

Giving Across Borders – International Charitable Planning

International Family Forum - Managing Change

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GIVING ACROSS BORDERS

- Giving across borders today
- US tax exempt organizations
- US income tax benefits
- US gift and estate tax benefits
- The future of giving across borders

GIVING ACROSS BORDERS TODAY

- Foreign charities seeking support from US donors
- US donors with a global mission
- Global donors and global charities
- Keeping philanthropy charitable
- Charity and Security Network
www.charityandsecurity.org

US TAX EXEMPT ORGANIZATIONS

- **US public charities**
- **US private foundations**
- **Foreign charity exempt from US income tax**
 - IRS Determination Letter classifying as an exempt public charity
- **“American Friends of” structure**
- **US tax compliance**

US INCOME TAX BENEFITS

- **US person federal income tax deduction for gifts to US tax exempt organizations**
 - Individual donors
 - Corporate donors
 - Treaty exceptions - Canada, Mexico, Israel
- **Limitations based on type of charity**
- **Limitations based on type of property contributed**
- **Non-resident alien US charitable income tax deduction**

“AMERICAN FRIENDS OF” SOLUTION

- **Used by individual donors giving globally and by private foundations making grants globally**
- **Gift to the US charity, an “American Friends of” organization, which exercises discretion and control over further gifts to foreign charities**
- **Doctors Without Borders USA/Médecins Sans Frontières USA is one example**

US GIFT AND ESTATE TAX BENEFITS

- **US person unlimited gift and estate tax deduction for gifts to charity - US or foreign**
- **Non US citizen, non US domiciliary unlimited gift and estate tax deduction for gifts to charity - US only**
- **Documentation of the charitable purpose of the donee, receipts, releases and approvals of accounts**

THE FUTURE OF GIVING ACROSS BORDERS

**Impact of Tax Reform
on Donors**

“Giving While Living”

**Global Philanthropy
Industry**

**Impact Investing and ESG
Strategies**

**“Next Generation”
Financial Stewardship**

**Volunteerism, Leadership
Development and
Succession Planning**

Appendix

SLIDE 4 - GENERAL ADVANTAGES OF 501(C)(3) PUBLIC CHARITIES OVER PRIVATE FOUNDATIONS

No 2% tax on net investment income or regulatory excise tax

“50% charities” for charitable contribution purposes

Less detailed reporting requirements than private foundations

No minimum Distributions or termination tax

Eligible to make limited lobbying expenditures

SLIDE 5 - DEDUCTIBILITY OF CONTRIBUTION DEPENDS ON TWO FACTORS

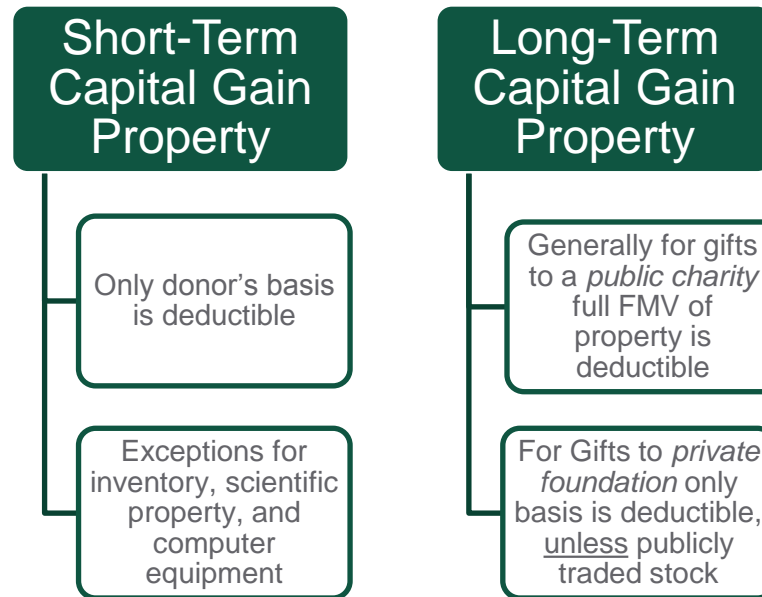
First

- Type of property contributed (e.g., cash, short-term capital gain property, long-term capital gain property)

Second

- Type of organization to which property is contributed (public charity vs. private foundation).

SLIDE 5 - DEDUCTIBILITY OF BASIS V. FMV



SLIDE 5 - LIMITATIONS ON TIMING OF DEDUCTION

- Charitable deduction limited to certain percentages of the donor's "contribution base" each year.
- Donor's "contribution base" is defined as the donor's AGI without regard to any NOL carry-back.
- Annual limitation can be 20%, 30%, or 50% of donor's contribution base, depending on what kind of property is donated and nature of donee charity.
- Excess contributions generally can be carried forward for up to 5 years.

SLIDE 5 - LIMITATIONS ON TIMING OF DEDUCTION

- **Donation of Cash and Short-Term Capital Gain Property to a Public Charity:** Individual donor may deduct up to 50% of contribution base for such donations.
- **Donation of Cash and Short-Term Capital Gain Property to a Private Foundation:** Individual may deduct up to 30% of contribution base for such donations.
- **Donation of Long-Term Capital Gain Property to a Public Charity:** Individual donor may deduct up to 30% of his or her contribution base for such gifts.
- **Donation of Long-Term Capital Gain Property to a Private Foundation:** Individual may deduct up to 20% of contribution base for such gifts.
- **Gifts by Corporations:** Deduction for contributions of cash and appreciated property to any type of organization limited to 10% of taxable income

SLIDE 6 - INCOME TAX DEDUCTIBILITY OF CONTRIBUTIONS

For a charitable contribution to be deductible for US income tax purposes, gift must be to a corporation, trust, or foundation created under the law of the US or any State of the US.

Since organization must be created under the law of the US, a contribution to a non-US charitable organization will not qualify for the US income tax charitable.

SLIDE 6 - DONATION ALTERNATIVES FOR NON-US CAUSES

- US Public Charity with Overseas Operations
- Non-US 501(c)(3) Organization
- US “Friends of” Organization

SLIDE 6 - GRANT TO US PUBLIC CHARITY

Because of deductibility restrictions for contributions to non-US charities, US donors who want to benefit non-US causes or charities quite often look to make contributions to US 501(c)(3) public charities that have programs overseas.

Many US 501(c)(3) public charities carry on activities outside of the US.

It is the type of activity, not where it is conducted geographically, that determines whether an organization qualifies as a tax exempt organization.

Donor can claim an income tax and gift tax charitable deduction for contribution to US charity even if funds will be used overseas.

SLIDE 6 - NON-US 501(C)(3) ORGANIZATION

Non-US charities may apply for 501(c)(3) status.

Nevertheless it may be cost prohibitive for non-US charity to do so.

Non-US charity may not want to subject itself to IRS oversight.

Contributions from private donors will not be eligible for the income tax or the gift tax charitable deduction.

However, if it qualifies as a 501(c)(3) public charity, private foundations may make donations to such non-US charities without the need for an equivalency determination or expenditure responsibility.

Such non-US charities may avoid income tax in the US.

SLIDE 6 - US “FRIENDS OF” ORGANIZATION

A “friends of” organization as US formed charity that obtains 501(c)(3) status.

Acts as an intermediary for contributions to non-US charities or can fulfill goals of non-US charities.

Allows the US donor to secure the US income tax deduction for contributions and allows US private foundations to avoid equivalency determination or expenditure responsibility, while “friends of” organization can expend funds overseas.

Key is that “friends of” organization must exercise a certain amount of control and oversight of granted funds.

Funds cannot be earmarked by donor for a specific non-US charity; “friends of” organization must have ultimate decision making power.

SLIDE 6 - US “FRIENDS OF” ORGANIZATION

General characteristics of “friends of” organizations:

Has full control and discretion on use of granted funds.

Majority of board should be different than board of foreign charity.

Should have its own purposes, in addition to making grants to foreign charity.

Funds should be used in the US as well.

Should make it clear to donors that earmarking is not permitted.

SLIDE 7 - GENERAL BACKGROUND

US imposes an estate tax for bequests at death and a gift tax on lifetime gifts at a top rate of 40%.

Current lifetime exemption from the gift tax is \$5,490,000, and to the extent it is not utilized during lifetime, it is available at death to offset estate tax.

For charitable contribution to be deductible for US estate or gift tax purposes, gift or bequest must be to a corporation organized and operated exclusively for charitable purposes

Unlike rules for income tax charitable deduction arena, there is no requirement that the charity be a US entity.

SLIDE 7 - OVERRIDING REQUIREMENTS FOR NON-US CHARITY TO SECURE ESTATE AND GIFT TAX CHARITABLE DEDUCTION

Gift and estate tax charitable deductions not permitted if the entity (US or non-US) has not notified the IRS that it is applying for recognition as a Section 501(c)(3) organization.

This would give one pause as to whether a non-US entity actually can qualify for the estate and gift tax charitable deduction, since normally it will not have applied for Section 501(c)(3) status.

There are, however, overriding provisions of the Code that enable non-US entities that have not applied to qualify for the estate and gift tax charitable deduction if certain requirements are met.

SLIDE 7 - OVERRIDING REQUIREMENTS FOR NON-US CHARITY TO SECURE ESTATE AND GIFT TAX CHARITABLE DEDUCTION (CONT'D)

Substantially non-US donors – If non-US charity has, from the date of its creation, received at least 85% of its support from non-US sources, contributions by US donors will qualify for the estate and gift tax charitable deductions, even if the organization has not applied for Section 501(c)(3).

Trust - Where the non-US charity is a trust that is not exempt from taxation under Code Section 501(a), all of the interests in the trust are devoted to one or more charitable purposes, the trust will be treated as a 501(c)(3) organization for purposes of the estate and gift tax charitable deductions for US donor contributions and is not required to apply for 501(c)(3) status

SLIDE 8 - IMPACT OF TAX REFORM ON CHARITABLE PLANNING

Exempt organizations rely on charitable contributions

- Many organizations are eligible to receive tax deductible charitable deductions.
- Some organizations are more dependent on contributions than others.
- Studies show that hospitals and colleges rely primarily on fees for health care and tuition and on tax-exempt financing to provide services, and rely to a lesser extent on contributions.
- By comparison, cultural organizations and charitable organizations that serve basic needs rely to a greater extent on contributions from private donors or from government grants.
- Studies show that about 13% of charitable organizations' revenue comes from private contributions from corporations, private foundations, bequests, and individuals.

SLIDE 8 - IMPACT OF TAX REFORM ON CHARITABLE PLANNING

Theory behind charitable deduction

Helps support provision of goods and services that would not be supplied sufficiently by free market.

Constitutional or practical restrictions may prevent government from providing services offered by charities.

Governments must offer services equally to all and cannot support religious institutions.

Private individual donors may focus their donations on specific causes and may donate to religious organizations.

Charities can also create an atmosphere that encourages changes to government structures, while generally the government itself will not.

There is a limit on how much can be funded through taxation.

Someone who donates has less assets with which to pay income taxes.

SLIDE 8 - IMPACT OF TAX REFORM ON CHARITABLE PLANNING

Potential impact of tax reform on charitable deductions and exempt orgs.

- **House Blueprint would not eliminate itemized deduction for charitable deduction, while Trump proposal would cap itemized deductions at \$100,000, if single, and \$200,000 for MFJ, and included in the cap would be charitable deductions.**
- **Both plans would reduce tax rates and portion of income subject to taxation.**

SLIDE 8 - IMPACT OF TAX REFORM ON CHARITABLE PLANNING

Potential impact of tax reform on charitable deductions and exempt orgs.

- **Studies suggest that wealthier donors are more sensitive to the after-tax cost of donations, which suggests that the caps proposed by the Trump plan would have a significant negative effect on donations.**
- **Cap may cause donors to spread donations over years, which will impact overall donations to charities.**
- **Lower rates may reduce incentive to donate, since donors save less when they donate than in a higher rate environment.**
- **Higher standard deduction proposed by Trump will also reduce charitable giving since taxpayers will be less likely to itemize deductions.**

SLIDE 8 - IMPACT OF TAX REFORM ON CHARITABLE PLANNING

Potential impact of budget on charitable planning

- **The National Endowment for the Humanities, and the Corporation for Public Broadcasting.**
- **The budgets for these institutions are a tiny fraction of the annual government budget.**
- **Proponents of these institutions say importance is less about the money and more about the message that it sends about the importance of culture in the United States.**
- **In essence, the thought is that when the government supports such institutions, even to a small degree, this incentivizes taxpayers to donate to the arts, humanities, and public broadcasting, so indirectly defunding these institutions will reduce charitable giving.**

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