposes.

For a UK resident who is eligible to claim the remittance basis, an offshore structure could be funded from offshore income and gains without any impact for UK tax purposes provided funds are paid directly from offshore accounts to the offshore entity.

No tax relief would be available on giving, however, since the individual has the ability to restrict income and gains subject to UK tax by controlling their remittances to the UK, tax relief may not be of paramount importance.

Remittance basis users may, however seek to benefit from UK tax relief in the future, and may therefore consider a UK structure.

TYPES OF STRUCTURE

Depending on the jurisdiction, there are a number of potential legal structures which may be appropriate to a family charity. These include charitable companies, trusts and foundations.

In the UK, the most common legal structures used to set up a new charity are a charitable trust, charitable company and a charitable incorporated organisation (CIO).

A charitable trust is not a separate legal entity, Trustees therefore hold legal title of a charitable trust's property on trust for the charity's specific purposes and are responsible for managing and administering the affairs of the charity.

A charitable company is usually limited by guarantee and is its own legal entity. It has director(s) responsible for the day to day management and administration and member(s) who have rights to vote to influence the governance of the charitable company.

A CIO holds similar attributes to those of a charitable company but is a corporate structure designed specifically for charities. Unlike a charitable company, it is regulated solely by the Charity Commission and no Companies House registrations are required.

For charities engaging in activities with a high degree of risk including those engaging in trading activities and entering into contractual arrangement with employees, in relation to land, loan agreements etc, a limitation of liability may be preferred such that a charitable company or CIO is used. This is in contrast to a charitable trust which may be favoured by a simple grant making charitable activity.

FURTHER CONSIDERATIONS

Families may wish to think widely when considering their charitable and philanthropic ventures. There is a wealth of opportunity for families to have significant impact and the structure and governance behind the venture serves as its foundation. The long-term intentions of the family will certainly be relevant in the initial establishment.

Aside from the structure, our experience is that such ventures can be beneficial to the family unity and succession. There are many examples of younger generations working together on charitable projects, researching ways of giving, unifying over a shared purpose, sparking passion and core beliefs. Charitable and philanthropic adventures can help to create and cement relationships between family members who may progress to work together in unity.

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